

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I have just one question and I think your greatest competency to testify would be in this area, Mr. Chairman.

Did I understand that it is your legal opinion that the FCC does not presently have jurisdiction over this particular matter?

Mr. CELLER. I think that is correct.

Mr. BROTZMAN. You say that, having studied this proposition, is that correct?

Mr. CELLER. What was that last?

Mr. BROTZMAN. You make this particular assertion, having studied the legal propositions presented?

Mr. CELLER. Yes, sir, and I think it is incumbent upon the House to act so as to remove all possibility of doubt. The FCC must have had doubt because, as I said before, for 12 years they have been stewing around with this question whether they should or should not.

If there were clear-cut decision, their counsel, and they have counsel, would have told them to go ahead. But they have their doubts, too; otherwise they would have gone ahead long ago.

I think all doubts should be removed by some affirmative action by Congress. I don't think Congress can any longer pass the buck, to use a word of common parlance.

I think it is the duty of the Congress to say something now. Otherwise they are going to act. By your silence they will act. I don't think they have a right to act but they are going to act.

Mr. BROTZMAN. I yield to the gentleman from Ohio.

Mr. BROWN. Mr. Chairman, in the same vein, do you feel that the FCC has or has not the jurisdiction to regulate program content should we permit pay TV to go on the air?

Mr. CELLER. I would not want to have the Congress determine that the FCC shall go whole hog on regulation of programing. That might be an undue interference but I think there should be some words placed in the statute to give them some minimal authority over what the traffic is.

As I understand the Supreme Court decision on this matter, when the Supreme Court spoke of determining the composition of that traffic there ought to be some words there giving the FCC some authority. They have always shunned it. They have given the stations and networks almost free rein to do almost anything they wish.

Mr. BROWN. Does this raise any questions with reference to the first amendment so far as you are concerned?

Mr. CELLER. Yes, sir. I think we have to be very careful. You are walking a tight rope.

Mr. BROWN. I would be interested in seeing language which would permit us to give them some control but not whole hog control over this delicate area of program content.

Mr. CELLER. When you say regulate I think you involve in the word "regulation" some modicum of determination of what shall go over the airways. There must be something like that otherwise there is no regulation at all, they go hog wild on it, I mean hog wild in the sense of doing nothing.

I think the time has passed for that.