March 18, 1991

Statement of Commissioner James H. Quello
Re: Financial Interest/Syndication Proceeding

The proposed alternative plan for financial interest and syndication rules currently favored by three commissioners departs drastically from the findings in the FCC staff report and order. Moreover, it practically defies the official record that overwhelmingly supports complete repeal of the financial interest-syndication restrictions on the networks. In what seems to be an inadvertent flight from reason, it proposes new additional regulatory restrictions not justified by the preponderance of evidence nor by any reasonable sense of present market conditions. It also runs counter to the evaluation and proposals of the professional FCC staff representing years of experience. It promulgates further marketplace imbalance to the detriment of future free over-the-air TV and to the benefit of huge, wealthy foreign telecommunications conglomerates who will be the ultimate major benefactors of unrestricted participation in the multi-billion dollar syndication market. The proposal represents a type of intrusive bureaucratic and regulatory overkill that has resulted in a public outcry for reform.

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The new proposal has not been subjected to any rigorous internal debate and it shows. We should require full Commission review and public comment from all affected parties. In a blistering editorial, the prestigious New York Times characterized the proposal as

> "Truly bizarre.
> The proposal also makes a mockery of fair play. The Commission has yet to make the proposal public or invite competing testimony. This rush to judgment is outrageous."

The pulling of the item as requested by the Justice Department now avoids the rush to judgment and provides opportunity to seek comment on and review the new plan.

The proposal was first circulated to the Commission Thursday afternoon (March 7). It was made known to the public through immediate leaks to the west coast press (Los Angeles Times and Hollywood Reporter) followed by the local communications trade press.

The editorial in the March 11 issue of Broadcasting Magazine calling for full review was right on target. The Justice Department apparently agreed.

In evaluating changes in the rules, I believe the testimony of disinterested parties deserves special consideration. The testimony of producers, networks and independent stations are naturally self serving. Disinterested parties without a direct economic interest in the outcome of the Fin/Syn issue overwhelmingly advocated repeal of the rules. The Justice Department, that was responsible for consent decrees restricting the networks, now petitioned for complete relief as did the Bureau of Economics of the Federal Trade Commission. Henry Geller, a distinguished public interest attorney and former chief counsel of the FCC, testified for complete repeal -- a drastic change from 1983, when he favored retention of restrictions.

The two leading telecommunications unions supported by twelve other major unions and over a dozen public interest groups filed for complete repeal. Then too, over 600 network affiliates favored repeal of financial interest restrictions because of the increasing threat to their free over-the-air TV service. A large number of affiliates supported repeal of syndication limits as well. Network affiliates did not rally to the support of the networks in 1983. Neither did I.

In addition to comments filed in the record, disinterested opinion in the press also favored substantial repeal of the rules. Previous editorials or editorial page articles in a number of prestigious publications strongly advocated complete repeal of the rules -- They included the Washington Post, the New York Times, Wall St. Journal, Chicago Tribune, Detroit News, and Business Week. The editor of TV Digest and Communications Daily favor complete elimination of the rules. Syndicated TV columnist Tom Shales, often a caustic critic of network programming, labeled the network syndication restrictions "relics of the past." In addition to the previous editorials, new editorials criticizing the proposed plan appeared last week in the Washington Post and the New York Times.

In my opinion, a principal valid public interest concern in the Fin/Syn issue is to assure the reasonable continued viability of independent stations. The Barrett proposal does responsibly address that concern, but many of the added network restrictions were unnecessary to guarantee independent station viability.

For example, the ludicrous definition of a network as 11 hours of prime time programming to 100 or more stations seems deliberately calculated to keep Fox and any other emerging network from ever developing. Fox is already programming 12 hours in prime time, and may soon increase that number.

Since the advent of television itself, FCC network findings have stressed that developing a fourth network would be in the public interest and would add to diversity and competition in the broadcast marketplace. The proposed network limits are unwarranted, unreasonable and not supported by the record or any reasonable sense of fairness.

Another glaring example of additional regulatory excess is the proposal to reduce the contract option period from four years to two years. Option periods have never been subject to FCC regulations; current four year limitations were imposed by Justice Department consent decrees and will expire in 1995. The two year period has the practical effect of nullifying any network financial interest. It means that networks that spend time, resources and millions of dollars in promoting original hit shows will be forced to put them out for bidding in two years rather than the current practice of four years. For example, they could be asked every two years for a 100 million dollar (Cosby) bonus or 125 million (Cheers) dollar bonus for renewal instead of every four years.

