

In addition, the whole category of sports events that are *not* now regularly broadcast on free television could be shown for a fee on STV. If STV were authorized five years ago, professional golf would probably be on STV and millions of viewers would not be able to see it free of charge. Under the proposed rules and absent contractual restrictions, professional soccer could be siphoned to STV next season, since last season was its first on STV. The point is that free television, in its sports and other programming, has shown great flexibility in seeking out new attractions to present to the public. The proposed rules as to sports events would tend to cast free television in a rigid mold of certain types of sports programming and deprive viewers, who would not be served by STV, of viewing different types of sports attractions.

Sports that are not presently regularly shown on free television could also provide a program source for marginal UHF stations and could lead to the establishment of specialized sports networks with those stations as the affiliates. A specialized network, perhaps one that could offer a baseball game every week night during the baseball season, could develop if there were an "extra" UHF station in the major markets and an independent UHF station in the other markets.⁷¹ If the sports events that such a network could offer are already committed to STV, no such supplementary free television services could develop.

Aside from the substantive provisions, the lack of clarity in the proposed rules raise other siphoning problems. For example, it is not clear how many games or matches of a specific event must be broadcast by free television to constitute a "substantial number," so as to protect that sports event from STV siphoning.

There is also ambiguity with respect to the effect of the proposed rules as to limitations on STV presenting categories of nonspecific sports events. It appears that the STV Report proposed limitations on STV's ability to present entire categories of nonspecific sports events. In this way the proposed rules would distinguish between specific events, as to which there would be limitations for each event, and nonspecific events, as to which there would be limitations for each category of such events. If "a substantial number of events in a category were not televised in the community, the *category* will be considered not to have been regularly televised therein, and STV may show the contests in that *category*."⁷² Assuming that the converse is true, if a substantial number of contests in a category *were* broadcast on free television in the community, STV would not be permitted to broadcast *any* of the contests in that category over and above those broadcast on free television. However, the examples set out in Paragraph 267 of the STV Report would seem to indicate that free television would have to broadcast *all* of the nonspecific events in a category in order to preclude STV from siphoning the games that had been broadcast on free television. In one example used, "some, but not all" home baseball games of the Washington Senators were regularly shown on free television. The STV Report indicated that STV could present the balance of the games in that category "above and beyond" the average number of games broadcast on free television for the preceding two years. This appears to be inconsistent, since "some, but not all" may be a "substantial number."

If the latter interpretation of the proposed rules is correct, there would appear to be no distinction between the STV limitations upon presenting specific sports events and nonspecific sports events. If such were the case, there would be no limitations on program siphoning by STV. A STV promoter would be able to use his economic leverage to purchase the balance of the games in a category and present them without delay. For example, a baseball team may play 80 home games and an average of ten to twenty each year may be regularly broadcast on free television in the home community. STV could purchase the television rights to the other 60 to 70 games the very next season, while the games previously broadcast by free television could be withdrawn by the ball club during that season so that they, too, could be made available to STV the following year, thereby immediately depriving the public of *any* home games broadcast on free television.

E. APPLICATION OF COMMISSION'S BROADCASTING RULES TO STV—STV REPORT, PARAGRAPH 286 AND PROPOSED SECTION 73.643 (d)

If STV is authorized, MST sees no reason why the provisions of the Communications Act and of the Commission's Rules which govern free television

⁷¹ Of course, if the "extra" UHF station is engaging in STV operations, it would most likely be lost to a free television specialized network.

⁷² STV Report, ¶ 266, at 93 (emphasis added).