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FEDERAL COMMUNICATIONS COMMISSION

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COMMERCIAL TELEVISION NETWORK PRACTICES

Notice of Inquiry

**FEDERAL COMMUNICATIONS
COMMISSION**

[FCC 77-53; Docket No. 21049 (RM-2749)]
**COMMERCIAL TELEVISION NETWORK
PRACTICES**

Notice of Inquiry

Adopted: January 14, 1977.

Released: January 14, 1977.

1. Notice is hereby given of the institution of an inquiry into commercial television network practices and policies regarding the acquisition and distribution of television programming. Almost two decades have elapsed since the Commission completed its last overall study of network practices.¹ Developments in recent years suggest that a new inquiry is warranted.

2. This inquiry will encompass a number of subjects surrounding the matter of alleged dominance of the nation's commercial television industry by the three major commercial networks, but will focus most specifically on the relationship between these networks and their affiliated stations. In this regard, the Commission has consistently emphasized that it is the individual licensee who has the right and the responsibility to program his station:

* * * the Commission in administering the Act and the Courts in interpreting it, have consistently maintained that responsibility for the selection and presentation of broadcast material ultimately devolves upon the individual station licensee and that fulfillment of such responsibility requires the free exercise of his independent judgment. *En Banc Programming Policy Report*, 20 R.R. 1901, 1911 (1960).

It is clear, furthermore, that this responsibility for the independent exercise of programming judgment cannot be delegated to a network or to any other entity or individual.² Accordingly, we propose to carefully examine whether particular network practices may improperly compromise or restrict the programming discretion of the broadcast station licensee.

3. In giving proper consideration to this question, it is not possible to limit our inquiry simply to an examination of the contractual relations which exist directly between a network and its affiliated stations. The networks play a central role in our commercial television industry and their activities have a direct bearing on the entire market relating to the production and distribution of television entertainment programming. Sta-

¹ Between 1955 and 1957, a special network study staff conducted a broad-ranging inquiry into network practices. This study resulted in the release of the "Barrow Report." *Network Broadcasting*, H. Rep. No. 1297, 85th Cong., 2nd Sess. (1958). (Hereinafter cited as the "Barrow Report.")

² As also stated in the Programming Policy Report (20 R.R. 1901, 1914), the broadcaster is obligated to provide programming to meet the needs and interests of his local community and this "is a duty personal to the licensee and may not be avoided by delegation of responsibility to others." See also *Broadcast Licensees and Public Agreement*, 57 FCC 2d 42, 49-51 (1975).

tion discretion can be meaningful and effectively exercise only in circumstances where this market is in a healthy, competitive state and is in a position to offer alternative sources of programming. For this reason, our inquiry will encompass the question of whether the networks have maintained anticompetitive policies which unduly restrict the development of other programming sources.

PRELIMINARY OBSERVATIONS

4. This study is prompted, in part, by a rulemaking petition brought before us by Westinghouse Broadcasting Company, Inc. (RM-2749) and by allegations contained in antitrust complaints which the Department of Justice filed against the networks in the Central District of California.³ The Westinghouse petition called for a "comprehensive inquiry and rule-making proceeding to review the changing role and function of the three national television networks." Westinghouse Petition in RM-2749, September 3, 1976, p. 1. The Justice Department filed comments in support of this petition but, in a supplemental letter, emphasized that its comments "should not be construed as suggesting that the inquiry encompass those issues now being litigated in the Federal District Court in California," and that neither this letter nor the Department's formal comments were intended "to preclude either the Commission or the Department of Justice from taking any action consistent with its respective responsibilities." Letter from the Honorable Donald I. Baker, Assistant Attorney General, Antitrust Division, December 3, 1976, pp. 1 and 2.

