Washington, D.C. 20460; and the Rhode Island Department of Environmental Management, Division of Air Resources, Cannon Building, Room 204, 75 Davis Street, Providence, Rhode Island 02908.

Send written comments to Linda M. Murphy, Acting Chief, State Air Programs Branch, U.S. Environmental Protection Agency, at the Boston address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey at the U.S. Environmental Protection Agency Boston address above or call (617) 223–4448.

SUPPLEMENTARY INFORMATION: For each pollutant for which there is a national ambient air quality standard (NAAQS), section 107(d) of the Clean Air Act requires all areas of the nation to be designated either (1) as attaining the NAAQS, (2) as unclassifiable with respect to attainment status, (3) as not meeting primary NAAQS, or (4) as not meeting secondary NAAQS for the pollutant. Primary NAAQS protect the public health; secondary NAAQS protect the public welfare. Providence, Rhode Island was designated nonattainment for the suspended particulate (TSP) primary NAAQS on May 7, 1981 (46 FR 25447) based upon air quality data collected in 1978 at a Westminister Street air sampler.

On February 28, 1982 the Rhode Island Department of Environmental Management (RIDEM) requested that EPA redesignate Providence from nonattainment for TSP primary standards to nonattainment for TSP secondary standards. RIDEM's submittal noted that the 1978 primary NAAQS violation occurred during a period of local and unusually high construction and demolition activity. Furthermore, RIDEM has reviewed its former TSP sampling practices and concluded that passive sampling error was likely to have biased TSP readings high enough to have caused the reported primary standards violation. Last, and supporting these two findings, no violation of the TSP primary NAAQS has been observed in the 3 years of sampling since 1978. For these reasons, EPA agrees with RIDEM that the 1978 TSP measurements at Westminister Street are an inappropriate basis for a nonattainment designation and approves the state's request to redesignate Providence from nonattainment for TSP primary to nonattainment for TSP secondary NAAQS. The secondary standards violation is based on TSP measurements collected in 1980 at Westminister Street.

Since this action affects only the designated air quality status of a limited geographical area, this rulemaking is considered noncontroversial. Based on past experience with similar actions in Region I, no adverse or critical comments are expected. Therefore, this action is being published as a final rulemaking. EPA believes that publishing a notice of proposed rulemaking is unnecessary.

However, if notice is received on or before August 11, 1982, that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from the date of publication of this **Federal Register** notice.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not Major because it imposes no new regulatory requirements, but only changes an area's air quality designation. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 2, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AIR QUALITY CONTROL REGIONS

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.340 the attainment status designation table for TSP is revised to read as follows:

§ 81.340 Rhode Island.

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Rhode Island—TSP				
Providence		X		
East Providence, Warwick, North Providence, Pawtucket, and Central Falls.			X	
Remainder of Rhode Island portion of AQCR 120				X.

(Secs. 107, 301 of the Clean Air Act, as amended (42 U.S.C. 7407, 7601))

[FR Doc. 82-18755 Filed 7-9-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73 and 74

[Gen. Docket No. 81-911; RM-3533; FCC 82-283]

Reallocate Certain MHz Frequency Bands to Television and Radio Respectively in the State of Alaska.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Alaska Public Broadcasting Commission, a government body of the State of Alaska, asked the FCC to make VHF–TV channels 5 and 6 and FM channels 201–260 (76–100 MHz) available for broadcast use in Alaska. Up until now broadcasters were not allowed to use these channels because they were reserved for another use, namely common carrier fixed operations. The FCC proposed to reallocate the spectrum between 76 and 100 MHz in a Notice of Proposed Rule Making adopted December 24, 1981, and released January 7, 1982. In this Report and Order, the FCC is adopting changes to its Rules which are required to make these channels available to broadcast operations in Alaska. With this action broadcasters in Alaska gain access to TV and FM channels which they may now use in providing service to the people of that State.

EFFECTIVE DATE: August 11, 1982.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis—(202) 653–8164.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Radio, Frequency allocation.

47 CFR Part 73

Radio broadcast, Television, Noncommercial educational FM stations.

47 CFR Part 74

Radio, Television, TV translators and low power TV stations, FM translators.

Report and Order

In the matter of amendment of Parts 2 of the Commission's rules governing frequency allocations and radio treaty matters general rules and regulations, 73 of the Commission's rules governing the Radio Broadcasting Services, and 74 governing Experimental, Auxiliary and Special Broadcast and Other Program Distributional Services to reallocate the frequency bands 76–88 and 88–100 MHz to television and radio respectively in the State of Alaska; Gen Docket No. 81–911, RM–3533.

Adopted: June 23, 1982.

Released: July 2, 1982.

1. Since 1955, the frequency band 76–100 MHz has been allocated, in the State of Alaska, for Government and non-Government fixed operations. This spectrum is presently allocated throughout the rest of the U.S. to the Broadcast Services and is commonly referred to as VHF Television Channels 5 and 6 (76–88 MHz) and FM Radio Channels 201–260 (88–100 MHz). In 1979, the Commission received a petition for rule making (RM–533) from the Alaska Public Broadcasting Commission (APBC) requesting reallocation of the band 76–100 MHz to the Broadcast Services in Alaska which would bring that State's allocation in line with the rest of the United States.[1]

2. On January 7, 1982, the Commission issued a *Notice of Proposed Rule Making (Notice)*[2] proposing to reallocate that portion of the spectrum between 76 and 100 MHz for shared use by the Broadcast Services on a primary basis and the Common Carrier Fixed Service on a secondary basis. The *Notice* also proposed to "grandfather" existing common carrier operations to provide them interference protection from new broadcast stations. A list of the existing fixed service licensees is included as Appendix B to this Order.

3. The eight comments and the two reply comments which were filed in response to our notice voiced unanimous support for the proposed reallocation, including the provisions for existing and future common carriers. Aurora Community Broadcasting, Alascom, State of Alaska, Northern Television, Alaska Public Broadcasting Commission (APBC), and Association of Maximum Service Telecasters (MST) urged the Commission to adopt the proposed Rule changes without delay. The remaining commenters qualified their support as follows:

4. Communication Equipment and Service, a radio common carrier (RCC) in Alaska, recommended that immediate reallocation take place but that licensing be deferred "* * * until all other available FM and TV channels have been exhausted." In reply comments, APBC opposed the RCC suggestion pointing out, among other reasons, the existence of other low VHF bands which are available to the RCC. We agree with APBC that such a delay in licensing would undermine the purpose of this rule making proceeding. Petitioner has already demonstrated the effects of needless restrictions on applicants for educational FM stations. Our purpose here is to eliminate these hindrances, not to prolong their existence.

5. The National Association of Broadcasters (NAB) supports the entire proposal, but recommends limiting fixed use of the 76–100 MHz band by establishing a cut-off date. However, NAB does not offer any specific date(s). We understand NAB's concern that at some time a broadcaster will be prevented from obtaining a TV or FM radio channel because an RCC is operating in that portion of the spectrum. We draw NAB's attention to the comments of MST where the latter explains why "[a] unique combination of circumstances makes [sharing] possible * * *" (page 2). Furthermore we now have no idea how long RCC's will continue to use the 76–100 MHz band in Alaska. Alascom, in its reply highlights the advantage of having "* * * a broad range of facilities * * *" available. In 1955, circumstances dictated that we reallocate the band for Government and non-Government Fixed use. The situation in 1982 is changed, and our action herein seeks to meet the new need for extensive cross-Service sharing. Our provisions for Fixed use of this band may indeed become obsolete as the common carriers gradually move to other parts of the spectrum. If so, we will then delete the Fixed provisions from these Rules.

6. Because of the eight parties' unanimous support for our proposal, and based on our own study of the population distribution and fixed-use locations, we are confident that reallocation of the 76–100 MHz band to the Broadcast Services is entirely in the interest of the people of Alaska. Without interrupting the Common Carrier Rural Radio Service in Alaska, we are expanding the number of available TV and FM channels, thus providing greater spectrum utilization on these frequencies in the State.

