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PART I

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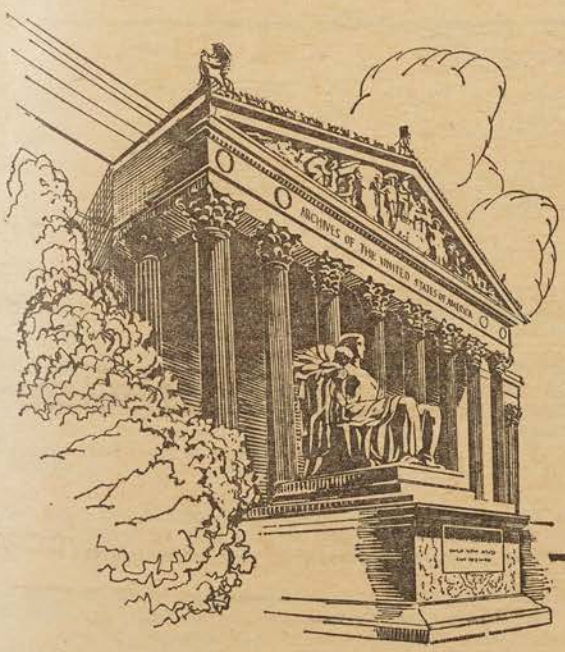

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1968, and specifies how they are affected.

Rules and Regulations

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 31—WOOL STANDARDS

Miscellaneous Amendments

Pursuant to the authority conferred by the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, et seq.), a notice of rulemaking was published in the FEDERAL REGISTER (32 F.R. 12485–12488) on August 29, 1967, regarding a proposal to revise the wool top grade standards and other provisions in 7 CFR Part 31. The notice provided that written data, views, or arguments concerning the proposal could be submitted within 60 days after the notice appeared in the FEDERAL REGISTER. At the request of several trade organizations, the promulgation of the revision was delayed until a study could be made of fiber diameter variation in current wool production. The comments submitted on this proposal, as well as the information made available by the additional study, have been considered in arriving at a decision on the proposal.

Statement of considerations. Grade standards for wool top are issued under authority of the Agricultural Marketing Act of 1946, which provides for the issuance of official U.S. grades which may be used for the designation of various levels of quality of wool top.

The present official standards for grades of wool top became effective January 1, 1955. In order to keep pace with current combing and trading practices, it was proposed in the FEDERAL REGISTER (32 F.R. 12485–12488) on August 29, 1967, to revise the grade standards as follows:

1. Permit the 62s grade wool top to contain 1.5 percent of fibers 40.1 microns and larger in diameter rather than the 1 percent allowed in the present standards.

2. Provide a dual grade designation for wool top which fails to meet the same grade specifications in both average fiber diameter and fiber diameter dispersion. For such wool top, the first designation would indicate the grade corresponding to the average fiber diameter and the second designation would indicate the next coarser grade.

3. Establish two new grades—Finer than grade 80s and Coarser than grade 36s.

4. Make the method of determining grade of wool top a part of the official standards and increase the number of fibers to be measured in some grades in order to improve accuracy.

In general, the comments received in regard to the proposal favored its adoption. However, several trade organizations objected to the proposal to increase the number of fibers required per test (7 CFR 31.301). They felt that the number of fibers to be measured per test may have been based on noncurrent data which was out of line with present-day combing practices.

The trade organizations asked that promulgation be delayed until a study could be made of fiber diameter variation in current wool top production. The study was conducted and data from a wide range of grades was made available from commercial combers, manufacturers, and testing laboratories. The results of the study were substantially the same as those based upon the original data used in developing the specifications. The results establish the validity of the data used and emphasize the need to measure the number of fibers specified for each grade in order to achieve the accuracy desired. After completion of the study, the trade organizations withdrew their objection and now favor adoption of the proposal.

Therefore, under the authority of sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624) the standards are revised as follows:

A. The provisions for the official standards of the United States for grades of wool top (7 CFR 31.101—31.114) are deleted and the following are substituted therefor:

OFFICIAL STANDARDS OF THE UNITED STATES FOR GRADES OF WOOL TOP

§ 31.100 Official grades.

The official grades of wool top shall be those established in §§ 31.101 through 31.116: *Provided, however,* That wool top which qualifies for any of the grades in §§ 31.101 through 31.116 on the basis of its average fiber diameter but fails to meet the fiber diameter dispersion requirements for that grade shall be assigned a dual grade designation. In such case, the first designation shall indicate the grade based on the average fiber diameter and the second designation shall be that of the next coarser grade and shall indicate merely that the fiber diameter dispersion does not meet the requirements specified for the grade corresponding to the average fiber diameter.

§ 31.101 Finer than grade 80s.

Wool top with an average fiber diameter of 18.09 microns or less and a fiber diameter dispersion that meets the following requirements:

25 microns and under—not less than 95 percent.
25.1 microns and over—not more than 5 percent.
30.1 microns and over—not more than 1 percent.

§ 31.102 Grade 80s.

Wool top with an average fiber diameter of 18.10 to 19.59 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

25 microns and under—not less than 91 percent.
25.1 microns and over—not more than 9 percent.
30.1 microns and over—not more than 1 percent.

§ 31.103 Grade 70s.

Wool top with an average fiber diameter of 19.60 to 21.09 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

25 microns and under—not less than 83 percent.
25.1 microns and over—not more than 17 percent.
30.1 microns and over—not more than 3 percent.

§ 31.104 Grade 64s.

Wool top with an average fiber diameter of 21.10 to 22.59 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 92 percent.
30.1 microns and over—not more than 8 percent.
40.1 microns and over—not more than 1 percent.

§ 31.105 Grade 62s.

Wool top with an average fiber diameter of 22.60 to 24.09 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 86 percent.
30.1 microns and over—not more than 14 percent.
40.1 microns and over—not more than 1.50 percent.

§ 31.106 Grade 60s.

Wool top with an average fiber diameter of 24.10 to 25.59 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 80 percent.
30.1 microns and over—not more than 20 percent.
40.1 microns and over—not more than 2 percent.

§ 31.107 Grade 58s.

Wool top with an average fiber diameter of 25.60 to 27.09 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 72 percent.
30.1 microns and over—not more than 28 percent.
50.1 microns and over—not more than 1 percent.

§ 31.108 Grade 56s.

Wool top with an average fiber diameter of 27.10 to 28.59 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 62 percent.
30.1 microns and over—not more than 38 percent.
50.1 microns and over—not more than 1 percent.

§ 31.109 Grade 54s.

Wool top with an average fiber diameter of 28.60 to 30.09 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 54 percent.
30.1 microns and over—not more than 46 percent.
50.1 microns and over—not more than 2 percent.

§ 31.110 Grade 50s.

Wool top with an average fiber diameter of 30.10 to 31.79 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

30 microns and under—not less than 44 percent.
30.1 microns and over—not more than 56 percent.
50.1 microns and over—not more than 2 percent.

§ 31.111 Grade 48s.

Wool top with an average fiber diameter of 31.80 to 33.49 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

40 microns and under—not less than 75 percent.
40.1 microns and over—not more than 25 percent.
60.1 microns and over—not more than 1 percent.

§ 31.112 Grade 46s.

Wool top with an average fiber diameter of 33.50 to 35.19 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

40 microns and under—not less than 68 percent.
40.1 microns and over—not more than 32 percent.
60.1 microns and over—not more than 1 percent.

§ 31.113 Grade 44s.

Wool top with an average fiber diameter of 35.20 to 37.09 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

40 microns and under—not less than 62 percent.
40.1 microns and over—not more than 38 percent.
60.1 microns and over—not more than 2 percent.

§ 31.114 Grade 40s.

Wool top with an average fiber diameter of 37.10 to 38.99 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

40 microns and under—not less than 54 percent.
40.1 microns and over—not more than 46 percent.
60.1 microns and over—not more than 3 percent.

§ 31.115 Grade 36s.

Wool top with an average fiber diameter of 39.00 to 41.29 microns, inclusive, and a fiber diameter dispersion that meets the following requirements:

40 microns and under—not less than 44 percent.
40.1 microns and over—not more than 56 percent.
60.1 microns and over—not more than 4 percent.

§ 31.116 Coarser than grade 36s.

Wool top with an average fiber diameter of 41.30 microns or over.

B. Definitions of certain terms in 7 CFR 31.201, paragraphs (f), (s), (t), (u), and (v) are revised to read as follows:

§ 31.201 Terms defined.

* * * * *

(f) *Grade.* (1) With respect to wool, this term means a numerical designation of wool fineness based on average fiber diameter and variation of fiber diameter. It does not include characteristics such as length, crimp, strength, elasticity, luster, hand, and color—all of which affect the spinnability of wool and the properties of the yarn and fabric and which are usually referred to as "quality." Neither does it apply to wool by geographic origin, breed of sheep, manner of preparation for market, or a combination of characteristics which makes wool appropriate for a specific use. These characteristics are usually referred to as "type."

(2) With respect to wool top, this term means a numerical designation of wool top fineness based on average fiber diameter and fiber diameter dispersion. It does not include characteristics such as length, crimp, strength, elasticity, luster, hand, and color—all of which affect the spinnability of wool and the properties of the yarn and fabric. These characteristics are usually referred to as "quality."

* * * * *

(s) *Lot.* (1) With respect to wool, this term means the entire quantity of wool or card sliver constituting the subject of consideration or test.

(2) With respect to wool top, this term means the entire quantity of wool top constituting the subject of consideration or test.

(t) *Sample.* (1) With respect to wool, this term means a suitable amount of wool representing a lot, obtained as described in § 31.204(a)(5).

(2) With respect to wool top, this term means four slivers of top obtained as described in § 31.301(a)(4).

(u) *Test specimen.* (1) With respect to wool, this term means a representative portion of the sample obtained and prepared as described in § 31.204(a)(6).

(2) With respect to wool top, this term means a sliver of wool top, at least 1 yard (0.91 meter) long, obtained as described in § 31.301(a)(4).

(v) *Test.* (1) With respect to wool, this term means a determination by measurement of the average fiber diameter and the standard deviation of a sample of wool, in accordance with the procedures provided in § 31.204.

(2) With respect to wool top, this term means a determination by measurement of the average fiber diameter and the fiber diameter dispersion of a sample of wool top, in accordance with procedures provided in § 31.301.

* * * * *

C. The provisions relating to the determination of grade of wool top (7 CFR 31.300) are deleted and the Methods for Determining Grade of Wool Top are issued to appear in §§ 31.300, 31.301, and 31.302 as follows:

METHODS FOR DETERMINING GRADE OF WOOL TOP

§ 31.300 General.

The official standards of the United States for grades of wool top as defined in §§ 31.100–31.116 shall be the basis for determining the grade of wool top. The provisions in §§ 31.301–31.302 prescribe two methods for making such determinations—by measurement and by inspection. Both methods for determining grade shall be official; however, if the grade as determined by inspection differs from that determined by measurement, the grade determined by measurement shall prevail.

§ 31.301 Measurement method.

The determination of the grade of wool top by measurement shall be by comparison of the measured average fiber diameter and fiber diameter dispersion with the specifications of the U.S. standards. This determination shall be made in accordance with the procedure for determining average fiber diameter and fiber diameter dispersion provided in paragraph (a) of this section and the procedure for designating grade provided in paragraph (b) of this section.

(a) *Procedure for determining average fiber diameter and fiber diameter dispersion*—(1) *Principle of procedure.* The average fiber diameter and fiber diameter dispersion are determined by sectioning the fibers in a sample to a designated short length, mounting the sections of fibers on a slide, projecting the magnified image onto a scale, and measuring the diameter of a minimum number of fibers, as specified in this section.

(2) *Apparatus and material.* The following apparatus and material are needed and shall comply with the following provisions:

(i) *Microprojector.* The microscope shall be equipped with a fixed body tube, a focusable stage responsive to a coarse and fine adjustment, and a focusable substage with condenser and iris diaphragm. It shall be vertically installed with adequate light source, eyepiece, and objective to give a precise magnification of 500 × as determined by use of a stage micrometer. A magnification of 500 × can be obtained when the microscope is adjusted at a proper projection distance and equipped with a searchlight microprojector bulb, a 10–15 × eyepiece, and a 20–21 × objective of good quality with an aperture of approximately 0.50 centimeter.

(ii) *Stage micrometer.* Calibrated glass slide used for accurate setting and control of the magnification.

(iii) *Cross-sectioning device, heavy duty.* An instrument approximately 5 cm. (2 inches) in height, consisting essentially of a metal plate with slot for holding a quantity of fibers, a key for compressing the fibers, and a tongue-propelling arrangement by which the fiber bundle may be extruded for sectioning.

(iv) *Microscope slides.* 25 × 75 mm. (1″ × 3″).

(v) *Cover glasses.* No. 1 thickness, 22 x 50 mm. (⅞″ x 2″).

(vi) *Mounting medium.* Colorless mineral oil with a refractive index between 1.53 and 1.43 and of suitable viscosity.

(vii) *Wedge scales.* Strips of heavy paper or Bristol board imprinted with a wedge for use at a magnification of 500 × 0. The wedge is usually divided into 2.5 micron intervals.

(3) *Calibration.* The microscope shall be adjusted to give a magnification of 500 × in the plane of the projected image. This may be accomplished by placing a stage micrometer on the stage of the microprojector and bringing the microscope into such adjustment that an interval of 0.20 mm. on the stage micrometer will measure 100 mm. when sharply focused in the center of the image plane.

(4) *Sampling.* Sample the lot of top by drawing from each 20,000 pounds (9,072 kilograms), or fraction thereof, four sections of sliver (test specimen) each of which shall be at least 1 yard (0.91 meter) in length and taken from different balls of top selected at random. Take one ball only from any one bale or carton. For broken top take an equivalent aggregate length of sliver at random. The four test specimens shall constitute a sample.

(5) *Test condition.* Precondition all samples to approximate equilibrium in an atmosphere of 5–25 percent relative humidity at a temperature less than 50° C. (122° F.). Then condition them for at least 4 hours in the standard atmosphere for testing—65±2 percent relative humidity at 21°±1.1° C. (70°±2° F.).

(6) *Preparation of slides*—(i) *Filling cross-section device.* Each sliver (test specimen) of top making up the sample shall be placed individually in the slot of the cross-section device far enough from either end of the sliver to assure sectioning at an undisturbed area. The sliver shall be compacted firmly with the compression key and the latter secured with the set screw.

(ii) *Preliminary section.* The gripped fibers shall be cut off at the upper and lower surfaces of the plate. The fiber bundle shall be extruded to the extent of approximately 0.50 mm. in order to take up slack in the fibers and the propulsion mechanism. The projecting fibers shall be moistened with a few drops of mineral oil. This projecting fiber bundle shall be cut off with a razor blade flush with the upper surface of the fiber holder plate and the section discarded.

(iii) *Final section.* The fiber bundle shall again be extruded, approximately 0.25 mm., the equivalent of 250 microns. The fiber bundle shall be moistened with a few drops of mineral oil and the excess blotted off. The projecting fibers shall be cut off with a sharp razor blade flush with the holder plate. The fiber pieces should adhere to the razor blade.

(iv) *Mounting the fibers.* A few drops of mineral oil shall be placed on a clean glass slide. With a dissecting needle the fiber pieces shall be scraped from the razor blade onto the slide. The fibers shall be thoroughly dispersed in the oil with the dissecting needle and the slide completed with a cover glass. Sufficient oil should be used in the preparation of the slide to insure thorough distribution of the fibers, but an excess must be avoided, as practically no oil should be permitted to flow out or be squeezed out beyond the borders of the cover glass. If the number of fibers is too great to permit proper distribution on the slide, or if an excess of oil has been used, a portion of the mixture, after thorough dispersion of the fibers, may be wiped away with a piece of tissue or cloth.

(v) *Finished slide.* The slide shall be placed on the stage of the microprojector, cover glass toward the objective. The measurement courses shall be planned across the slide so that the far, near, and intermediate areas will be reached. Slides shall be measured the day they are prepared.

(7) *Measurement of fibers.* The midlength portion of the fiber to be measured shall be brought into sharp focus on the wedge scale. Fiber edges appear as fine lines without borders when they are uniformly in focus. It is unusual, however, for both edges of the fiber to be in focus at the same time. If both edges of the fiber are not uniformly in focus, adjustment shall be made so that one edge of the fiber is in focus and the other shows as a bright line. The measurements of 100 fibers are recorded on one wedge by marking on the wedge scale the point where the wedge corresponds with the fiber image as determined by (i) the fine lines of both edges when they are uniformly in focus or (ii) the fine line of one edge and the inner side of the bright line at the other edge when they are not uniformly in focus. The slide shall be traversed and successive fibers measured in the planned courses, with only those fibers being measured whose midpoints come within the field—a circle 4 inches in diameter, centrally located in the projected area. Fibers shorter than 200 microns or longer than 300 microns and those having distorted images shall be excluded from measurement. The marks on the wedge indicating the diameter of fibers measured are counted and combined into class intervals for calculation as indicated in subparagraph (10) of this paragraph. Occasionally a fiber diameter will be less or greater than the extreme limits of the wedge scale. When this occurs, the image of the fiber is projected onto the border of the wedge scale and lines are drawn on the scale at the edges of the fiber image. The distance between the lines is later measured with a metric ruler to obtain the correct average diameter of the fiber. In using the metric scale in this manner, 1 mm. is equal to 2 microns at a magnification of 500 ×.

(8) *Nature of test.* One test shall consist of the measurement by two operators of the same four slivers (test specimens) of top. The measurement of both operators shall be combined for calculation of average fiber diameter and fiber diameter dispersion.

(9) *Number of slides and fibers.* Each operator shall make a slide from each test specimen for a total of four slides per operator. The number of fibers to be measured per slide shall be determined by dividing the total number of fibers to be measured per test by 8 (the total number of slides prepared per test). The minimum number of fiber measurements required for each test shall be the number for the respective grade as prescribed in the measurement schedule for designating grades of wool top set forth in paragraph (c) of this section. Each operator shall measure approximately one-half the required number of fibers. In lots that are assigned a dual grade designation, the minimum number of fibers measured shall be that specified for the coarser of the two grades.

(10) *Calculations.* From the observations recorded on the wedge scales, compute the total number of measurements (n), the distribution of fiber diameter frequencies, and the average diameter of fiber ($\bar{X}$).

(i) The average diameter of fiber ($\bar{X}$) shall be determined by the following formula: $\bar{X}=A+mE_1$. In this formula—

A = Class interval midpoint
m = Class interval
$E_1=\frac{\Sigma fx}{n}$, where
Σ = Summation
f = Observed frequency
x = Deviation in class intervals from A
n = Total number of measurements

An example of the calculations is set forth below, based on an arbitrary selection of a class interval midpoint of 6.25 microns:

EXAMPLE OF CALCULATIONS: AVERAGE FIBER DIAMETER AND FIBER DIAMETER DISPERSION

Class interval	A	Deviation in class intervals from A x	Observed frequency f	fx	Cumulative frequency	Cumulative percent
5.0–7.5	6.25	0	0	0	0	0
7.5–10.0		1	0	0	0	0
10.0–12.5		2	1	2	1	.12
12.5–15.0		3	12	36	13	1.62
15.0–17.5		4	53	212	66	8.25
17.5–20.0		5	113	565	179	22.38
20.0–22.5		6	132	792	311	38.88
22.5–25.0		7	141	987	452	56.50
25.0–27.5		8	111	888	563	70.38
27.5–30.0		9	79	711	642	80.25
30.0–32.5		10	63	630	705	88.13
32.5–35.0		11	44	484	749	93.63
35.0–37.5		12	28	336	777	97.13
37.5–40.0		13	7	91	784	98.00
40.0–42.5		14	6	84	790	98.75
42.5–45.0		15	5	75	795	99.38
45.0–47.5		16	3	48	798	99.75
47.5–50.0		17	0	0	798	99.75
0.0–52.5		18	2	36	800	100.00
Total			800	5,977		

Number of measurements (n) = 800
A (class interval midpoint) = 6.25 microns
m (class interval) = 2.5 microns

$$E_1=\left(\frac{\Sigma fx}{n}\right)=\frac{5977}{800}=7.47$$

Average diameter, $\bar{X}=A+mE_1=6.25+2.5(7.47)=24.93$ microns [1]

[1] Round off the calculated values of average fiber diameter to two decimal places as follows: If the figure in the third decimal place is 4 or less, retain the figure in the second decimal place unchanged; otherwise, increase the figure in the second decimal place by 1.

(b) *Procedure for designating grade.* A grade shall be assigned to a lot of wool top which corresponds to the average fiber diameter and fiber diameter dispersion requirements specified in §§ 31.100–31.116 and paragraph (c) of this section.

(1) *Single grade designation.* If the measured average diameter and fiber diameter dispersion correspond to a single grade, that shall be the grade assigned to the sample.

Example: Average fiber diameter—28.10 microns.

Fiber diameter dispersion:
30 microns and under—64 percent.
30.1 microns and over—36 percent.
50.1 microns and over—1 percent.
Grade designation—56s.

(2) *Dual grade designation.* If the fiber diameter dispersion does not meet the requirements for the grade to which the average fiber diameter corresponds, the wool top shall be assigned a dual grade designation, the second designation being one grade coarser than the grade to which the average fiber diameter corresponds.

Example: Average fiber diameter—28.10 microns.

Fiber diameter dispersion:
30 microns and under—61 percent.
30.1 microns and over—39 percent.
50.1 microns and over—2 percent.
Grade designation—56s–54s.

(c) *Measurement schedule for designating grades of wool top.*

Grade	Finer than 80s	80s	70s	64s	62s	60s	58s	56s	54s	50s	48s	46s	44s	40s	36s	Coarser than 36s
Average fiber diameter range, microns:																
Minimum		18.10	19.60	21.10	22.60	24.10	25.60	27.10	28.60	30.10	31.80	33.50	35.20	37.10	39.00	41.30
Maximum	18.09	19.59	21.09	22.59	24.09	25.59	27.09	28.59	30.09	31.79	33.49	35.19	37.09	38.99	41.29	
Fiber diameter dispersion, per-percent: [1]																
25 microns and under, minimum	95	91	83													
30 microns and under, minimum				92	86	80	72	62	54	44						
40 microns and under, minimum											75	68	62	54	44	
25.1 microns and over, maximum	5	9	17													
30.1 microns and over, maximum	1	1	3	8	14	20	28	38	46	56						
40.1 microns and over, maximum				1	1.5	2					25	32	38	46	56	
50.1 microns and over, maximum							1	1	2	2						
60.1 microns and over, maximum											1	1	2	3	4	
Number of fibers required per test [2]	400	400	400	600	800	800	1,000	1,200	1,400	1,600	1,800	2,000	2,200	2,400	2,600	2,600

[1] The second maximum percent shown for any grade is a part of, and not in addition to, the first maximum percent. In each grade, the minimum percent and the first maximum percent total 100 percent.

[2] Research has shown that when wools of average uniformity in fiber diameter are measured, the prescribed number of fibers to measure per test will result in confidence limits of the mean ranging from approximately ±0.4 to ±0.5 micron at a probability of 95 percent.

§ 31.302 Inspection method.

The grade of wool top also may be determined by inspection. This usually will be facilitated by comparing the fibers in the sample of wool top to be graded with fibers in the wool top samples certified by the U.S. Department of Agriculture as representative of the official grades. When using the certified samples to determine the grade of wool top, the grade assigned shall be that of the certified sample which most nearly matches the wool top being graded.

The foregoing provisions shall become effective 30 days after date of publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 16th day of December 1968.

GEORGE R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 68-15163; Filed, Dec. 20, 1968; 8:45 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 353]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.653 Lemon Regulation 353.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter

set forth. The committee held an open meeting during the current week, after giving due notice thereof to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 17, 1968.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period December 22, 1968, through December 29, 1968, are hereby fixed as follows:

(i) District 1: 13,950 cartons;

(ii) District 2: 42,780 cartons;

(iii) District 3: 101,370 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 19, 1968.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68–15324; Filed, Dec. 20, 1968; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68–SO–96]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Macon, Ga., control zone.

The Macon control zone is described in § 71.171 (33 F.R. 2058 and 10280).

In the description, extensions are predicated on the Macon VORTAC 316° and 138° radials. Since a step-down fix, 8 miles from the Macon VORTAC, has been established for JAL–442 VORTAC–2 RWY 14, and the final approach radial for AL–442 TACAN–1 RWY 32, JAL–442 TACAN/ILS RWY 32, and JAL–442 VORTAC/ILS RWY 32 instrument approach procedures has been changed from the 138° radial to the 140° radial, it is necessary to alter the control zone by reducing the extension predicated on the Macon VORTAC 316° radial from 11.5 miles to 8 miles, and redesignate the extension predicated on the Macon VORTAC 138° radial to the 140° radial.

Since this amendment is less restrictive and minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., January 9, 1969, as hereinafter set forth.

In § 71.171 (33 F.R. 2058), the Macon, Ga., control zone (33 F.R. 10280) is amended as follows: "* * * extending from the Lewis B. Wilson Airport 5-mile radius zone to 11.5 miles northwest of the VORTAC * * *" is deleted and "* * * extending from the Lewis B. Wilson Airport 5-mile radius zone to 8 miles northwest of the VORTAC * * *" is substituted therefor, and "* * * within 2 miles each side of the Macon VORTAC 138° radial * * *" is deleted and "* * * within 2 miles each side of the Macon VORTAC 140° radial * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in East Point, Ga., on December 13, 1968.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 68–15231; Filed, Dec. 20, 1968; 8:45 a.m.]

[Airspace Docket No. 68–SW–88]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the New Orleans, La., transition area.

On April 18, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 5958) stating the Federal Aviation Administration proposed to alter the New Orleans, La., transition area by redescribing the 1,200-foot portion of the area to include the 3,000-foot MSL portion.

On June 8, 1968, a final rule was published in the FEDERAL REGISTER (33 F.R. 8479) which amended, effective July 25, 1968, the 1,200-foot portion of the New Orleans, La., transition area, as proposed in the notice. However, the final rule did not delete the 3,000-foot MSL portion from the description of the transition area. This amendment revokes the 3,000-foot MSL portion since that airspace is now included in the 1,200-foot portion and its appearance in the description of the transition area is redundant.

Since this amendment is editorial in nature and does not alter or amend controlled airspace, notice and public procedure hereon are unnecessary and the amendment may be made effective immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (33 F.R. 2227, 8479) the New Orleans, La., transition area is amended by deleting the 3,000-foot MSL portion.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on December 13, 1968.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 68–15232; Filed, Dec. 20, 1968; 8:46 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

SUBCHAPTER A—GENERAL

PART 200—INTRODUCTION

Subpart D—Delegations of Basic Authority and Functions

MISCELLANEOUS AMENDMENTS

In Part 200 in the Table of Contents the headings of §§ 200.58d and 200.61a are revised, and a new § 200.61d is added as follows:

Sec.
200.58d Chief of the Elderly, Nursing Homes, Medical Facilities, and Nonprofit Hospitals Branch.
200.61a Chief of the Moderate Income Assistance Branch.
200.61d Chief of the Homeownership Assistance Branch.

1. In § 200.56 paragraphs (b) and (e) are amended to read as follows:

§ 200.56 Assistant Commissioner for Home Mortgages and Deputy.

* * * * *

(b) To develop and recommend policies and establish operating plans and procedures for the insurance of home mortgages, other than those insured under sections 221(h), 235, and 237, and the insurance of rehabilitation loans under section 203(k) of the National Housing Act.

* * * * *

(e) To develop and establish policies and procedures for servicing of insured and Secretary-held home mortgages other than under sections 221(h), 235, and 237, to review and evaluate home mortgage insurance default experience,

and to provide technical advice and guidance to approved mortgagees and field offices on insured and Secretary-held home mortgage servicing problems.

2. In § 200.57 paragraph (b) is amended and new paragraphs (h), (i), and (j) are added to read as follows:

§ 200.57 Assistant Commissioner for Multifamily Housing and Deputy.

* * * * *

(b) To develop and recommend policies and establish operating plans and procedures for the insurance and servicing of all multifamily housing mortgages; home mortgages under sections 221(h), 235, and 237; nursing home mortgages; equity investments in multifamily housing; mortgages for the construction and equipment of group medical facilities; for urban renewal housing rehabilitation loans; and for technical and loan assistance to nonprofit sponsors of low and moderate income housing.

* * * * *

(h) To be responsible for the administration of the rent supplement program, the homeownership assistance and rental housing assistance programs, and the credit assistance program under section 237.

(i) To act for the Commissioner in approving applications for financial assistance and in approving the waiver of repayment of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended, and in approving the waiver of interest on such loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965.

(j) To be responsible for the administration of FHA's responsibility with respect to the nonprofit hospital mortgage insurance program and for coordination with the Department of Health, Education, and Welfare on the program.

3. In § 200.58 paragraph (a) is amended and a new paragraph (c) is added to read as follows:

§ 200.58 Director of the Project Mortgage Insurance Division and Deputy.

* * * * *

(a) To develop and recommend policies and establish operating plans for the insurance of multifamily housing mortgages, exclusive of sections 221(d)(3), 221(h), and 236; nursing home mortgages; equity investments in multifamily housing; and for mortgages for the construction and equipment of facilities for the group practice of medicine.

* * * * *

(c) To be responsible for the administration of FHA's responsibility with respect to the nonprofit hospital mortgage insurance program and for coordination with the Department of Health, Education, and Welfare on the program.

4. In Part 200, § 200.58d is revised to read as follows:

§ 200.58d Chief of the Elderly, Nursing Homes, Medical Facilities, and Nonprofit Hospitals Branch.

To the position of Chief of the Elderly, Nursing Homes, Medical Facilities, and Nonprofit Hospitals Branch there is delegated the following basic authority and functions:

(a) To develop and recommend policies, procedures, requirements, and methods of operation for insurance of mortgages for housing for the elderly, nursing homes, and for the construction and equipment of facilities for the group practice of medicine.

(b) To be responsible for the administration of FHA's responsibility with respect to the nonprofit hospital mortgage insurance program and for coordination with the Department of Health, Education, and Welfare on the program.

5. In § 200.59 paragraph (a) is amended to read as follows:

§ 200.59 Director of the Project Mortgage Servicing Division and Deputy.

* * * * *

(a) To direct mortgage servicing operations for all multifamily housing programs and for the home programs under sections 221(h), 235, and 237.

* * * * *

6. In Part 200 §§ 200.61 and 200.61b are amended, § 200.61a is revised, and a new § 200.61d is added to read as follows:

§ 200.61 Director of the Low and Moderate Income Housing Division and Deputy.

To the position of the Director of the Low and Moderate Income Housing Division and under his general supervision to the position of Deputy Director of the Low and Moderate Income Housing Division there is delegated the authority to develop and recommend policies and establish operating plans and procedures for the insurance of multifamily housing mortgages under section 221(d)(3), exclusive of cooperative and condominium program mortgages; for insurance of mortgages under the homeownership assistance program, exclusive of section 235(j), and for insurance of mortgages under the rental housing assistance and credit assistance programs; for technical and loan assistance to nonprofit sponsors of low and moderate income housing; for administration of the rent supplement program, the homeownership assistance program exclusive of section 235(j), and the rental housing assistance and credit assistance programs; and to act for the Commissioner in approving applications for financial assistance and in approving the waiver of repayment of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development of 1965, as amended, and in approving the waiver of interest on such loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965.

§ 200.61a Chief of the Moderate Income Assistance Branch.

To the position of Chief of the Moderate Income Assistance Branch there is delegated authority to develop and recommend policies and establish operating plans and procedures for insurance of mortgages under section 236 and section 221(d)(3), exclusive of those receiving rent supplement support; and administration of the rental housing assistance program, including, but not limited to: (a) The reservation of contract authority; (b) the negotiation of assistance payments contracts; (c) tenant eligibility requirements; and (d) the direction and control of the reservation of assistance payments contract authority.

§ 200.61b Chief of the Management Assistance Branch.

To the position of Chief of the Management Assistance Branch there is delegated authority to develop and recommend policies and establish operating plans for technical and loan assistance to nonprofit sponsors of low and moderate income housing and assistance to project management to meet the needs of families of low and moderate income.

§ 200.61d Chief of the Howneownership Assistance Branch.

To the position of Chief of the Homeownership Assistance Branch there is delegated authority to develop and recommend policies and establish operating plans and procedures for the insurance of mortgages under sections 235, exclusive of 235(j), and 237, and for administration of the homeownership assistance program, exclusive of section 235(j), and the credit assistance program, including, but not limited to: (a) The reservation of contract authority; (b) the negotiation of assistance payments contracts; (c) homeownership eligibility requirements; and (d) the direction and control of the reservation of assistance payments contract authority.

7. In § 200.65 paragraph (c) is revoked as follows:

§ 200.65 Assistant Commissioner for Programs and Deputy.

* * * * *

(c) [Revoked]

(Sec. 2, 48 Stat. 1246, as amended; sec. 211, 52 Stat. 23, as amended; sec. 607, 55 Stat. 61, as amended; sec. 712, 62 Stat. 1281, as amended; sec. 907, 65 Stat. 301, as amended; sec. 807, 69 Stat. 651, as amended; 12 U.S.C. 1703, 1715b, 1742, 1747k, 1748f, 1750f)

Issued at Washington, D.C., December 17, 1968.

PHILIP N. BROWNSTEIN,
Federal Housing Commissioner.

[F.R. Doc. 68-15240; Filed, Dec. 20, 1968; 8:46 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Preparedness

[Defense Mobilization Order 8600.1A]

DMO 8600.1A—GENERAL POLICIES FOR STRATEGIC AND CRITICAL MATERIALS STOCKPILING

1. *Purpose.* This order sets forth revised policies for the administration of strategic and critical materials stockpiling.

2. *Cancellation.* This order supersedes Defense Mobilization Order 8600.1 (29 F.R. 5076, Apr. 14, 1964).

3. *Policies.* By virtue of the authority vested in me by Executive Order 11051, the following policies are promulgated to govern the administration of strategic and critical materials stockpiling:

a. *General.* The strategic stockpile shall be so administered as to assure the availability of strategic and critical materials in a war emergency.

b. *Period covered by stockpiling.* All strategic stockpile objectives for conventional war shall be limited to meeting estimated shortages of materials for a 3-year emergency period. Strategic stockpile objectives for nuclear war involving attack on the United States, shall be designed to meet estimated shortages of materials during (a) actual hostilities and (b) the reconstruction of the national economy to a point where it is adequate for national defense.

c. *Stockpile objectives.* Strategic stockpile objectives shall be adequate for conventional or nuclear war, whichever shows the largest supply-requirements deficit to be met by stockpiling.

d. *Emergency requirements.* The requirements estimates for conventional or nuclear war shall, where appropriate, reflect specific requirements to the extent available. It shall be assumed that the total requirements will approximate the capacity of industry to consume, taking into account necessary wartime limitation, conservation and substitution measures. Requirements shall be discounted for wartime losses of consuming capacity to the extent that such losses can be reliably estimated. Departments and agencies having responsibilities with regard to requirements data on stockpile materials shall review such data and provide the Director of the Office of Emergency Preparedness annually with information as to all significant changes.

e. *Emergency supplies.* Estimates of supply for the mobilization period shall be based on readily available capacity and known resources in the United States and such other countries as certified by the Joint Chiefs of Staff and as approved by the Director. The share of an accessible foreign source of supply available to the United States shall be discounted to reflect the risks involved internally in the supply country and the risks of concentration of the sources. Domestic supplies shall be discounted to reflect vulnerability to total or partial destruction by overt or covert action or disaster. In cases of excessive concentration particularly, provision shall be made for supplies during the estimated time required to restore capacity and operations unless substitute capacity can be located in the United States, Canada, Mexico, or the Caribbean area. Departments and agencies having the responsibilities with regard to supply data on stockpile materials shall review such data and provide the Director of the Office of Emergency Preparedness annually with information as to all significant changes.

f. *Provision for special-property materials.* Arrangements shall be made for the regular availability of objective scientific advice to assist in the evaluation of prospective needs for high-temperature and other special-property materials. Such materials shall be stockpiled if reasonably firm minimum requirements indicate the existence of a supply deficit in the event of an emergency.

g. *Supply-requirements reviews.* The supply-requirements balance for any material that is now or may become important to defense shall be kept under continuing surveillance. Supply-requirements data submitted pursuant to paragraphs d. and e. above shall be examined upon receipt. A full-scale review may be undertaken at any time that a change is believed to be taking place that would have a significant bearing on the wartime readiness position. Priority of review shall be given to materials under procurement.

h. *Procurement policy.* Unfilled objectives shall be attained expeditiously by cash procurement, barter, surplus transfers or exchange for other surplus commodities, or otherwise as the Director shall deem appropriate. Long-term contracts shall contain termination clauses whenever possible. All feasible measures for meeting materials deficits in an emergency shall be considered. Stockpiling shall be undertaken only when it is clear that it is the best solution.

i. *Maintenance of the mobilization base.* A portion of the mobilization base comprises existing or projected productive capacity the output of which will be relied on to fill defense requirements. All inventories of Government-owned materials held for long-term storage are a part of the mobilization base and should be weighed in determining the need for a relevant portion of the productive segment of the mobilization base. The maintenance of any portion of the productive segment of the mobilization base through stockpile procurement shall be undertaken only within unfilled stockpile objectives.

j. *Upgrading to ready usability.* In order to satisfy the initial surge of abnormal demands following intensive mobilization either in a conventional or nuclear war, subobjectives of stockpile materials shall be established for upgraded forms of such materials for immediate use in such circumstances. For this purpose a minimum readiness inventory shall be provided near centers of consumption. To the greatest extent practicable the amounts of such inventories should be based on the largest of the calculated mobilization requirements for any of the foregoing types of war during the first year of mobilization. Materials in Government inventories may be upgraded for such stockpiling purposes only when the net cost of such processing including transportation and handling is less than the cost of new material. Materials should be upgraded to forms which will permit the greatest use-flexibility. Surplus materials may be used to pay for the upgrading of the same or other materials required to meet objectives providing that the use of excess materials for this purpose is in conformance with disposal criteria.

k. *Beneficiation of subspecification materials.* Subspecification-grade materials in Government inventories may be beneficiated within the limits of the objectives when this can be accomplished at less cost than buying new material.

l. *Cancellation of Commitments.* Commitments for deliveries to national stockpile and Defense Production Act inventories beyond the objectives shall be canceled or reduced when settlements can be arranged which would be mutually satisfactory to the supplier and the Government and which would not be disruptive to the economy or to projects essential to the national security. Such settlements may take into account anticipated profits and cover adjustments for above-market premiums. The settlement of commitments may be made through the payment of cash or through the use of surplus materials. Responsibility with respect to the settlement of commitments in the light of over-all interest of the Government rests with the Administrator of General Services who shall keep other agencies advised and consult with them to the extent appropriate.

m. *Retention of other inventories.* Within the limits of unfilled stockpile objectives, stockpile-grade materials in the Defense Production Act and the Supplemental Stockpile inventories shall be retained for national stockpile purposes.

n. *Disposals.* The Director of the Office of Emergency Preparedness will authorize the disposal of excess materials whenever possible under the following conditions: (a) Avoidance of serious disruption of the usual markets of producers, processors and consumers, (b) avoidance of adverse effects on the international interests of the United States, (c) due regard to the protection of the United States against avoidable loss, (d) avoidance of adverse effects upon domestic employment and labor disputes, and (e) except when materials are channeled to other agencies for their direct use, consultation with the Departments of the Interior, Commerce, State, Agriculture, Defense, Labor, and other governmental agencies concerned, and consultation as appropriate with the industries concerned. If within 30 days after such consultation either the Department of State or the Department of the Interior indicates an objection to the proposed plan which, after discussion, the Director does not support, he shall so notify the President and present the issue to him for decision. To the extent possible, disposals

should be made in accordance with long-run disposal plans which have been worked out in consultation with the interested departments and which take into account probable trends in supply and price both at home and abroad.

In making such disposals preference shall be given to materials in the Defense Production Act inventories.

Disposals of materials that deteriorate, that are likely to become obsolete, that do not meet quality standards, or that do not have stockpile objectives, are to be exepedited.

The Administrator of General Services shall be responsible for conducting negotiations for the sale of materials and will consult with and advise the agencies concerned.

o. *Public notice on disposals.* Generally the sale of excess materials acquired under the Defense Production Act will be made only after appropriate public announcement of the quantity or quantities to be offered in a specified period of time.

p. *Direct Government use.* Government agencies which directly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof whenever such action is found to be consistent with overall disposal policies and with the best interests of the Government. Except where appropriate in the judgment of the Administrator of General Services, the requirements of subsection n. above, with respect to approval by Government departments or agencies and consultation with industries, shall not be applicable to transfers of strategic and critical materials for direct Government use.

4. *Delegation of authority*—a. *Preparation of reports.* The Administrator of General Services shall prepare on behalf of the Director of the Office of Emergency Preparedness and forward to him for transmittal to the Congress the reports required by section 304 of the Defense Production Act of 1950, as amended, and section 4 of the Strategic and Critical Materials Stock Piling Act.

b. *Supplemental Stockpile.* The Administrator of General Services shall on behalf of the Director of the Office of Emergency Preparedness and in accordance with programs certified by him, purchase or contract for the purchase of materials for the Supplemental Stockpile under Title III of the Agricultural Trade Development and Assistance Act of 1954, as amended.

5. *Effective date.* This order shall take effect on the date hereof.

Dated: December 16, 1968.

PRICE DANIEL,
Director,
Office of Emergency Preparedness.

[F.R. Doc. 68-15230; Filed, Dec. 20, 1968; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-12—LABOR

Subpart 1-12.9—Service Contract Act of 1965

FEDERAL SERVICE CONTRACTS

This amendment of the Federal Procurement Regulations makes changes in Subpart 1-12.9, Service Contract Act of 1965. The changes reflect the revisions by the Department of Labor in its regulations in 29 CFR Part 4 (33 F.R. 9880, July 10, 1968), which implement the Act.

The table of contents for Part 1-12 is amended, as follows:

Sec.
1-12.900 Scope of subpart.
1-12.905-4 Use of minimum wage determinations and fringe benefit specifications.
1-12.905-10 Absence of minimum wage determinations and fringe benefit specifications.

1. Section 1-12.900 is added, as follows:

§ 1-12.900 Scope of subpart.

This subpart sets forth policies and procedures for carrying out the provisions of the Service Contract Act of 1965 (41 U.S.C. 351-357), the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), as they pertain to service contracts, and the implementing regulations prescribed in 29 CFR Parts 4 and 1516, and instructions issued by the Secretary of Labor.

2. Section 1-12.902-1(a) is revised as follows:

§ 1-12.902-1 Geographical coverage of the Act.

(a) (1) Inside the United States, the Act is applicable to all service contracts irrespective of amount.

(2) Outside the United States, the Act is applicable to service contracts under $2,500. However, the regulations of the Secretary of Labor (see 29 CFR 4.6 (m) and 4.7) have exempted such contracts from the provisions of the Act.

* * * * *

3. Section 1-12.903 is revised as follows:

§ 1-12.903 Department of Labor regulations.

The Department of Labor has issued Parts 4 and 1516, Title 29, Code of Federal Regulations, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(a) Service contract labor standards and procedures (see 29 CFR Subpart A, Part 4);

(b) Equivalents of determined fringe benefits (see 29 CFR Subpart B, Part 4);

(c) Application of the Service Contract Act of 1965 (rulings and interpretations, see 29 CFR Subpart C, Part 4);

(d) Safe and sanitary working conditions (see 29 CFR Part 1516); and

(e) Rules of practice for administrative proceedings enforcing service contract labor standards (see 29 CFR Part 6).

4. Section 1-12.904-1 is revised as follows:

§ 1-12.904-1 Clause for Federal service contracts in excess of $2,500.

Federal agencies (except as provided in §§ 1-12.902-3 and 4) shall include the following clause in all invitations for bids and requests for proposals which may result in contracts in excess of $2,500 and in contracts in excess of $2,500 (including any transaction for an indefinite amount unless the contracting agency has knowledge that it will not exceed $2,500) where the principal purpose of the contract is to furnish services in the United States through the use of service employees.

SERVICE CONTRACT ACT OF 1965

This contract, to the extent that it is of the character to which the Service Contract Act of 1965 (41 U.S.C. 351-357) applies, is subject to the following provisions and to all other applicable provisions of the Act and the regulations of the Secretary of Labor thereunder (29 CFR Parts 4 and 1516).

(a) *Compensation.* Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or his authorized representative, as specified in any attachment to this contract. If there is such an attachment, any class of service employee which is not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the Contractor, and the employees who will perform on the contract, or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the Contracting Officer shall submit the question, together with his recommendation, to the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, or his authorized representative, for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator, or his authorized representative, shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended ($1.60 per hour).

(b) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments

in cash, pursuant to applicable rules of the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor (29 CFR Subpart B, Part 4).

(c) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any of his employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938 ($1.60 per hour). However, in cases where section 6(e)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(d) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(e) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services. Except insofar as a noncompliance can be justified as provided in section 1516.1(c) of Title 29 CFR, this will require compliance with the applicable standards, specifications, and codes developed and published by the U.S. Department of Labor, any other agency of the United States, and any nationally recognized professional organization such as, without limitation, the following:

National Bureau of Standards, U.S. Department of Commerce.
Public Health Service, U.S. Department of Health, Education, and Welfare.
Bureau of Mines, U.S. Department of the Interior.
United States of America Standards Institute (American Standards Association).
National Fire Protection Association.
American Society of Mechanical Engineers.
American Society for Testing and Materials.
American Conference of Governmental Industrial Hygienists.

Information as to the latest standards, specifications, and codes applicable to the contract is available at the office of the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20212, or at any of the regional offices of the Bureau of Labor Standards as follows:

(1) North Atlantic Region, 341 Ninth Avenue, Room 920, New York, N.Y. 10001 (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, New Jersey, and Puerto Rico).

(2) Middle Atlantic Region, 1110–B Federal Building, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201 (Delaware, District of Columbia, Maryland, North Carolina, Pennsylvania, Virginia, and West Virginia).

(3) South Atlantic Region, 1371 Peachtree Street NE., Suite 723, Atlanta, Ga. 30309 (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee).

(4) Great Lakes Region, 848 Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604 (Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin).

(5) Mid-Western Region, 2100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106 (Colorado, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming).

(6) Western Gulf Region, 411 North Akard Street, Room 601, Dallas, Tex. 75201 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).

(7) Pacific Region, 10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102 (Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and Guam).

(f) *Records.* The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work the records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor.

(1) His name and address.

(2) His work classification or classifications, rate or rates of monetary wages, and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) His daily and weekly hours so worked.

(4) Any deductions, rebates, or refunds from his total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, or his authorized representative, pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (j) of this clause shall be deemed to be such a list.

(g) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as he, or an appropriate officer of the Department of Labor, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(h) *Subcontractors.* The Contractor agrees to insert the paragraphs of this clause relating to the Service Contract Act of 1965 in all subcontracts. The term "Contractor" as used in these paragraphs in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(i) *Service employee.* As used in this clause relating to the Service Contract Act of 1965, the term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semi-skilled, or skilled manual labor occupations; and any other employee, including a foreman or supervisor, in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(j) *Contractor's report.* If there is a wage determination attachment to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the Contractor shall report to the Contracting Officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined as provided in paragraph (a) of this clause.

(k) *Regulations incorporated by reference.* All interpretations of the Service Contract Act of 1965 expressed in 29 CFR Subpart C, Part 4, are hereby incorporated by reference in this contract.

(l) *Exemptions.* This clause shall not apply to the following:

(1) Any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35–45);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Service Contract Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island. It does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country; and

(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor hereby finds necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business: Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(m) *Special employees.* Notwithstanding any of the provisions in paragraphs (a) through (k) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor hereby finds pursuant to section 4(b) of the Act to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(2) An employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in 29 CFR Part 531: *Provided, however,* That the amount of such credit may not exceed 80 cents per hour.

5. Section 1–12.904–2 is revised as follows:

§ 1–12.904–2 Clause for Federal service contracts not exceeding $2,500.

Federal agencies (except as provided in §§ 1–12.902–1, 3, and 4) shall include the following clause in every contract not in excess of $2,500 which has as its principal purpose the furnishing of services through the use of service employees:

SERVICE CONTRACT ACT OF 1965

Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($1.60 per hour). However, in cases where section 6(e)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

6. Section 1–12.905–2 is revised as follows:

§ 1–12.905–2 Register of wage determinations and fringe benefits.

The regulations of the Department of Labor provide that the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, shall determine the minimum monetary wages and specify the fringe benefits to be furnished the various classes of service employees for the several localities in which they are to be employed under contracts subject to such determinations under the Act (see 29 CFR 4.3). The regulations further provide that these determinations and specifications will be issued as an orderly series constituting a register of such minimum wages and fringe benefits. The register will be available for public inspection during business hours at the national, regional, and district offices of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor. In addition, the regulations authorize the Department, when practicable, to maintain such a register at other locations where the needs of procurement agencies for the information contained therein may be better served by such action.

7. Section 1–12.905–3 is revised as follows:

§ 1–12.905–3 Notice of intention to make a service contract.

(a) Contracting agencies shall file Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, with the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, in accordance with the detailed instructions printed on the back of the form.

(b) Notices shall be filed not less than 30 days prior to any invitation for bids, request for proposals, or the commencement of negotiations for any contract exceeding $2,500 which may be subject to the Act (including any contract for an indefinite amount, unless the contracting agency has knowledge that it will not exceed $2,500).

(c) An original and three copies of Standard Form 98 shall be submitted, together with any attachments necessary, to the address indicated on the form. The "Response" portion of the original will be completed by the Wage and Hour and Public Contracts Divisions and returned to the contracting agency, advising the agency of any determination of minimum monetary wages and fringe benefits applicable to the contract. Supplies of Standard Form 98 are available in all GSA supply depots under stock number 7540–926–8972.

(d) If exceptional circumstances prevent the filing of the notice on or before a date 30 days prior to any invitation for bids or the commencement of negotiations, the notice shall be submitted to the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

8. Section 1–12.905–4 is revised as follows:

§ 1–12.905–4 Use of minimum wage determinations and fringe benefit specifications.

Invitations for bids and requests for proposals which may result in contracts in excess of $2,500 and contracts in excess of $2,500 (including any transaction for an indefinite amount, unless the contracting agency has knowledge that it will not exceed $2,500) shall contain an attachment setting forth the minimum wages and fringe benefits specified in any applicable, currently effective, determination. The attachment shall also include any determinations expressed in any communication from the Administrator, Wage and Hour and Public Contracts Divisions, Department of Labor, responsive to the notice required by § 1–12.905–3(a), or any revision of the register of wages and fringe benefits prior to the award of the contract or contracts. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective except where the Federal agency finds that a reasonable time is available in which to notify bidders of the revision. (See § 1–12.905–10 regarding the absence of wage and fringe benefit determinations.)

9. Section 1–12.905–5 is revised as follows:

§ 1–12.905–5 Additional classifications.

Where any classes of service employees which are to be engaged in the performance of the contract are not listed in the wage and fringe benefit determination attached to the contract (see paragraph (a) of the clause in § 1–12.904–1), such employees shall be classified by the contractor so as to bear a reasonable relationship to the classifications listed in the determination. The wages paid and the fringe benefits provided to employees so classified shall be determined by agreement between the interested parties. Such parties shall be deemed to be the contracting agency, the contractor, and the employees (or their representatives) who will perform under the contract. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable with the wage and fringe benefit determination, the contracting officer shall submit the question, together with his recommendation, to the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, or his authorized representative for final determination.

10. Section 1–12.905–10 is added as follows:

§ 1–12.905–10 Absence of minimum wage determinations and fringe benefit specifications.

(a) *Authority.* The Secretary of Labor, pursuant to his authority under the Act to allow reasonable variations, tolerances, and exemptions (see § 1–12.902–4), has made the finding set forth in § 1–12.905–10(b) with respect to service

contracts in excess of $2,500 for which minimum monetary wages and fringe benefits have not been determined as provided in § 1–12.905–4.

(b) *Finding.* To avoid serious impairment of the conduct of Government business, it is hereby found necessary and proper to provide exemption (1) from the determined wage and fringe benefits section of the Act (section 2(a)(1) and (2)), but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of all contracts for which no such wage or fringe benefit has been determined for any class of service employees to be employed thereunder, and (2) from the fringe benefits section (section 2(a)(2)) of all contracts and of all classes of service employees employed thereunder if no such benefits have been determined for any such class of service employees. Accordingly, such exemptions are hereby provided.

(c) *Application of finding.* The exemptions covered by the finding do not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage and fringe benefit determination (see § 1–12.905–5).

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: December 17, 1968.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 68–15241; Filed, Dec. 20, 1968; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 81]

AIR QUALITY CONTROL REGIONS

Notice of Proposed Designation of Metropolitan St. Louis Interstate Air Quality Control Region (Missouri-Illinois); Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Metropolitan St. Louis Interstate Air Quality Control Region (Missouri-Illinois) as set forth in the following new § 81.18 which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Ballston Center Tower II, Room 905, 801 North Randolph Street, Arlington, Va. 22203. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the States of Missouri and Illinois, and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at the Assembly Room of the soldiers Memorial Building, 1315 Chestnut Street, St. Louis, Mo., beginning at 10 a.m., January 14, 1969.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Ballston Center Tower II, Room 905, 801 North Randolph Street, Arlington, Va. 22203, of such intention by January 8, 1969.

A report prepared for the consultation, entitled "Report for Consultation on the Metropolitan St. Louis Interstate Air Quality Control Region (Missouri-Illinois)," is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.18 is proposed to be added to read as follows:

§ 81.18 Metropolitan St. Louis Interstate Air Quality Control Region. (Missouri-Illinois)

The Metropolitan St. Louis Interstate Air Quality Control Region (Missouri-Illinois) consists of the territorial area encompassed by the boundaries of the following jurisdictions (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

IN THE STATE OF MISSOURI

St. Louis City.	St. Louis County.
St. Charles County.	Jefferson County.

IN THE STATE OF ILLINOIS

Madison County.	Monroe County.
St. Clair County.	

This action is proposed under the authority of sections 107(a) and 301(a) of the Clean Air Act, section 2, Public Law 90–148, 81 Stat. 490, 504; 42 U.S.C. 1857c–2(a), 1857g(a).

Dated: December 17, 1968.

EDWARD F. TUERK,
Acting Commissioner, National Air Pollution Control Administration.

[F.R. Doc. 68–15234; Filed, Dec. 20, 1968; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 87]

[Docket No. 18398; FCC 68–1177]

CIVIL AIR PATROL

Search and Rescue Operations

In the matter of amendment of Part 87 of the Commission's rules to improve the capability of the Civil Air Patrol (CAP) to participate in Search and Rescue (SAR) operations, Docket No. 18398, RM–1326.

1. Notice of proposed rule making is hereby given in the above-entitled matter.

2. The Commission has under consideration a petition by the Civil Air Patrol (CAP) for rule changes that would permit the CAP to participate more fully and effectively in Search and Rescue (SAR) operations. The rule changes requested by CAP would apply to the operation, by the CAP and others, of all SAR stations and the rule changes requested would:

a. Make the frequency 122.9 Mc/s available to aeronautical search and rescue stations for training and practice use;

b. Provide for SAR land stations (mission control) and authorize temporary relocation of such stations to the scene of action or specific localized search area; and

c. Authorize communication between land and mobile stations and between mobile stations.

3. The CAP, in addition to being licensed under the provisions of Subpart O of Part 87, is also licensed under Subpart K to operate search and rescue mobile stations and, additionally, aircraft stations which use the search and rescue frequency. This enables CAP to communicate with other aircraft participating in search and rescue operations even though such other aircraft are operated by persons not CAP members and the aircraft are not equipped for operation on frequencies available under Subpart O. In order to meet the need for training and practice, CAP has been granted licenses for multicom stations in accordance with Subpart D. Such dual licensing of the same ground station equipment would be eliminated by the proposed rule making.

