

# I. Basic Public Interest Issues

## A. STV WOULD NOT CONSTITUTE A "BENEFICIAL SUPPLEMENT" TO FREE TELEVISION BROADCASTING

The Commission has long recognized that one central issue relating to permanent authorization of STV is "whether subscription television would provide a beneficial supplement to the program choices now available to the public . . . [on free television]." <sup>1</sup> Indeed, the STV Report states that, "if the programming of STV is merely duplicative of types of programs now appearing on free TV in quantity . . . we would be inclined to agree, that it would not appear that other public interest considerations could justify the authorization of STV using broadcast channels." <sup>2</sup>

Since this is the determinative issue, it is ironic that, to the extent the Hartford experiment has proven anything, it has proven that STV must provide essentially the same type of programming as free television if it is to be at all acceptable to the public, and, therefore, an economically viable service. STV had always promised previously that it would give those willing and able to pay the opportunity to enjoy programming essentially different from that generally available on free television. In Hartford, movies and sports—which are provided in quantity by free television—accounted for 93.7 percent of the programming, with only 5.5 percent devoted to so-called "special entertainment programs." <sup>3</sup> Movies and sports found the greatest public acceptability and this, rather than diversity, has become the *sine qua non* of STV financial viability. The STV Report recognized that STV programs would be largely duplicative of free television programs, since "the reality is that the major part of the programming, as opponents had argued, will be of a kind that would appeal to a mass audience." <sup>4</sup>

Aside from films and sports, under the STV Committee's proposed rules, STV would be able to carry all the entertainment programming now available on free television with the exception of series with "interconnected plot or substantially the same cast of principal characters. . . ." <sup>5</sup> Such programming, which has attracted millions of families to television, could and would be diverted to STV.

What then would STV offer as a "beneficial supplement," if it cannot offer the diversity and nonduplicative programming originally promised? With respect to feature films, which are expected to be 85 percent of STV programming, the STV Report states that STV would offer "recency"; not better films, not different types of films, just recent ones. <sup>6</sup> STV would allow those people who could afford it the opportunity to sell films in their home sooner than they could see them on free television. For this "beneficial supplement," the STV Report justifies diversion of scarce spectrum space and broadcast facilities to STV! "Recency" of films on television is a function of the feature film distribution system. The elements of this system are not immutable, although the Report treats them as if they were. Film distribution practices *have* changed and continue to change and the trend has steadily been toward making better and more recent films available to free television. This trend is bound to be reversed if STV is authorized. Film distributors would doubtless delay the sale of such films to free television until they had a "run" on STV.

Moreover, "recency" as such is not determinative as to whether STV films would in fact be a "beneficial supplement." "The Bridge on the River Kwai" was successful on free television not because it was recent, but because it was an outstanding, Academy Award winning film. On the Committee's own data derived from the Hartford experiment, it can be seen that "recency" is virtually irrelevant; "the average subscriber paid \$1.20 per week for programs whether 27 percent or 70 percent of the feature films shown on STV were first subsequent

<sup>1</sup> First Report on Subscription Television, 16 R.R. 1501, 1520-21 (1957).

<sup>2</sup> STV Report, ¶ 47.

<sup>3</sup> Moreover, most of the "special entertainment programs" (for example, drama, variety, and "night club" programs) are either already available regularly on free television or are essentially the same kinds of programs that are now available on free television. Insofar as concerts and opera and ballet are concerned—the types of programs that used to be promised by STV—it will be noted that a total of only four concerts and four opera and ballet programs were presented in Hartford over the period of two years.

<sup>4</sup> STV Report, ¶ 56, at 19-20. It is important to note that even the proposed STV program rules implicitly assume that STV programming would duplicate free television programming substantially. Granting this, the proposed rules attempt to prevent siphoning of programs from free television by STV.

<sup>5</sup> STV Report, App. D, § 73.643(b) (3).

<sup>6</sup> See STV Report, ¶¶ 51-53.