

charges the listener for the use of wire lines which he has constructed so as to bring the programming presented by the licensee to the public.⁶ But a licensed pay television system permits the licensee to directly charge for the use of public facilities (the air waves) without any governmental regulation of those rates,⁷ while at the same time depriving the public of the free service it previously enjoyed over the air.

7. In the First Report, the Commission, although admitting that the Communications Act of 1934 makes no specific or direct delegation of power to authorize such a major change in the concept of American broadcasting and the regulatory scheme surrounding it, nevertheless found that power in the statute, and found support for its interpretation in its legislative history. The Commission reasoned that Sections 301 and 303 of the Act gave it broad powers over the use of radio frequencies, and it specifically cited Section 303(g) as giving it the power to study new and experimental use of frequencies and to generally encourage the larger and more effective use of radio in the public interest. It then cited what it considered to be certain specific statutory limitations on the Commission's licensing power (Sections 310(a), 313, 317, 325(a), 325(b) and 326) and concluded that if Congress wished to further

⁶ It should be noted, of course, that, as was pointed out above, the CATV operator may, himself, originate programming, charging the public for it. Under these circumstances, CATV becomes quite similar to pay television. It is significant, however, that the Commission has specifically refused to hold that origination of programming by CATV systems on a permanent basis is in the public interest and has sought guidance from Congress on this matter. See Second Report in Docket No. 14895 at Par. 153(ii), 2 F.C.C. 2d at 787.

⁷ The Supreme Court clearly indicated in F.C.C. v. Sanders Bros. Radio Station, 309 U. S. 470, 474, that rate regulation of broadcasting is not encompassed within the present Act.