

talent. It must then decide — as though the licensee were a public utility — what constitutes a reasonable return upon the licensee's investment, for which no guidance is given in the Act. The pay television proponents, as well as certain of its opponents, strenuously urge that the Act as now written does not, in fact, allow the Commission to institute even the minimum controls recommended by the Committee, on the grounds that those conditions represent "censorship" forbidden by Section 326. If such assertions are correct, then the Commission will be deprived of the power to promulgate and enforce even the conditions which the Committee recognizes are vital to the protection of the public interest.

16. It is apparent that the Communications Act as now written neither sets out nor attempts to set out a broad regulatory scheme sufficient to promulgate and regulate a permanent pay television system. The absence of such a scheme is plain evidence that Congress did not grant the Commission power to authorize a permanent pay television system.⁹

III. The Commission Should Not Authorize Permanent Pay Television Without Further Congressional Guidance

17. Even assuming, however, that the Commission possessed the statutory authority to authorize pay television on a permanent basis, nevertheless, it must then face the question whether such authorization is appropriate in the absence of Congressional guidance.

⁹ Petitioners believe, and will discuss more fully below, that the conclusions in the Committee's Report concerning rate regulation of pay TV represent perhaps the most serious error contained in the Report.