Also, the limitations of 40% in-house production will be subject to constitutional and fair marketplace challenges. Networks certainly have a right in today's competitive market to produce programs for themselves without limitations. The restrictions in the Barrett-Marshall proposal on in-house programming controls seem deliberately calculated to discourage network productions. It is hard to conceive how government can intervene in program production contracts to require a network through regulation to have 100% financing, 100% creative control, and full copyright ownership when all other players have freedom to negotiate joint ventures and creative participation.

That the proposed plan is ill considered is underscored by the fact that prominent Hollywood studios like MTM and MGM are criticizing the irrationality of the Barrett-Marshall plan which replaced the official FCC staff report and order rejected by three commissioners.

I also believe the record strongly supports not only a gradual sunset but immediate, complete repeal of the rules. However, to avoid the disruption associated with a "flash cut" approach, all of the commissioners have agreed upon a transitional process. My preference is for a review of the transition rules in four years with a presumption of sunset. All interested parties would have the opportunity to file comments six months before the presumptive date of repeal.

I am the only commissioner on the present FCC who participated in this contentious issue eight years ago. A newspaper reporter recently asked me what I perceived as the major difference between this issue today and in 1983, particularly since I was the only dissenting vote in the 3-1 FCC tentative decision authorizing financial interest-syndication rights for the networks. Summarizing my remarks to him -- I said the network audience and market power have eroded dramatically since 1983 (and lopsidedly since 1970 when the rules were imposed).

Cable penetration, too, has significantly increased in the past eight years. Today cable systems, not networks, are the dominant gateway program distributors to over 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 also with a growing array of increasingly popular sports, news and entertainment programs in a diverse arena of 24 to 54 cable channels.

This year, unlike 1983, 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 1991, unlike 1983, the great preponderance of press and editorial opinions advocated elimination of the fin/syn rules.

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 hopefully emerging as a 4th network,
first run syndication offerings,
competitive cable networks -- some owned by studios,
direct to cable program sales,
potential development of DBS,
cable ownership of program production companies, and
joint production ventures with foreign capital.

Another major development since 1983 has been the surprising and dramatic foreign acquisition of major American production studios. Thus, the program and syndication 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 and nothing like the annual 5 billion dollar plus syndication market.

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, with some safeguards for independent stations. The networks face 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. Most of the studios have long term contracts with these essential entities that produce for movies, VCR, cable, syndicators as well as for TV networks.

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. This is why I believe there is a compelling public interest for freeing networks, the foremost providers of free over-the-air sports, news and entertainment programs, from program production restrictions.

If reconsideration doesn't result in rational revisions to the proposed restricted plan, there is still an ultimate recourse in the courts.

Many will be relying on court appeal to restore rationality and a 1991-model free marketplace balance to this longstanding contentious issue. Among those relying on the good judgment of the judicial system will be over 600 of the strongest and most popular TV stations; three networks and a fourth trying-to-emerge network; prestigious publications among them the Wall Street Journal, New York Times, Washington Post, Business Week, Broadcasting Magazine, Chicago Tribune and TV Digest; fourteen major unions, the foremost public interest communications attorney and former general counsel of the FCC; the Justice Department; the FTC; perhaps even a few major Hollywood studios; and, of course, FCC Chairman Al Sikes.

New York Times ✓
Washington Post
The Wall Street Journal
Los Angeles Times
Washington Times
Financial Times
USA Today

DATE 3/12 PAGE A22

The F.C.C. Goes Hollywood

Something bizarre is taking place at the Federal Communications Commission. On Thursday the commission is scheduled to approve strict new syndication and ownership rules governing the television networks. That would represent a surprising change of direction, a stunning victory for the major Hollywood studios — which fear competition from the networks — and a loss for the consumer.

The new proposal is opposed by the commission chairman, Alfred Sikes. It runs counter to previous recommendations by the commission's staff, the Department of Justice and the Federal Trade Commission. It is also opposed by the Bush Administration, which appointed four of the five commission members in the apparently misguided expectation that they believed in deregulation.

Truly bizarre.