4. The use of the SAR frequency for training and practice SAR missions has not been permitted because of the need to have this channel clear in case an actual SAR mission developes. The Commission, however, recognizes that increased efficiency and ability to conduct proper SAR missions can be achieved through realistic training exercises utilizing radio communications. We feel, therefore, that some provisions should be made for training and practice by SAR teams. The frequency 122.9 Mc/s requested by CAP is used mainly for multicom operations and is a good choice as multicom operations include the directing of aerial activities from the ground or ground activities from the air. In addition to these changes requested by CAP, we are using this occasion to make certain editorial changes in § 87.441(b).

5. CAP's request for rule changes to permit more flexibility in points of communication and location of ground stations appears to be reasonable and desirable and should result in greatly increased efficiency when operating on SAR missions. The present rules concerning use of the SAR frequency permit communications between aircraft and between SAR mobile stations and aircraft. The rules do not, however, permit communication between ground stations nor is there any provision for a station which can control the movement of SAR mobile stations and aircraft, a so-called mission control. Thus, ground units act independently of each other unless intercommunication is conducted under some other class of station license.

Direct communication between ground stations is especially desirable when searches or rescues are being conducted over water, or mountainous, swampy or inaccessible terrain in order to avoid loss of time or wasted effort because of uncoordinated operations: *Provided,* That such communications are incidental to aircraft operations. It is not intended that ground to ground communications not involving aircraft be permitted since there are mobile services other than aeronautical, such as the land mobile services, where such radio communications are authorized.

6. These proposed amendments to the rules, as set forth below, are issued pursuant to authority contained in section 4(i) and 303(b) (c) and (r) of the Communications Act of 1934, as amended.

7. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before January 24, 1969, and reply comments or or before February 3, 1969. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into consideration other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: December 12, 1968.

Released: December 18, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

I. Part 2, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, is amended as follows:

In § 2.1 the definition of an Aeronautical search and rescue mobile station is deleted, and a new definition for an aeronautical search and rescue station is added, as follows:

§ 2.1 **Definitions.**

* * * * *

Aeronautical search and rescue station. A land or mobile station in the aeronautical mobile service used for communication with aircraft and other aeronautical search and rescue stations pertaining to search and rescue activities with aircraft.

* * * * *

II. Part 87, Aviation Services is amended as follows:

1. In § 87.5 the definition for an Aeronautical search and rescue mobile station is deleted, and a new definition for an aeronautical search and rescue station is added, as follows:

[1] Commissioner Robert E. Lee absent.

§ 87.5 **Definition of terms.**

* * * * *

Aeronautical search and rescue station. A land or mobile station in the aeronautical mobile service used for communication with aircraft and other aeronautical search and rescue stations pertaining to search and rescue activities with aircraft.

* * * * *

2. Section 87.183(g) is amended to read as follows:

§ 87.183 **Frequencies available.**

* * * * *

(g) 122.9 and 123.1 Mc/s: These frequencies may be used by aircraft for air-to-air communications and air-to-ground communications with aeronautical search and rescue stations when engaged in search and rescue activities in accordance with Subpart K of this part.

* * * * *

3. Subpart K is amended by deleting the word "Mobile" from the title, and in § 87.441 paragraphs (a) and (b) are amended and a new paragraph (c) is added, to read as follows:

Subpart K—Aeronautical Search and Rescue Stations

§ 87.441 **Frequencies available.**

(a) The frequency 123.1 Mc/s is available for assignment to aeronautical search and rescue stations for actual search and rescue missions. Each search and rescue station shall be equipped to operate on this frequency.

(b) 121.5 Mc/s: This is a universal simplex emergency and distress frequency for air-ground communications and will not be assigned unless; (1) a showing is made establishing a need for such services, and (2) the search and rescue mobile frequency 123.1 Mc/s is assigned and available for use to accommodate normal communication needs.

(c) The frequency 122.9 Mc/s is available for assignment to aeronautical search and rescue stations for organized search and rescue training and practice search and rescue missions.

4. Section 87.443 is amended to read as follows:

§ 87.443 **Scope of Service.**

(a) Aeronautical search and rescue mobile stations shall be used only for communications with aircraft, and other aeronautical search and rescue stations, engaged in search and rescue activities.

(b) Aeronautical search and rescue land stations shall be used only for communications with aircraft and search and rescue mobile stations engaged in search and rescue activities. Such land stations may be moved for temporary periods from a specified location to an area where actual or practice search and rescue operations are being conducted.

[F.R. Doc. 68-15251; Filed, Dec. 20, 1968; 8:47 a.m.]

[47 CFR Parts 21, 74, 91]

[Docket No. 15971; FCC 68-1204]

COMMUNITY ANTENNA TELEVISION SYSTEMS

Distribution of Television Broadcast Signals; Order Terminating Docket

In the matter of amendment of Parts 21, 74, and 91 to adopt rules and regulations relating to the distribution of television broadcast signals by Community Antenna Television Systems, and related matters, Docket No. 15971 (RM Nos. 636, 672, 742, 755, and 766).

1. In its Second Report and Order (2 FCC 2d 725, 789), the Commission did not terminate the proceedings in Docket No. 15971, but rather reserved jurisdiction to amend the rules there adopted or to adopt additional rules in light of the comments filed on Part II of Docket No. 15971 and/or such further proceedings as the Commission might order. In view of the matters set forth in the notice of proposed rule making and notice of inquiry in Docket No. 18397 (FCC 68-1176), we think that the unresolved questions in Docket No. 15971 would be more appropriately considered in the newly instituted proceeding.

2. *Accordingly, it is ordered,* That the proceedings in Docket No. 15971 are terminated.

Adopted: December 12, 1968.

Released: December 18, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-15250; Filed, Dec. 20, 1968; 8:47 a.m.]

[47 CFR Part 74]

[Docket No. 11279; FCC 68-1175]

SUBSCRIPTION TELEVISION SERVICE

Third Further Notice of Proposed Rule Making

In the matter of amendment of Part 73 of the Commission's rules and regulations (radio broadcast services) to provide for subscription television service; Docket No. 11279.

1. In a fourth report and order adopted today in this proceeding (FCC 68-1174), we have established a nationwide, over-the-air subscription television service and, with the exception of technical standards governing subscription television systems, have adopted rules governing that service.

2. In paragraphs 361-368 of that document we discussed the question of carriage by CATV systems of the signals of stations authorized to transmit subscription television programs and announced that although we were not presently requiring such carriage, we were

[1] Commissioner Bartley abstaining from voting; Commissioner Johnson concurring in the result.

today issuing the instant document inviting comments on a proposal to require it.

3. In establishing over-the-air subscription TV service, we have concluded that it is a broadcasting service, and the rules adopted are designed to assure its effective integration into the total television broadcasting system. We believe that as a part of that system it is entitled to protection with regard to CATV operations, just as conventional television broadcasting is. The present CATV rules (47 CFR 74.1100–74.1109) contain carriage and nonduplication requirements concerning conventional TV stations. Not to require carriage of STV signals would, in our opinion, be inconsistent with sections 1 and 307(b) of the Act and with our view that STV is broadcasting.

4. If CATV systems are not required to carry subscription TV signals, those residing in the service area of an STV station who are dependent on CATV for television viewing do not receive the same consideration as those capable of receiving the subscription station without the aid of CATV. Under the rules governing subscription TV service, persons falling in the latter category may, as of right, subscribe to subscription service if they reside within the Grade A contour of a subscription television station. If they live within the Grade B contour, they have a good chance of subscribing, although as of right. On the other hand, as to those dependent on CATV, some might be inhibited from receiving subscription programs because often CATV operators, in installing the cable connection, disconnect the TV set from the outdoor antenna. Others, who cannot receive the off-the-air signal of the subscription TV station, even with a rooftop antenna, are foreclosed from receiving subscription service. Requiring CATV carriage of subscription signals would remove the foregoing difference in treatment of television viewers.

5. The record in this proceeding indicates that while it is technically feasible to attach a decoder to the head end of a CATV system that would unscramble subscription TV signals and transmit them along the cable to sets of subscribers, it is doubtful that any subscription TV station would permit this because it would defeat the purpose of having single subscribers pay on a per-program basis. It supports the view that any flat rate arrangement with the CATV operator for use of the subscription programs would be commercially impractical since program suppliers for box office product prefer to participate in the gross receipts on the basis of percentage arrangements. Moreover, it suggests that this approach to carriage of subscription signals implies that those viewing subscription programs over the CATV system would pay a flat fee for the service and that the public in the past has demonstrated its reluctance to purchase blocks of entertainment in this way.

6. On the other hand, the record contains statements by knowledgeable parties saying that it is technically possible for CATVs to pickup scrambled subscription TV signals, transmit them along the cable, and have them unscrambled by decoders attached to sets of subscribers in the same way that this would be done if the subcription viewer picked up the scrambled signal off the air.

7. In view of the foregoing, we are proposing rules in the Appendix hereto that would require CATV systems located within the Grade B contours of television broadcast stations authorized to broadcast subscription programs to carry, in scrambled form, the subscription signals of those stations in accordance with a system of priorities. Comments are invited on the proposed rules, and on any other system of priorities that parties believe would better serve the public interest.

8. The proposal also provides that CATV systems may not extend subscription television signals beyond the Grade B contours of the stations broadcasting them. This would limit subscription television service to the communities that, for reasons set forth in detail in the fourth report and order, have been designated to be eligible to receive such service. Parties may wish to submit comments to show that it would be in the public interest to permit extension of subscription TV signals beyond the Grade B contour.

9. Under the subscription television rules, stations authorized to broadcast subscription programs must, in addition, broadcast conventional free programs. It is possible that adequate subscription TV signals might not extend as far out as the conventional TV signals of the station. To avoid confusion, the proposed amendment to Part 74 set forth below indicates that the Grade B contour referred to in the proposal is that of the conventional service of the station.

10. Since we propose to restrict CATV carriage of subscription television signals as mentioned above, it appears unlikely that any problems of duplication of programing with regard to other subscription television stations will occur. Moreover, we do not anticipate having duplication problems between subscription and free television stations in the same area. Any subscription duplication problems should be so rare that they will be handled on an ad hoc basis rather than by rule.

11. Under present § 74.1103(c) of the rules, if a CATV system does not carry the conventional signals of a local TV station, it must offer and maintain a switching device for each subscriber so that the subscriber may choose between viewing the local station off the air or viewing other stations on the cable. This need not be done if the subscriber indicates in writing that he does not desire the device. Although in the proposed amendment to Part 74 below we do not propose a modificatioin of that section, we invite comments on whether it should be amended in any way with regard to subscription signals of a local TV station that are not carried by the CATV system.

12. Since the subscription rules adopted today restrict subscription service to communities lying within the Grade A contours of five or more commercial television stations, it is likely that, under the proposals in paragraphs 7 and 8 above, CATV systems required to carry subscription signals would be systems with a large number of channels on the cable. Thus the required carriage of subscription signals would not generally be at the expense of making fewer conventional TV signals available to the CATV viewers. At the same time the required carriage could facilitate the development of subscription television.

13. Authority for the amendments proposed herein is contained in sections 4(i), 301, 303, and 307 of the Communications Act of 1934, as amended.

14. Pursuant to the procedures set forth in § 1.415 of the rules and regulations, interested parties may file comments on or before January 24, 1969, and reply comments on or before February 14, 1969. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it in addition to the specific comments invited by this notice.

15. In accordance with the provisions of § 1.419 of the rules and regulations, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents filed in this proceeding shall be furnished the Commission.

Adopted: December 12, 1968.

Released: December 13, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

It is proposed to amend Part 74 of the Commission rules and regulations as indicated below.

1. Sections 74.1101 (c) and (d) are proposed to be amended to read as follows:

§ 74.1101 Definitions.

* * * * *

(c) *Principal community contour.* The term "principal community contour" means the signal contour which a television station is required to place over its entire principal community by § 73.685 (a) of this chapter. In the case of a television station with an authorization to broadcast subscription television programs, the term refers to the contour of the conventional television service of the station.

(d) *Grade A and Grade B contours.* The terms "Grade A contour" and "Grade B contour" mean the field intensity contours defined in § 73.683(a) of this chapter. In the case of a television station with an authorization to broadcast subscription television programs, the

[1] Dissenting statement of Commissioner Bartley filed as part of original document; Commissioner Johnson concurring in the result; Commissioner H. Rex Lee not participating.

terms refer to the contours of the conventional television service of the station.

* * * * *

2. Section 74.1103(a) is proposed to be amended by adding a note at the end thereof that reads as follows:

§ 74.1103 **Requirements relating to distribution of television signals by community antenna television systems.**

* * * * *

(a) * * *

NOTE: In the case of a television broadcast station with authorization to broadcast subscription programs, the signals required to be carried by this paragraph include both the conventional television signals and the scrambled subscription signals of the stations. The subscription signals shall not be unscrambled at the head end of the CATV system and carried over the cable unscrambled, but shall be carried over the cable in scrambled form.

* * * * *

3. Section 74.1107 is proposed to be amended by adding a note at the end thereof that reads as follows:

§ 74.1107 **Requirements applicable to carriage of television broadcast signals in specified zones and in areas outside of specified zones.**

* * * * *

NOTE: Regardless of the size of the television market in which a CATV system is operating, it shall not extend the subscription television signals of television stations with subscription television authorizations beyond the predicted Grade B contours of such stations.

[F.R. Doc. 68-15167; Filed, Dec. 20, 1968; 8:45 a.m.]

[47 CFR Part 91]

[Docket No. 18406; FCC 68-1179]

BUSINESS RADIO SERVICE

Frequency Coordination

In the matter of amendment of Part 91 of the Commission's rules to require frequency coordination in the Business Radio Service, Docket No. 18406; petition of Central Station Electrical Protection Association, and controlled companies, American District Telegraph Co. and Baker Industries, Inc., to amend Part 91 of the Commission's rules to establish an industrial protection radio service and to require coordination of frequencies allocated to the Central Station Protection Industry, RM-1267; petition of National Association of Business and Educational Radio, Inc. (NABER), to amend § 91.8 of the Commission's rules to require frequency coordination for applications requesting assignment of frequencies in the 450-470 MHz band allocated for use in the Business Radio Service, RM-1302.

1. The Commission has before it for consideration the petition for rule making (RM-1267) filed on March 7, 1968, by the Central Station Electrical Protection Association, and the controlled companies, American District Telegraph Co. and Baker Industries, Inc. (referred to collectively herein as "CSEPA"); the petition for rule making (RM-1302) filed on May 3, 1968, by the National Association of Business and Educational Radio, Inc. (NABER); comments in opposition to NABER's proposals, filed on June 20, 1968, by Maximum Service Telecasters, Inc. (MST)[1]; and NABER's reply to MST's comments, filed July 5, 1968.[2]

2. CSEPA asks the Commission, through rule making, to establish a separate service for the central station protection industry and reallocate to it the five frequency pairs made available for its use in the proceedings in Docket No. 13847 (Frequency Allocations—450-470 Mc/s Band, 11 FCC 2d 648, 653 (1968)) or, alternatively, to amend § 91.8(a)(1)(vii) of the rules and require frequency coordination for applications for protection industry frequencies (See Appendix, attached).[3] Pending consideration of these proposals, CSEPA asks the Commission to issue a public notice requiring frequency coordination for these applications.

3. Along similar, but much broader lines, NABER proposes amendment of § 91.8(a)(1)(vii) of the rules to require frequency coordination uniformly for all applications in the Business Radio Service proposing use of frequencies in the 450-470 MHz band (See Appendix, attached). See Frequency Allocations—450-470 Mc/s Band, supra, at page 657. In this connection, it asks the Commission to recognize NABER as frequency coordinator for this purpose, except as to applications for frequencies for central station protection industry and air terminal use. Coordination as to the latter frequencies would be carried out, under its proposal, by the Central Station Industry Frequency Advisory Committee and by Aeronautical Radio, Inc., respectively. Pending consideration of these proposals, like CSEPA, it asks the Commission to issue a notice "encouraging" frequency coordination by all applicants in the Business Radio Service for use of frequencies in this band.

4. CSEPA's request that we institute rule making proceedings to consider the establishment of a separate service for the central station protection industry will be denied. Without detailing the arguments it has advanced in support of this proposal, we observe that the same request was considered and was denied in Docket 13847 and again in Docket No. 17891. Frequency Allocations—450-470 Mc/s Band, supra, at paragraphs 13-15, 35, 40-41; and In re Amendment of Part 91 of the Commission's rules, Report and Order (FCC 68-657), Docket No. 17891, adopted June 24, 1968, released June 25, 1968, 13 FCC 2d 713 (1968). In these circumstances, we believe no further consideration of this matter is warranted.

5. We will also deny CSEPA's and NABER's requests that interim measures be adopted to "make mandatory" or "encourage" frequency coordination for the protection industry and for the Business Radio Service. Such action, in our view, would require a tentative determination that the amendments proposed would serve the public interest without the benefit of any comments that may be filed in this proceeding. Further, there does not seem to be sufficient urgency to justify such action in as much as some type of voluntary coordination is being conducted at the local level, and both NABER and CSEPA can encourage further coordination among their members.

6. In support of its proposal for frequency coordination in the Business Radio Service, NABER argues that prior coordination of authorizations in this service would foster improved utilization of the allocated frequencies; result in better engineered radio systems; reduce interference in many cases; and, in general, promote the more efficient use of mobile radio communications facilities authorized in the Business Radio Service.

7. More specifically, NABER points out that the allocation of new frequencies in the 450-470 MHz band to the Business Radio Service "unencumbered by debilitating congestion" affords a good opportunity for inaugurating coordination in this service. Further, NABER states, the Commission's decisions in the Second Report and Order (FCC 68-128) in Docket No. 13847, relating to five MHz spacing and reallocation of frequencies, the compliance date for which is January 1, 1970, present difficult transitional problems, and urges that coordination, instituted at an early date would facilitate a more orderly readjustment in assignments and would minimize confusion and any attendant interference difficulties.

8. If recognized as a frequency advisory committee, as it asks, NABER plans to coordinate Business applications for frequencies in the 450-470 MHz band, except for applicants for air terminal and central station protection industry assignments. Under its proposal, as mentioned, applications for those frequencies would be coordinated by committees within those industries.

9. As to the other Business services, NABER plans to process coordination requests at its Washington headquarters and issue frequency recommendations

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[1] MST's opposition was filed 1 day beyond the time period allowed for such pleadings, see § 1.405 of the rules. Since its opposition was not unduly late and there is no apparent prejudice to NABER or any other party, we are waving the requirements of § 1.405 of the rules and will consider the MST pleading.

[2] NABER's reply is supported in general by arguments advanced by it in its rule making petition. These matters, and those advanced by NABER and by MST in opposition, are disposed of consistent with our opinion and the actions taken herein.

[3] The frequencies for the central station industrial protection industry were made available in the Business Radio Service (Subpart L of Part 91), where, except in a few special cases, frequency coordination is not now required. See § 91.8(a)(1)(vii) of the rules. Adoption of CSEPA's proposal to establish a separate radio service for the protection industry would bring into force the provisions of § 91.8(a) of the rules, which require frequency coordination of applications in other Industrial Radio Services (Part 91). Thus, if its suggestion for establishment of this separate service were adopted, frequency coordination for applications for industrial protection frequencies would become mandatory without any further rule amendment.

from there, although local area coordinating committees will be advised of all requests and will be asked to submit recommendations. For this service, NABER will assess a fee, but it has not determined the amount it will charge.

10. MST, while it agreed that effective coordination of radio frequencies is a desirable goal, doubted whether meaningful and effective coordination is possible in the Business Radio Service. Further, it opposed recognition of NABER as a coordinator. It argued that NABER is not "representative" of the licensees in the Business Radio Service in that its members account for a small percentage of the total number of Business licensees and could not have "intimate" knowledge of their communications requirements, since, in MST's words, this service is a "hodgepodge of disparate users engaged in activities that have no relation to one another." MST argues further that the NABER petition "raises a serious question as to the appropriateness of having frequency coordination functions performed by a private organization that serves purposes other than frequency coordination and has goals other than the more efficient use of existing * * * frequencies."

11. The matter of coordination of business frequencies was considered when the service was established in 1958. The Commission, however, concluded that coordination would be impractical because of the anticipated heavy sharing of the frequencies allocated to the service by a large and nonhomogeneous group of potential users. See first report and order in Docket 11991, FCC 58-602, p. 30. There are now well over 100,000 Business licenses outstanding and applications for new and modified facilities continue to flow at a rate of over 2,000 per month.[4] Under these circumstances, we wish comments as to whether coordination is indeed practical and as to whether it could make significant improvement in the efficiency in the use of Business frequencies and in the quality of communication systems authorized in that service. Further, we note that coordination is not completely lacking. Applicants, with the aid of their equipment suppliers, perform some sort of coordination locally in that they attempt to select frequencies so as to minimize interference to and from existing systems.

12. On the other hand, we recognize, as NABER points out, that new frequencies have been made available to the Business Radio Service in the 450-470 MHz band, and coordination could result in their more orderly assignment; and that more complicated operational standards for their use have been imposed, and formalized coordination may aid existing licensees and new applicants in implementing these new standards and frequency changes during the prescribed transitional period. Finally, the Commission has always encouraged efforts on the part of its licensees to improve the usefulness of the frequency spectrum allocated.

13. In view of these considerations, we believe, the issue raised by NABER's petition is whether coordination, such as proposed by NABER, would offer sufficient advantages in terms of more efficient use of Business frequencies in the 450-470 Mc/s band and improved quality of communications to warrant the added effort, expense, and delays in preparing and processing applications for both the applicants and for the Commission. In addressing themselves to this question, interested persons are asked to discuss and to give information and views on the following matters: (1) The type of information that will and should be required of applicants; (2) the type of records that will and should be kept by the coordinator; (3) the approximate number and the qualifications of personnel required to process these requests; (4) how coordination should and will be performed (i.e., the criteria for a favorable—or unfavorable—recommendation, the procedures that will be followed in arriving at "optimum" frequencies, and the disposition that is to be made of controversial requests); (5) whether each coordination request will be examined on an engineering basis, taking into account such things as the technical parameters of the proposed system and existing systems with a view to fitting each new system into the existing technical environment; (6) the processing time for each coordinating request; (7) the approximate cost to the applicants for each coordination request; and (8) other such considerations.

14. In addition, interested persons should discuss, in some detail, the expected benefit of coordination in terms of the more efficient use of Business frequencies and in terms of improved quality of communication systems particularly in view of the fact that frequencies in the Business Radio Service are to be shared on an intensive basis, with many licensees being expected to use a given channel in a given area.

15. From the foregoing discussion, it is clear that, it would not be appropriate now to pass on NABER's request that it be recognized as a frequency coordinator for the Business Radio Service. It would be premature to do so, when we have not determined whether to adopt the requirement for this service. Also, this course of action has the added advantage of affording interested parties, such as MST, an opportunity to comment on the points raised as to the qualifications of NABER to perform in this role and to suggest alternative procedures. Accordingly, we also ask that the comments address themselves to this aspect of NABER's proposal.

16. Frequency coordination for the central protection and air terminal frequencies stands on a different footing. The potential licensees for the frequencies allocated for these purposes are, in each instance, a relatively small and homogeneous group. Moreover, the channels made available to the central station protection and airline industries, although included in the Business Radio Service, were allocated on an exclusive basis in urbanized areas of 200,000 or more population; and, additionally, in the case of the protection industry, two of the five frequency pairs were made available exclusively nationwide. Further, it is expected that relatively few air terminal and central protection licensees will share these frequencies in a particular area. These characteristics are similar to those present in the services where coordination procedures have been established.

17. These features persuade us that frequency coordination for the air terminal and central protection industries will be feasible and could lead to more efficient and effective management of the available spectrum space. Therefore, we are proposing to amend the rules as suggested by CSEPA, but modified to include like frequency coordination requirements for the air terminal frequencies. (See below).

18. *Accordingly, it is ordered*, That, to the extent indicated in the foregoing opinion, the petitions for rule making filed herein on March 7, 1968, by the Central Station Electrical Protection Association, and controlled companies, American District Telegraph Company, and Baker Industries, Inc., and on May 3, 1968, by the National Association of Business and Educational Radio, Inc., are granted, and in all other respects, denied.

19. Notice is hereby given of proposed rule making to amend § 91.8(a) (1) (vii) as set out below.

20. The proposed amendment to the rules is issued pursuant to authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended.

21. Pursuant to the procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before February 7, 1969, and reply comments on or before February 24, 1969. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

22. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: December 12, 1968.

Released: December 18, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[5]

[SEAL] BEN W. WAPLE, *Secretary.*

[4] These applications, of course, are for frequencies in all of the bands available in the Business Radio Service and NABER proposes coordination only in the 450-470 Mc/s band. But a substantial number of these applications are for 450-470 Mc/s frequencies and it is expected that the bulk of future applications will be in that band where new frequencies have recently been made available.

[5] Commissioner Robert E. Lee absent; Commissioner Johnson concurring in the result.

Proposal of Central Station Electrical Protection Association, the controlled companies, American District Telegraph Company, and the Baker Industries, Inc., as modified, is as follows:

It is proposed to amend present § 91.8 (a) (1) (vii) of the Commission's rules by deleting present subdivision (vii) and substituting new subdivision (vii) to read as follows:

(vii) Any application in the Business Radio Service, where the frequency involved and both immediately adjacent frequencies are available for assignment in that service, except for the frequencies allocated for the exclusive use by persons rendering a central station commercial protection service or by persons engaged in furnishing commercial air transportation service at air terminals, in accordance with the provisions of § 91.554(b).

Proposal of the National Association of Business and Educational Radio, Inc., is as follows:

It is proposed to amend present § 91.8 (a) (1) (vii) of the Commission's rules by deleting present subdivision (vii) and substituting new subdivision (vii) to read as follows:

(vii) Any application in the Business Radio Service requesting a frequency below 450 Mc/s where the frequency involved and both immediately adjacent frequencies are available for assignment in that service.

[F.R. Doc. 68-15252; Filed, Dec. 20, 1968; 8:47 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEF, DIVISION OF ADMINISTRATIVE SERVICES, DENVER SERVICE CENTER, ET AL.

Delegation of Authority Regarding Contracts and Leases

Supplement to Bureau of Land Management Manual 1510.

.01 *Purpose.* This Manual Supplement designates those DSC positions which are authorized to enter into contracts and leases of space pursuant to the authorities contained in Bureau Manual 1510.-03B2c and 1510.03C.

.02 *Objectives.* To promote uniformity of operations and to assure that the Bureau's practices conform to established policy and procedure.

.03 *Authority.* The Service Center Director's Authority with regard to contracting is spelled out in Bureau Manual 1510.03B2c. He is granted redelegation authority in Bureau Manual 1510.03C.

1. *Redelegations.* Pursuant to the authority in Bureau Manual 1510.03C, the incumbents of the following positions are hereby redelegated the authorities contained in Bureau Manual 1510.03B2c in the amounts and subject to the same limitations shown therein, or as otherwise specified below.

A. *Chief, Division of Administrative Services; Chief, Branch of Procurement, DSC.* SF–44 procurement authority may be redelegated in writing as further provided below.

B. *Procurement Agents, Contracting Section.* 1. May enter into contracts and leases as described in Bureau Manual 1510.03B2c in amounts not to exceed $10,000, except that procurements from established sources may be made in any amount. This authority may not be redelegated.

C. *Procurement Agent, Supply Section.* 1. May enter into contracts under section 302(c)(3) up to $2,500 and in any amount from established sources. This authority may not be redelegated.

D. *Chief, Office Services Branch; Office Services Specialist.* 1. May enter into leases of space in real estate, provided that the conditions set forth in FPMR 101–18.106 are met.

2. May sign Government Bills of Lading.

3. May sign Government Printing Office Orders.

4. This authority may not be redelegated.

E. *Supervisor, Forms Center, Office Services Branch.* 1. May sign Government Bills of Lading.

2. May sign Government Printing Office Orders.

3. This authority may not be redelegated.

F. *Chief, Property Management Branch; Property Management Specialist; Property Utilization Specialist.* 1. May sign Government Bills of Lading.

2. This authority may not be redelegated.

2. *Special Redelegations, Standard Form 44 Procurements.* A. In addition to the procurement authorities delegated above, the positions listed below are authorized to make procurements on the open market, subject to the restrictions of section 302(c)(3) of the FPAS Act, using SF–44, Purchase Order-Invoice-Voucher.

B. *Redelegations.* SF–44 procurement authority delegated herein may be redelegated in writing to specific individuals as determined necessary for the conduct of the Bureau's programs. Each such delegation shall specify by name(s) each individual authorized to make open market purchases by use of SF–44 and the limit of such authorizations. See Illustration 2 of Bureau Manual 1510.03D for format. Copies of written redelegations must be distributed as follows:

One copy to each individual involved.
One copy to D–733.
One copy to Central Files official file.

NOTE: Written delegations made pursuant to this paragraph are not required to be published in the FEDERAL REGISTER.

C. *Responsibilities.* Every employee given SF–44 purchasing authority has the responsibility to use it only in accordance with established regulations and procedures and within the limits of the amounts authorized for each transaction.

D. *Positions Authorized to Use SF–44, DSC.* The following positions, in addition to those listed under .03B1A, B, and C, above, are authorized to use SF–44 for the purchase of supplies, materials, and services up to the amounts specified below for each transaction, and are further authorized to redelegate this authority to qualified personnel as provided above.

1. *$500 Limitation, Regular DSC Positions.*

a. Chief, Division of Engineering.
b. Chief, Branch of Cadastral Surveys.
c. Chief, Office of Basin Studies.
d. Supervisory Range Conservationist, MRB.

2. *$100 Limitation, Regular DSC Positions.*

a. All other Division Chiefs, DSC.

3. *Special Redelegations, Standard Form 44 Procurements, Administrative Fire Support Positions, DSC Personnel.* A. Employees serving in the following Administrative Fire Support Positions during emergency fire situations who hold valid fire qualification cards are hereby authorized to make purchases by SF–44 in accordance with sections 302(c)(2) and (3) of the FPAS Act. Procurements exceeding $2,500 must be documented as required by section 302(c)(2). This authority may not be redelegated.

1. *List of Positions.*

a. Comptroller.
b. Service Chief.
c. Supply Officer.
d. Equipment Officer.
e. Finance Officer.
f. Commissary Officer.
g. Assistant Disbursing Officer.

4. This Delegation of Authority is effective upon publication in the FEDERAL REGISTER. This supplement to Bureau of Land Management Manual 1510 supersedes all prior issuances relating to the delegation of authority for contracts and leases in the Denver Service Center, Bureau of Land Management.

GARTH H. RUDD,
Director, Denver Service Center.

[F.R. Doc. 68–15229; Filed, Dec. 20, 1968; 8:45 a.m.]

[Utah 5291]

UTAH

Notice of Offering of Land for Sale

DECEMBER 16, 1968.

Notice is hereby given that, under the provisions of the Act of September 19, 1964 (78 Stat. 988) and pursuant to an application from Beaver City Corp., Utah, the Secretary of the Interior intends to offer for sale the NE¼NW¼ sec. 8, T. 29 S., R. 7 W., SLM, Utah. The land is being classified as suitable for a garbage dump site. The tract is zoned G–1, Grazing Zone, which permits public dump grounds. The land is located 2½ miles northwest of Beaver, Utah.

It is the intention of the Secretary of the Interior to enter into an agreement with authorized city officials to permit Beaver City Corp. to purchase the land at the appraised market value.

Patent to the land will be issued under the Act of September 19, 1964, supra, and shall contain a reservation to the United States of rights-of-way for ditches and canals under the Act of August 30, 1890 (43 U.S.C. Sec. 945), and of all mineral deposits which shall thereupon be withdrawn from appropriation under the public land laws, including the mining and mineral leasing laws. The land will be sold subject to all valid existing rights and reservations for rights-of-way.

R. D. NIELSON,
State Director.

[F.R. Doc. 68–15238; Filed, Dec. 20, 1968; 8:46 a.m.]

[Utah 5512]

UTAH

Order Opening Lands to Application, Entry, and Patenting

DECEMBER 16, 1968.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315g), the following described lands have been reconveyed to the United States:

SALT LAKE MERIDIAN

T. 16 S., R. 2 W.,
Sec. 5, N½SE¼, NE¼SW¼, SE¼NW¼;
Sec. 7, S½SE¼;
Sec. 8, S½SW¼;
Sec. 16, S½, S½NW¼;
Sec. 17, S½, NW¼, S½NE¼;
Sec. 18, E½;
Sec. 19, NE¼, SE¼NW¼;
Sec. 20, N½;
Sec. 21, W½NW¼.
T. 15 S., R. 3 W.,
Sec. 24, all;
Sec. 25, N½.

The areas described aggregate 3,160 acres.

2. The lands are located in Juab County about 10 miles north of Scipio, Utah. They are semiarid in character and not suitable for farming. The lands have values for watershed, grazing, wildlife, and recreation, which can best be managed under principles of multiple-use.

3. The United States did not acquire any mineral rights with the lands.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will at 10 a.m. on February 5, 1969, be opened to application, petition and selection.

All valid applications received at or prior to 10 a.m. on February 5, 1969, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Post Office Box 11505, Salt Lake City, Utah 84111.

R. D. NIELSON,
State Director.

[F.R. Doc. 68-15239; Filed, Dec. 20, 1968; 8:46 a.m.]

Fish and Wildlife Service

[Docket No. S-449]

WARD N. AND STEVE W. NICHOLS

Notice of Loan Application

DECEMBER 16, 1968.

Ward N. Nichols and Steve W. Nichols, Route 2, Box 137A, Astoria, Oreg. 97103, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 62.5-foot registered length wood vessel to engage in the fishery for shrimp, albacore and bottomfish.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised) that the above entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

WILLIAM M. TERRY,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-15228; Filed, Dec. 20, 1968; 8:45 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

USE OF NATIONAL HOUSING ACT IN RURAL AREAS

Memorandum of Agreement

I. *Introduction.* For the purpose of encouraging and facilitating the use of sections 235, 236, and 237 of the National Housing Act (sections 101(a), 201(a) and 102(a) of the Housing and Urban Development Act of 1968) in rural areas to finance housing for lower income families, the Secretary of Agriculture and the Secretary of Housing and Urban Development hereby agree to the delegations of authority, as well as to the policies, procedures, and joint working arrangements set forth in this memorandum. Both Secretaries will expedite action at all levels of their Departments to accomplish these arrangements, and each will use every available means at his disposal to see that the respective responsibilities of the two Departments are carried out in accordance with the intent of that legislation.

II. *Section 235 and 237 home mortgages in rural areas.* 1. The Secretary of HUD hereby delegates to the Secretary of Agriculture the authority to receive applications for mortgages to be given by families eligible for assistance under section 235(b)(1) and to be insured under section 235(i), or under section 237; to process such applications including determinations of eligibility, appraisal of the property, mortgage credit and architectural review, and inspection during construction; and to make commitments to insure such mortgages and to make commitments to make such assistance payments for and in the name of the Secretary of HUD. These mortgages are to be made and serviced by HUD-approved mortgagees, for eligible and qualified homeowners and home purchasers in rural areas as defined in section 520 of the Housing Act of 1949, 42 U.S.C. 1490 (open country and rural communities of 5,500 population and less, except those that are part of or associated with an urban area). This delegation is confined to mortgage transactions involving purchase, construction, or rehabilitation of single-family dwellings for section 235(i) or section 237 mortgagors eligible for assistance payments under section 235(b)(1). It does not extend to applications from builders for conditional commitments to insure mortgages on tract developments, and it does not extend to cooperatively owned housing or condominium units, although Agriculture may participate with applicants and assist them in developing applications involving tract developments, cooperatives, or condominiums.

2. It is understood and agreed that applications under section 237 will not be accepted until a contract between the Secretary of HUD and Secretary of Agriculture has been entered into with respect to counseling services for budget and debt management, as authorized under section 237(e).

3. From contract authority as authorized in appropriation Acts for assistance payments on behalf of homeowners who qualify under section 235(b), the Secretary of HUD pursuant to section 235(k) will allocate to the Secretary of Agriculture authority to obligate assistance payments required in connection with home mortgages processed by the Secretary of Agriculture. The Secretary of HUD will make such assistance payments periodically to mortgagees holding such insured mortgages.

4. Mortgagees holding such insured mortgages will charge borrowers a mortgage insurance premium as required in the security instrument and HUD will bill mortgagees directly for annual mortgage insurance premiums required under the contract of mortgage insurance. The Secretary of Agriculture will charge applicants the same processing fees charged by the Secretary of HUD on similar transactions and the Secretary of Agriculture will retain these fees as partial reimbursement for administrative expenses connected with the operation of this program.

5. Under the authority contained in section 101(e) of the Housing and Urban Development Act of 1968 and in 237(e), the Secretary of HUD will enter into a contract with the Secretary of Agriculture to provide budget, debt management, and related counseling services to homeowners in rural areas with mortgages insured under section 235(i) or section 237.

6. In processing applications for mortgages in rural areas to be insured under section 235(i), or 237 the Secretary of Agriculture will use standards and procedures for appraisal, inspection, and credit and architectural review substantially consistent with those employed by the Secretary of HUD in its insurance of such mortgages.

7. The Secretary of HUD will provide to the Secretary of Agriculture whatever technical assistance he may need to develop the procedures and instructions necessary to implement the understandings and agreements contained in this memorandum. The Secretary of HUD

will also assist the Secretary of Agriculture in carrying out any staff training that may be needed.

8. The Secretary of Agriculture will maintain records of the estimated annual assistance payments required in connection with commitments issued for mortgages to be insured under section 235(i) or 237 and he shall be responsible for keeping Agriculture-originated mortgage insurance commitments (and the assistance payments related thereto) within the contract authority amounts allocated to Agriculture by the Secretary of HUD. The Secretary of Agriculture will make weekly reports to the Secretary of HUD on the annual assistance payments required in connection with mortgage insurance commitments issued. All reports will be prepared in a manner to be mutually agreed upon. Copies of statistical reports showing applications filed and in process which the Department of Agriculture prepares for its own use will be made available to HUD.

9. Nothing in this agreement shall be construed to prevent or inhibit the processing and insurance of mortgages under section 235 by HUD when they are originated by a home purchaser or builder through an approved lender without recourse to the Secretary of Agriculture.

III. *Section 236 mortgages in rural areas.* 1. Because of the complexity involved in processing applications for mortgage insurance under section 236 for rental and cooperative housing, processing and commitment responsibility will be retained by HUD, but arrangements will be developed under which the Secretary of Agriculture may provide information and assistance to groups seeking to sponsor section 236 rental or cooperative housing in rural areas. Agriculture may participate with such sponsors in discussions with the nearest HUD insuring office and in planning and developing project applications for review and approval by HUD.

2. The Secretary of HUD will provide to the Secretary of Agriculture all necessary technical assistance and help in staff training necessary to make section 236 assistance effectively available where it can be appropriately used in rural areas.

3. As in the case of section 235, sponsors may also submit applications through approved lenders directly to HUD.

(Secs. 235, 236, and 237 of National Housing Act, as amended, 12 U.S.C. 1715z, 1715z–1, and 1715z–2; sec. 502(a) of Housing Act of 1948, as amended, 12 U.S.C. 1701c(a))

Dated: October 31, 1968.

ROBERT C. WEAVER,
Secretary of Housing and Urban Development.

Dated: November 8, 1968.

ORVILLE L. FREEMAN,
Secretary of Agriculture.

[F.R. Doc. 68–15236; Filed, Dec. 20, 1968; 8:46 a.m.]

ATTESTING OFFICERS

Designation; Delegation of Authority To Cause Department Seal To Be Affixed and To Authenticate Copies of Documents

Each of the following employees in the Department of Housing and Urban Development is hereby designated an Attesting Officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, or other document is a true copy of that in the files of the Department:

A. With respect to documents in the files of the Department of Housing and Urban Development:

1. Emily A. Amor.
2. Mary F. Dennis.
3. Elizabeth D. Tihany.
4. Cynthia M. Wilkerson.

B. With respect to documents in the files of the Federal Housing Administration, Department of Housing and Urban Development:

1. Assistant Commissioner - Comptroller, FHA.
2. Deputy Assistant Commissioner-Comptroller, FHA.
3. Mortgagee Approval Officer, FHA.
4. Chief, Liquidation Section, and Administrative Officer, Office of Assistant Commissioner for Property Improvement, FHA.
5. Deputy Chief, Liquidation Section, and Administrative Officer, Office of Assistant Commissioner for Property Improvement, FHA.

C. With respect to documents in the files of Renewal and Housing Assistance, Department of Housing and Urban Development:

1. Margaret McManus, Finance Officer.
2. Robert C. Gilkison, Finance Officer.

This document supersedes the designation of attesting officers effective June 3, 1968 (33 F.R. 8464, June 7, 1968).

(Sec. 7(d) of Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This document is effective as of December 21, 1968.

ROBERT C. WEAVER,
Secretary of Housing and Urban Development.

[F.R. Doc. 68–15237; Filed, Dec. 20, 1968; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20569; Order 68–12–93]

TRANSATLANTIC SUPPLEMENTAL CHARTER AUTHORITY RENEWAL CASE

Order Instituting Investigation and Consolidating Applications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of December 1968.

Six supplemental carriers—American Flyers Airline Corp. (AFA), Capitol International Airways, Inc. (Capitol), Overseas National Airways (ONA), Saturn Airways, Inc. (Saturn), Trans International Airlines Corp. (TIA), and World Airways (World)—presently hold temporary certificate authority, expiring on April 18, 1969, to provide transatlantic charter transportation, including inclusive tours. The six carriers have filed timely applications for renewal of their transatlantic charter authority.[1] By this order the Board is setting these renewal applications for hearing.

In order to limit the scope of this proceeding, thereby avoiding undue complication of the issues and delay, we will consolidate only those portions of the renewal applications which request the renewal of existing authority. Accordingly, in view of the fact that the six carriers' existing transatlantic charter authority does not include the right to serve Alaska or Hawaii, but is limited to flights originating or terminating in the 48 contiguous States, we will not consolidate those portions of the applications of ONA, Saturn, TIA, and World which request authority to serve Alaska and Hawaii on transatlantic routings.

Accordingly, it is ordered, That:

1. The applications of American Flyers Airline Corp., in Docket 20389; Capitol International Airways, Inc., in Docket 20325; Overseas National Airways in Docket 20438; Saturn Airways, Inc., in Docket 20344; Trans International Airlines Corp., in Docket 20391; and World Airways in Docket 20387, be and they hereby are set for consolidated hearing in a proceeding to be known as the Transatlantic Supplemental Charter Authority Renewal Case, Docket 20569, to the extent that these applications seek renewal of the transatlantic charter authority presently held by the foregoing carriers;

2. The application of Overseas National Airways, Docket 20438, be and it hereby is accepted as being in compliance with the requirements for timely filing of renewal applications imposed in Part 377 of the Board's regulations;

3. To the extent not consolidated and set for hearing herein, the applications referred to in paragraph 1 above, be and they hereby are dismissed without prejudice;

4. Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed no later than 20

[1] AFA, Docket 20389; Capitol, Docket 20325; ONA, Docket 20438; Saturn, Docket 20344; TIA, Docket 20391; and World, Docket 20387. As a result of their filings, the carriers will continue operating after April 18, pursuant to 5 U.S.C. section 558(c). With respect to ONA we note that the carrier's application was filed 17 days later than the 180-days-before-expiration requirement imposed by § 377.10 (c). As a matter of discretion we will waive the 180-day requirement for ONA's application and accept the application as being in compliance with the requirements for timely filing prescribed in Part 377 of the Board's regulations.

days after the date of service of this order, and answers to such pleadings shall be filed no later than 10 days thereafter; and

5. This proceeding shall be set down for hearing before an examiner of the Board at a time and place hereafter designated.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-15243; Filed, Dec. 20, 1968; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 18392-18394]

HOWARD M. McBEE ET AL.

Memorandum Opinion and Order; Correction

In re applications of Howard M. McBee, Lawton, Okla., Docket No. 18392, File No. BP-17238; Allan Pratt Page, Anadarko, Okla., Docket No. 18393, File No. BP-17575; Bill Thacker, Burkburnett, Tex., Docket No. 18394, File No. BP-17576; for construction permits.

The Memorandum Opinion and Order, FCC 68-1170, adopted herein on December 5, 1968 (33 F.R. 18530), is corrected as follows:

On page 4, on line 2 of Issue 4, the letter, "(a)", is corrected to read figure, "3".

Released: December 17, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-14659; Filed, Dec. 20, 1968; 8:45 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 68-48; Independent Ocean Freight Forwarder License No. 790]

NORTH AMERICAN VAN LINES

Order Instituting Proceeding

North American Van Lines, Fort Wayne, Ind., was a registered ocean freight forwarder pursuant to Federal Maritime Board General Order 72, and continued to operate pursuant to grandfather rights until it was issued an independent ocean freight forwarder license, No. 790, by the Federal Maritime Commission on June 8, 1965. It has continued to operate under that license until the present time.

One hundred percent of the capital stock of North American Van Lines has now been acquired by PepsiCo, Inc., which corporation also owns a controlling interest in the Pepsi-Cola Corp. and Frito-Lay Corp. Both of these latter corporations export cargoes in the foreign commerce of the United States by oceangoing common carriers.

In a number of prior decisions the Federal Maritime Commission has held that under the definition of an independent ocean freight forwarder contained in section 1 of the Shipping Act, 1916, a freight forwarder who has a direct or indirect control relationship with a shipper cannot be licensed, even though the forwarder would not handle shipments for the related shipper. Application for Freight Forwarding License—Louis Applebaum, 8 FMC 306 (1964); Application for Freight Forwarding License—Wm. V. Cady, 8 FMC 352 (1964); Application for Freight Forwarding License—Del Mar Shipping Corp., 8 FMC 493 (1965); and Application for Freight Forwarding License—York Shipping Corporation, 9 FMC 72 (1965).

Because of the corporate relationship now existing between North American Van Lines and Frito-Lay Corp. and Pepsi-Cola, Inc., the Commission intends to institute a proceeding to determine whether North American Van Lines continues to qualify for a license as an independent ocean freight forwarder, and whether its license should remain in effect or be revoked.

Therefore, it is ordered, Pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 831, 841b) that a proceeding is hereby instituted to determine whether North American Van Lines continues to qualify for a license and whether its license should be continued in effect or be revoked pursuant to sections 1 and 44 of the Shipping Act, 1916 (46 U.S.C. 801, 841b).

It is further ordered, That North American Van Lines be made respondent in this proceeding and that the matter be assigned for hearing before an Examiner of the Commission's Office of Hearing Examiners at a date and place to be announced by the Presiding Examiner.

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and a copy thereof and notice of hearing be served upon respondent, North American Van Lines.

It is further ordered, That any persons, other than respondent, who desire to become a party to this proceeding and to participate therein shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, with a copy to respondent, on or before January 3, 1969; and

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 68-15220; Filed, Dec. 20, 1968; 8:45 a.m.]

[Independent Ocean Freight Forwarder License No. 1114]

WORLEX CORP.

Order of Revocation

On November 4, 1968, the Transamerica Insurance Co. notified the Commission that the Independent Ocean Freight Forwarder Surety Bond No. 5270-17-44, under written in behalf of Worlex Corp., 444 North Lake Shore Drive, Chicago, Ill. 60611, would be cancelled effective December 3, 1968.

Worlex Corp. was notified that, unless a new surety bond was submitted to the Commission, its Independent Ocean Freight Forwarder License No. 1114 would be revoked effective December 3, 1968, pursuant to General Order 4, Amendment 12 (46 CFR 510.9).

Worlex Corp. has failed to submit a valid surety bond in compliance with the above Commission rule.

It is ordered, That the Independent Ocean Freight Forwarder License No. 1114 is revoked effective December 3, 1968; and

It is further ordered, That the Independent Ocean Freight Forwarder License No. 1114 be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the licensee.

LEROY F. FULLER,
Director,
Bureau of Domestic Regulation.

[F.R. Doc. 68-15221; Filed, Dec. 20, 1968; 8:45 a.m.]

[Docket No. 67-57]

SIGNIFICANT VESSEL OPERATING COMMON CARRIERS IN DOMESTIC OFFSHORE TRADE; REPORTS OF RATE BASE AND INCOME ACCOUNTS

Order for Evidentiary Hearing

On December 1, 1967, the Commission published in the FEDERAL REGISTER (32 F.R. 16, 496), a notice of proposed rulemaking and proposed new rules governing the submission of rate base and income account reports to be used by significant common carriers in the domestic offshore trade in lieu of reports now submitted by these carriers pursuant to the Commission's General Order 11. The purpose of the new rules is to obtain more accurate and specific data to resolve problems encountered under the General Order 11 procedure and to obtain unit costs which will be particularly helpful in examining the lawfulness of individual commodity rates. Some of the parties to this proceeding alleged the necessity for evidentiary hearings with respect to the proposed rules. All parties were, therefore, allowed to file supplemental briefs setting forth why evidentiary hearings should be held and identifying the section or sections of the rules on which evidence would be presented. Several parties responded, indicating

that hearings were necessary to resolve "factual disputes" relating to the ability of the carriers to acquire, compile, and assemble required data, and the burden upon them to do so, particularly with reference to such problems as the conversion of cargo from a weight to a cubic foot basis, and the allocation of cargo expenses to each type and class of cargo. Additional problems are raised as to the reliability of unit costs once obtained, and the appropriateness of allocation methods and procedures employed in the proposed rules.

Specific requests to present evidence have been made by Sea-Land Service, Inc., with respect to the Commission's proposed § 514.6(b)(8) which deals with the propriety of including leased property as owned for rate base purposes and by States Marine Lines, Inc., and Isthmian Lines, Inc., with respect to § 514.5(d)(1), the definition of "cargo cube" for computing carrier cargo costs, which they maintain should be modified to take into account cargo stowage characteristics.

Pacific Interocean Transport (PIT), a foreign-flag vessel operating in the American Samoa trade, asked to be exempted from the requirements of the proposed rules.

In order to provide a complete factual record upon which any rules promulgated herein may be based, the Commission has determined that evidentiary hearings should be held in which all parties will be allowed to present evidence and testimony on the issues outlined above.

Therefore, it is ordered, That this proceeding be assigned for public hearing before an Examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and place to be determined and announced by the Presiding Examiner; and

It is further ordered, That an Initial Decision be issued on the testimony and evidence presented in the hearing containing proposed formulations of the rules brought under investigation at said hearing; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER; and

It is further ordered, That Hearing Counsel shall participate in the evidentiary hearings and further proceedings herein; and

It is further ordered, That any person not already participating in this proceeding who desires to participate herein shall file a petition to intervene in accordance with Rule 5(1) (46 CFR 502.72) of the Commission's rules of practice and procedure;

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Assistant Secretary.

[F.R. Doc. 68-15222; Filed, Dec. 20, 1968; 8:45 a.m.]

[Docket No. 68-49]

PORT EQUALIZATION AND ABSORPTION AGREEMENTS, RULES AND PRACTICES

Order of Investigation

Between October 25, 1968, and November 26, 1968, five conferences of ocean carriers operating in the foreign commerce of the United States under agreements approved by the Commission pursuant to section 15 of the Shipping Act, 1916, identified in the Appendix below, filed modifications to their agreements seeking authority for their member lines to make absorptions or rate adjustments affecting costs to shippers of moving cargo via particular ports of loading or discharge within the conference range. The proposed modification to Agreement No. 9548 is typical and reads as follows:

> Provided, however, that the Members may authorize such limited absorption or other rate adjustments as may be necessary or appropriate with the object of equalizing disadvantages to shippers in instances where Member Lines' vessels do not call at particular loading or discharge ports within the Conference range.

In addition to the above, American Export Isbrandtsen Lines, Inc., and Container Marine Lines, a division thereof, have published in their tariffs[1] "diversionary equalization" rules which state typically:

> DIVERSIONARY EQUALIZATION
>
> Where cargo originates at points within the range covered by this tariff is diverted to a loading port which is not the shipper's normal port of exit and the bill of lading so indicates, the carrier will absorb any additional costs of inland transportation from the shipper's plant or warehouse on the basis of the lowest rates, either published, advertised, or quoted by bona fide carrier's for hire, holding appropriate authority to do business by the regulatory agency or agencies having jurisdiction over such matters. The carrier will assess or adjust the shipper's inland transportation costs in the same amount which the shipper would have incurred if the cargo had been transported from his plant or warehouse to the normal port of exit.
>
> Where cargo is diverted to a carrier's vessel for discharge at a port within the range of this tariff which is not the consignees normal port of entry, and the bill of lading so indicates, the carrier will absorb any additional cost of inland transportation to the consignee's plant or warehouse from the vessel's port of discharge over that cost of inland transportation to such plant or warehouse from the normal port of entry based upon the lowest available published rates. The carrier will assess or adjust the consignee's inland transportation cost in the same amount which the consignee would have incurred if the cargo had been transported to his plant or warehouse from the normal port of entry.

[1] Container Marine Lines Inward Freight Tariff No. 1—F.M.C. 2, Item 37; Container Marine Lines Outward Freight Tariff No. 1—F.M.C. No. 9, Item 22; American Export Isbrandtsen Lines, Inc., Middle East Mediterranean Westbound Freight Tariff No. 2—F.M.C. 28; Rule 19.10; American Export Isbrandtsen Lines, Inc., North Atlantic Spanish Tariff No. 3, F.M.C. No. 4, Rule 19.

The proposed modifications and tariff rules purport to absorb additional costs of inland transportation to a particular port so as to equalize the costs to that port with those applicable to another port through which particular traffic would normally move.

Four protests have been received by the Commission with respect to the modification to Agreement No. 9548.[2] Moreover, two formal complaints have been filed with the Commission by the Massachusetts and Delaware River Port Authorities alleging undue or unreasonable prejudice and disadvantage to the ports of Boston and Philadelphia respectively, unjust discrimination, detriment to commerce, and the public interest, and contravention of policies designed to protect and develop ports. In addition to the complaints and protests, the Commission has been informed of a decline in direct vessel service to the port of Boston and resulting dissatisfaction on the part of shippers and other interests serving that port.

The modifications and rules are apparently designed to equalize ports by means of absorptions of inland transportation costs. If so, they would alter previously existing routes of traffic and divert the flow of cargo from one port to another, and, in fact, may have already done so. Such practices may violate the provisions of section 16 First of the Shipping Act, 1916, by unjustly depriving particular ports of traffic and shippers of service to which they may be entitled or which they may have traditionally enjoyed, thus subjecting localities and persons to undue or unreasonable prejudice or disadvantage in violation of section 16 First of the Shipping Act, 1916. The same practices may additionally be contrary to the public interest or detrimental to commerce within the meaning of section 15 of the Act if carried out by conferences, may result or have resulted in unjust discrimination between shippers or ports in violation of section 17 of the Act or in a device to rebate, refund, or remit portions of tariff rates and charges as prohibited by section 18(b)(3) of the Act.

The Commission is of the opinion for the foregoing reasons that these modifications and rules involve serious questions which can only be resolved on the basis of a full and complete evidentiary record developed in a formal investigatory proceeding. In such a proceeding, the Commission desires the parties to address themselves to a resolution of the following issues:

(1) Whether the proposed modifications should be disapproved because they would permit equalization practices which would be unjustly discriminatory or unfair as between ports, or shippers, contrary to the public interest, or detrimental to commerce in violation of section 15 of the Shipping Act, 1916;

[2] The protests were filed by the Delaware River Port Authority, Boston Shipping Association, Port of Boston Marine Terminal Association, and the Foreign Commerce Club of Boston, Inc.

(2) Whether the proposed modifications and tariff rules mentioned above would result or have resulted in practices which unduly or unreasonably prefer or advantage a person or locality or or unduly or unreasonably prejudice or disadvantage a person or locality in violation of section 16 First of the Shipping Act, 1916;

(3) Whether the proposed modifications and tariff rules would result or have resulted in the charging and collecting by the various steamship lines of rates and charges that are unjustly discriminatory between shippers or ports in violation of section 17 of the Shipping Act, 1916;

(4) Whether the proposed modifications and tariff rules would result or have resulted in a carrier's or conference's departing from tariffs filed with the Commission and rebating, refunding or remitting any portion of the rates or charges specified in the tariffs in violation of section 18(b)(3) of the Shipping Act, 1916;

Therefore, it is ordered, That pursuant to sections 22, 15, 16 First, 17, and 18(b) of the Shipping Act, 1916, the Commission institute an investigation to determine whether the proposed modifications and tariff rules will result or have resulted in violations of sections 15, 16 First, 17 and 18(b)(3) of the Shipping Act, 1916, in the manner described above;

It is further ordered, That the parties listed in the Appendix below be made respondents in this proceeding;

It is further ordered, That this matter be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and place to be determined and announced by the presiding examiner;

It is further ordered, That the pending complaint proceedings, Massachusetts Port Authority v. Container Marine Lines, et al., Docket No. 68-45, and Delaware River Port Authority v. Container Marine Lines, et al., Docket No. 68-46, and this proceeding be expedited;

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondents;

It is further ordered, That any person, other than respondents, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene in accordance with Rule 5(1), 46 CFR 502.72 of the Commission's rules of practice and procedure;

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Assistant Secretary.

