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SPEECHES

PROPRIETARY INTERESTS IN TELEVISION SHOWS: A PRODUCTION COMPANY'S VIEW.

Ralph M. Baruch†

Let me preface my remarks by making it very clear that my stance is not anti-networks. Prior to Viacom, I spent 17 marvelous years at CBS; years which were inspiring, working among people of enormous substance, integrity and vision. Networks continue to perform a most valuable service to communications and to the public and if they didn't exist, we'd probably have to invent them. On the other hand, there must be some restraints on the powers they exert on the industry.

Viacom was created by CBS as a direct result of the FCC's Financial Interest/Prime Time Access Rule. Viacom is just one example of the success of the policy enacted by the Commission to create diversity in programming and bring about new entities to compete in the world of communications and entertainment. The Rule has done just that.

As Chairman of the Program Producers and Distributors Committee, I'm here today to defend these companies because they are making a very substantial contribution to American television. Our member companies have created broad diversity in programming. From a three-network program schedule, television stations everywhere can now make their own choices as to what programs are more locally suitable for their own audiences.

Recently, the networks have claimed that because of declining network shares, competition and declining profits, the Financial Interest and Syndication Rule should be trashed and the networks should once again be able to acquire a financial interest in programs which they license for broadcasting, and even be allowed to re-enter syndication. While they say they want a level playing field, they really want control of the ball — and the referee.

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† Mr. Baruch is the Chairman of the Program Producers and Distributors Committee. This speech was given before the National Academy of Television Arts and Sciences in New York City, April 4, 1990.

Fortunately, the networks have one major obstacle. *The system is working.* The Financial Interest/Prime Time Access Rule is an FCC policy which has created diversity in programming by giving opportunities for the rise of new and competitive companies. Since the Rule was promulgated, more than 50 production companies have been created. They now generate programming for newly-available time periods previously monopolized by the networks.

So, if the system is working — if it ain't broke — why fix it? And that is my theme. Despite the network arguments, there is absolutely no reason to change the current system. Moreover, some of the arguments currently being put forth by the networks are not true. They are sheer myth. Here is what they want you and Washington to believe:

First, they say that due to declining shares and increased competition, their financial fortunes are declining. *Not true.*

Second, they say the Rule will prevent them from remaining a viable medium, servicing affiliates and the public. *Not true.*

Third, they say the Rule unfairly forces them to promote and advertise the programming of others. *Not true.*

Fourth, they say the Rule prohibits them from competing against foreign-owned studios. *Not true.*

Fifth, the networks say they cannot diversify, either in this country or overseas. *Again, simply not true.*

Now that I have established these myths, I would like to go back and knock them down, one by one.

The networks want you and our legislators and our regulators to believe that due to declining shares and increased competition, their financial fortunes are sinking and they must find new sources of revenue if they are to survive. But let's look at the status of the networks when the Rule came into being, versus their economic condition today.

The chief executive of one network parent said recently that, when the Financial Interest/Prime Access Rule became effective, the networks were immensely profitable. Again not true. The fact is, when the Rule was adopted, the combined operating profit of the three networks was about $50 million and one network, ABC, had been losing money for the previous 10 years.

Today, every respectable analyst, every research report, every knowledgeable source estimates that, in 1989, the combined operating profits for just three networks' divisions were $700 million.

This estimate of $700 million does not include profits that the networks make from their expanding array of stations. These owned stations had, in 1989, an operating profit margin of nearly 50 percent. Of every dollar taken in, nearly 50 cents went to the bottom line. That has to be one of the highest profit margins of any industry.

These owned television stations are estimated to contribute nearly $1.0 billion additional profits. This raises the total three-company television operating profit estimate for 1989 to between $1.5 and $2.0 billion.

So you can see why some of us believe that, while the networks are telling a tale of woe in Washington, they are telling a tale of wow on Wall Street. Recently, a trade publication quoted one top broadcast executive as admitting that the networks seem to carry around two different financial statements, one for the bankers and another for government officials.