The proposal also makes a mockery of fair play. The commission has yet to make the proposal public or invite competing testimony. This rush to judgment is outrageous.

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The arcane syndication rules now in existence forbid the networks to own most of the programs they broadcast or to sell programs as reruns on local stations. When these rules were adopted in 1970, they were designed to break the networks' stranglehold over prime-time viewing. Now, however, their share of the video industry — including cable television, video rentals and independent stations — is low and falling.

Under existing rules, networks have been unable to bankroll independent producers. So the independents have either disappeared or been forced into the clutches of the large studios. Since 1970, the percentage of programs supplied by the large studies has risen from 39 percent to 70. One answer is to unshackle the networks.

The F.C.C.'s proposal would reportedly give networks some new powers but also impose layers of new restrictions. The networks would come out barely ahead, perhaps not even that.

For example, they would gain rights to acquire a financial interest in prime-time programming, but any such licensing agreement with an independent producer would be restricted to two years, rather than four at present. The networks would also gain the right to syndicate domestically, but only for programs produced entirely in-house. That would block joint ventures with independent producers. Hollywood wouldn't get everything it wants. But the upshot would be a web of unnecessary restrictions that stifles the networks.

The secrecy of the F.C.C. proposal invites skepticism. Some Washington insiders say the pending vote reflects internal commission politics. Three of the members seem intent on handing Mr. Sikes a humiliating defeat. Others point to the extraordinary power of Hollywood lobbyists.

Perhaps there are other reasons for the F.C.C. reversal. And, perhaps, the plan makes more sense than initial reflection discloses. At the least, the F.C.C. could in fairness postpone the Thursday vote pending an opportunity for all parties to comment on this new package. At best, it would reject regulatory meddling and require Hollywood to win in the marketplace, not in Washington.

The Washington Post

AN INDEPENDENT NEWSPAPER

Television's Pot of Gold

TWENTY-ONE years ago, to protect the public from the power of the television networks, the Federal Communications Commission imposed an extraordinary rule on them. The idea was to ensure other producers' access to prime time and promote diversity in a highly concentrated industry. This rule prevented the networks from getting into the enormously profitable business of syndicating the reruns of the programs they broadcast. Now, much later, the effect turns out to have been to benefit a small number of big studios and protect them from competition from the networks. It's time to repeal the rule.

At one level, it's a fight among very big corporations over a pot of gold—and it has engaged the talents of as many lobbyists, lawyers, public relations pundits and feather merchants as anything going on in Washington. But at another level, the central issue is the history of broadcasting during the past two decades.

In 1970 the three networks had 90 percent of the prime-time audience, and there was little else on the air. Today they have about 60 percent of the audience. There's now a fourth network, plus several hundred independent stations, plus cable, not to mention movies on cassette. The studios, in response, argue that while 60 percent of the audience is less than the networks once commanded, it's far more than any other part of the industry has won and much too large to permit a genuinely free market in broadcast entertainment.

At this point in the debate, we remind readers that the Washington Post Co. owns four television stations, all of them network affiliates, and cable systems in 15 states. But it seems clear to us that the trend in technology is running against the networks. It's hard to conclude that they could ever again dominate the field.

The FCC is scheduled to take up the syndication rule tomorrow after long preparation and much maneuvering. The commission is apparently split. Various leaks and hints suggest that the majority will support a revision that the networks say will make their position in some respects worse than the present law. The White House and the Justice Department are supporting outright repeal of the rule. But three of the FCC's commissioners seem to be headed in a different direction.

If they have real doubts about the wisdom of repeal, they could peel the rule off over, say, five years with an annual review of the effects. But this rule is severely and unfairly distorting the broadcasting industry. What it needs is not a revised syndication rule but more open competition.

EDITORIALS

Committed to the First Amendment and the Fifth Estate

TIME FOR A TIME OUT

The Federal Communications Commission is about to act on a new financial interest/syndication proposal that no one had seen before last Thursday, that departs radically from the official commission proposal that has been advancing for months (years, if one takes the historical perspective) and that will change the way television does business for still more years to come. It is a last-minute rush to judgment that has the potential of seriously retarding over-the-air television's ability to compete. Someone ought to call time.