5. We would like to make it clear that, in instituting the present inquiry, we have neither the power nor the desire to foreclose the Department in its antitrust action. While it is invidentable that thorough inquiry into network practices will encompass many of the questions raised in the antitrust suit, we do not believe that our inquiry should in any way preclude the Department from prosecuting its case or from arranging an appropriate settlement. See *United States v. Radio Corporation of America*, 358 U.S. 334 (1958). In concurrently examining similar issues, the Department of Justice has a direct responsibility for the enforcement of the Sherman Act, whereas the Commission's inquiry will focus on public interest questions affecting communications policy pursuant to our responsibilities under the Communications Act of 1934. In this connection, we note that in mid-November 1976 a proposed consent decree was agreed to by the Department and by NBC in one of the three antitrust actions mentioned (Case No. 74-3601—RJK), and is now pending before the Federal District Judge handling the case. See 41 Fed. Reg. 51991 (November 24, 1976). This is discussed

³ *United States v. American Broadcasting Companies, Inc.*, Civil Action No. 74-3600—RJK (C.D. Cal.); *United States v. CBS Inc.*, Civil Action No. 74-3599—RJK (C.D. Cal.); *United States v. National Broadcasting Company, Inc.*, Civil Action No. 74-3601—RJK (C.D. Cal.).

below, in connection with the general subject of network-producer relationships.

6. In the discussion of specific topics below, there is extensive reference to allegations raised in the Westinghouse petition, statements in response to that petition filed by public interest groups and other parties, the Department of Justice antitrust complaints, and the proposed NBC consent decree. The networks vigorously oppose most of these allegations, as to their relevance and materiality and in some cases their accuracy. They also advance counter-arguments, both in respects mentioned below and otherwise. We have carefully considered the networks' positions, just as we have carefully noted assertions made by Westinghouse, the Department of Justice, and public interest groups. Given the networks' highly important role in the commercial television industry, allegations regarding abuses of power, and the lapse of 20 years since the last overall network study and investigation, we believe that this Inquiry is appropriate at the present time. This is true not only in connection with consideration of possible Commission regulation by rule or adjudication, but also in connection with possible legislative recommendations to Congress. The Commission hastens to point out, however, that we have not reached any conclusions, even of a tentative nature, regarding these issues discussed below. What we contemplate at this time is solely a fact gathering inquiry designed to provide the Commission with information necessary to a thorough understanding of television networking.

7. The Commission is, of course, cognizant of the vital contributions which the networks have made to the development of the television medium. As pointed out in the 1960 Program Policy Statement, *supra*, (20 R.R. 1914):

The programs provided first by "chains" of stations and then by networks has always been recognized by this Commission as of great value to the station licensee in providing a well-rounded community service. The importance of network programs need not be reemphasized as they have constituted an integral part of the well-rounded program service provided by the broadcast business in most communities.

While it is certainly not our intention to adopt any regulatory measures which would impair the ability of the networks to serve the public interest, we must assure ourselves that the networks are not engaging in practices which might unduly encroach on the discretion of our licensees, or unnecessarily restrict the development of new sources of television programming.

8. As a matter of convenience, this Notice has been divided into three sections. (1) background on the role of the networks; (2) questions concerning the relationship between networks and their affiliated stations; and (3) questions concerning the relationships between the networks and program producers and suppliers. It is obvious, of course, that the categories of questions concerning network-affiliate relations and network-

program supplier relations are far from being mutually exclusive. Developments in one area can and generally do impact on the other. Nevertheless, we believe that this division of questions will be useful for the purposes of discussion and inquiry. Commenting parties should be careful, however, to keep in mind the fact that to a very large extent these categories are inextricably intertwined. The fact that we are studying various particular aspects of commercial television broadcasting does not mean that these are viewed as problem areas. It simply means that information pertaining to these activities is indispensable to a thorough understanding of network practices. In this regard, our inquiry addresses the identification of problems, not the consideration of possible remedies for any abuses that may be identified.

