



BUREAU OF ECONOMICS

UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION  
 WASHINGTON, D.C. 20580

**COMMISSION AUTHORIZED**

July 21, 1992

Constance K. Robinson, Esq.  
 Chief, Communications and Finance Section  
 Antitrust Division  
 Department of Justice  
 555 Fourth Street, NW  
 Washington, DC 20001

Dear Ms. Robinson:

The staff of the Bureau of Economics of the Federal Trade Commission (FTC) submits this letter, and the attached analysis, in response to the call for comment on the proposed modification of the network syndication consent decrees.<sup>1</sup> These decrees respond to complaint allegations that the three major networks had restrained trade, monopolized, or attempted to monopolize a market comprising national commercial television prime time entertainment programs and submarkets comprising each network's own prime time entertainment schedule, in violation of the Sherman Act.<sup>2</sup> The proposed modifications would remove the injunction that prevents CBS, ABC, and NBC from acquiring a financial interest in, or engaging in the syndication of, certain television programs.

The analysis attached to this letter was prepared by the staff of the Bureau of Economics and filed with the Federal

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<sup>1</sup> This letter and comment represent the views of the staff of the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Commission itself or any individual Commissioner.

<sup>2</sup> See *United States v. American Broadcasting Cos.*, 1981-1 Trade Cases at 64,150, *United States v. CBS Inc.*, 1980-81 Trade Cases at 63,594, *United States v. National Broadcasting Co.*, 1978-1 Trade Cases at 61,855.

<sup>3</sup> Order Establishing Notice and Public Comment Procedures for Motion to Modify Consent Judgment, *United States v. CBS, Inc.*, No. 74-3599-RJK (C.D. Cal., May 8, 1992), *United States v. American Broadcasting Cos.*, No. 74-3600-RJK (C.D. Cal. May 8, 1992), *United States v. National Broadcasting Co.*, No. 74-3601-RJK (C.D. Cal. May 8, 1992).

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Communications Commission (FCC) in September 1990.<sup>4</sup> At that time, the FCC was considering whether to revise its rules governing network holdings of financial interest and syndication rights in programming ("Fin-Syn" rules). The Fin-Syn rules were adopted in 1970, prior to the filing of the network consent decrees. Like the network consent decrees, the Fin-Syn rules barred television networks from acquiring a financial interest in, or engaging in the syndication of, certain television programs. According to the brief submitted by the Department of Justice in support of the proposed modifications to the consent decrees, "the decrees in these cases essentially incorporated the restrictions of the FCC's 1970 Fin-Syn rules."<sup>5</sup>

In May 1991, the FCC issued a report and order modifying, but not abolishing, the Fin-Syn rules. The modified rules permit the networks, with some restrictions, to acquire financial and syndication interests in television programs not permitted under the 1970 rules. The networks cannot exercise these new rights, however, due to the prohibitions contained in the consent decrees. The issue before the court is whether to amend the existing consent decrees to permit the networks to take advantage of their new rights established by the revised Fin-Syn rules.

The central economic issues before the court are virtually identical to those before the FCC when it reviewed the Fin-Syn rules: would relaxing the existing restrictions on network ownership of program and syndication rights in prime time entertainment programming enable them, either individually or collectively, to exercise market power in distributing off-network syndicated programming or in purchasing television entertainment programming. These issues are addressed in the 1990 FTC staff comment attached to this letter. I believe that the 1990 staff comment could prove helpful in considering modifications to the consent decrees.<sup>6</sup>

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<sup>4</sup> *Comment of the Staff of the Bureau of Economics of the Federal Trade Commission In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162 September 5, 1990.*

<sup>5</sup> Memorandum of the United States in Response to Motion of Defendant CBS, Inc. to Modify the Final Judgment, Civil No. 74-CIV-3599, page 6.

<sup>6</sup> The staff of the Bureau of Economics submitted two other comments to the FCC about the Fin-Syn Rules in 1991. Those later comments, which relied on the analysis in the September 5, 1990 comment, would be less relevant to the present proceeding, because they were tailored to address details of specific regulatory options that the FCC was considering.

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Thank you for taking the time to consider the analysis contained in the 1990 FTC staff comment. Questions concerning either this letter or the 1990 staff comment can be directed to Timothy P. Daniel, Assistant Director, Division of Economic Policy Analysis, (202)326-3520.

Respectfully,

A handwritten signature in cursive script, appearing to read "John L. Peterman", with a long horizontal flourish extending to the right.

John L. Peterman  
Director