As far back as in 1970, networks were claiming that if the Financial Interest/Prime Time Access Rule was adopted, they would not continue to be a viable entity for their affiliates or the public. The FCC stated then, and I quote: "we do not believe that the proposed rule will have an adverse effect on either function of network corporations." How right they were. And, how right they still are.

Today, the networks still get a prime time audience share of 65 to 70 percent. When combined with Fox, the total goes well over 80 percent. This chart demonstrates my point that network shares still far outweigh those of the competition.

One crucial point has to be made here. We should always remember that *the broadcast networks are still the only way to potentially reach 100 percent of all television homes in this country*. And, if you don't believe me, here is what Pier Mapes, President of the NBC Television Network, had to say in a recent letter to a trade magazine, "the three major networks and their affiliates still deliver 94 percent of the nation's households each week. No other medium is close to network delivery. The national advertisers have acknowledged this massive delivery with a record-shattering upfront. The bottom line is that the system works very well."

Added to this economic evidence is the fact that networks have consistently increased their advertising rates, despite diminished shares and a steady reach. Last fall, the upfront buying hit an all time high, and rate increases were not far behind. According to Paul Kagan, a 30-second spot on the Super Bowl cost $222,000 in 1980. In 1990, with a decreased audience, it rose to $700,000. So, in 1980, the cost per thousand was $6.28 and in 1990, it was over $18.00.

Even more dramatic is the fact that the networks are achieving these financial results in an unprecedented era of competition. This is competition created by the FCC Rule. For example, the number of independent television stations has increased nearly fivefold — from 65 when the Rule was created to 321 independent outlets today. Independent audience shares have also spiraled upward.

This amazing growth and vigorous competition have been fueled by programming now available, which prior to the Rule would have been warehoused by the networks.

The networks want to go back to their strong-arming days vis-a-vis competition, especially independent stations. Here is what the chief executive of one network parent company recently had to say, and I quote: "and what business has anything like the phenomenon by which we commission a program, give it prime time exposure and promotional support, only to see it go into syndication after five years, to be shown on an independent station in direct competition with our own offerings?"

In reply, I would ask that executive: What business *is not* responsible for promoting and advertising its product? Networks are mere distributors in an oligopoly position. And I would also say to this executive that he can't have it both ways. He can't force a producer to generate network programming at a deficit, have the network realize large profits from his creativity, and then prevent that producer from realizing a profit by selling the product in syndication to independent stations.

To me, it is astonishing that independent television producers should be asked to give up rights and pieces of a program to further enrich the networks. Maybe the producers should propose something equally astonishing: maybe they should demand a share of the profits the networks make from their programs.

All of this is a bit like *Back to the Future*. The networks would like to go back two decades, when they dictated that no syndicated programming or motion pictures could be distributed until they, the networks, had exhausted their full use of the product.

The problem today is that such network demands would not stop with the independent stations. Cable programming and other developing technologies would surely be next to feel the network grip. Furthermore, we also know that the networks would be anything but silent partners if they had a financial interest in programming.

Before the Rule was adopted, in the FCC's own figures, over a five-year period, networks obtained a financial interest in 93 percent of the programs that were put on the air. Networks have disputed this as being an older number and that the figures were not as high in later years. Come on fellows, I don't care whether it was 93 percent or 78 percent or 84 percent. You forced producers to give up syndication rights, financial interest and so much else in exchange for getting on the air.

In myth number four, networks say that since studios and other entertainment organizations have been sold to foreign owners, this should entitle the networks to a repeal of the Financial Interest and Syndication Rule. Frankly, there is absolutely no connection whatsoever between the two. None.

In fact, the networks and their parent companies have *encouraged* foreign interests in American entertainment companies. CBS sold its record division for billions of dollars to Sony. RCA has already sold its record division to Bertelsmann. To me, that sounds like the old story of the young man who kills his parents and then pleads for mercy because he is an orphan.

