Wherefore, the Commission should not authorize over-the-air subscription television on any basis, unless the Congress explicitly directs such authorization.

Respectfully submitted.

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Mr. LINDOW. If you review the history of the pay television proceeding at the FCC and the results of the Hartford pay television experiment, it is clear that a nationwide system pay TV would represent a drastic, fundamental change in the system of American broadcasting as we know it. The most apparent change is that viewers would have to pay, whether by the program, day, week, or month, for the opportunity to see television programs they now see free of charge.

The imposition of program charges would mean that pay TV would be available only to those who could afford to pay such charges and who live in communities where the economics justify the establishment of pay TV. The FCC has concluded that such pay TV "narrowcasting" constitutes "broadcasting" under the Communications Act and is, therefore, within the Commission's jurisdiction. But this assertion of jurisdiction is of doubtful validity.

In any event, by asserting jurisdiction over pay TV upon such grounds, the Commission is faced with a very serious dilemma. On the one hand, it is trapped by its conclusion that pay TV is "broadcasting" and thus its rates and related practices cannot be regulated. On the other hand, the Commission is aware that authorizing pay TV on a permanent basis without the type of control imposed upon public utilities would create dangers of rate gouging and other serious abuses to pay TV customers. And the dilemma becomes even greater because the imposition of such controls would result in an intolerable degree of governmental involvement in television.

Furthermore, under the rules proposed for pay TV authorizations, pay TV would be regulated primarily in terms of its programing content, even to the extent of regulating the scheduling of certain types of programs. This would involve the Government in an area in which, as a matter of law and policy, it clearly should not be.

On the other hand, without adequate regulation of program content, pay TV poses the danger of severe adverse impact on the service the public receives from our present system of free television broadcasting. Many segments of the American public would be deprived of the free television broadcast service that they now receive free of charge. This is another regulatory dilemma which merely points up the drastic change in our television system that authorization of pay TV would involve.

Given these radical changes in television broadcasting that pay TV would involve, MST believes that, even if it has jurisdiction to authorize pay TV, the Commission should not act without an explicit and affirmative mandate from the Congress. When it enacted the All-Channel Receiver Act, the Congress determined that an 82-channel television system is essential to the public interest.

This was a determination that these channels would be used for all the American people, not just those able to pay. Use of some or all of these channels during some or all of the time for pay TV would