Remarks by

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Thank you for the kind introduction. Generous introductions are always the most impressive part of my speaking appearances. Anyway, I agonized and suffered over this speech-- So now it's your turn.

Substituting for an established Democratic leader like Congressman Richard Gephardt, particularly in that he is a favorite of my Congressional Godfather, John Dingell, is a flattering but awe inspiring assignment. However, I take some comfort in the fact that neither your treasury nor my standing as an amateur speaker are impaired by my speaking today.

Incidentally, my amateur standing in another category-- reporting -- was validated years ago when I worked as the Detroit stringer for Variety. I was just out of the Army and needed an extra curricular job to pay the rent. When I complained about the meager fees paid for my masterful (self-rated) two column front page headline story on Margaret Truman's network singing debut, I was reminded of the two G bonus you get upon being hired; one G -- gratitude for being hired; two G -- glamour of the Variety tag. The editor also joked "Anyway, haven't you heard that Variety is the spice of life?" I answered yeah but first I need bread and staples before I can even think of condiments. I laughed, but not all the way to the bank. Anyway, it was an interesting part-time experience. I did enjoy the prestige of Variety and all the press invitations to theatres and night clubs.

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Variety today is still the boffo Bible of show biz. But they stick closer to the English language nowadays. I assume the usual efficient, tight fisted management is still able to field an overworked, underpaid professional team that takes pride, like I did, in being identified with Variety.

And today as an occasional communications news source, I have an empathetic ear when called by reliable publications like Variety, Broadcasting, TV Digest, Wall St. Journal and major dailies.

This brings me to the major topic today. The most phone calls I have ever received as a Commissioner were generated by the most heavily lobbied, contentious issue in all my seventeen years at the Commission -- network financial interest and syndication. With all the recent press reports, you must be acquainted with or sick to death of the subject.

It was voted this last Tuesday. A vote of 3-2 Commissioners rejected a previous proposal recommended by the FCC staff and substituted a coalition plan that provided networks some limited relief from the majority's over-restrictive plan. We must all remember that the initial network restrictions were imposed in 1970 under vastly different market conditions. Today, the Justice Department that filed antitrust suits in the 1970s now urges total repeal.

This longstanding contentious issue merits special attention because it impacts an estimated 32 billion dollar a year TV business and an estimated 5 billion dollar domestic and foreign syndication business.

More important, it impacts a major public interest consideration -- the future viability of free over-the-air TV and specifically of the TV networks and their affiliates, by far the largest suppliers of free over-the-air television programming. Fin-syn is the dominant current communications topic and has temporarily deflected attention from many other significant FCC issues. Each subject could easily absorb an hour speech or a six chapter booklet. The major issues include: telco entry into cable, effective competition standard for cable that would obviate municipal rate regulation; orderly transitions to the mind boggling potential and problems of multichannel, multiservice DBS -- also fiber optics which could provide two way communications, video phone, interactive services, electronic newspapers, data processing and other computer services; digital audio broadcasting, DAB, with marked improvement in AM service; introduction of HDTV, hopefully a compatible terrestrial system; relieving telcos from restrictive provisions of the MFJ; revisiting TV, cable, radio cross-ownership rules; children's TV programming; new spectrum allocations and many others that affect the public, millions of shareholders and top management of communications companies.

As you know, the guiding principle for government officials is "the best service to the most people at the most reasonable cost." The active word in that phrase is "reasonable" -- it is subject to various interpretations depending on the experience and judgment of regulators or legislators.

I believe it is a reasonable guess that advanced technology, spectrum-efficient compression and varied multiservices will necessitate a complete restructuring of the Communications Act in this century. My guess is that a complete re-writing will be initiated no later than 1996 and completed well before the year 2000.

But all these fascinating, innovative subjects are for elaboration at some other time. Today I plan to present my perspective on the widely publicized financial interest and syndication items voted by the majority of three Commissioners. Although I strongly disagree with the overall result, I am not impugning the personal motives of my three colleagues. It is possible for different people to analyze the record differently and arrive at different conclusions. There are usually pleadings on the record in any issue that skilled lawyers may search out to support their client's interests. However, I believe the official record overwhelmingly supports complete or substantial repeal of the restrictions on the networks.

The plan ignores the record and runs counter to the evaluation and proposals of the professional FCC staff representing years of experience. It promulgates continued marketplace imbalance to the detriment of free over-the-air TV and to the benefit of huge, wealthy foreign conglomerates who would be the ultimate major benefactors of unrestricted participation in the multi-billion dollar syndication market. Calling the rules the Commission adopted Tuesday "deregulation" is like telling an inmate at the end of his jail term that he may leave his cell -- so long as he doesn't venture beyond the prison walls. But in the case of fin-syn, the networks have done their time; they deserve to be set free.

