

V. THE HARTFORD TRIAL DOES NOT SUPPORT THE VIEW THAT SUBSCRIBERS COULD BE OBTAINED IN SUFFICIENT NUMBERS TO MAKE SUBSCRIPTION TELEVISION A VIABLE BUSINESS

The Commission decided in its First Report that it was unable to make a determination that the authorization of subscription television would be in the public interest without the benefit of empirical data. In considering the economic viability of a nationwide subscription television system the Commission wrote in its First Report:

"An important factor—the degree of acceptance and support which the service might be able to obtain from members of the public in a position to make a free choice—could be reasonably tested in suitably limited trial demonstrations. We think it is neither necessary nor desirable that decisions upon which this factor and other important factors have an immediate bearing should be made on the unsatisfactory basis of speculation and conjecture which, with few exceptions, is the only ground available in support of the argument that even a limited trial would disserve the public." (Paragraph 54)

Petitions suggest in their Comments that Hartford now has furnished the Commission with sufficient empirical data on which to authorize a nationwide subscription television system.

However Petitioners arrive at their financial projections, we submit that they cannot be based on the results of the Hartford trial. Nor does the Commission view Hartford as establishing the economic viability of a nationwide subscription television system. On this issue, the Commission's Notice states:

"Finally, although the Hartford trial, together with the experience of International Telemeter in Etobicoke and of Subscription Television, Inc., in California, has demonstrated that a subscriber market does exist where such service is offered, we cannot conclude from such a small sample that subscribers can be obtained in sufficient numbers to make this a viable business." (Paragraph 17)

We are in no position to determine how many subscribers RKO could have obtained in the Hartford tests if RKO had continued its efforts in that direction. RKO's decision to limit the number of Hartford subscribers to 5,000 resulted, according to Petitioners, from RKO's determination that "business prudence and fairness to the subscribers did not warrant further substantial expansion without some assurance that the Commission would authorize the trial beyond the third year." (Petitioner's Comments, p. 4) In approving RKO's application for testing in Hartford, the Commission took note in its findings of the fact that RKO (whose application proposals were endorsed by Petitioners) was prepared to invest on an unrecoverable basis up to ten million dollars in Hartford and was looking toward 10,000 subscribers by the end of the first year and a maximum of 50,000 during the trial. It is surprising that the considerations of "business prudence and fairness to the subscribers" which led RKO to limit their test operation in Hartford were not apparent to RKO and Petitioners at the time they submitted their application for testing with the Commission.

If RKO and Petitioners intentionally limited their Hartford subscribers to 5,000 it would appear that they misled the Commission at the time of their original Hartford application. In any event, a decision to limit the subscribers to 5,000 had the effect of torpedoing the Commission's ability to obtain valid empirical data from Hartford. There is, of course, a further possibility—that the 5,000 subscriber "limit" was not a voluntary decision on RKO's part, but reflected its inability to sign up additional subscribers.¹² The Commission appears to recognize this possibility in paragraph 13 of the Further Notice: "While the fact that RKO decided not to increase the number of subscribers at the end of the second year of the trial could account in part for that low figure, there is a question whether if it had elected, instead, to continue to promote new subscriptions, it would have achieved a subscription penetration of much more than 1%."

The Commission's recognition of the inconclusiveness of the Hartford data bearing on the issue of the economic viability leads it now to suggest that this

¹² Or to keep them. We note that Petitioners, in explaining the high voluntary cancellation rate among Hartford subscribers, attributed it in their Comments to "such factors as subscribers moving from the community (the average American family moves once every five years), discontinuing service during extended vacation periods, credit delinquencies and related economic reasons, such as loss of employment, insufficient use by customer to justify expense, etc." However, in supplemental information filed with the Commission covering all three years of the trial Petitioners list the three principal reasons for subscriber cancellations as "Non-use", "Dissatisfaction with programming" and "economic reasons". Of a total of 3,478 voluntary cancellations during the entire trial period over 62% were due to these reasons.