BACKGROUND: THE ROLE OF THE NETWORKS

9. Ever since the demise of the Dumont Network in the mid-1950's, there have been only three "national" television networks: the American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting System, Inc. (CBS) and National Broadcasting Company, Inc. (NBC). Recent years have witnessed the development of a number of specialized networks offering sports or movies, but the pre-eminent position of the three national networks remains unchallenged. Their affiliates number well over 75% of all U.S. commercial television stations (approximately 600 out of slightly more than 700) and, outside the major markets, network affiliation is virtually indispensable to successful station operations.⁴ As discussed below, it appears that about sixty percent of the broadcast programs currently presented by affiliates are supplied directly by their network. In addition to their ability to reach nearly all American households through their affiliated stations, all three networks own VHF stations in each of the nation's three largest television markets (New York, Los Angeles and Chicago), and two in other major markets (ABC, Detroit and San Francisco, the 6th and 7th markets; CBS, Philadelphia and St. Louis, the 4th and 12th markets; and NBC, Cleveland and Washington, the 8th and 9th markets). Each of these 5-station "owned and operated" (O and O) groups reaches about 22 percent of the U.S. audience.⁵ The networks are actively involved as brokers or middlemen connecting the program producers and national advertisers with local stations and their viewers. It is, therefore, not surprising that the networks play a very important role in the development, se-

lection, and distribution of television programming.

10. This role, with respect to program development and selection, has not remained unchanged. Twenty years ago, more than half of the programs carried by the networks were either produced or purchased by major advertisers who acquired the necessary amount of network time to broadcast their programs. Today, for a variety of economic reasons, virtually all regularly scheduled network programs are either obtained by the networks directly from an independent producer or produced by themselves. With this development, the ability to determine what types of television programming will be made available to the American public has largely shifted from the advertising community to the networks.

11. This change is largely attributable to increases in the costs of producing programming as well as the costs of network advertising time. Between 1960 and 1976, the average cost of a single half-hour episode of a new prime-time program increased by about 237 percent from nearly \$49,000 to approximately \$165,000.⁶ Network program expenditures reflected this trend, rising from \$376,948,000 in 1960 to \$1,273,241,000 in 1975, an increase of 238 percent. The average cost of a thirty-second network TV advertising spot rose by 153 percent during the same period. Cost increases have also been accompanied by a general recognition that shorter commercial messages are, for the most part, more cost effective than longer TV advertisements. That is, a 20 or 30-second spot, in many instances, is thought to be as nearly effective as a 60-second spot besides being less expensive. Given these developments, it is not surprising that advertisers have become increasingly inclined to spread their commercials over a larger number of programs. Consequently, they no longer produce their own regularly scheduled programming but, rather, purchase a number of commercial spots which are usually placed in a variety of programs. While this development has shifted almost exclusive control over the development and selection of programs to the networks, it has also permitted more businesses, particularly smaller ones, to use television as an advertising medium.

12. Network control over access to the medium has also coincided with rather extraordinary increases in profits. Between 1960 and 1975, total combined network expenditures rose from \$461 million to \$1,465 million, for an average annual increase of 13.6 percent. Total net broadcast revenues, on the other hand, increased more rapidly; from \$495 million in 1960 to \$1,673 million in 1975, which was equivalent to an average annual increase of 15 percent. Net income (total

combined profits before taxes) earned by the networks has risen at an annual rate of 32 percent; increasing from \$33.6 million in 1960 to \$208 million in 1975. According to the Internal Revenue Service, pretax profits accruing to all businesses in the United States increased at an average annual rate of approximately 12 percent between 1960 and 1974.⁷

13. Westinghouse alleges that increases in network profits have partially resulted from expanded program schedules and relative reductions in station compensation payments. It is stated that between 1960 and 1976 the networks increased the length of their program schedules from 434 to 516 half-hours, or by 19 percent.⁸ It is further argued that these increases occurred at the expense of local station time which has declined by 25 percent since 1960. Additionally, Westinghouse maintains that network programming currently occupies up to two-thirds of the available time on affiliated stations. The networks, it is claimed, have also reduced the proportion of their total revenues devoted to station compensation which, of course, has also enhanced their profits. Westinghouse further maintains that between 1964 and 1975, station payments as a percent of network revenues declined from 23.1 to 13.4 percent. Similarly, it is contended that station compensation payments as a percent of station receipts decreased from 19.8 to 10.7 percent during the same period. It is suggested that these and related developments have adversely affected the ability of affiliated stations to meet their public service responsibilities.