APPENDIX

Marseilles North Atlantic U.S.A. Freight Conference—Agreement No. 5660, Mr. G. Retournat, Secretary, 10, Place de la Joliette, Marseilles, 2E, France.

North Atlantic Mediterranean Freight Conference—Agreement No. 9548, Mr. D. M. MacNeil, Chairman, 17 Battery Place, New York, N.Y. 10004.

Portugal/U.S. North Atlantic Westbound Freight Conference—Agreement No. 9616, Mr. G. Retournat, Secretary, 10, Place de la Joliette, Marseilles, 2E, France.

Spain/U.S. North Atlantic Westbound Freight Conference—Agreement No. 9615, Mr. G. Retournat, Secretary, 10, Place de la Joliette, Marseilles, 2E, France.

The West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference—Agreement No. 2846, Mr. G. Ravera, Secretary, Post Office Box 1070, 16123 Genoa, Italy.

The following steamship lines are parties to one or more of the above conferences as shown in parenthesis beside the name of each line.

Achille Lauro (2846), Via Nuova Marittima, Naples, Italy.

American Export Isbrandtsen Lines, Inc. (2846) (5660) (9548) (9615) (9616), 26 Broadway, New York, N.Y. 10004.

American President Lines, Ltd. (2846) (5660), 29 Broadway, New York, N.Y. 10006.

Blue Sea Line-Joint Service (9548), c/o Funch, Edye & Co., Inc., Agents, 25 Broadway, New York, N.Y. 10004.

Companhia De Navegacao Corregadores Acoreanos (9616), c/o East Coast Overseas Corp., Agents, 80 Broad Street, New York, N.Y. 10004.

Compania Trasatlantica Espanola (9615), c/o Garcia & Diaz, Inc., Agents, 25 Broadway, New York, N.Y. 10004.

Concordia Line Joint Service (2846) (5660) (9548), c/o Boise-Griffin Steamship Co., Inc., Agents, 90 Broad Street, New York, N.Y. 10004.

Constellation Line/Van Nievelt, Goudriaan & Co. (2846) (5660) (9548), c/o Constellation Navigation, Inc., Agents, 85 Broad Street, New York, N.Y. 10004.

Costa Line (2846) (9615), c/o Overseas Consolidated Co., Ltd., Agents, 26 Broadway, New York, N.Y. 10004.

Fabre Line (2846) (9548) (9615) (9616), c/o Columbus Line, Inc., Agents, 26 Broadway, New York, N.Y. 10004.

Fassio Line (2846) (5660), c/o Norton, Lilly & Co., Inc., Agents, 26 Beaver Street, New York, N.Y. 10004.

French Line (9548), 17 Battery Place, New York, N.Y. 10004.

Fresco Line (5660) (9548) (9615) (9616), c/o F. W. Hartmann & Co., Inc., Agents, 21 West Street, New York, N.Y. 10006.

Hansa Line (2846) (5660) (9548), c/o F. W. Hartmann & Co., Inc., Agents, 21 West Street, New York, N.Y. 10006.

Hellenic Lines, Ltd. (2846) (9548), 39 Broadway, New York, N.Y. 10006.

Isthmian Lines, Inc. (2846) (9548) (9615), c/o States Marine-Isthmian Agency, Inc., Agents, 90 Broad Street, New York, N.Y. 10004.

Italian Line (2846) (9548), One Whitehall Street, New York, N.Y. 10004.

National Hellenic American Lines, S.A. (9548), c/o Cosmopolitan Shipping Company, Inc., Agents, 42 Broadway, New York, N.Y. 10004.

P. N. Djakarta Lloyd (9548), c/o Texas Transport & Terminal Co., Inc., Agents, 52 Broadway, New York, N.Y. 10004.

Prudential Lines, Inc. (2846) (9548) (9615) (9616), One Whitehall Street, New York, N.Y. 10004.

States Marine Lines—Joint Service (9548), c/o States Marine-Isthmian Agency, Inc., Agents, 90 Broad Street, New York, N.Y. 10004.

Torm Lines (9548) (9616), c/o Peralta Shipping Corp., Agents, 85 Broad Street, New York, N.Y. 10004.

Turkish Cargo Lines (9616), c/o Thule Ship Agency, Inc., Agents, 11 Broadway, New York, N.Y. 10004.

Yugoslav Line (2846) (9616), c/o Crossocean Shipping Co., Inc., Agents, 17 Battery Place, New York, N.Y. 10004.

Zim Israel Navigation Co., Ltd. (2846) (5660) (9548) (9615) (9616), c/o American-Israeli Shipping Co., Inc., Owner's Representative, 42 Broadway, New York, N.Y. 10004.

[F.R. Doc. 68-15223; Filed, Dec. 20, 1968; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI63-315, etc.[1]]

SINCLAIR OIL CORP.

Order Accepting Offer of Settlement, Requiring Filing of Contract Amendments, Refunds, Severing and Terminating Proceedings

DECEMBER 5, 1968.

On October 4, 1968, Sinclair Oil Corp. (Sinclair) filed an offer of settlement in these proceedings[1] pursuant to §§ 1.18 (e) and 2.56 (b) and (c) of the Commission's rules of practice and procedure. The offer involves eight sales of natural gas to Texas Eastern Transmission Corp. (TETC) from various fields in the State of Texas (Texas Railroad Commission District Nos. 2, 3, 4, and 6) and from the Greenwood-Waskom Field in Caddo Parish, northern Louisiana.

Under each of the rate schedules here involved, Sinclair is presently charging and collecting proposed increased rates, which were suspended by the Commission under section 4 of the Natural Gas Act, subject to possible refund. Sinclair proposes that it file reduced rates under such rate schedules to the level permitted by § 2.56 (b) and (c), and, in accordance therewith, to eliminate by amendment all price escalation provisions from its contracts, except for possible future tax reimbursement. The remaining contract terms exceed the 5-year requirement of § 2.56 (b)(3) and (c)(3) except for rate Schedule Nos. 61, 62, and 63. As to those, Sinclair proposes to extend the term of each contract to November 1, 1973.

Approval of Sinclair's offer will decrease its annual revenues approximately $58,000 based on the currently effective rates. It will refund approximately $267,000 exclusive of interest. In regard to refunds, TETC is required to flow-through to its jurisdictional customers all refunds attributable to deliveries made to it on and after June 1, 1965, pursuant to an order issued July 21, 1965, in Docket No. RP65-59, 34 FPC 98. However, since some of its jurisdictional customers may not have similar flow-through obligations, we shall order TETC to retain the refund monies for this period of time in accordance with our order in Humble Oil & Refining Co., Dockets Nos. G-9287 et al., 32 FPC 49, pending further Commission action. As for the monies collected prior to June 1, 1965, by Sinclair, and refundable to TETC, because there

[1] The dockets, involved herein, the rate scheduled and supplement numbers, and amounts of all rates involved are set forth in the appendix hereto.

may be some question regarding TETC's flow-through obligation, we shall require Sinclair to retain such funds, pending further Commission action, also in accordance with the reasons set forth in the Humble order (supra).

The Commission finds: The proposed settlement is consistent with the provisions of the Commission's statement of General Policy No. 61–1, § 2.56, General Policy and Interpretations, rules of practice and procedure, and its acceptance would serve the public interest. However, acceptance of Sinclair's offer of settlement does not constitute approval of any future increased rate it may file in accordance with its reservation of the right to file increases in the event of possible future tax increases, and is without prejudice to any findings or orders of the Commission in any proceedings, including area rate or other similar proceedings, involving Sinclair's rates and rate schedules.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sinclair on October 4, 1968, is hereby approved in accordance with the provisions of this order.

(B) Sinclair shall file, within 30 days of the date of this order, as supplements to its FPC Gas Rate Schedules Nos. 61, 62, 63, 67, 143, 281, 282, and 325, notices of change in rate reflecting the proposed settlement rates, and executed contractual amendments to each of said schedules, as provided for in its offer of settlement. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's regulations under the Natural Gas Act.

(C) Sinclair shall separately compute the difference between the rates collected subject to refund in these proceedings and the settlement rate, with applicable interest to the date of this order under each of the subject rate schedules, for sales of natural gas to TETC (1) prior to June 1, 1965, and (2) on and after June 1, 1965, and shall within 30 days of the date of issuance of this order submit separate reports for each period to the Commission setting out the amounts of refunds (showing separately the principal and applicable interest) the basis used for such determination and the periods covered.

(D) A copy of each of the refund reports required by ordering paragraph (C) hereof shall be served on TETC within 30 days of the date of this order. Within 10 days from receipt of such refund reports, TETC shall file with the Commission its written concurrence or disagreement to each (and if it disagrees, the reason therefor) and shall serve a copy thereof on Sinclair. If TETC concurs with said refund report, Sinclair shall refund the monies, with applicable interest, computed in accordance with ordering paragraph (C) (2) above, within 10 days of receipt of TETC's concurrence, and, promptly thereafter, file evidence of payment from TETC. If TETC does not concur, Sinclair shall retain such monies pending further action of the Commission.

(E) Sinclair shall retain the refund monies due and owing TETC for sales and deliveries made prior to June 1, 1965, and TETC shall retain the monies refunded to it by Sinclair in accordance with ordering paragraph (D) above, pending a further order of the Commission prescribing the disposition thereof. These retained refunds shall be commingled with general corporate assets or deposited in special accounts in accordance with the following terms and conditions:

(1) If Sinclair or TETC elects to commingle such retained refunds with its general assets and use such refunds for corporate purposes, it shall pay interest thereon at the rate of 6¼ percent per annum from the date of issuance of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(2) If Sinclair or TETC elects to deposit the retained refunds in a special escrow account, it shall tender for filing within 30 days after the date of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon each purchaser. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Sinclair or TETC at any bank or trust company used as a depositor for funds of the U.S. Government and the agreement shall be conditioned as follows:

(i) Sinclair or TETC, the bank or trust company, and the successors and assignees of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(ii) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 180 days as the said bank or trust company in the exercise of its sound discretion may select.

(iii) Such bank or trust comany shall be liable only for such interest as the invested funds described in paragraph (2) above will earn and no other interest may be collected from it.

(iv) Such bank or trust company shall be entitled to such compensation as is fair, reasonable, and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(v) Such bank or trust company shall report to the Secretary of the Commission quarterly, certifying the amount deposited in the bank or trust company for the quarterly period, the interest earned and any payments made therefrom in accordance with subparagraph (iv) above.

(F) Upon full compliance by Sinclair with this order, the proceedings in Dockets Nos. RI63–315, RI63–415, RI64–305, and RI64–314 shall be deemed severed from the consolidated proceedings in Docket No. AR64–2 et al.; the proceeding in Docket No. RI64–256 shall be deemed severed from the consolidated proceedings in Docket No. AR67–1 et al., and said dockets, together with Dockets Nos. RI68–378, RI68–379, RI68–380, and RI69–137 shall be deemed terminated, insofar as the subject rate schedules are concerned herein, all without further order of the Commission.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX

Rate schedule and supplement No.	Docket No.	Effective date	Rates		
			Approved	Suspended	Settlement
61—24	RI64–305	4–24–64	14.68 [1]	15.69 [1]	15.08 [1]
			(14.6) [2]	(15.6) [2]	(15.0) [2]
62—14	RI64–305	4–24–64	14.68 [1]	15.69 [1]	15.08 [1]
			(14.6) [2]	(15.6) [2]	(15.0) [2]
63—12	RI64–256	4– 9–64	14.68 [1]	15.69 [1]	15.08 [1]
			(14.6) [2]	(15.6) [2]	(15.0) [2]
67—12	RI63–315	7–11–63	13.95 [3]	14.45 [3]	14.58 [3]
			(13.8733) [4]	(14.3733) [4]	(14.5) [4]
—15	RI68–378	7– 5–68	13.95 [3]	14.95 [3]	14.58 [3]
			(13.8733) [4]	(14.8733) [4]	(14.5) [4]
143—6	RI64–314	4–24–64	14.68 [1]	15.69 [1]	15.08 [1]
			(14.6) [2]	(15.6) [2]	(15.0) [2]
281—9	RI63–415	10–27–63	13.95 [3]	14.45 [3]	14.58 [3]
			(13.8733) [4]	(14.3733) [4]	(14.5) [4]
14—	RI68–379	7– 5–68	13.95 [3]	14.95 [3]	14.58 [3]
			(13.8733) [4]	(14.8733) [4]	(14.5) [4]
282—6	RI63–415	10–27–63	13.95 [3]	14.45 [3]	14.58 [3]
			(13.8733) [4]	(14.3733) [4]	(14.5) [4]
—10	RI68–380	7– 5–68	13.95 [3]	14.95 [3]	14.58 [3]
			(13.8733) [4]	(14.8733) [4]	(14.5) [4]
325—16	RI69–137	(5)	16.04 [1]	17.02 [1]	16.45 [1]
			(16.3654) [6]	(17.3654) [6]	(16.7756) [6]

[1] Cents per Mcf at 14.73 p.s.i.a., inclusive of tax reimbursement.
[2] Cents per Mcf at 14.65 p.s.i.a., inclusive of tax reimbursement.
[3] Indicates a deduction of 0.5 cent per Mcf differential maintained by Texas Eastern for dehydration and central point delivery. Rate at 14.73 p.s.i.a., inclusive of tax reimbursement.
[4] Indicates a deduction of 0.5 cent per Mcf differential maintained by Texas Eastern for dehydration and central point delivery. Rate at 14.65 p.s.i.a, inclusive of tax reimbursement.
[5] Suspended until Apr. 1, 1969, not yet effective.
[6] Cents per Mcf at 15.025 p.s.i.a., inclusive of tax reimbursement.

[F.R. Doc. 68–15224; Filed, Dec. 20, 1968; 8:45 a.m.]

FEDERAL TRADE COMMISSION

CEASE AND DESIST ORDERS

Compliance

The Federal Trade Commission emphasizes that the obligation of firms to comply with its cease and desist orders arises on the effective date of the orders and is not suspended or deferred pending the submission of any report of compliance which may be required under the order itself or under the Commission's rules.

The Commission's requirement that compliance reports be submitted is designed to facilitate its determination of compliance, but this requirement in no way defers the effective date of its orders. Liability for civil penalties for violation of its orders may be incurred at any time following their effective date.

Compliance reports must in fact disclose compliance when submitted, and the failure to do so will be immediately reported to the Commission by its compliance staff. Moreover, the failure of the Commission to notify a firm subject to its order as to the adequacy of the firm's compliance report does not defer or suspend obligations which have accrued at the time of the order's effective date.

Issued: December 18, 1968.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 68-15235; Filed, Dec. 20, 1968; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30 (Rev. 12), Amdt. 4]

AREA ADMINISTRATORS

Delegation of Authority To Conduct Program Activities in Field Offices

Delegation of Authority No. 30 (Revision 12) (32 F.R. 179), as amended (32 F.R. 8113, 33 F.R. 8793, and 33 F.R. 17217), is hereby further amended by revising Item I.C.1 to read as follows:

I. *Area Administrators.* * * *

C. *Procurement and Management Assistance Program.* * * *

**1. To approve applications for Certificates of Competency up to but not exceeding $250,000 of the total contract value received from small business concerns which are located within the geographical jurisdiction of his area office, with the exception of re-referred cases.

* * * * *

Effective date: December 12, 1968.

HOWARD J. SAMUELS, *Administrator.*

[F.R. Doc. 68-15141; Filed, Dec. 20, 1968; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[S.O. 994; ICC Order 4, Amdt. 4]

CHICAGO, BURLINGTON AND QUINCY RAILROAD CO.

Rerouting and Diversion of Traffic

Upon further consideration of I.C.C. Order No. 4 (Chicago, Burlington and Quincy Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 4 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1969, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1968, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-15242; Filed, Dec. 20, 1968; 8:46 a.m.]

[S.O. 994; ICC Order 1, Amdt. 4]

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

Rerouting and Diversion of Traffic

Upon further consideration of I.C.C. Order No. 1 (Chicago, Rock Island and Pacific Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 1 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1969, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1968, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-15244; Filed, Dec. 20, 1968; 8:47 a.m.]

[S.O. 994; ICC Order 11, Amdt. 2]

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.

Rerouting and Diversion of Traffic

Upon further consideration of I.C.C. Order No. 11 (New York, New Haven and Hartford Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 11 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1969, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1968, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-15245; Filed, Dec. 20, 1968; 8:47 a.m.]

[S.O. 994; ICC Order 12, Amdt. 3]

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD CO.

Rerouting and Diversion of Traffic

Upon further consideration of ICC Order No. 12 (New York, Susquehanna and Western Railroad Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 12 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1969, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1968, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that

agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 68-15246; Filed, Dec. 20, 1968; 8:47 a.m.]

[S.O. 994; ICC Order 16, Amdt. 2]

PENN CENTRAL

Rerouting and Diversion of Traffic

Upon further consideration of I.C.C. Order No. 16 (Penn Central) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 16 be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1969, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1968, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[F.R. Doc. 68-15247; Filed, Dec. 20, 1968; 8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 18, 1968.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41517—*Wheat and grain sorghums from Kansas to gulf ports.* Filed by Union Pacific Railroad Co., Agent (No. 135), for interested rail carriers. Rates on wheat and grain sorghums, in bulk, in carloads, as described in the application, from Bridgeport, Lindsborg, Johnstown, and Hilton, Kans., to gulf ports for export.

Grounds for relief—Truck and truck-barge competition.

Tariffs—Supplement 29 to Union Pacific Railroad Co.'s tariff ICC 5615.

FSA No. 41518—*Grains and grain screenings from and to ports in Illinois, and Wisconsin.* Filed by Illinois Freight Association, Agent, (No. 336), for interested rail carriers. Rates on barley, buckwheat, corn, oats, rye, soybeans, wheat and grain screenings, in carloads, between points in Illinois and Wisconsin, on the one hand, and Chicago, Ill., on the other.

Grounds for relief—Motor competition.

Tariffs—Western Trunk Line Committee, Agent, tariff ICC A-4423, and other individual lines tariffs named in the application.

FSA No. 41519—*Wheat flour to points in southern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-9121), for interested rail carriers. Rates on wheat flour, in carloads, as described in the application, from stations in Southwestern and Western Trunk Line Territories, also St. Louis, Mo., and East St. Louis, Ill., to points in southern territory.

Grounds for relief—Market competition.

Tariffs—Supplements 6 and 91 to Southwestern Freight Bureau, Agent, tariffs ICC 4819 and 4691, respectively, Supplements 92 and 93, to Southern Freight Association, Agent, tariff ICC S-665, Supplement 2 to Western Trunk Line Committee, Agent, tariff ICC A-4727.

FSA No. 41520—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 621), for interested rail carriers. Rates on canned or preserved foodstuffs, and other commodities named in the application, from, to and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Intrastate rates and maintenance of rates from and to points in other States not subject to the same competition.

Tariff—Supplement 83 to Texas-Louisiana Freight Bureau, Agent, tariff ICC 998.

FSA No. 41522—*Phosphate Rock-Occidental, Fla., to Centrala, Ala.* Filed by O. W. South, Jr., Agent (No. A6073), for interested rail carriers. Rates on phosphate rock, in bulk, in covered hopper car, in carloads, from Occidental, Fla., to Centrala, Ala.

Grounds for relief—Market competition.

Tariff—Supplement 70 to Southern Freight Association, Agent, tariff ICC S-658.

AGGREGATE-OF-INTERMEDIATE

FSA No. 41521—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 622), for interested rail carriers. Rates on canned or preserved foodstuffs, and other commodities named in the application, from, to and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Maintenance of depressed rates published to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff—Supplement 83 to Texas-Louisiana Freight Bureau, Agent, tariff ICC 998.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-15248; Filed, Dec. 20, 1968; 8:47 a.m.]

[Notice 750]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 17, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1630 (Sub-No. 12 TA), filed December 12, 1968. Applicant: D. D. JONES TRANSFER & WAREHOUSE COMPANY, INCORPORATED, 630 Poindexter Street, Chesapeake, Va. 23506. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plywood,* and in connection therewith, *accessories used in the installation thereof,* from Danville, Va., to points in Alabama, Georgia, Florida, Mississippi, North Carolina, and South Carolina, from Norfolk, Va., to points in North Carolina, *returned shipments* in the opposite direction, for 180 days. Supporting shipper: Boise Cascade Transportation Department, Post Office Box 7747, Boise, Idaho 83707. Send protests to: Robert W. Waldron, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10-502 Federal Building, Richmond, Va. 23240.

No. MC 76032 (Sub-No. 232 TA), filed December 9, 1968. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, Colo. 80223. Applicant's representative: William E. Kenworthy (same address as above).

Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Silver bullion, dore bullion and fine silver alloys*, (1) Between Cheyenne, Wyo., and junction Interstate Highways 80 and 80S near Big Springs, Nebr., over Interstate Highway 80, serving no intermediate points, and serving Cheyenne, Wyo., and junction Interstate Highways 80 and 80S for purposes of joinder only; (2) between Chicago, Ill., and Fairfield, Conn., serving the intermediate and off-route points of Rochester, N.Y., Buffalo, N.Y., and Bridgeport, Conn., and serving Chicopee, Mass., for purposes of joinder only; from Chicago over Interstate Highway 90 to junction U.S. Highway 20 near Elyria, Ohio, thence over U.S. Highway 20 to junction Interstate Highway 90 at Cleveland, Ohio, thence over Interstate Highway 90 to junction Interstate Highway 91 near Chicopee, Mass., thence over Interstate Highway 91 to junction Interstate Highway 95 at New Haven, Conn., thence over Interstate Highway 95 to Fairfield, and return over the same route; (3) between Chicopee, Mass., and Attleboro, Mass., serving no intermediate points; from Chicopee over Interstate Highway 90 to junction Massachusetts Highway 146 near Worcester, Mass., thence over Massachusetts Highway 146 to junction Interstate Highway 295 (Massachusetts Highway 122), thence over Interstate Highway 295 to junction Interstate Highway 95, thence over Interstate Highway 123 to Attleboro, and return over the same route;

(4) Between Chicago, Ill., and New York, N.Y., serving the intermediate and off-route points of Newark, N.J., Carteret, N.J., and Perth Amboy, N.J.; from Chicago over Interstate Highway 80 to junction Interstate Highway 80S near Youngstown, Ohio, thence over Interstate Highway 80S to junction Interstate Highway 76, thence over Interstate Highway 76 to junction Interstate Highway 78 (U.S. Highway 22), thence over Interstate Highway 78 (U.S. Highway 22) to New York, and return over the same route; (5) between Kansas City, Mo., and Indianapolis, Ind., serving no intermediate points; from Kansas City over Interstate Highway 70 to junction Interstate Highway 270 near St. Charles, Mo., thence over Interstate Highway 270 to the junction with Interstate Highway 70, thence over Interstate Highway 70 (U.S. Highway 40) to Indianapolis, and return over the same route; (6) serving Selby, Calif., as an off-route point in connection with carrier's regular route operations between San Francisco, Calif., and Denver, Colo. for 180 days. NOTE: Applicant intends to tack authority with that in MC 76032 and Subs 167 and 218. Tacking would occur at San Francisco, Calif.; Denver, Colo.; Chicago, Ill.; and Kansas City, Mo., for 180 days. Supporting shippers: P. R. Mallory & Co., Inc., 3029 E. Washington Street, Indianapolis, Ind. 46206; Engelhard Minerals & Chemicals Corp., 113 Astor Street, Newark, N.J. 07114; American Smelting and Refining Company, Traffic Department, 120 Broadway, New York, N.Y. 10005. Send protests to: District Supervisor C. W. Buckner, Interstate Commerce Commission, Bureau of Operations, 161 Stout Street, Denver, Colo. 80202.

No. MC 94350 (Sub-No. 207 TA), filed December 12, 1968. Applicant: TRANSIT HOMES, INC., Post Office Box 1628, Haywood Road, at Transit Drive, Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles in initial shipments, from Red Springs, N.C., to South Carolina, Virginia, Tennessee, West Virginia, Georgia, Florida, and Maryland, for 180 days. Supporting shipper: Plantation Homes, Inc., Red Springs, N.C. Send protests to: Arthur B. Abercrombie, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 601A Federal Building, 901 Sumter Street, Columbia, S.C. 29201.

No. MC 95540 (Sub-No. 739 TA), filed December 12, 1968. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, Fla. 33801. Applicant's representative: Paul E. Weaver (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textiles and textile products*, from East Greenwood, S.C., to Pawhuska, Ohio, for 180 days. Supporting shipper: Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 97009 (Sub-No. 16 TA) (Correction), filed November 25, 1968, published in the FEDERAL REGISTER, issue of December 4, 1968, and republished as corrected, this issue. Applicant: VINCENT J. HERZOG, 200 Delaware Street, Honesdale, Pa. 18431. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fireplace equipment*, from Greentown, Pa., to Binghamton, N.Y.; (2) *Automobile accessories and supplies*, from Teterboro, N.J., to Lenoxville and LeRoysville, Pa.; and (3) *General commodities*, except household goods, commodities in bulk and those requiring special equipment, from Binghampton, N.Y., to South Canaan, Pa., for 150 days. NOTE: The purpose of this republication is to include the names of three supporting shippers which were inadvertently omitted in the previous publication. Supporting shippers: S. F. Williams, Inc., LeRoysville, Pa. 18829; H. L. Stephens & Son, Lenoxville, Pa.; Lockwood's General Store, South Canaan, Pa.; Reichman Welding Co., Greentown, Pa. 18426.

No. MC 106194 (Sub-No. 26 TA), filed December 11, 1968. Applicant: HORN TRANSPORTATION, INC., 1119 West 24th Street, Kansas City, Mo. 64108. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles including cast iron soil pipe and fittings*, from Kansas City, Glasgow, and Grain Valley, Mo., and Hutchinson, Kans., to points in Nebraska, South Dakota, North Dakota, Minnesota, Wyoming, Montana, Idaho, Utah, New Mexico, and points in Colorado on and west of U.S. Highway 85, for 180 days. Supporting shippers: Clay and Bailey Mfg. Co., 40th and Fremont Avenue, Kansas City, Mo. 64129; Columbia Steel Tank Co., 1509 West 12th Street, Kansas City, Mo. 64101; Farmland Industries, Inc., Post Office Box 7305, Kansas City, Mo. 64116; Havens Steel Co., 7219 East 17th Street, Kansas City, Mo., 64126; Kansas City Structural Steel Co., 2100 Metropolitan Avenue, Kansas City, Kans. 66106; Mid-States Ornamental Iron Co., 5321 East Ninth Street, Kansas City, No., 64124. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 107162 (Sub-No. 22 TA), filed December 12, 1968. Applicant: NOBLE GRAMHAM, Brimley, Mich. 49715. Applicant's representative: Phillip H. Porter, 708 First National Bank Building, Madison, Wis. 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Fort Wayne, Ind., to Bessemer, Mich., for 150 days. Supporting shipper: Seraphino Fiori, doing business as Fiori Beverage, Bessemer, Mich. 49911. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 221 Federal Building, Lansing, Mich. 48933.

No. MC 115648 (Sub-No. 16 TA), filed December 12, 1968. Applicant: LUTHER LOCK, doing business as LUTHER LOCK TRUCKING, 705 13th Street, Wheatland, Wyo. 82201. Applicant's representative: Ward A. White, 1600 Van Lennen, Cheyenne, Wyo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregualr routes, transporting: (1) *Dry animal and poultry feed*, and (2) *animal and poultry health aids*, in containers, when moving in the same vehicle as the commodities set forth in (1) above; from Denver, Colo., to points in Fremont, Natrona, Campbell, Sheridan, Niobrara, Converse, and Johnson Counties, Wyo., for 180 days. Supporting shipper: Ralston Purina Co., Denver, Colo. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 304 Lierd Building, 259 South Center Street, Casper, Wyo. 82601.

No. MC 116949 (Sub-No. 13 TA), filed December 9, 1968. Applicant: BURNS TRUCKING, INC., Route No. 1, South Sioux City, Nebr. 68776. Applicant's representative: Paul W. Deck, 222 Davidson Building, Sioux City, Iowa 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New doors and*

windows, constructed of aluminum, glass, wood, or combinations thereof, and *parts, accessories and screens thereto*, between the plantsite of Gerkin Co., Inc., at/or near Sioux City, Iowa, on the one hand, and, on the other, points in Minnesota, Wisconsin, Illinois, North Dakota, South Dakota, and Nebraska, for 180 days. Supporting shipper: Gerkin Co., Inc., 1501 Gordon Drive West, Sioux City, Iowa 51102. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 304 Post Office Building, Sioux City, Iowa 51101.

No. MC 124174 (Sub-No. 67 TA), filed December 12, 1968. Applicant: MOMSEN TRUCKING CO., a corporation, Highways 71 and 18 North, Post Office Box 309, Spencer, Iowa 51301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Green salted and chrome split hide trimmings*, from Peabody, Mass., to Johnstown, N.Y., for 180 days. Supporting shipper: Peter Cooper Corporations, Harold C. Lauer, Traffic Mgr., Gowanda, N.Y. 14070. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 304 Post Office Building, Sioux City, Iowa 51101.

No. MC 128940 (Sub-No. 4 TA) (Correction), filed November 27, 1968, published in the FEDERAL REGISTER issue of December 6, 1968, and republished as corrected, this issue. Applicant: RICHARD A. CRAWFORD, doing business as R. A. CRAWFORD TRUCKING SERVICE, Post Office Box 722, Adelphi, Md. Applicant's representative: Charles E. Creager, 5507 Sarril Road, Baltimore, Md. 21206. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products, related advertising materials and equipment and supplies* used in the preparation and serving of foods in restaurants and commissaries, (1) from Washington, D.C., to Livingston, Macomb, Monroe, Oakland, Washtenwa, and Wayne Counties, Mich.; (2) Chicago, Ill., to Washington, D.C.; (3) Detroit, Mich., to Washington, D.C., and (4) Cleveland, Ohio, to Washington, D.C., for 150 days. NOTE: The purpose of this republication is to include destination points under (1) in publication, which were inadvertently omitted. Under contract with and supported by Fairfield Farm Kitchens, 5200 Addison Road NE., Washington, D.C. 20027. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1220, 12th and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 133317 (Sub-No. 1 TA), filed December 12, 1968. Applicant: DON EICHELBERGER, doing business as EICHELBERGER TRUCKING, Shickley, Nebr. 68436. Applicant's representative: D. Acklie, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Breeding swine*, from points in Fillmore County, Nebr., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Cornhusker Farms, Shickley, Nebr. 68436. Send protests to: District Supervisor Max H. Johnston, Interstate Commerce Commission, Bureau of Operations, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 133338 (Sub-No. 1 TA), filed December 12, 1968. Applicant: MICHAEL JANKIELWICS AND JUREK GIVNER, doing business as J & G GENERAL TRUCKING, 302 Avenue C, Brooklyn, N.Y. 11218. Applicant's representative: George Chernoff, 295 Madison Avenue, New York, N.Y. 10017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Groceries*, from New York, N.Y., to points in Fairfield and New Haven Counties, Conn., and points in Bergen, Essex, and Passaic Counties, N.J., for 150 days. Supporting shipper: Bernice Foods, Inc., 581 Austin Place, Bronx, N.Y. 10455. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 68-15249; Filed, Dec. 20, 1968; 8:47 a.m.]

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PART II

FEDERAL COMMUNICATIONS COMMISSION

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Subscription Television Service

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 11279; FCC 68-1174]

PART 73—RADIO BROADCAST SERVICES

Subscription Television Service

Fourth report and order. In the matter of amendment of Part 73 of the Commission's rules and regulations (radio broadcast services) to provide for subscription television service; Docket No. 11279.

Introduction. 1. The Commission has the following before it for consideration:

(a) Further notice of proposed rule making and notice of inquiry released in this proceeding on March 24, 1966,[1] and comments, reply comments, and technical submissions filed in response thereto.

(b) Proposed fourth report and order in this proceeding submitted to the Commission on July 3, 1967, by its Subscription Television Committee.[2]

(c) Transcript of oral argument, addressed to the proposed fourth report and order, held before the Commission en banc on October 2 and 3, 1967.

(d) Written comments submitted in conjunction with the oral argument.

(e) Record of hearings on subscription television held on October 9, 10, 11, 12, 13, and 16, 1967, before the Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce of the House of Representatives, 90th Congress, first session, on H.R. 12435, A Bill to Amend the Communications Act of 1934 so as to Prohibit the Granting of Authority to Broadcast Pay Television Programs (Serial No. 90-15).

2. To set the foregoing material in perspective, the course of events from the commencement of this proceeding to the present is sketched in the next few paragraphs.

3. In 1955 the Commission adopted a notice of proposed rule making[3] inviting comments to help it decide whether it would be in the public interest to adopt rules authorizing television broadcast stations to transmit programs paid for on a subscription basis. A notice of further proceedings,[4] released in 1957, announced that although the comments responding to the 1955 notice had been useful, they did not provide a fully adequate basis for arriving at final decisions on the matter, and that trial demonstrations would be necessary to aid in arriving at conclusions thereon. Later in 1957, a first report[5] announced the conditions under which applications for trial operations would be accepted. In 1958, a second report[6] gave notice that any such applications filed would not be processed until after the adjournment of the 85th Congress because of the interest and activity of that Congress with regard to subscription television (hereinafter called STV), the delay being for the purpose of affording the Congress an opportunity to consider public policy questions which the subject raised. A third report,[7] issued in 1959, made some amendments to the first report, otherwise readopted and affirmed it, and stated that the Commission was ready to give consideration to applications for trial operations.

4. Three applications for trial authorizations were filed. One was denied, one was granted but operation never commenced and the authorization was later relinquished, and the third was granted and operation began in the summer of 1962 over UHF Station WHCT, Hartford, Conn.[8] The last-mentioned grant was affirmed by the U.S. Court of Appeals.[9] The Hartford trial uses Phonevision equipment of which Zenith Radio Corp. is the manufacturer and patent holder. Teco, Inc., is the patent licensee of Zenith.

5. In 1965 Zenith and Teco jointly filed a petition for further rule making to authorize nationwide STV on a permanent basis. The petition was based on data derived from the Hartford trial. The first part of the further notice of proposed rule making and notice of inquiry (hereinafter called further notice) mentioned in paragraph 1(a) above is responsive to the Zenith-Teco petition. It contains a discussion of over-the-air STV[10] and invites comments on proposed rules for such a service. In the second part, the Commission, on its own motion, instituted an inquiry into what the appropriate Federal role, if any, should be with respect to the establishment and manner of operation of wire or cable STV. This type of STV was previously outside the scope of this proceeding, and was made a matter of inquiry because of the change of conditions since 1955 when the proceeding began.

6. In 1967, the Subscription Television Committee of the Commission, having carefully studied the further notice, comments and submissions filed in response thereto, and other material in the record, submitted for Commission consideration a proposed fourth report and order (par. 1(b) supra) which, if adopted by the Commission, would establish an over-the-air subscription television service and rules governing that service.[11]

7. Acting in the belief that study and resolution of this important matter would be aided by oral argument directed at the proposed fourth report and order, the Commission released that document to the public and announced that it was planning to hold the argument at a date to be specified later. It also stated that interested parties could submit written comments or outlines of their arguments.[12]

8. Written submissions were duly filed (par. 1(d) supra) and oral argument before the Commission en banc was held (par. 1(c) supra). About a week after the oral presentations, The Communications and Power Subcommittee of the House of Representatives held hearings on subscription television. (Both the hearings and the printed record thereof (par. 1(e), supra) are hereinafter referred to as "Congressional Hearings.") The Chairman of the Commission testified at those hearings, the proposed fourth report and order was inserted in the record, and many participating parties directed testimony at that document. In concluding his prepared statement which traced the history of the Commission's subscription television proceeding from its inception to the date of the Congressional Hearings, the Chairman indicated that because the matter was pending before the Commission he was not in a position to express the Commission's conclusions on the substantive issues involved. He further said that in arriving at decisions in the instant proceeding the Commission would not only consider the views appearing in the record herein, but would also give consideration to those expressed at the Congressional Hearings.

9. After a careful study of the proposed fourth report and order and related material, we are today adopting that document with some modifications based on the oral argument, the Congressional Hearings, and on other developments since July 3, 1967.[13] The remainder of the present document is therefore in large part identical with the proposed fourth report and order, the reasoning of which we believe to be as valid and relevant today as it was when it was originally prepared by the Subscription Television Committee.

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[1] 31 F.R. 5136, 7 Pike & Fischer, R.R. 2d 1501 (1966).

[2] 10 Pike & Fischer, R.R. 2d 1617 (1967).

[3] 20 F.R. 988 (1955).

[4] 22 F.R. 3758 (1957).

[5] 23 F.C.C. 532, 16 Pike & Fischer, R.R. 1509 (1957).

[6] 16 Pike & Fischer, R.R. 1539 (1958).

[7] 26 F.C.C. 265, 16 Pike & Fischer, R.R. 154a (1959).

[8] 30 FCC 301, 20 Pike & Fischer, R.R. 754 (1961). The original authorization was for a period of 3 years. In 1965, and again in 1968, it was extended for a period of 3 years or (if it occurs sooner) until such time as the Commission terminates the present proceeding and enters an order with respect to the authorization.

[9] Connecticut Committee Against Pay TV v. FCC, 301 F. 2d 835 (C.A.D.C., 1958), 23 Pike & Fischer, R.R. 2001, cert. denied, 371 U.S. 816.

[10] In over-the-air subscription television, usually both the audio and video signals are transmitted over the air in "scrambled" form by television stations and may be viewed intelligibly only by those having "unscrambling" devices attached to their sets. Some systems scramble only the video and not the audio.

[11] The Subscription Television Committee consists of three Commissioners, two of whom recommended that the Commission adopt the fourth report and order, and the third of whom agreed that it should be presented for Commission consideration but stated that this did not imply that he endorsed adoption of it.

[12] 32 F.R. 10606, 10 Pike & Fischer, R.R. 2d 1617 (1967).

[13] Many of the views expressed at the oral argument and the Congressional Hearings had previously been presented and considered in this proceeding. They are given no further discussion herein. The modifications are based on new material or developments.

10. It will be recalled that the first part of the further notice contained proposed rules for over-the-air STV; the second part expanded the proceeding to include an inquiry into wire or cable STV. We shall first consider over-the-air STV and then turn to the inquiry.

OVER-THE-AIR SUBSCRIPTION TELEVISION

PRELIMINARY MATTERS

11. The Commission is of the opinion that it is in the public interest to authorize over-the-air STV on a nation-wide basis to the extent described in the following discussion and crystallized in the rules adopted today (Appendix D).

Jurisdiction. 12. The notice of further proceedings announced the Commission's conclusion that it has statutory authority to authorize over-the-air STV operations. The first report affirmed that conclusion and presented in detail (in pars. 20–40) the reasons underlying it. The third report readopted and affirmed those paragraphs of the first report. In the further notice (par. 19) we adverted to our views expressed in the first report and also observed that the Circuit Court, in affirming our grant of the Hartford authorization, supported our jurisdictional conclusion. The record of the Congressional Hearings contains a letter from the Chairman of the Commission to the Chairman of the Subcommittee which details the views of the Commission concerning the import of that court decision.[14] It is attached as Appendix E hereto. Some parties opposing STV raise the jurisdictional issue once more in their most recent comments. Since the arguments raised have been given thorough consideration in the preparation of the first report and Appendix E, and since we are still of the opinion that statutory authority exists for the action which we take, it would serve no useful purpose to evaluate them.

Congressional guidance. 13. Various opponents of STV urge that the Commission should not act in this area without Congressional guidance. In support thereof, many arguments are presented, some of which are: (1) STV is a basic modification of the American system of broadcasting—a modification which should originate with Congress and not the Commission. (2) The jurisdiction of the Commission to act is questionable, so guidance should be sought from Congress. (3) The Commerce Committees of both houses of Congress have expressed their views either questioning the jurisdiction of the Commission to license STV operations or stating that such operations should not be authorized by the Commission without specific authorization by law,[15] and that Congressional inaction therefore cannot be construed as meaning that the Congress approves of the Commission's establishing an over-the-air STV service. (4) If STV is established, its rates should be regulated to protect the public, but, if it is broadcasting as the Commission has found, there is no authority in the Act to regulate rates thereof and the Commission should go to Congress for guidance.

14. The question of seeking Congressional guidance was raised in pleadings considered prior to issuance of the further notice. In that document, after having expressed our belief that we possess adequate statutory authority to authorize STV on a permanent basis, we said that we could not at that time determine whether amendments to the Act were needed to serve as guidelines for STV service. We also said that if STV service were ultimately established we would, on the basis of information then before us in this proceeding, decide whether amendments were needed and, if so, what recommendations should be made to Congress. We allowed a lengthy period for filing comments in this complex proceeding and announced in so doing that such a period would afford the Congress time to act with regard to STV before the termination of this proceeding if it so desired.

15. Although the Congress had not acted on the matter by the time that comments were filed and the Subscription Television Committee had submitted the proposed fourth report and order to the Commission, it held the aforementioned Congressional Hearings about 1 week after the oral argument before the Commission and on November 16, 1967, the Committee on Interstate and Foreign Commerce of the House of Representatives adopted the following resolution:

WHEREAS the experimental Subscription Television systems thus far tested have proved to be inconclusive as to acceptability to the public generally, and as to whether the public interest would best be served; and

WHEREAS such experimental systems have been unable to demonstrate the abiilty of Subscription Television to offer new, different or higher quality viewing for potential subscribers; and

WHEREAS the long term effects of Subscription Television on commercial television and upon the established national policy with regard to localization and public service aspects of television are unclear; and

WHEREAS the development of Public Television may fill adequately the need for additional viewing fare and cultural programing; and

WHEREAS the many complex issues and interrelationships among radio, commercial television, Public Television, Community Antenna Television, Subscription Television, networks, satellites, and spectrum allocation require additional Committee attention and comprehensive consideration; and

WHEREAS it has not been established to the satisfaction of this Committee that authority to license Subscription Television operations comes within the power of the Commission under the provisions of the Communications Act of 1934;

NOW, THEREFORE, BE IT RESOLVED, That it is the sense of the Committee on Interstate and Foreign Commerce that the Federal Communications Commission should refrain from further action upon its fourth report and order for 1 year, or, until the Communications Act of 1934 is amended to authorize Subscription Television.

16. On September 3, 1968, the Commission sent the following letter to the Chairman of the Commerce Committee:

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C. 20515.

DEAR MR. CHAIRMAN: I am writing this letter in keeping with the desire of the Committee on Interstate and Foreign Commerce to be kept informed of the progress of the Commission's consideration of subscription television, and in light of the Committee's Resolution of November 16, 1967, expressing the sense of the Committee that the Commission should refrain from further action in this field for one year or until the Communications Act of 1934 is amended to authorize subscription television.

As you know, the Commission, prior to the adoption of the Resolution, had heard oral argument en banc after receiving a report from its Subscription Television Committee transmitting a proposed Fourth Report and Order and a Second Further Notice of Proposed Rule Making to establish a subscription television service. Subscription television has been the subject of formal Commission consideration for some thirteen years and, in view of that background and the present circumstances, the Commission has found it necessary to determine its future course of action. We believe that we cannot, consistent with our responsibilities to the public, continue to delay resolution of this important question. Indeed, further substantial delay in this matter would constitute, in effect, a failure of the administrative process. We therefore propose to take up the matter for consideration at an early date looking toward further Commission action on the long-pending issues before the end of this year.

If the Commission should adopt rules authorizing subscription television, the opportunity would remain not only for judicial review but also full Congressional review prior to the authorization of any particular subscription television service. Fully cognizant of the many serious questions in this area, we believe that our proposed course of action will be most conducive to their appropriate resolution.

Sincerely yours,

ROSEL H. HYDE,
Chairman.

17. On September 11, 1968, the Commerce Committee adopted the following resolution:

WHEREAS the Committee has heretofore expressed its concern over implementation by the Federal Communications Commission of its Fourth Report and Order dealing with the subject of Pay Television; and

WHEREAS those same concerns and considerations pertain today as they did in November 1967 when stated by the Committee; and

WHEREAS the development of Public Television has been delayed because the corporation provided for in legislation passed by the Congress has been but recently formed and has had no opportunity to this time to carry out the responsibilities assigned to it; and

WHEREAS the pressures of legislation have made it impractical if not impossible for the Committee to take action on the subject of Pay Television during the second session of the 90th Congress;

NOW, THEREFORE, BE IT RESOLVED, That (a) it is the sense of the Committee that the Federal Communications Commission should further refrain from acting upon its Fourth Report and Order until the end of the first session of the 91st Congress or completion of action upon legislation if by the end of said first session legislation pertaining to the subject of Pay Television and amendment of the Communications Act of 1934 to authorize same is under consideration; and (b) it is further the sense of this

[14] Congressional Hearings, pp. 149–151.

[15] These views appear in the second report, supra note 6.

Committee that to avoid further delay in considering the matter hearings on the subject of Subscription Television should be scheduled by the end of May 1969.

18. On September 12, 1968, the following letter was sent to the Commission by nine members of the Commerce Committee:

Hon. ROSEL H. HYDE,
Chairman, Federal Communications Commission, Washington, D.C. 20554.

DEAR MR. CHAIRMAN: The Commerce Committee resolution requesting the Commission to suspend any action in the area of pay TV represents the thinking of the barest majority of those present at the Commerce Committee meeting on September 11, 1968.

The motion to recommit the resolution to the Communications Subcommittee failed by a tie vote of 14–14. The final passage did secure, finally, 16 votes for, 13 against. Quite clearly, this does not represent a mandate to the Commission, nor should it be so construed.

The failure of the Congress during 10 years of suspended activities in this important field to accept its responsibility to give legislative guidance is unexcusable, and we who voted against the resolution cannot condone a policy of endless and futile delay. In our opinion, the failure of the FCC to act promptly to decide the 13-year old rule making proceeding on subscription television would be inconsistent with your responsibilities imposed by the Administrative Procedure Act and contrary to the public interest in an early ruling on this important subject.

Sincerely,

/s/ John E. Moss
JOHN E. MOSS, M.C.
/s/ Torbert H. Mcdonald
TORBERT H. MACDONALD, M.C.
/s/ Lionel Van Deerlin
LIONEL VAN DEERLIN, M.C.
/s/ Richard L. Ottinger
RICHARD L. OTTINGER, M.C.
/s/ W. S. Stuckey
W. S. STUCKEY, M.C.
/s/ Fred B. Rooney
FRED B. ROONEY, M.C.
/s/ Daniel J. Ronan
DANIEL J. RONAN, M.C.
/s/ Brock Adams
BROCK ADAMS, M.C.
/s/ Peter N. Kyros
PETER N. KYROS, M.C.

19. Consistent with the views expressed in the Commission's letter of September 3, 1968, we are taking our action of today establishing a nationwide over-the-air subscription television service and we are making the rules governing the service effective 6 months from now to afford an opportunity for judicial and Congressional review of that action before the granting of any application for a particular STV service to a community.

20. At the present time, we do not believe that any amendments to the Act are necessary to serve as guidelines for the new service. In this connection, we note that whether the Commission has statutory authority to regulate rates for the new service—a broadcast service—is open to question. Since we do not believe that such regulation is necessary (see pars. 258–260) the matter need not now be analyzed. However, we shall carefully observe all aspects of the new service in operation, and if amendments are indicated shall make appropriate recommendations concerning rate regulation or other matters.

STV is broadcasting. 21. In the further notice we concluded that STV is broadcasting within the meaning of section 3(o) of the Act, and set forth in detail our views on the subject (pars. 22–29). As stated there, we regard intent to provide a radio or television program service without discrimination to as many members of the general public as can be interested in the programs as of primary importance in our determination. We further said that intent may be inferred from the circumstances under which the programs are transmitted and that the number of actual or potential viewers is not significant.

22. In our discussion we cited the Functional Music case[16] and the Muzak case.[17] Both involved the use of special equipment attached to the receivers of subscribers in order to receive the service. ABC, urging that STV cannot be classified as broadcasting, cites early decisions of the Commission[18] that certain activities over broadcast stations constituted point-to-point communications rather than broadcasting and argues that the interpretations in those decisions are worthy of more weight than the Muzak case. Motorola questions whether Functional Music is authority for the proposition that STV is broadcasting. We should note that we cited Muzak, as well as Functional Music, merely to illustrate that payment of a charge by subscribers for a special type of service is not in itself determinative of the question of intent that the programs be received by the public.

Parties filing. 23. Parties filing comments, reply comments, and technical descriptions of STV systems in response to the further notice are listed in Appendix A. Those opposing permanent STV are the three networks (ABC, CBS, NBC), the National Association of Broadcasters (NAB), the Association of Maximum Service Telecasters, Inc. (AMST), the Joint Committee Against Toll TV (Joint Committee), Motorola, Inc. (Motorola), and the Colorado Translator Association. All other parties favor permanent STV (some with qualifications). These parties include proponents of various STV technical systems, licensees of television broadcast stations who contemplate entering into STV operations if nationwide over-the-air STV is authorized, and other groups, such as the American Civil Liberties Union.

24. Parties who participated in the oral argument and those who filed written comments in connection therewith are also listed in Appendix A. All parties mentioned in this document hereinafter are referred to by short designations which appear in parentheses following the names of the parties in that appendix. "Comments" and "reply comments," as used herein, refer to those filed in response to the further notice. The transcript of the oral argument and written comments filed in connection with the oral argument will both be referred to as "oral argument." The comments were filed in October 1966, and oral argument was held in October 1967, so that the record on which the present document is largely based is 1 to 2 years old. Since repeatedly pointing out this fact in the discussion which follows would impede its flow, the document is written in the present tense.

SHOULD STV BE AUTHORIZED ON A PERMANENT BASIS?

25. Paragraph 45(a) of the further notice invited comments on whether STV should be authorized on a permanent basis. Paragraph 45(b) requested comments on 15 specific matters of concern to the Commission in regulating STV if it is so authorized. We shall first deal with the fundamental problem of 45(a) and then treat the issues in 45(b).

26. In the first report (pars. 47, 65, 56, 66)[19] the Commission mentioned what sort of information it hoped to obtain from trial operations to help it make public interest determinations. This information included the following:

(a) Whether STV would provide a beneficial supplement[20] to the program choices now available to the public.

(b) Whether STV would provide an increase in financial resources which would facilitate significant increases in the numbers of services available to the public under the present system.

(c) The degree of acceptance and support which STV might be able to obtain from members of the public in a position to make a free choice.

(d) Whether STV would seriously impair the capacity of the present system to continue to provide advertiser-financed programing of the present or foreseeable quantity and quality, free of direct charge to the public. This is closely related to the question of whether STV would result in significant audience diversion from conventional television and siphoning of programs and talent away from free television into STV service.

(e) Other information, such as (1) modus operandi of the service; (2) the technical performance of the systems; (3) the nature of the programs offered; (4) the methods to be employed; (5) the role of participating broadcast station licensees; (6) possible monopolistic features of STV.

Comments on the question of whether STV should be authorized on a permanent bases generally fall into categories a, b, c, d, and e above.

[16] Functional Music, Inc. v. FCC, 274 F. 2d 543 (C.A.D.C., 1958), cert. denied, 361 U.S. 813.

[17] Muzak Corporation, 8 F.C.C. 581 (1941).

[18] Scroggin & Co. Bank, 1 F.C.C. 194 (1935); Standard Cahill Co., Inc., 1 F.C.C. 227 (1935); Bremer Broadcasting Company, 2 F.C.C. 79 (1935); Adelaide Lillian Carrell, 7 F.C.C. 219 (1939).

[19] These paragraphs were affirmed by the third report.

[20] The term "beneficial supplement" merely means STV programing that is not duplicative of the programing of free TV and that is desired or needed by at least a portion of the viewing public. It has no connotation of lack of impact upon free TV, which is a separate question.

Whether STV would provide a beneficial supplement to the program choices now available to the public—27. *Hartford programing.* In joint comments filed March 10, 1965, in support of their petition for further rule making (prior to the issuance of the further notice) Zenith and Teco set forth in detail the STV programing offered by WHCT during the first 2 years of the Hartford trial. Their comments[21] filed in response to the further notice supply no additional data but incorporate by reference the March 10 material. As we pointed out in the further notice (par. 12), that information showed an average of about 1,500 hours of STV programing, consisting of about 300 separate programs, were presented each year.[22] The programs were not available on free television either in Hartford or elsewhere in the United States. The breakdown of the programs is as follows:

Category	Approximate number of programs	Approximate number of showings	Average number of showings per program	Percentage of total showings
				Percent
Feature films	216	768	3.55	86.5
Sports	40	40	1.0	4.5
Special entertainment	18	49	2.7	5.5
Educational	26	32	1.2	3.5
Totals	300	889	2.96	100.0

Of the 216 feature films shown during each year, one was a first-run U.S. film, 58 (27 percent) were first-subsequent-run U.S. films (i.e., films shown several weeks after their first showing in theaters, which corresponds to the time when pictures are released to neighborhood theaters), about 149 (69 percent) were U.S. films of over 6 months in theater release, and nine (4 percent) were foreign language films with English titles or dialogue dubbed in. The sports programs were live broadcasts of events not carried on conventional television, such as championship boxing, high school, college, and professional basketball, college football, and professional hockey. The special entertainment included plays, opera and ballet, concerts and recitals, variety, and nightclub programs. Educational features included, among other programs, three for doctors only.

28. Zenith and Teco state that when the Hartford trial was authorized various theater owner organizations tried to induce picture producers and distributors not to supply films for the trial, but that a number of independent and most major producers nevertheless did supply films. However, we are told, two major producers were unwilling to do so. In March 1964, RKO filed an antitrust action against them which was settled out of court in June 1964, and at the end of the second year of the trial those companies were supplying both first-subsequent-run and older films for the trial.

29. Although producers and distributors have been unwilling to supply films on a first-run basis (only one such film has been broadcast since the trial began), Zenith and Teco state that this is mainly because the operation is on a trial basis. They express the opinion that if nationwide STV were authorized, first-run films could be made available, if it were considered important, on the date of their release to first-run theaters.

30. Concerning sports programs, Zenith and Teco mention that heavyweight championship boxing matches, which consisted of about 0.3 percent of the total STV programing during the first 2 years of the trial, were the most popular of all STV programs since, on the average, they had audience ratings of about 63 percent of all subscribers. They observe that before the Hartford trial there had been no such fights on television for more than 10 years because promoters of such events found it much more profitable to show them by way of closed-circuit theater outlets. They also point out the savings to the public that can accrue from viewing such events on STV. As an example, they cite the following figures for one of the Liston-Clay fights: An average of nine persons per tuned-in subscribing set watched the fight at a cost of $3 for all of them as compared to a cost of $5 a head (or a total of $45) at several local theaters which showed the fight on closed circuit.

31. As to college sports, they state that none of the football games shown on STV could have been broadcast over free TV under the restrictions of the National Collegiate Athletic Association (NCAA). These restrictions, they point out, were designed to protect college football teams from loss of gate receipts (similar rules prevail for college basketball). They limit the number of games that may be viewed in any part of the country to one game per week. As a result, viewers in the Midwest, for example, may be deprived of viewing a conference title game between two Big Ten teams because the game of the week is between teams from another part of the country. Zenith and Teco argue that STV would protect gate receipts and thereby make it possible to show local and regional games in which there might be great interest so that viewers would not be limited to the NCAA "game of the week." Robert Hall, former chairman of the board of athletic control and director of athletics at Yale University, and principal architect of the NCAA controlled football plan for television, testified on behalf of Skiatron at the oral argument and at the congressional hearings. His views bear out those of Zenith-Teco. He states that he foresees no chance that the NCAA television plan will lessen its restrictions so as to permit conventional television to obtain more games. He says that, as far as he can determine, there would be no easing of the restriction that prohibits the telecasting of a game within a 75-mile radius of where it is being played. Thus the game might be sold out, but free TV will not be able to show it in that area. He testifies that "the NCAA very easily could, and in his opinion very definitely would, say that the game may, however, go on STV in that area."