7. We have altered the language originally proposed for the affected rule sections in Parts 73 and 74. These changes are purely editorial and are intended simply to clarify the intent of the rules for ease of understanding. At the same time, we have included an editorial amendment of Section 73.513, which was not proposed, but which is necessary to reflect the adoption of the change in allocation.

8. Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*) the Commission certifies that the action contained herein will not have a significant economic impact on a substantial number of small entities. There is only one radio common carrier, Alascom, operating in the Fixed Service in Alaska in the 76–100 MHz range, and that entity is not a small business according to the Small Business Administration's criteria.

9. Accordingly, it is ordered that under the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, the Commission's Rules are amended as set forth in Appendix A, effective thirty days after publication in the **Federal Register**.

10. It is further ordered that a copy of this Report and Order be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. It is further ordered, that this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parts 2 and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

[1] At the time APBC filed (November 30, 1979), TV Channels 5 and 6 (76–88 MHz), and FM Channels 251–300 (98–108 MHz) were allocated to the Common Carrier Rural Radio Service in Hawaii. Hawaii's allocation has since been changed to conform with broadcast allocation of the contiguous States (46 FR 50372).

[2] 47 FR 983, General Docket 81–911.

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

§ 2.106 [Amended]

1. Section 2.106 is revised by removing footnote designator US23 in column 5 for the bands 76–88 and 88–108 MHz.

2. Section 2.106 is revised by adding a new footnote, NG129, in column 7 for the bands 76–88 and 88–108 MHz.

3. Section 2.106 is revised by removing the text of footnote US23 from the list of footnotes following the Table of Frequency Allocations.

4. Section 2.106 is revised by adding a new footnote to the list of footnotes following the Table to read:

NG129 In Alaska, the bands 76–88 MHz and 88–100 MHz are also allocated to the Fixed service on a secondary basis to the Broadcast service. Broadcast stations operating in these bands shall not cause interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

PART 73—RADIO BROADCAST SERVICES

1. In § 73.220, paragraph (b) is revised to read as follows:

§ 73.220 [Amended]

* * * * *

(b) In Alaska, FM broadcast stations operating on Channels 221–300 (92.1–107.9 MHz) shall not cause harmful interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

* * * * *

2. In § 73.501, paragraph (b) is revised to read as follows:

§ 73.501 [Amended]

* * * * *

(b) In Alaska, FM broadcast stations operating on Channels 200–220 (87.9–91.9 MHz) shall not cause harmful interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

* * * * *

3. Section 73.513 should be revised as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

Noncommercial educational FM stations other than Class D (secondary) which operate on Channels 221 through 300 but which comply with § 73.503 as to licensing requirements and the nature of the service rendered, must comply with the provisions of the following Sections of Subpart B: § 73.201 through § 73.213 (Classification of FM Broadcast Stations and Allocations of Frequencies) and such other Sections of Subpart B as are made specially applicable by the provisions of this Subpart C. Stations in Alaska authorized before August 11, 1982, using Channels 261–300 need not meet the minimum effective radiated power requirement specified in § 73.211(a). In all other respects, stations operating on Channels 221 through 300 are to be governed by the provisions of this Subpart and not Subpart B.

4. In § 73.603, paragraph (b) is revised to read as follows:

§ 73.603 [Amended]

* * * * *

(b) In Alaska, television broadcast stations operating on Channel 5 (76–82 MHz) and on Channel 6 (82–88 MHz) shall not cause harmful interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. In § 74.702, the last sentence of paragraph (a)(1) is revised and the paragraph now reads as follows:

§ 74.702 Channel assignments.

(a) * * *

(1) Any one of the 12 standard VHF Channels (2 to 13 inclusive) may be assigned to a VHF low power TV or TV translator station. Channels 5 and 6 assigned in Alaska shall not cause harmful interference to and must accept interference from non-Government fixed operation authorized prior to January 1, 1982.

* * * * *

2. In § 74.1202, paragraph (b)(3) is revised to read as follows:

§ 74.1202 [Amended]

* * * * *

(b) * * *

(3) In Alaska, FM translators operating on Channels 201–260 (88.1–99.9 MHz) shall not cause harmful interference to and must accept interference from non-Government fixed operations authorized prior to January 1, 1982.

* * * * *

APPENDIX B.—LIST OF RECEIVE SITES OF EXISTING FIXED OPERATIONS AS OF JANUARY 1, 1982, INCLUDING PROPOSED INTERFERENCE PROTECTION CRITERIA

Rx stations	Lat	Long	Rx freq (MHz)	Rx occupied BW (KHz)	Rx threshold sensitivity (C/N–10dB)	Ant. type	Ant. gain (dB1)	Cnd. elev. ft. AMSL	Ant ft. AGL	Call sign	Ant azimuth	Interference criteria
Pelican	57 57 38.00	136 13 50.00	96.9000	510	–99 dBm	VC.004M (Andrew 3605A).	6.5	50.	80.	WGF39	318.02°	–118 dBm
Cape Spencer	58 11 56.00	136 38 16.00	93.8000	510	–99 dBm	VC.004M	6.5	70.	40.	WGF30	137.68°	–118 dBm
Cape Spencer	58 11 56.00	136 38 16.00	86.6000	510	–99 dBm	VY.005M (Scale CLFM).	7.0	70.	40.	WGF30	65.79°	–118 dBm
Gustavus	58 25 4.00	135 41 43.00	90.2000	510	–99 dBm	VY.005M	7.0	36.	60.	WGF35	246.59°	–118 dBm
Gustavus	58 25 4.00	135 41 43.00	82.4000	510	–99 dBm	VY.005M	7.0	96.	60.	WGF35	154.20°	–118 dBm
Hoonah	58 7.4090.	135 25 50.86	79.1000	510	–99 dBm	VY.005M	7.0	1539.	105.	WGF826	334.43°	–118 dBm
Hoonah	58 7.4093.	135 25 50.86	89.1000	264	–102 dBm	VY.005V	7.0	1539.	105.	WGF826	194.89°	–121 dBm
Hoonah Village	58 6 29.00	135 26 27.00	93.1000	264	–102 dBm	VY.005V	7.0	75.	30.	WGF36	14.88°	–121 dBm
Boswell Bay	60 25 4.00	146 9 8.00	95.4000	510	–99 dBm	VY.005M	7.0	782.	42.	WGF70	57.57°	–118 dBm
Sand Point	55 21 3.00	160 29 15.00	83.0000	60	–108.5 dBm	VC.004H	6.5	299.	88.	WGF45	355.65°	–127 dBm

NOTE.—The interference criteria denote the maximum allowable received interference levels (in dBm) over the receiver occupied bandwidth exceeded no more than 10% of the time.

[FR Doc. 82–18539 Filed 7–9–82; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Docket No. 21502; RM-2737; FCC 82-281]

Radio Broadcast Services; Subscription Television Service

Preamble

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Four of the five issues raised in the Further Notice of Proposed Rule Making, relating to subscription television (STV) 46 FR 57078, published November 20, 1981, are resolved by this action which amends the Commission's rules. First, the rule restricting STV operation to communities within the Grade A contour of at least five commercial television stations, including that of the STV operator, is eliminated. Second, the requirement that an STV station broadcast at least 28 hours of conventional programming per week is eliminated. Third, the Commission is allowing either the purchase or lease of STV decoders by subscribers at the discretion of the STV licensee. Fourth, the requirement that an applicant for STV authorization ascertain the needs and interests of the community specifically with regard to subscription programming is eliminated. The deletion of these rules essentially deregulates the subscription television service. These restrictions have inhibited competition and unnecessarily burdened STV licensees while depriving the public of greater diversity in programming. Removal of these regulatory restraints will thus foster the development of this relatively new communications outlet and thereby provide consumers with more diverse programming.

