

be a vehicle capable of furnishing significant artistic, cultural or informational programming for minority interests were without foundation and that free television in fact is better suited by far to perform this function.

The Hartford trial, while resulting in a clear-cut failure to achieve any significant degree of audience penetration and casting doubt on the viability of subscription television, nevertheless prompts Petitioners to project audience penetration levels which would enable subscription television to bid away from free television selective mass appeal attractions which free television now offers to the public.

And, finally and importantly, the Hartford trial shows that subscription television would furnish such attractions for pay to an audience which would for all practical purposes exclude the economically less advantaged 30% of the nation's population.

We note that the Petitioners rely exclusively on the Hartford trial and contend that in every respect it has established an adequate basis for the permanent nationwide authorization of subscription television. In that connection we note the statement of Petitioners that since the Commission's Third Report adopted on March 23, 1959 the "... only new facts developed concerning broadcast subscription television ... are those available from the Hartford subscription trial." (Petitioners' Comments, p. 69) We would point out that additional "new facts" necessarily arise from the changes in the broadcast environment during the past seven and a half years, particularly those relating to the program choices which free broadcasting—both commercial and educational—offers to the general public, and we propose to relate such changes as well to the public interest issues which are at stake.

In response to the Commission's Notice of Inquiry with respect to wire or cable subscription television, our comments will urge that the Commission does not have jurisdiction over a system of subscription television not using the broadcast spectrum, for the same reasons expressed in our comments in the CATV proceeding, Docket No. 15971.

II. THE HARTFORD TRIAL SHOWS THAT SUBSCRIPTION TELEVISION, FAR FROM PROVIDING A BENEFICIAL SUPPLEMENT TO THE PROGRAM CHOICES AVAILABLE TO THE PUBLIC ON FREE TELEVISION, WOULD DEVOTE ALMOST ALL OF ITS PROGRAM TIME TO TYPES OF PROGRAMS DUPLICATIVE OF PROGRAMMING OFFERED IN QUANTITY BY FREE TELEVISION

The most important single issue before the Commission is whether subscription television would provide, in the Commission's phrase (*Notice*, para. 15), "a beneficial supplement" to the program choices now available to the public through free television. If it would, doubts which arise as to other public interest aspects of subscription television operations might conceivably be resolved in its favor. But if a subscription television operation in any community will merely duplicate types of program offerings already available to the public in quantity on free television, it would not appear that any other considerations of public interest could justify the authorization of such a service using broadcast channels.

Some confusion is discernible in the Commission's Notice as to the distinction which is drawn between programming which beneficially supplements free television and that which duplicates its offerings. The Commission's Notice (*Notice*, para. 12) appears to accept Petitioners' underlying assumption that if subscription television offers programs which, as individual units, were not available on free television its function would be supplementary. Elsewhere in the Notice (*Notice*, para. 42) the Commission invites "comments on whether there should be any limitation on the *type* of programming that subscription operations may present, and if so, what *types* should be excluded, or how a line might be drawn to determine what *types* of programs could be shown and what could not." (Emphasis added.) Surely the whole thrust of the Commission's concern over the threat posed to free television is not whether subscription television can at times present individual programs not otherwise available to the public—any network or individual station licensee often does present programs not otherwise so available—but upon whether, taken as a whole, subscription television operations will provide "a different service from that of conventional television . . ." (*Notice*, para. 42).

Petitioners themselves are confused or disingenuous with respect to this distinction. While generally urging that their programming constituted box office attractions not otherwise available on conventional television Petitioners,