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247. In addition, in dealing with a First Amendment argument in that case, the Court said at pages 226-227:

"[It is argued that the] Regulations, even if valid in all other respects, must fall because they abridge, say the appellants, their right of free speech. If that be so, it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to government regulation. Because it cannot be used by all, some who wish to use it must be denied. . . The right of free speech does not include...the right to use the facilities of radio without a license. The licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the 'public interest, convenience, or necessity.' Denial of a station license on that ground, if valid under the Act, is not a denial of free speech."

248. Just as, in the exercise of our regulatory function, we may-- using the public interest standard--specify who will or will not be licensed to use a station, so too--using the public interest standard--we may specify what is or is not to constitute the service to be rendered by a class of licensed stations, or by stations within the class. As the Supreme Court indicated, inherent in radio communication is the fact that some restrictions in its use are necessary. Examples of cases in which the courts have sustained restrictions are Lafayette Radio Electronics Corp. v. U.S., 345 F. 2d 278 (C.A. 2, 1965), and Carter Mountain Transmission Co. v. FCC, 321 F 2d 359 (C.A.D.C., 1963). An example of a present rule restricting the programming of broadcast stations is Section 73.242 of our Rules which provides that licensees of FM broadcast stations in cities of over 100,000 population shall not devote more than 50 per cent of the average FM broadcast week to programs duplicated from a standard broadcast station owned by the same licensee in the same local area.

249. 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 on which there is freedom of expression of all kinds. To weaken that structure could weaken the opportunities for freedom of expression over that thriving service. 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 programming generally not found in free television. We cannot agree with those who urge that the type of programming that STV will show is known, that it is clear that it will not