

January 23, 1984

ABC Position Paper on  
Syndication/Financial Interest Rules Negotiations

During November and December of 1983, ABC, CBS and NBC engaged in negotiations with representatives of the Hollywood production community and independent television stations in an effort to compromise differences regarding changes in the Federal Communications Commission's Syndication and Financial Interest Rules, which efforts were encouraged by Members of Congress and the Commission.

From the outset, it was ABC's view that the scope of these negotiations should be determined by the specifics of the controversy which brought the parties to the bargaining table. The networks generally supported the substantial changes contemplated by the Tentative Decision while the Hollywood production community and INTV generally opposed changes. In our judgment, good faith bargaining required each side to make substantial concessions in order to find common ground between the FCC's Tentative Decision and the existing Rules.

In meetings between the two sides in early November, ABC, CBS and NBC evidenced their good faith approach to these negotiations by making two separate proposals, involving substantial concessions in each of the three principal areas covered by the Tentative Decision -- financial interests, syndication, and an expiration date for all rules ("sunset").

(1) Financial Interests

Theoretically, the Tentative Decision would allow the networks to bargain for up to 100% profit participation in any program. The Hollywood and INTV interests claimed that, if networks acquired "controlling interests" (i.e., more than 50%), this could have a detrimental effect on the syndication market. To overcome this concern, the networks proposed on November 3, 1983 (in "Network Proposal I") a 49% limit on the interest they could acquire in any prime time entertainment series programs. On November 9, 1983 (in "Network Proposal II"), the networks further proposed an additional "cap" on the number of prime time entertainment series programs in which they could hold any such interest.

Together, these proposals were a meaningful response to any claim that the networks could "control" the syndication market, or even have a major impact on it.

(2) Syndication\*

The Tentative Decision would allow the networks to engage in immediate syndication of all programs except off-network prime-time entertainment series programs, which were believed to be of special importance to independent stations. As to these series programs, the networks would have to sell-off all of the syndication rights to unaffiliated syndicators within a defined period.

The independent stations expressed concern that the networks might discriminate against them in the distribution of off-network syndicated programming. In response, Network Proposal I provided that the networks would disclose promptly and fully the terms of all syndication agreements to the FCC. Furthermore, in Network Proposal II, the networks expressed their willingness to discuss: (i) specific program types in which syndication rights could not be acquired; (ii) a "phase-in" of network syndication activities; and (iii) a possible prohibition on network acquisition of syndication rights for programs produced before June 1, 1984.

(3) Sunset

In recognition of the increasing levels of competition in the video marketplace, the FCC expressed its intention in the Tentative Decision to remove all limitations on network syndication by 1990. Since the Hollywood and INTV interests opposed this, the networks offered to extend the date to 1992. The foregoing proposals, which represented major concessions from the Tentative Decision, are summarized in the attached Table 1.

From the outset, the representatives of the production community sought to condition any relaxation of the Syndication and Financial Interest Rules upon new and unrelated restraints against the networks. In the early November meetings, they proposed that the networks be required to cede a portion of advertising time or revenues, in addition to the payment of license fees, to program producers in exchange for limited program profit participations -- an extreme proposal far beyond the scope of the present Rules of the Tentative Decision.

Specifically, at the early November meetings, the Hollywood and INTV negotiators responded to Network Proposals I and II with the following counterproposals: (a) no network financial interest unless the networks give 30-second advertising spots to program producers; (b) no network syndication (domestic or

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\*The syndication business involves the licensing of television programs to individual stations. Syndication can be "first run," i.e., programs that never ran on the networks, or "off-network," i.e., programs that first played on the networks.

foreign) except for educational programs; and (c) no sunset on financial interest and syndication restrictions (but FCC review of the Rules in 1992 would be encouraged). These counterproposals which represented virtually no relaxation of the existing Rules (Hollywood/INTV Proposals I and II), are summarized in the attached Table 2.

In view of the unwillingness of the other side to bargain within the appropriate scope of the issues or to offer meaningful concessions, negotiations did not resume until early December. At that time, through a top management negotiating channel, the networks offered still further concessions: (1) financial interests limited to an aggregate average of 30% in those programs in which interests were acquired; (2) no domestic syndication by networks, and no acquisition of syndication rights in prime time series programs produced by others; and (3) disposition of domestic syndication rights in prime time entertainment series which networks produce themselves to an independent syndicator within one year of the end of the series' network run. It was further proposed that these very burdensome rules would sunset in 1990.

