

(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.

13. Petitioners respectfully submit 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):

The distinguishing characteristics of the Federal Communications Commission's authorization of subscription television in this case is the experimental or trial basis upon which the system is to operate for the duration of its three years authority.

14. It should be obvious that the statutory framework and guidelines which would be required to support a nation-wide permanent pay television system is far different from the type of legislation required to support a small experiment so limited in size as the Hartford test, and with such a necessarily inconclusive effect on the free broadcast system. The dangerous effect which pay television will have on the