

sections of the Communications Act and pertinent legislative history, and stated that:

“[I]t is not reasonable to infer Congressional intent to prohibit charges for the reception of programs transmitted by broadcast stations, from language which makes no express reference to the question, and which in our opinion could be so construed only on a strained interpretation. Such a construction of the statute seems to us especially unwarranted in view of the fact that in the several respects, mentioned above,^[6] in which Congress decided to impose specific limitations on the broadly defined licensing powers of the Commission, it did so in express, explicit language.” (para. 29.)

These sections of the First Report were “readopted and reaffirmed” in the Third Report (para. 7). In the subsequent appeal from the Commission’s 1961 final decision authorizing the Hartford operation, the appellant Connecticut Committee Against Pay TV argued, *inter alia*, that “the Commission lacks statutory power to authorize a television broadcast system which requires the direct payment of fees from the public”⁷ This contention was rejected by the Court in its affirmance of the Commission’s decision. These decisions have since stood undisturbed by either the Supreme Court or Congress.

Thus, no useful purpose would be served by prolonging this discussion with detailed argument and citation, except to add that the Hartford trial has not disclosed any fact that would in any way alter these conclusions.

The only jurisdictional consideration remaining open, then, is whether subscription television should be classified as “broadcasting” or under some entirely new category. In its First Report the Commission, while rejecting any contention that the definition of “broadcasting” contained in Section 3(o) of the Communications Act *per se* bars the authorization of subscription broadcasting (para. 28) and, conversely, observing that “there would appear to be little basis for classifying the proposed kind of service as a common carrier service within the meaning of Section 3(h)” (para. 43), reserved a decision upon its proper classification. We submit that the language of

⁶ Communications Act, as amended, Sections 311, 313, 315, 317, 325, 326. See First Report, para. 25.

⁷ *Connecticut Committee Against Pay TV v. FCC*, 301 F. 2d 835, 837 (D.C. Cir.), cert. denied, 371 U.S. 816 (1962).