32. Zenith and Teco also mention that in both the American and National Football Leagues home games are blacked out and that home games of many major league baseball teams are either blacked out or their number is restricted in many cities. They state that the Chicago Bears and the Detroit Lions have permitted closed circuit theater operators to carry home games because the stadium seats are usually sold out. Zenith and Teco express the opinion that theater television of home games of professional football teams will increase in the next few years and say that STV could provide a beneficial supplement to free TV by carrying such games to a larger audience than that of the theaters.

33. As to special entertainment, the programs shown during the 2-year period are discussed. They claim that the economic limitations of the trial prohibited a steady supply of Broadway plays, but that with a broader economic base which nationwide STV would provide these limitations would not exist.

34. We are told that there were difficulties in obtaining programs of box-office caliber in the educational and instructional category, and that the audience ratings for such programs were low. It is stated that possibly the primary use of STV operations in the future in this programing area would be the use of commercial STV facilities by educational groups for the broadcast of educational programs for a fee. Especial reference is made to programs available only to doctors. Three such programs were shown in the 2-year period and since then more have been shown. The programs were designed to aid doctors in keeping abreast of medical advances within the confines of their busy schedules, were supervised by a noted physician, and had considerable professional support.

35. *Etobicoke programing.* Telemeter's comments incorporate by reference all material in previous submissions (June 5, 1955, May 25, 1965, and June 17, 1965) to the extent that it does not vary from its present comments. We note that in its May 1965 filing, in setting forth information about the 5-year Etobicoke (a suburb of Toronto, Canada) cable STV experimental operation, it stated that "the prime pillars of programing were motion pictures and 'blacked out' sports," which is consistent with the experience of the over-the-air trial at Hartford. Special entertainment productions were also shown. Telemeter's experience in obtaining feature films for its experiment supplements the Hartford information.[23]

[21] To avoid needless repetition, RKO—which conducted the Hartford trial—filed brief comments stating that it fully agreed with the recommendations and conclusions of Zenith and Teco.

[22] During the same period WHCT averaged about 1,812 hours of conventional programing per year.

[23] The May 1965 filing was a "Statement of International Telemeter Corporation in Support of [Zenith-Teco] Rule Making Petition for Authorization of Nation-Wide Subscription Television." Although the Etobicoke operation was a three-channel cable rather than an over-the-air operation and therefore dissimilar in many respects to the Hartford trial, in terms of programing experience it can shed light on STV operations generally.

Telemeter states that "many—but not all—major film distributors as well as other leading companies were reasonably cooperative in supplying some of their current product for subscription TV use. However, except for three 'road-show attractions', which were exhibited on Telemeter during their general release to theatres, none of the other so-called 'road-shows' produced in the past 5 years or earlier were made available and, since not all major distributors permitted current feature pictures to be shown on the cable system, Telemeter subscribers had no access in their homes to a large number of desirable pictures released to theatres." (For meaning of "road-show" and "general release," see note 56 infra.)

36. The sports programing at Etobicoke constituted only a small portion of the total STV offerings, but was the most consistently favored. Among other things, it included away-from-home games of the Toronto Maple Leafs ice hockey team. Such games had not previously been available to Etobicoke. It also showed blacked-out home games of the Toronto Argonauts professional football team, as well as some professional championship boxing bouts not carried on free TV in Canada or the United States.

37. *Conventional TV programing.* Opponents of STV devote many pages of their comments and part of their oral argument attempting to show that the STV programing of the Hartford station did not provide a beneficial supplement since it was of the same general type as that shown on conventional television, i.e., motion pictures, sporting events, special entertainment, and educational presentations. Illustrative of the mass of data submitted to document their case is the material in the immediately following paragraphs.

38. *Feature films.* Of the 73½ hours of network programing between the hours of 7:30 and 11 p.m. each week over the three networks combined, 10 hours are feature films (CBS—2 films, NBC—2, ABC—1). Such films are available five nights per week. (The figures are now 14 hours of films available seven nights per week, because since the record was made herein, ABC has begun to show two films per week in this time period, and NBC now shows three.) In addition, local stations also offer feature films in prime time. Viewers in some cities, e.g., Los Angeles, can see as many as 35 films per week during prime time. No figures are given for the number of films shown by free television stations in the Hartford market per week during the first 2 years of the Hartford trial, but it is said that the networks offered 160 films to their affiliates during that period. Moreover, we are told that although it is true that when this proceeding began motion picture producers were selling pictures of relatively minor caliber to free television, the number of major feature films released to free TV increased rapidly during the late 1950's and continues to increase today, so that presently there are over 1,200 films available for conventional television. During the 1966–67 season, 120 films of high caliber were scheduled by the networks alone. Examples of such films include "The Bridge on the River Kwai" (1957) which is said to have been viewed by more than 60 million people, "Lilies of the Field" (1963), and "Breakfast at Tiffany's" (1961).

39. As to recency of films shown on free TV, it is stated that the bulk of those shown by the networks five nights a week are "relatively" current and that not only have producers released more major pictures to free TV since the proceeding commenced, but also they have been releasing more recent films. Cited as evidence are purchases announced in September 1966 by ABC and CBS whereby the two networks acquired the right to show, over a period of 5 years, more than 112 feature films, including some that had enjoyed record box-office grosses. Of the films acquired by CBS, at least 14, we are informed, were films released to theaters in 1965 and 1966. It is stated that the trend toward showing more recent films on free TV will continue because the heavy demand is drying up the source of supply. Indeed, because of this, feature films are now being produced specifically for conventional television. To illustrate the trend toward recency, NBC states that for all feature films shown by networks on free TV the average elapsed time between theatrical release and exhibition on TV has decreased at an average rate of 6 months per broadcast season during the past 6 years. It states that more than 10 percent of the feature films carried by the networks during the 1966–67 broadcast season were less than 2 years old.

40. It is pointed out by STV opponents that of the 432 films shown during the first 2 years of the trial at Hartford, only 116 (27 percent) were first subsequent run, and the remaining 297 were over six months old, the average release date of those films having been 1960. We are told, moreover, that of the films shown during that period in the Hartford trial, over 60 percent have already been made available to free TV, some as soon as 5 months after their showing on STV, the average being less than 2 years after STV showing. Of the remaining ones, many have already been purchased or are under option.

41. *Sports.* Opponents of STV state that there is virtually no major sports attraction that is not presently being broadcast on free TV. They list in overwhelming detail the kinds of sports and sports programs that free TV carries, and we shall not here repeat them. They state that the quantity and quality of sports programs exceeds all expectations of about 10 years ago when this proceeding began. They concede what cannot be denied—that STV at Hartford carried heavyweight championship boxing matches, a type of program that in recent years has not generally been carried by free TV; and they would appear to admit that other sports events carried by WHCT were not otherwise available in the market, but argue that differences between sports programing on free TV and proposed STV will probably narrow because of programing developments currently taking place in free TV.

42. *Special entertainment and educational programs.* As with sports, opponents describe at length the great variety and quality of special entertainment programing carried by free TV to show that it is of the same type that STV offered at Hartford, and mention that since the issuance of the first report such programs have expanded in number and quality. Mention is also made of the growth of educational television service in this country which provides educational and cultural programing, the programing of National Educational Television (NET), the fact that since this proceeding started the number of educational television stations has increased from 23 to over 100,[24] and the fact that recent developments suggest that there may be new financing available in the near future for programing in the educational television service which would further improve its already excellent offerings. Some advert to the role of the proposed Corporation for Public Broadcasting in adding to the diversity of programing.[25] In addition, the Oxtoby-Smith "Study of Consumer Response to Pay Television" is quoted to the effect that "the ratings for educational and cultural programs and even available stage plays have been low * * *. The operation of a ready market for 'cultural' programing has not materialized." Along the same line, they advert to the very limited viewing of such programing by Hartford subscribers (average of only 22 subscribers viewing educational programs).

43. As mentioned above, STV opponents, in connection with the foregoing data submitted by them, make the argument that the Hartford trial did not provide a beneficial supplement because programing of the same general type appears on free TV. With regard to feature films, the only possible advantage of STV, we are told, is that of reducing the time lag between theater release and TV viewings. At least one party says that STV will not allow viewers to see films "at a significantly earlier time." Several admit that it is possible that STV can provide films "somewhat earlier" or that STV "can somewhat accelerate" their presentation to the public. However, it is argued, because conventional television is getting more and more recent films of high quality, the difference in time of presentation over STV and free TV would be less and less important. This time differential, it is said, does not justify the use of scarce channels for STV. Opponents say that

[24] Since the filing of the comments, the number has increased to 175 on the air as of Oct. 1, 1968.

[25] The Corporation for Public Broadcasting has since been established under authority granted in the Public Broadcasting Act of 1967, Public Law 90–129, 81 Stat. 365. Pursuant to the financing provision of that Act (sec. 396(k)(1) of the Communications Act of 1934) as amended in 1968 by Public Law 90–294, 82 Stat. 108, the sum of $5 million has been appropriated by Congress for expenses of the Corporation for the fiscal year ending June 30, 1969.

representations were originally made to the Commission that STV would show first-run films, but that such films have not been made available to STV nor is there anything to indicate that if STV were authorized on a nationwide basis they would be. As a matter of fact, they state, only first-subsequent-run films and films 6 months or more old have been made available, and only 27 percent of the Hartford films were first subsequent run.

44. The following is also contended: The promise of STV was that it would provide viewing for members of the public interested in the fine arts, opera, educational and informative programing, and similar programing, i.e., programing for minority tastes and not for mass appeal, but Hartford has not fulfilled that promise—its programing was largely of a mass appeal type, directed at those who watch free TV the most. Its own research firm reported that it should be directed at that audience, which is less demanding in its expectations than the minority who expect more from STV. The Oxtoby-Smith study shows that there is no ready market for cultural programing. Therefore, if STV became a national service, it would be unreasonable to assume that it would do other than show the mass appeal type of programing as Hartford did, for that is where the profits would be. Thus, Hartford (allegedly because of the limitations of a one-city trial) did not provide the diversity of programing that STV promised, and national STV would not either. Whatever the facts may have been in 1955, the broadcasting environment has since changed and today, present conventional television, the all-channel bill, syndication, and the networks all provide a great diversity and the trend is toward greater diversity so that STV would merely be duplicative of free TV.

45. Other arguments offered are that STV promised quality programs and that most of the films shown at Hartford were run-of-the-mill films; that STV would deter the formation of a fourth national TV network; that the game-of-the-week and black-out restrictions imposed by college and professional sports are a reasonable accommodation of conflicting economic and social interests, and to the extent that STV would derogate from these policies it would undermine amateur and professional sports; and that Zenith and Teco should have given information about the more recent programing of the Hartford trial in their comments since the information of the first 2 years of the trial may be out of date.

46. In their reply comments, Zenith, Teco, and Telemeter take issue with the contentions of the opponents of STV. Zenith and Teco say that the opponents have compared the programing of a single STV experimental operation with that of the combined networks with nearly $700 million to spend for programing and that it would be more realistic to have compared the programing of the networks in 1948—the second year of their operation when the weekly schedule of all four networks during the hours of 7 to 11 p.m. consisted of about 40 percent unprogramed hours and 23 percent boxing and wrestling, with only four 1-hour dramatic productions, and a feature film library of about 50 titles. They aver that given 20 years, STV may also make strides. Telemeter offers a similar argument, stating that during the formative years of TV broadcasting which parallel the start of STV broadcasting around 1960, broadcasters competing for channel assignments made a plethora of programing promises which were not fulfilled until many years later, because a large enough audience did not exist at the beginning. Before such audiences were obtained, Telemeter states, TV stations sustained great losses, losing millions of dollars according to published records of the Commission.

47. Also controverted is the argument that free TV supplies in quantity all the types of programs that STV would provide, so that the latter would not provide a beneficial supplement. Zenith and Teco observe that the "types" of which opponents speak are general categories such as "feature films," "sports," "opera," "mass entertainment," and the like. By using such broad categories, they state, it would even be possible to condemn the formation of a fourth free TV network on the grounds that the present networks provide ample amounts of all conceivable "types" of programing that a fourth network might offer. Telemeter says that when opponents speak of feature films as a "type" they ignore such differences as age of the film, quality, and the desires and habits of the public.

48. With regard to the age of the film, Zenith and Teco contend that the opponents belittle the matter of time delay that now exists between theater release and showing of films on free TV, and that they imply the public does not mind waiting 3 to 10 years to see a film on TV after it has been shown in a theater. This, they state, is contrary to the economics of show business and human behavior, for "[f]reshness, immediacy and currency have long been essential ingredients in arousing the public's interest in entertainment."

49. In connection with the questions of currency, Zenith and Teco say that although opponents mention the recent purchase by CBS and ABC of 112 feature films as examples of the kind of current pictures the networks are showing, they fail to state that many of those pictures will not be shown on free TV until 1970 or 1971, and that many of them have already been shown on STV during the past several years at Hartford. Similarly, Telemeter, in referring to the argument of opponents that the bulk of the films shown on free TV in prime time are "relatively current," mentions a compilation from a list of films in the July 27, 1966, Variety, presented by ABC, which suggests that (exclusive of two movies made originally for free TV) the films to be shown on the networks in prime time in the 1966–67 season had their theater releases anywhere from 1960 to 1965. However, Telemeter calls attention to the fact that the ABC compilation does not include the total list that appeared in Variety, an examination of which shows that more than 60 percent of the films to be shown are from 4 to 15 years old. Telemeter also states that 40 of the 116 films mentioned in the list were shown at Etobicoke. In addition, Telemeter names 24 pictures shown at Hartford during the start of the 1966–67 season (prior to the date of filing of its reply comments on November 10, 1966) which, it says, probably will not be available to free TV until 1969 to 1971. It points out, too, that many of the films shown at Etobicoke have still not appeared on free TV.

50. Zenith and Teco, responding to the assertion that only 27 percent of the films shown at Hartford in the first 2 years of the trial were first subsequent run and that the remainder were 6 months old or more, advert to RKO's previous programing difficulties (see par. 28), characterizing them as water over the dam, and state that during the 1-year period of October 1, 1965, to September 30, 1966, 70 percent of the 174 feature films shown were first subsequent run.[26] The other 30 percent were shown within the first year of theater release, with a few exceptions which included "Bambi" and "Mary Poppins" which were road-showed on a hard-ticket basis for over a year before they were given general release in theaters. In his testimony at the congressional hearings, Joseph S. Wright, President of Zenith, states that of the top 35 feature films of the previous year—i.e., the films that grossed $4 million or more for that year—only seven were not shown at Hartford. Five were unavailable because they were still being shown on a hard-ticket basis, and two were turned down by Hartford because they were too "blue" (not the kind that the station would want to show in the home).

51. With respect to the argument that of the 432 films shown in the first 2 years of the Hartford trial 273 have since been released to free TV, Zenith and Teco point out that they never represented that such films would not some day reach that medium, but, rather, that they would be shown at an earlier date on STV.

52. They further state that the feature films which the opponents of STV seems to indicate are so important on network and local station programing could not be made available to free TV without support from box office receipts. In the same vein, Telemeter says that current

[26] In oral argument, AMST uses the 27 percent and 70 percent figures to argue against the importance of recency of feature films. It states that recency as such is not determinative of whether STV feature films would in fact be a beneficial supplement to free TV. "The Bridge on the River Kwai," it says, was a success on free TV not because it was of recent vintage, but because it was an outstanding Academy Award winner. It then adverts to the fact that the average subscriber at Hartford spent $1.20 per week for programs whether 27 percent or 70 percent of the feature films shown were first subsequent run (see pars. 109 and 122). This, it says, shows that recency is virtually irrelevant. The Joint Committee, in oral argument, makes a similar point.

films—which are available on STV at the same time that they are being shown in local theaters—are not now and, under the economics of motion picture production and commercial TV broadcasting, never will be available on free TV while they are in current release in theaters. The reason given is that the films must first recoup their "negative cost" and at least some portion of their box office potential prior to being made available to free TV. Numerous examples are cited. Thus, "The Bridge on the River Kwai," frequently referred to by the STV opponents as an example of free TV film fare, cost ABC $2 million 8 years after its release to theaters. Its negative cost was about $6 million on top of which were publicity promotion, and distribution costs, so that the amount that ABC was able to pay for the film under the economics of commercial television would not have paid a third of the total costs of the film, let alone absorb a part of its potential theater box office gross of $17 million.

53. Telemeter goes on to say the following: According to industry sources, the average motion picture is seen by only 5 percent of the population. A major picture is viewed by only 8 percent or, in rare cases, 10 percent of the population. Many who would like to see the current movie do not do so because of inconvenience or cost. A Broadway show in a 1,200-seat theater that runs a year with every performance sold out is seen by 499,200 persons. Many of the nine and a half million residents of New York or the millions of persons in the rest of the country would like to see the show but cannot because of distance or cost. STV would aid the box office potential of a motion picture or a Broadway play by showing it to an additional audience at a price, whereas free TV would impair the box office potential. Therefore, STV may well stimulate additional quantity and quality of films, Broadway plays, operas, and the like. Additional programs so stimulated by STV would redound to the ultimate benefit of free TV.[27]

54. Telemeter states that there are thus three levels of viewing films: (1) The theater, (2) STV, and (3) free TV. The public, it urges, should be entitled to choose at which level it wishes to view. It says that, after having been viewed in theaters or over STV, there will still be large audiences waiting to see them on free TV 3 to 5 years later and they will no doubt make for sizable ratings for sponsoring advertisers just as they do now.

55. Along the same line, Kahn says that STV constitutes a new box office for film makers and will stimulate them to produce more and better films to take advantage of that box office. Moreover, according to Kahn, since film makers should be recouping their investments first through theater exhibition and then through STV showings, they will no doubt be willing to release their pictures to conventional TV years earlier than they have in the past. Zenith and Teco express a similar view about earlier availability of films for free TV as a result of more rapid realization of box office revenues through showing the films on STV.

56. Telemeter, Zenith, and Teco all make a further contention—that films shown on free TV are cut and edited to fit appropriate time segments, and are often interrupted by commercials which, it is said, distort and destroy the artistic continuity of the films.[28] In STV, the full feature is shown without cutting and without commercials. Moreover, another advantage of STV is said to be that the films may be shown more than once so that viewers may see them at their convenience.

57. Finally, concerning sports, special entertainment, and educational programing, Telemeter avers that STV will considerably expand the sports events available—events that are not now shown and in the foreseeable future will not appear on free TV. It is stated that although opponents belittle the fact that an average of only 17 doctors viewed each of the three medical programs at Hartford, it must be remembered that there were not more than 5,000 subscribers. If STV were nationwide, Telemeter says, there would be millions of subscribers. As an example, it assumes 10 million subscribers which is less than 20 percent of the total TV homes. With such penetration, 17 viewing doctors at Hartford would translate into 34,000 viewing doctors nationally. This is, Telemeter says, 12 percent of all doctors in the United States, who would be furnished a not inconsiderable and unique service by STV. Similarly, with regard to cultural programs, Telemeter states that opponents play down their import and play up the fact that these programs achieved very low ratings. Thus, NAB points out that The Consul had an average rating of only 3.5 percent at Hartford. However, Telemeter says, if STV had millions of subscribers, even with such small ratings enough revenues would be generated to reward the producer of the opera. On the other hand, it is argued, such programs are viewed as "deadly" by commercial TV and get short shrift even in nonprime time, so that the minority audiences that would be interested in seeing them do not have the opportunity to do so.
is whether STV would provide a beneficial supplement to the offerings of free

58. *Conclusions.* One of the most important single issues in this proceeding TV.[29] If it would, even its opponents agree that doubts about other public interest aspects of STV might possibly be resolved in its favor. However, if the programing of STV is merely duplicative of types of programs now appearing on free TV in quantity, opponents urge—and we would be inclined to agree—that it would not appear that other public interest considerations could justify the authorization of STV using broadcast channels. We believe, for the reasons given below, that STV will provide a beneficial supplement to free TV.

59. Of course, the programing of a single over-the-air trial operation at Hartford and an experimental cable operation at Etobicoke cannot form the basis for completely certain predictions about the programing that would be shown if nationwide STV were authorized. However, programing different from free TV programing was available for the STV trials, and no arguments have been made that convince us that such programing would not continue to be available for STV if it becomes a nationwide service.[30] If anything, it seems that nationwide activity would strengthen the position of STV in obtaining such programing, or even better programing. Proponents suggest that nationwide STV would follow the pattern of the trials and that the major portion of its programing would consist of feature films and sports (91 percent of Hartford programing). This appears to be a reasonable forecast, and the rules which we adopt herein take cognizance of it. Should STV programing change as it develops, and should the change require amendments of our rules in the public interest, we, of course, stand ready to make them.

60. It may be useful first to analyze STV programing on the basis of the Hartford trial. We begin with sports. Opponents of STV urge that because a cascade of sports events is shown on free TV, sporting events shown on STV would be duplicative because they would be of the same type. This is unrealistic. It is elementary that if a man wishes to view a heavyweight championship fight he will not be satisfied with viewing a tennis match, a football game, or a motorcycle race instead. Such fights were generally not carried on free TV for many years. To let him see the fight on STV is clearly to supplement present sport-events programing on free TV.[30]

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[27] With regard to films, for example, Zenith and Teco mention that the increased use of films by the networks is making such product more scarce, and, citing figures, they say that except for second and third reruns free TV will not be able to show the quantity of first-commercial-TV-run film that it has in the past. They state that if STV were to generate an increase in film production, this would not only aid STV, but would aid free TV as well. Comments of ABC state that because the supply of films is growing smaller feature films are now being produced specifically for conventional TV exhibition and that such films may ultimately become a network staple.

[28] Telemeter cites two instances in which producers of films brought legal actions in efforts to prevent this sort of distortion on the part of free TV.

[29] The question of impact of STV on free TV, discussed hereinafter, is also of great importance.

[30] Since the comments were filed in this proceeding, a question has developed as to whether heavyweight championship fights will be available to STV, to free TV, or both. For many years, including the period when the Hartford STV trial operation showed them, they were not available on free TV. Recently, however, ABC has shown several Clay defenses from Europe by satellite. It has also broadcast a series of heavyweight elimination fights, including the final fight in which Ellis won the title. Whether this indicates a changing pattern or a lack of interest in the fights that meant they could not command a theater closed circuit audience is not known (see par. 303 infra).

The same is true with respect to blacked-out home games of amateur or professional teams. If one wishes to view on TV the local teams in which he has a strong interest, it is at best a poor substitute to let him view other teams playing in other parts of the country. It is a fact of life that just as heavyweight title fights are not now generally shown on free TV, home games are blacked out. The promoters and team owners do not permit them to be shown on free TV for fear of harming box office revenues. The testimony of Robert Hall indicates that this situation will probably continue for college teams, and it would appear that it will also prevail for professional sports since like reasons dictate the black-outs in both cases. Opponents speak of the present black-out restrictions as "a reasonable accommodation of conflicting economic and social interests." This may be so, but it is not the only possible accommodation. If the teams which now protect their box office revenues by blacking out home games find that they can permit the games to be shown locally on STV and still benefit financially, perhaps a new balance of economic and social interests will be struck. It is argued that other factors than "protecting the gate" are involved. Thus, we are told that the Commissioner of the National Football League has said that he "does not want to follow the path of professional boxing—with teams playing in comparatively empty arenas with national television audiences." If the league believes that this would happen, there is nothing to force it to allow its football games to be shown on STV. They can only be shown if the league consents. The record suggests that at least in some cities where the professional football stadia are completely sold out and people cannot obtain tickets, STV might provide a beneficial supplement and the arenas would not be empty.

61. Another benefit to the public that should not be overlooked is the fact that many viewers may see a sports event over a single STV subscriber's set for a relatively modest per-capita cost. Thus, for example, a Hartford survey showed that during one heavyweight title fight an average of nine viewers was watching each STV set that was tuned in, and the cost for all nine was $3. The same fight on closed circuit TV at theaters in Hartford cost $5 per person.

62. Turning now to feature films, we observe that, generally speaking, people like to see fresh, new films. That is one reason that theaters showing first-run films can charge more than those with later showings. The fact that there are some exceptions to this observation, such as "blockbusters" that are not recent films, does not destroy its general validity. Nor does the fact that Hartford viewers spent about the same amount whether 27 percent or 70 percent of the feature films shown were first subsequent run. The constancy of the amount spent points more to a limitation on the sums a family will spend on a certain kind of recreation rather than to the unimportance of recency. Moreover, the record indicates that the cumulative audience rating for first-subsequent-run films was about 27 percent whereas it was 18 percent for other films. Just as a person wishing a heavyweight fight will not be satisfied with a tennis match, the chances are that generally a person wishing to see a widely advertised, favorable reviewed, new movie will not be satisfied with a substantially older film on free TV. They are both entertainment of the same type, i.e., "films," but there is a difference. It may be noted that although the opponents of STV attempt to minimize the importance of recency, at the same time they attempt to show that films being presented on free television are current.

63. In large part we agree with the proponents of STV who state that under the cost-per-thousand economics of conventional television, current films, such as first-subsequent-run films, cannot be shown on that service, because free TV cannot pay enough to cover production costs and potential box office revenues that would be lost because of the free showing. On the other hand, Zenith and Teco report that after difficulties in program procurement were ironed out, 70 percent of the films exhibited in the Hartford trial in a recent year were first subsequent run (and in roughly the same period Hartford showed 28 of the top 35 films). It may also be recalled that although only 27 percent of the films shown in the first 2 years of the trial were first subsequent run, the rest were, on the average, shown 2 years after theater release.

64. Although the comments of opponents make an effort to show how recent the films on free TV are, there can be no doubt from the data they submit, or from a perusal of TV program schedules, that the average age of the films on free TV is far above the Hartford average. As an example, we refer to the list of films to be shown by networks in prime time during the 1966–67 season which ABC compiled from the July 27, 1966, issue of Variety. Except for two films made expressly for original run on free TV, it consisted of 26 films that were, on the average, to be shown 3½ years after theater release. Moreover, the complete Variety list of films to be shown by networks during the 1966–67 season, from which the ABC list was selected, shows 60 percent of the films to be from 4 to 15 years old. Calculations based on this list show the average age of the films to be about 5½ years. In oral argument, AMST states that the July 26, 1967 Variety lists 130 films to be shown by the networks in prime time during the 1967–68 season and that about 20 percent of them might be shown less than 2 years after theater release. A check made since the end of that season shows that of the films receiving their first TV showing on the networks, about 6 percent, rather than 20 percent, were less than 2 years old. (This may be compared with the 10 percent figure for the 1966–67 season mentioned in paragraph 39.) They were, on the average, presented about 5 years after theater release. (This may be compared with the 5½-year figure for the 1966–67 season mentioned above.) Finally, although not indicative of what the entire season will bring, we note that during the first 6 weeks of the 1968–69 season the average age of the films shown by the networks was about 3¾ years, and about 8 percent were less than 2 years old.

65. A final point should be mentioned with regard to feature films. Opponents suggest that, in pleadings filed about 12 years ago in this proceeding, the Commission was led to believe that STV would supply first-run feature films, but that it has only furnished first-subsequent-run pictures. Zenith and Teco state that although first run films have generally not been made available for STV, if the service were authorized on a nationwide basis they could no doubt be obtained if desired. We would point out that, as indicated in paragraphs 67–68 below, the Commission was of the opinion that claims of both proponents and opponents might not be free of exaggeration and the very purpose of trial operations was to aid in ascertaining where reality lay. The Hartford trial has shown that, at the least, first-subsequent-run films are available. Whether first-run features would be similarly at hand if STV is authorized on a national scale is not controlling at this juncture, since we are convinced that even without their availability the films to be shown on STV constitute a beneficial supplement. This supplement permits the public to have three methods of viewing motion pictures: (1) First or later runs in theaters, (2) first-subsequent or later runs on STV, and (3) later runs on conventional television. If first-run films were made available to STV the same three methods of viewing would still prevail with STV being even more of a beneficial supplement.

66. Several opponents have stated that the Hartford trial has shown that STV has disproved the proponents' statements that STV would diversify television programing. They quote from paragraph 48 of the first report to the effect that proponents "allege that subscriber financed broadcasts could and would provide a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs." Instead of diversity, it is argued, Hartford has shown that most of the programing will be that which appeals to a mass audience—films and sports. Therefore, we are told, since it will not provide the diversity promised, STV should not be authorized.

67. This argument overlooks the context in which the quoted statement was made. Therefore we quote in full paragraphs 48, 49, and 51 of the first report:

48. Insofar as a judgment can be made on the present record the Commission believes that in some respects the claims of proponents and opponents alike are not free from exaggeration. Proponents, for example, have tended to stress the capacity of subscription television to bring to the public new kinds

of programing hitherto unavailable or available on a very limited basis. In support of this argument proponents refer to the incentive to the advertiser to concentrate his support on programs of wide general interest. They allege that subscriber financed broadcasts could and would provide a wider choice to members of the public interested in the fine arts, operas, educational and informative material and other similar kinds of programs.

49. As against this picture of greatly enhanced variety of programs, the opponents insist that the incentive to offer programs of the widest popular appeal would be if anything greater in subscription television. Time availabilities, it is claimed, which could yield substantially greater returns for programs of wider popular appeal would not be sacrificed to any appreciable extent for the transmission of programs which may be expected to attract such smaller audiences.

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51. It is not possible, however, without a demonstration of the service in operation, to determine reliably where the practical realities lie—in the glowing prospects pictured by proponents, with the alarms raised by the opponents, or somewhere between these extremes.

Comments of proponents filed in 1955, and paragraph 50 of the first report not quoted here, make it clear that proponents not only stated that STV would provide wider diversity, but that it might offer sports events not shown on free TV, as well as movies.

68. In view of the foregoing, it may be seen that we expressed an inability to determine where the realities of the matter lay without help from trial operations. We now have the results of the Hartford trial, as well as some information concerning Etobicoke. It would appear, at least at present, that the reality is that the major part of the programing, as opponents had argued, will be of a kind that would appeal to a mass audience. To say this, however, is not to say that it would not be in the public interest to authorize STV for, as indicated above, we believe that such programing does provide a beneficial supplement to present television fare, albeit the diversity promised may not be fully achieved. Since most of STV programing may well be that which appeals to mass audiences, the argument that STV should not be authorized because diversified programing appealing to small audiences is being supplied by noncommercial educational TV stations (and is expected to be supplied by the Corporation for Public Broadcasting) loses cial educational TV stations (and is weight. To the extent that STV does provide such programing, it may well provide a healthy stimulus to improve the quality of that material televised in both services.

69. It is difficult at this stage to arrive at any definite conclusions about the cultural or educational type of programing that was to make for diversification. Hartford did offer some. So did Etobicoke. Audience response was not great, but there was a response. On a national scale, total audiences would be greater. Zenith and Teco state that the limitations of the trial prevented more such programing. Larger audiences might permit it. The Joint Committee says that RKO promised the Commission that it was prepared to lose up to $10 million on the trial. It lost money, but not that much. The Joint Committee argues that had it spent and lost more, as it promised it was willing to do, it might have provided the Commission with more information about such programing. This is obviously an area where we know little. In any event, the rules we adopt today adjust to the reality of the situation—the expected predominance of films and sports—but provide assurance of programing for other tastes as well by establishing a maximum percentage of STV hours on the air that may be devoted to films and sports.

Whether STV would provide an increase in financial resources which would facilitate significant increases in the numbers of services available to the public under the present system—The degree of acceptance and support which STV might be able to obtain from members of the public in a position to make a free choice. 70. These two categories are discussed together because they are so closely intertwined. Zenith and Teco give business projections based on the Hartford experience which indicate that an over-the-air STV operation would break even with 20,000 subscribers. They then assume what they characterize as a conservative estimate that 10 percent of the TV households in a community would subscribe to STV. Under these assumptions, the top 91 markets would have sufficient TV homes to support viable STV operations. From this they argue that STV has a reasonable potential of supporting 91 more stations in addition to those already in operation, and that, depending on the market place, it might do even more than that. Thus STV would facilitate increases in the number of services to the public. Whether STV could provide an increase in financial resources depends, of course, not only on the validity of the assumptions that went into the preparation of the business projections that suggest a 20,000 subscriber break-even point, but also on whether public support would be such as to produce more than 20,000 subscribers in various communities. We turn first to the business projections.

71. *Business projections based on Hartford Trial Information.* Although the Hartford trial lost over three and a half million dollars in the first 3 years of operation, Zenith and Teco remind us that RKO mentioned at the hearing prior to the grant of the trial authorization that even under the best conditions it expected to lose more than a million dollars. They aver that the objectives of the trial were to obtain operating experience and that in this respect it was a success. Thanks to the trial, they say, for the first time reliable data are at hand from which reasonable business projections may be made about the potential of STV to provide an increase in financial and program resources which would facilitate significant increases in the numbers of services available to the public.

72. The Zenith-Teco business projections were summarized in paragraphs 10 and 11 of Appendix A of the further notice. That appendix is attached hereto as Appendix B. The assumptions used in preparation of the projections are stated briefly in paragraph 11 thereof and will not be repeated here.

73. Opponents variously criticize those assumptions. Thus, for example, it is said that the projections assume payments of $65 per year per subscriber for program charges, but that at Hartford the average for the first year was $67.47 and it fell to $56.84 the second year, so that the figure of $65 is not based on the trial data.

74. It is also argued that if STV pays only 35 percent of total subscriber program expenditures for payment to program suppliers (this is the figure assumed in the projections; the percentage was slightly higher at Hartford) it will obtain little more than the programing that was obtained for Hartford which produced less than 1-percent penetration rather than 10 percent or more. Quality films, we are informed, can command as much as 90 percent for a first-run showing in New York or Los Angeles, and often obtain as much as 50 percent or more for first subsequent run. Closed-circuit television in theaters can expect to pay 50 percent to 60 percent of the gross, it is said.

75. Other arguments are that in calculating the projections, the turnover rate (the number of subscriber homes disconnected as a percent of the average number of subscriber homes) is taken to be 20 percent, but it was higher at Hartford; and that the assumption of payments of $300,000 to $400,000 per year for station time is too low.

76. *Penetration.* As to penetration of STV, opponents state the following: The so-called conservative assumption of 10 percent has no basis in fact. At Hartford the penetration was less than 0.75 percent of the TV homes in the market. If the trial is to be used as the basis of projection then one should assume not more than roughly 1-percent penetration. Using that figure, STV would be viable in only the top four markets and not in 91.[31]

77. In addition, the following is argued: The revenues of the projection include not only program charges of $65 per year per subscriber, but weekly decoder rental charges of 75 cents that come to $39 per year, for a total of $105 per year. According to the most recent Department of Labor statistics, the average family spends only $27.67 per year on all spectator admissions, yet Zenith and Teco expect them to quadruple that amount for box office admissions and spend the entire amount on STV. There is no empirical basis in fact for expecting this to happen, and the trial results show that only 0.75 percent might do so, which is a far cry from 10 percent. Thus the

[31] It is also urged that the high turnover rate at Hartford shows subscriber dissatisfaction and is significant in showing that STV lacks ability to attract sufficient subscribers.

revenues are overstated insofar as they purport to be based on the Hartford data.

78. *Channel allocations and station growth.* Zenith and Teco present their projections and penetration material against a background of information concerning channel allocations and station growth in order to show that STV would provide an increase in financial and program resources for the nation's competitive television system. They briefly mention the activity of the Commission in allocating television channels throughout the country on the basis of priorities designed to provide the setting for a national competitive television system. But they emphasize that establishing stations using the allocated channels is the province of private enterprise. Figures are presented to show the number of television broadcast licensees and the number of permittees as of January 1, 1964 (shortly before they filed their joint petition for further rule making), and the number of idle channels. In addition, information is given about television stations that went off the air and construction permits for TV stations that were surrendered or canceled between the lifting of the freeze in 1952 and January 1, 1964. Zenith and Teco also point to the Commission's sponsorship of the all-channel law as another example of what the Commission has done to develop the television system. They then conclude that the Commission has perhaps done all it can to achieve a nationwide television system and foster UHF except for promoting economic support and program sources through the authorization of STV.

79. Responsive to the foregoing, the Joint Committee points out that the Zenith-Teco figures stop at January 1, 1964, but that between that date and September 29, 1966, the number of commercial UHF stations increased from 88 to 115 and the number of VHF stations, from 476 to 490. Also, during that period the number of UHF construction permits increased from 61 to 139. This UHF growth, it is suggested, was brought about by the fact that the UHF problem was caused by the lack of set conversion, a situation that was corrected by the all-channel law without the aid of STV.

80. *Necessary showing for establishment of new service.* In their reply comments and elsewhere in the record [32] Zenith and Teco place stress on the question of what sort of showing is necessary in order for the Commission to establish a new service. They say that opponents hold that the Hartford trial did not supply enough information to permit valid projections of viability of STV, and that without absolute proof the Commission cannot establish a new service or otherwise encourage the larger and more effective use of radio because it would result in waste of spectrum space. Opponents also say that without a showing of demand or need, use of broadcast channels for STV is not justified. Zenith and Teco, while not conceding that there is no demand, maintain that nothing in the Act indicates that establishment of a new service must be preceded by absolute proof that it will be viable, and that authorizing a new service does not require evidence of a widespread public demand. Such proof, they say, was not made when the Commission allocated for UHF in 1952 or when it reserved channels for educational TV in 1952; and there was no great demand for FM or TV services when they were commenced. The Hartford trial, they state, provided useful information on which to make projections. Citing American Airlines, Inc. v. Civil Aeronautics Board, 192 F. 2d 417 (C.A.D.C., 1951), they argue that the Commission, in encouraging and developing new broadcast service in the public interest, should consider not only present facts but estimates of the future. Along the same line, in response to the argument that the 10 percent penetration figure is too optimistic, Telemeter states in its reply comments that one of the opponents of STV (NAB) misjudged the future of commercial television when it was beginning, but that service grew from 8,500 TV homes to 94 percent of all homes in the Nation.

81. *Conclusions.* We agree with the views of Zenith and Teco expressed in the preceding paragraph. We observe that the results of a single trial cannot be projected into the future to indicate with complete accuracy the nature of a new service. However, a trial can, and the Hartford trial did, supply us with information that does afford a projective basis with some attachment to reality as opposed to mere conjecture that existed before. We recognize that there are some weaknesses in the assumptions underlying the Hartford business projections, but do not consider them to be overriding. For example, the estimated $65 figure for program revenue per year per subscriber is slightly higher than the Hartford experience. However, in making the projections, Zenith and Teco state that it only approximates the average program expenditure of the Hartford subscriber. They also point out that with nationwide STV more, and in some respects better, program product might be available and it is not unreasonable to expect that subscribers might spend more on programs because of this. In any event, even if the $65 figure were shaved by a few dollars to make it correspond exactly to the average Hartford expenditure, it would only result in a relatively minor change in the projections.

82. Nor, for example, do we gainsay the validity of the fact that the projections assumed a revenue of about $105 per year per subscriber for STV alone, whereas the average family spends only $27.67 per year on all spectator admissions. However, the fact remains that the average subscriber at Hartford did spend close to $65 per year for programs and, with discounts, did pay a weekly decoder rental fee. To say that the average family spends $27.67 is not to say that no families spend more than that amount, for it is the nature of an average that many lie above it and many below. Unfortunately, we have not been told what percentage of American families spend far above the average. Nor do we have information about the possibility that expenditures for STV might come out of a nonrecreational part of the budget as has apparently been the case with amounts paid for purchase of television sets.

83. Concerning the argument that the estimate of payments of $300,000 to $400,000 per year for use of station time for broadcasting of STV programs is too low, we would point out that even in the largest markets some TV stations charge rates comparable to those of the larger radio stations in the area. This indicates that the figure of $300,000 to $400,000 is not unreasonable.

84. As to the argument that the high turnover rate shows public dissatisfaction with STV and that the public will not support it, we conclude that not enough is now known about the causes of turnover to permit drawing valid conclusions. We agree that, based on the experience of telephone companies, Zenith and Teco assume too low a turnover rate. However, we have no reason at this time to believe that with STV authorized on a nationwide basis this factor would be of such magnitude as to result in insufficient support of STV. In any event, the rule we adopt today provides for lease rather than purchase of decoders by subscribers, and thus provides protection to subscribers who may wish to withdraw.

85. As to the estimate that program costs would run about 35 percent of program revenues, it is said that unless STV spends more than that for quality product it will not achieve a better penetration than it did in Hartford and it will fail; and that quality product sometimes costs more. Yet we are not told how much quality product there is that costs more, or how much more it costs other than that "it will bring as high as 90 percent for first-run exhibition in New York or Los Angeles," or that it often obtains as much as 50 percent or more for first-subsequent-run and that closed circuit television in theaters can expect to pay 50 percent to 60 percent of the gross. We believe that the question of what programs STV can obtain and how attractive they will be to how many people cannot be answered with any great degree of certainty. It is conceivable, for example, that a nationwide STV system, even if only moderately successful, could provide an audience sufficiently large to make payments of 35 percent of program revenues very attractive to suppliers of quality product. In fact, with larger audiences, suppliers might be willing to charge lower percentages. Moreover, there is the possibility that if more than 35 percent had to be paid to obtain quality programs, STV operators could charge more for the better product. In any event, the question of STV penetration and what it might take to obtain greater penetration is one about which there can only be speculation at this stage. At worst, using a 1 percent penetration, and accepting the

[32] "Reply to Opposition by Joint Committee Against Toll TV to Joint Petition for Further Rule Making," filed July 29, 1965.

other assumptions of the projections, presumably STV could be viable in the top four markets (New York, Los Angeles, Chicago, Philadelphia). At best, it would be successful in many more. Having decided that STV can provide a beneficial supplement to present TV programing, we are content to let this aspect work itself out in actual operations under our new rules and under a requirement (as a matter of policy) that applicants for STV authorizations make a showing that they have the financial capacity to operate for at least a year.

86. Although not previously mentioned, we here note with regard to the matter of potential penetration of STV that it has been argued that STV would be something which only the very wealthy could afford. Zenith and Teco provide the following table, based on the Hartford trial, controverting this:

Income levels	4,633 Hartford subscribers		
	Proportion of total U.S. families [1]	Proportion of total subscribers	Average weekly program expenditure
	Percent	*Percent*	
0–$3,999	29.1	1.5	$0.00
$4,000–$6,999	32.5	40.8	1.25
$7,000–$9,999	21.0	43.3	1.23
$10,000 and over	17.7	14.4	1.18
Totals (rounded)	100.0	100.0	[2] 1.22

[1] Statistical abstract of the United States 1964, Table No. 457, p. 338.
[2] Average.

It would appear, if the trial is any indication, that STV would appeal especially to the more than 50 percent of the population in the middle-income groups, and not mainly to the upper-income level which includes only about 18 percent of the population. As to the 30 percent of the population in the lower income category, Zenith and Teco state that an annual income of $3,000 has been called a "poverty" income and that therefore many of those in the less than $4,000 bracket in the table might not be able to afford other than basic necessities; and some might not even be able to afford TV sets, let alone STV.

87. STV opponents contend that 30 percent of the Nation would appear to be unable to afford STV and that therefore authorizing such a service would not be in the public interest, for it would divide viewers along economic lines. It would deprive the poor, we are told, of access to the broadcast channels used by STV stations. Moreover, it urged, it would leave them a smaller choice of free TV stations to view and on those stations the programing would be degraded because of siphoning of programs from free TV to STV (see note 34 infra). Assuming that the figures of the trial would carry over into permanent STV so that this economic group in fact could not subscribe, we still do not find these arguments persuasive. Among other things, we observe that under the rules which we adopt (STV permitted only in communities with signals from five or more stations, and on only one station in any such community) all those the lower-income group who own TV sets will be able to continue to see ample amounts of free TV programing, while at the same time a substantial portion of the population (70 percent) will be given the opportunity to view STV if it so desires. We believe it in the public interest to afford such a large segment of the population the beneficial supplement of STV programing and concomitant advantages of monetary savings and convenience that group viewing of an STV set affords. We have in mind, for example, the viewing of STV films by a family for a single charge, without the expense of parking, or babysitters. As for the argument that remaining free TV program fare would be degraded because of siphoning, we are adopting rules today which we believe will prevent siphoning that would be seriously detrimental to free TV, and which could quite possibly improve free TV programing through healthy competition.

88. Opponents argue that, in a five-station community, permitting one station to engage in STV means that viewers in that community are deprived of free programing which they could have seen on the station had it not been broadcasting subscription programing. This overlooks the fact that some STV operations may well be on new stations which but for the STV authorization would not have gone on the air. Since the rules we adopt will require all STV stations to show some free programing, this means that the new STV station would add to the total amount of free programing available to the market. In addition to new stations, it is not unlikely that stations seeking STV authorizations may be those which are having financial difficulties operating as conventional TV stations. Such stations may well have had a type of programing that families might not have been inclined to watch and which was viewed by them very little.

89. Finally, we are gratified that the all-channel law is apparently acting as a stimulus to UHF development, for this was our hope when we sponsored it.[33] However, our commitment to aid UHF is not limited to that law, and it is well known that our continuing policy is to foster UHF development. We are pursuing many paths toward that end, and to the extent that STV may act as a stimulus, we will pursue that path as well. One opponent has argued that the financial resources of STV would not be used to strengthen free TV on the same station that carried on STV operations, but that they would be used to strengthen STV since STV and free TV would compete with each other, and that this would impair rather than promote the capacity of such stations to yield an expanding service envisioned by the all-channel law. As with other aspects of this or any other new service, this cannot be known until the actual operations commence. However, we note that our new rules require that STV stations carry at least the minimum of conventional service specified by our present rules.

Whether STV would seriously impair the capacity of the present system to continue to provide advertiser-financed programing of the present or foreseeable quantity, free of direct charge to the public. The closely related question of whether STV would result in significant audience diversion from conventional television and siphoning of programs and talent away from free television into STV service. 90. With regard to the matter of impact of STV on free TV and the related subject of siphoning, we stated in the further notice (par. 16):

> In our judgment, our consideration of subscription television should proceed with due regard both for its potential benefits and disadvantages and for the inherent strengths and advantages of the existing system. That subscription television on a nationwide scale can be effectively integrated into a total TV system, with advantages to the viewing audience, appears to be a reasonably sound conclusion at this point. While * * * there may be some impact on free TV, we do not believe that this is in itself necessarily bad or that it need occur to a degree contrary to the public interest particularly if safeguards such as those previously mentioned are adopted. Our concern, as it must be, is with the overall public interest and not with protection of any existing service as such. It may well be that competition between conventional and subscription TV for viewing audience and program material may result in improved and more varied fare, both for subscription viewers and those who continue to rely on conventional television. But we also emphasize that we regard the preservation of conventional television service and the continued availability of good program material to the free service as extremely important considerations * * *.

91. We also stated in the further notice (pars. 13–14) that although no final conclusions could be drawn from the Hartford trial about the extent to which STV would divert audience from conventional TV, the trial data suggest that such diversion would not be destructive of the latter service. In connection with that statement we adverted to the fact that the average Hartford STV audience at any particular time was 5.5 percent of the subscribers, and that the number of subscribers was less than 1 percent of the net weekly circulation of the market. We stated that even with 10 percent penetration and 10 percent average subscription audience (as compared with the 5.5 percent of the trial), the average STV audience in prime viewing time would only be 1 percent of all the TV homes in the United States. This diversion and whatever effect on revenues it might have we felt would not seriously impair the free TV service.

92. We went on to say that conceivably the audience diversion might be substantially greater if STV should re-

[33] U.S. Census reports that in June 1967, 94.1 percent of households had TV sets and 42.1 percent of households had sets equipped for UHF reception. (Current Housing Reports, Series H–121, No. 14, January 1968.)

sult in "siphoning" [34] of programs and talent from free TV to STV. And, aside from audience diversion, should siphoning occur, we stated, it could make free TV a less rich and varied medium for those continuing to view it. Because we found it difficult, on the basis of the Hartford or any other information, to arrive at conclusions about siphoning, we invited comments on the extent to which it might be likely to occur and on what rules or policies, if any, should be adopted to prevent it from occurring to a degree contrary to the public interest. Paragraph 14 mentioned and invited comments on possible regulative approaches to the problem—the safeguards mentioned in the quotation in paragraph 90 above.[35]

93. *Comments of proponents of STV.* Comments received are summarized in this and the succeeding paragraphs.[36] They are followed by material submitted in oral argument, and then by our conclusions. Zenith and Teco, incorporating by reference previously submitted material, state that audience siphoning would be minimal because the average subscriber at Hartford has an STV viewing time of approximately 2 hours per week as compared to the average U.S. free TV viewing of about 38 hours per week. This is about 5 percent of the hours the public now views free TV. If every home were to become an STV home, which is unlikely, there would thus be a loss of 5 percent of viewing time to STV. But if 10 percent penetration of STV were achieved, the loss would be one-half of 1 percent. Moreover, since even in prime time between 35 and 50 percent of TV homes do not use their sets, some of those viewing STV might be those whose sets would otherwise have been dark so that their viewing would be additive rather than subtractive. They also demonstrate the minimal audience siphoning effect by stating that the average STV audience at any particular time was 5.5 percent of the subscribers. Thus even if there were 100 percent penetration by STV, only 5.5 percent of the subscribers would be diverted at any given time, leaving 94.5 percent of TV homes available to watch free TV.

94. Concerning preempting of time now used by free TV, it is stated that WHCT at Hartford broadcasts an average of 30 hours per week of subscription programing and that, because of the limitation on the number of box office programs and the size of the recreational budget of families, that number is unlikely to vary in other STV operations.[37] Since typical TV stations broadcast about 115 or 120 hours per week, in a multiple-station market of three or more stations STV could not absorb more than 10 percent to 15 percent of the total broadcast time available. Moreover, it is argued, because conventional TV stations affiliated with networks probably would not wish to desert profitable operations by giving up network programing for STV programing, it is likely STV will have to support the establishment of new stations if it is to get off the ground. New stations would not siphon time that would otherwise be available to free TV. They would add to the total amount of time.

95. As to program siphoning, Zenith and Teco inform us that none of the programs shown at Hartford were available on free TV. With regard to talent siphoning, they remind us that stars, producers, directors, and writers often work for more than one medium and there is no more reason to assume that STV will siphon talent than there is to suppose that the motion picture industry would do so, since for much of its programing STV merely would substitute for the motion picture theater. They contend that STV will not siphon programs or talent from free TV and that the two services will not bid for the same product. In any event, they aver, the economic resources of STV are dwarfed by those of the networks, so that STV could not outbid them. In support of these views they state the following:

> The fear that subscription television could outbid conventional television for programing also reflects a basic misconception concerning the fundamental economics of subscription television. Expensive box office programs—such as 10-million dollar current feature-length motion pictures—can admittedly be shown on subscription television long before conventional television. But the reason is not that subscription will necessarily have more money available for program procurement than conventional television. The reason lies primarily in the distribution structure which results from the efforts of product owners to maximize their profits from each production.
>
> Thus, conventional television programing usually has only one source of economic support—the advertising sponsor. The extent of the sponsor's support is controlled by the cost-per-thousand economics of advertising. On the other hand, box office attractions have several sources of economic support, which include revenue derived from theater release, both domestic and worldwide, in addition to revenue derived from later use on conventional television. Subscription exhibition can be combined with simultaneous theater release and add to the box office revenue of program producers and distributors without reducing the further revenue ultimately obtainable from conventional television. The combined amount of these box office revenues will ordinarily exceed what sponsors can pay for a single conventional television release. Yet the combined box office releases exhaust the residual value of the film to a lesser extent than a single showing on conventional television. In short, subscription television and theater box office release can profitably be permitted simultaneously, whereas release to conventional television must be deferred in the interest of maximizing profits over the life of the production.
>
> Aside from the erroneous presumption that subscription television and conventional television would often be simultaneously seeking the same product, it is a matter of simple business arithmetic that subscription television will not be in a position to outbid conventional television for program product. Thus, in Hartford the average subscriber has been willing to spend approximately $65 a year for subscription programing; and, on the basis of numerous market studies made by Zenith, Teco and others, this appears to be the approximate portion of the public's recreational budget that it is willing to spend on subscription programs. Of this $65 annual program income, approximately 35 percent (or $22.75) is available for program procurement, with the remaining 65 percent required to support the television station and the subscription system.
>
> For purposes of nationwide projection, the Commission in its further notice has estimated, on the basis of the Hartford trial, that a 10 percent nationwide penetration of television homes would be a relatively optimistic figure in the foreseeable future. A 10 percent nationwide penetration would amount approximately to 5.5 million subscribers. Five-and-a-half million subscribers spending $65 each per year, of which $22.75 would be available for program procurement, would make available $125,125,000 for subscription programs. This amount is dwarfed by current network expenditures for programing. Thus, in 1965 (latest figures available), the networks and their O&O's spent $686,752,000 and the total broadcast industry spent $953,251,000 on conventional programing. In short, with a 10 percent nationwide penetration, subscription would have available for program procurement less than one-fourth of the amount spent by the entire television industry for programing in 1964. Stated otherwise, subscription would have to achieve approximately a 70 percent nationwide penetration of television homes to have an amount available for program procurement which would even approximate the amount already being spent by the television industry for conventional programing. Thus, the fear that subscription could win in a

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[34] A matter of key importance is the possibility of diversion of talent and programs from free TV to STV, a process often called "siphoning."

[35] The pertinent portion of paragraph 14 is as follows:

"It is difficult, on the basis of the Hartford trial or any other information which we have, to arrive at well-founded conclusions concerning siphoning of programs or talent. We invite comments on the extent to which such developments are likely to occur, and what rules or policies, if any, should be adopted to prevent them from occurring to a degree contrary to the public interest. For example, such regulations might include (1) rules preventing or limiting interconnection of pay TV operations by microwave or otherwise, (2) rules prohibiting a system manufacturer or franchise-holder (who might hold franchises in numerous markets) from engaging in subscription program procurement and supply, which could be made the responsibility of the individual licensee, or (3) rules to assure that subscription television entrepreneurs do not unreasonably contract with performers in such a way as to prevent or discourage their appearing on conventional television. Another possible approach to this question, urged by Zenith and Teco, is that subscription television be limited to kinds of programs not presently available in substantial amounts on conventional TV. This is discussed in paragraphs 41–42 below. We anticipate that, if subscription TV operations are authorized, the licensee thereof will be expected to furnish the Commission, on a continuing basis, with information as to number of subscribers, per-subscriber expenditures, and programs presented so that we may be periodically informed as to the factors bearing on their potential for siphoning programs or talent from conventional television."

[36] Many of the arguments made in the comments have been previously made in earlier stages of this proceeding.

[37] Zenith and Teco state that because of these limitations a total of about 30 hours of STV programing is all that can be absorbed in any market regardless of the number of STV stations therein.

bidding contest with conventional television is simply not realistic.

96. To the often made argument that STV would siphon from free TV the programs that have high ratings and make the public pay for them, Zenith and Teco say that the Hartford experience shows that even for box office programs the public is selective. Thus the cumulative audience rating for first-subsequent-run films was about 27 percent but for older films it was 18 percent. Therefore, they argue, it is unreasonable to assume that the public would pay to see the type of program now available on free TV, especially when programs of that type could be seen on some other station free. Even with the 40 top-rated programs on free TV during the Fall season of 1964, according to the Nielsen rating, an average of 76 percent of the viewers did not watch them.

97. To the contention that STV would siphon all major sports, they state that even with an STV penetration of 20 percent in the top 175 markets, at an average yearly subscriber program expenditure of $65, there would be $650 million in program revenues. Assuming that 35 percent of this amount would be available for program procurement, there would be $227,500,000 for all STV programing. Citing figures for relative amounts of spending by the public for movies, plays, sports, and other entertainment, assuming that these figures will apply to STV spending, and allocating a proportionate amount for program purchases accordingly, about $32 million would be available for sports programs. This figure they point out is about 60 percent of the sum of approximately $50 million that free TV spends for some, but not all, of the sports programs seen on conventional TV. This reflects the relative abilities of STV and free TV to acquire sports programing. They state that with the money available, the major contribution of STV to sports programing would be that of carrying heavyweight championship fights and blacked-out games (see note 30 supra).