14. When the allegations of Westinghouse and other parties are considered against this background of significant change in the commercial television industry, it appears that an inquiry is warranted. In order to protect the interest of the public in receiving the best possible programming service, the Commission must take a careful look at the question of whether the networks may have engaged in conduct which hampers the independent judgment of the affiliated station, and which restricts effective competition in the programming market.

NETWORK-AFFILIATE RELATIONS

15. In the paragraphs which follow, we will briefly discuss three areas of network-affiliate relationships which appear to be particularly pertinent in connection with this inquiry, and as to which comments are specifically invited, although, of course, parties may wish to discuss others. These are: (1) clearance of network programming and the

⁴ There are only ten commercial independent stations (in the conterminous U.S.) outside the top 50 markets.

⁵ In terms of "ADI households" (households located in the market stations' "area of dominant influence") the figure was 22.82% for ABC, 22.76% for CBS and 21.91% for NBC. See Broadcasting Yearbook 1976, p. B-80, American Research Bureau (ARB) estimates for 1975-76.

⁶ The average cost of a prime time network episode was obtained from Arthur D. Little, Television Program Production, Procurement, Distribution and Scheduling, (April 21, 1969) p. 41. Production costs are based on individual program production fees published in Variety, September 15, 1976, pp. 50-54.

⁷ According to the Statistics Division of the Internal Revenue Service, net income earned by proprietorships, partnerships and corporations increased from \$79,809 million in 1960 to \$225,120 million in 1974. Statistics are not available for 1975.

⁸ "Clearance" of network programs by affiliate stations is usually very high; ABC shows it as 95% or more for prime time and Monday-Friday daytime programming (though less in other parts of the week).

expansion of network program schedules, (2) previewing of network programming by affiliated stations, and (3) the relationship between station compensation plans and the independence of affiliate stations. While we are confident that larger licensees will supply comments, we particularly urge affiliates in smaller markets and independent stations to provide us with their views. With respect to each of these matters, we would hope that commenting parties will support their arguments, as completely as is possible, with relevant statistics and other factual information. This will facilitate our assessment of the merits of these arguments as well as assist the staff in its fact-finding efforts.

16. *Clearance of Network Programs and the Expansion of Network Schedules.* Westinghouse has estimated that, in 1960, network schedules filled only about one-half of the total hours broadcast by affiliate stations, but that today network programs occupy approximately two thirds of these hours. It is argued that this increase has caused a corresponding decrease in the opportunities for independent programming decisions by station licensees. Implicit in this argument is an assumption that affiliated stations really do not wish to clear additional network programming, but that circumstances compel them to accept these programs anyway. In response to these claims, the networks argue that the overall figures on network program expansion are misleading and that regardless of the amount of increase, affiliates have supported and benefited from the additional programs.⁹ We specifically invite comments on the extent to which such clearances are other than voluntary and the nature of any contractual provisions or other economic relationships which might serve to undermine the independent judgment of the station licensee.¹⁰

17. In addition, we seek comments on the likelihood of further expansion of network schedules and whether this would impact on the financial performance of local stations as well as their ability to serve the interests of the local

⁹ It is further argued that these increases are largely attributable to ABC which accounted for more than half of the overall expansion of combined network schedules since 1960. Moreover, the networks maintain that the expansion was part of a "long process of building ABC into a fully competitive network." CBS and NBC, on the other hand, only expanded their schedules by 9 and 5 percent, respectively. Furthermore, the new network material has largely been late night, early morning (cleared, ABC and CBS note, by only about 80 percent of their affiliates) and weekend sports programming which has meant increased station compensation and/or made possible station broadcasts at times when the affiliates were previously off the air.