In response, the negotiator for the other side proposed a new, unrelated restraint against the networks. Changes in the existing rules along the lines proposed (sunset was rejected outright) would be considered only if the networks agreed to new and additional restrictions on the right of each to produce a portion of its own entertainment program schedule. (Already limited by a decree with the Justice Department as to the amount of entertainment programming each network may produce.)

ABC has long believed that the right to produce entertainment programs for a portion of its network schedule is fundamental to its ability to assure viewers of a high quality and innovative program service; to meet competitive challenges posed by the new and emerging communications technologies; and to insure continued reasonable profitability. The position of Hollywood representatives that any relief under the Syndication and Financial Interest Rules must be conditioned upon new and additional restrictions on ABC's right to produce entertainment programs -- not contemplated in any of the issues before the FCC on the merits of the Syndication and Financial Interest Rules -- was unacceptable to ABC.

The record is now clear that the opposing representatives have not bargained realistically or meaningfully. They have insisted that as a condition for any relaxation of the existing Syndication and Financial Interest Rules networks must accept new restrictions upon their business activities in other areas -- first, a ceding of advertising time or revenues to program producers, and, more recently, new limitations upon networks' right to produce programs for their own schedules. Nor did they ever offer meaningful concessions in the areas covered by the existing Rules.

At the end of 1983 it was clear that most concerned Members of Congress were hopeful that the parties in interest could reach an agreeable compromise. Although such a negotiated settlement is not now foreseeable, it is equally apparent that a renewal of an intense legislative struggle would not be welcomed.

In view of all these circumstances, it has been suggested by Members of Congress that all parties suspend efforts to gain regulatory relief or legislation with respect to these Rules for a reasonable period of time. While it is not in our immediate best interest, we are prepared to suspend any further activities concerning these Rules for the remainder of calendar year 1984 contingent upon a like commitment from the opposing parties. During such period it may be possible for the parties to reconsider their differences and resume negotiation.

TABLE 1

Syndication/Financial Interest Negotiations:  
Network Movement away from Tentative Decision

	<u>FCC TENTATIVE DECISION</u>	<u>NETWORK PROPOSAL I November 3, 1983</u>	<u>NETWORK PROPOSAL II November 9, 1983</u>
<u>FINANCIAL INTEREST</u>	Networks may acquire 100% interest in unlimited number of programs.	Networks may acquire no more than 49% interest in any given prime-time entertainment series program.	In addition to Proposal I, networks may acquire financial interests in a limited percentage ( <u>e.g.</u> , 49%) of network series programs.
<u>SYNDICATION</u>	Networks may immediately syndicate all types of programs other than prime time entertainment series. Networks also may purchase syndication rights to prime time series, but must resell these rights to independent syndicators who would actively market programs to stations.	Networks must report terms of all syndication agreements to FCC to ensure that the interests of independent stations are protected.	In addition to Proposal I, networks will discuss other program types in which syndication rights could not be acquired, a phase-in of network syndication activities, and a prohibition on network syndication of programs produced before June 1, 1984.
<u>SUNSET</u>	1990	1992	1992

TABLE 2

Syndication/Financial Interest Negotiations:  
Relationship Between Existing Rules and Hollywood/INTV Offers

<u>EXISTING RULES</u>	<u>HOLLYWOOD/INTV PROPOSAL I</u>	<u>HOLLYWOOD/INTV PROPOSAL II</u>	
<u>FINANCIAL INTEREST</u>	Networks may not obtain a financial interest in programs produced by others. Network advertising revenues are unregulated.	Networks may not obtain a percentage interest in programs unless a comparable percentage of network advertising revenue is given to producers of those programs.	Networks may not obtain any interest in programs unless a 30-second advertising spot is given to producers of those programs. An unspecified "cap" would be placed on the percentage interest networks could hold in any given program.
<u>SYNDICATION</u>	Networks may not syndicate any type of program in the United States and may not syndicate abroad programs produced by others.	No change in existing rule, except networks may syndicate educational programs.	Same as Proposal I
<u>SUNSET</u>	No sunset	No sunset	No sunset, but FCC review in 1992.