By that we mean, time for a fully empaneled FCC to solicit industry reaction—from all sides—to the particulars of the Barrett plan before it goes to a final vote. Time, at the minimum, for that same FCC to meet en banc to thresh out the pros and cons of this and other proposals. If ever sunshine were needed on a critical commission proceeding, now's the time. It may be that the Barrett proposal, crafted behind closed doors, is the answer so many have sought to sever the Gordian knot of fin/syn. Still, we'd like to see it tested in the open.

Failing that, the parties will likely see themselves in court. Fox, which had the initiative to create this country's first fourth network, will be asking the government to prove how 11 hours of programing is the determinant of market power in a fractionating television universe. All networks will challenge the notion that they should nurture hits and then be forced to put them up for open bidding after two years.

There's no magic in March 14.

BATTLE PLAN

According to a study commissioned by the Radio Advertising Bureau, radio has a 36% share of the consumer's media time, and with that impressive reach grabs only 6.8% of the total advertising dollar. It is an old story that improves none in the retelling. Radio continues to be the most underutilized of advertising media. In contrast, newspapers boast a 25.7% share of the advertising dollar for their 9% share of the consumer's attention. Something's definitely wrong with this equation.

There are few people more interested in the success of radio than the people who sell advertising on it. For that reason, the rep-driven marketing plan currently being circulated by The Interep Radio Store is worth studying. Critics argue that the rep firm is trying to drum up business for itself. True enough, but business for the Radio Store is business for radio as well—self-interest being a powerful motivator—and competing reps are free to adopt similar marketing strategies or come up with their own.

The Interep Radio Store suggests that rather than simply selling its empty spaces, radio needs to market the medium's power, and in ways it has yet to exploit fully, including borrowing a page or two from direct marketers. The Radio Store's "Radio 2000: An Alliance For Growth" marketing plan has set some long-range goals: to increase radio's share of total advertising from its current 7% to 9% by the year 2000. The Interep plan assumes the reality of an increasingly fragmented market, then proposes the marketing of "brand-specific consumer networks" (see story, page 39), groups of stations that together target specific advertiser needs as defined by any number of factors (the plan talks of the importance of targeting "geo-demographic" and "psychodemographic" groups, for which we will have to take its word). As such, the primary target of the campaign will be national advertisers, who, as the Radio Store points out, use radio as little more than an afterthought in their media buys.

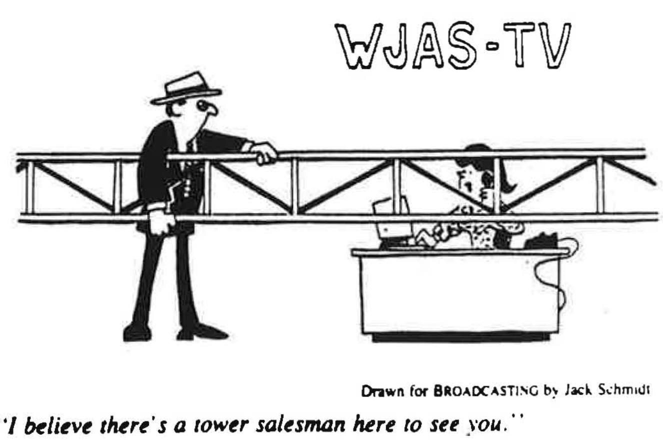
The plan is not an answer but a "work in progress," and treads some familiar ground, as the Radio Store concedes, but it is ground not yet won and worth winning.

TAX TALK

The tax committee of the New Mexico state legislature has tabled a bill that would have wiped out broadcasters' exemption from a 5% gross receipts tax—in effect levying a 5% tax on their national advertising—while maintaining the exemption for the print medium (BROADCASTING, March 4). We anticipated the measure might make it through committee (given its support by the house majority leader), as had observers closer to the action. We're happy to have been wrong.

It would be nice to think the discriminatoriness of the tax and its potential negative economic impact were self-evident to everyone, but we realize that in tough economic times the goldbug's bite can cloud the judgment of even the most farsighted legislator. That is why the perspective supplied by local ad clubs and broadcast associations, and the firepower of national groups like the American Association of Advertising Agencies and the Association of National Advertisers, remains an important resource, as it was in helping defeat this and an earlier ad tax measure in New Mexico in the past month.

There are 49 other states with budgets to balance; we again remind broadcasters to keep their guard up and their eyes peeled.



Drawn for BROADCASTING by Jack Schmidt

"I believe there's a tower salesman here to see you."