The networks also claim falsely that foreign companies and studios are syndicating overseas, while the networks cannot. In reality, networks can now produce up to 10 half-hours of programming a week, own them 100 percent and syndicate all of these self-produced programs worldwide.

In addition, networks can auction off domestic syndication rights, as other producers are doing, making them available on a competitive basis to companies like Viacom and other successful domestic distribution organizations.

Yet, very few such programs have been produced. Why? Because the networks know that the risk of production is substantial. ABC learned just that when it produced *Moonlighting*. When the network was in trouble with *Moonlighting* being substantially over budget, it quickly recouped some of these overruns by scheduling a much larger than usual number of upfront reruns, to the detriment of affiliates, who lost ratings and audiences, and to the ultimate detriment of the public.

No, the networks would much rather take a safer approach. They would rather try and force a producer to give up his or her rights and financial interest in a program for the privilege of having the show licensed for network broadcast.

So, ABC, CBS and NBC, you *can* compete in foreign syndication and you are doing so now. You have set up your overseas operations and have made headlines in all the trades about your overseas expansion. But you should compete on a par with others, including the one foreign-owned studio. This foreign-owned studio, incidentally, must, like everybody else, still come hat in hand to the networks to license its programs.

Finally, the last myth says that networks can't diversify, either in this country or overseas. In truth, they have had enormous opportunities to diversify and are doing so now. For example: ABC, has formed co-production companies in Spain, and has announced a joint purchase of

Telemuchen in Germany, along with major partners from Luxembourg and Italy. ABC has also joined with Thames Television, Yorkshire, Central TV, MGM-UA and Don Taffner in Advertiser-Supported Allied Programming in Europe. Another subsidiary of Cap Cities, ESPN, is forming Screensport in the United Kingdom; has announced a Japanese version of ESPN; and has invested in a French production company. Other such ventures are now under negotiation by ABC's Herb Granath.

NBC has a 38 percent ownership in Visnews, the worldwide newsgathering organization. It has just announced a one- or two-channel worldwide news service delivered via satellite. NBC Europe, based in the United Kingdom, is exploring a number of joint ventures for foreign coproductions. The network has a number of other major ventures in Australia, New Zealand, the United Kingdom and France. A few days ago, the day after a summit meeting with the Chairman of the FCC, NBC announced another foreign television partnership in the U.K. with Britain's commercial broadcaster, Yorkshire Television Limited. NBC's parent, General Electric, is a partner with Sony's Columbia Pictures in RCA/Columbia Home Video. So much for international barriers.

The networks also tell us they cannot diversify in this country because they are handicapped by the Financial Interest Rule. Again not true.

On the one hand, the head of NBC, at the recent NATPE Convention, made an impassioned speech in which he said the network was dedicated to promoting and fostering local television service through its affiliates. Yet, just a few weeks later, NBC announced that it was entering a joint venture for a new direct broadcast satellite service (DBS) offering 108 channels to the nation by 1993. We all know this new DBS service is designed to eventually bypass conventional over-the-air broadcasting, and probably cable as well.

NBC's partners in the DBS venture are a foreign company, Rupert Murdoch's News Corporation, a General Motors subsidiary, Hughes Aircraft, and one of the largest cable systems in the country. The Program Producers and Distributors Committee has no quarrel with this project. God has not created an electronic curtain, preventing the progress of technology, but at the same time, networks should not say they are totally dedicated to local television affiliates, or that, because of the Financial Syndication Rule, they are prevented from diversifying in this country. Nor, for that matter, does this move appear to be a gesture of support for local television affiliates.

Even more interesting is the fact that General Electric — the parent of NBC — is supplying GE's new K-band satellite to another recently announced DBS service. GE's partners in this venture are some of the nation's largest cable system operators. And yet another GE subsidiary finances the purchase of numerous television stations and cable systems, and through the ownership of Kidder, Peabody, finances other communications ventures. It appears, then, that the colossus GE is everywhere.

