

rules and regulations which the Commission should adopt in authorizing such a system.

The Joint Committee respectfully submits that the Commission gravely erred in making the preliminary determination that the authorization of a permanent Pay-TV system is in the public interest, convenience and necessity. On the contrary, the Joint Committee asserts (and will demonstrate in the instant pleading) that the Commission's determination in this regard was erroneous for the following reasons:

- (a) The Commission's determination was based almost completely on the results of the Hartford test and those results do not warrant any such conclusions. Pay-TV was able to attract less than 5,000 people over a three-year period of time in one of the major television markets in the country. The limited number of subscribers precludes any valid conclusions concerning the effect of pay television as a nationwide, permanent medium. The inability to attract more subscribers denotes failure, and the statistics of failure provide no basis for evaluating the impact of Pay-TV on free television.
- (b) The Commission does not have jurisdiction under the present Communications Act to authorize a permanent pay television system; assuming *arguendo*, that it did, the Commission should not do so without guidance from Congress in the form of statutory amendments to the Communications Act, particularly since pay television's proponents have not demonstrated any pressing public need or desire for the institution of a permanent pay television system.