

Opening Statement of Commissioner James H. Quello
At the FISR En Banc Hearing
Washington, D.C.
December 14, 1990

I am the only commissioner who participated in this contentious issue seven years ago -- so as Yogi Berra, that often quoted master of creative parables once said, "To me it's Deja Vu -- all over again."

Years ago I characterized the Hollywood producers vs network rivalry as the battle of the wealthy against the very rich. I even mentioned that our FCC constituency, the public, would not be affected. I also said, and I repeat today, that it is the most intensely and subtly lobbied issue in my sixteen years at the FCC.

A major newspaper reporter asked me last week what I perceived as the major difference between this issue today and in 1983, particularly since I was the only dissenting vote in the FCC tentative decision authorizing financial interest-syndication rights for the networks. Summarizing my remarks -- I said the network audience and market power have eroded dramatically since 1983 (and lopsidedly since 1970 when the consent decrees were imposed).

Cable penetration, too, has significantly increased in the past seven years. Today cable systems, not networks, are the dominant gateway program distributors to 60% of the American homes. Cable decides what is to be carried or not carried. A single network today competes not only against other networks but a growing array of increasingly popular sports, news and entertainment programs in a diverse arena of 24 to 54 cable channels.

This year, network affiliates throughout the nation rallied behind their networks and urged elimination of what they term outdated government restrictions. The affiliates believe increased broadcast revenue is essential for free over-the-air broadcasting to compete with dual stream cable and pay companies in bidding for major sports, news and entertainment programs. Then, too, in 1990, unlike 1983, the great preponderance of press and editorial opinions advocated elimination of the fin/syn rules. This included recent editorials in the prestigious New York Times, Washington Post and Business Week.

Again, since 1983 there has been an undeniable and marked decrease in network audiences and influence. This has been caused by substantial and growing competition resulting in notable to huge increases in:

multi-channel cable penetration,
 VCR home rentals,
 competing independent stations,
 network competition -- Fox now an emerging 4th network,
 first run syndication offerings,
 competitive cable networks -- some owned by studios,
 direct to cable program sales,
 development of DBS,
 cable ownership of program production companies, and
 joint production ventures with foreign capital.

A major development since 1983 has been the surprising and dramatic foreign acquisition of major American production studios viz Columbia by Sony, Japan, now MCA-Universal by Matsushita, Japan, MGM by Pirelli, Italy, Fox by Australian News Corps and, MTM by an English Company. Thus, the program profits of these companies eventually flow to foreign corporations and banks. Networks, too, have foreign investments, but not with the impact and scope of the recent studio acquisitions.

It strikes me as somewhat perverse that foreign companies can purchase major American studios with full program syndication rights that are out of bounds for American controlled network companies. It seems time to consider allowing networks to at least negotiate for full program rights, possibly with some safeguards. The networks face future intense competition as prime national program distributors from the evolving DBS and fiber optics technologies. Access to full programming rights may well be essential to the viability of not only networks but to free over-the-air broadcasting.

The real power today, in TV, with the multiple distribution systems, is in programming -- in creative writers, producers and talent.

I am on record as favoring free over-the-air TV service to the American public so that those who can't afford cable or prefer not to incur that expense can still participate in the vital informational and social benefits of television news, public affairs, sports and entertainment. I tend to favor proposals that encourage universal free public access to TV.

I believe that what I said is factual, certainly worth consideration -- but not conclusionary or, as the lawyers say, dispositive. There are many other considerations in this longstanding contentious issue.

We must remember that program producers, too, have compelling arguments in maintaining creative and financial independence and in providing diverse sources of programming. I am reminded why the rules were enacted in the first place and the resulting program growth the past 20 years. Someone told me that choosing between networks and Hollywood studios is like having to pick a side between Iran and Iraq. I hope the panelists today transcend the well-worn hyperbole that have led to such characterizations.

I'll be listening to the arguments old and new and hoping they can lead to a rational solution to this contentious issue. Our eventual decision must be based on our determination of what best serves the overall public interest, not the economic interests, as valid as they may be, of the competing industries represented today.

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