98. Finally, to the argument that STV would siphon all present network conventional programing from free TV, they state that there are just too many such programs to permit them to be absorbed by the public's recreational budget at a rate higher than sponsors will pay for their showing on free TV.

99. Other proponents of STV also present their positions in this area. Telemeter says that STV will not siphon but will show programs not now available to free TV. Teleglobe says that free TV is a giant and can't be hurt, its revenues having increased from $324 million in 1952 to about $2 billion in 1965. With 10 percent penetration, STV revenues would only be about $500 million a year. Jerrold says that phonograph records and tape recordings have not driven radio out of business or decreased quality of radio programing, nor have motion pictures become extinct because of TV. Actually, in Jerrold's view, pictures have improved because of the competition of television. Competition, it is said, should be assumed beneficial until a contrary showing is made and the Government should not inhibit competition for the sake of preferring one kind of communications over another. Acorn says that if STV programing is good enough it is conceivable that free TV would try to siphon it away—a siphoning in reverse.

100. *Comments of opponents of STV.* Concerning the matter of audience siphoning, the Joint Committee says that the trial gives no information because with an average of 5.5 percent of subscribers watching STV at any one time, only 267 persons (5.5 percent of 4,851) would be watching, and in a market with a net weekly circulation of 800,000 there would be little audience siphoning effect; and besides such an STV operation would not long survive. However, they argue, proponents foresee a 10 percent to a 50 percent penetration for STV. With such penetration in Hartford it would mean anywhere from 80,000 to 400,000 subscribers for that market. But if programing of a quantity and quality were available to attract that many subscribers, i.e., to establish a successful STV operation, what would the average viewing time be? Hartford provides no information about that. The Joint Committee points out that the Liston-Clay fight attracted 82.6 percent of the subscribers. With 80,000 to 400,000 subscribers, they state, this would have had a disastrous impact on free TV on the night of the fight. AMST says that although Zenith and Teco allege that audience siphoning would amount to only one-half of 1 percent of the audience available to free TV, by far the greatest part of STV programing would be shown at peak viewing hours and it would therefore have a critical impact at the very time that free TV generates its largest advertising revenues which sustain programing in less profitable periods of the day. Free TV relies on low cost-per-listener economics and would be vulnerable to audience losses. Moreover, AMST urges, the success of STV depends on its ability to penetrate the largest markets, as well as the smaller ones, and the destructive impact of STV through the larger markets would strike at the heart of free TV.

101. Preempting by STV of time now used for free TV is a matter toward which ABC, NAB and the Joint Committee direct remarks. The latter party states that the allegation of Zenith-Teco that there would be 30–40 hours of STV programing per week in any market and that this would still leave ample time for free TV overlooks the facts that the 30–40 hours are in prime time and that Zenith-Teco do not propose to limit STV to multiple station markets. The Joint Committee also questions the assumption of a 30–40 hour limitation of STV programing—a limitation based on the restricted amount of box office programing and limitations in the family recreational budget. NAB points out that Zenith and Teco have said that stations would be predominantly STV or free TV because of such factors as prime time demands by both types of programing. If a station has STV programs on the air, the time is taken away from nonsubscribers. In most markets, even the use of one station for STV would seriously restrict the public choice among programs. The concern of ABC about time preempting is expressed somewhat differently. It states that the Commission, recognizing the number of free TV hours would be reduced to some degree by STV, has proposed a limitation on the number of hours of STV broadcasting. In spite of this, it is stated, hours of free TV will be lost. There are relatively few markets with four or more stations where the loss would be less noticeable. To the extent that existing network affiliates use prime time for STV programs, network clearances could be severely compromised. This could be especially serious for ABC, which has the fewest number of primary affiliates and therefore has a greater problem in obtaining clearances for its programs. Failure of a significant number of stations to clear a program could badly hurt ABC's position in satisfying advertiser requirements, especially if the lack of clearances occurred in some of ABC's key markets. It could spell the difference between the retention or dropping of a program. Nor do delayed clearances help, because research has shown that programs cleared on a delayed basis frequently do not have sufficient audience to make them economically viable. Finally, ABC argues, the demand for station time of competing sources of entertainment which results in nonclearance of network programs frequently leads stations to drop network public affairs and other public service programs. Preempting of station time by STV programing would do this.

102. Several opponents state that the Hartford trial failed to give information about program siphoning. For example, ABC says this is because it was such a small operation that there wasn't even a remote possibility that it could compete for the most popular programs of network television that are sold nationally. CBS says that since the Hartford trial was limited to 5,000 subscribers, rather than 50,000 it originally contemplated as a maximum, meaningful conclusions on program diversion cannot be made. However, it is said, the trial established that STV and free TV rely on the same program sources, and if the Hartford business projections are correct, STV would have financial resources to siphon significant amounts of quality programing from free TV. Owners of box office programs now on free TV would invite offers from both STV and free TV.

103. The latter point—that STV and free TV would compete for the same programs—is made by many opponents. It is variously argued that STV would cater to the same general audience tastes as free TV since the trial at Hartford showed that most of the programing would consist of mass circulation entertainment (movies and sports); that STV would siphon off most of the popular free TV programs with a devastating effect on the latter service; that siphoning of top shows would result in news and public service programing (which involve

substantial losses) vanishing from free TV because of loss of financial earnings from the lost shows; that a showing of a program on STV dilutes the potential free TV audience and vice versa; that although talent, absent any contractual limitation, could work for STV and free TV, it cannot do so at the same time; that if the talent is a performer he might suffer the same problem of audience dilution as movies; that STV would bid away selective mass appeal programs such as the World Series and professional football games since those involved would have a choice of whether to use STV or free TV; and that in addition to siphoning the most popular free TV programing STV would siphon other programs as well as producers, writers, and directors of entire serials and specials.

104. Both ABC and CBS discuss selective program siphoning. ABC says that CBS is paying $19 million for the right to show the NFL football games and that it appears that this is near the limit of what free TV can pay. It states that although it is difficult to estimate what STV penetration would be nationally, if only 15 million sets were tuned in to professional football games at a cost of $1 for each game, over a 14-game season revenues of $210 million would be obtained—an amount which dwarfs the $19 million that CBS pays. Thus it is implied that STV could outbid free TV for such games.

105. Although questioning some of the reasoning of Zenith and Teco underlying the assumption that about $32 million would be available to STV for procurement of sports events (if there were 20 percent penetration in the top 175 markets), CBS says that even assuming that figure, the Zenith-Teco statement that free TV spends about $50 million for selected sports events so that STV could presumably not outbid free TV for them is not correct. CBS maintains that STV could concentrate its programing dollars on the lion's share of the major events and thereby siphon them from free TV.

106. Finally, ABC argues that there is no effective protection against siphoning. It states that if STV is authorized on a nationwide basis and siphoning then develops, the immense capital investments and the establishment of viewing patterns will make it difficult, if not impossible, for the Commission to take effective regulatory action. ABC says that it was this sort of consideration that led it to urge the Commission to assert jurisdiction over CATV. As to taking action now to prevent siphoning by Commission rule, it is asserted that the limitation of STV programing to box office attractions is impractical, and in any event would raise section 326 and First Amendment problems.

107. *Reply comments of proponents.* Zenith and Teco reply to comments of STV opponents on siphoning as follows: The Joint Committee argues that even though talent might continue to work for free TV and STV, it could not do so at the same time. This completely overlooks the fact that programs may be taped or filmed so that the artist need not perform the impossible task of being in two places at the same time. Recently (citing an example), the same artist appeared on CBS and NBC simultaneously. The argument that if talent appears on both STV and free TV it might dilute its conventional TV audience by self-competition (i.e., by siphoning part of its free TV audience to STV) is poppycock.

108. They advert to the example of ABC which stated that if 15 million STV sets were tuned in to NFL football games at a cost of $1 per television household, then over a season of 14 games $210 million would be generated so that STV could siphon the games from free TV because the latter medium can only afford to pay $19 million for them. To this they reply: The ratings of AFL and NFL football games have averaged between 10 and 14. Therefore, if STV could achieve the same rating by levying a charge as was obtained when the programs were shown free, STV would need a penetration of 100 to 150 million subscribers in order to obtain revenues of $15 million per week. But there are only about 55 million sets in the country. It is more reasonable to assume a 10 percent STV penetration which would result in about 5½ million subscribers. At $1 per game and with a rating of 10, STV would obtain $550,000 per week or $7,700,000 for the 14-week NFL season—an amount far less than that which CBS pays for the games.

109. As to the Joint Committee's questioning of limitations in the family budget that would serve as a brake on preempting of time, the Joint Committee had stated that this limitation was incapable of measurement. Zenith and Teco reply: It is measurable and was measured at Hartford. Thus, during the first 2 years of the trial only 27 percent of the feature films shown were first subsequent run. Between October 1, 1965, and September 30, 1966, 70 percent were first subsequent run. However, the average weekly expenditure of subscribers was about $1.20 in both situations. Therefore, even with improved programing the amount remains fairly constant and this is proof that there is a family budget limitation.

110. In response to arguments that the trial was too small to give information about siphoning they state that the sample of 5,000 subscribers at Hartford is about five times larger than the Nielsen sample for the whole country on which free TV so heavily relies. It is averred that it gave the data on which estimates of potential may reliably be drawn.

111. Zenith and Teco urge that contrary to hurting free TV by program siphoning, STV may well help free TV because by helping to increase the total box office returns (by adding to the theater returns) it will make for a larger total box office revenue and this in turn will make for the production of more and better quality feature films. They state that this will help free TV because although that service is apparently placing more reliance on feature films, the fact is that the source is drying up. The stimulus that STV will give to motion picture production will, according to them, help to alleviate the situation.

112. Finally, they observe that the Commission stated that if nationwide STV were authorized it would require STV licensees to furnish it with continuing information so that it might take steps to control siphoning if it should appear to be developing. (Supra note 35.)

113. Telemeter also voices the argument that STV will stimulate more and better motion pictures by increasing box office revenues. It points to the fact that only a small percentage of the population sees any particular film (see par. 53 supra) in the theater, and home viewing of current films would add to this number. In addition, it states, millions will still wait for the film to be shown eventually on free TV. Hartford and Etobicoke, Telemeter urges, show that STV and free TV can exist side by side with the latter taking up the interest and attention of viewers 95 percent of the time. STV will be a supplement to the more extensive free programing.

114. *Reply comments of opponents.* The reply comments of opponents generally do not direct themselves to specific points concerning siphoning, but generally reiterate previous arguments. The most emphatic voice is perhaps that of ABC which emphasizes that it is erroneous to argue that the public will not pay for what it can see free. There are many programs—films, World Series, professional football games—that would command a price if not available on free TV. Thus, ABC argues, if such programs were siphoned to STV, it would not be a question of paying versus seeing the program free, it would be a question of paying or not seeing the program at all.

115. *Oral argument.* In oral argument, many arguments concerning audience diversion, preempting of time, and program and talent siphoning are presented that were either previously made in this proceeding or made in slightly different form. Some are conjectural. Some exaggerate, misconstrue, quote out of context, or overlook parts of the proposed fourth report and order drafted by the Subscription Television Committee. Such material is not repeated here. Several points, however, should be mentioned.

116. First, opponents urge that to permit STV under the rules proposed by the Subscription Television Committee (limiting STC to five-station communities and to only one station per community) would have an adverse impact on conventional UHF television stations. Thus, for example, the Joint Committee says that in cities with four stations with three of them network affiliated, the independent station can count on only a small fraction of the audience. Hence, it is urged, the affiliated stations, since they have the majority of the viewers, might be able to withstand the audience diversion of STV, but the independent station (which they appear to indicate might well be a UHF station), with its much smaller audience, would be more seriously affected. They then go on to say that it was just such a harmful effect on

UHF stations which formed the basis for adoption of CATV rules pertaining to the importation of distant signals to the larger markets.

117. Second, AMST refers to the rule proposed by the Subscription Television Committee that would have permitted feature films to be presented on STV only if shown within less than 2 years after their theater release, or after more than 10 years. They state, relying on a Variety (July 26, 1967) listing of feature films to be shown by the three networks during the 1967–68 season, that under such a rule about 20 percent of the films listed would be available for STV because less than 2 years of age, and about 12 percent would be available to STV because they were more than 10 years old. This, they say, means that "given the potential revenues of STV, STV could consistently outbid free television in the competition" for such films. They argue that the proposed rules would thus permit about one third of the feature films available to free TV to be siphoned to STV.

118. Third, AMST gives a rather detailed argument attempting to show that STV could generate enough revenues to have an adverse impact on free TV. Briefly, the argument holds that "while there is no present public interest in or demand for STV, once established it would create and generate its own demand by siphoning programs that were available free of charge and 'snowball' until it destroys free television." It is averred that STV could start this snowballing even "with relatively little penetration" at the beginning for the following reasons: The national average station rate for prime time is $3 per minute per 1,000 homes. Thus, a program an hour in length delivering 100,000 homes and having 16 commercial minutes would, on the average, produce $4,800. On the other hand, if a beginning STV station only had 5,000 or 6,000 subscribers viewing a program an hour in length for $1, it could outbid free TV for the program.

119. From this start, the argument then presents figures and assumptions designed to show how STV could eventually go on to dominate program procurement both locally and nationally. Thus, it says that assuming 20 percent penetration into the markets where STV could be authorized under the proposed rules, and assuming $65 yearly program revenue from each subscribing home, total annual revenues would be $945 million—close to half the $2.2 billion total 1966 broadcast revenues of the three TV networks, their owned and operated stations, and all other commercial TV stations in the country. Assuming that 35 percent of annual program revenue goes for program purchases (they question the 35 percent figure), STV would have a potential of $190,750,000 available yearly for program purchases, an amount that would allow them to dominate program procurement.

120. *Conclusions.* We have given careful consideration to the information supplied by parties concerning the impact of STV on free TV and the related problems of audience diversion, preempting of time, and siphoning of programs and talent. As might have been expected, a considerable amount of the information is speculative. But this is not to say that it has not been helpful in illuminating various facets of the problems. As far as actual facts are concerned, we are left with those provided by the Hartford trial.

121. About audience diversion, we know that at any particular time the average subscription audience was 5.5 percent of the subscribers, although some programs, such as a heavyweight championship fight, generated viewing among 82.6 percent of the subscribers; that most of the programing was during prime time; that the average subscriber viewed STV about 2 hours per week, viewed one program per week, and spent $1.20 per week. In view of the fact that the total number of subscribers was about 5,000 and in view of the foregoing facts, audience diversion was minute.

122. About preempting of time we know that on the average there were about 30 hours of STV programing per week.[38] We also know that the average subscriber paid $1.20 per week for programs whether 27 percent or 70 percent of the feature films shown on STV were first subsequent run.

123. About siphoning we know that all of the programs shown at Hartford were unavailable over free TV anywhere in the Nation at the time that they were shown. Thus there was no program or talent siphoning.

124. The problem we face is that of whether and to what extent the foregoing facts form a reasonable basis for conclusions about the impact that nationwide STV would have on conventional television service, and the related questions of audience diversion, preempting of time, and program and talent siphoning. Opponents state that they afford no basis for meaningful predictions. Proponents aver the contrary. We are of the opinion that the Hartford experience, limited though it may have been, was sufficient to supply information that can serve as an adequate foundation for reasonable estimates about the future. Nevertheless, as with any new and untried service, there are imponderables.[39] Considering both the Hartford facts and the imponderables, we believe it is in the public interest to establish a nationwide STV system with the regulatory safeguards which we adopt today—safeguards directed at program siphoning and preempting of time.[40]

125. As to audience diversion, no reasons have been presented to lead us to expect that substantially more than an average of 5.5 percent of subscribers will be viewing STV at any particular time. The constancy of the weekly program expenditure per subscriber even with substantially more first-subsequent-run films would indicate that this figure is likely to remain the same regardless of attractiveness of programs. If it be assumed that every TV home in the Nation would become an STV home, this would mean that at any STV viewing time 5.5 percent of the television homes would be watching STV. It is certainly questionable whether such audience diversion and possible loss of revenues that might go along with it would impair the present service.[41] However, in view of the fact that we believe it to be highly unlikely that there would be 100 percent penetration of STV throughout the country, it appears reasonable to assume that audience diversion would be considerably less. Even with as high as 50 percent penetration the audience diversion would only be 2¾ percent. In view of the foregoing, and in view of the fact that the rules we adopt limit STV for the present to communities receiving five or more Grade A commercial TV signals, and limit STV to one station in such communities (which would further reduce the nationwide audience diversion), we see no cause for concern. This is especially true because we shall also require STV licensees to furnish the Commission on a continu-

[38] Thirty hours of programming per week is the fact that we shall have to use in our consideration of this topic with regard to authorization of nationwide STV. Whether there was actually preempting of 30 hours per week in Hartford is open to question because at the hearing prior to the grant of the Hartford authorization RKO informed the Commission that WHCT had been operating at a loss and that if the grant were not made it would discontinue operation of the station (30 F.C.C. 301, 307 (1961)). Had the station gone off the air, there would have been no free programming over it. Thus the trial not only provided STV programing, but, since WHCT was required to broadcast at least the minimal number of hours of free programing required by the rules for television stations, it added to the amount of free programing in the market instead of subtracting. The argument of STV proponents, of course, is that nationwide STV would aid marginal or new stations to do just that.

[39] One imponderable, mentioned by the Joint Committee, is the recent development of CATV. That group urges that we should defer action on authorization of STV until the impact of CATV on the present system is known. We find this argument lacking in merit, especially in view of the actions which we have taken by the adoption of rules to govern integration of CATV into the present television structure of the Nation.

[40] Topics such as whether interconnection of STV operations should be prevented or limited, whether STV should be limited to carrying certain kinds of programs, whether STV system manufacturers or franchise holders with franchises in more than one market should be allowed to engage in STV program procurement or supply, and similar problems relating to siphoning are discussed in the subsequent portion of this document which treats of the issues mentioned in paragraph 45(b) of the further notice (see par. 25 supra).

[41] Industry figures show that about 61 percent of TV homes are tuned in during prime time. If 100 percent of TV homes were STV subscribers and 5.5 percent were viewing STV in prime time this would mean audience diversion of about 9 percent of the viewers. However, it must be remembered that not all STV viewers would have been watching free TV had they not been watching STV.

ing basis with information that will show trends with regard to audience siphoning, preempting of time, and program and talent siphoning (see par. 348). To the extent that some STV programs which would result in very high subscriber viewing (e.g., a Clay-Liston fight that produced over 82 percent subscriber viewing) might cause significant audience diversion, we would observe that STV penetration of, say, 20 percent would considerably reduce the magnitude of the diversion. Moreover, such diversion would probably be rare, for such highly attractive presentations are unusual. It could be mentioned, too, that when a "blockbuster" such as "The Bridge on the River Kwai," mentioned on many occasions in the comments, was presented on free TV, audience diversion from the other two networks and from independent stations was considerable. An answer to such diversion might be better competing programing, which would be in the public interest. As to the adverse impact of audience diversion on UHF stations suggested in paragraph 116, see paragraph 171(2) below.

126. Concerning preempting of free TV time for the showing of STV programs, we are inclined to agree with those who state that if STV is not limited as to the communities in which it may operate, there might be considerable preempting of time, especially in peak viewing hours. Taking the figure of 30 hours per week as about the maximum number of hours which STV will show per week regardless of the number of STV stations in a market (as Zenith and Teco urge), and assuming, as Zenith and Teco mention, that the average TV station operates about 115 to 120 hours per week, if an operating station in a one-station market turned to STV it could reduce the amount of free programing by a fourth, and in prime time could replace free TV entirely. In a two-station market, in prime time the free programing could be halved. Of course, if STV were carried by new stations, any free programing (as well as STV programing) would be additive unless one were to argue that without STV the new station would have carried all free TV programing. On the other hand, the argument could be made that without STV the new station might never have gone on the air.

127. In connection with the last point, Zenith and Teco state that the Hartford trial indicates that there is a likelihood that TV stations will be primarily STV or free TV in their programing because of the demands of prime time of either service, because of the need of free TV stations to maintain network clearances and continuity of audience, and because existing free TV stations, especially network affiliates, may deem it imprudent to forsake present substantial profits for the speculative profits of STV. For this reason, it is observed that, to develop, STV will probably have to turn to new stations. Such stations, they urge, will not preempt time but will add new STV time plus conventional programing time to the total available to the market.

128. Zenith and Teco say that the limited supply of box office attractions and the limitations on the family recreational budget will serve as brakes so that the number of free TV hours presently available to the public that could be absorbed by STV could not be great. However, it is clear (see par. 126 supra) that although the number might not be great the effect could be great in communities with a limited number of television stations. Moreover, Telemeter informs us that at Etobicoke, on its three-channel cable system, it carried 54½ hours per week per channel for a total of 163½ hours per week for all channels, and that viewing averaged a little under 4 hours per week. Although this Canadian experience might not be typical, it suggests the possibility that more than 30 hours of STV programing might be available to preempt free TV time, but not necessarily to divert audiences from free TV. In view of these considerations, and in view of our desire to assure an adequate number of hours of free TV service to the nation, the rule we adopt today limits STV operations to communities within the Grade A contours of five or more commercial television stations, and limits STV to only one station in such communities. This, we believe, will assure that those communities will usually continue to receive the full three network services plus that of an independent station. In such communities, the percentage of time preempted from free TV would be minimal, and the effect of loss of free television programing, even if all STV programing were in prime time, would not be great. Moreover, to the extent that a new fifth station broadcasting STV programs is built in a four-station community, as a consequence of the anticipated revenues from STV broadcasting, the effect would be to add new free TV programing that would otherwise have been unavailable, since our new rules will require STV stations to carry at least a minimum of conventional programing.

129. Program and talent siphoning, as we have stated, did not occur at Hartford. Whether it would occur if STV is authorized on a nationwide scale and were not limited by Commission regulation is one of the most hotly contested points in this proceeding. It is one of the imponderables to which we referred. Most arguments on the topic of program siphoning we find too speculative to influence the action which we take here. Among them we would include that of AMST set forth in paragraphs 118 and 119. To illustrate the speculation and assumptions of the AMST argument, we note the following: (1) It assumes the national average rate for prime time, but the rules suggested by the Subscription Television Committee, which we adopt, would usually limit STV to markets where the rates would be higher. Thus the figure of $4,800 in the example given is too low. (2) It assumes that the 1-hour program over STV would bring $1, but most of the programing may well be feature films, they last close to 2 hours, and the average price for them at Hartford was $1.03. The average overall charge per hour for all kinds of programing was 59 cents. Hence the revenues for an hour's viewing on STV might be half their figure. (3) It assumes 20 percent penetration. As we state in paragraph 168, this could be too great a figure. (4) It gives the predicted amount of money that would be available for purchase of STV programing ($190,750,000), but it fails to state the amount spent by the networks and all of the commercial TV stations. In this connection, attention is invited to the figures given in the fourth quoted paragraph appearing in paragraph 95 above which suggest that the amount spent by the latter might well be upwards of five times more than the amount AMST says would be available to STV for program procurement. (5) It implies that the STV operation has 5,000 to 6,000 subscribers and that they would all be viewing the 1-hour program. However, we have noted that at any one time only about 5.5 percent of STV subscribers are likely to be viewing STV. Therefore, we could only expect from 275 to 330 to be viewing the hypothetical program. To have 5,000 or 6,000 viewing, we would have to assume that the STV station had from roughly 91,000 to 109,000 subscribers. All of the foregoing, it appears, tends to invalidate the AMST argument that from small beginnings STV could proceed forthwith to outbid free TV.

130. Of the various arguments raised by STV opponents, we find that of so-called selective program siphoning most persuasive. It is at least conceivable that a successful nationwide STV system, even though possibly not having as much money as free TV to spend for program product, could, by directing its purchases at select programs, e.g., the World Series or professional football games, take them from free TV and require the huge audiences of those programs to pay to see them or not see them at all. We would not consider this to be in the public interest. Zenith and Teco, in discussing the charge that STV would siphon from free TV programs with high ratings, say that it is tortured reasoning to assume that people will pay to see siphoned programs on STV when there are programs of the same conventional type which could be seen on free TV. We disagree. In a different context, in refuting an argument of STV opponents, we said that a viewer wishing to see a heavyweight boxing match will not be satisfied with a tennis match. The same reasoning applies against the views of Zenith and Teco here. If a viewer wishes to see a particular program and that program appears on STV and not on free TV, he may not be satisfied by viewing other programs of the same general type on free TV.

131. The rule which we adopt, and which is discussed more fully in paragraphs 285–338 below, will serve to prevent, or greatly limit, selective program siphoning. First, that rule requires that feature films shown on STV shall not

have been given general release in theaters more than 2 years before STV showing. In other words, to the extent that STV shows feature films (and both Hartford and Etobicoke suggest that they will constitute much of STV programing) they must be current films. It appears that such motion pictures infrequently find their way to free TV (see par. 64), and it does not appear that, in the light of box office economics of motion picture production, they may generally do so in the foreseeable future. Thus the older films, which are usually the ones shown on free TV, cannot be shown on STV and there can be no competition between the two services with resulting siphoning to STV of that kind of programing—a kind, incidentally, which opponents seem to indicate is of growing importance to free TV. Two exceptions to the requirement that films shown on STV must be current are the following: (1) The rule will permit STV stations to televise up to 12 feature films per year which had general release over 10 years before STV showing. STV stations may not choose to show that many old films. In any event, even if they do, this could be expected to constitute a very small percentage of all feature films shown per year by an STV station (see par. 59) and any siphoning would be minimal. In this regard, we note that AMST (par. 117) states that about 12 percent of the feature films to be shown on free TV in the 1967–68 season would be over 10 years old. Our calculations at the end of that season show less than 6 percent to have been of that age. During the first 6 weeks of the 1968–69 season, none were that old. (2) The rule permits STV showing of films from 2 to 10 years old that have been offered to and refused by free TV, or that the owner of the television rights will not permit to be shown on free TV (for reasons mentioned in par. 287 infra). It is clear that use of such films by STV will not siphon them from conventional television.

132. Second, the rule will also require that sports programs shown by STV in a community shall not have been shown on free television in that community on a regular basis within the last 2 years. Thus, for example, the World Series, having been on free TV in October 1964 could not be shown on STV in October 1965. This rule, we believe, will serve effectively to prevent siphoning of key sporting events that might prove desirable to STV entrepreneurs, and assure the continued free viewing of programs of that kind now being seen free. It will, however, permit STV to show programs such as "blacked-out" games that presently do not appear on conventional television. Details of this rule are discussed in pars. 288–305 below. Finally, the rule will not permit STV to show programs common in free TV in which continuing characters are presented from week to week in a series using a common setting or central program concept. This type of programing constitutes a not inconsiderable portion of free TV programing.

133. In view of the indications that STV programing will consist mainly of feature films and sports events, we believe that the new rules will assure that, with regard to the major part of STV programing, there will be little or no siphoning. The restriction on week-to-week series should further prevent such effects. Admittedly, it is conceivable that this still leaves some types of programs open to siphoning, e.g., specials, and perhaps a few feature films less than 2 years and more than 10 years old, but we believe that these rules represent the extent to which we should regulate at this time. As we have stated (par. 90), although we consider the preservation of conventional television service and the continued availability of free programs to be important, we also believe that the competition between STV and free TV could result in improved and more varied programing for both services. We believe that the rules we adopt, in the light of the information now before us, strike a desirable balance in this area. We shall, of course, as stated in paragraph 125, continue to watch closely the development of the infant STV industry to detect any trends with regard to siphoning.

Other information, such as (1) modus operandi of the service; (2) the technical performance of the systems; (3) the nature of the programs offered; (4) the methods to be employed; (5) the role of participating broadcast station licensees; (6) the possible monopolistic features of STV. 134. *(1) Modus operandi of the service; (4) the methods to be employed; (5) the role of participating broadcast station licensees.*[42] Since these three items are closely interrelated, they will be discussed together. Zenith and Teco say that there are three functional organizations in the operation of STV service: (1) A local franchise organization to scramble programs for stations; to provide for the installation, servicing and maintenance of unscrambling devices attached to television sets of subscribers; to provide information to subscribers so that they will know how to adjust the unscrambling device to obtain desired programs; and to collect and disburse revenues obtained from subscribers. (2) A TV station licensee over whose facilities the STV programs are broadcast. (3) Program sources which supply programs directly to broadcasters.

135. At the Hartford trial, they state, RKO General, Inc., was the franchise holder, and its subsidiary, RKO Phonevision Co., was the licensee of WHCT over the facilities of which the STV programs were transmitted. We are informed that programs were obtained by WHCT in a manner comparable to that now used by conventional TV stations in obtaining programs from networks, syndicators, and other sources. Programs were obtained from many sources (more than 50 sources during the first 2 years of the trial), it is said, such as motion picture producers and distributors, sports promoters, producers of plays, and the like.

[42] Additional information about these subjects appears in Appendix B attached hereto.

136. Zenith and Teco assert that there appears to be no business or public interest reason why there should not be a close ownership relationship between the franchise holder and the station licensee as was the case in Hartford. They also express the opinion that probably in some markets there will be instances in which the two have little or no ownership relationship. One possible reason for this, they say, is that it takes a substantial investment to operate an STV franchise system and some stations could not meet this burden alone. However, they urge that so long as the franchise holder is required to supply STV service to all stations in a market authorized to carry on STV operations, it would appear to make no difference whether the franchise holder is owned entirely by nonbroadcasters, or by one or more TV stations in a market.[43]

137. During the trial, it is said, it became apparent that any of three possible methods of arranging for programs might be used: (1) The licensee, the franchise holder, and the program distributor might agree among themselves upon a division of fixed percentages of gross. (2) The licensee and franchise holder might join together in a cooperative effort to obtain programs from distributors, with revenues in excess of the program costs being divided on a basis agreed to by the licensee and franchise holder. (3) The franchise holder might supply the programs and buy time from the station at a so-called subscription card rate to broadcast them, in much the same manner as networks and affiliates now operate. This approach, they state, might be used particularly when nationwide STV is getting underway in order to induce investors to build new TV stations for the showing of STV programs.

138. We are told that at Hartford the licensee of WHCT had control over the selection of STV programs, the times at which they were to be broadcast, and the charges to be made for them. (This, of course, was in accordance with the provisions of the third report under which the trial was authorized.) Zenith and Teco express the opinion that as a matter of business policy, as well as regulatory policy, these functions should always be the primary responsibility of the licensee.

139. (2) *The technical performance of the systems.* The Hartford trial, Zenith and Teco state, established that the system could meet the technical, requirements of the third report, namely: (a) The operation must not cause interference, either within or without the frequency employed, to any greater extent than is permissible under the present rules and standards of the Commission. (b) The operation must not cause perceptible degradation in the quality of video or audio signals on any receivers during either a subscription program or a nonsubscription program.

[43] This argument is based on the assumption that more than one STV operation would be permitted in a market. It is irrelevant since the rules adopted herein permit only one STV operation in a community.

140. In addition, it is related that the trial established that the Phonevision decoder (unscrambler) could be installed on all makes and models of TV sets if the sets were in good operating condition; that the system provides adequate protection against reception by nonsubscribers; that it functions to permit an accurate allocation of per-program charges to the individual programs, the monthly billing reflecting not only the total amount due for programs but the amount for individual programs; that a credit system will work and is accepted by the public; and that Phonevision equipment will function satisfactorily with a minimum of service calls, home service calls having averaged 89 cents per subscriber per year.

141. Zenith and Teco mention that, as a result of the Hartford experience, a new model decoder is being production-engineered that will accommodate color as well as monochrome, that can be connected to the antenna terminals of the set instead of to the inside wiring, that simplifies the billing function of the new decoder so as to reduce cost and facilitate operations on the part of the subscriber, and that has circuitry changes designed to reduce cost and further improve reliability.

142. In connection with the foregoing statements, Motorola says that it has studied the Zenith and Telemeter proposals (presumably the descriptions of those systems submitted in response to the further notice) and that both vary widely from any system used in prior field tests. It is averred that the Hartford field test "involved a totally different concept and the field test results can have no meaningful bearing on the technical aspects of the proposed systems." A similar statement is made with regard to the system used by Telemeter in Canada (which was a cable system) and the proposal (for an over-the-air system) submitted by Telemeter in this proceeding. These statements are followed by a suggestion of Motorola that further field testing is therefore needed before STV can be authorized.

143. To this Zenith and Teco reply that the decoder used at Hartford operated in conjunction with certain parts of the subscriber's television set to unscramble the signal, whereas the new proposal uses the same unscrambling principle but does the unscrambling independently of the set, and sends the unscrambled signal directly to the antenna terminals of the subscriber's set. They further state—

(1) that the television broadcast signals and Zenith scrambling apparatus used in Hartford during the past 4 years were and are exactly the same as those to be used with the new Zenith decoder described in our July 25, 1966, technical submission in this proceeding; (2) that the decoding functions performed by the apparatus under test in Hartford are the same as those accomplished by the decoding apparatus described in Zenith's current technical submission; and (3) that the Hartford test of these signals and the effectiveness of Zenith's scrambling and decoding processes involved several thousands of hours in a field test operation involving thousands of homes. Thus the Hartford operation provided a greater quantity and quality of field testing of the proposed Zenith concept in actual commercial use than any comparable type of service has ever before had. Therefore, Motorola's conclusions with respect to field testing of the Zenith concepts are totally unfounded.

144. (3) *The nature of the programs offered.* This has been fully discussed in relation to the question of whether STV can offer a beneficial supplement of free TV programing and will not be treated here.

145. (6) *The possible monopolistic features of STV.* Zenith and Teco state that the Hartford trial has established that there are no inherent monopolistic features arising from STV operations. They do not urge that the Commission select Phonevision equipment as the only system to be used for nationwide STV. On the contrary, they suggest that the Commission adopt general standards that will permit the use of multiple systems, and that will result in competition. They do, however, admit that it is unlikely that, as a practical matter, there will be more than one over-the-air STV system in any single community (were we to permit more than one such operation), although there may be competition within a community between cable and over-the-air STV. But within a community, Phonevision could be used with color or monochrome sets, UHF or VHF, and could serve more than one station authorized by the Commission to conduct STV operations, This, they point out, would be under the regulatory control of the Commission.

146. As to programing, they aver the following: There are already in existence numerous producers and distributors of programs of all kinds from which STV may draw. During the Hartford trial, there was no centralized distribution control over the programs chosen for STV broadcast. RKO was free to negotiate with any program supplier for whatever programs it desired on whatever terms it worked out. Ninety percent of the STV programs shown at the trial were obtained on the basis of RKO's paying the program supplier a fixed percentage of the program revenues obtained from subscribers. In a relatively small number of cases, e.g., a Broadway play, it was necessary to pay cash acquisition costs. If requested by RKO, Teco usually provided such funds to RKO in return for receiving a certain percentage of the subscription fees received for the program. It is emphasized that this aid was not given until RKO had negotiated for the program and requested Teco aid. On occasion, and at the request of RKO, Zenith sometimes stepped in to facilitate negotiations for programs, but this was usually by way of using its personal contacts. Zenith also furnished some financial assistance to Teco to aid it in obtaining programing as mentioned above. Zenith states that it does not intend to continue supplying such assistance if STV is operating on a nationwide basis, and it also does not intend to engage in the distribution or production of programs for STV.

147. It is claimed that comments filed in this proceeding in 1955 alleged that Zenith and Teco would exercise control over the distribution and selection of STV programs whereas such has not been the case. These two parties state that because of legal and business reasons they could not enter into any arrangement or tie-in with local franchise holders giving any program supplier the exclusive use of Phonevision facilities. If nationwide STV is authorized, they say, Teco will serve two functions: (1) Granting local franchises and promoting the use of Phonevision equipment. (2) Possibly assisting in obtaining programs for STV, but such assistance will not tie in with its arrangements with local franchise holders, or with the arrangements that such franchise holders may have with station licensees, so as to give Teco an exclusive position with regard to any other program supplier.

148. The comments of Zenith and Teco on this subject end with a statement that monopolistic conditions in any business result from either the intent of parties involved or natural economic forces. These two parties aver that they have no intent to gain monopolistic control over STV in the United States. With regard to station owners, they say, there can be no monopoly because of the Commission's multiple ownership rules. While the natural economic forces that might make for monopoly are difficult to foresee, they state that under the operating proposals which they make there does not appear to be "any immediate or reasonable prospect of monopolistic evils which would require governmental regulatory action. If, after the full play of the natural forces of competition, a condition now unforeseen should arise at some time in the future which would indicate any trend toward monopoly detrimental to the public, the Commission can always exert its present regulatory power to eliminate any antitrust problems that may possibly arise."

149. Combining its comments on the modus operandi, methods to be employed, and possible monopolistic features of STV, Telemeter takes issue with some of the views expressed by Zenith and Teco. The position of Telemeter follows, nearly all of it being best expressed in its own words.

150. There is only one STV operation in the United States today—that at Hartford which numbers but a small minority of the community as subscribers, and they only spend about 5 percent of their time viewing STV.

The fact is that subscription television is not even an infant industry. Its opponents have attempted, by raising false issues, to stifle it before it can be born. Any regulations which the Commission makes at this time should recognize the essential truth of this statement.

The elements of a subscription television industry have not yet emerged in any clear-cut form. There are no subscription television programming companies, syndicators, maintenance companies or other needed components. The elements of the existing structure which constitutes commercial broadcasting, or which constitutes the motion picture production, distribution and exhibition industry, do not yet exist. The Commission must

therefore proceed with caution in adopting rules to regulate an industry whose essential character has not yet begun to emerge, lest its natural and successful growth be unduly restricted and inhibited.

The subscription television business, regardless of the form which it will ultimately assume, will have at its core today the subscription television entrepreneur. He is the man, or the corporation, which must bring all of the elements required for successful subscription television into existence. At some time in the future, after the business has been started, there will be producers, maintenance firms, syndicators, broadcasters, and others, but these elements do not exist today. It serves no useful purpose, therefore, to talk about separating the components and establishing regulations to govern their relationships. If a single firm is not allowed to start a total subscription television business including everything from the production of entertainment through its broadcasting, through its sale to the public, through installation of decoders, and through the collection of money, and every other aspect of the enterprise, subscription television is unlikely to come into existence.

Subscription television, in its present stature, is analogous to the motion picture industry in its beginnings. A motion picture theatre, like any other theatre, is an enclosure containing means for exhibiting entertainment for which the patron must pay. The enclosure of a theatre may be analogized to the scrambling and unscrambling means of the broadcast subscription television system, and the box office to its credit or cash charging system. The projection equipment constitutes a means of communicating the entertainment on films to the public, and is analogous to the transmitting equipment of a broadcast. The theatre owner picks his programs and determines the timing and duration of their exhibition and their pricing, incidentally on the basis of his knowledge of his market.

In the early days of motion pictures, exhibitors would not go to the expense of building theatres because there was no entertainment available to be shown in them. Therefore, in order to get the industry under way, a natural identity developed between producers, distributors, and exhibitors. This identify was an absolute necessity if the industry was to come into existence.

At this stage in the development of subscription television, no company (which is truly independent) is going to invest in decoders if it does not control broadcast facilities, and if it is not able to assure itself that it will be able to make its own efforts to obtain programing by every means physically available * * *. The problem of the infant subscription television industry is that even where entertainment is available, it has been withheld, so that it is naive to assume that a subscription television operator, at this stage, can sit in his office and expect purveyors of entertainment of top quality to come to him.

Furthermore, in view of the obvious and manifest hostility of existing media toward subscription television, it is equally naive to suppose that commercial broadcasters in significant numbers will approach a detached subscription television operator—without his own broadcast facilities—for the privilege of showing an occasional subscription television program. If subscription television is to develop, it is Telemeter's considered judgment that it will have to be started by those in full control of every aspect of the subscription television business with no, or exceedingly few, limitations upon their ability to solve the multifarious problems which experience has shown they cannot avoid.

151. The Joint Committee directs comments at another aspect of the question of monopoly in its reply comments. It states that STV proponents hold that the Commission cannot regulate STV rates to be charged subscribers. However, the Joint Committee says, it would be singular for the Congress to have intended that broadcast frequencies could be used for STV without at the same time having provided power to regulate rates to prevent rate gouging. It is for this reason, it is stated, that the Commission has no authority to authorize STV.

152. The Joint Committee then goes on to say that if, as Zenith and Teco state, it is unlikely that there will be more than one STV system in any single market, then such an STV station would have a monopoly over STV in that community, and it would be unconscionable for the Commission to permit such a situation to exist without having the power to regulate charges. It would be an abdication of Commission responsibility, it is argued, to permit STV operators to use the frequencies and charge subscribers without clear congressional authority to regulate rates and without even considering or deciding whether the Commission already possesses such authority. The Joint Committee also refers to the comments of ADA, a group that favors STV, which indicate that STV should be regulated as a common carrier.

153. *Conclusions.* In paragraph 25 above, we indicated that we would first consider comments concerning the question of whether an STV service should be established, and that we would then turn to consideration of 15 issues of importance in determining what the pattern of regulation of such a service should be. We mentioned that comments concerning the broad question of whether to establish the service fell into five categories. The first four have been fully treated above. As to the fifth—concerning modus operandi, monopoly, and other matters—the immediately preceding paragraphs contain pertinent information and views thereon supplied by the parties. Since the topics in the fifth category are closely related to some of the 15 issues, in the interest of efficient presentation we shall evaluate the information and views about them and state our conclusions thereon in the course of treating the 15 issues to which we now turn our attention.

FIFTEEN REGULATORY ISSUES

154. In the following paragraphs, the issues are stated verbatim as they appeared in the further notice, and are followed by a discussion thereof.[44]

(1) Whether subscription television should be limited to communities receiving a minimum number of television signals, e.g., whether it shoulld be limited to stations the principal communities of which are within the Grade A contours of at least four commercial television stations (including that of party proposing to broadcast subscription programing), or whether it should not be so limited but should, in communities not lying within four commercial Grade A contours, be restricted to a more limited scope, especially as to hours of operation, than those in four-service communities. (See limitation proposed in § 73.643(d) of Appendix C.) 155. This issue may be divided into two parts: (1) Whether STV should be limited to communities receiving a minimum number of TV signals, and (2) whether, if there is no such limitation, there should be a limitation as to hours of operation of STV stations. Our discussion here will be restricted to the former. The latter may more properly be dealt with under Issue (2) below which has to do with the general topic of hours of operation of STV stations. Both parts of the issue, of course, underscore our concern over possible reduction of free TV hours and services available to the public in communities where STV operates.

156. Some proponents of STV urge that the service be permitted to operate in any community, regardless of the number of TV signals which it receives. Telemeter, for example, states that STV has a potential for usefulness under varying situations in different sizes and types of markets. Thus, in marginal communities it might form the financial basis for building a station that would otherwise not be built. In large communities with three network services it might provide the basis for the development of a viable UHF competitor. Kaiser makes a similar point, stating that "[t]his is particularly true in markets such as Los Angeles, where the number of competing stations is large enough to strain the advertiser-supported system's ability to provide financial and programing support."

157. Zenith and Teco hold the view that section 307(b) of the Act, which requires the Commission to make a fair, efficient and equitable distribution of broadcast service among the several "communities," dictates the conclusion that STV should be made available to all communities where there is a demand for it. In this connection, they mention that if STV could bring about the construction of a first TV station for a community, they would find it difficult to think of any public interest considerations that would justify not permitting the building of such a station. Along the same lines, Teleglobe says that it believes that among the principal objectives of STV is that of aiding UHF broadcasters in their struggle to survive, and a limitation of STV to, for example, markets with two or more stations would defeat that objective. Zenith, Teco, Telemeter, ACTS, and Trigg-Vaughn suggest that questions of whether STV operations should be permitted in a particular community would best be handled on an ad hoc basis.

[44] In addition to inviting comments on the issues, the further notice asked for comments on rules proposed in Appendix C attached thereto. For convenient reference, that Appendix is also attached hereto as Appendix C.

158. ACLU urges that STV operations should be permitted in any market. Its views are founded on its interest in advancing diversity of expression (which it regards as an application of the first amendment) by way of over-the-air broadcasting. It believes that by providing new and different programing STV can increase diversity. If it is not limited to particular markets, there will be open competition that will also enhance diversity. ACLU states. ADA also believes that STV should be permitted in all markets. ACLU and ADA have additional views which are related to this belief, but they more properly belong with a discussion of hours of operation discussed under Issue (2) below and will be treated there.

159. ABC, as previously mentioned, opposes STV. However, in the event that the Commission should decide to authorize such a service, it offers its views on the various issues. It believes that this and the following three issues are related to the question of what rules are necessary to protect the existing structure of conventional commercial television. It states that—

> [u]ntil the impact of pay-TV operations upon the free television structure can be assessed, it would not appear meaningful to adopt restrictive rules which, at this juncture, are necessarily somewhat arbitrary. If the Commission elects to go forward with authorization for pay-TV, ABC urges that it adopt no rules at this time with respect to [this matter] * * *. If, based upon meaningful experience with pay-TV, it appears that rules of some kind should be adopted, further rule making proceedings are available to the Commission.

ABC adds, however, that the Commission should make it clear that STV is not intended to disrupt the existing structure of free TV, including network service, and that it should place STV proponents on notice that the fact that no restrictive rules are adopted does not mean that they might not be at some future date if found to be necessary to preserve that structure.

160. As opposed to the aforementioned views that there be no limitation in regard to the communities in which STV may operate, both proponents and opponents suggest the contrary. Thus, Acorn, a proponent, believes that STV should not deprive anyone of free TV that he now has, and therefore thinks it inadvisable to allow STV operations over existing stations in one-station communities. The more stations in a community, the less the effect of STV broadcasting over one of them would be, Acorn states. On the other hand, it sees no reason arbitrarily to restrict STV only to the larger markets since in some cases it would appear that STV would not undermine free TV service. Wherever possible, Acorn deems it best to conduct STV operations over new stations, for this could only add to the TV service of a community.

161. Munn and Chase, also proponents, are of the view that STV should be limited to communities that have three Grade A commercial signals in addition to that of the STV stations, so that there will be three network services available. Of the same view is the Joint Committee which urges that, if STV is to be permitted, it should be limited to communities within the Grade A contours of at least four commercial TV stations, for this would be consistent with the goal of the Commission to promote parity among the networks. It was this policy which underlay the conditions of the third report, it is said, and the Hartford trial provides no basis for changing that policy. However, the Joint Committee would superimpose on such a rule the additional requirement that, if a market is one of the top 100, there be a hearing to determine whether it is in the public interest, and, specifically, consistent with the establishment and healthy maintenance of free TV service in the area, to permit STV therein—a requirement not unlike that used in CATV proposals to extend the signals of TV stations beyond their Grade B contours into one of the top 100 markets. The Joint Committee argues that such a requirement exists for CATV in spite of the voluminous information available about CATV which was prepared by Drs. Seiden and Fisher, the National Community Television Association, CBS, and AMST, so that a fortiori there should be such a hearing requirement for STV about which much less is known.

162. AMST, in discussing this as well as other issues, says that the very fact that the issues have been posed recognizes rather than cures the incompatibility of STV and free TV. With regard to this issue it argues that to restrict STV to the largest markets will not prevent the preempting of free time from free TV and that in such markets more people would be deprived of this time. McClendon expresses the view that STV should not be permitted over VHF stations in multiple-station markets having at least one UHF or one independent VHF station if those VHF stations broadcast one or more hours of network programing during prime time. This, it is suggested, would correct the economic imbalance between UHF and VHF stations.

163. *Conclusions.* Because we believe that STV can furnish a beneficial supplement to the programing of free TV and that it might well provide a wholesome stimulation that would improve free TV and the overall programing available to the public, we believe that it should be authorized. However, as indicated in previous portions of this document, although the Hartford trial did furnish information that has proved helpful in making reasonable estimates of the future, its proscribed nature has left numerous areas about which we are legitimately concerned. Until we know more about how STV will develop on a nationwide scale, we feel it best to proceed with caution. For this reason, the rules which we adopt are designed to strike a reasonable balance that will not hamstring the development of the new service and yet will provide safeguards against occurrence of events that might be contrary to the public interest.

164. One area of concern is that of the preempting of time by STV from free TV. The third report provided that STV trial operations might be conducted only in communities lying within the Grade A contours of at least four commercial TV stations including the station of the STV applicant. It mentioned that one of the primary reasons for this provision was to assure the continued availability of substantial amounts of free TV programing to the public, i.e., to prevent undue preempting of free TV time. We stated in that report that it was our intent to suspend judgment on the question of whether there should be such a market limitation if permanent STV were authorized. The further notice, having referred in paragraphs 31–32 to the foregoing, announced that, in the light of the Hartford information, we tentatively agreed with the view of Zenith and Teco that STV should not be so restricted. However, we specified this matter as Issue (1), the present issue, and invited comments thereon.

165. We have carefully weighed the comments, including those summarized in the immediately preceding paragraphs as well as those mentioned in paragraphs 93, 94, 101, and 122 above, and believe on further consideration that the tentative conclusion of the further notice should be rejected. For reasons stated below, we are now of the view that, at least for the present, STV should be restricted to communities lying within the Grade A contours of at least five commercial TV stations including that of the STV operator, and are adopting a rule to that effect.[45] (It is thus more stringent than the requirement of the third report.) This conclusion has been anticipated in paragraphs 126–128. The following supplements those paragraphs.

166. Elsewhere (par. 90) we have indicated that we regard the continued availability of free programing as a most important consideration. This is so because we think that the tremendous investment of the public in television receivers based on the expectation of free service ought to be protected and the millions

[45] This rule appears in § 73.642(a) of Appendix D. It may be noted that the rule does not require that the five or more stations providing Grade A service to a community be licensed to that community. When we speak of a five-station community herein, we mean a station receiving five Grade A services regardless of what the communities of license of the stations are. The rule requires the entire community, not merely part of it, to be located within the five Grade A contours. It is further noted that the rule, in addition to the five-station requirement, also contains other provisions designed to restrict preempting of time. One, discussed under Issue (4) below, provides that in the five-station communities where STV will be permitted, only one station in the community may engage in STV operations. Another is that, not counting the station of the applicant, at least four of the stations must be in operation and providing conventional TV service at the time of the STV grant of authorization.

of viewers who rely on that service for free entertainment should be permitted to do so. Although we are aware of the merits of the arguments that STV should be permitted in all communities—the arguments maintaining that permitting STV in all communities might help marginal or new stations in small communities, might aid UHF in such communities, might promote diversity of programing; arguments that section 307(b) of the Act requires that STV be allowed in all communities where a demand exists; arguments that we should not regulate in this area until the impact of STV on the free TV structure has been assessed—we are of the opinion that at this stage, where uncertainty about the new service exists with regard to this subject, considerations of protecting against preempting are overriding. In communities with fewer TV services, preempting could substantially reduce the amount of free programing available to the public, as some parties have mentioned. Since it appears likely, from the Hartford trial, that much of the STV programing might be in prime time, the effect would be even more marked, for although the loss in terms of hours is the same regardless of the time of day when the preempting occurs, the loss in prime time would generally be a loss of more popular programs.

167. The rule protects against such loss in communities with fewer TV services. In communities where it permits STV, it usually assures three network services and one independent service. To the extent that existing stations in those communities offer STV, there will be a relatively small amount of time preempted. To the extent that STV operations occur on new stations, there will be no preempting at all. It gives ample assurance against the dangers to networks, mentioned by ABC and the Joint Committee, which could conceivably result in an untoward weakening of the present broadcast structure. At the same time, the rule will permit a not inconsiderable portion of the nation's population to have the opportunity to use the new service if it so desires.[46] Moreover, this will afford an opportunity to observe what factors evolve in the operation of a nationwide STV service, such as, for example, the broadening of the base for the purchase of programs which Zenith and Teco tell us was lacking in a single-city trial, the possible development of an STV network, audience diversion, preemption of time, program siphoning, or others. With this additional information we should be in a position to take further steps to guide the development of this service in the public interest as it seems appropriate.

168. At the present time there is no certain way of predicting what STV penetration will be after the service has been authorized on a nationwide basis. If we were to hazard a guess, it would be that 10 percent to 20 percent would be optimistic for the near future. If this is correct, it would appear likely that the most interest in STV would be focused on the largest communities where the potential for more subscribers lies. Our rule, therefore, should not seriously impair the development of STV since it would generally permit it in those communities.

169. We do not adopt the suggestion that the point at issue be handled on an ad hoc basis. This would involve separate hearings, and the results, in our opinion, would not be commensurate with the cost, time, and effort expended thereon. A rule on this subject is clear and automatic in its application. It appears to be the better way to handle the matter.

170. We note the suggestion of the Joint Committee that hearings be held on applications requesting authorization to engage in STV operations in the top 100 markets. The Joint Committee maintains that the important factor common to both STV and to CATV proposing to extend television signals beyond the Grade B contours of stations to one of the top 100 markets is that of the introduction of programing not otherwise available to free TV in the market. The principal concern of the Commission in the CATV and the STV proceedings, it states, has been over the impact on free TV. Since hearings are required by rule in CATV for the top 100 markets, they should also be required when STV attempts to enter those markets. The point is lacking in merit.

171. In the second report and order in Dockets Nos. 14895, 15233, and 15971, we discussed in detail the reasons for the rule which requires hearings for the top 100 markets,[47] and we shall not repeat that discussion here. Suffice it to say that STV and CATV involve different considerations—of which we shall mention only a few—that clearly indicate that the concern that led us to the conclusion that CATV hearings should be held does not exist here. Thus, (1) in the case of CATV systems entering the top 100 markets, we were concerned with the fact that CATV stands outside the program distribution process through which UHF stations have to obtain their programs. In the case of STV, there is no such element of unfairness since the STV operator would be in a program procurement position similar to that of the UHF free TV operator. (2) In the case of CATV, audience diversion from the UHF station could be large. In the case of STV, it would, as we have said, probably be small. In this connection, we note that CATV systems have multiple channels and thus a single CATV system is a source of multiple competition for local stations, whereas here we are permitting only one STV operation in a market. (3) STV can broadcast over a UHF station. If so, it is because the licensee thereof believes that it will help his station, not harm it. In fact, one of the principal arguments of proponents of STV is that it will aid UHF, not damage it. These few observations should make clear the reasons why we reject the Joint Committee's proposal.

172. The oral argument contains views of various parties directed at the rule proposed in the fourth report and order drafted by the Subscription Television Committee, which is the rule which we adopt here. Many of these arguments were previously made and are not mentioned here since they are presented and evaluated above. Some, however, are given consideration now since they either present new suggestions or raise matters concerning the rule which otherwise merit discussion.

173. Telemeter, for example, like some other parties, argues that the rule is unduly restrictive. More particularly, it says that because about 80 percent of the nation's viewers may be able to enjoy STV under the rule, this is no reason for depriving the other 20 percent of the service. The Commission, it urges should be as much concerned about this as it is about "white" and "grey" areas in aural broadcasting. Our view that the investment of the public in TV sets based on the expectation of free service should be protected is assailed on the ground that the sets in which the public has invested can be used for STV service, conventional service, or both. The choice, we are told, as to how the public should best use its investment should rest with the public. If the public does not want to pay for STV service, STV will fail. Although in another part of its oral argument Telemeter indirectly recants this view, we would point out that it is true that the public is free to use its sets for conventional television or for STV—with the rule that we adopt. However, this would not be true in a one-station community if the station were engaged in STV operation. The rule is designed to assure that there is a choice between STV and conventional programing, and that the choice will be a fairly broad one.