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 previously was responsible for imposing the consent decrees restricting the networks, now petitioned for complete relief. As the Department of Justice noted in a marvel of understatement "the willingness of producers to spend large amounts of money to keep the rules suggests that significant wealth transfers may be involved." Another disinterested party, the Bureau of Economics of the Federal Trade Commission, also filed for total relief. 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. He represented various parties including Action for Children's TV, Black Citizens for a Fair Media and Dr. Everett Parker, considered to be the founder of the citizens movement in the communications field.

The two leading telecommunications unions supported by twelve other major unions and over a dozen public interest groups including the Senior Citizens Council, filed for complete repeal. In addition to concerns about international competition, the union commenters voiced very real concerns that their members will be deprived of free over-the-air TV if the networks' decline is not counterbalanced by relaxation of regulations. The National Education Association wrote to the Commission stating it was not supporting retention of the rules. The Media Institute, an independent Washington think tank, advocated total repeal as did the Heritage Foundation and Citizens for a Sound Economy Foundation. 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 and growing 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. Syndicated TV columnist Tom Shales, often a caustic critic of network programming, labeled the network syndication restrictions "relics of the past."

In another more vitriolic column in the Washington Post this past Monday, Shales led with "Tomorrow, the Federal Communications Commission is expected to make one of the dumbest rulings in its history, and that's saying something. Instead of repealing regulations that handicap the broadcast networks in their ability to compete with cable and other recent TV arrivals, the FCC is expected merely to muck up the mire.

Shales continued "A battle between the networks and Hollywood studios over the rules has been raging for years, and the FCC has been wrangling with the issue for months. Why should the public care? Because the networks symbolize and epitomize free television, accessible to all, a longstanding system that the FCC now perversely conspires to jeopardize." Columnists Rowland Evans and Robert Novak wrote "The preponderance of objective opinion would let the networks share in the re-run business."

In addition to the previous editorials, new editorials criticizing the restrictions appeared recently 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 coalition proposal does address that concern, but most of the added network restrictions were unnecessary to guarantee independent station viability.

Also, the limitations of 40% in-house production will be subject to challenges as to their constitutionality and fairness. Networks certainly have a right in today's competitive market to produce programs for themselves without limitations. The restrictions in the coalition proposal on in-house programming controls seem deliberately calculated to discourage or restrict 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 (except when specifically requested by a producer) when all other players have freedom to negotiate joint ventures and creative participation. Chairman Sikes and 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 Commissioners agreed upon a transitional process but the coalition proposes a review, not sunset. 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. Also, cable in the past four years has embarked on an aggressive advertising sales campaign -- advertising sales for 1990 were estimated at 2-1/2 billion dollars and growing.

Cable with pinpoint demographic delivery for advertising is a growing competitor for advertising dollars.

Consider the following:

-- In 1970, there were 600 network affiliates and 82 independent television stations; by 1989, affiliates numbered 656 and independents (including Fox stations) totalled 339.

-- In 1970, there were three national television networks; by 1990, a fourth network was becoming established and industry rumors suggested more TV-cable networks might emerge.

-- In 1970, the three networks enjoyed more than a 90 percent audience share; by 1990, prime time viewing of the three networks was 57 percent and headed downward.

-- The networks' share of national television advertising revenue decreased from more than 60 percent in the late 1970s to less than 50 percent in 1989. During this same period, the network share of total broadcast and cable advertising revenue decreased from 48 percent to 32 percent.

-- In 1970, the average television viewer received 6.8 video channels, by 1989, the average viewer received 30.5 channels.

-- In 1970, off-network syndicated programming captured over 64 percent of the audience for syndicated programming; by 1990, the off-network audience declined to about 30 percent, while first run programming became increasingly popular.

-- In 1970, 2,490 cable television systems had 4.5 million subscribers; by 1990, 10,823 cable systems had about 54 million basic subscribers.

-- In 1970, pay cable channels (such as HBO) did not exist; by 1990, such channels had approximately 27 million subscribers.

-- In 1970, cable "networks" were virtually nonexistent; by 1990, there were 80 basic cable networks and 17 pay movie channels.

-- In 1970, VCRs did not exist as a consumer product; by 1990, they were installed in 66 million households. This represents about 72 percent of all television households.

Given these vast changes, it should surprise no one that the program acquisition market today is far different than it was in 1970. In the current syndication marketplace, 14 of the top 15 syndicated shows are first-run and not off-network; off-network fare accounts for only 30 percent of viewing of all syndicated programs. Nor is over-the-air television the only outlet for original programming. For the 1990-91 television season, for example, about as many original entertainment series were shown on alternative outlets as appeared on the three networks. The President and co-CEO of Time-Warner has said that "Warner Bros. and Lorimar will be producing more and more for cable. . . . We hope we're not producing less and less for the commercial broadcast networks. <u>But a good show will always get on somewhere</u>."

