

C. STV'S ADVERSE IMPACT ON FREE TELEVISION WOULD BE LARGELY FELT IN TERMS OF PREEMPTION OF TIME, AUDIENCE DIVERSION, AND SIPHONING OF PROGRAMMING AND PROGRAM TALENT

The STV Report correctly analyzes the potential adverse impact of STV upon free television largely in terms of preemption of time, audience diversion, and, especially, siphoning of programming and program talent. However, these aspects of impact are distinct only for purposes of analysis and evaluating the possible effects of STV. In reality, these effects overlap and, in some instances, are cumulative; this is what creates the "snowball" effect.

1. *Preemption of time*

The STV Report defines this possible adverse effect as the broadcasting of STV programs over a station that would otherwise have been broadcasting free television programs. The Hartford experiment, operating with less than 5000 subscribers and incurring a loss of over \$3 million, preempted approximately 30 hours of free television time each week. The STV Report assumes that this amount of preemption by an isolated STV trial operation would be the "maximum number of hours which STV will show per week. . . ." ²³ The Report concedes that even 30 hours per week could cause dangerous preemption of time in certain communities. The preemption is likely to occur in peak viewing hours ²⁴ and, thus, is likely to have a disproportionately adverse effect, since, such hours comprise segments of the broadcast day in which free television generates its largest advertising revenues and the revenue necessary to sustain public affairs programs. Rules are proposed that are intended to minimize the adverse effects of preemption of time, but MST will show that the proposed rules would not do so.

2. *Audience diversion*

The Hartford experiment indicated that an average of 5.5 percent of the 5000 subscribers watched a single STV program. The Report generalizes this 5.5 percent "average rating" achieved by an isolated, fledgling STV station, into the "average" for an established, nationwide STV system and finds that even at a nationwide STV penetration of 50 percent of all television households, audience diversion would be minimal and dismisses the problem. ²⁵ The Report acknowledges that some STV programs might produce *very* high subscriber viewing (e.g., 82 percent in Hartford for a Clay-Liston championship boxing match) but equates this to "blockbuster" presentations on free television (e.g., "The Bridge on the River Kwai"). It states that "such highly attractive presentations are unusual," and concludes that the answer to such great audience diversion "might be better competing programming. . . ." ²⁶ But the Report is both inconsistent and unrealistic. In the first place, the STV Report justifies STV as a "beneficial supplement" for the very reason that it could offer programs of mass audience appeal both regularly and often. Certainly STV would make every effort to maximize its audience and revenues. Those revenues would be used to divert programs and hence further audience from free television. By skimming off the cream of free television programs (including movies like "The Bridge on the River Kwai"), STV would make usual the "unusual" occurrence of large audience diversion. The suggested answer of "better competing programming" on the part of free television is no answer if, through the feedback effects of program siphoning and audience diversion, the amounts of such programming available to free television are diminished.

Finally, the potential STV audience would probably be the same audience that has been the most devoted to free television programming. STV programming of 90 percent films and sports and 10 percent other light entertainment is not going to attract as STV subscribers those who have not been viewing free television. When STV siphons free television programming, the new subscribers would be those who comprised the audience for such programming on free television and are willing and able to pay for it when it moves to STV.

²³ STV Report, ¶ 108. The STV Report does not recognize that the 54½ hours per week per channel (i.e., total of 163½ per week) presented on the Etobicoke pay television system might be more typical, though it does concede that "more than 30 hours of STV programming might be available to preempt free TV time. . . ." STV Report, ¶ 1110.

²⁴ *Id.* at ¶ 108.

²⁵ See STV Report, ¶ 107.

²⁶ *Ibid.*