DATE: Effective August 5, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792, or Scott W. Roberts, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television, Radio broadcast.

In the matter of Amendment of Part 73 of the Commission's rules and regulations in regard to § 73.642(a)(3) and other aspects of the subscription television service; Docket No. 21502, RM-2737.

Third Report and Order

Adopted: June 17, 1982.

Released: June 29, 1982.

1. This document is the *Third Report and Order* in the above referenced subscription television ("STV") proceeding.[1] Now before the Commission for consideration are the comments filed in response to a *Further Notice of Proposed Rule Making* ("*Further Notice*").[2] Four of the five issues raised in the *Further Notice* will be resolved in this *Order*. They are:

(1) Whether the rule restricting STV operation to communities within the Grade A contour of at least five commercial television stations, including that of the STV operator, should be modified or deleted;

(2) Whether the requirement that an STV station broadcast at least 28 hours of conventional programming per week should be modified or deleted;

(3) Whether the Commission should allow the purchase of decoders by subscribers or should retain the present system of permitting only the leasing of such equipment; and

(4) Whether the requirement that an applicant for STV authorization ascertain the needs and interests of the community specifically with regard to subscription programming should be deleted.[3]

2. To place our consideration of these issues in an historical context, we will briefly summarize the more detailed history of STV regulation contained in the *Further Notice*. After lengthy administrative proceedings, the Commission in 1968 established the basis for nationwide over-the-air STV service.[4] At that time it was concluded that STV could provide a beneficial supplement to conventional television programming and that, as an alternative medium, it might well provide a wholesome stimulus to conventional television which could lead to an improvement in overall programming available to the public. Until more was known about how STV would develop on a nationwide scale, the Commission decided it was best to proceed with caution.

3. Thus the regulations initially governing the subscription television service were imposed in the belief that they were necessary to maintain the availability of conventional programming. These regulations restricted STV operation to communities within the Grade A contour of at least five commercial television stations including that of the STV operator (the "complement of four" rule). In those communities, only one station was permitted to engage in STV operations (the "one-to-a-community" rule). Also, STV stations were required to broadcast at least 28 hours of conventional programming per week and operated under a variety of program restrictions. Additionally, to protect the public against the obsolescence of equipment or cessation of service during STV's infancy, decoder equipment could be leased but not purchased by subscribers.

4. Although non-experimental STV stations were permitted as of 1968, none commenced operation until almost a decade later. Because of the increased public interest in pay broadcast and the significant development of pay television technology, the Commission commenced a re-evaluation of its rules restricting STV service in 1977. *Notice of Inquiry and Proposed Rule Making ("Notice")*, Docket No. 21502, 67 F.C.C. 2d 202 (1977).

5. In the *First Report and Order ("First Report")* in Docket No. 21502, the Commission eliminated the rule providing that only one station in a community could engage in STV operations.[5] The Commission found that rather than precluding additional conventional programming, the growth of STV could both stimulate the use of UHF channels not currently utilized and provide a sound economic underpinning for existing UHF facilities. The Commission noted that since STV can obtain subscribers by responding to intense demands of a small viewing group, this communications service could make cultural, minority-oriented, or quality children's programming financially viable. Therefore, it was concluded that eliminating the "one-to-a-community" rule could hold the promise of more diversity in the mode and substance of television fare. The Commission also refused to require compatibility of STV systems, and decided that a cut-off procedure for applications for STV authorization was neither necessary nor beneficial in view of the elimination of the "one-to-a-community" rule.

6. In the *Second Report and Order* in Docket 21502 ("*Second Report*"), we

[1] Briefly described, subscription television broadcasting involves the broadcasting of a scrambled television signal which, on payment of a fee, subscribers are authorized to unscramble through use of a decoder. See *In the Matter of Subscription Television Program Rules*, 52 F.C.C. 2d 1, 2 (1974).

[2] 88 F.C.C. 2d 213 (1981).

[3] The fifth issue raised the question of whether STV stations should be made to comply with those television technical standards, largely in the audio performance area, not currently met by STV stations. We are not prepared, at this time, to resolve this issue.

[4] *Fourth Report and Order*, 15 F.C.C. 2d 466 (1968).

[5] FCC 79-535, 44 F.R. 60091 (published October 18, 1979).

established the policy that mutually exclusive applications proposing STV and conventional service would be compared by traditional comparative criteria.[6] The Commission found that STV is an alternate form of programming, and that the marketplace would more efficiently serve the public interest in selecting the more needed format.

7. Upon adoption of the *Second Report*, the only issues raised in the *Notice* which remained unresolved were: (a) Whether criteria should be established for comparing applications for STV authorization where the applicants hold licenses or construction permits, but only one can operate as an STV station because of the "complement of four" rule; (b) whether proceedings should be consolidated where an applicant is involved in two mutually exclusive hearings, one in which it seeks a construction permit for a new television station and the other in which it seeks an STV authorization; and (c) whether the purchase of decoders by subscribers should be allowed. Resolution of issues (a) and (b) was left to a final decision on whether to delete the "complement of four" rule. Deletion of the rule would obviate the need for both comparative criteria and consolidation of mutually exclusive STV and conventional application proceedings because no STV comparative situations would arise. These matters will be resolved in this *Third Report and Order*.

The STV Marketplace

8. The *Further Notice* indicated that nineteen STV stations were on the air as of April 1981, serving approximately 864,000 subscribers. *Further Notice* at paragraph 16. As of May 1, 1982, there were 27 stations operating in an STV mode in 18 different markets serving over 1,300,000 subscribers.[7] The 27 stations are as follows:

WWHT Newark, New Jersey
WSNL Smithtown, New York
KBSC Corona, California
KWHY Los Angeles, California
WSNS Chicago, Illinois
WFBN Joliet, Illinois
WWSG Philadelphia, Pennsylvania
WRBV Vineland, New Jersey
KTSF San Francisco, California
KSTS San Jose, California
WQTV Boston, Massachusetts
WSMW Worcester, Massachusetts
WXON Detroit, Michigan
WIHT Ann Arbor, Michigan
WCQR Washington, D.C.
WCLQ Cleveland, Ohio
KTWS Dallas, Texas
KNBN Dallas, Texas
KTXA Ft. Worth, Texas
WVEU Atlanta, Georgia
WKID Ft. Lauderdale, Florida
KECH Salem, Oregon
WBTI Cincinnati, Ohio
WCGV Milwaukee, Wisconsin
KNXV Phoenix, Arizona
KAUT Oklahoma City, Oklahoma
KGCT Tulsa, Oklahoma

An additional sixteen stations have been approved for STV operation, but they have not yet commenced operating in a pay mode.

9. STV stations provide both conventional and pay programming. Generally, from sign-on to about 7 or 8 pm, they present conventional programming much the same as other non-network affiliated stations. In the pay mode, the signal is scrambled so that only subscribers supplied with a decoder can receive the programming. Pay programming consists of unedited movies, sports and specials. Movies make up the bulk of the pay schedule and in any given month as many as twelve to twenty new titles are scheduled with older movies to provide the customer with diverse viewing. Specials include Las Vegas type shows and cultural events such as ballet, opera, symphonies and plays. Sometimes educational children's programs are also included in the earlier hours of pay programming. A few stations also present late night movies considered "adult" fare. These movies are offered for an additional fee over and above the regular monthly fee, a practice known as "tiering." Occasionally, some STV stations also charge an additional fee for a special telecast such as the Roberto Duran-Sugar Ray Leonard fight.

10. The costs to the STV subscriber are broken down into three categories: deposit, installation and monthly fees. Not all stations require a deposit, but, of those that do, the range is from $25 to $50. Installation fees vary from $30 to $100 and monthly charges range from $17 to $22.95. The average monthly charge is $19.95. Of those stations that use tiering, the second level generally costs an additional $5 per month.

