

are planning more than 150 dramatic and entertainment specials.⁶³ There will be at least five or six specials every week during the 1967-68 regular season.⁶⁴ In addition to "special" programs, which could be siphoned by STV, there are many regular free television programs that do not fall within the protected series category. Such popular variety shows as "The Ed Sullivan Show," "Hollywood Palace," "The Dean Martin Show," etc.; dramatic shows appearing on "The Bob Hope Theatre," ABC's "Stage 67," NBC's "Experiment in Television," etc.; and various musical programs all may be siphoned by STV.⁶⁵ This is not the kind of problem that can be brushed aside by praising competition and leaving it to the market place.⁶⁶ As MST has shown, the "box-office" economics of STV would consistently allow it to outcompete free television for these programs, and, more important, for the talent that makes such programs possible. Programs in these nonprotected categories of "specials" and variety shows are often the only types of programs with which networks can counter the feature films appearing on rival networks.⁶⁷ Therefore, the proposed rules would offer no protection to the programs which may be free television's only defense against the feature films presented on STV.

2. *Sports events—STV report, paragraphs 256-70 and proposed section 73.643(b)(2)*

The proposed rule on feature films available for presentation on STV would not protect against siphoning, but it at least has the advantage of being relatively clear. The proposed rule on sports programs does not even have this advantage.⁶⁸ If these highly complex proposed rules are adopted, the Commission would find itself involved in endless disputes as to whether certain sports events are protected from siphoning by STV and would still not accomplish the intended purpose of protecting against siphoning of sports events which the public now can, or in the near future would, see free of charge.

In essence, the proposed rule provides that, "sports events shall not be broadcast [on STV] which have been televised live on a nonsubscription, regular basis in the community during the two years preceding their subscription broadcast. . . ."⁶⁹

Under this rule, *any sports events could be siphoned from free television by STV*. All that a STV entrepreneur would have to do would be to arrange to black out a sports event in a certain community. The next year, and for every year thereafter, the event could be presented by STV in that community. Such situations would be likely to develop, since the STV operator would have the financial resources with which to persuade those holding the television rights to sports events to withhold the event from free television for one year to cash in on the STV revenues. Moreover, this siphoning would not have to be undertaken by STV on a large scale to be successful. Selective siphoning of a few of the most popular sports events could be undertaken community by community until the event is withdrawn, from a large number of people across the nation who could not afford STV or who are not served by STV.⁷⁰ In some communities, popular, specific sports events have already been blacked out in the communities in which they are played, and STV would only have to outbid free television for the right to broadcast that event in that community next season when it would not be blacked out! For example, under the proposed rules, the NFL-AFL "Super Bowl" could be carried by an STV station in Los Angeles in January 1968 or January 1969, since Los Angeles was blacked out for the "Super Bowl" in January of 1967.

The whole category of taped sports programs is not protected from STV siphoning. Sports events originating in foreign countries, such as the European Grand Prix automobile races, that may be taped for rebroadcast in the United States because of the time differential, would thus be available for STV.

⁶³ 150 additional specials will deal with news and public affairs. New York Times, August 2, 1967, p. 59, col. 1.

⁶⁴ *Ibid.*

⁶⁵ It must be noted that many of the fine dramatic and entertainment programs appearing on noncommercial television would also not be protected from siphoning by STV.

⁶⁶ See STV Report, ¶ 276.

⁶⁷ New York Times, August 2, 1967, p. 59, cols. 3-4.

⁶⁸ The STV Report seems to concede this. See STV Report, ¶ 276.

⁶⁹ STV Report, App. D, Section 73.643(b)(2).

⁷⁰ The fact that the Commission might expect that the hue and cry that would arise if popular specific sports events were siphoned from free television would move the Congress to prevent this from happening is no reason for the Commission to abdicate its responsibility to protect the public interest.