¹⁰ Westinghouse has also suggested that the lack of joint efforts by affiliates in dealing with their network with respect to program clearances and other matters may have impeded their ability to serve the public. Some parties may wish to comment on the need for, legality, and propriety of such joint efforts.

community.¹¹ We invite additional comments regarding any relationships between the length of network schedules, and the supply and demand for syndicated programming, particularly first-run material, available to affiliated and independent stations. With regard to the latter questions, we have noted various reports indicating that the networks, at some time in the near future, may increase the total amount of available commercial minutes per hour in prime time. We ask for comments on whether this would significantly impede the development of additional networks, specialized networks, and other syndicated program offerings in competition with network programming.

18. *Previewing of Network Programs by Affiliate Stations.* Westinghouse has also alleged that the networks do not afford affiliated stations a reasonable opportunity to review network programming before it is shown to local audiences, thereby making it difficult for station licensees to exercise independent judgment concerning the suitability of particular episodes for their communities. With regard to this issue, it is suggested that audiences will become confused or angered if a program is cancelled after it has been promoted over-the-air or has been published as part of an announced program listing. Westinghouse contends that prescreening opportunities are commonly delayed until after this promotional material has been provided to the public. Network comments in response to the Westinghouse petition contain extensive descriptions of present (in the case of NBC, recently amended) procedures for informing affiliates in advance of network program content, procedures which the networks claim are "adequate."¹² We invite comments on the

¹¹ With regard to this specific question, Westinghouse has estimated that an expansion of network news to one hour would cost affiliate stations a total of \$75 million annually and would increase total network income (including 0 and 0's) to 50 percent of all industry income.

¹² All three networks provide affiliates with written materials, summarizing future programs. Policies on allowing actual previews of programs are: ABC—up to 15 hours per week (9 on the average), including all programs which carry a parental guidance advisory; CBS—no hour per week figures, but provides programs of particular interest "virtually on a daily basis" and theatrical movies approximately 4 weeks in advance where practical; NBC—up to 20 hours per week (series episodes, theatrical and made-for-television movies, specials), programs with parental guidance advisories and any available program requested by in affiliate ABC and NBC both refer to their program standards departments as one way of insuring that programs are "acceptable" to affiliates (although Westinghouse points out that licensees must determine acceptability based on local, not national standards). Other network policies in this area include showing pilot programs to affiliates at annual meetings and during the preceding season and permitting affiliates to invite newspaper television critics to previews. Finally, it is said that there are practical problems in providing affiliates with programs 4 weeks in advance, as Westinghouse requests—production schedules and editing, MPAA classifications and dealing with the creative community.

nature and adequacy of the information which is presently provided to affiliates concerning up-coming programs, and the extent to which improvements may be needed so as to allow the effective exercise of licensee discretion. We also invite comments on the cost and inconvenience which may be associated with the provision of additional, or more timely, program information. Finally, we encourage comments regarding the extent to which affiliates currently prescreen network programs as well as their willingness to make use of additional prescreening opportunities if made available.

19. *Station Compensation Plans.* Traditionally, the networks have paid their affiliated stations for clearing network programming, or more precisely, for clearing the network commercials which are associated with that programming. While the methods used to determine these payments are rather complicated, they are directly related to the size of a station's audience and constitute an important ingredient contributing to the financial health of affiliated stations. While the Commission is not concerned with the earnings of stations per se, we do become interested when financial arrangements detract from the ability of these stations to live up to their responsibilities as public trustees. In 1963, for example, we found that a proposed CBS compensation plan would discourage affiliates from rejecting network programs which they believed to be unsatisfactory or contrary to the public interest. CBS Network Compensation Plan, 24 R.R. 520a; 1 RR 2d 696 (1963). In this instance, the Commission stated that:

Any graduated payment plan wherein the average hourly rate of compensation varies greatly with or is heavily influenced by the number of hours taken and which as a practical matter, requires an affiliate to take the majority of its programs from the same network without regard to the merits of the programming offered, is barred by our rules.