Issues for Resolution

11. As indicated in the brief history of STV development discussed, *supra*, STV has been encumbered by administrative restrictions that had the unintended effect of inhibiting its growth because of concern over the availability of conventional programming. Although some deregulation has occurred, a number of restrictions, including the "complement of four" rule, remain intact. As stated in the *Further Notice*, a significant question to be resolved is whether STV should be viewed as an additional broadcast service with the ability to develop as the marketplace dictates or as a minor supplemental service limited to that role by government regulation. The comments filed in response to the *Further Notice* have aided us in making this determination.[8]

12. As will be discussed in further detail, we have concluded that STV should be given the opportunity to develop on an equal footing with conventional television since it can respond directly to the intensity of consumer preferences, and therefore serve the public interest. We find that conventional broadcasting need not be protected from STV incursion. Neither the data studied nor the comments submitted indicate that STV development threatens the preservation of conventional broadcasting. Whatever impact it has on the continued existence of conventional television is thus likely to be minimal.

The "Complement of Four" Rule

13. The "complement of four" rule was adopted to assure that a pay service would not replace an existing free service or use an allocated but vacant channel which could otherwise be utilized by a conventional station, unless there was a minimum of four operating conventional services available. The *Further Notice* proposed eliminating the "complement of four" rule because it constitutes a barrier which prevents implementation of STV service in many television markets. Moreover, we noted that STV can serve the public interest by leading to the activation of otherwise vacant UHF allocations, and providing a new service where no service was previously available. Finally, our own staff study concluded that very few existing conventional stations could be expected to alter their mode of operation and become STV stations in the absence of the "complement of four" limitation.

14. In response to the *Further Notice*, most parties who commented on the merits of the "complement of four" rule favored its elimination. They submit that the Commission has recognized the shortcomings of the STV eligibility requirement by granting waivers,

[6] 85 F.C.C. 2d 631 (1981). Traditional comparative criteria include, but are not limited to, diversification of mass media and integration of ownership and management.

[7] The STV subscriber count as of January 1, 1982, is based on information obtained from the Subscription Televison Association.

[8] A lost of the parties filing comments and/or reply comments is contained in Appendix B.

eliminating the restriction in connection with low power subscription operations, and by apparently viewing this limitation as unnecessary for and inconsistent with the development of Direct Broadcast Service ("DBS") subscription television services. Commenters assert that entrepreneurs should be encouraged to select the appropriate pay television delivery system for their products based on engineering and economic considerations and not on the basis of an eligibility rule. They further note that the restriction has had a limiting effect on the ability of television broadcasters to compete with other pay television modes.

15. Commenters also argue that the development of STV has not been at the expense or in place of conventional programming. Rather, STV has led to the construction of new stations and the broadcasting of conventional programming which otherwise might not have existed. Proponents of deleting the "complement of four" rule submit that its elimination would not cause conventional programming to be supplanted. Although the National Association of Broadcasters ("NAB") views the continued availability of free over-the-air television as crucial, it too believes that market forces can be relied upon to provide a mix of conventional and STV programming which would satisfy the public interest.[9] Most commenters conclude that the Commission's entry restriction does little more than deny large segments of the viewing public access to STV's programming services.[10]

16. Two parties addressed themselves specifically to the staff study analyzing the effect of relaxing the "complement of four" rule on conventional television. The Subscription Television Association ("STVA") [11] submits that operating experience demonstrates that the STV break-even point occurs at a much higher level than the staff estimated, and that therefore the study significantly overstated an entrepreneur's willingness to forego conventional programming and provide STV services.[12] On the other hand, Subscription Television of America ("STA") [13] argues that the study estimates the value of a television household to a conventional station at too high a level. STV submits that the value is really half the $109 estimated by the staff and therefore more conversions are likely to occur.

17. STA objects to a complete elimination of the "complement of four" rule. Instead, it suggests a hybrid approach to modifying the rule. According to STA, the rule should be modified so that it does not prevent the inauguration of new service. However, STA would retain the rule to the extent that it prevents an existing station from changing to an STV format, except in cases that warrant a waiver of the restriction. Only two other parties opposed eliminating the "complement of four" rule in its entirety, Liberty Communications, Inc. ("Liberty"), owner of 34 cable television systems, and Wometco Home Theatre, Inc. ("Wometco"), a cable as well as an STV entrepreneur. Liberty submits that elimination of the rule might lead to a significant loss of conventional service.[14] Wometco argues that diversity can be obtained in small communities through low power facilities without eliminating the rule.

18. In 1968, we concluded that a nationwide STV service is in the public interest. The growth of the service, particularly over the last few years, reinforces this conviction. STV can no longer be considered a service offering a product of uncertain appeal. Pay programming is now widely available over cable, through MDS systems, as well as STV stations. Proposals to offer vast subscription services via a DBS service have been filed with the Commission. There is clearly a market for pay video services and suppliers are likely to find themselves competing not only with conventional television but also among themselves.

19. There are some obvious advantages to be realized by allowing STV to be offered without the "complement of four" restriction. The most significant advantage is the activation of new stations. Of the 27 operating STV stations, 18 were activated on otherwise unused channels. Only 9 were converted from previously operating conventional stations. Sixteen additional STV authorizations have been issued, and applications for STV authority are pending for 31 other stations, for a total of 47 potential STV stations. Thirty-five of these 47 stations represent new stations and 12 represent conventional stations which would convert to STV.[15]

20. Since the overwhelming majority of existing STV stations (two-thirds) and issued STV authorizations and pending applications (three-fourths) involve activation of new channels, we can expect the elimination of the "complement of four" restriction to permit STV to activate previously vacant channels. In this regard, there are 133 television markets comprising 25 percent of all television households which do not qualify for STV because of the "complement of four" rule. There are 503 vacant television allocations, the vast majority of which are UHF. Deletion of the "complement of four" rule will allow many of those 133 markets to obtain STV service by virtue of the activation of unused allocations. The data indicates that at least two out of three STV stations activate otherwise vacant channels. Although our experience shows that such conversions have occurred, their proportion is at a rate that is acceptable because many more new stations are put into service. Moreover, a conventional station that converts to STV may well be replaced in the market by an entrepreneur who wishes to fill the conventional programming void that was created by the conversion. The large number of vacant allocations allows for marketplace dynamics to occur.[16]

21. The staff study (Appendix A of the *Further Notice*), to which we have already referred, consists of an economic analysis undertaken to determine the likely result of eliminating

[9] The Department of Justice comments that some loss of conventional programming is not necessarily bad. Justice states that a conversion from conventional to STV service is likely to increase net economic welfare because it is in every broadcaster's interest to provide the kind of programming most desired by its customers. Further, Justice notes that the marketplace is far more sensitive to customer desires than is the prohibition of the "complement of four" rule.

[10] The Department of Justice states in its comments that the "complement of four" rule prohibits *de novo* STV entry into a market with fewer than four existing conventional stations even though such entry involves no loss of conventional programming.

[11] STVA is a trade association comprised of companies which provide over-the-air subscription television services to the public. Its membership includes all of the STV operators now on the air.

[12] The staff study estimates the STV break-even point to occur between 25,000 and 40,000 subscribers, whereas STVA's estimate is 70,000 subscribers.

[13] STA has interests, through affiliated corporations, in operational STV franchisees in Atlanta, Georgia; Dallas, Texas; Chicago, Illinois; and Washington, D.C., and in proposed STV operations in St. Petersburg, Florida, and Boulder, Colorado.

[14] However, Liberty suggests that the public interest might warrant the Commission granting particular requests for waiver of the "complement of four" rule.

[15] In the *Further Notice* we found that about half of the 19 STV stations on the air in April 1981 had been converted from conventional stations. *Supra* at 219. These more recent figures indicate a significant increase in the ratio of new stations to conversions.

