

8. In our previous reports we also explicitly rejected arguments that the definition of "broadcasting" in Section 3(o) of the Communications Act, *per se*, bars the authorization of subscription broadcasting, stating: "The evident intention of any station transmitting subscription programs would be to make them available to all members of the public within the range of the station."⁶ (First Report, para. 28.) However, we reserved the question of whether subscription television should be classified as "broadcasting" or should be classified under some entirely new service classification until trial experience would furnish a better basis upon which we might determine the answer to this question. (First Report, para. 43.) Information available to us from the Hartford trial lends support to our previous conclusion that subscription television should be classified as "broadcasting" within the meaning of Section 3(o) of the Act. The Hartford trial has not only demonstrated that the subscription television station operator intends to make subscription programs available to all members of the public desiring them, but it has further demonstrated that a broadcast licensee carrying subscription programs will have no more difficulty in complying with all pertinent requirements of the Communications Act and those provisions of the Commission's Rules and Regulations applicable to television broadcasting than a station broadcasting non-subscription programs. Thus, the proposed rule contemplates that subscription operations will be generally classified as "broadcasting" within the meaning of Section 3(o) of the Act. Comments on the proposed rule may also be directed to our proposal to so classify subscription television operations.

9. *Scope.* It should be emphasized that the proposed rule which would permit subscription operations on an extended nation-wide basis does not, without more, automatically authorize all television stations to broadcast subscription programs. Rather, the proposed rule requires any television station desiring to broadcast subscription programs to first file with the Commission an application for subscription television authorization. The grant or denial of individual applications for subscription television authorization will be decided on a case-to-case basis in light of the public interest considerations which may be involved in the particular circumstances. We believe that such a case-to-case approach under the rule will provide a flexibility which will better serve the ultimate public interest than would an

⁶ We also concluded 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)." (First Report, para. 43.)