Id. at 698.¹³ We invite comments on the extent to which the networks' present compensation plans are consistent with this principle. These contracts variously call for affiliates to carry up to an equivalent of 24 hours of prime time programming per month without compensation or for dollar discounts which amount in substance to roughly the same thing. We are specifically interested in the effect these provisions have on the independent discretion of our licensees and on the ability of syndicators and other program suppliers to compete with the networks by dealing directly with affiliated stations.¹⁴ We are further interested in (1) whether and to what extent uncompensated prime time represents a

¹³ Aside from this concept, network control over a station's network rate has the potential for use by the network to influence the station's clearance decisions and also the level of its national spot advertising rates. See American Broadcasting Company, 17 R.R. 458, 462-463; Columbia Broadcasting System, Inc., 17 R.R. 447, 449; National Broadcasting Company, Inc., 17 R.R. 449, 452-453 (all 1958).

¹⁴ A brief discussion of this issue may be found in the "Barrow Report," supra. pp. 463-66.

justifiable means of sharing the overhead expenses associated with network program procurement and (2) the extent to which the average amount of compensation for each half hour of network programming cleared by a station varies depending on the total amount of network programming cleared by that station.

20. In its petition, Westinghouse states that between 1964 and 1975 the net income of the networks increased by 246%, whereas compensation payments to stations increased only 20%. It is argued that, by virtue of their powerful economic position, the networks have been able to limit compensation payments and thus realize a rather dramatic increase in their profits. This argument suggests that the advantages of networking, as opposed to syndication, are very substantial. That is, in the absence of anti-competitive practices, artificially depressed levels of station compensation would be expected to provide a fertile opportunity for entry by non-network program sources. We are most interested in comments on the question of whether the economic picture painted by Westinghouse is complete and accurate and, if so, what factors exist which discourage vigorous competitive activities by syndicators or the creation of a "fourth network." Comments are also invited on the effects which various changes in compensation plans might have on the health and viability of networking and the viability of networking and the ability of the networks to contribute to programming in the public interest. We would encourage comments, particularly from our licensees, regarding relationships between compensation payments and expenditures to serve local programming needs (including locally produced material) as well as their ability to compete effectively with networks for national spot advertising. With regard to the latter two questions, it is alleged that relative decreases in compensation have forced stations to increase prices for national spots, while at the same time, permitting the networks to reduce commercial rates charged to national advertisers. This, according to Westinghouse, has afforded the networks a substantial competitive advantage which has adversely impacted on station revenues and on the quantity and quality of local service. Finally, parties are free to comment on any other aspect of network compensation plans or contractual relations which may be inconsistent with legitimate public interest objectives. We stress again, however, our unwillingness to become involved in the amount of station compensation per se i.e., without reference to practices which are anti-competitive or contrary to the public interest).

NETWORK-PROGRAM SUPPLIER RELATIONS

21. Our discussion of the relationships between the networks and program producers and suppliers is divided into the following six categories: (1) network interests in syndicated programs produced by independent suppliers, (2) network produced entertainment programming, (3) contractual tying agreements relat-

ing to production facilities and program options, (4) exclusive exhibition rights to new programs, (5) exhibition rights to network reruns, and (6) relations between network owned and operated stations and program suppliers. Once again, parties are free to comment on other matters which may be relevant to this Inquiry. All parties are urged, however, to make every effort to support their arguments with factual information.

22. *Network Interests in Syndicated Programs Produced by Independent Suppliers.* The proposed NBC consent decree contains terms prohibiting NBC from acquiring distribution rights or profit shares in programs produced by outside producers, and from engaging in syndication of such programs anywhere, and from all syndication in the U.S. These particular terms appear virtually identical to rules adopted by the Commission in 1970 (§ 73.658(j)), prohibiting such activities, including the acquisition of any interest in a program produced by an outside party beyond the right to network exhibition. We invite interested parties to comment on the adequacy of our present rules and to propose alternatives if that appears to be warranted. Parties may wish to comment, particularly, on programs such as the current Dinah program—created originally by CBS, produced for its 5 owned and operated stations by an outside entity, and syndicated nationally by a different company but often, according to Westinghouse, carried by CBS-affiliated stations. Westinghouse and NAITPD claim that this violates the spirit if not the letter of the 1970 rules, particularly in light of Dinah Shore's other contractual relations with CBS.¹⁶

