

danger of preemption of free television time by STV, and also to reduce possible audience diversion. The Committee believes that:

"The rule protects against such loss [time preemption] in smaller markets. In the markets where it permits STV, it assures three network services and one independent service. To the extent that existing stations in those markets offer STV, there will be a relatively small amount of time preempted. To the extent that STV operations occur on new stations, there will be no preempting at all."³⁷

These assumptions are incorrect; therefore the proposed rule would not accomplish its intended purpose.

The proposed rule does not restrict STV to only the largest communities. Given the configuration of Grade A contour overlaps in many areas, there could be many smaller communities in which STV could be authorized contrary to the intent of the STV Report. Taking the southeast coast of Florida as an example of such an overlap area, it can be seen that Channel 51 in Fort Lauderdale could be authorized as an STV station. Its principal community is served by the Grade A signals of five operating commercial television stations.³⁸ The *only* channel allocated to Fort Lauderdale to provide local service would thus be preempted for STV.

As a result of overlapping Grade A contours between different communities and television markets, STV would not be confined within the seeming limitations of the proposed rules, and certainly would not be restricted to the communities which have been selected for STV service. In addition, the mandatory service requirement within the Grade A contour of the free television service of the STV station,³⁹ when combined with the Grade A overlap situation, would permit STV penetration into smaller communities. In sum, what appears to be a restriction of STV to the largest communities and television markets, is no restriction at all.⁴⁰

To the extent that the Commission could devise a rule that would restrict STV authorizations to large cities and guarantee that people in those cities would receive at least three network services and one independent service, the rule would still not prevent preemption of free television time in those cities, where more people would be deprived of the time and more audience would be diverted to STV. It would also not protect the public from being deprived of the free service of a second independent or a fourth specialized, national or regional network affiliate. Moreover, if free television is impaired in the larger cities, the effect of program siphoning would be felt in the smaller communities whose residents could not even pay to see the siphoned programs on STV.

2. Minimum free broadcast hours—STV Report, Paragraphs 162-65 and Proposed Section 73.643(c)

The limitation intended by proposed Section 73.643(c) is also illusory. The STV Report asserts that requiring STV stations to broadcast at least the minimum number of free television hours required by Section 73.651 of the Commission's Rules, would assure adequate free programming for the public. At most, after three years of operation, Section 73.651 would require the STV authorized station to broadcast only 28 hours of free television a week! The STV Report rejected limiting STV programming to certain segments of the broadcast day;⁴¹ therefore, there is nothing to prevent the STV station from scheduling its minimum free television hours in off-viewing hours and preempting prime time for wholly-STV operations.⁴²

³⁷ STV Report, ¶ 148.

³⁸ Three Miami stations, WCKT (Channel 7, NBC), WLBW-TV (Channel 10, ABC) and WTVJ (Channel 4, CBS), and two West Palm Beach stations, WPTV (Channel 5, NBC) and WEAT-TV (Channel 12, ABC). Data are compiled from the 1967 Television Factbook, Stations Volume, pp. 143-b—145-b, 149-b—150-b.

³⁹ STV Report, ¶ 230.

⁴⁰ The seepage of STV beyond the seeming limitations proposed in the STV Report may be further accentuated when one takes into account the Report's conclusion that STV stations may make the arrangements with CATV systems operating in the Grade B contour of the station's free television service to carry the scrambled STV signal of the station, with the prior approval of the Commission. STV Report, ¶ 309. The most likely effect of such arrangements would be that communities not eligible for direct authorization of STV would receive it indirectly by CATV. There would be a corresponding diversion of audience from free television in those communities.

⁴¹ STV Report, ¶ 164, at 56.

⁴² The Report recognizes that this would be a serious loss, since: "the effect [preemption of time] would be even more marked, for although the loss in terms of hours is the same regardless of the time of day when the preempting occurs, the loss in prime time would generally speaking be a loss of more popular programs." STV Report, ¶ 147.