

Sullivan, the Smothers Brothers, Carol Burnett, Johnny Carson, or Dean Martin for a season's variety series, the stars would not have time for regular free television variety shows and appearances, which are presently available regardless of whether the viewer is in the largest markets or can afford to pay a fee. No Commission rule could prevent against the danger of program talent siphoning by STV.

II. The Commission Should Await an Explicit Congressional Mandate Supporting Authorization of STV

On the basis of the public interest issues discussed above, MST urges that the Commission refuse to authorize a nationwide system of STV. However, at the very least, the Commission should take no action with respect to such authorization without an explicit, affirmative Congressional mandate.³⁵

When the Congress determined that an 82-channel television system is essential to the public interest and, accordingly, passed the All-Channel Receiver Act, its determination assumed use of these channels for programming available to all of the American people. Use of some or all of these channels during some or all of the time for STV would cut into the effective number of channels found by the Congress to be required for free television. Moreover, the radical change in the structure of television broadcasting that would be caused by authorization of nationwide STV should not be undertaken without explicit Congressional approval. It is not sufficient to say that it is proper for the Commission to go ahead because the Congress did not act during the lengthy period that has elapsed while his proceeding has been in progress. The type of regulation proposed by the STV Committee raises issues of a kind that are more properly resolved by the Congress—an ambiguous Congressional silence is not sufficient justification for the Commission to proceed.

III. Specific Regulatory Issues Raised by the Commission

When MST first filed Comments in this proceeding, it stated that, since it is opposed to STV under any conditions, it took no substantive position on most of the issues and proposed rules specified in the Further Notice of Proposed Rule Making. This is still MST's position.

The regulatory issues themselves, the STV Report conclusions on these issues, and the rules it proposes all demonstrate the fundamental incompatibility of STV with free television. Not even the complex regulation of STV proposed in the STV Report would prevent the adverse impact of STV. Over and above the question of whether the proposed rules offer the intended protection of the public's interest in a sound free television service, it is clear that undue government intervention into broadcasting would reach intolerable levels if nationwide STV is authorized by the Commission.

There follows a discussion of the STV Report's conclusions with respect to some of the fifteen specific regulatory issues posed by the Commission in its Further Notice of Proposed Rule Making.

A. PROTECTION AGAINST PREEMPTION OF FREE TELEVISION TIME AND DIVERSION OF FREE TELEVISION'S AUDIENCE

1. Five grade A signals—STV Report, paragraphs 144-52 and proposed section 73.642(a)

Proposed Section 73.642(a) provides that an STV authorization would be issued only for a station "the principal community"³⁶ of which is located entirely within the Grade A contours of five or more commercial television stations. The Report states that the proposed rule is primarily intended to minimize the

³⁵ The question of whether the Commission should authorize STV without explicit Congressional guidance is not the same as the question of whether the Commission should regulate CATV without detailed Congressional guidance. Like unlimited CATV, STV poses a substantial threat to free television system, now serving the American public. But, whereas Commission inaction would have allowed unregulated CATV to disrupt established national policy, such disruption would be caused in the case of STV only by affirmative act of the Commission. Thus, the same consideration—protection of existing national television policy—which justified prompt Commission action with respect to CATV—dictates at least awaiting Congressional judgment on STV.

³⁶ While the proposed rules use the term "community," the STV Report constantly speaks of five station markets. See, e.g., STV Report, n. 36, at 50; and ¶¶ 148, 162, 164, 172, 199 and 230. The precise intention is not clear.