174. Concerning broadness of choice, ABC doubts that the rule is sufficiently restrictive to attain the desired objective. As an example, it mentions Providence which has three local stations and receives a Grade A signal from three Boston stations. It argues that if a Providence station converted to STV, and thus removed one of the three network services from Providence, it would be to the detriment of viewers in outlying areas who do not receive service from the Boston stations. We believe that if a more restrictive standard were to be adopted, such as, for example, one that would permit STV operation only on a station in a community lying within the principal community contours of five or more television broadcast stations, it would unduly shrink the number of communities that could qualify. This, in our opinion, would unduly hamper the development of the new STV service. Moreover, the argument that ABC makes, concerning loss

[46] As of August 31, 1968, the Commission had allocated five or more commercial channels to 89 markets which include 81 percent of the nation's TV homes. STV is potentially available to all of those markets. More immediately, of those markets, 68—including 76 percent of all TV homes—presently have activity on four or more channels, i.e., there are licenses, permits, or pending applications for four or more stations.

[47] 2 FCC 2d 725, 769–784 (1966).

of service by some viewers in a community who are outside the range of television stations licensed to other communities, could be made even with the more restrictive principal-community-contour requirement. It is a question of where to draw the line. Under the circumstances, we believe that the Grade A contour provides a fair criterion of eligibility for STV authorizations.

175. ABC also says that to the extent that the rules would provide the stimulus for activation of new stations, the five-Grade A rule could have serious adverse economic impact in markets currently supporting three or four stations but which are not profitable or only marginally profitable. They state that the Tucson, Ariz., area has four television stations on the air and allocations for at least a fifth. This market, they observe, has shown an overall loss according to FCC figures so that if a new STV station competed for advertising revenue for periods when it is not programing STV, one or more of the free TV stations would suffer serious economic hardship and might ultimately be forced off the air. In this regard, we note that a Carroll financial issue may be raised with regard to an application for an STV station as well as for a new conventional TV station. Moreover, it must be remembered that the STV station could not accept advertising for a key portion of its broadcast day, since it would probably use prime time for STV programs, and no commercials will be permitted under the rules we adopt during the STV period of broadcasting.

176. AMST raises a point that requires clarification. The fourth report and order drafted by the Subscription Television Committee made clear that the rule would permit STV only in communities within the Grade A contours of five or more commercial TV stations. It also clearly set forth the basis for the rule, namely, to prevent undue preempting of time from conventional TV stations. However, AMST appears to assume that the purpose of the rule is to provide STV service to large communities and not to small ones. It then goes on to argue that in some cases STV could, under the rule, be authorized to a station in a small community. Hence, they say, the rule does not accomplish its intended purpose. We wish to make clear that the object of the rule is to limit preempting of time, and not to assure that STV will be brought to large communities rather than small ones. The key is the number of Grade A TV services available and not the size of the community.

177. As a practical matter, this probably means that most large communities will be eligible. However, as AMST indicates, some small communities will be eligible, too. As an example, AMST mentions Fort Lauderdale, Fla. This community, it says, lies within the Grade A contours of three Miami stations and two West Palm Beach stations, so that it would be eligible for an STV authorization. Were this the only factor involved, it would present us with no problem, for it clearly falls within the purport of the rule. However, AMST points out that there is only one TV channel assigned to Fort Lauderdale so that if it were used for STV it would preempt the only channel assigned to that community to provide for local service. First, we would point out that the station, under the rules, will be required to broadcast a certain amount of free programing. It is expected, of course, that in so doing it will meet community needs. Moreover, although we do not write it into the rule, in the rare cases where such situations might arise, we shall as a matter of policy condition the grant of an STV authorization on the applicant's broadcasting some local programing during prime time.

178. Other parties, believing that the rule is too restrictive, suggest a standard other than the five-station rule. Thus, Nationwide, holder of a construction permit for Channel 47 in Columbus, Ohio, would prefer a rule that permits STV in communities which lie within the Grade A contours of four commercial stations, three of which are VHF stations, and which has a local noncommercial educational station in operation. This situation, which fits that of Columbus, Nationwide urges would give the UHF station a better chance for survival. Skiatron urges that the five-station rule not apply to UHF stations at all and that such stations be permitted to engage in STV operations in any area. It also suggests that if a community receives four commercial TV services from VHF stations, one of those stations be permitted to engage in STV operations even though a UHF station is similarly licensed to serve the community.

179. Teleglobe recommends that STV authorization be granted in communities with four or more commercial services, including the station of the applicant. It believes that this might help a considerable number of struggling UHF stations, and that the more STV operations in existence, the more favorable would be the prospects of developing programs specifically for STV, with resulting improved quality and diversity of programing. Zenith and Teco propose modification of the rule to provide that STV be permitted in communities to which five or more TV channels have been allocated, but that STV be permitted if only four stations are in operation at the time of the STV authorization (including the station of the STV applicant).

180. We believe that the suggestions of Nationwide, Teleglobe, and Zenith are essentially the same as that made by the Joint Committee (para. 161) and the standard used in the third report. We believe that, on balance, the overriding importance of protecting against undue preempting of time weighs more heavily than the other benefits claimed to result from a relaxation of the rule as proposed by those parties and by Skiatron. As we have stated in paragraph 167, after having had an opportunity to observe the development of the new service under the rule, we shall be in a position to take whatever steps seem appropriate with regard to this rule.

(2) Whether stations engaged in subscription operations should be required to broadcast a minimum number of hours of conventional programing and, if so, what the minimum should be (see § 73.643(c) of Appendix C). Whether subscription programing should be restricted to certain segments of the broadcast day and, if so, what segments; and whether a minimum or maximum number of hours of subscription programing per day or week should be specified, and if so, what the number should be. (Concerning this issue, see § 73.643(d) of Appendix C which has been drafted on the assumption that only one subscription operation would be permitted in any single community. Comments are invited on alternatives if the issue in paragraph 45(b)(4) is resolved to permit more than one such operation in a community.)

181. As with Issue (1), our concern is with making sure that adequate amounts of free programing remain available to the public in markets where STV operations exist. Requiring STV stations to broadcast a minimum number of hours of free TV would be directed toward that end, as would the establishing of limits on STV broadcasting both as to amount and time of day of such broadcasting. In paragraph 33 of the further notice, we mentioned that if free TV is to remain available, the amount of permissible STV broadcasting by a station should depend on the amount of free TV available from other stations serving the community. As an example, we suggested that all STV stations be required to broadcast the minimum number of hours of free TV required by § 73.651 of the rules and that the amount of STV broadcasting (assuming only one STV station in a community) should vary with the number of TV stations serving the community and with the time of day (prime time or nonprime time). The proposed rule to that effect appears in § 73.643 (c) and (d) of Appendix C. Comments were invited on the proposal, which assumes one STV station per community, and on what the rule might be if communities were permitted more than one STV station.

182. Many parties agree that STV stations should be required to carry the minimum number of hours of free TV required by § 73.651 of the rules in the interest of helping to maintain a supply of free programing for the market. However, this view is not without its opponents. Munn and Chase, for example, say that the free programing of STV stations might be an unwarranted burden on STV stations and could turn out to be programing designed to fill the required number of hours, but of low quality. This could be especially true, they state, in major markets where STV stations would be competing with large, well-equipped and well-staffed stations. Moreover, in communities receiving many TV services, the free programing of STV stations might be purely redundant. For this reason, they urge that no such requirement be adopted, and that STV be allowed to pursue the development of good STV programing without having to present free programing.

183. Trigg-Vaughn also disagrees with the proposal to require a minimum number of hours of free TV over STV stations, and for the same reasons expressed by Munn and Chase. It states that the requirement could impose a severe operating disadvantage on STV licensees who are attempting to pioneer STV, by requiring them to do more than their competitors simply for the right to engage in STV operations. It suggests that, since both STV and free TV are broadcasting, the purpose of § 73.651 would be met by permitting STV licensees to fulfill the requirements of that rule by all STV or any combination of STV and free TV broadcasting.

184. It goes on to say that if at a later time it should appear that such a rule is necessary, the Commission can take necessary action. In the meantime, it is said, absence of such a rule at the outset will permit STV to have greater freedom in the programing area and a better opportunity for development.

185. As to limiting STV to certain segments of the broadcast day, or limiting the number of hours of STV, proponents generally oppose such restrictions, stating that the record shows no need for them, that at this stage they would hamper the development of STV, and that the amount of time of broadcasting of STV programing should be determined in the market place.

186. On the other hand, one proponent—Zenith-Teco—states that because single-station communities present a unique problem, and because there is no problem of time availability for free TV in communities within the Grade A contours of five or more stations, the proposed rule with regard to such communities should be adopted. They believe, however, that communities receiving service from two to four Grade A signals present different considerations. As a practical matter, it is said, network affiliates in such communities are not likely to give up assured profits to enter the speculative STV area. Moreover, the Hartford trial has shown that STV will have greater demands for STV programing in prime time than the proposed rule would permit. These two factors could operate to confine STV to only a few communities where five Grade A signals are received, and where therefore there would be no limit on STV broadcasting. They therefore suggest that the Commission exempt UHF stations in two to four station markets. This would, they urge, permit STV to have the same competitive access to UHF that free TV has always had, and would restrict the rule to VHF where most of the free TV is.

187. They also suggest that any time limitations be applied on the basis of an annual average and not a daily or weekly average, as is permitted with the AM–FM nonduplication rule (47 CFR 73.242), so that programs will not be arbitrarily restricted. Finally, since the meaning of "prime time" is vague, they propose that the rule define the term as the hours between 6 p.m. and 11 p.m., which is also the period used in the programing portions of the Commission's application forms. Another clarifying suggestion is made by ABC, which points out that ambiguity exists in the proposed rule as to the meaning of "community," which may be cured by language making it clear that it is referring to the community to which the station is licensed.

188. AMST does not think that the proposed rules should be adopted because, among other reasons, in a five-station community it would be possible in peak viewing time to have no free TV available, in a four-station community, it would be possible that there would be no free programing available between 7:30 and 9:30 p.m., and so on with regard to communities with fewer TV services. The Joint Committee suggests restrictions more stringent than those in the proposed rule. Among others, it suggests that no STV station be permitted to devote more than 60 percent of its broadcast day to STV programing. Thus, whereas our proposal would have imposed no restrictions on STV stations operating in five-station communities, the Joint Committee would impose the 60 percent restriction on them because the lack of information about the possible impact of STV on free TV "does not warrant the risk of permitting any Pay-TV station to operate on unlimited time in any market."

189. ACLU believes that STV should not be viewed as a beneficial supplement to free TV, but as a different and independent system. Therefore, that group argues, both services will have the greatest chance of developing their potentials if stations are exclusively STV or free TV, and they accordingly propose that there be two classes of TV broadcast stations. This, they state, would best promote diversity (see par. 158) because an exclusively STV station would have the incentive to provide diversified programing for all hours of the day and evening. (In addition to working against diversity, they state that to permit STV and free TV over the same station could lead to various problems which they set forth.) ADA has similar views, but they contain additional ramifications which are discussed later in paragraphs 254–257.

190. *Conclusions.* In discussing Issue (1) we stated that we were adopting a rule limiting STV operations to communities within the Grade A contours of five commercial TV stations because we believed that assuring adequate amounts of free TV programing to the public was an overriding consideration. We shall not repeat the discussion of the subject which we presented there, but point out that the same considerations lead us to adopt a rule requiring STV stations to broadcast at least the minimum number of free TV hours required by § 73.651 of the rules. We believe that, at least at this point in the development of the new service, such a rule is a necessary safeguard.

191. We cannot agree with ACLU and ADA that there should be two classes of stations and that STV stations should not only not broadcast the minimum number of conventional TV hours, but should be prohibited from doing so. One of the principal arguments made by proponents of STV is that it will promote development of new or marginal stations and of UHF by supplying needed financial support. Clearly, the development of which they speak is one that envisaged both STV and conventional TV on the same station. We are of the opinion that STV and free TV can exist side by side on the same station, each service supplementing the other to the ultimate benefit of the public, and that free programing will not be an undue burden on STV stations.

192. We are adopting a rule limiting STV to five (or more)-station communities, permitting only one STV operation in a community (see Issue (4)), and requiring that STV stations broadcast at least the minimum number of hours of free programing, all in the interest of assuring adequate free programing for the public. We now face the question of whether STV programing should be limited as to segment of the broadcast day and to number of hours of programing. The answer to us is a clear "no." We have made adequate provisions to assure free programing. The new service cannot be completely surrounded with restrictions lest it smother. Some flexibility in operation is needed, and for various reasons we think that this is an area where that flexibility should be preserved. For example, to limit the number of hours of STV programing in prime time could, in the light of the Hartford trial, quite possibly prevent the new service from becoming financially viable. Prime time was the principal programing time at Hartford, and it would appear that it will be in new operations. STV should be permitted to program that or any other time with STV programing if it so wishes, with as many or as few hours as it wishes. A single exception is that of STV over a station using the only channel assigned to a community, in which case we consider it in the public interest to require some local programing in prime time. Such situations should occur rarely (see par. 177).

193. With the limitations which we are adopting, the fears of the Joint Committee about impact should be allayed; and the AMST argument that the proposed rule might allow all STV programing (and no free programing) during prime time in five-station communities vanishes. In the light of the position we take, it becomes unnecessary to discuss some of the other points made in the comments. As with other parts of our rules, should experience indicate the need for modification thereof, such changes can always be made.

(3) *Whether subscription television should be permitted over any television station (subject to possible qualification as in par. 45(b)(4) concerning number of stations in the market), UHF stations only, or some other limitation.* 194. Comments on this issue present a mixture of views. Several parties state that STV should be permitted over any station, for to adopt limitations, such as limiting it

to UHF stations, is inherently anticompetitive, and no station should be precluded from rendering STV service if it wishes. They argue that there is no apparent reason for any limitation of this nature, and that if one were adopted it would foreclose VHF stations in some communities from STV operations and some communities might be deprived of STV, contrary to the public interest. Although Trigg-Vaughn is of the foregoing view, it states that as an interim policy the Commission might, in comparative hearings, favor UHF applicants proposing STV operations. Kaiser, believing that it is too early to decide whether to limit STV to particular types of stations, in effect says that there should be no limitation at the present time. AMST, although opposing STV, apparently would favor not limiting it to UHF stations because, among other reasons, it is irrelevant whether free TV is impaired by STV over UHF or over VHF stations, and because to limit it to UHF would do violence to the principle of an integrated UHF and VHF national television system on which the all-channel law is based. "In any event," AMST argues, "the Commission's plans for UHF development are long-range and short-term expedients like this would only divert UHF stations from providing the free television service contemplated for them by the Congress."

195. On the other hand, some parties would have us limit STV operations to UHF. The usual reason for this view is that STV can supply needed economic and program sources for marginal and new UHF stations. The views differ slightly: Skiatron, for example, would limit STV to UHF and marginal VHF stations. Springfield says to limit to UHF but to waive the rule on an adequate showing. Nationwide (in oral argument) suggests that in intermixed markets preferential treatment should be given UHF stations over VHF stations in obtaining STV authorizations. It also would prohibit STV over stations with basic network affiliations. Acorn would limit STV to UHF stations at the outset. It says that a UHF station is more likely to be a new station and that the public would be more likely to pay for programs over that station than to pay to stations from which they have been receiving programs free. In addition, Acorn observes, since UHF stations are more likely to be new, there is less chance of preempting of free TV time than there is if an established VHF station begins STV operation.

196. *Conclusions.* Although as a practical matter, STV may turn out to be limited mostly to UHF stations, we do not think it should be so limited by rule. To do so could, as some parties argue, foreclose some VHF stations that wish to engage in STV operations from doing so. With the rules that we adopt today, sufficient restrictions are placed on STV to act as safeguards in areas of concern. We do not find any of the reasons given for restricting STV to UHF of sufficient weight to merit such a rule at this time.

(4) *Whether more than one station in a community should be permitted to engage in subscription television operations, and, if so, whether such stations should be permitted to broadcast subscription programs simultaneously.* 197. Telemeter states that this is a complex question which should be decided on a case-by-case basis, at least until some pattern emerges. It thus appears to oppose a rule restricting STV to a single station in a community. Zenith and Teco mention that as a practical matter it is likely that there will only be one STV station in a community, but to impose such a limitation by rule would apparently go contrary to the Commission's policy of encouraging competition. They suggest deferring this kind of decision until such time as a second station in a community applies for STV authorization, at which time the Commission will have information concerning the operation of the first station therein and could make a judgment on the basis of that information and other local public interest conditions. The opinion of Kaiser that it is too early to decide this issue is consistent with the foregoing.

198. Various parties, including ABC, Teleglobe, and ACLU take a position that STV should not be restricted to a single station because this is anticompetitive. Teleglobe adds that a limitation would also be unfair to another station in the community wishing STV.

199. Munn and Chase say that STV should be limited to one station per community because there is insufficient box office programing for more than one station, and that allowing more than one to engage in STV operations would deteriorate the service. Trigg-Vaughn and AMST state that to limit STV to one station in a community would give the single station a monopoly. Moreover, according to AMST, "the combination of these market monopolies, deeply committed to pay television, would be particularly effective and energetic in efforts to 'siphon' free television audiences and programing." AMST admits, however, that such a restriction would reduce the preempting of free TV time by STV.

200. *Conclusions.* Our concern about preempting of time has been previously discussed. It has led us to adopt rules restricting STV to certain communities, and requiring STV stations to carry some free TV programing. For the same reason, we adopt a rule that, with the qualification mentioned in paragraph 207 below, restricts STV to one station in a community. If more than one station were licensed to a single community more time could be preempted than we consider to be in the public interest at this juncture. We foresee no serious problems of monopoly in this connection. Opponents state that there will be no competition if there is only one STV station in a community. We observe that there will be competition between the station offering a recent film without commercial interruptions and unedited, and stations offering a usually older film with no direct charge, and with commercials and editing. There will also be competition between STV stations and motion picture theaters. The prices charged by the latter will provide a bench mark that the STV station must heed. And there will be competition between two ways of viewing sports events for pay. It may be noted, too, that there are numerous communities in the nation which have but a single free TV station, but monopoly problems sufficient to warrant action on our part have not arisen. In paragraph 152, we mentioned the views of the Joint Committee to the effect that it would be unconscionable for the Commission to permit such a monopoly without having clear-cut authority to regulate rates. We do not find it so. In balancing the conflicting considerations of dangers of preempting time against danger of monopoly, the scale tips in favor of protecting against the former. As to the matter of rate regulation, it is discussed under Issue (9) below.

201. In oral argument, Teleglobe suggests that the rule which we are adopting to be modified to permit two STV stations (using the same technical system) in communities lying within the Grade A contours of six or more operating stations. It believes that this would make for additional diversity and supplemental programing. ADA suggests permitting STV on any number of channels in a community if this does not reduce the number of free TV services below four. Although these suggestions may have merit, we think it best at the outset to adhere to the one-station rule until more experience is gained. It is possible that they might be given consideration in the future.

202. In its oral argument directed at the proposed one-station rule in the Committee draft of the fourth report and order, AMST, quoting from the draft, states that the rationale of the rule 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." It then says that there are many communities in which STV programs from more than one station will be available. As an example it refers to the Springfield-Holyoke, Mass., market, which, it says, possibly would be required to receive the STV programs of three STV stations. Citing from the 1967 Television Factbook, it says that under the "five-Grade A rule" STV stations could be authorized in Springfield-Holyoke, in Worcester, Mass., and in Hartford, Conn., and that therefore each of the three STV stations could be required to give STV service to Springfield-Holyoke.[48] It says that Worcester is covered by the Grade A signals of three Boston commercial TV stations and by the Grade A signal of the Worcester station. It says that Springfield and Holyoke are covered by the Grade A's of at least two Hartford stations and by the Grade A's of two Springfield-Holyoke stations. It does not say how many Grade A signals cover Hartford.

[48] See Issue (10) below. Under the rules we adopt, each STV station must, with some exceptions provide STV service to those requesting it who reside within the Grade A contour of the free TV service of the station.

203. The example is inaccurate and strained, and in any event misses the point of the rule. It is inaccurate and strained because, using their source, the 1967 Television Factbook, the following seems evident: An STV station could be authorized at Worcester, as AMST states. It is covered by three Boston stations, one Worcester station, and has two idle channels assigned. If another Boston station increased its facilities to cast a fourth Boston Grade A signal over Worcester, the presently operating station in Worcester could apply for an STV authorization. However, that station does not cast a Grade A signal over Springfield-Holyoke and would not be required to give STV service to that community. Assuming that there is no fourth Grade A signal covering Worcester from Boston, then one of the two idle channels would have to be activated in order to grant an STV authorization for a Worcester station. For purposes of discussion, we shall assume that the new station would cast a Grade A signal over Springfield-Holyoke, and that it is granted an STV authorization.

204. Using the Factbook, it is clear that only two Hartford stations include Springfield-Holyoke in their Grade A contours. The only other Grade A contours covering those communities are those of the two Springfield-Holyoke stations. Since there are only two channels assigned to Springfield-Holyoke, there could not, under the five-station rule, be an STV authorization granted for Springfield-Holyoke. However, for purposes of discussion, we shall assume that a Hartford station increases its facilities and casts a third Grade A signal over Springfield-Holyoke so that an STV station could then be authorized in the latter market. We shall further assume that such an STV station is authorized.

205. Finally, according to the Factbook, it would appear that Hartford lies within the Grade A contours of five commercial TV stations. Stations in that community would therefore be eligible for an STV authorization. For the sake of discussion, we shall assume that a Hartford STV station is authorized.

206. With these multiple assumptions, we arrive at a situation where an STV station is authorized at each of the three markets under consideration. It is, of course, possible that the grant for STV operation in Hartford might be to a station that does not cast a Grade A signal over Springfield-Holyoke, so that it would not be required to give STV service to that market. However, for the sake of discussion, we assume that the Hartford STV authorization goes to a station the Grade A signal of which covers Springfield-Holyoke. Thus, we now have three STV stations, the one at Springfield-Holyoke, the one on the activated channel at Worcester, and one at Hartford all being required to give STV service to Springfield-Holyoke.

207. This in and of itself is not undesirable, whether or not the STV stations broadcast simultaneously. The one-station rule is not designed to assure that there will be only one STV service to a community. Its purpose is to prevent undue preempting of time. It purports to do this by assuring that, in addition to STV service, there are at least four Grade A free services available to a community. Let us examine Springfield-Holyoke with that in mind. That market would be receiving a free service from its non-STV station, none from the non-STV station at Worcester, and two free services from non-STV stations in Hartford. It would thus be receiving three free services, instead of the four that the rule contemplated. This, we believe would not be in the public interest. Hence we are amending the rule as proposed in § 73.642 of the Committee draft. As proposed by the Committee, the rule stated that one STV authorization would be granted to a five (or more) station community if, not counting the station of the STV applicant, at least four of the stations which include the community of the applicant within their Grade A contours are operating stations. We now amend it to state that the STV authorization will be granted if, not counting the station of the STV applicant, at least four of the stations which include the community of the applicants within their Grade A contours are operating non-STV stations. This means that if the Worcester and Hartford stations were authorized for STV in the example mentioned above, and subsequently one of the two Springfield-Holyoke free TV stations should apply for STV authorization, the application would be denied because if it were granted, Springfield-Holyoke would lie within the Grade A contours of only three non-STV stations.

208. We have analyzed Springfield-Holyoke in detail for several reasons. First, it demonstrates that it is unlikely that the situation imagined by AMST would occur, although admittedly it could occur. Second, it serves to sharpen and bring into focus the rationale of the one-station rule, and to provide what we believe to be a desirable amendment to it that will avoid future confusion, since we believe that the problem covered by the amendment could arise. For example, Hartford (using the Television Factbook) lies within the Grade A contours of four Hartford stations and one of the stations in the Springfield-Holyoke market. It is therefore eligible for an STV authorization. Waterbury, Conn., lies within the Grade A contour of the Waterbury station and the Grade A contours of four Hartford stations. If a Hartford station that placed a Grade A signal over Waterbury were to receive an STV authorization, and the Waterbury station subsequently were to apply for STV, its application would be denied.

(5) *Whether more than one subscription television technical system should be authorized, and, if so, whether more than one technical system should be authorized to operate in any one community (assuming that the answer to par. 45(b)(4) is such as to permit more than one station in a community to engage in subscription operation); and, if only a single technical system is permitted, what system should it be?* 209. This issue was referred to briefly in paragraphs 36–39 of the further notice which mentioned that Zenith and Teco favor not limiting STV operations to a single technical system because the underlying policy of the Act encouraging competition points to the adoption of general technical standards within which more than one system might operate. We stated, however, that there might be advantages to the adoption of a single technical system—advantages similar to those accruing to the basic broadcast services, color TV, and FM stereo where we have required all broadcast stations in any band to use a single system so that receiving equipment in the hands of the public will be capable of using signals from any station.

210. Possible disadvantages in using multiple systems were mentioned in those paragraphs as well as in Appendix B of the further notice, which consisted of a memorandum from the Chief Engineer of the Commission for the information of commenting parties. These included the following: Viewers living within the service areas of more than one STV station would be put to unnecessary expense and inconvenience if they wished to see the programs of more than one of them. Persons purchasing decoders and later moving to other communities where other STV systems are used would be put to unnecessary expense and inconvenience. Even if decoders were rented rather than bought, there might still be inconvenience and expense in installing more than one kind of decoder in the home. Having multiple systems might restrict competition because viewers with one decoder attached to their sets could not, without additional inconveniencs and expense, receive STV programs of other stations. Thus, different systems in the same area might have different audiences. Competition between systems in the market place might become a popularity contest between competing systems which would be decided largely on the basis of promotional efforts rather than on their respective merits. The competition should occur before the Commission and be decided on the basis of technical merits before the STV service is regularized With multiple systems, it will be necessary for the Commission to decide on a city-by-city basis what system should be used. This would necessitate detailed technical evaluation of the comparative merits of systems competing for the same market. If different kinds of decoders are used, their price would be greater than if only one kind were manufactured in greater quantity for a single system. In addition to the foregoing, the Chief Engineer's memorandum contained considerable detail about patents, patent holders, and the Commission's revised patent procedures adopted December 6, 1961, which are designed to prevent the public benefits of systems which the Commission specifies shall be used from being derogated by unreasonable exercise of patent rights. That information will not be repeated here.

211. The comments in favor of having a single technical system are very brief.

Thus, ABC states that it favors a single system because the public interest would be served, but does not say how. ACLU favors a single system because multiple systems would have a deleterious effect on diversity of expression for the reasons mentioned in paragraph 37 of the further notice. Motorola gives somewhat more on the matter. It states that authorization of multiple systems would be

> * * * a tragic regulatory mistake for which the public would pay a high price in years to come.
> A single technical system provides the basic tools for growth of the service, as it has for television, both monochrome and color and for FM-Stereo. A single technical system allows equipment manufacturers a better opportunity to plan, to produce, to control inventory, to control national distribution and service, all of which reflect in higher quality, more reliable, lower priced units for the ultimate consumer.

Motorola urges thorough field testing of all systems before a single one is selected. It states that both the Zenith and the Telemeter systems have not been adequately tested (see pars. 142–143 supra), and urges the Commission to institute a formal program of technical investigation and to request the industry to reconstitute the National Television Systems Committee as a vehicle for obtaining the field performance results for the Commission to evaluate.

212. The most lengthy arguments against limiting STV to a single technical system are presented by Teleglobe, Telemeter, and Zenith-Teco. Teleglobe offers the following: It presents a brief sketch of the history of STV systems including the delevolpment of the Teleglobe externally-connected decoder (as opposed to decoders that have to be connected to the inside of the TV set), and its centralized metering and billing system which permits immediate knowledge at a central office that a program is being viewed and which entails no coin or token insertion into the decoder or periodic sending in of tapes, code cards or the like for billing purposes. There were three STV systems in existence in 1957 when Teleglobe came on the scene. Had the Commission in 1957 decided to adopt a single technical system for STV, technical developments would have been frozen, progress stultified, and Teleglobe's novel concepts of external decoder connection and centralized metering and billing would not have emerged. Moreover,

> [a]ll systems are workable. They are all ready for the market place. But only the actual operation of the individual systems—over a period of years—with tens of thousands of subscribers—in a number of markets—will be able to establish conclusively their comparative technical merits, efficiency of collection methods, ease of operation in the subscribers' homes, degree of servicing problems and general applicability. There is no other evidence that will justify the Commission to choose now one system in preference to the others. To make a choice of a single system for nationwide use, merely on the strength of circuit diagrams and written specifications is extremely unsound * * *. A commitment by the Commission to a single system—in the present circumstances—will be a deterrent to progress and inventiveness.
> A "hands off" policy on the part of the Commission may or may not lead ultimately to the establishment of a single nationwide system. The public will not be hurt, however, since it is our proposal that television decoders should be installed by the Pay-TV operator and not sold to the subscriber.

In addition, not only would the adoption of a single system be unfair to the entrepreneurs who have pioneered STV at considerable expense and in the face of difficult opposition, but it would present a single company with a billion dollar monopoly, with profits not only from decoder sales, but from yearly royalties paid by franchise holders for use of the system. Finally, multiple systems should comply with general standards of good engineering practice, and should not be limited to one system per market since there is no technical difficulty in attaching more than one decoder to a set.

213. Telemeter presents arguments like those of Teleglobe with regard to stifling of invention and competition to improve systems if a single system is adopted. In addition, Telemeter says that because having a single system would eliminate competition, it would prematurely necessitate rate regulations, patent license regulations, and other burdens which tend to stifle an industry which does not yet exist. It is premature, we are told, to fix upon a single system because this is not merely a technical question; it goes to the heart of the commercial organization of STV. In addition, as mentioned earlier (par. 150), Telemeter believes that broadcasters, decoder owners and maintainers, and programers will have to be one and the same in the early phases of STV, and it will probably be necessary at the start to grant franchises in order to induce investment in STV. Because of this, it is argued, having multiple systems would be the only way to have competition.

214. Zenith and Teco make the following presentation: Multiple systems are dictated by the underlying policy of the Act of encouraging competition. The Commission should adopt general technical standards under which the systems may operate. They could be as follows: (a) The system should be compatible with existing TV service (both UHF and VHF, and monochrome and color) so that present TV sets can be used. (b) The STV system should not cause interference or have other undesirable effects within or without the assigned frequency. (3) It should result in no perceptible degradation of the quality of the video or audio signals received during either an STV program or a conventional program. There is no disagreement with the policy of single systems for basic broadcasting, color TV, and the like, but the same considerations do not apply here. There is no apparent reason why one method of secrecy to preclude nonsubscribers from seeing STV programs need be used everywhere. Whether one or multiple systems are used, they would all be compatible with existing TV sets.

215. Like Teleglobe and Telemeter, Zenith and Teco are concerned about stifling inventiveness. They believe that establishing a single system would tend to make it impossible to incorporate future improvements—improvements which, among other things, could reduce ultimate costs to subscribers. We are told that based on the Hartford trial experience Zenith has made many new improvements in its equipment. The general technical standards that they have proposed would permit this sort of thing, they state. Moreover, they urge, decoder and encoder design involve other considerations than technical transmission of signal, such as billing, for example; and the Commission need not concern itself with what billing method is used as long as it is compatible with existing transmitter and receiver standards.

216. Zenith-Teco also argue that to have a single system would be contrary to the national policy against enlarging the monopoly of patent holders. To adopt a single system which would be inherently anticompetitive, there must be overriding social interests not presented here, they urge. Other arguments given are that there is a paramount interest in fostering competition and diversification of program sources which should brook no unnecessary delays; that there is an urgent need to increase the box office support of feature films which are now so important to the free TV industry; that delay caused by the selection of a single system could cause TV channels to lie idle and open the door to reallocation of those channels to other services, as Motorola apparently would desire; and that there is no need for extensive field testing of systems as Motorola suggests.

217. Finally, they argue as follows: If multiple systems are used, it is unlikely, because of economic reasons, that there will be more than a single system in a community. This is so because an existing system in a community could also serve other stations subsequently authorized by the Commission to engage in STV operations therein. The later STV operators probably would not bring in new systems because it would be more economical and expeditious to use the existing system. Therefore, the inconvenience foreseen by the Chief Engineer if there were more than one system in a community is not likely to occur, and financial burden on the subscriber is minimized by renting of decoders. Although there will probably be only a single system used in a community, no reason why there should be a rule requiring this restriction is apparent.

218. As to the last-mentioned subject—limitation of STV to a single system in any one community—Acorn says that it favors STV broadcasting by more than one station in a community, and for that reason urges that only a single technical system be permitted in one community so that all subscribers may receive the programs of all STV stations there. Munn and Chase, on the other hand, believe that STV should be limited to one station per community (because

of the limited number of box office programs) and say that this view carries with it the requirement of having only one system to a community, although they see no reason for not having multiple systems nationally in nonoverlapping markets. Trigg-Vaughn opposes limitation of one system to a community simply for the sake of confining all STV operation in the community to a single system, on the ground that this would be contrary to the public interest. However, it would apparently favor the adoption of appropriate limitations if having different kinds of STV service in a community would cause loss of the public's investment in receiving equipment or cause incompatibility with such equipment.

219. *Conclusions.* We have carefully considered the comments of filing parties and the views of the Chief Engineer of the Commission and here decide that it is in the public interest that multiple technical systems of STV be permitted. Many of the negative aspects of having multiple systems that are mentioned by the Chief Engineer are nullified by the fact that we are limiting STV by licensing a single station within a community for such operation. Thus there is no problem of inconvenience and expense to the public caused by having two decoders attached to one receiving set for the purposes of receiving two STV operations in the community. While there may be viewers within the range of STV operations in more than one community, we do not believe these situations will be so numerous that, over all, significant inconvenience will be caused. Because of the foregoing, the argument that multiple systems might tend to restrict competition by dividing STV audiences between two STV stations falls. Our rule requiring that decorders be leased rather than sold (see Issue (11) infra) protects those subscribers who move from one community with STV service to another STV community. To the argument that one system may be better than another and that with multiple systems use of one or another may be based on the efforts of salesmanship rather than technical quality, we reply that by establishing standards which multiple systems must meet, we assure that they will be able to transmit satisfactory pictures and sound. Moreover, as to the matter of decoders costing less with a single system as compared to manufacturing fewer of each kind with multiple systems, we believe that competition between systems may well serve to stimulate better methods of production that will tend toward lower costs. We agree that, under the rules which we adopt, if two or more applicants within a community apply for STV authorizations, a comparative consideration in a hearing may be necessary to determine the relative merits of the technical systems, but this fact does not deter us in view of the advantages to the public of the action which we here take.

220. Many of the arguments made by those favoring multiple systems we find to be of a makeshift nature and lacking in merit. Thus, for example, while we can sympathize with the argument that many entrepreneurs who have invested time and money in STV systems will lose if a single system is selected, private interests would have to yield to public interest considerations, as they did in the case of color TV and FM stereo, if the public interest considerations in this case appeared to point to that direction. On the other hand, we believe that there is merit to the position that adoption of a single system at this time might well stifle inventiveness and the incentive to improve STV systems. At some future date, depending on the factors then existing, it might be in the public interest to adopt a single system, and STV operators are hereby put on notice to that effect. We believe that a broad trial of multiple systems over a period of years, possibly coupled with the reconstituting of the National Television Systems Committee to aid the Commission, might form the basis for subsequent decisions in this area. However, we do not believe that the testing should be made in the abstract. Standards which we adopt can assure the reception of satisfactory signals on all of the multiple systems used. In view of this, we see no reason why the market place should not be the proving ground. Finally, we agree with the argument that there is a paramount public interest in fostering competition and diversification of program sources as quickly as possible. We have already found that STV could provide a beneficial supplement to free TV. In view of this, in view of the paramount public interest just mentioned, and in view of the foregoing observations, nationwide STV—using multiple systems—should begin with a minimum of delay.

(6) Whether a party manufacturing or selling equipment, or a holder of a subscription television franchise in more than one market should be permitted to engage in the procurement and supply of programs to television stations for subscription use; (7) What requirements should be imposed upon station licensees engaged in subscription television operations to assure licensee control, i.e., whether the licensee should be required to retain sole control of all decisions as to program choice, charges to the public, etc., or whether the requirements should merely concern such matters as the licensee's retention of the right to reject programs, to make free choice of programs, to schedule the time of showing of programs, and to set the maximum price to be paid for a program by subscribers (see § 73.642(e) of Appendix C); (12) What restrictions should be adopted concerning the nature of arrangements among patent holders, patent licensees, franchise holders, and television station licensees, e.g., concerning such matters as whether, and under what terms and conditions, patents on any particular subscription television system will be required to be made available to franchise holders and station licensees, and whether stations engaged in subscription television operations should be permitted to enter into contracts that would give them exclusive rights to use a system in a particular community; 221. These three issues are dealt with together because of their close interrelation, bearing as they all do on questions relating to monopoly and competition and on the licensee's responsibility for the programing which is broadcast over his station. We have already set forth considerable information about them in paragraphs 134–138 and 145–152 which presented material on the subjects of modus operandi of the STV service, the methods to be employed, the role of participating broadcast station licensees, and the possible monopolistic features of STV. In paragraph 153 we stated that we would evaluate that material in our discussion of the issues, and this will be done in stating our conclusions below. Reference is also made to footnote 40 in which we indicated that such topics as whether interconnection of STV operations should be prevented or limited, and whether STV system manufacturers or franchise holders with franchises in more than one market should be allowed to engage in STV program procurement or supply, and similar problems related to siphoning, would be discussed under the issues. (The question of whether STV should be limited to carrying certain kinds of programing, also mentioned in footnote 40, is treated under Issue (14).)

222. *Issue (6).* In paragraph 59 of the first report we stated:

> Opponents of subscription television have charged that the conduct of subscription television operations on the lines proposed in this proceeding would permit or foster monopolistic control of the medium. It is pointed out, for example, that a sole franchise holder in an individual community of a system employed exclusively in the local community for the encoding and decoding of subscription television programs might become the sole medium for the channeling of subscription programs into the community. This, it is argued, would enable the franchise holder, and through him the persons controlling patents on the equipment, to control the program availabilities, determine the terms of services to the subscribers and otherwise control the operation without competition from any other persons performing similar services locally. It is also argued that any system which by virtue of nationwide standardization by the Commission, or otherwise, established a nationwide network of local outlets, may gain monopolistic control over provision of subscription television service for the public in all the communities where that system was exclusively used for subscription television operations.

We then went on to say the following in paragraph 61:

> It is superfluous to say that the Commission favors competition in the conduct of subscription television operations. The conditions set out herein for trial operations have been carefully determined with that objective in view. A trial conducted under these conditions would, we believe, provide useful indication of the extent to which it is possible to create and maintain competion in all phases of subscription television operations: Among program producers and distributors, among manufacturers and distributors of equipment, and among stations, to name several. Should a trial disclose that competition among several systems is not feasible, or that the need for standardization of equipment precludes it, there would be ample opportunity, after trial data are available, for deciding whether the continuation

of such a service should be prohibited as contrary to the public interest, or whether its continuation and expansion should be governed by new regulatory controls furnished if need be by amendments to the present statute.

As events developed, however, trial operations were not conducted under the provisions of the first report, but under those of the third report instead. Two fundamental differences exist between these reports: Under the former, more than one STV system could have operated within any one market, and any STV system could have been tried in up to three markets. Under the latter, only one STV system could operate within a single market (although more than one station in the market could engage in STV operations using the system), and any system could be tried in only one market. This fact may have resulted in our obtaining less information about the subject of monopoly than might otherwise have been obtained. However, at the time, other considerations militated in the direction of adopting the revised provisions of the third report. In any event, it may be seen that our concern in the quoted paragrahs had to do with the matters specified in the present issue as well as with that of interconnection of STV stations by a nationwide network—an item mentioned in footnote 40.

223. Proponents of STV commenting on these matters generally favor having no restrictive rules thereon, at least at the outset. As an example, the views of Zenith and Teco are stated in their own words:

> Zenith does not contemplate engaging in program production or distribution if subscription television is authorized. However, we see no reason for a rule prohibiting Zenith from so doing. Other parties manufacturing or selling equipment in more than one market are presently permitted to engage in the procurement and supply of programs to conventional television for either their own or other television stations, or both, while making and selling equipment to those stations or to the public, or both.
>
> In our opinion, a holder of a subscription television franchise in either a single market or in several markets should not be prohibited from engaging in the procurement and supply of programs to television stations for subscription use, so long as the subscription television station is free to use the franchise holder's system, whether or not it uses the programs supplied by the franchise holder. Indeed, in many cases the subscription television station and the franchise holder may be the same party. This, as the Commission knows, is true of RKO in Hartford. This may also occur in the case of two Phonevision franchise options which have been granted to Field Communications in Chicago and Kaiser Broadcasting in Los Angeles.
>
> We believe that so long as any subscription television franchise holder stands willing to provide subscription service to all stations authorized by the Commission to carry subscription programs in a particular market, it should not make any difference whether the franchise holder on some occasions obtains programs which are in turn supplied to the stations. The stations will still have plenty of other sources from which they may obtain programs.
>
> It should be emphasized that because of legal and business considerations involved, Zenith and Teco would be effectively precluded from entering into any arrangement or tie-in with a local franchise holder giving any program supplier exclusive use of Phonevision facilities. Likewise, the same legal and business considerations would preclude a local franchise holder from entering into any tie-in arrangement which would require stations to use only programs supplied by the franchise holder.
>
> We, of course, recognize that the television station should have ultimate control over the final selection of all subscription programs broadcast * * *.

They then refer to the three methods for arranging for programs which involve various degrees of cooperation between the licensee, the franchise holder, and program producers which were mentioned in paragraph 137, and conclude by saying:

> We do not believe that any sound regulatory purpose will be served at this point by putting unnecessary restrictions on a franchise holder's participation in program procurement. Nor do we believe that any useful purpose would be served by putting a program distribution restriction on any other group or classification. At the outset at least, subscription stations will require all the collateral help they can possibly obtain to acquire sufficient box office product to make subscription television a success.

224. The views of Telemeter were set forth in detail in paragraph 150. On the basis of those views, Telemeter urges that, at least at the outset, there be no limitations placed on the system proponent, such as Telemeter, or on the franchise holder with regard to their ability to produce, acquire, obtain or supply STV programing. In one respect, Telemeter disagrees with Zenith-Teco. The position of the latter parties, we are told, would preclude exclusive franchise agreements between Telemeter and TV station licensees. Telemeter believes that an exclusive franchise may be the only method for commencing STV in the early days of the service.

225. Without mentioning them by name, we note that other proponents have views similar to those mentioned in portions of the foregoing. However, we specifically mention Kaiser because of its reference to networking of STV programs. It states that the key to the success of STV lies in its ability to obtain programing that will be supported by subscribers, and that to prevent interconnection of STV operations in different markets or to prevent equipment manufacturers from engaging in program procurement or supply would be to impose severe restrictions in this vital area with no real evidence that they are necessary either to protect free TV or to prevent anticompetitive practices. One proponent, ACLU, holds the view that there should be a complete divorce of programing from other facets of STV operation because diversity is limited by monopolizing programing in the hands of those who control distribution, and diversity is broadened by developing new entrepreneurs in programing.

226. Among opponents of STV, ABC believes that the Commission should not presently adopt rules limiting equipment manufacturers or sellers or franchisers with regard to engaging in program procurement and supply for STV. It observes, however, that—

> [a]lthough these combined functions may raise questions under the antitrust laws, the questions are subtle and do not lend themselves to answers in the abstract. The sound course would be for the Commission to adopt no rule at this time and to await development of the subscription television industry.

AMST is of the view that although if such restrictions were adopted they would preclude certain groups from siphoning programing from free TV, they would not prevent siphoning itself. Finally, the Joint Committee, in order to minimize the risk to free, TV opposes any form of networking of STV programs or other types of multiple program purchase agreements.

227. *Issue (7)*. Generally, comments favor traditional concepts of licensee responsibility, and most favor the requirements in proposed § 73.642(e) (see Appendix C) for assuring licensee control. They are those required by the third report for trial operations and suggested by Zenith-Teco for final rules, and it is stated that they would be adequate to insure licensee responsibility for STV station operations. Kaiser, however, believes that it is too early to decide on detailed restrictions because we do not yet know along what lines the program procurement process will develop. It might be along the lines of free TV with a network-station relationship, or it might be different and therefore call for more complete control by the licensee over operational details. Munn and Chase state that having rules on licensee control might protect licensees against outside pressures.

228. Telemeter supports the proposal providing it is made clear that exclusive franchise agreements are permitted and that stations may enter into contracts whereby the franchise holder undertakes to broadcast a minimum of STV programs within specified time segments. ABC favors the proposal but states that the Commission should recognize that in order to offer special and unusual attractions some kind of network-type distribution structure may be necessary. Because of this, it states:

> [t]he Commission should not foreclose subscription television operators from contractual arrangements necessary to provide a nationwide audience for programing. In the free television and radio areas, a reasonable accommodation between the concepts of licensee responsibility with respect to program selection and national program distribution has been realized, and a comparable relationship would appear appropriate for subscription television.

229. *Issue (12)*. Comments on this issue vary. Teleglobe believes that it would be premature to adopt rules on this subject at this early stage. Telemeter, expressing the same thought, says that if multiple systems are permitted, there may be some cross-licensing and pooling of patents. Some system proponents may manufacture and others not. Therefore, until the pattern of the industry emerges, it would be impractical to attempt to be specific about patent licensing terms and conditions. Trigg-Vaughn

believes that the proposed rule in § 73.642 (e) concerning licensee control is sufficient to protect against abuses, should any develop, that might be imposed on licensees and ultimately the public by manufacturers of equipment. Zenith and Teco are of a similar view. ABC, on the other hand, believes in having appropriate restrictions to guard against anticompetitive practices. If the Commission should adopt a single technical system and permit more than one STV operation in a community, it then urges that rules be adopted that would permit sharing of rights and that would limit exclusivity arrangements.

230. *Conclusions.* We have carefully weighed the foregoing material and have arrived at the conclusions in the following paragraphs. Because of the limited scope of the Hartford trial, we lack information about conceivable problems of monopoly with regard to STV. As we said in paragraph 222, this may be partly the result of the more limited conditions which the third report imposed for trial operations. For example, had one system been tried in three markets, as would have been permitted by the first report, we might now have trial information about interconnection of systems and the purchase of programs from a broader financial base by a franchise holder in more than one community. This lack of information, and other considerations mentioned below, lead us to the conclusion that, at least until such time as the infant STV industry grows to the point where patterns of organization and problems are discernable, we shall not adopt rigid regulations in respect to matters related to Issues (6) and (12), and the kindred matter of interconnection of STV operations. Instead, we are adoptiong rules in respect to Issue (7) which are of such breadth that each application may be treated on the basis of its specific fact pattern as to topics therein relating to Issues (6), (12), and interconnection.

231. *Issue (6).* Zenith and Teco have depicted for us the modus operandi and methods used at Hartford which include three functional organizations — the local franchise organization, the TV station, and program sources. At Hartford, the first two were under common ownership. We are told that there appears to be no reason why this should not be, although it often may not be the case. Three possible methods for making arrangements among these elements for obtaining programs (par. 137) are mentioned. We are informed that at Hartford programs were obtained from more than 50 sources during the first 2 years of the trial. These parties indicate that Zenith does not intend to engage in program production or distribution, that for business and legal reasons they would be precluded from entering into arrangements with local franchise holders giving any program supplier exclusive use of Phonevision facilities, and that the same considerations would preclude local franchise holders from entering into arrangements with station licensees that would require the latter to use only programs supplied by the franchise holder.

232. Telemeter, with considerable experience in Canada, stresses the importance of permitting a single firm to engage in all phases of STV operations including production of entertainment, broadcasting it to the public, installing decoders, and all other aspects of the business. Without this, they insist, STV may not get off the ground. They are therefore of the opinion, at this stage, that it serves no useful purpose to try to predict and separate the elements of STV and regulate them. Moreover, they strongly favor permitting exclusive franchise arrangements, contrary to the position of Zenith-Teco.

233. Thus, the two entities that have the most actual experience in STV operations appear to have views that differ in some essential respects. This underscores the fact that we are in an uncharted area. There is no real evidence that restriction is necessary. In free TV some manufacturers and licensees have gone into programing to promote competitive free TV. Why should the same not be permitted in STV? We have only conjecture to argue against it.

234. We have, through limiting STV operations to five (or more) station communities and to one station in those communities, and through limiting the kind of programing that STV stations may broadcast (see Issue (14)), taken sufficient steps at this time to protect the existing TV structure. We think it essential that thought be given to what might be necessary to protect the growth of the new STV service. It appears that some sort of broader purchasing base for programs might be effective in making available to viewers programs of little mass appeal—operas, plays, and the like—which may not be available on the basis of single-station purchasing. (It might also be helpful in obtaining more and better mass-appeal programs, thereby aiding STV to achieve greater market penetration—a matter about which doubts have been expressed.) As was mentioned in the comments, if a relatively small number of viewers in each of many communities were to view an opera, it might make producing and selling operas an attractive business venture. Lack of such programing on STV trials is one of the areas that STV opponents have chosen at which to aim their darts. It would appear unreasonable, then, to argue against interconnection of STV operations, or against procurement and supply of programs by franchise holders with franchises in more than one city, or by equipment manufacturers, when there is no real evidence that such restrictions are essential to protect free TV or to provide safeguards against anticompetitive practices. AMST states that even if we had such restrictions they would only prevent some program siphoning but not all. To which we can only reply that it is not our intent to erect a complete fence about free TV. It may well benefit the public to leave at least a small opening in the enclosure. Finally, to the ACLU argument that diversity is best promoted by separating the functions of programing from other parts of STV operations, we answer that we give credence to the view that there may be a need for flexibility of approach to program procurement and supply in the early stages without which the service may not develop at all—a result that would make for even less diversity.

235. *Issue (7).* In view of the foregoing discussion about Issue (6) and the discussion of Issue (12) hereafter, we are of the view that proposed § 73.642(e) concerning licensee control should be adopted with amendments befitting the situation as it appears to be. Before specifying what the amendments are, we shall refer briefly to a related topic—our chain broadcasting rules—to illustrate what we consider to be fundamental policy. That policy underlies the chain broadcasting regulations and the amendments to § 73.642(e) which we adopt today. The chain broadcasting rules, adopted for radio in 1941, were later carried over to television stations when TV came into being, and the essentials of those rules are presently in effect. The rules were designed to protect against two types of situation that the Commission deemed to be contrary to the public interest—so-called exclusivity of affiliation, and territorial exclusivity. The former consisted of an agreement between a station and a network whereby the station agreed to accept programs only from that network. The latter was the reciprocal undertaking on the part of the network whereby it agreed that it would not make its programs available to any other station within a given radius. The former was economically advantageous to the network because it gave assurance of an outlet in the community. The latter was of advantage to the station because it had a definite source of programs assured, and knew that no other station in the area could carry those programs.

236. In adopting the chain broadcasting rules, we found both types of exclusivity to be contrary to the public interest. Exclusivity of affiliation was proscribed because it hindered affiliates in the choice of their programs, since they could not broadcast those of another network even though the other network might offer some programs that were highly desirable and the broadcasting of which would be in the public interest. In addition, such exclusivity arrangements limited the chances of other networks to have their programs broadcast in that community, since the station having an exclusive affiliation with one network could not broadcast programs of another. In other words, network competition in the community was restricted, contrary to the public interest. Similarly, territorial exclusivity also restricted competition in that if an affiliate did not carry a program of its network, other stations in the market were prevented from competing to obtain and broadcast the program.

237. As explained above, and for the reasons mentioned, we are adopting rules providing that only one station licensed to a particular community may engage in STV operations. In effect, then,

we have decided that under the conditions of uncertainty about the future development of STV, and to protect the interest of the public in having sufficient amounts of free TV programs available there should at least at the present time be something akin to territorial exclusivity for the STV operator in each community.

238. As to the matter which is analogous to the exclusivity of affiliation which was struck down by the chain broadcasting rules, we have, as the previously stated views of the parties indicate, a conflict of thought between two of the principal proponents of STV—Zenith-Teco, and Telemeter. Zenith and Teco relate that for business and legal reasons they would be precluded from entering into arrangements with local franchise holders that would give any program supplier exclusive use of Phonevision facilities. They state that the same considerations would prevent local franchise holders from arrangements with STV stations that would require the stations to broadcast only STV programs which the franchise holder supplied. On the other hand, if we understand the position of Telemeter correctly, it is of the view that it is essential that arrangements which limit an STV station to obtaining programs from a single source be permitted or the new service will not be able to develop in its early stages. It appears that Telemeter would agree that at a later stage of development such arrangements might conceivably not be in the public interest.

239. As a general principle, we believe that the philosophy underlying the chain broadcasting rules should apply to STV, for it is in the public interest to stimulate competition and diversity. However, general principles are subject to modification if the situation indicates a public benefit may result. Such was the case with our decision to limit STV operations to one station per community. As to the present problem, in our judgment we do not know enough about STV at this time to adopt rules proscribing exclusive programing arrangements—which on their face would appear to be anticompetitive. For it may be that under the circumstances that prevail in the early phases of STV such arrangements, as Telemeter argues, will be necessary to nurture the new service into being—thereby once again modifying the general principle. Thus, on the one hand we believe, along with ABC, that there should not now be specific regulation. But on the other, we would be remiss in our duty, in setting up a new service, to write rules that are silent on a topic of great concern. For this reason, we have chosen a middle course. We adopt rules (see § 73.642(e) of Appendix D, which with modifications is the proposed § 73.642(e) of Appendix C) which provide that, generally speaking, parties will not be granted STV authorizations if they have entered into agreements that prevent or hinder them from making a free choice of programs. However, we provide that we shall examine each application on an ad hoc basis, and if it appears under the given fact situation that the rule should be waived, we shall do so.

240. Similarly, Telemeter has urged what in effect is a rule permitting optioning of a station's time for broadcasting a certain number of hours of STV programs per day or segment thereof. We have, of course, abolished option time for free TV because we found it not essential to successful conduct of TV network operations, and a restraint contrary to public interest. For reasons stated in the preceding paragraph, it could be that in some cases it might be in the public interest to permit this type of arrangement in the early stages of STV. Therefore, we have also incorporated in the new § 73.642(e) provisions to the effect that STV authorizations will not be granted to parties who have entered into such arrangements unless the Commission has approved them.

241. The rules which we adopt are broad enough to encompass not only equipment manufacturers, franchise holders, or others who may be engaged in program procurement and supply, but also any STV networks that may develop or other types of STV interconnections between communities. We do not foreclose STV interconnection or networks, but if arrangements related thereto restrict the freedom of choice of STV stations in procuring programs, the Commission must approve them or no STV authorization will be granted.

242. In periodic reports which we shall require those holding STV authorizations to submit, we shall obtain information in this area, and do not, of course, foreclose further rule making with regard to it.

243. Although, as stated in paragraph 347, we do not now decide what information will be required in applications for STV authorizations, we believe that the subject just discussed is of such importance that information on it will have to be contained in applications. For this reason, we are adopting a rule stating what material on the subject must appear in STV applications (See § 73.642(g) of Appendix D).

244. *Issue (12).* As with Issue (6) we believe that we have insufficient information at present to know what, if any, regulations may be necessary. Much, if not all, of the issue is mooted by the new rules which we adopt. Thus, for example, restricting STV operations to one per community moots the question of whether stations should be permitted to enter into contracts giving them exclusive rights to use a system in a particular community. The adopting of rules permitting multiple systems greatly dilutes the other question posed in the issue.

245. As with other aspects of the new service, we shall keep the matters covered by this issue under surveillance and may from time to time require the submission of reports and other information to keep us abreast of developments, toward the end of having an informed basis on which to take any further regulatory action that may be required in the public interest.

(8) The nature of the technical rules that should be adopted. 246. Appendix C of the further notice contained a proposed § 73.644 concerning equipment and technical operating requirements. That section indicated that STV equipment must be approved in advance by the Commission's established type approval and type acceptance procedures. It further stated (as did par. 39 of the further notice) that additional rules concerning equipment and technical operating requirements would be announced at a later date. (This, of course, was contingent on the establishment of a nationwide STV service.)

247. No comments were received on whether to adopt the proposed § 73.644. After having considered that proposal, we are of the opinion that the type approval portion thereof should be deleted. Type acceptance is generally used throughout the radio services in the absence of an urgent need for type approval. No such urgent need appears evident here. Section 73.644 adopted herein is modified accordingly.

