

18. The Committee noted some, though not all, of these objections in its Report (Par. 7), and attempted to answer a few of them. The points made by the Committee, however, are untenable.

19. The Committee rejects the need for awaiting Congressional clarification by stating (Report, Pars. 8-9) that Congress has not acted, although it was aware of the pendency of this proceeding for a number of years, and although the Commission specifically announced that it would allow a lengthy period for the filing of Comments so that Congress could act if it so desired. But this is no answer. Concededly, Congress as a body has not acted. Congressional inaction *per se*, however, obviously can mean either of two mutually contradictory things: either it believes that no guidance is necessary and that pay TV can be established and fully regulated under the present Act or, on the contrary, Congress may believe that no further statutory activity is required since the Commission cannot, under the present Act, authorize permanent pay television at all. If Congressional inaction is based upon the second of these propositions then, clearly, inaction cannot be used as an excuse by the Commission for authorizing the system on a permanent basis. And it appears that the weight of the evidence indicates that the second of these propositions is precisely the explanation for Congressional inaction for, as the Committee candidly noted (Par. 7), both Committees of Congress most intimately concerned with the Commission have indicated their judgment that the Commission does *not* have the requisite jurisdiction. Under these circumstances, it would appear that Congressional *action* (not inaction) affirmatively indicating that the Commission has such power is necessary before pay television should be permanently authorized. Such *action*, of course, has not been forthcoming.