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

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

ORDER DENYING MOTION FOR EXTENSION OF TIME

Adopted: May 24, 1995

Released: May 25, 1995

By the Chief, Mass Media Bureau:

1. On April 5, 1995, the Commission released a *Notice of Proposed Rule Making* ("*Notice*"), FCC 95-144, in this docket to conduct a review of the financial interest and syndication ("fin/syn") rules prior to their scheduled expiration in November 1995. This review and the scheduled expiration of the rules arise out of the timetable the Commission adopted in its 1993 *Second Report and Order* in MM Docket No. 90-162 ("*Second R&O*").¹ As contemplated by the Commission's 1993 decision, the *Notice* lists a number of factors that will be relevant to the review of the rules, and places the burden of proof on those parties seeking continued fin/syn restrictions. The *Notice* also seeks comment on whether to accelerate the expiration date for the remaining fin/syn rules in the event parties arguing for their continuation fail to carry their burden of proof. The Commission established a deadline of May 30, 1995, for filing comments in response to the *Notice* and a deadline of June 14, 1995 for filing reply comments.

2. The Coalition to Preserve the Financial Interest and Syndication Rule (the "*Coalition*") has filed a motion seeking to extend the comment deadline to June 30, 1995,

¹ 8 FCC Rcd 3282, *recon. granted in part, Memorandum Opinion and Order* in MM Docket No. 90-162, 8 FCC Rcd 8270 (1993) ("*MO&O*"), *aff'd sub nom. Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

and the reply comment deadline to July 21, 1995.² The Coalition claims that this additional time will allow it to collect and analyze information concerning network negotiating patterns and acquisition of financial interests and syndication rights for the Fall 1995 television season. The National Broadcasting Company, Inc., Capital Cities/ABC, Inc. and CBS Inc. have filed oppositions to the Coalition's motion.

3. "It is the policy of the Commission that extensions of time shall not be routinely granted."³ For the reasons set forth below, we do not believe the Coalition has established the exceptional circumstances or good cause necessary to justify the grant of its motion.

4. First, we believe parties have had a sufficient amount of time to gather and assess the information necessary to make a case that the fin/syn rules should be continued. The fourteen factors listed in the *Notice* as being relevant to the Commission's review of the rules are the same fourteen factors listed in the *Second R&O* released over two years ago on May 7, 1993. Moreover, the three networks have been operating for over 18 months under a relaxed fin/syn regulatory regime and without the restrictions imposed on them by antitrust consent decrees that paralleled the Commission's fin/syn rules.⁴ We believe this is an adequate time period for parties to have examined network fin/syn practices for purposes of the Commission's review of the rules, whether or not they have obtained complete information concerning the Fall 1995 season. This 18-month period is part of the timetable established in the *Second R&O*, which sought to balance the Commission's need to exercise caution in deregulating in this area and the finding in its 1993 decision that the market conditions present at that time did not justify continuation of the fin/syn regime.⁵ On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed this timetable, stating that the "precise timetable on which the Commission executes a major turn in regulatory policy is a matter of judgment and prudence rather than of logic and measurement, and it is confided to the discretion of the Commission within broad limits not here exceeded."⁶

5. Second, it appears that there has been considerable information available for some time concerning the networks' activities with respect to the Fall 1995 season. According to the oppositions filed by the networks, NBC, ABC, and CBS announced their fall schedules on May 15, May 16, and May 24, respectively. The networks also state that the negotiations

² The Coalition states in its motion that INTV, the Media Access Project, and the Tribune Broadcasting Company support its extension request.

³ 47 C.F.R. § 1.46(a).

⁴ See *Notice* at ¶ 4 (describing timetable for review and expiration of fin/syn rules and antitrust consent decrees).

⁵ See *Second R&O*, 8 FCC Rcd at 3303-08, 3337-40; see also *MO&O*, 8 FCC Rcd at 8279-80.

⁶ *Capital Cities/ABC, Inc.*, 29 F.3d at 316.

as to financial interest and syndication rights in the programs for next season have for all practical purposes been completed.⁷ While the Coalition acknowledges in its motion that the networks will have announced their fall schedules prior to the May 30 comment deadline, it states that its task in gathering "the information we need at this time" has been hampered because "the very same people who are in a position to provide us with the information we have requested are tied up in the final stages of the negotiations regarding pickups and the terms thereof with the networks."⁸ But, as just noted, two of the networks settled on their fall schedules at least two weeks before the May 30 comment deadline, and CBS did so nearly a week before the deadline. While this is undoubtedly a busy time of year for the television industry, this alone does not warrant an extension of the comment deadline, especially given that it appears that a considerable amount of information concerning network bargaining over next season's program schedule has been available for some time.⁹

6. Finally, granting an extension of the comment deadlines might compromise the Commission's consideration of its proposal to accelerate the scheduled expiration of the fin/syn rules in the event parties arguing for their continuation fail to carry their burden of proof. The *Notice* seeks comment on this proposal, and in the event fin/syn proponents do not meet their burden of proof, the Commission may deem it appropriate to free the networks from all fin/syn restraints immediately rather than waiting until the scheduled November 1995 expiration date.

7. Accordingly, IT IS ORDERED that the Motion for Extension of Time filed by the Coalition to Preserve the Financial Interest and Syndication Rules IS DENIED.

8. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and Sections 0.204(b), 0.283, and 1.46 of the Commission's Rules.

⁷ See Opposition of NBC at 3-4 ("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 acquisitions of financial interests' in NBC's Fall 1995 prime time entertainment schedule for several weeks, if not months."); Joint Opposition of CBS and ABC at 2 ("The lengthy process of negotiations relating to the network distribution and 'back-end' rights to the programs on [the Fall 1995] schedules -- which would have revealed any network 'negotiating patterns' to the Hollywood community by now -- has for all practical purposes been completed.").

⁸ Coalition Motion at 3.

⁹ See, *supra*, note 7.

9. For additional information on this proceeding, contact Charles W. Logan (202/776-1653), Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION


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