248. As mentioned previously, we have decided that multiple technical systems should be permitted (pars. 219–220). On July 31, 1967, we released a second further notice of proposed rule making.[49] It invited comments on proposed rules which would permit the use of any STV technical system which meets the standards set therein in the event that STV were authorized and that multiple systems were permitted. Those rules would require adequate performance of STV systems in serving subscribers and in avoiding any increase of interference to conventional television services.

249. As that document pointed out, the Commission did not foresee a need for special technical operating requirements for STV, and stated that in the absence of such requirements the operating requirements for conventional television station operation would apply. However, it was made clear that if any parties believed that special rules on the subject were necessary, their suggestions and comments would be welcome.

250. All comments filed in response to the second further notice are presently under study. The rules which we adopt today establishing an STV service will not become effective until 6 months hence so that ample time will be allowed for congressional and judicial review (par. 19). Before that date we intend to issue another report and order in this proceeding adopting rules establishing standards with which STV technical systems will have to comply.

(9) Whether, and to what extent, the Commission should regulate the charges, terms and conditions pursuant to which subscription television service will be offered to the public. 251. Zenith and Teco support proposed § 73.643(b) of Appendix C which would require that charges, terms, and conditions of STV service to subscribers be applied uniformly, although providing that subscribers may be divided into reasonable classifications, approved by the Commission, with different sets of terms and

[49] 32 F.R. 11285.

conditions applied to subscribers in different classifications. However, beyond that, they believe that the actual decoder installation, decoder rental, or per-program charges should not be regulated by the Commission. Trigg-Vaughn has a similar view. Among other reasons for this position, Zenith-Teco state that STV will be in competition with other forms of box office entertainment, and prices would best be controlled by competition in the market place. Telemeter, along the same vein, holds that STV should have the same freedom in pricing as other box office entrepreneurs enjoy.

252. Acorn states that there should be no rate regulation initially because the competition between free TV and STV should keep the STV charges reasonable. Kaiser says that it is too early to decide whether to regulate rates, and Teleglobe holds that it is premature to regulate charges, terms, and conditions because there should be as little regulation of STV as possible in the beginning. Trigg-Vaughn argues that no need for rate regulation has been shown and that regulation would place an artificial restriction in that area. If experience shows the existence of abuses, it is argued by Zenith-Teco and others, the Commission may take appropriate action.

253. As to actual jurisdiction to regulate rates, Telemeter holds that the Commission has no such authority because STV is a broadcast service, section 3(h) of the Act states that broadcasting shall not be deemed common carriage, and rate regulation has traditionally and legally been limited to common carrier and public utility fields. ABC expresses doubts that the Commission can regulate rates because STV has been determined to be broadcasting so that it comes under Title III of the Act; thus, it would not appear that the Act would sanction STV rate regulation. It suggests that the Commission seek Congressional guidance on the matter because STV is such a drastic step which changes traditional concepts of American broadcasting. Others, too, state that the Commission has no jurisdiction. For example, the views of the Joint Committee have been expressed in paragraphs 151–152 above; and, Trigg-Vaughn urges that the regulation of the economics of broadcasting is beyond the powers of the Commission. Although AMST states that it takes no position on the matter, it points out that rate and other regulation would be vast and complex, and that because of the doubtful benefits and substantial threats to the public, STV should not be authorized.

254. It is appropriate here to mention the proposal of ADA which foresees as a development of the future a system described by Dr. Joseph V. Charyk, president of the Communications Satellite Corp. The system is based on the "telephone exchange" principle. It is briefly described as follows:

> * * * The home or place of business would have a TV set and speaker with an auxiliary tape recorder for both picture and sound, connected to a central exchange by a single coaxial cable through a selector switch like a telephone dial or push-button.
>
> The cable would come from a central exchange, like a telephone exchange, which would have literally thousands of feeder connections from television and radio station studios, film and tape libraries, newspaper offices, educational classrooms and laboratories, retail stores, banks, and accounting services, movies, and sports centers, theaters, and concert halls. Each service and individual newspaper, lecture, film, game, etc. would be individually dialed.
>
> Viewing and listening need not be "live." The receiver can be turned on and off to a specific channel by a clockswitch, so the subscriber can receive and tape record programs and services for later, more convenient viewing or study; newspapers, for example, would be recorded in the early morning hours for breakfast consumption—and continually updated around the clock.

ADA states that such a system would provide a choice of all available programs and services whether paid or sponsored. All programs would be carried by the system. The producer of programs would be separate from the television station and cable carriers, and would pay them on a cost-plus-fair-return basis.

255. This is not a complete description of the views of ADA, but it serves to give the central theme of their comments—that although ADA favors STV, the Commission should withdraw its proposed rules and propose new rules under which free TV and STV stations would be separately licensed, with the latter being regulated by common carrier principles under direct FCC supervision of carrier rates and terms. It expresses the fear that to adopt STV rules along the lines of those proposed in the further notice might thwart the development of the foregoing type of system, contrary to the public interest.[59]

256. In oral argument, Zenith and Teco maintain that the ADA proposal is premature. They state that eventually if it came to pass that pressures for spectrum space were so great as to make it necessary to lay cables to cover 80 to 90 percent of the population of the country, then cable would be the primary form of transmitting information into TV sets. Such cables, they say, could realize economies only by carrying many channels, e.g., 20 to 40 channels. They state that under such circumstances, probably the cable would be under single ownership and it might then be in the public interest to have a policy prohibiting the cable owner from being an entrepreneur of information that goes over the cable and requiring the owner to provide channels on a fair basis to all who order them. However, as to over-the-air STV, they aver that the situation is different, for there are not single owners of many channels, but licensees of single channels, and the duopoly rules provide protection within a community.

257. *Conclusions.* With regard to the ADA views, we admit that the future may well bring with it the sort of development which they describe but it would appear to be years away. We do not believe that STV, which we think is in the public interest, should be required to await such a great passage of time, especially since there is nothing to lead to the conclusion that our action taken today would, as ADA fears, thwart the future. We see no reason to believe that STV, authorized as we propose, would impede the development of a "telephone dial" system any more than would the fact that retailing, banking, accounting, distribution of newspapers, and the like are presently cast in a mold that is highly different from that which ADA foresees. STV has already been postponed for a number of years and, with the information now before us, we believe that it should at last be given a chance to provide what lies within its power to the public. Should the situation envisaged by ADA occur, there will be time enough to switch to a common carrier type of regulation if that is then indicated.

258. It is stated that the nature of STV, like that of common carriers and public utilities, is such that rate regulation is necessary. Coupled with this are two additional arguments: That we must consider and decide whether we have such rate-regulatory authority before permitting STV operations; and that lacking clear-cut authority we should go to Congress for legislation amending the Act to give clear authority.

259. We cannot agree with these views. For reasons stated in the first report, we have concluded that we have jurisdiction to authorize STV. Although we do not here decide whether we possess authority to regulate STV rates, we observe that the authority to authorize STV is not dependent on a concomitant one permitting such regulation. It is stated that television channels are in the public domain and that the STV operator will make a direct charge to the public for use of the public's property. Such a situation, we are told, requires rate regulation. The argument is without merit. Throughout this document we have used the term "free TV." However, "free TV" is not really free. The advertising costs which support free TV are eventually passed on to the public, and a profit is made by the licensee or others from the

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[59] We also note here the suggestion of TVC of California, Inc., and Con-Sumers, Inc., that space satellites be used for STV. The suggestion is couched in the broadest terms, contains no details, and is, in any event, outside the scope of this proceeding.

use of the public's channels.[51] Yet we do not regulate the rates charged by free TV stations for time over their stations which results in their profits, and it has been said that we cannot.[52]

260. The public is free to subscribe or not to subscribe to STV services. We believe that the market place will regulate the charges that are paid and that if they are excessive the operations will not succeed (see par. 200). There is nothing in the Hartford trial to indicate that rates will be exorbitant. The highest price for a feature film during the first 2 years of the trial was $1.50. The lowest was 50 cents. The most costly sports event was $3; the lowest, $1. The average prices for such programs during the second year were $1.03 and $1.37, respectively. Prices for other programing were comparably reasonable. We have already adverted to the fact that for a very popular heavyweight fight nine persons were viewing at each tuned-in set for a cost of $3, whereas the same fight was shown on closed circuit TV in local theaters for a price of $5 per head. Moreover, the rules which we adopt provide that the station licensee shall have ultimate control over the maximum charges to be made for programs, and the licensee is responsible to the Commission at renewal time for the stewardship of the station in the public interest and is expected to govern his activities during the license term accordingly. Regulation of charges, terms and conditions as prescribed in § 73.642(f) (2) (Appendix D) which we adopt today is the extent of regulation that we deem necessary at the present time in this area. Should abuses arise, we are not barred from taking whatever steps appear to be necessary to correct them.

(10) *Whether a station engaged in subscription television operations should be required to furnish subscription service to all persons within its service area who desire it.* 261. Several parties are of the opinion that it would be premature to adopt rules on this subject in this stage of development of STV. In this, as in other areas, Kaiser believes that because of the uncertainty about how the new service will develop, overly narrow and detailed restrictions might both fail to achieve their desired ends and smother the infant industry. Kaiser states:

> * * * [I]t is far too early to conclude that there is a need to impose full-blown public utility regulation upon subscription operations, with an obligation to serve everyone within some defined area and with detailed regulation of rates and earnings.

Trigg-Vaughn thinks it too early to impose a regulation requiring that everyone within the service area of a station be furnished STV service if he desires it. The reason given is that there might be a limitation on the ability of a station to do this as a result of freak interference and reception conditions or other problems for which the station would have no remedy. ABC, Telemeter, and by implication, Munn and Chase, are of the view that, generally speaking, STV service should be provided to all persons in the service area on a nondiscriminatory basis. However, the last two of those three parties qualify the position with provisos which include giving the STV operator the right to refuse or terminate service for non-payment of STV fees, for irresponsible or unauthorized damage to or use of decoder equipment leased to the subscriber, or for other reasons. Telemeter would also like the right to provide cash decoders rather than credit-type decoders to poor credit risks. Munn and Chase observe that the right to see free TV is limited by the ability to buy a set, and if a person does not pay for his TV set, it is repossessed. They believe it would be an error to place on STV operators a requirement to serve all who wish to subscribe, and that the matter would best be left to the operator's business judgment and desire to expand.

262. As to the last-mentioned point, Trigg-Vaughn says that because of natural competitive motives the STV operator will make the broadest efforts to serve as many subscribers as possible. Zenith and Teco, of the same view, say that because of this there is no need for a rule. They also advert to the fact, like the Trigg-Vaughn view mentioned in the previous paragraph, that it is sometimes difficult to define a station's service area because there may be places of poor reception within the Grade A and B contours. They believe that although a rule might give protection in such situations, they can easily be handled on an ad hoc basis. Although apparently opposing the adoption of a rule, Zenith and Teco express a view like that of Telemeter, and Munn and Chase, that the STV operator should be permitted to withhold or withdraw STV service from those who are poor credit risks or who otherwise violate the terms of subscription agreements.

263. Finally, Zenith and Teco make the following statement:

> * * * We might also note that in commencing new subscription operations in any community, it may be necessary, in order to efficiently and expeditiously handle decoder installations, to break down the so-called service area into geographic sections for purposes of orderly promotion and development. While this approach would be usually temporary, in most cases it will undoubtedly be utilized.

264. *Conclusions.* This issue is not without difficulties. We have classified STV as broadcasting on the ground that its transmissions are intended to be received by all members of the public who wish to subscribe. This would suggest that all who wish it should receive service, i.e., that all should be served, but for the reason that STV is broadcasting—regardless of whether it is a public utility or not.

265. It is suggested that we not have rules on the subject, at least until more is known about the pattern of STV activities. However, although for that reason we have been willing to defer possible action in some of the areas discussed in the issues mentioned above, we believe that with regard to the instant issue the possible problems are rather clearly drawn, and that to defer action could lead to difficulties that by rule could be avoided. We know, for example, that within the normal service areas of television stations there may be poor reception at some places; that a small percentage of people are poor credit risks, that they may violate the terms of a contract with an STV operator, and that they may damage decoders installed in their homes; and that when an STV service is commencing operations in a community it may be more efficient and expeditious to install decoders on the basis of geographic sections.

266. The rule which we adopt (§ 73.642 (f), Appendix D) takes such matters into consideration. We believe that it will avoid problems that might arise with regard to them, that it will not hinder STV operations, or, on the other hand, do a disservice to the public by unjustly preventing them from receiving STV programs which they desire to view. With regard to the relatively tiny percentage of the public who might not pay their bills, for example, we note that even in the public utility field precautions are taken on the matter. Thus, for example, it is common for a utility like a telephone company to include in its tariff rules a provision that the company may require potential customers to supply a surety bond or cash deposit satisfactory to the company to assure payment for service. Moreover, they often provide that the company may terminate service for nonpayment of bills. The fact that the tariffs state that the company "may" discontinue service, i.e., leaving the matter to the discretion of the company, instead of stating that the service "shall" be discontinued when certain conditions of nonpayment prevail, raises certain questions about possible dissimilar treatment of customers by the utility which have not yet been solved. Be that as it may, we mention the tariffs to indicate that even in the utility field, of which the

[51] In oral argument, the Joint Committee questions this view that advertising costs are passed on to the public and calls attention of the Commission to a recent book, by a professor of economics, in support of the argument that "television today is indeed free because as there are more and more units of a particular commodity being sold * * * the purchase price goes down and to that extent the advertising costs are borne by the results of mass production in terms of lowering the purchase price." The Joint Committee thus has introduced into the record two conflicting positions, for Appendix A to its comments filed Oct. 1, 1966, in response to the further notice, consisted of a scholarly article appearing in the June 1966 issue of the Economic Journal which stated the following on its first page:

"In 1963 American advertisers spent $1.6 billion to support the existing commercial television system. In the same year this system provided viewers in all income groups with a total of 3.4 million station hours of entertainment and news programmes. The costs of this entertainment were shifted to consumers in the form of higher prices for advertised goods and services."

In any event, even if advertising costs were not passed on to the consumer, the fact would remain that we do not regulate the rates charged advertisers by licensees of public channels, and advertisers constitute a part of the public.

[52] Pulitzer Publishing Co. v. Federal Communications Commission, 68 U.S. App. D.C. 124, 126, 94 F. 2d 249, 251 (1937).

cornerstone is service to the public demand, there are provisions of the type referred to.[53] We do not find it unreasonable, therefore, to have similar provisions for STV service, for we think that they would do no more violence to the concept of broadcasting serving all of the general public than the telephone company provisions do to the concept of a public utility.

267. However, since the service is new, we do not know under exactly what circumstances precautions or other actions should be taken by STV operators or what the precautions or actions should be. This is an area as uncertain as the "may" vs. "shall" problem mentioned above. The rule which we adopt is broad enough to permit an STV operator, as Telemeter requests, to install a cash, rather than a credit decoder for poor credit risks, and to permit requirement of a reasonable deposit in advance for poor credit risks. However, we emphasize that we do not expect such cases to arise frequently, and that we regard as fundamental the concept that STV, like other broadcasting, is for the general public. We view actions like those just mentioned as reasonable under the circumstances, and as not precluding the persons involved from becoming STV subscribers. We also regard it as reasonable to permit termination of service for nonpayment of bills, damage to decoders, or the like. It is stressed that we expect STV operators to use good judgment in this area of business operations. We shall observe carefully the operation of STV under the leeway which we here provide, and shall take appropriate action to correct any abuses that may occur or any other situations which we deem contrary to the public interest. From time to time, as with other aspects of STV operations, reports on the subject may be required of STV operators.

268. As to geographic or other reasonable patterns of installation for new STV services, the rule is drafted to permit this. Such a provision seems reasonable and likely to make for a more rapid and efficient development of the new service in any community. The rule also provides that STV service need not be furnished to those residing in pockets of poor reception within the service area of an STV station. Finally, our preliminary study of the technical systems for STV leads us to recognize that the service area of an STV operation may well be smaller than that of its free TV service that our rules will require it to provide. The rule adopted today in relation to the instant issue of whether STV service should be provided to all within the service area of a station is designed to strike what seems a reasonable requirement, namely, that STV service must be provided to all within the Grade A contour of the free TV service of the station, with the exceptions mentioned above concerning nonpayment, poor reception pockets, and the like. This rule is consistent with our use of the Grade A contour in limiting STV to five-station communities. No doubt many subscribers will be obtained outside that service area, but service there will not be mandatory.

(11) Whether requirements should be imposed to insure that the public would not be adversely affected by obsolescence of subscription television equipment or cessation of service, e.g., should the Commission require that such equipment be leased rather than sold. 269. Kaiser states that because the industry is not yet developed, it is too early to decide whether a rule requiring STV equipment to be rented would protect subscribers from obsolescence or cessation of service, or whether it would serve primarily to prevent them from being able to obtain equipment from the sources they might prefer. Others, like Telemeter, Teleglobe, and Munn and Chase, believe that a requirement of renting would protect the viewers. Telemeter believes that it would not only protect from obsolescence and cessation of service, but that (assuming multiple systems were authorized) it would protect those who changed from the service of one STV company to another. Munn and Chase say that renting would help in the matter of maintaining equipment in proper operating condition. They analogize decoders to postal meters, saying that "the basic unit is sold to the customer but the meter, containing the postage printing element, is only leased, subject to regular service, with postage added only by postal authorities." ABC states that whether equipment is sold or leased, regulations should be adopted to protect against early obsolescence, or cessation of service. Trigg-Vaughn believes that, at this point, to protect the public, it would be wise as an interim measure to have a rule requiring that equipment be leased instead of sold, but with provisions for waiver thereof. Citing cases and examples, Motorola, in oral argument, states that a rule requiring leasing would be inherently anticompetitive, and urges a rule providing that subscribers have the option to lease or purchase decoding equipment.

270. Zenith and Teco believe that STV operators will rent rather than sell decoders because of practical business considerations. This is because the decoder contains the elements of secrecy of the system and the billing apparatus which the operator would want to keep under his control. They do not object to a rule requiring rental instead of sale, at least during the early years of STV, to protect the public.

271. They also point out that in paragraph 17 of the further notice the Commission, because of its doubts about the viability of STV, suggested that if nationwide STV service were authorized, it might require a showing on the part of STV applicants that they have the capacity for sustained operation just as is the policy with applications for proposed free TV stations.[54] Zenith and Teco believe that such a requirement, a showing by the applicant that it could continue operation for at least 1 year, would not be unreasonable. They stress, however, that this showing should be limited to the station applicant, and not extended to others such as the franchise holder. As an analogy, they state that if a free TV applicant proposed to use General Electric transmitting equipment it need not show the financial capabilities of that company. They admit, however, that if the franchise holder and the applicant for the station STV authorization are the same party, it might be appropriate to require a showing that the financial situation of the franchisee is such that it will not impair the ability of the station to be constructed and to operate for a specified period.

272. *Conclusions.* At this stage of development of STV service, it appears that the best way to protect the public against obsolescence of equipment or cessation of service is to adopt a rule requiring that equipment be leased and not sold to subscribers. We recognize that at some later stage it may better serve the public interest to permit sale or lease. Should STV flourish and become a regular part of the television scene, a continued leasing requirement could mean that subscribers would pay in continued rental fees more than it would cost to buy the decoding equipment. However, for the present it would appear that a rental requirement is more in the public interest.[55]

273. Moreover, although we do not adopt a rule on the subject we shall, as with applications for new free TV stations, follow the policy of requiring STV applicants to demonstrate financial ability to continue operations for a period of 1 year. This will apply not only to applicants for new stations wishing to provide STV service, but also to applicants for STV authorizations over existing stations. Besides the usual reasons for requiring such a financial showing in the case of applications for free TV stations, the requirement will here have the added function of protecting subscribers in the following way: It appears from the Hartford trial that in addition to weekly or monthly decoder rental fees, subscribers may be charged an installation fee (in the case of Hartford, $10). By assuring against early cessation of service, this investment of the subscriber is given some measure of protection. This requirement, as suggested, will run to the station applicant and not to franchise holders, although it may involve inquiry into financial status of the letter if station applicant and franchise holder are commonly owned.

(13) Whether means should be provided to insure that subscription television service will be available to all eligible stations on a nondiscriminatory

[53] In other words, utilities must serve the public on demand—for a charge. They are not charities.

[54] Ultravision Broadcasting Co., 1 ECC 2d 544, 5 Pike & Fischer, R.R. 2d 343 (1965).

[55] In addition to protecting subscribers against obsolescence or cessation of service, requiring lease of decoders could conceivably stimulate the growth of STV since selling decoders for an unfamiliar service might be more difficult than leasing.

basis. 274. Telemeter suggests that, assuming that the Commission establishes a class of eligible stations, STV should be made available to all stations within that class, subject to the ability of the station to work out satisfactory terms with appropriate parties, such as the franchise holder. It further states, assuming that STV is permitted over more than one station in a community, that just as a network may make an exclusive affiliation arrangement with a station in a market, an STV operator should be permitted to negotiate with a station on an exclusive franchise basis if it wishes to do so.

275. ABC believes that STV should be made available to all eligible stations on a nondiscriminatory basis, but thinks that at this time a policy statement on the matter is all that is required. If for any reason discriminatory practices should occur in the future, the Commission could regulate them. Zenith and Teco state that no problem could arise in this regard until more than one station is authorized to carry on STV operations in a community. Because they believe it unlikely that in the foreseeable future there would be more than one station applying for STV authorization in the same community, they think it the better course to defer action on the matter until an occasion arises in which a second station applies for STV authorization in a community. By that time, they say, there will be more experience with STV and thus a better basis for dealing with the problem which will exist.

276. *Conclusions.* We have already determined that all UHF and VHF television broadcast stations are eligible to conduct STV operations. However, since we today adopt rules limiting STV operations to one station in a community, possible discriminatory problems with regard to making technical equipment available to all stations in a community are moot. Of course, possible problems on a national scale are conceivable. For example, a party may be a licensee in each of two five-station communities. He may be engaged in STV operations in one of them using technical system X, and might have an agreement that the supplier of that system will not make it available to any station in the other community until such time as the viability of STV in the former community has been determined. If viable in the former, then the licensee might use the same equipment in the second community. If not viable, and the licensee does not wish to engage in STV operations in the second community, then the supplier of the system could make it available to another station there. Such an arrangement might hinder the development of STV, but we believe that permitting multiple systems for STV operations greatly reduces chances of adverse effect on the public interest that might occur and the possibility that arrangements of this sort might be made (also, they might be illegal restraints of trade). Similarly, we foresee no difficulties nationally with regard to other equipment arrangements. As to the Telemeter suggestion that it be permitted to negotiate with a station on an exclusive franchise basis, insofar as this pertains to programing arrangements and not to the matter of technical equipment discussed above, it has been discussed in paragraphs 231–234.

(14) Whether a limitation should be placed on the type of programing which subscription television operations may broadcast, and if so, what that limitation should be and whether applicants for subscription authorizations should be required to make a showing of how their programing will differ from conventional programing or would otherwise serve the needs and interests of the community to be served, and what that showing should be [references to pars. Nos. omitted]. Whether placing a limitation on type of subscription programing is within the scope of the Commission's authority, taking into account §§ 303(b) and 326 of the Communications Act. 277. Briefly, the principal views of parties on this issue, as expressed in the comments, are the following: There should be no program restrictions on STV because this would be contrary to the First Amendment of the Constitution and section 326 of the Act (ABC, ACLU, NBC, Telemeter). Only if there were an imperious need to limit STV programing might the Commission have authority to restrict (Kaiser). There is no such need because it is unlikely that there will be siphoning from free TV and thus there is no imminent threat of STV to free TV; and the very fact that there is no such threat raises serious questions about the censorship problems (Zenith-Teco).

278. Moreover, it is difficult, if not impossible, to draft a rule that would define the programs that STV could carry (ABC, Kaiser, NBC). For example, the Commission recognized the difficulty of defining "box office" in the further notice (ABC). Any attempted definition of a restrictive term appearing in a rule would lead to endless interpretations and reinterpretations of the rule by the Commission that could have a paralyzing effect on large areas of program procurement for STV without there being any evidence that a need exists for such a restriction (Kaiser). In addition, a restrictive rule might inhibit, channel, or otherwise bind creative activity (Trigg-Vaughn) and prevent diversity of programing (ACLU). Even if one succeeded in drafting a restrictive rule, it might not be adequate to protect against siphoning. For example, if a rule were adopted like the one suggested in the further notice which would prohibit STV from carrying certain types of programs common to free TV such as those in which continuing characters are presented from week to week in a series using a common setting or central program concept, it would not protect against the siphoning of all of the other types of programs which free TV carries (AMST, NBC).

279. The Hartford trial and Etobicoke have demonstrated what the programing of STV will probably be (Telemeter, Zenith-Teco). That programing shows that serious siphoning of programs or talent from free TV is unlikely (Telemeter, Zenith-Teco). Thus, there is no need to have restrictive rules to protect against siphoning (Zenith-Teco). If there were such a rule, it would probably have little influence on the actual programing anyway (Telemeter).

280. However, and without conceding that the Commission has the authority to regulate programing, it might be desirable to have a broad regulation that could serve the purpose of casting STV into the mold in which it is most likely to develop, if for no other reason than to placate the alleged fears of the opponents of STV (Telemeter). This rule or policy might provide that STV stations are expected not to duplicate free TV programing, and are expected to provide programs of the type shown at Hartford, i.e., current movies, sports events not carried on free TV, and the like, with the content thereof to be determined by the licensee or STV entrepreneur (Telemeter).

281. A rule prohibiting commercials is acceptable (Teleglobe, Trigg-Vaughn). Yet, since the impact of commercials on program diversity of STV is unknown, any rule or policy used by the Commission should be viewed as in the nature of an experiment to see how programing diversity is affected (ACLU). Possibly, prohibiting commercials on STV would violate principles of free competition (ACLU).

282. As a yardstick for the future, a rule might be adopted limiting STV to programs not presently being shown on free TV (Acorn). A possible rule would be one prohibiting STV from showing "trade name" programs for a period of 3 years, with the Commission reviewing the matter at the end of that time (Angel). A rule is proposed that STV not be permitted to devote more than 50 percent of its STV broadcasting time to feature films in order, among other things, to promote, during the remaining portion of STV broadcasting time, a variety of programs over STV which proponents of STV have always promised that STV would furnish (Joint Committee). Still another rule is proposed that would prevent STV from carrying sports events which have been regularly carried locally on free TV within the past 5 years—for the purpose of restricting STV to the kind of sports programing which has not been available on free TV (Joint Committee).

283. Finally, as to requiring applicants for STV authorizations to make a showing that programing would be different from that of free TV, no such showing should be required because the programing of STV stations should be decided in the marketplace (Munn and Chase). Besides, since the Hartford trial has shown what programing is likely to be presented over STV, such a showing would be redundant (Zenith-Teco). Moreover, it would be impossible to give meaningful definition to the showing that would have to be made by STV applicants in order to distinguish their programing from that of free TV because

the programing of the latter service is of unlimited variety (AMST).

284. *Conclusions.* We have determined that STV can offer a beneficial supplement to free TV and that it is in the public interest that this supplement be provided. The action which we here take to prevent possible siphoning of programs from free TV is designed to protect the present television structure. At the same time that we protect that structure, we add to the diversity of voices heard by authorizing a service with a type of programing generally not found in free television. We cannot agree with those who urge that the type of programing that STV will show is known, that it is clear that it will not siphon from free TV, and that therefore no rule is necessary. The ultimate path that STV will follow is not clearly known. Although it may be that STV programing will follow the pattern of the Hartford and Etobicoke operations, and we think it well may, we would be remiss in our duties if we did not take regulatory steps to afford some assurance that free TV will continue to be available in ample quantity and quality.

285. The rules which we adopt will require that feature films shown on STV must not have been given general release in a theater[56] anywhere in the nation more than 2 years before they are shown on STV. The purpose of this rule is to assure that the feature films shown on that service are generally of such recency that they are unlikely to appear on free TV. Thus the siphoning threat is minimized for feature films, a type of program which we are told is becoming increasingly important in the programing of free TV. Since a major part of the STV programing apparently will be feature films, the importance of this rule is especially great.

286. Under prevailing practices of the motion picture industry, films are given general release for showing in some parts of the country sooner than in others. The question thus arose as to whether the 2-year period should run from the date that the picture was first released anywhere in the nation, or from the date that it was released in the community where the STV station is located. We have chosen the former. This will give added protection to free TV from siphoning of pictures, for using that date it is more likely that free TV would not be eligible to obtain the film. It the latter date had been chosen, it would mean that when an STV station might wish to negotiate for it, the film would be older and thus more likely to be in the category reasonably available to free TV. Our decision, of course, could mean that in any particular community motion pictures shown on STV will, with regard to that community, be more current than in other communities, but we do not regard this as having any disadvantages. Attention is directed to the fact that the rule speaks of "general release." Some movies, of course, are "road-showed" on a hard-ticket basis for a considerable period of time before general release. Usually, however, they are of the "blockbuster" variety, and although the 2-year period for such films will still be measured from the date of general release rather than of roadshow release, we think that protection for free TV with regard to them is still adequate because such films generally take longer to exhaust their "box office" possibilities before going to free TV than do ordinary films.

287. Although the 2-year restriction will assure that feature films shown on STV will generally be of such recency as to protect against siphoning from free TV, we are of the opinion that it is in the public interest that STV also be allowed to show a limited number of older films of great public appeal that might or might not be available to free TV. Films that would fall into this category are, for example, "Gone With The Wind," and "All Quiet On The Western Front." Accordingly, the rule will permit STV stations to present, during one week of each calendar month, one feature film the general release of which occurred more than 10 years previously. The film may be shown more than one time during the week selected for it.[57] Finally, the rule will permit the showing of feature films on STV that fall into neither of the above-mentioned categories, i.e., it will permit the showing of films that are from 2 to 10 years old. Such films may be broadcast, however, only upon a showing to the Commission that (1) there has been a bona fide attempt to sell the films to free television and that they have been refused by that medium (e.g., because the film lacks wide enough audience appeal; or because its contents are of such a nature as to make it inappropriate to broadcast it indiscriminately without the restrictions as to the use imposed by a charge for viewing it), or (2) the owner of broadcast rights to the film will not permit it to be televised on free TV either because the owner has been unable to work out satisfactory arrangements concerning its editing for presentation on free TV or perhaps because the owner intends never to show it on free TV since to do so might impair its repetitive box office potential in the future (e.g., as in the case of Bambi, or Gone With the Wind).

288. We also believe that a rule giving a measure of protection against siphoning of sports events from free TV would be in the public interest. The Joint Committee (par. 282) suggests a rule the core of which is as follows:

> No licensee shall broadcast any program involving sports events for which a fee is charged which was regularly televised into the market via a free television station within 5 years from the last date on which the event appeared on free television.

Its proposal also contains a requirement that STV stations notify other television stations in the area of intent to broadcast a sports event, and a provision under which such other stations could file with the Commission, within a specified time, petitions to prohibit the showing of such programs. We find the latter proposals cumbersome, unduly restrictive, and unnecessary. However, we are of the opinion that the part of the proposal quoted above contains a helpful concept for the prevention of siphoning of sports, and the rule which we adopt is basically like it.

289. Our new rule appears in § 73.643 (b) (2) of Appendix D. Generally speaking, it prohibits the STV broadcast of sports events regularly televised in the community via free TV during the previous 2 years. It differs from the proposal of the Joint Committee in that it uses a period of 2 years rather than 5. The Joint Committee states that the 5-year period would act as a deterrent to siphoning, and would give free TV stations an adequate time in which to adjust to the loss of sports programs. We believe a period of 2 years to be a more realistic and workable figure on which to base a rule that will provide the desired deterrent effect. As to giving stations an adequate time for adjusting, we regard this as a makeweight argument, and, in any event, 2 years appears to be an adequate time for such adjustment. In addition to the foregoing modification of the proposal of the Joint Committee, other modifications, consistent with the discussion in the following paragraphs, appear in our rule.

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[56] As used herein, "general release" means the first-run showing of a feature film in a theater or theaters in an area, on a non-reserved-seat basis, with continuous performances. If a first-run film is given general release at more than one theater in an area, the opening will usually be on the same date. "General release" is distinguished from "road-showing" of a film which means the showing of a film on an exclusive first-run basis by one theater in an area, on a reserved-seat basis, with noncontinuous performances, usually at prices greater than the theater's normal admission price. The tickets sold for road-show performances are colloquially called "hard tickets," to describe the rectangular tickets sold for such performances as distinguished from the regular ticket torn from a roll for general release showings. "General release," as it is used herein and in the rules which we adopt (Appendix D, § 73.643(b)(1)), does not include special situations such as the first-run showing of a picture at Radio City Music Hall in New York City on a non-reserved-seat basis. We consider the general release date of such a picture for the New York City area to be the date on which the picture, after closing at Radio City, is first shown at other theaters in the immediate area on a non-reserved-seat continuous-performance basis.

[57] As the table in par. 27 indicates, each feature film at Hartford was, on the average, shown 3.55 times. Sometimes all of the showings occurred in 1 week; sometimes, in 2 widely-separated weeks. It may be expected that STV operators will similarly have more than one showing of both current and older films. Older films can be expected to constitute only a small percentage of all feature films shown by STV stations (see pars. 59 and 131). We believe it generally to be in the public interest to spread throughout the year the showing of older films, hence the provision that only one such film may be shown during 1 week during each calendar month. However, if STV operators should desire to show more than one in a single month, e.g., to show a "festival of classics" during all or part of a month, we shall give consideration to waiver of the rule.

290. The Joint Committee, in discussing its proposal, states the following:

> Such a rule, for example, in the Washington, D.C., area, would proscribe from Pay-TV the World Series, the Kentucky Derby, the National Football League and American Football League games of the week, Washington Senator baseball games, Washington Redskins regular season "away" games, Atlantic Coast Conference basketball games, National Association basketball games, American League and National League baseball games of the week, specific golf and tennis tournaments, specific professional and college preseason and post-season football games. Sports evens which could be carried would include Washington Redskins "home" football games, games of any professional or college team not formerly carried in Washington on a regular basis, and boxing bouts including championship boxing bouts since boxing has not been carried on a regular basis.

Although our views are essentially similar to those of the Joint Committee expressed in the foregoing statement, we believe that some refinement and elaboration is necessary as will become apparent below. Since to include in the rule all of the points covered in the following paragraphs would make it extremely cumbersome, we are, in Note 2 of § 73.643(b)(2), calling attention to the fact that when questions arise with regard to administering the rule they will be resolved in the light of the following discussion—the "legislative history" of the rule.

291. The principal questions raised by the proposed rule quoted in paragraph 288 have to do with the meaning of the term "sports events," and the phrase "regularly televised into the market via a free television station." It is to these questions that we now direct our attention.

292. To begin with, some may raise the question of the meaning of "sport." One dictionary defines it as a pastime or diversion involving "activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc." It is our belief that the term must include an element of physical agility or skill—the bodily exertion mentioned in the foregoing definition. Thus, we would not view chess or bridge as sports. On the other hand, there are activities, ballet for example, that require physical agility and skill (and that are carried on according to some traditional form or set of rules) that we would view as an art form rather than a sport. Generally, we believe that there will be no difficulty in recognizing, for purposes of the rule, what the term means.

293. As to the meaning of "events," there would appear to be two types: (1) Specific events, such as the baseball World Series, or the PGA Golf Tournament, and (2) games, or other contests, which are part of a regular series, such as football or baseball games played during a regular season (but, as indicated below, the games need not be played during a regular season).

294. The following are examples of what would be regarded as "specific events" within the meaning of the rule. The list is neither exhaustive of such specific events within any sports category (e.g., major league baseball, college football), nor does it include all sports categories in which such specific events might occur:

MAJOR LEAGUE BASEBALL

World Series.
All-Star Game.

PROFESSIONAL FOOTBALL

League Championship Game.
Division Championship Game.
Game Against College All Stars.

COLLEGE FOOTBALL

Rose Bowl, or other Bowl Game.
East-West Game.
North-South Game.
Blue-Grey Game.

PROFESSIONAL BASKETBALL

NBA All-Star Game.
NBA Championship Game.

COLLEGE BASKETBALL

National Invitational Tournament (NIT).
NCAA Semifinal Games After Regular Season.
NCAA Final Games After Regular Season.

HORSE RACING

Kentucky Derby.
Preakness.
Belmont Stakes.

GOLF

U.S. Open.
PGA.
Masters.
Thunderbird.
USGA Amateur.

OTHER

Le Mans Grand Prix Auto Race.
Olympic Games.

295. It may be noted that some of the specific events mentioned above consist of more than one game or match. Thus, there are at least four games in the World Series, there are numerous games in the NIT, and matches in golf or tennis tournaments. If a substantial number of games or matches (or portions thereof) were shown by a free TV station, it would be considered to have broadcast the specific event within the meaning of the rules. With the World Series, there would likely be no problem, since stations usually carry all of the games and carry each game in its entirety. However, with a golf tournament, for example, not all of the matches, and possibly not all of any particular match, may be carried. If a tournament runs for 3 days, and a station broadcasts it 1 to 2 hours per day for 2 or 3 days, it would be considered to have covered the event, although it is likely in such a case that only portions of play for all 3 days would have been broadcast. For example, in the case of a golf tournament, the broadcasts might have covered the last four holes of various matches on several days, but not the complete matches, and not all of the matches. Similarly, the broadcast of an auto race that takes 24 hours, like the Grand Prix at Le Mans, need not occupy 24 hours to be considered as having covered the event for protection within the rule. In this connection, we might also point out that, conceivably, some specific events might be regularly carried on television news programs. However, it is likely that such programs would only show very small portions of events, and we would not consider such broadcasts to merit protection against siphoning. Moreover, (as stated in par. 305) the rule will only provide protection for events that are televised live, and not for those broadcast on a delayed basis, and most news programs are broadcast on a delayed basis.

296. In addition to "specific events," we believe that certain other sports events should be protected against siphoning. We characterized these in paragraph 293 as games or other contests which are part of a regular series, such as football or baseball. For easy reference, we shall hereinafter refer to them as "nonspecific events." For the purpose of the rule, we shall afford protection to nonspecific events falling into well-defined categories. The following will serve to explain our meaning and intent. For some sports there is a regular season during which the sport is played, e.g., football, baseball, basketball. Games played during the regular season we view as nonspecific events. In these sports, the networks broadcast "games of the week." Examples are the NCAA games of the week for college football, games of the week in the National Football League and the American Football League, or games of the week for the American League or National League in baseball. Such broadcasts, for each sport, will be considered to constitute a category for purposes of the rule so that if they have been regularly broadcast by free TV in a community for a period of 2 years immediately preceding proposed STV broadcast of such programs, STV may not carry them. On the other hand, in addition to network games of the week during a regular season, other games may be televised in a community. Thus, in the case of major league baseball or professional football, games of the week might be shown in a community, but "away" games of the home team might also be televised, though the latter might not be network games of the week. Such "away" games would be considered a separate category. This means that if, for a period of 2 years, baseball games of the week were regularly broadcast by free TV in a community during the regular season, and "away" games were not, STV could then show the latter but not the former. The same would be true for professional football.

297. Another category of nonspecific events is that consisting of preseason games which do not qualify as "specific events." Before the start of the regular football season, a championship professional team plays a game against college all-stars. This game we regard as a specific event. However, professional football teams play other preseason games among themselves which we view as nonspecific events. For purposes of the rule, such preseason games will constitute a category separate from regular season games of the week or "away" games. Finally, some clarification should be given with regard to "playoff" games. It is customary in NBA professional

basketball and NHL professional ice hockey to have playoffs at the end of the regular season. These games are a regular feature of the season and will be viewed as such—i.e., as nonspecific events. They may be broadcast either as games of the week or as "away" games, and dealt with accordingly under the rule. However, in professional football or major league baseball, occasionally two teams will be tied for the division or league title at the end of the regular season, and a playoff is necessary. Such playoffs are not regular features of the season, usually generate great public interest, and will be viewed as specific events rather than as nonspecific events.

298. Having discussed the meaning of "sports" and "events," we now turn to the phrase "regularly televised into the market via a free television station." As stated elsewhere, the rules which we adopt permit STV operation in communities which lie within the Grade A contours of five or more operating commercial TV stations, including the contour of the STV station. Hence, in deciding whether sports events have been regularly televised in a community via free TV, we shall only consider commercial stations which place a Grade A contour over the community. Moreover, stations placing such a contour over the community will be considered collectively, so that if one broadcasts major league baseball games of the week, and another major league baseball "away" games, both categories will be considered as having been furnished the community.

299. As stated previously, we shall prohibit STV from broadcasting sports events that have been regularly televised over free TV during the 2 years preceding the proposed STV broadcast. With regard to the meaning of "regularly televised," our standard will be somewhat different for specific events, and for nonspecific events. Our standard for specific events is best illustrated by an example using the baseball World Series. If that Series were televised in a community on free TV in October 1965 and October 1966, it could not be shown on STV in October 1967 by a station licensed to the community. However, if the Series were on free TV in that community in either October 1965 or 1966, but not in both years, it would be viewed as not having been "regularly televised" there, and an STV station could show the Series in October 1967. Moreover, the period of 2 years need not be exact. Thus, if free TV showed the Series in a community starting Wednesday, October 6, 1965, and did not show it during 1966, an STV station in the same community could have shown it in 1967, even though (since it started October 4) the full 2-year period had not elapsed. In other words, for the purposes of the rule if an event is held each year, the time between occurrences need not be exactly a year.

300. The rule also provides that if the last regular occurrence of a specific event, e.g., the Olympic Games, was more than 2 years before the proposed STV broadcast of the event, it may not be televised on STV in a community if the last occurrence was televised therein over free TV. Another point should also be mentioned. It is conceivable that, for some reason, an event normally occurring at regular intervals might not take place. For example, it might usually occur yearly, but skip a particular year or years. In such cases, we would prohibit the showing of such events by STV in a community if the event was carried there on free TV the last time that it occurred. Finally, as previously stated, we shall view professional football division playoffs and major league baseball playoffs as specific events. Since such playoffs do not occur on a regular basis, we shall proscribe their broadcast on STV if they were televised in the community by free TV the last time that they occurred.

301. We have indicated in paragraph 295 that a specific event will be considered to have been broadcast by free TV even if the entire event is not televised. Although with regard to nonspecific events the whole contest is usually televised, in those cases where this is not the case, the event will be considered televised on free TV if a substantial portion thereof was broadcast. As to the meaning of "regularly televising" nonspecific events, we shall view any category of such events as having been carried on a regular basis within the past 2 years before proposed STV broadcast if a substantial number of events in the category were televised over free TV in the community within each of the 2 years preceding the proposed STV broadcasting thereof. The standard will be applied on a category by category basis (e.g., major league baseball games of the week, major league baseball "away" games, professional football games of the week) as explained in paragraphs 296–297. If during one, but not both, of the 2 years preceding proposed STV broadcast 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.

302. The rule would permit the showing on STV, during the regular season, of "home" games of a team that were not previously shown on free TV in the home community. Thus, to use the example of the Joint Committee, Washington Redskins professional football home games have not been broadcast on free TV in Washington, D.C., and could be shown on STV. The comments state that professional football home games of the Detroit and Chicago teams have been shown on closed circuit theater TV in those communities. This, however, would not prevent their being shown on STV since free TV did not carry them in those communities. The comments also suggest that all of the home games of the New York Yankees and of the New York Mets have hitherto been shown on free TV in New York City. Such games would therefore not be permitted on STV in that community. A problem exists in cities like Washington, D.C., where some, but not all, home baseball games of the Washington Senators have been shown on free TV. In communities where this sort of thing occurred, we would permit the showing of the home games on STV only to the extent that it would supplement what was previously shown. Thus, for example, if for a period of 2 years before STV proposed to show home games in Washington, D.C., five such games, on the average, had been shown for each of the two previous baseball seasons, STV could broadcast such games in that community, above and beyond five for a season. This means that five would be shown on free TV and any additional number could be shown on STV.

303. We would view a title boxing match—heavyweight or otherwise—as a "specific event." Other boxing matches probably would not be so viewed. As the Joint Committee suggests, it is likely that all boxing bouts including championship fights, would be available for STV since they have not been carried on a regular basis on free TV. Until recently this would clearly have been true of heavyweight title fights which for many years were carried only on closed circuit theater TV. However, a few recent heavyweight championship bouts have been broadcast over free TV. Should a pattern of broadcasting all heavyweight title fights on free TV develop, and should all such fights within a 2-year period be broadcast over free TV in a community, they would fall within the protection of the rule. However, if some such fights are on free TV and some on closed circuit theater TV during the 2-year period, an STV station could show them (see note 30 supra).

304. With regard to developing situations, it may be necessary to construe the rule or modify it as specific problems arise. Soccer, for example, may be viewed as such a situation. Up to 1967 it was a relatively unknown sport in the United States. In the Spring of 1967, for the first time, professional games were played here in each of two professional leagues—the United Soccer Association, and the National Professional Soccer League. These groups combined to form a single North American Soccer League which played league games during the 1968 season. CBS, in that season, broadcast a soccer game of the week. Generally, if a team was not selected for showing on the game of the week it did not appear on TV, although in some cases teams made arrangements to be shown on their local station. It has now been announced that the league has suspended league competition for at least 3 years, and that it will be represented by a single league team that will play international games. According to the press, a factor in the decision was notification from CBS that it would not televise league games in 1969. Thus, whether there will be televised soccer, and whether it will be on free TV or STV is not clear. Should special problems in this or other areas occur, we shall face them as they arise.

305. Finally, it is our belief that only sports events that are broadcast live should be afforded protection, and the rule reflects this view. It appears unlikely that STV would wish, or be able, to sell taped sports programs. To the extent that they should do so, we believe that

this sort of programing should be open to competition between the two TV services. This means, then, that the showing of such a program as ABC's Wide World of Sports consisting, generally, of taped sports events would not prevent the showing of similar programs on STV.

306. In addition to the foregoing, we are adopting a rule prohibiting STV stations from devoting more than 90 percent of their STV programing hours to feature films and sports combined, the percentage, generally speaking, to be applied on the basis of annual STV hours broadcast. Once again, this is similar to the proposal of the Joint Committee. That group suggests that not more than 50 percent of the STV time be devoted to films. This, coupled with sports events, they aver, would be an equitable balance that would give STV sufficient programing on which to operate, and yet require it to mine new program sources and give the sort of diversity of programing that it has promised. We believe that the Joint Committee's concept is a good one, but that its proposed restriction is of a harshness that could spell the death knell of STV before it even began. It would appear from the Hartford and Etobicoke experiences that feature films will be a staple part of the STV programing. To reduce the amount of this to 50 percent in an STV operation would be to raise serious doubts about whether it could be viable.

307. The figure of 90 percent which we select is, as with all lines of demarcation (voting age of 21, for example), arbitrary to some extent. However, it is roughly based on the information in the table of paragraph 27 above, and appears to be a reasonable one in terms of the Hartford operation. Using the figures of that table, and the fact that 1500 hours of STV programing were broadcast each year (par. 27), it appears that the average length of a single program was about 1.7 hours, and that films and sports events occupied about 91 percent of the STV programing hours.[58]

308. This rule, of course, does not limit STV operators to showing for only 10 percent of their STV broadcast hours programs like opera, ballet, theater, and other programs of their choice exclusive of feature films and sports. They may show more if they wish. Calculating percentages on an annual basis, as we do with our AM–FM nonduplication rules, will provide flexibility. However, we wish to avoid the possibility that some STV operators might have an overload of opera, ballet, theater and similar programs during, say, the summer months when there might be less STV viewing, in order that they could devote more STV broadcast hours to mass-appeal feature films during other months when there might be more viewing. Therefore, in the absence of a showing of good reason for not doing so, we shall expect STV stations to devote at least 5 percent of their STV broadcast hours in any calendar month to programing other than sports and feature films.

309. Still another rule adopted to prevent siphoning is that which proscribes the showing on STV of a series type of program with interconnected plot or substantially the same cast of principal characters, heretofore mentioned (par. 278). Since this sort of program is a staple of free TV it would appear essential to afford protection in this area, consistent with our desire to assure ample free programing to the viewing public.

310. Finally, we adopt a rule prohibiting commercial announcements of any kind during STV programing hours. However, it would permit promotional announcements about STV operations, at the beginning or end of each separate program. Thus, for example, if the same feature film were shown twice in the same evening, such announcements could be broadcast between the two showings. We cannot agree with ACLU that principles of free competition should weigh in favor of permitting commercials on STV. Such operations are based on an entirely different economic concept from that of free TV—namely, that of direct financial support from paying subscribers rather than from advertisers. This fact works to permit the enhancement of the beneficial supplement which STV can offer by additional advantages mentioned elsewhere, namely, no interference with artistic continuity of a program by commercials or by cutting programs to make them fit a time schedule.

311. If, as we believe, the classifications of service we have adopted will serve the public interest, our delineation of these classifications does not conflict either with section 326 of the Communications Act, 47 U.S.C. 326, or the First Amendment to the Constitution. We can agree that National Broadcasting Co. v. United States, 319 U.S. 190 (1943), does not specifically reach the precise situation before us. However, that decision makes amply clear that reasonable regulation of raido directed toward concern for program service in the public interest is prohibited by neither section 326 of the Communications Act nor the Constitution. On the contrary, the decision firmly supports our jurisdiction here. The circuit courts have also consistently rejected the contention that there is either censorship or some other violation of the right of free speech when the Commission takes cognizance of program categories in its licensing function. Johnston Broadcasting Co. v. Federal Communication Commission, 85 U.S. App. D.C. 40, 175 F. 2d 351 (1949); Bay State Beacon, Inc. v. Federal Communications Commission, 84 U.S. App. D.C. 216, 171 F. 2d 826 (1948); Lafayette Radio Electronics Corp. v. United States, 345 F. 2d 278 (C.A. 2, 1965); California Citizens Band Association, Inc. v. United States, 375 F. 2d 43 (C.A. 9, 1967) cert. den. 389 U.S. 844. See also Southwestern Cable Co. v. United States, 392 U.S. 157, decided June 10, 1968; Carter Mountain Transmission Corp. v. Federal Communications Commission, 116 U.S. App. D.C. 93, 321 F. 2d 359 (1963).

312. Thus, in both the broadcast and nonbroadcast fields the courts have refused to accept the contention that the classification powers conferred upon the Commission by section 303 of the Communications Act, 47 U.S.C. 303,[59] are either to be read as unrelated to program service or as violative of free speech. The contention of CBS that the Lafayette Radio and Carter Mountain cases both involve the classification of nonbroadcast stations in accordance with the purposes of their transmissions, does not persuade us that a classification of STV stations in accordance with the purposes of their transmissions is beyond our authority.

313. It must be recognized that any determination of the use to which a portion of the radio spectrum is to be put demands a resolution of conflicting purposes related to the public's needs and interests and that this resolution cannot be accomplished without classifications specified in terms of content. We believe that Congress fully intended this result and that National Broadcasting Co. and the other decisions cited above confirm its full compatibility with the constitutional and statutory protections of free speech.

314. Except for the proviso permitting STV stations to show feature films that are from 2 to 10 years old, the rules described above are the same as those which the Subscription Television Committee recommended for adoption. In oral argument and the Congressional Hearings we find that the Committee-recommended rules are a principal target of discussion. The arguments concerning them are manifold. Some are couched in general terms such as that they will not serve to prevent siphoning, that they are impractical, that they will be hard to administer and that the benefits of the rules will be far outweighed by the disadvantages, and that they will involve the Commission in detailed regulation of programing which is the sort of thing that it has avoided in the past in order to promote licensee responsibility and independent judgment.

315. Other arguments are more specific. Thus, some STV opponents say that the rule concerning feature films would check the trend to recency in the films that have been shown on free TV[60] because it would almost automatically consign the more current films to STV which has the potential economic base to pay more for product. Other opponents say that film distributors would probably delay the sale of films to free TV until they had a run on STV. (But

[58] The table supplies us with the number of programs per year in each category, and the total number of showings for each category. Thus, in terms of number of separate programs, films constituted 72 percent of the offerings and sports, 13 percent, for a total of 85 percent for the combined categories. In terms of number of showings, films occupied 86.5 percent and sports, 4.5 percent for a combined total of 91 percent.

[59] Section 303(a) authorizes the Commission to classify radio stations and section 303(b) authorizes the Commission to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class."

[60] See statement of NBC in par. 39 supra.

several proponents say that STV would probably bring feature films to free TV sooner than now because their box office potential would be exhausted sooner (par. 55)). Opponents also argue that, quite likely, STV would acquire the rights to the best of the film classics over 10 years old and there seems to be little justification for the rule to permit STV to show such older films if the Commission is concerned about preventing siphoning, since very few of such pictures can command a theater box office.

316. ABC urges that the rule on feature films use a 1-year rather than a 2-year period. Teleglobe suggests, on the other hand, that the 2-year period should be liberalized so that the time starts to run, not from the date of general release of the film anywhere in the country, but from the date of release in the community where the STV station proposes to show it. There are those proponents who assert that the feature film and other programing restrictions would hamper the development of STV and that they unduly protect free TV, and they urge that the programing rules be relaxed or eliminated. Zenith, however, says it can live with the film and other programing rules since it would program in much the same way with or without them. (Zenith also states in the Congressional Hearings that it can live within the limitations of all the STV rules proposed in the Committee draft of the fourth report and order.)

317. MPAA avers that the rule on feature films fails to define "feature films" in any manner except by age. It calls attention of the Commission to the judicial definition of "feature," citing cases.[61] MPAA also maintains that the proposed rule contravenes public policy against restraint of competition. In this regard it states:

> A motion picture distributor desiring to exhibit his pictures on STV stations will have to make certain that he arranges a playdate for the picture on STV within 2 years of the anniversary of the exhibition of the picture on general release anywhere in the nation. The mechanics of distribution will require the distributor to negotiate and conclude an agreement with the STV station well in advance of that date. He will not be in a position to delay, looking perhaps for an increase in the list of subscribers to the STV station. Free bargaining will be impaired, to his detriment. Some time before the 2-year anniversary both parties will be precluded from making an agreement because then it will be too late to arrange a playdate to take place before the expiration of the 2 years. At that time, even before the lapse of 2 years, conventional TV will become assured that the competition of the STV station is removed.

On the other hand, the manager of the Hartford station, over which the trial STV operation is being conducted, states in the Congressional Hearings that they normally attempt to obtain the license for a movie 2 to 3 weeks ahead of time. In addition to its view quoted above, MPAA also says that the 2-year rule does not take cognizance of the technique of the industry because distributors of motion pictures and STV operators must weigh matters such as timeliness, season of the year, and other factors in deciding when to schedule a picture for showing.

318. MPAA also criticizes the 2-year rule because it excludes from STV feature films more than 2 years old even though free TV in the area may have refused to show the film because of reasons such as sponsor dislike, station booker's judgment, or lack of mass audience appeal. One example given is the foreign "art" film. Another, is the film between 2 and 10 years old that has been shown on free TV but which STV subscribers request their STV station to show in an unedited version. CBS points out that in a recent edition of The New Yorker magazine, in the section listing movies of more than ordinary interest in New York City, about half of the pictures were over 2 years old. (No statement is made as to how many of those were over 10 years old so that they would be permitted under the Committee-drafted rule.) MPAA also says that over a period of 10 years there would be a total of 3500 domestic and foreign feature films generally released in the United States, and of these, those that had not been sold to STV within the 2-year period would be barred from STV until they were 10 years old.

319. Another point made by MPAA is that the 2-year rule precludes STV showing of feature films between 2 and 10 years of age which the producer does not wish shown on free TV because of commercial interruptions and editing to fit them into required time periods.[62] Laurence Olivier, we are told, has taken that position with regard to his Henry the Fifth, and Walt Disney, it is said, refused to sell any of his feature films to free TV; hence, Bambi and Snow White have never been shown on free TV, but Bambi was shown at the Hartford STV trial.

320. It is said by some that the rule prescribing STV showing of series-type programs with interconnected plot or substantially the same cast of principal characters is not clear. They ask, for example, whether such programs as the Ed Sullivan Show and the Bob Hope Show are of a series type that would prevent their being siphoned to STV. Opponents urge, too, that it would be easy for STV to circumvent this rule by techniques of random scheduling and nonrepetitive titling, renaming series, and making minor adjustment in the format and cast. Various parties say that "specials" are a program form that has become increasingly important to free TV and an increasingly large part of free TV programing, but they are afforded no protection under the rules. Such programs as the Miss America Pageant and the Academy Awards are referred to in this connection. It is also said that not only are specials becoming more important, but series-type programs are becoming less so in prime time.

