

In addition, one expected effect of allowing equipment manufacturers and STV franchisees to procure programs for STV stations would be to create a "broader purchasing base" for STV programs, which might "be helpful in obtaining more and better mass-appeal programs, thereby aiding STV to achieve greater market penetration. . . ." ⁵⁰ This would lead inevitably to program siphoning and result in audience diversion.

C. REASONABLE CHARGES AND NONDISCRIMINATORY SERVICES BY STV OPERATORS—
STV REPORT, PARAGRAPHS 219-22, 226-30, 234-35, 238 AND PROPOSED SECTION
73.642 (f) (1) - (3)

The Further Notice of Proposed Rule Making reflected the deep concern of the Commission that STV operations would lead to the abuses of rate gouging, and discriminatory and unfair treatment of subscribers. Because of these potential abuses, the Commission considered a public utility type of regulation. However, the STV Report declined to propose rules regulating STV rates, leaving the protection of subscribers to the market place. The STV operator in each community would have the advantages derived from monopoly status, but would not be subject to regulation to assure that reasonable rates would be charged to subscribers. On the other hand, the extent of government involvement in television broadcasting, if the Commission adopted regulations such as those suggested in its 1966 Further Notice of Proposed Rule Making, would be enormous and would constitute an unacceptable degree of governmental intervention in broadcasting, which would be contrary to the public's interest in a strongly independent television service. As a matter of principle, television broadcasting, like the other media of communication and information, should be left as untrammelled of government regulation as possible.

The STV Report did, however, incorporate some of the principles of public utility regulation, when it proposed rules to guarantee nondiscriminatory service to the public by STV stations. Although this proposal is obviously a compromise, it is a halfway measure which does not solve the Commission's basic dilemma of having to decide whether to take no action at all to deal with the range of possible STV abuses that concerned it, leaving the public unprotected, or to develop, adopt and administer an extensive and far-reaching type of public utility regulation. This Hobson's choice, which still faces the Commission, is but another compelling reason for the Commission not authorizing STV at all.

D. PROTECTION AGAINST SIPHONING OF FREE TELEVISION PROGRAMS BY STV

It is MST's position that, if STV is authorized, it should not be allowed to present the same kind of programming that free television presents, otherwise there would be no limitation on the destructive impact of program siphoning from free television. However, MST recognizes that it would be most difficult to regulate the programming of STV, in order to prevent siphoning, without raising serious questions of law and policy. At the very least, the rules proposed in the STV Report, and the conclusions found in the "legislative history" of those rules, would involve the Commission in detailed regulation of programming transmitted over broadcast facilities. The Commission would be making decisions which it has consistently avoided in order to promote licensee responsibility and independent judgment. ⁵¹ This further Hobson's choice between no STV program regulation, which would allow STV to have a severe adverse impact on free television, and complex STV program regulation, which would involve governmental interference with licensee programming responsibility, again leads MST to oppose *any* authorization of STV.

Moreover, the rules proposed in the STV Report to prevent program siphoning by restrictive STV to certain types of programming are unrealistic and impractical and essentially do *not* prevent siphoning of free television programming or program talent.

⁵⁰ STV Report, ¶ 199.

⁵¹ See Report and Statement of Policy Re: Commission *En Banc* Program Inquiry (FCC 60-970), 20 R.R. 1902 (1960). For example, under the proposed rules the Commission would become involved in scheduling programs for broadcast! An STV operator would be required to get prior Commission approval before he can show more than one film over 10 years old per week per month. See STV Report, n. 46, at 87.