[16] We will entertain requests to amend the UHF Table of Assignments to add a channel to a community that has had an operating conventional station alter its format and become a pay service should such a request be filed by a party who indicates an intention to apply for a new authorization. The proposed reallocation would, of course, have to comply with relevant engineering requirements.

the "complement of four" restrictions of the mix of television services in markets thereby made available to STV. To predict the likely decisions of entrepreneurs who would consider markets opened up to STV by a change in the rule, the staff undertook to compare the advantages and disadvantages of each pay television delivery system, as well as the capital and operating costs of each system. The study concluded that cable has a significant advantage in head-to-head competition with STV. To apply this conclusion to an entrepreneur's decisional process, the staff also determined relative value of a single television household to both an STV station and a conventional station. By considering that value, along with the number of alternative pay and conventional program sources and the market's cable penetration, the staff concluded that the stations would remain conventional in both one and two station markets. As to markets with three or more operating stations, the staff concluded that there are really only *four* markets where conditions suggest a loss of conventional service if the "complement of four" rule is eliminated.[17] The reason loss of conventional service is expected to be minimal is that in many markets cable penetration is sufficiently great to make STV entry unlikely.

22. Of the two parties addressing the staff's economic analysis, STVA's argument that the study significantly overstated an entrepreneur's willingness to forego conventional programming and provide STV services merely buttresses the staff's conclusions that conventional programming would not significantly be impaired by eliminating the "complement of four" rule. We take issue, however, with STA's assertion that the study is flawed in projecting the likely conversion of conventional stations to STV operations because it estimates the value of a television household to a conventional station at too high a level. STA contends that the study incorrectly attributed certain monies to a conventional broadcaster that actually are received by the networks from advertisers for program distribution and other monies that are given to advertising agencies as a commission for services rendered. Thus, STA asserts that the staff study values a television household to a conventional station at twice its true value. Similar costs, however, also could reduce the value of a subscription household to half the amount used in the staff's analysis. Since no data has been offered to convince us that the staff's economic analysis is not essentially correct, we have no reason to dispute the study's conclusions. In any event, whether the staff's prediction that only four markets are likely to lose some conventional programming can be relied upon with precision is not crucial. What is significant is the fact that the study suggests only a limited loss of such programming. Even those who took issue with the study did not maintain that the loss would be significant.

23. Commenters have not expressed concern that the expansion of STV service will jeopardize the continued availability of conventional programming. There is very little information available demonstrating the effect of the addition of a premium service, such as STV, on existing service. Whether it would fractionalize the audience or create new audience (enlarge the audience) is not clear. However, we are satisfied that the growth of STV will not result in a net loss of service to the public. Net service loss would be a concern—increased competition is not. See *Carroll Broadcasting Co.* v. *FCC*, 258 F. 2d 440 (D.C. Cir. 1958).

24. The growth of pay cable and other pay services provides a compelling reason for removing restrictions to the introduction of STV.[18] In facing the competition offered by pay cable, STV stations are at a potential disadvantage because they operate on a single channel, whereas cable offers multiple channels. It has been found that pay services which enter a market first have an advantage over similar types of services which follow. We do not believe that the public interest is served by a regulation which restricts market entry by one pay service but leaves those markets open to others. Rather, the public is best served by allowing interested parties to establish STV stations wherever they believe a market exists and a channel is available.

25. It has been suggested that we retain a version of the "complement of four" rule that would permit institution of a new service but would prevent conversion by an operating conventional station in the absence of four other conventional signals. However, prospering conventional stations are usually not candidates for STV operation. If it were otherwise, many more stations already eligible to operate as subscription facilities would have chosen to do so. It is the marginal station that would consider conversion in an attempt to improve its situation. We do not wish to prohibit these stations from offering STV service, nor do we wish to adopt a test to evaluate the financial health of a conventional station that might apply for an STV authorization. Any such test would be arbitrary and would result in unavoidable delays that could prove fatal to the applicant. Moreover, such a rule would create an inequitable situation whereby an operating station could not offer a form of programming that is available to a newcomer with whom the operating station would eventually have to compete. We believe that existing stations should have the same options as applicants for new facilities. Finally, since we conclude on the basis of past performance and the staff's study that conventional television will continue to be viable in the absence of the "complement of four" rule, we perceive no overriding public interest justification for modifying the rule to permit new STV services while restricting the conversion of conventional services to an STV mode.

26. We also find it inappropriate and unnecessary to retain a more modest version of the rule, such as a complement of one or two. Our experience and the staff study indicates that STV provides a service that complements rather than substitutes for existing service. It has also been suggested that we retain the "complement of four" restriction, and apply a case-by-case waiver procedure to decide when the rule should be waived. Such a procedure would be time-consuming for all involved, *i.e.*, the STV applicant, the FCC and the public. Furthermore, a waiver procedure is only advisable if the rule generally governs. Since we believe this regulation is unnecessary, retaining it in any form would be inappropriate. Another suggestion offered by a commenter would employ low power television as a substitute for STV. However, low power stations have a restricted coverage area and are secondary facilities. They are another means, not a substitute method, for bringing diverse services to many communities.

27. We are aware that deletion of the "complement of four" rule theoretically means that all the television stations in a market could become STV stations and that there would be no absolute guarantee that "free" service would be available. Our decision here should not be interpreted as an indication that the

[17] The four markets are: Rochester, New York; Chattanooga, Tennessee; South Bend, Indiana; and Fort Wayne, Indiana.

[18] Approximately 12 percent of television homes now have pay cable. By 1985 this percentage is expected to rise to 17 percent. See *Wines, The Cable Revolution—Tough Choices for the Industry and the Government*, the National Journal, page 1891, October 24, 1981.

continued availability of conventional service is no longer deemed essential for the "fair, efficient, and equitable distribution of radio service" as mandated by section 307(b) of the Communications Act of 1934, as amended. Rather, it is our conclusion that the net result of our decision here will be the addition of new service. We do not expect to lose conventional programming which has been accepted by the community.

The "28 Hour" Rule

28. Like the "complement of four" rule, the "28 hour" rule was designed to ensure the availability of conventional programming. The complement guaranteed at least four conventional stations in a community, while the "28 hour" restriction mandated the provision of conventional programming on an STV station.[19] In 1968, the Commission was of the opinion that STV and conventional television could exist side by side on the same station, each service supplementing the other to the ultimate benefit of the public. However, the *Further Notice* asked whether the mix of conventional and pay programming might better be determined by the judgment of the individual entrepreneur and the demands of the marketplace. In the alternative, we solicited comments on a rule requiring conventional programming on a sliding scale according to the number of conventional stations in a community.[20] The *Further Notice* also indicated that elimination of the "28 hour" requirement would permit STV stations to forgo all nonscrambled programming. In this connection, we solicited comments on whether STV licensees should continue to bear the responsibility to provide programming responsive to community needs, and if so, whether STV stations should be permitted to fulfill their public service programming obligations through offerings presented on a subscription basis.

29. Many commenters addressed the issue of whether to relax the "28 hour" rule. All but one were in favor of eliminating this requirement. None, however, found the sliding scale approach a viable one.[21] Parties such as NAB submit that the rule's rescission would appear to be consistent with the First Amendment goal of reducing government involvement in broadcasters' programming decisions and licensees' choices as to how best to serve their audiences. While recognizing the possibility that eliminating the "28 hour" rule could result in some loss of conventional television programming in at least certain markets, NAB nevertheless believes that sufficient economic and competitive considerations exist to limit any potential loss of non-scrambled programming. A number of parties note that one of STV's benefits is that its success depends entirely upon subscriber satisfaction. The minimum hour requirement, however, restricts the independent judgment of STV licensees to meet subscriber demand. Cox Broadcasting Corporation submits that subscriber election to take or reject STV service represents a more direct and efficient means of influencing the licensee than intervention by the government to determine STV program schedules.