Original programming is increasingly considered to be the "signature" by which cable channels are identified. Cable networks last year spent almost $700 million on original programming, and by 1995, analysts predict that half of all programming expenditures on cable -- over $1 billion -- will be for original shows. One basic cable channel, Lifetime, has fifteen new series in development, and plans to offer two nights of original prime time programming by early 1992.

Then too, the "mass audience" is no longer what it once was. As declining network revenues attest, advertisers are becoming less inclined to spend large sums of money to reach a generalized audience. Rather, they are interested in targeting a selected group of viewers -- hopefully those most disposed toward buying the product. They increasingly do so by purchasing "bundled media" campaigns, which utilize a variety of media (<u>e.g.</u>, magazines, specialized television channels and books) to aggregate a selected group of consumers. This fact helps explain why the cable television advertising market has remained strong at the same time the networks experienced sharp declines. And, although you would not know it by their comments in this proceeding, it is a point that has not been lost on the studios. In 1990 most major studios reduced their expenditures for network advertising and increased their spending on cable channels. It is a potent indicator of where the studios believe they will find the viewers. Now <u>there</u> is a reality test for you.

The upshot of this is that free over-the-air television is threatened unless sources of revenue other than advertising can be tapped. The theme of many of the comments in this proceeding and of a startling number of press accounts is that 1990 was the networks' worst year ever. This fact is not an aberration.

It cannot be explained away by the recession, the cost of Persian Gulf War coverage or by the prices some networks paid for sports packages. The networks' decline is more accurately understood as part of a fundamental change in the environment in which they operate. As audiences for the national networks continue to decline, so will their revenues; as cable channels with dual revenue streams pay large sums for the rights to sports events, networks will be forced to pay higher prices to compete; and as news events occur in an increasingly complex world, networks will need the financial wherewithal to provide comprehensive news coverage on par with that available on cable television.

Unlike the theoretical and intangible loss of programming diversity feared by the studios should the networks be freed from regulatory restraints, the loss to diversity from the networks' decline is both real and direct. CBS lost more than $200 million in 1990 and recently announced a first quarter 1991 operating loss of $54.6 million. This prompted the network to lay off 400 employees, including up to 140 in the news division. It is anticipated that the network will shut down domestic news bureaus in Dallas and Atlanta, as well as foreign bureaus in Johannesburg, Rome and Beijing. Even as the top-rated network, NBC's profits have slipped by a reported two-thirds, and it, too has experienced layoffs. NBC has announced the closure of some domestic news bureaus and there has been speculation that the network might eliminate its news division. Similarly, the economics of network broadcasting has forced Capital Cities/ABC to make cuts reported to be in the hundreds of millions of dollars. ABC is closing three domestic news bureaus, may reduce staff in others, and has delayed the introduction of a five-hour overnight newscast that was scheduled to begin last January. In addition to network cuts, CBS announced a reduction in affiliates compensation of 20 percent for 1991, and NBC has announced a 10 percent cut.

I realize the Commission is not obligated to ensure the financial health of the networks. By the same token, the public interest does not require that we create or maintain a regulatory subsidy for Hollywood producers. But to ignore the fact that our regulations make the over-the-air broadcast industry less competitive at a time when it is facing its greatest threat is to be blind to our public interest mandate to make available "a rapid, efficient, Nation-wide, and world-wide . . . communication service."

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 studios' access to the annual 5 billion dollar plus syndication market.

It strikes me as somewhat perverse that foreign companies like Sony, Matshusita, Paretti, Reeves, etc. can purchase major American studios with full program syndication rights that are out of bounds for American controlled network companies. Then too, Warner Brothers, a prestigious studio is now merged with Time, a powerful cable entity. It seems time to consider allowing networks to be able to negotiate for full program rights, with some safeguards for independent stations. The networks face intense future 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, and 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 to the courts.

Many will be relying on court appeal to restore rationality and a 1991-model free competitive 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 fourth trying-to-emerge network; prestigious publications among them the Wall Street Journal, New York Times, Washington Post, Business Week, Detroit News, Broadcasting Magazine; fourteen major unions, the foremost public interest communications attorney who was a former general counsel of the FCC; dozens of citizens groups; the Justice Department; the FTC; perhaps even a few independent Hollywood producers; and, of course, FCC Chairman Al Sikes and I.

In closing, I want to express my faith in the judicial system of this great country of ours by predicting justice and reason for the networks will eventually prevail!