321. Numerous opponents believe that the rule on sports programing could be circumvented. Some say that the owner of the sports rights could merely keep his programs off free TV for 2 years and then realize a bonanza in STV showings thereafter. Others say that STV operators could pay the holders of sports rights to keep the events off free TV for 2 years, so that there would be no loss of revenues for the holder of the rights during that period. Still others say that if the pattern has been to show the "away" games of a team on free TV and not the home games, STV could make arrangements to show the home games for 2 years and the holder of the rights to the sports events could keep the "away" games off free TV for 2 years. Thereafter, STV could show all the games of the team—home or away. On the other hand, in the Congressional Hearings we find the president of Zenith testifying that they have no intention of arrogating to themselves the existing programs of networks. He states that they have no intent of taking the World Series and the Rose Bowl; that they are not going to make any "deals" with baseball or other sports to the effect that if they go off free TV for 2 years STV will make it worth their while. He further states that Zenith would accept any kind of regulations that the Commission or Congress would wish to make to assure their carrying out this pledge. And the president of Teleglobe, at the same hearings, says that his company would not be averse to a tightening of the sports rule from 2 to perhaps 3 or even 5 years since it is his belief that no restrictions are really required to prevent siphoning of sports programing.

322. Several parties opposing STV argue that the rules would freeze sports and other free TV programing as it is now rather than permit it to change with changing needs and desires of the viewing public.

323. Finally, ACTS, testifying at the Congressional Hearings, takes the view that there should be no restrictions on STV programing and that the market place should determine this. It urges that, rather than having rules on the subject, STV applicants should be required to demonstrate to the Commission, as free TV applicants are presently required to do, how they propose to serve unmet programing needs. It states that the programing representations should then be made a condition of the STV license.

324. As to the foregoing arguments raised in oral argument or at the Congressional Hearings, we cannot agree that the programing rules proposed by the Subscription Television Committee are impractical or that they will be inordinately difficult to administer. On the contrary, we believe the rule concerning

[61] The definition and cases cited by MPAA are:

"Feature—Any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet." United States v. Paramount, 66 F. Supp. 323, 333, footnote 1 (S.D.N.Y., 1946); United States v. Paramount, 70 F. Supp. 53, 55 (S.D.N.Y., 1946). See, also, United States v. Twentieth Century-Fox Film Corp., 137 F. Supp. 78, 122 (S.D. Cal. C.D., 1956); United States v. Columbia Pictures Corporation, 189 F. Supp. 153, 157 (S.D.N.Y., 1960).

[62] See note 28 supra.

feature films is clear, definite, and easy of application. In addition, although some difficulties may occur in application of the rules on sports or series-type programs, we do not anticipate that they will be serious. Nor can we agree that the rules will be ineffective in preventing siphoning. On the contrary, it appears that they will serve to fulfill their functions of preventing undue siphoning, promoting program diversity, and preserving artistic continuity, without unduly hampering the development of the new service or impairing licensee responsibility or independent judgment.

325. *Feature films.* We believe that the points made in paragraphs 318–319 concerning feature films between 2 and 10 years of age are generally well taken. It may be observed, however, that if STV gets under way, of 3500 feature films generally released in theaters during its first 10 years of operation, many of those that are not shown on STV during the first 2 years after release quite possibly would be of a lesser quality, with little box office appeal; hence they might not be wanted for STV during the second through 10th years after release any more than they were during the first 2 years. Nevertheless, there is no doubt that to permit feature films 2 to 10 years old to be shown on STV if certain conditions are met would create a source of additional programing for the new service. We are modifying the Committee-recommended rule governing feature films to permit the STV broadcast of films between the ages of 2 and 10 years if a convincing showing is made that they either are not salable to free TV or that the owner of the rights to the film is intent on not permitting it to be shown on free TV (par. 287). We are persuaded that this relaxation is in the public interest, for it broadens the quantity and variety of films available on STV without adversely affecting the free TV service.

326. It has been pointed out that the 2-year provision will mean that there are some feature films for which STV and free TV will be competing, and it has been suggested that the standard be changed from 2 years to one, presumably to avoid such competition. As we have stated in paragraph 63, we are of the view that conventional TV, because of its cost-per-thousand economics, generally will not be able to pay enough to obtain the most current films. As Zenith and Teco have mentioned, free TV cannot pay enough to cover production costs and potential box office revenues that would be lost because of the free TV showing. (AMST, in oral argument, questions this conclusion. They state, quoting a New York Times (Aug. 2, 1967) article, that CBS has "plans to televise four or five feature length films it will produce for TV and subsequent theatrical release." The implication AMST would apparently give is that conventional TV showing does not destroy subsequent potential at theaters, so that free TV will, in the future, be able to obtain current films which may later be shown in theaters. However, it is important to note that in oral argument NAB suggests that such films would be shown abroad in European theaters. NAB is uncertain as to whether, after European showing, they would be shown in U.S. theaters.) The 2-year standard is an attempt to find a dividing line between films that would attract an STV audience and those which free TV could afford to purchase. We believe that it is a reasonable and workable standard (see par. 133). It can be adjusted, to some degree, at a later date if warranted, but it appears that to change to a 1-year rule would unduly restrict the product available to STV, and have a deleterious effect on its development.

327. Assuming the correctness of the NBC statement that during the past 6 years the average lapse of time between theater release of feature films and network showing on free TV has decreased about 6 months per year (par. 39), it would still appear that there is a point beyond which free TV cannot go in the purchase of recent films. We believe that any trend which may exist will not be stopped by the 2-year rule. The economics of the situation will act as a brake. As to whether any trend that might exist has begun to level off, we note that NBC has said that in the 1966–67 season more than 10 percent of films carried by the networks were less than 2 years old (par. 39). Our calculations show that during the 1967–68 season the figure was about 6 percent, and during the first 6 weeks of the 1968–69 season it was approximately 9 percent. The average age of films shown on the networks during the 1966–67 season is suggested to have been in the vicinity of 5½ years (par. 64); for the 1967–68 season (according to our calculations), the average age of films shown by the networks for the first time was about 5 years; and for the first 6 weeks of the 1968–69 season it was 3¾ years. (See par. 64 supra.)

328. For reasons stated in paragraph 286, we reject the suggestion that the 2-year period be changed to commence not on the date of general release anywhere in the nation, but on the date of release in the community where the STV station proposes to show a film. We also reject the argument that STV should not be permitted to show films over 10 years of age because very few of them can command a box office. If they cannot command a box office, it appears unlikely that an STV operator would care to show them, and there would be no siphoning from free TV. If they can command a box office, we think that this is a legitimate area of competition between the two services. Such films may possibly constitute a minuscule portion of STV programing, and in any event are limited by the rule to not more than 12 per year.

329. We are grateful for the information provided by MPAA concerning the definition of the term "feature." Although we do not anticipate any difficulties in determining what a feature film is and do not write the definition into the rule, we shall feel free to fall back on the judicial definition provided if the need should arise.

330. It has been suggested by MPAA that if motion picture producers agreed among themselves not to sell to STV any films over 2 years of age it would be a violation of the antitrust law, and that for the Commission to accomplish a similar end by rule contravenes the public policy against restraint of competition. We are of the opinion that it is one thing for private parties to engage in the activities mentioned, and another for the Commission, an arm of the Government, to adopt a rule of the kind under discussion because it believes it in the public interest to do so.

331. Concerning one facet of the subject, there appears to be a conflict in the information before us. MPAA suggests that the 2-year rule is unduly restrictive because it impairs free bargaining and that the mechanics of distribution require distributors to negotiate and conclude an agreement with the STV station well in advance of the date of STV televising. On the other hand, the Hartford experience, we are informed, has been that it was normal to attempt to obtain the license for a movie 2 to 3 weeks before showing time. Whatever the situation may be, we see no reason why, if STV becomes a factor in the market place, parties to such transactions cannot adjust themselves to the 2-year rule. The same would appear to be the case with regard to other decisional factors, mentioned by MPAA, that influence motion picture scheduling decisions.

332. *Sports.* Our sports rule, it is said, will not prevent siphoning of sports events from free TV to STV. Various methods are mentioned whereby parties could evade the intent of the rule and ultimately siphon sports to STV. To begin with, we believe that such suggested ruses would be avoided by STV and members of the sports world because they might generate great adverse publicity that could redound to their detriment. Moreover, if STV operators and owners of sports rights make arrangements that would result in keeping sports events off free TV for a period of 2 years, it is conceivable that violations of law with regard to restraint of trade might occur. In any event, we would emphasize here that it is not our intent to create new markets for owners of televising rights of sports events. We shall keep operations governed by this aspect of the rule under careful observation and if we detect any untoward trends we shall take appropriate action, which might include increasing the sports rule standard from 2 to 5 years.

333. *Specials.* Opponents of STV maintain that specials are assuming increasing importance in free TV and that the rules give no protection against their being siphoned to STV. To this we say, as we have said before, that some competition between STV and free TV in the programing area may be beneficial to free TV and to STV as well, and we leave this type of program to competing factors in the market place and the performer's desire for exposure. It is not only said that the series-type program is becoming less important to free TV and that specials are becoming more important, but that, generally speaking,

free TV programing is dynamic and changes to meet viewer interests and needs, and that the programing rules will freeze free TV programing into its present mold. We fail to see why this should be true. The rules place no strictures on inventiveness and ingenuity of the free medium; in fact, they may stimulate them.

334. *Series-type programs.* We find the arguments concerning the rule on series-type programs labored. It seems clear to us, although apparently not to some opponents of STV, that the Ed Sullivan Show is not a series type since it has no interconnected plot or substantially the same cast of principal characters. The same is true of the Bob Hope Show. Both could be siphoned to STV under our rules. And the methods suggested for circumventing the rule seem farfetched. As in all matters concerning our programing rules we intend to observe the operation of STV carefully in this area and are free to make changes that subsequently appear to be necessary.

335. *Talent siphoning.* We believe the foregoing rules adequate to prevent siphoning of programs. It does not appear to us that rules to prevent siphoning of talent are necessary to achieve the end of assuring adequate quantity and quality of free TV to the public, at least at this time. However, we would view with a jaundiced eye unreasonably restrictive contracts on the part of either STV or free TV with talent that would prevent the latter from performing on or otherwise serving the other service. It is suggested by some that the danger of talent siphoning lies not in such contracts but in the fact that talent like Bob Hope and Frank Sinatra, for example, have such great demands on their time that possibly they can only be on one service or the other; and if they have to make a choice, they might choose STV over free TV because it would pay more. This area, too, will be watched closely. We shall stand ready to take any action here that may be necessary in the public interest, including the entertaining of petitions by aggrieved parties.

336. The last point on the topic of programing rules has to do with the suggestion of ACTS that there be no rules, but that applicants be required to make a showing as to how their proposed programing will serve unmet needs and then have their licenses conditioned on their representations. This is an intriguing suggestion. However, we believe that the matter of siphoning is best handled by general rule rather than by the consideration of individual applications. In addition, the rule carries with it the possibility of applying additional enforcement sanctions.

337. The subject of requiring the STV applicant to make a showing of how he proposes to serve unmet needs, mentioned by ACTS, is not unrelated to the comments mentioned in pragraph 283 above. As to the subject of a required showing by STV applicants that their proposed programing will differ from conventional programing or would otherwise serve the needs and interests of the community, we shall, of course, require such a showing, contrary to what some parties suggest, for without it we could not make a public interest finding that grant of the authorization would be in the public interest. We do not believe, as AMST suggests, that such a showing will be impossible to make. As to feature films, a vital item will be the length of time since general release. Meeting the 2-year test, a major hurdle is passed—similarly with sports. Other programing, which we expect to comprise by far the lesser portion of programing, should present no insurmountable problems. As with free TV, we shall require that applicants provide us with narrative statements about what they have done to determine the needs of the community with regard to STV programing and the manner in which they propose to fulfill those needs.

338. Concerning the conventional programing which STV stations will be required to carry, we have already indicated our belief that such programing will provide a valuable service to the community. Applicants for STV authorizations must, in addition to a showing with regard to subscription programing, also make a showing with regard to the conventional programing which they propose to broadcast in non-STV hours. This will have to be based on a survey of community needs with a showing of how the proposed programing is designed to meet those needs, just as with any application made by a non-STV television station. We shall not consider that the STV applicant has met the standard with regard to conventional programing if it carries entirely, or almost entirely, industrial and other available free film programing. We shall expect STV stations to develop a staff—for programing, sales, news, engineering, etc.—which will perform the same functions as the staffs of conventional TV stations.

(15) Whether various sections of the Act and of the Commission rules, and of Commission policies, e.g., the "fairness doctrine", pertaining to broadcasting (see par. 30 above) should be modified as they affect subscription television, and if so, what the modification should be.

339. Paragraph 30 of the further notice, referred to in the issue, reads as follows:

> Since over-the-air subscription television is considered to be broadcasting, the question arises as to whether certain provisions of the Communications Act and our rules pertaining to broadcast stations should apply to subscription television operations in the same way they do to regular broadcasting. In the Act, section 303(i) gives the Commission authority to make special regulations applicable to stations engaged in chain broadcasting; section 307(d) limits the term of broadcast station licenses to 3 years, and of other stations to 5 years; section 315 provides for equal use of broadcasting facilities by political candidates; section 317 provides that announcement must be made * * * [about matters] for which money or other consideration has been paid; section 325 prohibits broadcast stations from rebroadcasting programs of other stations without permission; section 605 prohibits the unauthorized publication of communications, but expressly exempts "the contents of any radio communication broadcast" from its application. Most of the foregoing are the subject of Commission rules. We invite comments on whether we should recommend legislation to the Congress, and if appropriate, make changes in our rules, to modify any of these sections insofar as they affect subscription television. In addition, comments are invited on how the "fairness doctrine", which does not appear in our rules, but which is given recognition in section 315(a) of the Act, should apply to subscription television.

340. Some comments favor applying present sections of the Act and of the broadcast rules and policies to STV, without amendments of any kind, since STV has been determined to be broadcasting. Others state that at least some of the foregoing should not apply, or that STV experience should be gained before deciding. Illustrative of these views are the following.

341. Telemeter states that it sees no reason for adopting new rules. It believes that to the extent to which STV programing would bring present rules and policies into play, they should apply, and mentions that at Etobicoke (although it was a cable STV operation, and in Canada), candidates for public office appeared over STV without charge to them or to the subscribers in accordance with section 315 and the fairness doctrine principles. Zenith and Teco say that WHCT at Hartford reported that it experienced no dissimilarities in complying with the Commission's broadcasting rules when operating conventionally as compared to operating with STV. The station did not find it necessary to request a waiver of any of the rules except to the extent necessary to scramble its signals. These parties observe that should any problems arise in STV operations, they could be handled on an ad hoc basis. Teleglobe says that the only amendments necessary are those proposed in Appendix C of the further notice as modified by the comments in this proceeding.

342. AMST, mentioning the paragraph 30 material, says that since STV has been designated as broadcasting by the Commission, the fairness doctrine and the sections of the Act and of the Commission's rules which govern free TV should apply. As to section 317 of the Act, it says that it should apply if sponsorship is allowed on STV, which it should not be. It stresses the fact that comments of proponents indicate that a system of one or more national organizations similar to free TV networks is contemplated. Therefore, the chain broadcasting rules (§ 73.658 of the rules and section 303(i) of the Act) should apply to STV. These rules, it is said, are intended to guard against dangers which the Commission assumes are inherent in network systems, and would be especially important if only one STV network were to emerge, in which case even more stringent protective measures might have to be adopted. Finally, it mentions that section 315 and the fairness doctrine should be kept within the different confines of STV and free TV operations over the same station so that a candidate appearing on STV may not be balanced against one appearing on free TV.

343. ABC states that STV, which has been designated to be broadcasting, should not be exempt from the rules and

policies of the Commission such as the fairness doctrine. Although admitting that it is possible that some of these provisions may not have any real meaning with regard to the public interest insofar as they are related to STV, it would recommend no action on the matter at present. Specifically it says:

> At this juncture, however, ABC suggests that the Commission should not attempt to carve out exceptions to its rules and policies. If subscription television is to be authorized, the burden should be upon the proponents and applicants to show in each instance where exemption from the requirements of a rule or policy is appropriate. At this juncture, the Commission should presume that all of its rules are applicable and reserve judgment on exemptions until particular matters are raised and probably until some meaningful experience with subscription television has been realized.

Trigg-Vaughn takes the following position:

> We think that the Commission should gain actual experience with the day-to-day operations of pay television services before carrying over to pay television wholesale the limitations on program presentation which now apply to conventional broadcasting. The absolute statutory equal time obligation concerning political candidates would apply to pay television, of course, but there is a problem of significance in connection with the treatment of controversial issues. Applicants for pay television should be encouraged at the outset to set forth their plans for presenting in the course of pay television programs full opportunity for the expression of varying viewpoints on public issues. Whether the strict obligations of the Fairness Doctrine should apply exactly as they do in television broadcast operation is not clear at this point. If problems of significance are detected in the course of operation, it might later be appropriate to extend the Fairness Doctrine and similar regulations to pay television operations, but at this stage we think a less restrictive policy should apply to pay television than to television broadcasting as it presently operates.
>
> We think that the distinguishing feature of pay television—its usefulness only if the public wishes to pay for it—calls for more thought and observation before the many existing rules on regulations of programs are extended to it.

344. Munn and Chase state that since STV offers primarily box office entertainment and does not involve problems of politics and personal attack found in editorial and advertising programs over free TV, the subject of "fairness" does not enter. ACLU, on the other hand, maintains that it regards the fairness doctrine and section 315 of the Act as essential to assure that STV will operate in the public interest, because they "help to promote the concept of balance and fairness which undergird diversity, and we see no reason why they should not be vigorously enforced."

345. *Conclusions.* The purpose of this issue was to elicit information in recognition of the fact that STV might have different features from those of conventional TV and that therefore changes in the Act or the Commission's rules might be indicated. Those of the commenting parties who say that because STV has been judged to be broadcasting all broadcasting rules should apply to it are, in effect, saying that there are no differences between the two services. We are not sure that this is correct. However, neither do we know for certain at this point what the differences are that might require different regulation through the Act or our rules. We are of the view, therefore, that, for the present, the better course of action is to adopt § 73.643(e) of Appendix C which proposed that, except as otherwise waived by the Commission in issuing STV authorizations, the rules applicable to free TV broadcast stations be applicable to STV operations.[63] (In addition, of course, all of the other STV rules adopted today are new and in addition to present TV broadcasting rules.) We have no evidence on this matter other than that provided by Zenith and Teco (see par. 341). The path we pursue is consistent with that evidence and with the recommendation of those parties, and is not fundamentally at variance with the views of all parties. The rule will provide a necessary flexibility in a relatively unknown area. At a later stage, should we find that additions, deletions, or other changes are indicated, we shall act accordingly.

RULES

346. The rules which we adopt appear in Appendix D. They are based on careful consideration of all of the comments filed in this proceeding, the oral argument, and the Congressional Hearings. Although parties did not comment on some portions of the rules which we proposed in the further notice, we believe that they are reasonable and in the public interest and adopt them. These include the requirement that holders of STV authorizations shall complete construction of STV transmitting facilities within a period of 8 months after issuance of the authorization, and that STV authorizations will not be issued or renewed for a period longer than the regular license period of the applicant's television broadcast station. Although in some cases the adopted rules add to or otherwise modify the rules proposed in Appendix C, in accordance with previous discussion in the document, in other cases the only modification is a change in paragraph number. In a few cases, amendments not discussed in the document have been made because they appear to be reasonable and in the public interest (e.g., compare proposed § 73.642(c) of Appendix C with the same section in Appendix D. These rules, as well as the equipment and performance rules to be adopted later, will become effective on the same date, about 6 months hence.

APPLICATIONS, FINANCIAL REQUIREMENTS, REPORTS

347. As indicated in the note to § 73.642(b) of the rules appearing in Appendix D, no applications will be accepted for filing until such time as we have adopted rules concerning equipment and system performance capability. At or before that time we shall announce the manner in which applications are to be filed and the content thereof with regard to equipment, technical operation, and other matters. We contemplate that applications will be required to contain, among other things, financial information sufficient to permit us to make a judgment about capacity for continued operation for a period of at least 1 year (see pars. 271, 273); a program showing (see pars. 337–338); information pertinent to § 73.642(g) of the new rules; and some, but not all, of the information which was required of applicants for trial operations by paragraph 32 of the third report. Information already on file with the Commission in formal application forms or ownership reports may be incorporated by reference in these applications. We also contemplate that, at least in the early stages of the service, we shall not adopt an FCC form to be used by those wishing to apply for STV authorizations. Section 1.531[64] of the rules will be amended to indicate that STV applications will be viewed as formal applications although no FCC form will be used for them. Public notice of the acceptance for filing of such applications, or substantial amendments thereto, will be given by the Commission, and no grants will be made earlier than thirty days following the issuance of such public notice. We intend to charge filing fees for STV applications equal to those charged for applications for authorizations to operate TV stations. Thus, for example, if an applicant simultaneously files applications for a construction permit for a new TV station and for authorization to conduct STV operations over that station, the filing fee would be $150 for the former, and $150 for the latter, for a total of $300. Section 1.1111 of the rules (schedule of fees for Radio Broadcast Services) will be appropriately amended, prior to the time that applications are accepted, to reflect the filing fees for the new service. Finally, at the time that we announce the manner of filing and the content of STV applications, we shall make any announcements that may be necessary concerning guidelines to be followed in the granting of STV authorizations. No grants will be made until after the rules become effective.

348. We adopt no rule requiring applicants to make a showing as to their capacity to sustain operations for at least a year. This is, rather, a policy that will be followed. Similarly, although no specific rules are adopted thereon, as mentioned in various portions of the document we shall periodically require those possessing STV authorizations to submit reports and information to us for

[63] The rule which we adopt is modified to say "the rules and policies applicable to" free TV stations so as to include the fairness doctrine which, except for the subject of personal attacks (47 CFR 73.679), is embodied in no rule.

[64] Section 1.531 of the rules states (in part) the following:

"'Formal application' means any request for authorization where an FCC form for such request is prescribed. 'Informal application' means all other requests for authorization."

the purpose of keeping us informed about various aspects of STV operations.

EDUCATIONAL TELEVISION

349. Throughout this proceeding, our attention has been directed at commercial television, and the thrust of our entire discussion of beneficial supplementing of programing, siphoning, audience diversion, preempting of time, and other matters has been directed at commerical free TV. The rules which we adopt today, likewise, are so oriented, and the proposals in the further notice have been clarified to indicate that only parties having or applying for authorizations to operate commercial television stations are eligible to apply for STV authorizations.

350. As for the matter of STV as related to educational television, Teleglobe, in its comments, has the following to say:

"Subscription" is also in a position to alleviate the financial plight of Educational Television. It may take years before the ambitious plan of the Ford Foundation for the establishment of a "Broadcasters' Non-Profit Service" is realized and in the meantime the financial position of many an ETV station may deteriorate even further. The part-time use of the principle of subscription for financing ETV "Cultural"—as distinct from the "Instructional"—activities, would make ETV self-supporting.

Is it not rather sad that Channel 13, the New York Educational Station, which has on the whole succeeded in rising to a higher niveau of programming, is compelled for lack of finances to be off the air Saturdays and Sundays and thus leave waste a valuable natural resource? "Subscription" could help Channel 13—and similarly placed ETV stations—to provide expanded services to their communities.

351. On the same subject, ACLU states:

Although the FCC notice is silent on this question, ACLU believes it to be in the public interest to permit educational, municipal, and nonprofit stations to employ STV for portions of their broadcasting schedules. STV programming by such stations could be expected to add to the variety of services available to the public, as well as contribute to their financial self-support.

352. Except for the observations of Teleglobe and ACLU mentioned above, the relationship between educational television and STV has not generally been commented on by the filing parties, and we therefore have no basis on which to found decisions pertaining thereto at the present time. However, if parties having STV authorizations wish, as part of their programing, to broadcast educational or cultural programs in conjunction with non-profit educational organizations, such proposals will be given consideration in connection with their other proposed programing. In this regard, we point out that we are of the opinion that programing of an educational and cultural nature is certainly in the public interest. This is the main reason for our having adopted a rule requiring that at least 10 percent of STV broadcast hours be devoted to other than feature films and sports.

353. In the past, we have authorized noncommercial educational television stations, on an experimental basis, to transmit "scrambled" signals which could be viewed "unscrambled" on specially adapted equipment. An example is that of four such stations in California which have been authorized to present, in that manner, programs designed to meet the educational needs of the medical profession and not deemed suitable for the general viewing public. The programs have been broadcast to hospitals and educational institutions for viewing by physicians, hospital staffs, and others.[65]

354. One of the stations so authorized, noncommercial educational television station KCET, Los Angeles, Calif., on November 1, 1968, filed with the Commission a "Petition for Rule Making to Permit the Encoded ('Scrambled') Transmission of Medical and Police Instructional Programing by Noncommercial Educational Television Broadcast Stations" (RM-1365). The Petition states the following:

[Petitioner] hereby respectfully petitions the Commission to institute a rule making proceeding and to adopt rules that will permit noncommercial educational television broadcast stations to transmit limited amounts of encoded, or so-called "scrambled" programs. Such programs, which are not suitable for viewing by the general public, would be transmitted for the instruction of doctors, nurses, and law enforcement personnel.

There is clear need for such programs. They are of definite benefit to the public. Based upon KCET's transmission of such programs, under experimental authority during the past 4 years [footnote omitted], there is no question of technical or other feasibility. Moreover, KCET's experience demonstrates that the transmission of such programs results in no detriment to the regular broadcast services of educational television stations. Community Television believes that the Commission should therefore now adopt rules to permit such operations to be conducted by all noncommercial television licensees, so that similar benefits to the public can be provided throughout the country and on a continuing basis.

355. This petition is presently pending before us and could lead to the building of a record on which to base decisions concerning STV over educational stations.[66] In this connection, we call attention to the fact that educational STV is a part of the larger problem of educational television in general which in the past few years has been the subject of careful consideration by the Ford Foundation, the Carnegie Foundation, and others.[67]

[65] We shall continue to authorize such operations on the same basis where application is made and it appears appropriate to do so, unless action taken with regard to the petition mentioned in paragraph 354 suggests another course.

[66] In passing, we note that § 73.621 of the rules provides that educational television stations may not broadcast programs for which consideration is received. This rule, of course, was adopted in a context devoid of STV possibilities.

[67] Comments of the Ford Foundation concerning educational television were filed in the domestic satellite proceeding, Docket No. 16495, which we presently have under consideration. The report of the Carnegie Commission on Educational Television was a principal factor leading to the adoption of The Public Broadcasting Act of 1967 (note 25 supra). We shall follow with interest the operation of the Corporation for Public Broadcasting created under provisions of that Act.

WIRE OR CABLE SUBSCRIPTION TELEVISION

PRELIMINARY STATEMENT

356. As stated in paragraph 5 above, the scope of this proceeding was enlarged by the further notice to include not only over-the-air STV, its previous subject matter, but an inquiry into what the role of the Federal Government should be, if any, with regard to the establishment and manner of operation of wire or cable STV, and how that role should be effected. This was done, as the further notice mentioned, because of the change in conditions since this proceeding began in 1955. An important change has been the rapid growth of community antenna television (CATV) systems.

357. Because of the necessity to avoid frustration of our television plan and policies under sections 1 and 307(b) of the Act by the existence and growth of CATV systems throughout the nation, in 1965 (Docket Nos. 14895 and 15233) we asserted jurisdiction over CATV systems served by microwave facilities and adopted rules governing those systems.[68] In 1966 (Docket Nos. 14895, 15233, and 15971), for the same reason, we asserted jurisdiction over all CATV systems (whether receiving their signals by microwave or off the air). In so doing, we adopted rules governing over-the-air CATV's, and amendments to existing rules concerning microwave-served CATV's.[69] Our jurisdiction was sustained in Southwestern Cable Co. v. United States (par. 311 supra).

358. In the proceedings in which the CATV rules were adopted, some parties expressed the fear that CATV might become a vehicle for STV or combined CATV–STV operations which would siphon programs from free TV and possibly result in a transition from free TV to STV. Because of this, we invited and received comments therein on the question of whether it would be feasible or desirable to have STV operations over CATV, whether any conditions might be necessary to protect the interest of the public in free TV, and, if so, what conditions might be appropriate.[70]

359. The further notice stated that, in addition to the comments filed in the present proceeding on the subject of wire or cable STV, we would take notice of the above-mentioned comments (in Docket No. 15971) concerning the CATV–STV relationship. It further stated that besides comments on the general topic of wire or cable STV, we would welcome comments on problems that might be encountered by parties proposing to bring over-the-air STV to communities in which there were established CATV systems. These included such questions as whether (if subscribers do not have antennas because their only reception is by CATV) it would be necessary to have built-in antennas in decoders attached to sets of subscribers; whether a single decoder attached to the antenna of the CATV system which delivered an unscrambled signal along the cable would suffice, and, if so, how collection charges

[68] 38 F.C.C. 683, 1 F.C.C. 2d 524 (1965).
[69] 2 F.C.C. 2d 725, 6 F.C.C. 2d 309 (1966).
[70] 1 F.C.C. 2d 453, 473–475 (1965).

could be made; and whether the CATV rules on carriage of signals of local stations would apply to carriage of STV stations.

360. Having considered all of the material before us, it is discussed and conclusions thereon are set forth in the remaining paragraphs. We shall first treat the specific problems, just mentioned, related to bringing over-the-air STV signals to communities with established CATV systems. Then we shall turn to the general problem of cable STV or combined CATV–STV operations. Among other things, this will deal with the question of program origination by cable systems.

SPECIFIC PROBLEMS

Pickup of scrambled STV signals by CATV systems. 361. The comments of Zenith-Teco and Telemeter inform us that it is technically feasible to attach a decoder at the CATV head end that would unscramble signals of an STV station and transmit them to sets of subscribers. However, Zenith-Teco states that it is doubtful that any STV station would permit this since it would defeat the purpose of having single subscribers pay charges on a per-program basis, and Telemeter says that any flat rate arrangement with the CATV operator would be commercially impractical since program suppliers for box office product prefer to participate in the gross receipts on the basis of percentage arrangements. Moreover, Telemeter states, such an arrangement implies a flat fee for CATV subscribers for STV service, and "the public has shown a reluctance to pay a flat fee for blocks of entertainment."

362. Both of these parties also indicate that it is technically possible to have CATV systems pick up scrambled signals, transmit them along the cables, and have them unscrambled by decoders attached to sets of STV subscribers just as if the signals had been picked up off the air. No built-in antennas would be necessary in the decoders.

CATV rules requiring carriage of local TV stations. 363. Comments in the record contain the following views: Telemeter states that since STV stations will probably be required to broadcast conventional programing part of the time, it seems logical that the CATV rules on carriage of local stations should apply. ACLU expresses the opinion that it would be consistent with the present CATV carriage rules requiring carriage of local conventional television stations to require CATV systems to carry STV programing of local STV stations, for otherwise millions of families might be deprived of free TV programing without having the right to subscribe to STV services that replaced them. On the other hand, the Joint Committee argues that at least until such time as the Commission is prepared to evaluate the significance of CATV generally with regard to free TV, it should prohibit CATV systems from carrying STV programs broadcast by STV stations; and it should also prevent STV stations from entering into arrangements whereby STV stations would use CATV systems as outlets for STV programing.

Conclusions. 364. To the extent that, under our new rules, STV stations will be required to broadcast at least the minimum number of hours of free TV programs required by § 73.651 of our rules, such stations are conventional stations and, for their nonsubscription programing, are entitled to the protection of our CATV rules, including the carriage and nonduplication provisions. As to the STV programing, we are informed that a decoder attached to the head end of a CATV system could unscramble an STV signal and transmit the decoded signal along the cable like any other TV signal. However, this is said to be commercially impractical, and we dismiss it from further consideration. It is also said that existing CATV systems could carry scrambled signals along a cable to decoders, attached to sets of subscribers, which could unscramble them just as if they had been picked up off the air. However, we shall not at this time require that CATV systems carry unscrambled signals of local STV stations.

365. Should an STV station and CATV systems within the Grade B contour of the conventional service of that station wish privately to arrive at agreements whereby the CATVs will carry STV programing of the station, the public interest would be served (by having the STV signal of the station extended within its conventional TV service area). We shall therefore give consideration to proposals of STV stations wishing to make such arrangements. However, no party holding or applying for an STV authorization shall consummate such an arrangement without Commission approval thereof. It should be noted that we here speak of permitting such carriage of STV signals by CATV systems within the Grade B contour of the STV station. We do not now intend to permit it outside of that contour. This will confine STV to the communities which we have selected for that service. Because of this, we see little merit to the Joint Committee argument that STV–CATV arrangements should be prohibited (see par. 363).

366. Often the CATV operator, in installing the cable connection, disconnects the TV set from the outdoor antenna. This can make it impossible for the subscriber to receive a local TV station directly off the air. Under the provisions of § 74.1103(c) of the rules, we have provided that if a CATV system does not carry the conventional signals of a local TV station it must offer and maintain a switching device for each subscriber so that the subscriber may choose between viewing the local station off the air or viewing other stations on the cable. This need not be done if the subscriber indicates in writing that he does not desire the device. With regard to STV, it is possible that if the CATV operator has disconnected the set from the outdoor antenna, is not required to carry the scrambled signal of the local STV station (see par. 364), and has not made arrangements with the local STV station to carry its scrambled STV signals (see par. 365), the CATV subscriber might be precluded from becoming an STV subscriber. At a later date, if we were to continue not to require CATV carriage of STV signals, we might need to consider whether to adopt a rule for STV similar to § 74.1103(c), or to take other measures that would leave the TV set of the CATV subscriber accessible to STV service. (However, see par. 368 infra.)

367. The discussion in the preceding paragraph leads to a final topic. Although CATV carriage of STV signals will not presently be required, it appears that there is merit in the ACLU position that it should be. They base their argument on the belief that those who lose free TV service should have the opportunity to view the STV service which preempted the free TV time. This might be true, but the reason for requiring carriage could go deeper. For example, if STV were broadcast over a new station there would be no preempting of time, yet requiring carriage on the cable could be in the public interest because, whether the STV station is new or a previously operating station, if STV programs are not carried on the cable those residing in the service area of an STV station who are dependent on CATV for TV viewing do not receive the same consideration as those capable of receiving the STV station without the aid of CATV. The latter, if within the Grade A contour of an STV station, have the right to subscribe, and if between the Grade A and the Grade B contours have a good chance of obtaining STV service, although not as of right. As to those dependent on CATV, some might be inhibited from receiving STV because of the frequent rooftop disconnection mentioned in the preceding paragraph. Others, who cannot receive the off-the-air signal of the STV station, even with a rooftop antenna, are foreclosed from receiving STV.

368. We have concluded that STV is broadcasting and have taken measures to assure its effective integration into the total TV system. As a part of that system, it is entitled to protection with regard to CATV, just as conventional television broadcasting is, and for the same reasons (par. 357). The present CATV rules (47 CFR 74.1100–74.1109) contain carriage and nonduplication requirements concerning conventional TV stations. Not to require carriage of STV signals would, in our opinion, be inconsistent with sections 1 and 307(b) of the Act and with our view that STV is broadcasting. Therefore we are today adopting a third further notice of proposed rule making in this proceeding in which comments are invited on a proposal that would require CATV systems located within the Grade B contours of STV stations to carry the scrambled signals of those stations according to certain priorities. We believe that CATV systems operating in the large STV markets would have the multichannel capacity to meet such a requirement. Comments are also invited on whether, and under what circumstances, CATVs located outside the Grade B contours of STV stations should be permitted to carry STV signals. If as a result of the further notice rules requiring CATV carriage of STV signals are adopted, we shall not be unsympathetic to requests for continuation

of any arrangements which have been made under the policy expressed in paragraph 365.

GENERAL PROBLEMS

Will CATV become STV? 369. The principal arguments in the instant proceeding as well as in Docket No. 15971 on the matter of CATV–STV relationship revolve about the question of whether CATV might develop into an STV or a combined CATV–STV operation which would siphon programs from free TV. It is urged that revenues obtained from large CATV operations, in major cities, for example, would permit the CATV operators to outbid free TV for programs, and that a transition from free TV to STV might thereby occur. It is argued that this is not only unfair because CATV operations would be using free TV, which makes CATV possible, as a stepping stone to STV operations that will harm free TV, but that such undermining of free TV is contrary to the public interest. Various parties point to cases where there is already program origination by CATV systems and imply that this shows the direction that will be followed. STV would thus enter by the back door, using the financial base created and made possible by free TV. If it is to enter, it is said, it should enter by the front door after appropriate proceedings. Some suggest that the appropriate proceedings should include trial STV operations over CATV systems similar to the Hartford trial in order to develop information helpful to arriving at decisions on the subject. It is also urged that if importation of distant signals by CATV is prohibited, the systems may well have to turn to program origination to survive. Still another argument is that if copyright law is modified to require CATVs to pay fees for programs, the strength of the argument against program origination over CATV which derives its base from free TV is lessened.[71]

370. On the other hand we are told that there can be no objection to program origination by CATV systems in areas where there is no television station; that in the few cases where there is presently program origination by CATVs it is programing of a public interest nature such as local news, local sports, and the like; and that CATV alone or in combination with STV may well pose an economic threat to the present system of broadcasting, but that system is not central to the economic structure of this country, and what is central, is whether or not the public is being served in the best possible way—CATV with multiple channel capacity can provide a wider diversity of programs to the public.

Jurisdiction. 371. In their comments, several parties, without giving detailed legal arguments, express their views on the question of jurisdiction of the Commission over wire or cable STV. It should be borne in mind that the comments were filed in this proceeding on October 10, 1966, after we asserted jurisdiction over all CATV systems, but before the decision in Southwestern Cable.

372. On the jurisdictional issue, Telemeter says:

> Telemeter is aware, of course, of the Commission's assertion of jurisdiction over non-microwave serve CATV's and of the pending legislation in Congress to support that jurisdiction. In the case of the closed-circuit subscription operation by wire, however, which involves no use of frequency space whatsoever, and in the case of the CATV system, which, itself, originates subscription television programs (as distinguished from the off-the-air pick-up or microwave-fed subscription programs), there should be no question that no federal regulatory authority exists.

373. CBS is of the opinion that the Commission does not have jurisdiction over cable STV. It states that although jurisdiction was asserted over CATV, "an all important element was the fact that television stations' signals were extended by CATV systems beyond the area or zone to be served by the originating station, a factor not involved here." Teleprompter expresses a similar view. CBS goes on to say that even if the Commission had such jurisdiction it should not regulate cable STV because it does not involve scarce spectrum space. On the other hand, Taft asserts, simply, that there is no jurisdictional problem with Commission action in this area because it has established such jurisdiction over all forms of CATV.

374. ABC expresses the following view:

> ABC believes that the Commission should apply the same standards to pay-TV by wire as it applies to pay television by "broadcasting." The logic of the Commission's assertion of jurisdiction in CATV would support jurisdiction over pay-TV by wire. Although the Commission would appear to have no power to authorize pay television by wire, it should, in ABC's view, apply whatever regulatory policies it determines to be appropriate to wire television to the extent found necessary to protect the "public interest in the larger and more effective use of radio."

375. Finally, Trigg-Vaughn states:

> We think it premature to consider the question of the Commission's jurisdiction to regulate pay television systems conducted by wire. We believe that it is too early to tell how and in what way pay television by wire should be authorized. Experiments with off-the-air systems of pay television have been conducted and have produced meaningful operating data—the same cannot be said with respect to the relatively limited wire pay television systems.

Deferring action on over-the-air STV. 376. Teleprompter, in oral argument, states that the Commission should not now decide to authorize over-the-air STV because it would be better first to determine whether STV might be more satisfactorily provided by cable. It states, however, that if the Commission should authorize over-the-air STV operations, it should make clear that in so doing it is not proposing now or later to prefer such STV over any form of wire or cable STV. It goes on to say that the Commission should also make clear that it will not seek to use its regulatory power to restrict the offering of STV over cable because it has no jurisdiction to do so.

377. Motorola believes that before a new service is permitted to use spectrum space, competing claims to the space should be considered. This, it says, would involve determinations about whether wire is a practical substitute, the relative importance of the service as compared with other uses to which the spectrum space might be put, the number of people who would probably benefit from the service, and whether there is a substantial public need for the service that would result in its viability. Zenith and Teco reply to this argument by saying that this is not an allocation proceeding, and that the proposed new STV service would use channels already allocated for the use of television broadcast stations.

Conclusions. 378. We may make a threefold distinction with regard to STV over cable: (1) STV systems, like that which operated for a short period in Los Angeles and San Francisco, in which programs travel entirely by cable from studio to sets of subscribers, and which make no use of signals of television stations. See Weaver v. Jordan, 49 Cal. Reptr. 537, 411 P. 2d 289 (1966), cert. den. 385 U.S. 844. (2) CATV systems which, in addition to their traditional function of receiving and retransmitting conventional TV signals, also originate STV programs that travel by cable to sets of subscribers. (3) CATV systems which, in addition to traditional functions, transmit by cable the over-the-air STV programs which they have picked up either off the air or by microwave (and which may or may not engage in STV program origination).

379. Without deciding whether the Commission has jurisdiction over the first type of cable STV mentioned in the preceding paragraph, we believe that we clearly have jurisdiction over the second two. Pickup of over-the-air STV signals by CATVs has been previously discussed (pars. 361–368). As to program origination by CATVs, our authority to regulate programs originated by CATV systems on valid public interest grounds is discussed elsewhere and will not be repeated here. Midwest Television, Inc. et al., 13 FCC 2d, 478, 503–508 (1968); Memorandum Opinion and Order denying reconsideration, FCC 68–1089 (Nov. 6, 1968), 15 FCC 2d ———.

380. We cannot agree with Teleprompter and Motorola that we should not authorize over-the-air STV. The channels to be used by STV have been allocated to television broadcasting and are available for such use. The argument of Motorola, if accepted and logically extended, could mean that we should grant no further authorizations for conventional television stations, a result which we cannot believe would be in the public interest.

381. In establishing the new over-the-air STV service, we do not mean to imply that there is no place for cable STV. On the contrary, it is our view that the two kinds of service are not mutually

[71] On June 17, 1968, the Supreme Court of the United States held that when a CATV system picks up the off-the-air signal of a television station and transmits it by cable there is no liability under the Copyright Act to the copyright owner for the program material transmitted. Fortnightly Corporation v. United Artists Television, Inc., 392 U.S. 390.

exclusive. We believe it would be in the public interest to promote both over-the-air and cable STV, for the result could be increased diversification of service and choice of programs. Moreover, it should be noted that over-the-air STV operations could serve people living in a broad area away from the core of a community, whereas cable, at least at present, is generally restricted to the more densely populated areas of a community.

382. We have read the "Report on Cable Television and Cable Telecommunications in New York City," recently prepared by the Mayor's Advisory Task Force on CATV and Telecommunications. We recognize the advantages of cable transmission, such as, for example, the fact that cable may carry many channels as compared to the single channel of a broadcast station. If the recommendations of that document are carried into practice in New York City and other urban centers, there would be a great contribution to increased program diversity. However, that would, in our opinion, not mean that over-the-air broadcast operations would not have a place in the communications picture. Finally, whether such large-scale wire operations will actually occur cannot be regarded as a settled question. We believe, therefore, that we should now promote over-the-air STV which our exhaustive studies indicate has an excellent chance of contributing to program diversity, continue our studies and encouragement of CATV originations and, in short, seek to encourage the attainment of maximum program diversification consistent with the public interest.

383. We are of the opinion that the question of CATV program origination needs thoroughgoing examination. The material submitted in the present inquiry and in Docket No. 15971 has proved of some value, but more information is needed. We are aware, of course, that many CATV systems presently do engage in limited program origination consisting, e.g., of weather reports, stock reports, and some local interest programing. However, the origination of which we speak is broader.

384. In Midwest Television, supra, we permitted the origination of programing by CATVs, without advertiser support, for the purpose of providing some insight into its potential without at the same time having an undue adverse impact on broadcasting, especially UHF, in the San Diego area. In so doing, we stated, however, that the resolution of the issues with regard to CATV program origination and television broadcast stations was a matter of overall policy in a general rule making proceeding such as that in Docket No. 17999 [72] or a new proceeding. Several months later, on August 28, 1968, in Jefferson-Carolina Corporation, 14 F.C.C. 2d 601, we stated, in denying a request to prohibit general program origination and advertising over a CATV system, that we intended shortly to initiate a rule making proceeding in which we might gain data on the implications of such operations. We here today issued an order instituting such a proceeding (Docket No. 18397). Accordingly, we are terminating the present inquiry, although the material submitted will continue to be appropriately considered in our evaluation of this important matter.

ORDERS

385. Authority for adoption of the rules herein is contained in sections 3(o), 4(i), 301, 303 (a), (b), (d), (e), (f), (g), (r), and 307(b) of the Communications Act of 1934, as amended.

386. *Accordingly, it is ordered,* That the rules contained in Appendix D below are adopted, effective June 12, 1969.[73]

387. *It is further ordered,* That, since we have under study the comments filed in response to the second further notice of proposed rule making (pars. 248–250 supra) concerning proposed technical standards for over-the-air subscription television systems, and since we are today adopting a third further notice of proposed rule making, the rule making proceeding herein is not terminated.

388. *It is further ordered,* That, the inquiry into subscription television as related to wire or cable is terminated.

(Secs. 3, 4, 303, 307, 48 Stat., as amended, 1065, 1066, 1082, 1083; 47 U.S.C. 153, 154, 303, 307)

Adopted: December 12, 1968.

Released: December 13, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[74]

[SEAL] BEN F. WAPLE, *Secretary.*

NOTE: Appendices A, B, C, and E filed as part of original document.

APPENDIX D

Part 73 of the Commission rules and regulations is amended by adding the following new sections thereto:

OVER-THE-AIR SUBSCRIPTION TELEVISION OPERATIONS

§ 73.641 Definitions.

(a) *Subscription television.* A system whereby subscription television broadcast programs are transmitted and received.

(b) *Subscription television broadcast program.* A television broadcast program intended to be received in intelligible form by members of the public only for a fee or charge.

§ 73.642 Licensing policies.

(a) Subscription television service may be provided only upon specific authorization therefor by the Commission. Such authorization will be issued only to:

(1) The licensee of a commercial television broadcast station;

(2) The holder of a construction permit for a new commercial television broadcast station; or

(3) An applicant for a construction permit for a new commercial television broadcast station: *Provided, however,* That such authorization will not be issued prior to issuance of the construction permit for the new station.

Moreover, such an authorization will be issued only for a station the principal community of which is located entirely within the Grade A contours of five or more commercial television broadcast stations (including the station of the applicant), whether the principal community each station is authorized to serve is the same as that of the applicant, or is a nearby community. Only one such authorization will be granted in any community. No such authorization will be granted unless, not counting the station of the applicant, at least four of the stations which include the community of the applicant within their Grade A contours are operating nonsubscription stations.

(b) Application for such authorizations shall be made in the manner and form prescribed by the Commission. If the Commission, upon consideration of such application finds that the public interest, convenience and necessity would be served by the granting thereof, it will grant such application. In the event it is unable to make such a finding, the Commission will then formally designate the application for subscription television authorization for hearing and proceed pursuant to the provisions of section 309(e) of the Communications Act and the Commission's rules and regulations applicable thereto. The Commission may impose such conditions upon the grant as may be appropriate.

NOTE: No applications will be accepted for filing until such time as rules concerning equipment and system performance capability have been adopted in § 73.644. At that time, the manner of filing such applications, the form, and the content thereof with regard to equipment, technical, and all other matters will be announced. No grants will be made until June 12, 1969.

[72] This docket deals with the subject of permitting stations licensed in the community antenna relay service to transmit program material originated by CATV systems. In the notice of proposed rule making (adopted Feb. 5, 1968) instituting the proceeding (33 F.R. 3188) we stated: "[T]here is no question but that, at the least, the public interest is served by CATV acting as an additional outlet for community self-expression."

[73] Thomas A. Banning, Jr., proposes a system that would permit transmission of TV programs in color to those paying a fee, and in black and white to all others for no charge. He suggests that his system could be used in all markets, regardless of the number of free TV services therein, since there would be no blackout of a channel when an STV program is being shown. Such programs do not fit our definition of an STV program (see § 73.641(b) in Appendix D), namely, a program intended to be received in intelligible form by members of the public only for a fee or charge. Should any applications be received for use of this system by a station in any community (regardless of the number of free TV services therein) we shall treat them on an ad hoc basis. Such applications will be subject to technical rules adopted herein. They will not be accepted until such rules are adopted, and no grants will be made until June 12, 1969.

[74] Dissenting statement of Commissioner Bartley and concurring statement of Commissioner Wadsworth filed as part of original document; Commissioner Johnson concurring in the result; Commissioner H. Rex Lee not participating.

(c) Holders of subscription television authorizations shall complete construction of subscription television transmitting facilities within a period of 8 months after issuance of the authorization unless otherwise determined by the Commission upon proper showing in any particular case. During the process of construction of the subscription television facilities, the holder of the authorization, after notifying the Commission and the Engineer in Charge of the radio district in which the station is located, may, without further authority of the Commission, conduct equipment tests for the purpose of such adjustments and measurements as may be necessary to assure compliance with the terms of the authorization, the technical provisions of the application therefor, and the rules and regulations. The Commission may notify the holder of the authorization not to conduct tests if such tests appear to be contrary to the public interest, convenience, and necessity. Upon completion of the construction, the holder of the authorization shall submit a detailed showing that compliance with the terms of the authorization, the technical provisions of the application therefor, and the rules and regulations has been achieved. No subscription television operation shall commence until requirements of this paragraph have been fulfilled and operation has been specifically authorized by the Commission.

(d) A subscription television authorization will not be issued or renewed for a period longer than the regular license period of the applicant's television broadcast authorization. Renewals of such authorizations will usually be considered together with renewals of the regular station authorizations.

(e) No subscription television authorization or renewal thereof shall be granted to a party having any contract, arrangement, or understanding, expressed or implied, which:

(1) Prevents or hinders it from rejecting or refusing any subscription television broadcast program which it reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest; or substituting a subscription or conventional program which in its opinion is of greater local or national importance; or

(2) Delegates to any other person the right to schedule the hours of transmission of subscription programs: *Provided,* however, That this rule shall not prevent a licensee, permittee, or applicant from entering into an agreement or arrangement whereby it agrees to schedule a specific subscription television broadcast program at a specific time or to schedule a specific number of hours of subscription programs during the broadcast day (or segments thereof) or week subject to Commission approval; or

(3) Prevents or hinders it from, or penalizes it for, making a free choice of subscription programs, whatever their source: *Provided, however,* That upon making a satisfactory showing to the Commission that the public interest would be served by permitting the licensee, permittee, or applicant to enter into an agreement or arrangement whereby it agrees to obtain all or a specified portion of its programing from one or more sources, this rule may be waived; or

(4) Deprives it of the right of ultimate decision concerning the maximum amount of any subscription program charge or fee.

(f) No subscription television authorization or renewal thereof shall be granted to a party having any contract, arrangement, or understanding, expressed or implied, with other parties the provisions of which do not comply with the following policies of the Commission:

(1) Unless a satisfactory signal is unavailable at the location where service is desired, subscription television service shall be provided to all persons desiring it within the Grade A contour of the nonsubscription television service provided by the station broadcasting subscription programs: *Provided, however,* That geographic or other reasonable patterns of installation for new subscription services shall be permitted: *And provided further,* That, for good cause, service may be terminated.

(2) Charges, terms and conditions of service to subscribers shall be applied uniformly: *Provided, however,* That subscribers may be divided into reasonable classifications approved by the Commission, and the imposition of different sets of terms and conditions may be applied to subscribers in different classifications: *And provided further,* That within such classifications deposits to assure payment may, for good cause, be required of some subscribers and not of others; and, also for good cause, if a subscription system generally uses a credit-type decoder cash operated decoders may be installed for some subscribers.

(3) Subscription television decoders shall be leased, and not sold, to subscribers.

(g) All applications for subscription television authorization or renewal shall set forth, in such detail as the Commission may require, the terms of agreements and arrangements the applicant has or intends to have with other parties concerning the supplying of subscription television programs, including specifically any provision that such programs shall be presented at a particular time or during a certain number of hours during the day (or segments thereof) or week, any arrangement or understanding which might hinder or prevent the presentation of programs from different sources, or penalize the applicant for so doing, and, as to any arrangement or understanding with a party other than the producer of the program, any other arrangement or understanding of which the applicant has knowledge, between such other party and third parties, which prevents or hinders such other party from obtaining programs from different sources. The applicant shall use due diligence to ascertain the existence and nature of arrangements to which it is not a party.

§ 73.643 General operating requirements.

(a) No commercial advertising announcements shall be carried during subscription television operations except for promotion of subscription television broadcast programs before and after such programs.

(b) Subscription television broadcast programs shall comply with the following requirements:

(1) Feature films shall not be broadcast which have had general release in theaters anywhere in the United States more than 2 years prior to their subscription broadcast: *Provided, however,* That during 1 week of each calendar month one feature film the general release of which occurred more than 10 years previously may be broadcast, and more than a single showing of such a film may be made during that week: *Provided, further,* That feature films the general release of which occurred between 2 and 10 years before proposed subscription broadcast may be broadcast upon a convincing showing to the Commission that a bona fide attempt has been made to sell the films for conventional television broadcasting and that they have been refused, or that the owner of the broadcast rights to the films will not permit them to be televised on conventional television because he has been unable to work out satisfactory arrangements concerning editing for presentation thereon, or perhaps because he intends never to show them on conventional television since to do so might impair their repetitive box office potential in the future.

NOTE: As used in this subparagraph, "general release" means the first-run showing of a feature film in a theater or theaters in an area, on a nonreserved-seat basis, with continuous performances. For first-run showings of feature films on a nonreserved-seat basis which are not considered to be "general release" for purposes of this subparagraph, see note 56 in the Fourth Report and Order in Docket No. 11279, 15 F.C.C. 2d -------.

(2) Sports events shall not be broadcast which have been televised live on a nonsubscription, regular basis in the community during the 2 years preceding their proposed subscription broadcast: *Provided, however,* That if the last regular occurrence of a specific event (e.g., summer Olympic games) was more than 2 years before proposed showing on subscription television in a community, and the event was at that time televised on conventional television in that community, it shall not be broadcast on a subscription basis.

NOTE 1: In determining whether a sports event has been televised in a community on a nonsubscription basis, only commercial television broadcast stations which place a Grade A contour over the entire community will be considered. Such stations need not necessarily be licensed to serve that community.

NOTE 2: The manner in which this subparagraph will be administered and in which "sports," "sports events," and "televised live on a nonsubscription regular basis" will be construed is explained in paragraphs 288–305 of the Fourth Report and Order in Docket No. 11279, 15 F.C.C. 2d -------.

(3) No series type of program with interconnected plot or substantially the same cast of principal characters shall be broadcast.

(4) Not more than 90 percent of the total subscription programing hours shall consist of feature films and sports events combined. The percentage calculations may be made on a yearly basis, but, absent a showing of good cause, the percentage of such programing hours may not exceed 95 percent of the total subscription programing hours in any calendar month.

(c) Any television broadcast station licensee or permittee authorized to broadcast subscription programs shall broadcast, in addition to its subscription broadcasts, at least the minimum hours of nonsubscription programing required by § 73.651.

(d) Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules and policies applicable to regular television broadcast stations are applicable to subscription television operations.

§ 73.644 Equipment and system performance requirements.

(a) No subscription television authorization will be granted unless the system to be used has been type accepted in advance by the Commission pursuant to the type acceptance procedures established by Part 2, Subpart F—Equipment Type Approval and Type Acceptance—of this chapter.

NOTE: Additional rules concerning equipment and system performance capability for subscription television systems will be adopted after a rule making proceeding in Docket No. 11279.

[F.R. Doc. 68-15166; Filed, Dec. 20, 1968; 8:45 a.m.]