

in the number of services available to the public under the present system.

3. Whether it would seriously impair the capacity of the present system to continue to provide advertising-financed programming of the present or foreseeable quantity and quality, free of direct charge to the public, and the related question: Whether subscription television would have a siphoning effect causing program producers, sports promoters, talent, writers, directors and stations to migrate to a disastrous degree away from the present system to subscription television, which would in turn frustrate any possible effort to continue to provide free television service anywhere near the present quantity or quality.

4. The degree of acceptance and support which subscription television might be able to obtain from members of the public in a position to make a free choice.

5. Subsidiary issues which the Commission anticipated would be clarified as a result of trial operations authorized pursuant to the First and Third Reports were: (a) the *modus operandi* of subscription service; (b) methods to be employed; (c) the nature of the programs offered; (d) technical performance; (e) the role of the participating broadcast station licensee; and (f) possible monopolistic features of a subscription service.

We shall hereafter discuss in detail each of these issues in light of the empirical knowledge gained during the Hartford subscription trial operation.

Jurisdictional Consideration

IV. THE COMMISSION HAS THE AUTHORITY UNDER THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO AUTHORIZE SUBSCRIPTION TELEVISION AS A "BROADCAST" SERVICE.

It cannot now be doubted that the Commission has statutory authority to authorize subscription television. Both the Commission and the Court of Appeals have so held.

The Commission, "after a painstaking review of the briefs submitted in this proceeding and additional research by the Commission staff,"⁴ first reached this conclusion in its 1957 notice of further proceedings (FCC 57-530). In its First Report the Commission unanimously⁵ affirmed its prior holding. It discussed in detail the relevant

⁴ First Report, para. 20.

⁵ In the only dissent to the report as a whole, Commissioner Bartley *sub silentio* conceded that the Commission had the power to authorize subscription services, although apparently he would have held that such should be classified as non-broadcast. 16 RR at 1533, 1538. It should be noted that Commissioner Bartley concurred in the result of the Third Report. 16 RR 1540a.