30. Only National Business Network, Inc. ("NBN"), licensee of an STV station, KNBN, Dallas, Texas, opposes deleting the "28 hour" rule at this juncture. It submits that inadequate STV operational experience makes it premature to either eliminate or modify this requirement. NBN's major concern in this matter is with a loss of competition and diversity in the STV industry. It alleges that STV operations are dominated by a handful of national businesses incapable or unwilling to deliver locally-oriented programming to the communities they serve. Of those parties responding to the *Further Notice*, only Liberty Communications, Inc., commented on the questions raised in regard to an STV licensee's obligation to provide responsive programming to ascertained community needs. Liberty submits that the Commission should permit STV stations to fulfill their public service programming obligations through offerings presented on a subscription basis.

31. As previously noted, we do not see a present or future need for regulations to protect conventional programming. Accordingly, we will no longer require STV systems to broadcast any conventional programming. We do not believe that the "28 hour" rule is necessary to assure an adequate amount of conventional programming. Even if STV stations air only subscription programming, there will be substantial conventional programming available from non-STV facilities. Nothing has been offered to substantiate a public need for, or interest in, the broadcast of a designated number of hours of non-scrambled programming by STV facilities.

32. We conclude that the "28 hour" rule places an unnecessary and potentially burdensome requirement on STV stations with no apparent concomitant public interest benefit. This rule may operate to restrict an STV licensee from exercising independent programming judgments, and it could prevent efficient programming determinations in response to audience demands for conventional and/or pay programming. If there is an audience for non-scrambled programming, STV licensees will find it in their interests to air such broadcasts. Community needs for conventional and pay programming differ and those relative needs should be adequately addressed and met by marketplace forces rather than an arbitrary government rule. Therefore, we are deleting the "28 hour" rule.

33. However, an STV licensee will be expected to continue to meet its obligation to program in response to community needs. No reasons were offered by commenters or are evident to us to indicate that STV and conventional licensees should have different obligations in this area. However, we believe that the public interest will be better served if this basic obligation is fulfilled with the least government intrusion and with the most licensee flexibility. Therefore, we will allow an STV broadcaster to meet its programming responsibilities with either scrambled or conventional programming. In fact, permitting the former will allow the development of new types of non-entertainment

[19] Section 73.643(a) of the Commission's Rules provides: "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 programming required by § 73.1740." Section 73.1740(a)(2)(ii) states that all commercial television stations are required to operate not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week once they have been in operation 36 months. Before that time, television licensees or permittees are required by § 73.1740(a)(2)(i) to meet less strenuous standards, those being "* * * not less than 2 hours daily in any 5 broadcast days per calendar week and not less than a total of:

(A) 12 hours per week during the first 18 months.

(B) 16 hours per week during the 19th through 24th month.

(C) 20 hours per week during the 25th through 30th month.

(D) 24 hours per week during the 31st through 36th month."

[20] For example, where the only station in a community was an STV facility, it might be required to present 28 hours of non-scrambled programming per week. If there were one conventional station in a community, the STV station would present at least 14 hours of non-scrambled programming. If two conventional stations were in operation, only 7 hours of such programming would be required by an STV operator. Finally, if three or more conventional stations were in operation, an STV licensee would have no conventional programming requirement.

[21] While preferring deletion of the minimum hour requirement, Cox Broadcasting Corporation submits that the sliding scale procedure is preferable to no modification of the rule at all.

programs designed for select audiences willing to pay for such broadcasts (narrow-casting). In our view, greater diversity in responsive programming will result from an STV licensee's option to meet its programming responsibilities by conventional or scrambled means.

The "Decoder Purchase" Option

34. Another regulation adopted in 1968 as a means to protect consumers was the requirement that STV equipment be leased and not sold to subscribers.[22] The Commission reasoned that the best way to protect the public against the obsolescence of equipment or cessation of service at that early stage of STV development was to adopt the lease only rule. It also stated that requiring decoders to be leased could conceivably stimulate the growth of STV since selling decoders for an unfamiliar service might be more difficult than leasing. The Commission noted, however, that at some later stage the public interest might better be served by permitting sale or lease. Since early STV operations demonstrated a measure of success, the *Further Notice* raised the issue of whether to allow licensees to offer the purchase and/or lease of decoders.

35. Of the fourteen parties commenting on this issue, most favored a relaxation of the "lease only" provision. They submit that the significant increase in existing and potential nationwide STV service to the public precludes any real concern over the likelihood of the extinction of STV. Commenters, such as Channel 57 Corporation ("57 Corporation"), permittee of STV Station WWSG–TV, Philadelphia, Pennsylvania, assert that the sale of decoders would save consumers money since rental fees accumulated over two to three years would exceed the purchase price of the decoder box. Another purported benefit of permitting the purchase of decoders is the reduction of the STV operator's capital requirements by eliminating the substantial financial outlay required to purchase decoders for lease to subscribers. 57 Corporation asserts that this reduction is significant in view of the high interest rates and tight money faced by entrepreneurs. Also, ABC notes that allowing the purchase of decoders will give STV operations parity with other pay technologies, such as pay cable, where decoders may be offered on a lease or purchase basis.

36. Those opposing a modification of the "lease only" rule submit that the threat of technological obsolescence is greater today than it was at the time the regulation was adopted. Then, STV services were anticipated as being fairly simple and geographically isolated. As the STV industry evolved, notes STVA, the services offered have became more complex, and in turn subscriber equipment is more sophisticated.[23] STVA argues that the STV operator should be the one to bear the burden of any major shift in design of decoder boxes. STVA contends that the "lease-only" rule should be retained in order to reduce the likelihood of marketing schemes which would attempt to sell decoder boxes like new automobiles based upon a premise of technological obsolescence.

37. Some commenters argue that there is still a threat of cessation of service. These parties maintain that most STV stations currently are operating at the edge of profitability notwithstanding the fact that the STV industry is now well established. STVA asserts that there would be a strong temptation to change decoder boxes and sell new ones as a means of raising quick capital each time that control of an STV franchise shifts from one company to another.

38. Some commenters also argue that if STV operators sell equipment to consumers, subscriber entry costs would escalate and harm the ability of STV operators to compete in the entertainment marketplace. According to American Television and Communications Corporation, the forced upfront purchase of a $150 decoder would be a substantial deterrent to subscriber growth, and the STV operator who relies on this approach would suffer accordingly.

39. Opponents further argue that Multipoint Distribution Service ("MDS") and cable operators do not sell subscriber equipment. They also assert that subscribers' accumulated rental fees do not exceed the purchase price of decoder equipment and that, if purchased, subscribers would have to bear any maintenance costs required for the decoder. According to STVA, the wholesale cost of decoders ranges from $100 to $200, while that portion of the monthly subscription fee attributable to decoders is only between $1.60 and $2.00 depending on whether the cost of the decoder is amortized over a five, six or seven year period. It argues that the cost to a consumer of purchasing a decoder could be substantial compared to the cost of leasing it, even for a period of fifteen years. STVA also submits that from a technological perspective, it is highly probable that over a fifteen year period decoder boxes will wear out or become obsolete. Consumers would then have to purchase new boxes to obtain the new technology and more sophisticated services.

40. One of the major concerns of opponents, such as Wometco Home Theatre, is piracy of the STV signal. They submit that subscriber purchases can only worsen the present problem of signal piracy by proliferating decoders owned by private parties. Even if a particular operator decides not to sell decoders, others may do so, thereby resulting in a pirate operation that will be difficult to quash.

41. Whether favoring or opposing the relaxation of the "lease only" rule, commenters generally recommend that, if purchase is allowed, the choice of offering sale and/or lease of decoders should be the province of individual STV entrepreneurs. They argue that this is a business matter best left to their judgment. Furthermore, giving this option to the STV operator allows it to decide whether the purchase of decoder equipment would create security problems. ABC contends, however, that whether or not an operator decides to offer decoders for purchase, it should be required to continue to offer decoders on a lease basis because significant changes in STV technology are still foreseeable. According to Telease, Inc., subscribers should be able to lease or purchase decoders at their option, but not until late in this decade. Until that time, STV operators should have that option, thus providing a reasonable opportunity for them to solve any security problems.