New York Times
Washington Post
The Wall Street Journal ✓
Los Angeles Times
Washington Times
Financial Times
USA Today

DATE 3/14 PAGE B1

MEDIA

Networks Get FCC Reprieve On Rerun Rules

By Dennis Kneale
Staff Reporter of The Wall Street Journal

The Federal Communications Commission, which had appeared ready to hand Hollywood a major victory in the fight over rules that block the broadcast networks from the rerun business, suddenly postponed a final vote that had been scheduled for today.

The surprise delay is likely to unleash a new onslaught of lobbying on the much-debated issue, pitting the three major networks against the big Hollywood studios and independent producers, which virtually control the $3 billion syndication business as a result of the FCC rules.

The vote was pushed back indefinitely yesterday in response to a last-minute request from the Justice Department's antitrust chief, James Rill, who said the plan that had been scheduled for a vote should be held up for review by various parties in the rerun fight.

The networks and their upstart rival, Fox Broadcasting Co., had made major progress in the past year in pushing hard to get rid of the so-called Financial Interest and Syndication Rules, which were first imposed 21 years ago. But a late plan floated by FCC Commissioner Andrew Barrett proposed giving the networks far less relief than the FCC staff and FCC Chairman Alfred Sikes had recommended. The Barrett plan won the support of a commission majority and had been slated for formal action today.

Mr. Sikes, who had advocated lifting the "fin-syn" regulations on the networks and appeared ready to go down in defeat because of the Barrett plan, immediately granted the Justice Department's delay, drawing bitter comment from Hollywood officials involved in the battle over the rules.

The delay "was surprising, because obviously the FCC chairman decided he wanted to delay for reasons of his own—I have no idea what they are," said Jack Valenti, president of the Motion Picture Association of America. The group of seven big studios has organized Hollywood's opposition to lifting the fin-syn regulations.

After spending years fighting over the rerun rules, "to think that more time is needed to discuss the issue is just amazing to me," said Jerry Leider, co-chairman of a coalition of big studios and independent producers formed to oppose easing the network restrictions.

Any delay could hurt Hollywood's chances of keeping a unified opposition front to lifting the network restrictions. For the first time in the years-long battle, some prominent small producers have begun to split with the bigger studios over the issue.

David Gerber, chairman and chief executive of the MGM/UA television production unit of Pathe/MGM Entertainment Co., said yesterday he has serious doubts about some aspects of the Barrett plan—even though his parent company is a member of the Motion Picture Association.

Mel Blumenthal, chief operating officer of MTM Enterprises, said in an interview that the Barrett plan would all but eliminate any chances of negotiating partnership deals with the networks to get better financing to produce series, forcing independent producers to deal only with Hollywood's major studios.

The ABC, CBS and NBC networks yesterday had asked the FCC for a delay in the vote, which proved unnecessary in light of the Justice Department request. But the delay could cost Fox Inc.'s network millions of dollars if it goes on too long.

The rerun rules don't yet apply to the upstart service but would kick in once News Corp.'s Fox exceeds 15 hours of programming—or only 11 hours under an initial version of the Barrett plan. Yet Fox already has committed $12 million to new Saturday morning programming and millions more to expanding prime-time shows next year.

"Nobody expected that the FCC would put us on this short of a leash," said Fox Inc. Chairman Barry Diller. "We took a chance—We may have bet wrong." He added: "It's unfortunate the commission can't solve this hundred-year war between the networks and producers. For us, it's a crisis."

The rerun rules bar the networks from selling reruns to local stations or syndicating new programming such as talk shows; prohibit them from acquiring a partial ownership stake in programs they pay producers to make; and block them from sharing in the huge profits from rerun sales of network series. The rules were first adopted in 1970, when the networks controlled more than 95% of the viewing audience, as a way to ensure that they

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DAILY VARIETY

ers Business Newspaper VOL. 231 No. 6 Los Angeles, CA 90036, Wednesday, March 13, 1991 Newspaper Second Class P.O. Entry

MTM Exec Breaks Ranks On FCC Fin-Syn Proposal

By DENNIS WHARTON

WASHINGTON — Signs of a rift in Hollywood's position on the financial interest and syndication rules emerged yesterday when an MTM Enterprises exec criticized a Federal Communications Commission plan set for passage tomorrow. MTM senior exec veepee Mel Blumenthal yesterday called the plan developed last week by FCC commissioner Andrew Barrett "very much an anti-independent series producer proposal."

