

ford trial has now reached a stage where it has supplied meaningful data and information. It is alleged that the operational data and information so far produced by the Hartford trial give the Commission for the first time a factual basis for appraising the potentials of the service in other types of circumstances.

6. Available data from the Hartford trial include the technical performance of the Phonevision subscription equipment, the modus operandi of subscription service, methods to be employed, the nature of the programs offered and the role of the participating broadcast station licensee, which were factors which the Commission indicated in its Third Report it hoped would be demonstrated and clarified by a trial operation. Zenith and Teco contend that the Hartford trial has proven that subscription programs may be provided to the public which supplement rather than duplicate conventional television programming; that the public will respond to and support such subscription programming; and that subscription television offers a potential source of revenue which would increase the number of broadcast services now available to the public, in furtherance of the achievement of the Commission's television service priorities as established in its Sixth Report and Order. The petition further asserts that, in view of the growth of unregulated wire television, the use of CATV for pay television purposes, the Commission's continuing problem of UHF development and related problems of increasing the number of stations and the amount of program service available to the public, the time has come for further consideration by the Commission. Without here attempting to reach a final conclusion on all of the contentions advanced by Zenith and Teco in their petition, we have concluded that changed circumstances and new facts now available since our Third Report was issued in 1959 warrant a further appraisal of subscription television.

7. *Preliminary Legal Considerations.* In our First Report, as readopted and reaffirmed in the Third Report, we concluded that we have the statutory authority to authorize subscription television operations if we find that such operations would be in the public interest. Our conclusion in this respect is supported by the Court's affirmation of our power to authorize the Hartford trial, wherein the Court explicitly rejected arguments "that the Commission lacks statutory power to authorize a television broadcast system which requires the direct payment of fees by the public."⁵

⁵ *Connecticut Committee Against Pay TV v. FCC*, 301 F.2d 835, 837 (D.C. Cir.), cert. denied, 371 U.S. 816 (1962).