

1. *Feature films and entertainment programs—STV Report, Paragraphs 246-52 and Proposed Section 73.643(b) (1) and (3)*

As MST has shown above, STV programming would be substantially duplicative of free television programming. This becomes all the more apparent when one considers the proposed rule restricting STV to the broadcast of feature films within two years of the date on which they have been given general release to any theater in the United States. Feature films would be the major type of program on STV; they have long been a major program category on free television. In the 1967-68 television season, the three networks alone will be presenting feature films six nights a week, in prime time, or 12 hours of prime time each week.⁵² Contrary to what the STV Report indicates, a "recency" rule is no protection against such films being siphoned from free television. Of 130 films scheduled by the networks to be shown in prime time during the 1967-68 season, it appears that approximately 20 percent would be eligible for presentation on STV.⁵³ As MST has shown above, given the potential revenues of STV, STV could consistently outbid free television in the competition for recent films.

Moreover, the proposed rules allow older films (more than 10 years from the date of general release), "which might or might not be available to free TV,"⁵⁴ to be presented on STV. Approximately 12 percent of the public listing of 130 feature films to be shown by the three networks during the 1967-68 season appear to fall within this category.⁵⁵ Therefore, comparison of the proposed rules, which are intended to prevent siphoning of films from free television, with the films to be presented by the three networks in one season, shows that approximately one-third of those films could be siphoned from free television by STV.⁵⁶ Films in the category of older films eligible for STV comprise a significant part of the film acquisitions of local stations and are the mainstay of many independent UHF stations, which are most vulnerable to the adverse impact caused by STV.⁵⁷

Moreover, the STV Report's basic conclusion about the ability of free television to obtain recent films, "because free TV cannot pay enough to cover production costs and potential box-office revenues that would be lost because of the free TV showing," is doubtful.⁵⁸ For example, CBS "plans to televise four or five feature-length films it will produce for TV and subsequent theatrical release."⁵⁹

The only type of free television programming for which the proposed rule offers complete protection is television series with interconnected plots or substantially the same cast of principal characters. However, recent data show that this type of program is becoming less and less important, in prime time, to free television.⁶⁰ One cause of the decline is that the series cannot compete successfully for audience with feature films and specials.⁶¹ The former will comprise the great majority of STV programming and the latter will be open to STV.

The entertainment programs that are becoming more important to free television would *not* be protected from STV siphoning by the proposed rules! The STV Report states that "it is conceivable that this [the proposed rule] still leaves some types of programs open to siphoning. . . ." ⁶² A review of the 1967-68 free television season proves this to be an understatement. The three networks

⁵² *Variety*, July 26, 1967, p. 27, col. 2.

⁵³ *Variety*, July 26, 1967, p. 39, cols. 4-5. Since the networks will broadcast some 180 films during the regular season, this listing is incomplete by 50 films. These 50 films may well be the more recent ones, which, for competitive reasons, the networks are not willing to publicize so far in advance of their presentation.

⁵⁴ STV Report, ¶ 252.

⁵⁵ See *Variety*, July 26, 1967, p. 39, cols. 4-5.

⁵⁶ Moreover, a review of every feature film that has been televised on any network from September 1961 through December 1966 shows that, using January 1, 1967 as a base date, approximately 41 percent of those films fall into categories that are not protected from siphoning by STV. See *Television*, September 1967, pp. 76-86.

⁵⁷ There are indications that many of the older films, even pre-1948 films, are still very popular with the viewing public. See *Broadcasting*, September 4, 1967, p. 5. The ratings of many of these films further show that, contrary to the conclusions of the STV Report "recency" is not the most attractive characteristic of feature films.

⁵⁸ STV Report, ¶ 51.

⁵⁹ *New York Times*, August 2, 1967, p. 59, col. 4 (emphasis added). The comment has been made that the viewers do not like films produced for television and prefer films made for theater release. STV Report, n. 23, at 18. However, of the seven films telecast during the 1966-67 season which received the highest audience rating, three were produced especially for free television. See *Variety*, July 26, 1967, p. 43.

⁶⁰ See *Variety*, July 26, 1967, p. 27, col. 2; *New York Times*, August 2, 1967, p. 59, cols. 1-4; *The Washington Post*, August 4, 1967, p. D11, cols. 1-2.

⁶¹ *Ibid.*

⁶² STV Report, ¶ 114.