

VII. RESPONSE TO NOTICE OF INQUIRY REGARDING WIRED SUBSCRIPTION TELEVISION

77. The Commission's Notice of Inquiry indicates (par. 48) that it will take notice of the comments filed in the inquiry in Docket No. 15971 pertaining to subscription television as related to CATV. Telemeter, in its Reply Comments in that Docket as well as in its Statement filed May 25, 1965, in the instant proceeding (pp. 26-27), made the contention that the Commission has no statutory authority to regulate subscription television by wire or cable. As we there set forth:

"In its comments filed in 1955, Telemeter contended that since subscription television over the air falls within the definition of broadcasting, a term mutually exclusive with the definition of common carrier service, the Commission obviously does not have Title II regulatory authority over subscription TV.

"Cable subscription TV, of course, would not fall within the definition of 'broadcasting,' for the simple reasons that it makes no use of the airwaves and that the bridging of the geographic gap between the subscribers' sets and the subscription television studio would not involve the radiation of electro-magnetic energy. Nor would this difference in the technique of bringing subscription television signals to the subscribers' sets make the cable subscription television operator a common carrier. *WSTV, Inc. v. Fortnightly Corporation*, 23 RR 184 (1962). In fact, the establishment of a cable subscription television system does not, under existing law, require any authorization from the Commission."

78. Telemeter is aware, of course, of the Commission's assertion of jurisdiction over non-microwave served CATV's and of the pending legislation in Congress to support that jurisdiction. In the case of the closed-circuit subscription operation by wire, however, which involves no use of frequency space whatsoever, and in the case of the CATV system which, itself, originates subscription television programs (as distinguished from the off-the-air pick-up or microwave-fed subscription programs), there should be no question that no federal regulatory authority exists.

79. Assuming that the Commission's assertion of jurisdiction over CATV's is affirmed either by the Courts or the Congress, Telemeter's further comments will be directed to those situations where a regulated CATV system either picks up subscription programs off-the-air from the originating station or receives them on its cable system via microwave from the originating station. Under these circumstances and assumptions, response to the specific inquiries of the Commission is made.