

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re )  
 )  
Review of the Syndication and ) MM Docket No. 95-39  
Financial Interest Rules, Sections )  
73.659 - 73.663 of the Commissions Rules )

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NATIONAL BROADCASTING COMPANY, INC. OPPOSITION TO MOTION  
FOR EXTENSION OF TIME

There they go again. The major studios, syndicators and station groups that have been protected from competition by the fin/syn rules for twenty-five years are again seeking to prolong the life of those outdated and anticompetitive restrictions. Since 1980, when the Commission first commenced a review of the rules, the fin/syn battlefield has been littered with obstacles the rules' beneficiaries have erected to forestall the day when the three original networks will be able to compete on a level playing field. The current delaying tactic is an outrageous and unjustified request to extend the comment period in this proceeding for 30 days.<sup>1</sup> NBC vigorously opposes this request and urges the Commission to deny it.

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<sup>1</sup> Motion for Extension of Time filed by the Coalition to Preserve the Financial Interest and Syndication Rule ("Coalition"), filed May 15, 1995. The Coalition's Motion claims the support of INTV and Tribune Broadcasting, representing the independent stations and syndicators that are competitively advantaged by the fin/syn rules, and Media Access Project.

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The Coalition has not advanced a single bona fide justification for any extension of the comment filing deadline. The Coalition's claim that it cannot complete the collection and analysis of information for this proceeding by the current May 30 comment deadline does not withstand even superficial scrutiny.

First, the Coalition has known for 18 months -- since November, 1993 -- that a final review of the fin/syn rules would commence no later than May 10, 1995. Since June 1993 -- i.e., for almost two years -- the Coalition has had an exact list of the specific marketplace and behavioral factors the Commission would consider in this phase of the proceeding, and has known that the burden of proof would fall on the proponents of continued regulation.<sup>2</sup> Thus, the Coalition had two years to collect and analyze the bulk of the information it needs to participate in this proceeding.

Second, the Coalition has for some time had access to more than enough information to attempt to meet its burden in this proceeding. The Coalition would have the Commission believe that negotiations between networks and producers occur only when the

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<sup>2</sup> The Second Report and Order listed 14 specific factors the Commission would consider in the final phase of this proceeding. These are the precise 14 factors that are listed in the April 5 Notice of Proposed Rulemaking. Section 73.663 of the Commission's rules states that "the burden of proof shall be placed on those who oppose the expiration [of the fin/syn rules]."

Fall schedules are selected, so that without the requested extension, the Coalition will only be able to present evidence concerning one year (Fall 1994) of program negotiations and acquisitions. But as the members of the Coalition well know, network program negotiations and acquisitions take place all year round. NBC, ABC and CBS have been filing Financial Interest and Syndication Reports, which provide data on the extent of their financial interests, syndication rights and syndication activities, every six months since September, 1993. In NBC's case, each of the four Reports it has filed identifies additional programs in which NBC holds financial interests and syndication rights. In short, contrary to the Coalition's assertion, there is more than enough information for the Coalition to analyze and on which the Commission can base its decision to allow the rules to expire.

Third, in any event, it is not correct that the Coalition will not be able to "collect and analyze information with respect to network negotiation patterns and acquisition of financial interests for the Fall 1995" if the filing deadline is not extended. The Coalition's Motion is misleading in suggesting that negotiations between the networks and producers with respect to Fall 1995 programs are still ongoing. The fact is that, at least in NBC's case, negotiations for some programs began as early as September of last year and in all cases were completed before pilot production commenced, i.e., before May 1, 1995. Thus, the producers of these programs have had all information relevant to "network negotiation

patterns and acquisition of financial interests" in NBC's Fall 1995 prime time entertainment schedule for several weeks, if not months.

The Coalition also disingenuously claims that "none of the networks has yet announced their [sic] fall schedules." However, NBC's schedule was announced on May 15 (the day the Motion was filed), ABC's was announced on May 16 (the day after the Motion was filed) and CBS' will be announced on May 23, a week before comments are currently due.

As noted, the producers have for some time had all information relevant to negotiations for financial interests or syndication rights in these programs. The precise identity of the series that have been or will be selected for each network's Fall schedule adds only one additional piece of marginally relevant information. NBC announced seven new programs, and ABC announced eight. We assume that CBS will be announcing between 5 and 10 new programs on May 23. It takes literally a minute or two to calculate "the percentage of programs scheduled by the networks in which they have acquired a financial interest or syndication right." The Coalition can certainly manage to do this by May 30.

The Coalition's complaint that it needs additional time because the people who allegedly have the information it needs are "tied up" doesn't even pass the red face test. The time constraints of Hollywood producers is hardly sufficient grounds to

allow any further delay in a proceeding to eliminate rules that the FCC first declared unjustified and unnecessary in 1983 -- a proceeding that has already dragged on for over 5 years.

Finally, a grant of the Coalition's request would be harmful and prejudicial. The Commission has proposed accelerating the expiration of the rules. That option might be foreclosed if initial comments are not submitted until June 30. As noted above, negotiations between networks and producers occur all year round, not just for programs that premiere each Fall, as the Coalition asserts. The fin/syn rules' "mismatch with the current situation in the broadcast industry becomes more evident by the day."<sup>3</sup> As NBC plans to point out in its comments, there have been major competitive changes in the broadcast industry even in the two years since the adoption of the Second Report and Order. Every extra day these rules remain on the books diminishes the networks' ability to compete in this rapidly changing environment.

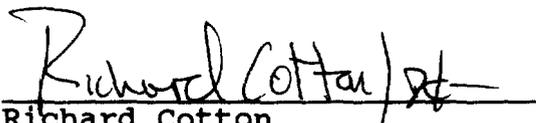
The Commission must reject what we fear is the first of many delaying tactics the Coalition and other proponents of the fin/syn rules will throw in the path of total repeal. The Coalition's

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<sup>3</sup> Capital Cities/ABC v. FCC, 29 F.3d 309, 316 (7th Cir. 1994).

Motion should be denied, and the Commission should move to complete this proceeding as expeditiously as possible.

Respectfully submitted,



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May 22, 1995

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