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244. 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 three 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% 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 five years-- for the purpose of restricting STV to the kind of sports programming which has not been available on free TV (Joint Committee).

245. Finally, as to requiring applicants for STV authorizations to make a showing that programming would be different from that of free TV, no such showing should be required because the programming of STV stations should be decided in the market place (Munn and Chase). Besides, since the Hartford trial has shown what programming 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 programming from that of free TV because the programming of the latter service is of unlimited variety (AMST).

246. Conclusions. We cannot agree with the arguments that the First Amendment and Section 326 of the Act preclude the Commission from restricting the programming on STV. Section 303(a) of the Act gives us the authority-- using the public convenience, interest, or necessity standard--to classify radio stations. Section 303(b) provides that--using the same standard--we have the authority to "p/rewrite the nature of the service to be rendered by each class of licensed stations and each station within any class." We regard it as settled law that under these provisions we may decide what the programming of STV, or other stations, may be. On this matter, the Supreme Court of the United States, in affirming our chain broadcasting rules, has said in National Broadcasting Company v. U.S., 319 U.S. 190 (1943), at pages 215-216:

"The Act itself establishes that the Commission's powers are not limited to the engineering and technical aspects of regulation of radio communication. Yet we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply. And since Congress itself could not do this, it committed the task to the Commission." (Emphasis supplied.)