

The concept of a pay television operation and the introduction of a direct financial relationship between the individual listener and the station is more than a mere advance in the broadcasting art. It introduces a major change in the entire concept of broadcasting and must necessarily introduce a major change in the regulatory scheme which surrounds the broadcasting industry. If rates are to be charged the public for the privilege of using public facilities, the question arises as to whether and how these rates must be regulated. The present Act does not provide this guidance to the Commission. Moreover, if rates are to be regulated, it would mean that the Commission must assess such things as cost of operation, cost of equipment and cost of talent and then decide — as though the licensee were a public utility — what constitutes a reasonable return upon the licensee's investment. It is apparent that the Communications Act as now written neither sets out nor attempts to set out such a broad regulatory scheme. The absence of such a scheme is plain evidence that Congress did not grant the Commission power to authorize a permanent pay television system.

B. The Commission Should Not Act Without Guidance From Congress

Even assuming, however, that the Commission possesses the statutory "power" to authorize permanent pay television, nevertheless, it is clear that it should not do so without further guidance from Congress.

Indeed, the Commission, itself, in the instant Further Notice of Proposed Rule Making, has indicated that amendment of the Communications Act may indeed be necessary in order to properly protect the public from the detriments inherent in pay television. However, the Commission has indicated that it will apparently follow the procedure of first establishing pay television on a permanent basis and *then* seeking guidance from Congress through amendments of the Communications Act to correct the abuses which may occur precisely as a result of the Commission's authorization of permanent pay television (Notice, Par. 20).