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franchise holders with franchises in more than one city, or by equipment manufacturers, when there is no real evidence that such restrictions are essential to protect free TV or to provide safeguards against anti-competitive practices. AMST states that even if we had such restrictions they would only prevent some program siphoning but not all. To which we can only reply that it is not our intent to erect a complete fence about free TV. It may well benefit the public to leave at least a small opening in the enclosure. Finally, to the ACLU argument that diversity is best promoted by separating the functions of programming from other parts of STV operations, we can only reply that we give credence to the view that there may be a need for flexibility of approach to program procurement and supply in the early stages without which the service may not develop at all--a result that would make for even less diversity.

200. Issue (7). In view of the foregoing discussion about Issue (6) and the discussion of Issue (12) hereafter, we are of the view that proposed Section 73.642(e) concerning licensee control should be adopted with amendments befitting the situation as it appears to be. Before specifying what the amendments are, we shall refer briefly to a related topic--our chain broadcasting rules--to illustrate what we consider to be fundamental policy. That policy underlies the chain broadcasting regulations and the amendments to Section 73.642(e) which we adopt today. The chain broadcasting rules, adopted for radio in 1941, were later carried over to television stations when TV came into being, and the essentials of those rules are in effect today. The rules were designed to protect against two types of situation that the Commission deemed to be contrary to the public interest--so-called exclusivity of affiliation, and territorial exclusivity. The former consisted of an agreement between a station and a network whereby the station agreed to accept programs only from that network. The latter was the reciprocal undertaking on the part of the network whereby it agreed that it would not make its programs available to any other station within a given radius. The former was economically advantageous to the network because it gave assurance of an outlet in the community. The latter was of advantage to the station because it had a definite source of programs assured, and knew that no other station in the area could carry those programs.

201. In adopting the chain broadcasting rules, we found both types of exclusivity to be contrary to the public interest. Exclusivity of affiliation was proscribed because it hindered affiliates in the choice of their programs, since they could not broadcast those of another network even though the other network might offer some programs that were highly desirable and the broadcasting of which would be in the public interest. In addition, such exclusivity arrangements limited the chances of other networks to have their programs broadcast in that community, since the station having an exclusive affiliation with one network could not broadcast programs of another. In other words, network competition in the community was restricted, contrary to the public interest. Similarly, territorial exclusivity also restricted competition in that if an affiliate did not carry a program of its network, other stations in the market were prevented from competing to obtain and broadcast the program.