

The problem also exists in markets other than the top 100.³⁸ The problem may be obviated by a rule which limits Pay-TV to four-station markets. In such event, Pay-TV will be, for all intents and purposes, precluded from the small markets. The proposed rule has been drafted to cover the maximum contingency and it can be adjusted in light of the discussion above.

PROPOSED RULE

1. No Pay-TV station shall be permitted to operate where more than 10% penetration is proposed or will be achieved except upon a showing, approved by the Commission, that such operation would be consistent with the public interest, and, specifically, the establishment and maintenance of a healthy free television broadcast service in the area. Commission approval of a request to operate a Pay-TV station in the foregoing circumstances will be granted where the Commission, after consideration of the request and all related material in a full evidentiary hearing, determines that the requisite showing has been made. Penetration shall be determined by the rating of the American Research Bureau on the basis of the net weekly circulation for the most recent year.
2. Pay-TV stations shall file with the Commission monthly subscriber lists. Pay-TV stations shall either (1) maintain subscribers at this 10% penetration level (or at such other level as the Commission may have approved in an evidentiary hearing) or (2) request Commission approval of additional subscribers. Commission approval of such a request will be granted where the Commission, after consideration of the request and all related material in a full evidentiary hearing, determines that the requisite showing described above has been made.

³⁸ It is to be noted that the minimum number of subscribers deemed by the proponents to be economically feasible is 20,000 and the proponents indicate that operation below the top 100 markets, consequently, will require a penetration substantially greater than 10%.