Blumenthal's comments are considered crucial since he is a member of the Coalition to Preserve the Financial Interest and Syndication Rules, a group that by and large has indicated privately it can live with the Barrett plan.

Blumenthal objects to a provision in the Barrett proposal that reduces from four years to two years the "option period" that allows webs to lock up exclusive rights to a new primetime program. The option term reduction would apply only to those programs in which a network takes a financial interest.

Blumenthal said the option term reduction "theoretically looks great." But the reality, he said, is that networks will simply choose not to invest in that program. "Networks won't pay more money to get a shorter term," Blumenthal said. "It's just not going to happen."

For indie series producers, that means nets will dry up as a revenue source, Blumenthal claimed. "The economics are so enormous now that I need additional financing sources to be able to produce," he said. As a result of the Barrett plan, indies will have to turn to major Hollywood studios for financing, Blumenthal predicted.

The fact that Blumenthal, in an interview, chose to publicly criticize that aspect of the plan is significant, especially since commissioners have at various times stated an interest in the affect of any fin-syn resolution on independent producers.

The networks have been harshly critical of the proposed Barrett compromise and, as part of their fin-syn p.r. campaign, have in the past indicated that some indie producers have expressed privately their own reservations about studio power under the fin-syn rules - an argument refuted by indie members of the pro-fin-syn coalition as well as the studios.

Chicago Tribune

FOUNDED June 10, 1847

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14 Section 1 Tuesday, February 19, 1991

How U.S. squeezes the networks

By Paula Stern

The Persian Gulf war is having profound effects on the American public and on the economy. The TV networks are no exception. It is costing them a bundle to cover the war, and they lost a bundle when advertising revenues, their main source of income, became casualties of war news that crowded out prime-time entertainment during the first weeks.

The war also squeezed out of the news unexciting but very important regulatory issues affecting the so-called Big Three networks—ABC, CBS, NBC. This month, the Federal Communication Commission (FCC) is re-examining its Financial Interest and Syndication (FINSYN) rules. This review, however, is not only important to the Big Three but also will affect the long-term ability of the U.S. visual-entertainment industry to maintain the remarkable $4 billion annual trade surplus it enjoys today. Even in wartime, the country needs to focus on longer term "postwar" issues of competitiveness like this one.

Why? Because history teaches us that America cannot take the trade surplus of the U.S. visual entertainment industry for granted. In my nine years on the International Trade Commission (ITC), I saw many U.S. industries that used to have similar surpluses. Mistakes at home made them vulnerable and led to their decline. If the FINSYN rules are not changed, it could happen again.

The recent takeover of MCA studios by Japan's Matsushita and Sony's stalking Orion Pictures highlight the problem. Only three out of eight major studios producing programs in Hollywood remain in American hands. The others are now owned by Japanese, Australian and Italian companies.

I am not making a case for "protecting" Hollywood studios against foreign takeovers. I am asking why large foreign companies are expanding in this area while the U.S. networks cannot. The answer is that in 1970, when the FCC imposed the FINSYN rules limiting the Big Three networks, America dominated the world entertainment industry and indeed the world economy. Few saw foreign competition as a problem either on our shores or abroad.

The FCC in the less competitive world of 1970 was concerned that the development and sale of programs could be dominated by "The Big Three" networks. To avoid this it crafted rules that prevent the networks from investing in independently produced programming, which stops them from bidding for U.S. studios, or selling (syndicating) prime-time shows either to local or to overseas buyers.

In the 21 years since the FCC developed the FINSYN rules, the world has changed fundamentally. The three American television networks—NBC, CBS and ABC—have shrunken in importance relative to other video outlets like cable, pay-per-view and your VCR. Over the same 21 years, the large Hollywood studios have become increasingly vertically integrated, engaging not only in producing programs but in syndication and distribution domestically and worldwide. And during the same period, vertically integrated foreign companies have emerged to capture a significant portion of the $2 billion foreign television syndication market for U.S.-produced programs—an export market where U.S. networks are currently restricted.