42. After careful consideration of the comments on this issue, we believe it is appropriate to eliminate our requirement that STV decoders must be leased to subscribers. Thus, licensees will be able to lease or sell decoders to their customers. An operator that insists that its subscribers buy a decoder will impose a substantial entry barrier on new customers. Similarly, an operator that changes decoders in order to raise new capital will very likely lose a significant number of subscribers in the process. With the availability of alternative forms of home video entertainment, including conventional television, cable, pay cable, MDS and potentially low power and DBS, a businessman must respond appropriately to the requirements of the marketplace.

[22] See § 73.642(f)(3) of the Commission's Rules.

[23] "Tiering" of services now is possible whereby several different programs may be offered, either simultaneously (using two or more available channels) or over time (as in the case of adult tiers offered late at night). Moreover, STVA asserts that widespread piracy of STV signals has caused nearly every new STV operation to use addressable decoding devices.

43. We recognize that encoding technology is in a state of flux, and that new and more secure systems are constantly being introduced. However, the possibility that a purchased decoder may become obsolete if the station decides to adopt a more modern system does not support a rule which absolutely bans the sale of decoders. Rather, it appears that the STV operator could retain subscriber good will by acknowledging the possibility of future new decoding systems when it offers a box for sale. The licensee may achieve the same type of customer satisfaction by offering a decoder owner a favorable price on any new decoder that is adopted by the station.

44. Finally, we do not believe that the sale of decoders by some or all STV operators may aggravate the piracy problem. Those individuals who may be capable of duplicating a decoder may be able to do so by utilizing boxes that are sold or rented to others or, for that matter, they may purchase the components from companies manufacturing and soliciting their sale.

45. In conclusion, allowing purchase or lease of decoder equipment at the STV operator's discretion can benefit both the businessman and consumer. As previously noted, decoder purchases can provide working capital to securely establish subscription operations. Additionally, the elimination of the restriction gives the STV operator the ability to change business practices on demand, thus serving himself and his subscribers. We do not believe that STV licensees should be restricted any longer in their ability to make a business judgment on whether to offer subscribers the purchase and/or lease of decoders. Thus, we are eliminating the rule prohibiting the sale of decoders.

The "STV Ascertainment" Study

46. One year after adopting the basic framework for the STV service, the Commission established guidelines for filing applications for STV authorization including the requirement that applicants survey the community's STV needs and interests.[24] This entails not only stating the methods used to ascertain those needs and interests, but indicating how the proposed STV programming will address them. The Commission believed that a substantial amount of STV programming might consist of feature films and sports with lesser amounts of STV programming offering opera, ballet or theater presentations. Thus, the Commission felt that ascertainment of the community's needs and interests regarding STV programming would initially be a search principally directed at the sports and entertainment needs of a community.

47. After observing a number of STV services in operation, we believed it appropriate to question the necessity of this ascertainment obligation. As stated in the *Further Notice*, it appears that ascertaining the community's STV interests could be accomplished by the operation of the marketplace. Is it not likely, we asked, that consumers will subscribe only to those who pay television systems offering programs meeting their STV interests? All those parties addressing the issue favor abolishing this requirement. They note that such action would be in keeping with the Commission's present policy of avoiding involvement in entertainment programming decisions.[25] Commenters further submit that the marketplace can most effectively and efficiently ensure that STV broadcasters provide subscription programming that meets the community's needs. Channel 57 Corporation contends that if an STV operator fails to present subscription programming that directs itself to the needs and interests of the community, subscriber support will dwindle. Thus, the success or failure of an STV operator will depend upon its programming and its ability to satisfy viewer demand. Inherent in such a process is determining the consumers' sports and entertainment programming needs.

48. We agree with commenters who submit that the basic economic relationship between an STV operator and the consumers of a community provides sufficient incentive for that operator to determine its service area's STV requirements and to provide programming that addresses these desires. It is in an STV operator's self-interest to maximize the number of subscribers. This can only be accomplished through meeting subscriber demand. The special STV ascertainment requirement is clearly unnecessary. It imposes a costly, time-consuming burden on the STV applicant with no benefit whatsoever accruing to the public. Consequently, we are eliminating the obligation on applicants to survey the *STV* needs of their service area.[26] [27]

Conclusion

49. In summary, we are persuaded from the data available to us and comments submitted by interested parties that deregulating the STV service will be of great benefit to the public. We have every expectation that the action taken herein will accelerate the utilization of unused channels, allow for additional specialized programming, provide financial support for small market stations and offer a unique broadcast service that directly responds to consumer interests to a far greater audience, *i.e.*, the entire country.

50. The removal of the "complement of four" restriction, the 28 hour rule, the lease-only limitation and the STV ascertainment requirement will aid not only the public but the STV industry as well. This pay broadcast medium now can effectively compete with other pay technological systems which do not operate under the same or similar regulatory restraints. The consequence of such competition should result in benefits to business and benefits to the consumer in the form of greater diversity in programming.

51. *Regulatory Flexibility Analysis:*

I. Need for and Purpose of the Rule

The Commission has concluded that the present restraints on the STV service inhibit the development of this broadcast medium while serving no public benefit. The proposal relaxation of the rules governing STV, by modification or deletion, will allow the natural expansion of the industry to the benefit of the public.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues raised:*

1. Those commenting in response to our initial analysis generally favored our proposals to relax the restrictions imposed on the STV service.

2. A few parties, however, opposed particular proposals. Some believed that in order to ensure an adequate amount of conventional programming, the "complement of four" restriction and the 28 hour rule should be retained.

3. Others argued that allowing subscriber purchase of decoder equipment would endanger the security

[24] *Fifth Report and Order* in Docket No. 11279, 19 F.C.C. 2d 559 (1969).

[25] See, *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981).

[26] No change in the Commission's rules is required as a consequence of the action taken herein eliminating the STV ascertainment obligation. This requirement appeared in the text of the *Fifth Report and Order*, 19 F.C.C. 2d 559 (1969), but was not the subject of any specific Commission rule.

[27] STV permittees, like other television permittees, are required to ascertain the community's needs, problems and interests and propose programs to meet those needs when applying for a license. Similarly, licensees must ascertain needs when applying for renewal. The action taken herein in no way affects this basic ascertainment requirement.

of the STV signal thereby increasing the problem of STV piracy. Thus, they opposed relaxing the requirement providing that STV equipment be leased and not sold to subscribers.

B. *Assessment.*

1. The Commission concludes that the arguments opposing the relaxation of various STV regulations are not persuasive.

2. We also conclude that both the public and industry will benefit from removal of regulatory restraints on STV development. Deregulation of this broadcast service will permit additional STV authorizations in additional television markets with reduced administrative and operating restrictions. Thus, consumers can be offered greater diversity in programming. We are convinced that relaxation of the rules will open up opportunities for small entities and reduce burdens imposed on them. In addition, STV entrepreneurs will be able to compete effectively with other pay technologies.

C. *Changes made as a result of such comment:*

1. In response to those comments favoring the removal of regulatory restraints, we are deregulating the STV service.

2. We did not adopt any of the suggestions made by those commenters opposing the elimination of particular STV restrictions.

III. Significant Alternatives Considered and Rejected

1. The *Further Notice* proposed eliminating or modifying the "complement of four" restriction and the 28 hour rule. Specifically, we considered whether the "complement of four" rule should be reduced to a complement of some number less than four. Also, we evaluated an option which would require conventional programming on a sliding scale according to the number of non-pay stations in a community.

2. The Commission concludes that these regulations are unnecessary for the preservation of conventional programming and have operated only to prevent STV from being competitive with other pay technologies. Thus, preserving these rules in some form not only is unnecessary but harmful to the public as well as industry.

52. Authority for adoption of the action taken herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

53. Accordingly, it is ordered, That §§ 73.642, 73.643 and 73.644 of the Commission's Rules are amended, effective August 5, 1982, as described above and set forth in the attached Appendix A.