23. *Network "In-House" Production of Entertainment Programs.* Although most network entertainment programs are acquired from outside producers, a small number have been and are produced entirely by the networks themselves. This was one subject of the Department of Justice's antitrust action. The Department's position (as set forth in its competitive impact statement filed with the NBC consent decree) is that, just as with programs produced by others but in which the network acquires subsidiary rights, there arises a network predisposition to use such material regardless of its merit, and independent producers are thus unduly excluded from the network program market. Other parties have alleged that the unlimited network potential for producing their own entertainment programs can be used to obtain first-run programming at unreasonably low prices. While we are not concerned with the profits of program producers as such, we are interested in the question of whether this factor gives the networks an anti-competitive advantage over po-

¹⁶ Westinghouse also mentions the fact that the program is produced by CBS facilities (see para. 25, below). While not mentioned by Westinghouse, other pertinent factors in this connection could be: (1) the proportion of guests on the show which are CBS "talent"; and (2) whether or not CBS advanced financing for the program.

tential competitors, and whether the advantage works to limit the supply of independently produced programs. Parties addressing the possibility of Commission regulation in this area should attempt to assess the possible effects of such restrictions on: (1) network programming schedules, as to quality and type of programming; (2) prices paid for network exhibition rights; and (3) the cost and supply of syndicated programming available to local stations.

24. *Contractual Tying Agreements Relating to Production Facilities and Program Options.* Independent production companies have periodically maintained that the networks agree to purchase a particular program on the condition that the producer grant the networks other rights or interests which are not incidental to network exhibition of that program. These interests, it is said, sometimes include a commitment to use network-owned production facilities to produce the program. We suggest that commenting parties address themselves to the question of whether such arrangements to the extent that they exist, may affect competition in the offering of program production facilities. We are further interested in obtaining information regarding the following questions: (1) what proportion of all network programs are produced using network owned facilities or that of other networks, (2) how does the cost of leasing these facilities compare with the cost of leasing facilities owned by others, (3) what percentage of total production costs is attributable to the cost of leasing facilities, and (4) does that percentage vary by type of program?

25. It is also alleged that the networks commonly demand options on exhibition rights for as much as five to seven years following the development of a script or program pilot, thereby precluding competition in bidding for the rights to a program which develops into a highly successful series. We invite comments on the effects which such practices could have on competition, and, more specifically, on the supply of programs available to local stations through the syndication market, and also on the extent to which these clauses may limit the life expectancy of a first-run series. Comment is also invited on (1) the extent to which extended options may be necessary to cover a network's heavy expenses in developing and promoting program series, (2) whether the terms and conditions of options differ for various types of programs, (3) their impact on the profitability of an investment by a producer in independently produced entertainment series, (4) the relationship between program options and the life expectancy of a new series and the subsequent availability of that series in the syndication markets and (5) the extent to which changes in program options would or could affect station compensation payments.

26. *Exclusive Exhibition Rights for Program Pilots.* In a given year, the networks typically purchase exhibition rights to a far greater number of new programs than they can possibly use.

In large measure, such purchases are necessary to enable the network to select an attractive line-up of programs and to replace those which generate relatively small audiences. Nevertheless, we believe that it is appropriate to seek comments on whether some present practices unduly restrict the release of a significant number of pilots for further development and thereby limit the amount of first-run material available for syndication, and whether this programming might, in some instances, provide viable competition to network offerings. More specifically we invite comments regarding (1) the extent to which networks have eventually used programs which were initially rejected for regularly scheduled distribution; (2) the amount of elapsed time between initial rejection and eventual acceptance of these programs during the past 10 television seasons; and (3) any differences in the duration of exclusive rights to new series which depend on the type of program (e.g. prime-time series as opposed to daytime, situation comedy as opposed to drama etc.). Finally, parties are invited to comment on whether these rights influence the diversity of network schedules or the availability of first-run syndicated programs.