The networks could still fight their way into this market overseas if the FCC would change the FINSYN rules. Without this, the American networks get squeezed. They are caught between the escalating costs of the Hollywood products they purchase for their television viewers and the FINSYN rules that restrict them from reselling (syndicating) these programs at home or in the growing overseas markets.

In part because large foreign firms can buy American programs and studios and sell in these world markets, foreign investors are bidding up Hollywood prices. The networks, restricted in both domestic and foreign markets, cannot match them. The profits from foreign sales of U.S. products, therefore, increasingly go overseas instead of staying home.

The trade implications of what is happening are what concern me. FCC policymakers ought to be trying to boost U.S. export industries like entertainment. There is no trade-off between more exports and domestic benefits here. U.S. consumers of entertainment would benefit as well. The current rules that prevent the U.S. networks from competing fully and maximizing earnings overseas could ultimately compromise American viewers' choices in other visual programming such as sports and news, something the FCC certainly does not want.

Reform of FINSYN is part of a larger picture.

The recent takeover of MCA studios by Japan's Matsushita and Sony's stalking Orion Pictures highlight the problem. Only three out of eight major studios producing programs in Hollywood remain in American hands. I am not making a case for 'protecting' Hollywood studios against foreign takeovers. I am asking why large foreign companies are expanding in this area while the U.S. networks cannot.

Existing regulations in many other areas are being overhauled in the face of global competition. The National Academy of Sciences has just delivered a report on national security export control laws which recommends removing rules that handicap American companies. The report is receiving a favorable reception in business and in Congress and the executive branch, which are busy removing a number of outdated barriers.

Prompted by the crisis in the banking industry, the president has just announced banking reform proposals that also are intended to take the international competitiveness challenge into account. The Bush administration and the Congress will soon be reviewing the McFadden and Glass-Steagall Acts, partially in response to international banking competition and regulatory initiatives in Europe and elsewhere.

At the Securities and Exchange Commission, a move is under way to slash state regulations on the grounds that they balkanize the U.S. marketplace at a time when Europe is streamlining its capital-raising process.

The entertainment industry needs the same regulatory house-cleaning when the FCC re-examines the FINSYN rules. The visual-entertainment market is now global. American networks are handicapped by rules that—of all things—protect foreign companies from competition from the U.S. networks. It is time to make changes.

Paula Stern chaired the International Trade Commission, on which she served from 1978 to 1987, and is a member of the National Academy of Sciences panel that has just recommended to Congress sweeping changes in U.S. and international export control laws.

Various unions, including communications unions, several AFL-CIO affiliates, and the National Education Association support total repeal of the rules.[1] In addition to matters of international competitiveness, these commenters voiced the very real concern that their members will be deprived of the benefits of free over-the-air television if the networks' decline is not counterbalanced by the relaxation of financial interest and syndicarion regulations.[2]

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[1]Many of these parties previously supported the rules. In fact, the National Education Association wrote to the Commission to clarify that it was not supporting retention of the rules, as other commenters had claimed. *Compare* Letter from Kenneth F. Melley, NEA, to Chairman Alfred Sikes, March 9, 1990 with *Comments of the Coalition to Preserve the Fiananclal Interest and Syndication Rule*, filed March 5, 1990, Attachment A. *See also* Letter from Barbara J. Easterling, Communications Workers of America, to Frances Seghers, MPAA, November 16, 1990 (expressly withdrawing from the Coalition to Preserve the Fianancial Interest and Syndication Rule).

[2]Those entities advocating repeal of the rules included: the International Brotherhood of Electrical Workers, the Amalgamated Clothing and Textile Workers Union, the National Council of Senior Citizens, the National Education Association, the United Food and Commercial Workers International Union, the American Federation of Television and Radio Artists, the Communications Workers of America, the International Ladies' Garment Workers Union, Service Employees International Union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, the United Brotherhood of Carpenters and Joiners of America, the International Longshoremen's and Warehousemen's Union, the Coalition of Labor Union Women, the Oil, Chemical & Atomic Workers International Union, the American Federation of Grain Millers, the Aluminum, Brick and Glass Workers International Union, the Glass, Moulders, Pottery, Plastics & Allied Workers International Union, and the Air Line Pilots Association.

