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we note that whether the Commission has statutory authority to regulate rates for the new service--a broadcast service--is open to question. Since we do not believe that such regulation is necessary (see paras. 220-222) the matter need not now be analyzed. However, we shall carefully observe all aspects of the new service in operation, and if amendments are indicated shall make appropriate recommendations concerning rate regulation or other matters.

STV is Broadcasting

10. In the Further Notice we concluded that STV is broadcasting within the meaning of Section 3(o) of the Act, and set forth in detail our views on the subject (paras. 22-29). As stated there, we regard intent to provide a radio or television program service without discrimination to as many members of the general public as can be interested in the programs as of primary importance in our determination. We further said that intent may be inferred from the circumstances under which the programs are transmitted and that the number of actual or potential viewers is not significant.

11. In our discussion we cited the Functional Music case 11/ and the Muzak case 12/. Both involved the use of special equipment attached to the receivers of subscribers in order to receive the service. ABC, urging that STV cannot be classified as broadcasting, cites early decisions of the Commission 13/ that certain activities over broadcast stations constituted point-to-point communications rather than broadcasting and argues that the interpretations in those decisions are worthy of more weight than the Muzak case. Motorola questions whether Functional Music is authority for the proposition that STV is broadcasting. We should note that we cited Muzak, as well as Functional Music, merely to illustrate that payment of a charge by subscribers for a special type of service is not in itself determinative of the question of intent that the programs be received by the public.

Oral Presentation

12. In the Further Notice (para. 21) we said that after a study of the written comments responsive thereto "we shall take whatever steps appear appropriate at that time, including an oral presentation if it is indicated, as may well be the case." Several parties suggest that if, in spite of their arguments to the contrary, the Commission should now decide to establish a permanent STV service, at the very least it should not do so without holding an oral evidentiary hearing first.

11/ Functional Music, Inc. v. FCC, 274 F. 2d 543 (C.A.D.C., 1958), cert. denied, 361 U.S. 813.

12/ Muzak Corporation, 8 F.C.C. 581 (1941).

13/ Scroggin & Co. Bank, 1 F.C.C. 194 (1935); Standard Cahill Co., Inc., 1 F.C.C. 227 (1935); Bremer Broadcasting Company, 2 F.C.C. 79 (1935); Adelaide Lillian Carrell, 7 F.C.C. 219 (1939).