

V. JURISDICTIONAL AND RELATED QUESTIONS

A. The Commission Does Not Have Jurisdiction to Authorize a Permanent Pay-Television System

The Commission has stated in its First Report, and reiterated in the Further Notice of Proposed Rule Making here at issue, that it possesses the statutory authority to authorize nation-wide permanent pay television. Moreover, the Commission asserts in its Notice that the Court of Appeals, in *Connecticut Committee Against Pay Television v. Federal Communications Commission*, 391 F.2d 835 (D. C. Cir.), cert. denied, 371 U. S. 816 (1962), concluded that the Commission possessed such statutory authority. The Commission has asserted that if (as the Court held in *Connecticut Committee*) it possessed the statutory authority to authorize a *test*, then, of necessity, the Commission possesses the statutory authority to authorize pay television on a permanent basis (Notice of Further Rule Making, Par. 19).

The Joint Committee respectfully submits that the Commission's reading of the Court of Appeals' opinion is erroneous. Although the appellant in *Connecticut Committee* urged that the Commission did not have the power to authorize pay television on a permanent basis, nevertheless, the Court *refused* to decide this question in its decision in that case. The Court never addressed itself to whether the Commission possessed the power to authorize pay television *permanently*. The Court held merely that the Commission's power to provide for *experimental* uses of frequencies constituted a sufficient basis for the trial authorization there in issue. The Court's opinion was explained and justified exclusively by the experimental nature of the authorization, and the Court went to great lengths to emphasize the experimental nature of the operation as the basis for its decision, stating (301 F.2d at 837):