

C. Conclusion

The Further Notice cannot be reconciled with the Third Report. The Third Report postulated a test situation for purposes of determining the benefits and evils inherent in a different distribution technique -- Pay-TV. The essence of the test was that this new technique was so inherently competitive to and with the existing system of free television that it could not be authorized on a nationwide scale until the Commission had facts upon which it could determine the public interest -- the benefits to be derived and the effect of the system on existing television. Every use by Pay-TV precludes a simultaneous use of a scarce commodity -- broadcast frequency space -- at the same time, and such use could be authorized only if the benefits conferred were substantially superior to the detriment that could result.

The only conclusion the Commission can draw from the Hartford experience is that Pay-TV is a total failure. If the proponents, in fact, invested as much time and effort as they claimed and, in so doing, produced so few subscribers, then no further authorizations are warranted.

The Further Notice recognizes the failure -- it questions the economic viability of Pay-TV. Notwithstanding this, the Commission appears to be prepared to ignore the failure and undertake a permanent nationwide system on the basis of supposition rather than fact.

If the Commission can properly determine the public interest on the basis of conjecture and supposition, then the entire test procedure was a farce. The Commission had before it in 1955 evidence of a magnitude comparable to what it now purports to rely upon. The Hartford test does not, under any circumstances, justify a nationwide authorization. If the Commission is not persuaded of the fact that the system is a failure, the most that Hartford warrants is an extension of the existing test authorization.