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may be a licensee in each of two five-station markets. 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 market until such time as the viability of STV in the former market has been determined. If viable in the former, then the licensee might use the same equipment in the second market. If not viable, and the licensee does not wish to engage in STV operations in the second market, then the supplier of the system could make it available to another station there. Although the example is conceivable, and such an arrangement might hinder the development of STV, we believe that the fact that multiple systems may be used for STV operations greatly reduces chances of adverse effect on the public interest that might occur and the possibility that this sort of arrangement might be made. 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 programming arrangements and not to the matter of technical equipment discussed above, it has been discussed in paragraphs 196-199.

(14) Whether a limitation should be placed on the type of programming 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 programming will differ from conventional programming or would otherwise serve the needs and interests of the community to be served, and what that showing should be [references to para. nos. omitted]. Whether placing a limitation on type of subscription programming is within the scope of the Commission's authority, taking into account Sections 303(b) and 326 of the Communications Act.

239. Briefly, the principal views of parties on this issue 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 programming 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).

240. 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