27. *Exhibition Rights to Network Re-runs.* The Department of Justice has raised a question as to whether limitations should be placed on the ability of networks to secure exclusive rights to re-broadcast episodes originally shown in a previous television season. Specifically, the consent decree contains a provision that negotiations for exhibition rights to repeats, originally broadcast in a preceding season, must be separated from negotiations for rights to first-run exhibition. We invite comments regarding the need for such restrictions and their effect on (1) the cost of repeats to the network and local stations, (2) network use of repeats in day-time, prime-time and fringe hours, (3) investment opportunities in new first-run network and syndicated programming and (4) the demand for new as well as repeated syndicated material available to local stations. Parties are invited to comment on any other aspect of this issue which warrants our attention. It is not our wish to reopen here the issues regarding same-year repeat episodes which were dealt with in the Commission's inquiry concerning the networks' use of reruns

in prime-time entertainment programming (Docket No. 20203, 37 RR 2d 1435).

28. *The Relations Between Network Owned and Operated Stations and Program Suppliers.* The networks also participate in the programming market as station owners. It has been alleged by Westinghouse that certain practices used by the networks in acquisition of programming for the owned and operated stations have adversely influenced the quantity and quality of syndication offerings. It would be helpful to the Commission to know the extent of block buying of programming for each network owned station group (i.e., the purchase of the same programs for exhibition on all of the stations in that group.) The Commission is also interested in whether any relationship exists between the purchase of first-run programs for O and O exhibition and the leasing of network owned facilities for the production of those programs. Comments are invited on whether a "network deal" in the form of a contract for exhibition on an O and O group is a prerequisite for the success of a first-run program sold in the syndication market. Parties are also free to address other issues concerning the impact which network practices with respect to owned and operated stations may have on the programming market and, in particular, the impact which such practices might have on the successful syndication of programming in direct competition with network offerings. While this inquiry concerns the business practices of the networks as they may impact on industry competition, and while attention, thus, must be paid to network practices with respect to the O and O's, we wish to make it clear that this is not a multiple or "group" ownership proceeding.

29. *The Nature of this Proceeding.* Comments and other information filed in connection with this inquiry will be evaluated by a special staff composed of economists, attorneys, and others with relevant experience and expertise. This staff will be under the direct supervision of the full Commission.¹⁶ The staff's analysis of the comments and reply comments may be followed by the issuance of questionnaires or inquiries designed to

¹⁶ The special staff which conducted the 1955-57 inquiry was under the supervision of a committee of four Commissioners. In the present instance, however, we see no need for the establishment of such a committee.

provide a complete factual record. If at any point it appears that these procedures are inadequate, the special staff will be authorized to initiate compulsory processes under Section 403 of the Act. It is hoped that a report concluding this inquiry can be completed within one year following receipt of the comments.

30. *It is ordered,* That the petition for inquiry, rule making and immediate temporary relief, filed September 3, 1976, by Westinghouse Broadcasting Company, Inc. IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

31. Authority for the institution of this proceeding is contained in sections 4(i), 303 (g), (i) and (r) and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set out in § 1.430 of the Commission's Rules, interested persons may file comments on or before May 2, 1977 and reply comments on or before June 1, 1977. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken here-with. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice. We recognize that some parties may wish to file comments which include confidential financial information or other material which they may be reluctant to make public. In a manner consistent with the Freedom of Information Act (5 U.S.C. 552) we will consider requests for confidential treatment made under § 0.459 of our Rules. As set forth in that section such requests may be made in advance.

32. In accordance with the provisions of § 1.419 of the Rules, an original and 5 copies of all comments, replies pleadings, briefs, and other documents shall be furnished the Commission. Material filed will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS
COMMISSION,¹⁷
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2338 Filed 1-25-77; 8:45 am]

¹⁷ Separate Statement of Commissioner Joseph R. Fogarty, filed as part of the original document.