Networks have diversified and are continuing to diversify in this country. Television networks and their parents today own interests in eight different satellite cable programming networks, movie and television production companies, DBS services, videocassette production and distribution companies, magazines, newspapers, satellites and so much more. Two of the networks own a combined 41 radio stations. All this sure sounds like diversification to me.

Let me give you a sampling of past diversification by just one network:

A national cable program network, which failed;
Two regional cable program networks, which were sold;
A cable system owned under FCC waiver, which was sold;
Two equity stakes in motion picture production, of which the first failed and the second was sold;
Book publishing, which was sold;
Medical book publishing, which was sold;
Magazine publishing, which was sold;
Toy manufacturing, which was sold;
Videotext, which failed;
A record company, which was sold;
A pioneering stake in the cassette industry, which failed;
The cable rep business, which failed;
Television set manufacturing, which failed;
Ownership of a sports team, which was sold; and
A theme park, which was also sold.

This network still has a partnership in the home video business with Australian-owned Fox.

In past years, the broadcast networks have had the opportunity to participate in Showtime and other cable networks, but refused to do so. It is also true that they can, and undoubtedly will once again, own studios. The only thing they cannot do is have a financial interest in programs they license for their networks, nor can they extend their programming to the prime time access periods. Clearly, there has been an ample opportunity for the broadcast networks and their parent companies to continue to diversify.

Beyond these five myths, I believe there is another issue at work here. And I believe it is an issue with a ring of truth. That issue is greed. In recent years, all three networks have changed ownership. None of these companies was forced to buy a network. But once they did, to increase profits and support a huge debt load, they made huge cuts in operating expenditures and personnel, and the layoffs are continuing. Now, the networks want to become even more profitable. I have no quarrel with fatter profits, as long as they are not at the expense of independent producers or the viewing public.

I believe that the networks must be vigilant in fostering innovation. They need exciting new programming, new leadership and more responsible spending policies. They should expend their resources to develop the best talent internally, both on the programming side and in front of the camera.

During a congressional luncheon held in Washington recently, an Emmy-award winning television producer told the story of submitting to one of the networks a possible remake of Oscar Wilde's *Portrait of Dorian Gray*. The senior program executive at the network became quite enthused, and then, in all seriousness, asked the producer, "would this fellow Wilde also have to write the script?"

Another example: After spending enormous time and money and research, they could surely come up with better ideas than a late-night talk show hosted by a game-show emcee. They can certainly find better ways to spend millions than on self-defeating raids of their rivals' news talent. And, once they get that talent, they can surely create better showcases for it.

As I see it, the networks have enough to worry about without trying to enrich themselves by tackling the Financial Interest and Syndication/ Prime Time Access Rule.

But I am concerned that the abandonment of the rule advocated by the networks will bring to the forefront some less desirable qualities of American business which we've seen over the past decade. I have said before that personal and corporate greed have, in many industries, gotten the upper hand. Dedication to service and a sense of character have suffered.

As a result, thousands of innocent people have been driven from their jobs and many once-thriving businesses no longer exist. If the networks get their way, the same thing can happen here. Vital smaller businesses, many of them members of the Program Producers and Distributors Committee, will be destroyed.

Fortunately, the networks have no allies in their fight, except for some nominal support from affiliates who, undoubtedly, caved in to great pressure. Still, those of us who want to see the Rule continued, must be just as vigilant.

However, if the networks succeed, other vital rules also would soon disappear. In addition to the undoubted disappearance of the Financial Interest/Prime Time Access Rule, we would see the end of the Rep Rule, the Cable Cross-ownership Rule, and many others which inhibit network power and are important to our industry.

If such an event were to occur, the regulatory and competitive structure of electronic communications in this country would be unrecognizable in just a few short years. That is why we need to defend a system that works. We need to stand up in favor of this Rule and say, "If it ain't broke, don't fix it."