

3. *One STV station in a community—STV Report, Paragraph 172 and Proposed 73.642(a)*

Proposed Section 73.642(a) states that, "only one such authorization will be granted in any community." The rationale of the STV Report is, "if more than one station should broadcast STV programs in a single market more time could be preempted than we consider to be in the public interest at this juncture."⁴³ However, there are many communities (and even markets) in which STV programs from more than one station will be available.

This restriction breaks down because of the interaction of the overlapping Grade A contour situation with the Grade A mandatory service requirement described above. As an example of the breakdown of this apparent restriction, it is possible that the Springfield-Holyoke, Massachusetts, television market would be required to receive the STV programs of three STV stations. Under the proposed "five Grade A" rule, STV stations could be authorized in Worcester, Massachusetts,⁴⁴ and Springfield-Holyoke,⁴⁵ and WHCT in Hartford, Connecticut, could receive a permanent STV authorization. Therefore, there could be service required from three STV stations in the 78th television market.

Under the STV Report's own rationale, the preemption of free television time caused in multi-STV signal communities would not be in the public interest.

To the extent that a rule could be devised, or the present proposed rule administered, to limit STV authorizations to only one per community or market, problems caused by the creation of STV monopolies in those communities would arise.⁴⁶ Moreover, an entity representing a combination of these monopolies would be in a strong position to siphon free television time and divert free television audiences.⁴⁷ The strong "group monopoly" leverage would pose a serious threat to the nationwide free television system, and not merely jeopardize the service provided the public by free television stations in the communities in which STV is authorized. It is not merely a question of what individual STV stations can do to free television, but what the combined efforts of all STV stations could do to free television with selected siphoning of programming and even at selected prime time hours.

B. GUARANTEE OF LICENSEE RESPONSIBILITY—STV REPORT, PARAGRAPHS 195-208 AND PROPOSED SECTION 73.642(e) (1)-(4)

In Issue (7) of the Further Proposed Notice of Rule Making, the Commission posed two alternative means of assuring licensee responsibility for the STV operations carried on over his station, but the STV Committee chose neither in its proposed rules.⁴⁸

The proposed rules basically apply the philosophy underlying the chain broadcasting rules to STV operations and prohibits the STV stations from entering into agreements that hinder their free choice in procuring or scheduling programs and prohibits them from optioning station time. However, the proposed rules would allow for restrictive "networking" arrangements and option time agreements, in violation of this basic philosophy, upon Commission approval. The STV Report states that this is the "middle course" between regulation and no regulation.⁴⁹ However, it is either no regulation at all or, if it is a meaningful restriction, it would involve the Commission in the day to day program acquisition efforts of STV stations and would result in an intolerable substitution of Commission responsibility for the licensee responsibility, which is essential for a mature and independent medium of communications.

⁴³ STV Report, ¶ 172 (emphasis added).

⁴⁴ Worcester is covered by the Grade A's of the three Boston commercial VHF stations and by the Grade A of the Worcester station. 1967 Television Factbook, Stations Volume, pp. 329-b-332-b, 339-b.

⁴⁵ Springfield and Holyoke are covered by the Grade A's of at least two Hartford, Connecticut, commercial stations (WTIC-TV and WHNB-TV) and the Grade A's of two Springfield-Holyoke stations (WHYN-TV and WWLP). 1967 Television Factbook Stations Volume, pp. 123-b-124-b, 337-b-338-b.

⁴⁶ The divisiveness in television broadcasting that would be caused by such rigid segregation is inconsistent with the premise of this proceeding, which the Commission has stated as being: "that subscription television on a nation-wide scale can be effectively integrated into a total TV system, with advantages to the viewing audience. . . ." Further Notice of Proposed Rule Making and Notice of Inquiry, FCC 62-268, ¶ 16 (March 24, 1966).

⁴⁷ The proposed rules would in no way prevent the establishment of such an entity.

⁴⁸ To the extent that the proposed rules allow for the separation of STV franchisees from station licensees, they are inconsistent with the Commission's policy of strengthening licensee programming responsibility.

⁴⁹ STV Report, ¶ 204.