

Mr. GAYNES. We believe first of all and perhaps primarily that this committee should make it very clear to the Federal Communications Commission, one, that the Commission does not have the statutory authority to institute pay television under the Communications Act of 1934 and, two, that even if it did it certainly should not do so because pay television is not in the public interest.

I do not think I have to speak too long about the fact that pay television is a tremendously drastic change in the television system we have in this country today.

I think the fact that this committee has been working so assiduously at it and the fact that so many people have appeared before them arguing pro and con demonstrate the novelty of pay television and the change it would make.

For the first time in the history of television broadcasting there would be a direct charge from the broadcasting licensee to the viewing public. In fact, it seeks to adopt a pay system which I think was rejected by the drafters of the Communications Act and certainly finds no support in it.

I find the lack of statutory authority in three aspects most particularly.

One, the present act has not a word about it which would indicate that the Commission has the power to institute a direct pay system. The legislative history of the act which is long and which we have analyzed in some of our comments make it quite clear this was never conceived as a real practical possibility at the time the act was passed. Two, this is demonstrated I think by the absence of rate regulation which I think is perhaps the most striking demonstration of the Commission's lack of authority.

The Communications Act is, of course, broad and gives the Commission many powers but it does not give them the power I believe to regulate the rates.

If the Congress wished to give the Commission the authority to institute pay television I cannot believe they would have done so without giving them the authority to regulate the rates.

This is a public utility. The airways belong to the people of the United States. They are given to broadcast licensees to use for limited periods and no property right is given therein. I just cannot conceive, it would be singular in the history of regulatory authority for this kind of power to be given without the regulation authority.

Yet the Commission does not have the power to regulate the rates. It won't even say it does have the power to regulate rates. It would launch this venture without the kind of protection that is necessary to protect the public.

I think there is a third reason. That can be found right in the fourth report. The Commission has recognized as we all have recognized the tremendously destructive potential which pay television has to destroy the free system. It tries to protect the free system by instituting program controls of a type which have never before been attempted.

It would limit movies on pay television only to those which are less than 2 years old in general release. It would prohibit the presentation of sporting events that appeared on free television in the past