New York Times
Washington Post
The Wall Street Journal ✓
Los Angeles Times
Washington Times
Financial Times
USA Today

DATE 3/18 PAGE B6

FCC Gives Last Chance for Objections In Bitter Fight on TV Syndication Rule

By MARY LU CARNEVALE
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The Federal Communications Commission, which pulled the bitter network-Hollywood fight off its meeting agenda last week, gave both sides one last chance to raise objections.

The commission wants to decide soon on how to ease rules that restrict television networks' role in producing programs and syndicating them. And it is giving television networks, Hollywood producers, broadcasters and other interested parties until next Monday to voice their concerns about two proposals. Three out of five commissioners favor one plan, while FCC Chairman Alfred Sikes and Commissioner James Quello favor the other proposal. After weighing the public comment, the commission is expected to schedule a vote quickly.

While significantly easing the so-called Financial Interest and Syndication Rules, the majority plan contains several restrictions the networks find onerous. The Sikes-Quello proposal would substantially deregulate the networks, allowing them far greater freedom to take a stake in programs they air as well as permitting them to enter the syndication business.

The majority plan was circulated among commission members a week and a half ago by Commissioner Andrew Barrett, but it was kept secret. Details of the plan leaked to the news media caused an uproar at the commission and among the networks and led to an unusual last-minute decision to postpone a final vote on the "fin-syn" rules.

Regardless of the outcome, the commission is certain to be asked to reconsider its decision. Even if the commission amends its decision, one side or the other is likely to ask for federal appeals court review.

The matter is also being monitored by several key lawmakers and the Bush administration, which has advocated lifting the rules. While Congress isn't eager to pick sides in the massive lobbying battle, the administration could intervene. A Justice Department request precipitated Chairman Sikes's decision to delay a fin-syn vote.

The plan released Friday is a polished version of the Barrett proposal. The definition of a network was reworked, a change important to News Corp.'s Fox Broadcasting Co. Under the original proposal, the "fin-syn" rules would have applied to networks that produce 11 hours or more of prime-time programming a week and have 100 affiliates. That was changed to 14 hours of prime-time programming and affiliates that reach at least 75% of the nation's television households. Fox, which had been seeking special protection as an emerging network, currently produces 12 hours of prime-time programming and plans to produce more. The original proposal would have forced Fox to scale back programming, the number of its affiliates—many of which are struggling UHF stations—or withdraw from the syndication business.

"We are relieved to see that our existing operations and immediate plans are not sitting on the edge of a precipice," said Preston Padden, Fox's senior vice president for affiliate relations.

Nevertheless, Mr. Padden said that Fox favors the Sikes-Quello plan, which over the long-term would impose fewer restrictions on the networks and allow them greater freedom to compete with cable companies and other video entertainment services.

The changes under the majority plan would take effect June 15 and extend a year-old waiver that permits Fox to provide all of its current programming. It would allow Fox to continue with plans to add programming over the next few years. The new fin-syn rules would be reviewed in four years, and they could be repealed if market conditions have changed.

In contrast, the plan favored by the Bush administration and Chairman Sikes would phase out the rules within three or four years, but retain some safeguards to discourage anticompetitive behavior by the networks. Messrs. Sikes and Quello have argued that the marketplace has changed significantly since the financial interest and syndication rules were adopted in 1970 and that the networks are no longer dominant and can't extract a stake in shows or syndication rights from unwilling producers or pay less than market value for those rights.

Neither the networks nor the Hollywood studios commented on the plans. Lawyers on both sides spent the weekend plotting strategies and preparing their arguments for the FCC.

The networks have been pushing to eliminate the fin-syn rules, arguing that the future of free, over-the-air television hangs in the balance. Commissioner Sherrie Marshall, who took the lead in opposing Chairman Sikes on the fin-syn matter, has warned the networks that "further pleas for total repeal will be unsuccessful," and has asked them to keep their comments focused on the FCC proposals.

The majority plan would lift all financial interest and syndication restrictions for network programming other than entertainment during prime time, or from 7 p.m. to 11 p.m. Eastern time. It would allow the networks to take a financial stake in all of their prime-time entertainment shows as long as the initial option period for the programs is limited to two years. Currently, initial option periods for most shows are four years. The option period wouldn't apply to shows that a network produces itself or in which it has no financial interest.

The plan would limit in-house production to 40% of a network's prime-time schedule and set up safeguards to prevent networks from withholding productions from syndication and from favoring affiliates in selling syndicated productions.