

established and was universally followed. This had not, however, resulted from any legislative requirement. It was the way radio broadcasting grew up. The Secretary of Commerce—the predecessor licensing authority—was not limited to issuing broadcast licenses only to licensees proposing free broadcasts. The practice of free broadcasting resulted from what at that stage was the voluntary choice of the industry.” (para. 32.)

Furthermore, the Commission, in the *Muzak Corporation* case, 8 FCC 581, 582 (1941), and the Court of Appeals, in *Functional Music*, expressly decided that the procurement of station revenue by direct charges to the public is within the definition of broadcasting.

The only remaining consideration, then, is whether a subscription broadcaster can comply with all of the Communications Act requirements and Commission regulations and policies imposed upon other broadcasters. The answer is definitely yes.¹⁰ The Hartford trial demonstrated that a broadcast licensee supplying subscription television programs will have no difficulty whatsoever in meeting all of his obligations if classified as a “broadcaster.” Indeed, the Hartford station (WHCT) experienced no dissimilarities in complying with these obligations during its hours of operation as a standard television broadcast station and those of a subscription broadcaster.

We submit, therefore, that the broadcast licensee is clearly performing a broadcasting function, whether his signal carries a sponsored, sustaining or subscription program. The fact that in the course of performing this ultimate task he employs services that are not in and of themselves broadcasting does not deprive his telecast of its real broadcasting character. He now uses the services of national networks, regional networks, news services, film syndicates, telegraph companies, transportation companies, the U.S. Mail, and telephone companies to obtain entertainment and information that he intends to release to the public, but this does not deprive his final act of transmission of its basic character—broadcasting.

From the above, it is clear that subscription television is broadcasting within the statutory definition. Any other conclusion would do violence to history, the background of governmental regulation, and the logical and reasonable meaning to be given to the plain words of the statute. It should be noted, however, that even if the Commis-

¹⁰ Allowing, of course, for the requisite subscription scrambling of transmitted signals.