54. Accordingly, it is further ordered, That the proceedings concerning this *Third Report and Order* are terminated.

55. For further information concerning this proceeding, contact Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792, or Scott W. Roberts, Broadcast Bureau, (202) 632-6302.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. Section 73.642 of the Commission's Rules is amended by revising paragraph (a)(3) and removing paragraph (f)(3) in its entirety to read as follows:

§ 73.642 Subscription TV licensing policies.

(a) * * *

(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.

* * * * *

(f) * * *

(3) [Removed]

* * * * *

§ 73.643 [Amended]

2. Section 73.643 of the Commission's Rules is amended to remove paragraph (a) in its entirety and redesignate paragraph (b) as the sole undesignated paragraph of this section.

Appendix B

*Parties Filing Comments**

American Broadcasting Companies, Inc.
American Television and Communications Corporation
Channel 57 Corporation
Choice Channel of Kansas City, Inc.
Consumer Electronics Group of the Electronic Industries Association
Cox Broadcasting Corporation
Department of Justice
Liberty Communications, Inc.
Marnel Associates, Ltd.
National Association of Broadcasters
National Business Network, Inc.
Oak Industries, Inc.
Subscription Television Association
Subscription Television of America, Inc.
Telease, Inc.
Wometco Home Theatre, Inc.
Zenith Radio Corporation

Parties Filing Reply Comments

American Broadcasting Companies, Inc.
National Cable Television Association
Satellite Syndicated Systems, Inc.
Subscription Television Association
Subscription Television of America, Inc.

Separate Statement of Commissioner Mimi Weyforth Dawson re: Subscription Television Service

With this decision we are taking the major step of removing all Commission regulations that restrict the ability of television broadcast licensees to collect subscription revenues. Under the existing "complement of four" rule, subscription service is restricted to communities within the Grade A contour of at least five commercial television stations, including that of the STV operator. The Report and Order adopted today correctly observes that elimination of the "complement of four" restriction will have the very beneficial result for consumers of additional television outlets. However, as discussed below, the potential long term benefits of the Order are much more significant and far-reaching.

The question of whether consumers will be better off under a subscription television system has been extensively discussed. For example, two decades ago Minasian cogently explained that:

> In an advertising-supported system * * * the program results reflect an all-or-nothing type of voting since votes take weights of either one (viewer) or zero (non-viewer). In contrast, a subscription system can be expected to yield a more diversified program menu than an advertising system, because the former enables individuals, by concentrating their dollar votes, to overcome the "unpopularity" of their tastes.[1]

Of course, the scholarly literature on pay television has recognized that there is no clear answer to the question of what pricing structure maximizes consumer welfare. For example, Noll, Peck and McGowan observe that:

> The nature of a television broadcast precludes a solution which meets all of the efficiency criteria as satisfactorily as does a perfectly competitive industry producing a private good. Leaving aside the problem of income distribution, no structure will both insure equality of price and marginal cost and produce the socially most desirable mix and number of programs * * *[2]

Nevertheless, other scholars have argued that "pay TV with unrestricted entry and many competing channels (large numbers of differentiated products produced under

*The dates for filing comments and reply comments were originally December 21, 1981, and January 5, 1982, respectively. They were extended to January 15 and 29, 1982, by an *Order* adopted December 15, 1981. Because of severe weather conditions, the date for any submissions due to be filed on January 15, 1982, was extended to January 18, 1982, by the Commission. Thus, all comments were timely filed.

[1] Jora R. Minasian, "Television Pricing and the Theory of Public Goods," 7 *Journal of Law and Economics* 75 (1964).

[2] R. G. Noll, M. J. Peck and J. J. McGowan, *Economic Aspects of Television Regulation*, p. 26 (1973).

monopolistic competition) may at least begin to approach efficiency."[3]

The question for the Commission to determine is what pricing system has the prospect to be the most efficient one. I believe the optimal system is most likely to be the one that naturally evolves in the marketplace, even if it results in many conventional stations switching over to subscription operations. Over the long term, as we gain experience with the newer methods of distributing video information, the optional pricing structure for video distribution may, for example, turn out to be advertiser supported channels broadcast by direct broadcast satellites, pay channels broadcast by VHF and UHF television stations and per-program pay television delivered by cable television. The number of possibilities is endless. But the implication for consumers is not. With the growth of subscription services the quantity and quality of video information distributed to the home will increase dramatically. I do not believe that the Commission should place any restrictions on the ability of conventional broadcast stations, or any other video distribution technology, to provide subscription service. Therefore, I strongly support this deregulatory action.

[FR Doc. 82-18754 Filed 7-9-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 11]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: When the final rule establishing Standard No. 213, *Child Restraint Systems,* was issued, it included a section setting requirements for a diagram to show the proper installation of a child restraint within a vehicle. Although the preamble discussed the installation diagram requirement, the standard inadvertently did not require the diagram to be placed on the restraint. This notice makes the necessary technical amendment to correct the standard.

DATE: The amendment is effective August 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety System, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: In May 1978, the agency proposed a substantially upgraded Standard No. 213, *Child Restraint Systems* (43 FR 21470). In sections 5.5.2(a)-(k) of the standard, the agency proposed requirements for certain warning and installation labels for child restraints. In particular, section 5.5.2(k) proposed specific requirements for a diagram showing the proper installation of a child restraint in a vehicle. Section 5.5.1 of the standard proposed that all of the labels specified in 5.5.2(a)-(k) would have to be placed permanently on the child restraint.

When the agency issued its final rule, it expanded the labeling requirements for child restraints (44 FR 72131). The preamble for the final rule discussed the specifics of the expansion and the reasons for adopting the labeling requirements. Because of the expansion, the installation diagram requirement of section 5.5.2(k) of the proposal was redesignated as section 5.5.2(l) in the final rule. Inadvertently, section 5.5.1 of the standard was not modified to reflect the expansion of the labeling requirements and thus it continued to specify that only the information found in section 5.5.2(a)-(k) be placed on the child restraint.

Most manufacturers recognized the intent of the agency and have placed the correct installation diagram on their restraints. A number of manufacturers apparently have not included such diagrams on their child restraints.

This notice makes the necessary technical amendment to correct the standard to require the installation diagram to be placed on a child restraint. The effective date of this correction is August 26, 1982. This will allow time for the few manufacturers that have not included installation diagrams to prepare the needed diagrams for their child restraints.

The agency has determined that there is good cause for not providing additional notice and opportunity to comment on this technical amendment. The public has previously had notice and opportunity to comment on the installation diagram requirement. This technical amendment merely corrects an error arising from the redesignation of the installation diagram requirement during the rulemaking process.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Standard No. 213, *Child Restraint Systems* (49 CFR 571.213), is corrected as follows:

1. Section 5.5.1 is revised by amending it to read as follows:

Each child restraint system shall be permanently labeled with the information specified in § 5.5.2 (a) through (l).

2. Section 5.5.2 is revised by amending it to read as follows:

The information specified in paragraphs (a)-(l) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type and are on a contrasting background.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on July 2, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-18722 Filed 7-9-82; 8:45 am]
BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte MC 95 (Sub-1)]

Practices of Motor Common Carriers of Passengers; Checked Baggage Prohibitions and Liability Exemptions; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction to notice of final rules.

SUMMARY: At 47 FR 21840, May 20, 1982, the Commission adopted regulations which define the groups of articles that motor common carriers of passengers (bus lines) may refuse to transport in checked baggage and for which bus lines may limit or disclaim liability for loss or damage. The regulations contained an inadvertent error, which omitted watches from the list of "valuable articles" given in § 1063.4(c)(3). That error is corrected below.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7656.

SUPPLEMENTARY INFORMATION: Correct § 1063.4, which is amended at 47 FR 21840, by adding the word "watches", to follow the word "jewelry" and to precede the words "and other" in

[3] B. M. Owen, I. H. Beebe and W. G. Manning, Jr., *Television Economics,* p. 80 (1974).