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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. note	JC to Bud re attached issue, 1p [Item is still under review under the provisions of EO 13233]	4/11/-	
2. memo	Cicconi and Kenneth Cribb to McFarlane re INTELSAT, 1p [Item is still under review under the provisions of EO 13233]	4/11/83	
~~3. list~~	~~Recommended State Department Actions Listed by Priority, 2p~~	~~n.d.~~	~~B1~~
~~4. list~~	~~COMSAT Actions – Listed by Priority, 1p~~	~~n.d.~~	~~B1~~
5. letter	Mark Fowler to James Baker re rebounding economy, 1p [Item is still under review under the provisions of EO 13233]	3/7/83	

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1185a A

THE WHITE HOUSE

WASHINGTON

February 14, 1983

MEMORANDUM FOR MEMBERS OF THE CABINET COUNCIL ON COMMERCE AND TRADE

FROM: WENDELL GUNN
Executive Secretary

SUBJECT: Agenda for Meeting of February 16, 1983
8:45 am, Roosevelt Room

JAB did not attend

Attached are reading materials for this Wednesday's CCCT meeting. The items to be discussed are as follows:

1. DISC Replacement Proposal
2. FCC Synidication: The Financial Interest Rule

There is a possibility that the FCC syndication issue will be moved to the agenda of a Cabinet meeting with the President, to be held later on Wednesday or on Thursday. You will be notified when a final determination has been made.

Copy

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

February 11, 1983

Memorandum for: Members, Cabinet Council on Commerce and Trade

From: MB Malcolm Baldrige
Chairman Pro Tempore

Subject: FCC Syndication and Financial Interest Rule

THE RULE

In 1970, the Federal Communications Commission (FCC) adopted its Syndication and Financial Interest Rule 1/ prohibiting the three major television networks (ABC, CBS, and NBC) from engaging in television program syndication and/or acquiring any financial interest in television programs produced by another entity (i.e., they are prohibited from producing programs for broadcast in which they are not the sole owner).

In July 1982, the FCC issued a Notice of Proposed Rule Making 2/ to review the impact of this Rule in light of changes in market conditions and evaluate the conclusions and recommendations made by the Network Inquiry Special Staff described below.

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program supply market."4/ The report stated that the Rule failed to increase competition in the syndication market because the market was competitively structured prior to its imposition.

Specifically, the Network Inquiry Special Staff concluded: (1) the program supply market for prime time television was not concentrated prior to the Rule 5/; (2) the program supply market is competively structured today 6/; (3) the syndication market was competitive prior to the Rule 7/; (4) the syndication market remains competitive today 8/; (5) the Rule has resulted in inefficient risksharing by prohibiting network participation 9/; and (6) the Rule may have the unintended effect of handicapping the networks' ability to compete with new technologies. 10/

NETWORK ANTITRUST CONSENT DECREES

In 1972, the Department of Justice filed antitrust complaints against the three television networks charging violations of Sections 1 and 2 of the Sherman Act. The suits were dismissed without prejudice on procedural grounds 11/ but refiled in late 1974 12/ charging that: (1) ownership and control of prime time programming was concentrated among the networks; (2) the networks unreasonably restrained competition in the production,

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4/ Federal Communications Commission Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation ("New Television Networks") Vol. I at 510 (1980).

5/ Federal Communications Commission Network Inquiry Special Staff, Background Report, "An Analysis of Television Program Production, Acquisition and Distribution," (hereinafter "Special Staff Analysis") in New Television Networks, Vol. II, 293 at 556.

6/ Id. at 561.

7/ Id. at 532.

8/ Id. at 566.

9/ Id. at 622.

10/ New Television Networks at 518.

11/ United States v. National Broadcasting Co., 65 F.D.R. 415 (C.D. Cal. 1974).

12/ United States v. National Broadcasting Co., Civ. No. 74-3601-RJK (C.D. Cal., 1974); United States v. CBS, Inc., Civ. No. 74-3599-RJK (C.D. Cal., 1974); and United States v. American Broadcasting Companies, Inc., Civ. No. 74-3600-RJK (C.D. Cal., 1974).

distribution, and sale of entertainment programming; (3) program supply to the networks was unreasonably restrained; and (4) the public had been deprived of the benefits of free and open competition in the broadcast of television entertainment programming.

In late 1976, NBC and the Department of Justice filed a stipulation providing for the entry of a consent decree to settle the litigation. A little more than one year later, a modified version of the proposed consent decree was entered by the district court. 13/ Slightly more than two years after that, in mid-1980, first CBS, then ABC followed by entering into similar consent decrees with the Department of Justice. 14/

The consent decrees incorporate the major provisions of the Commission's Syndication and Financial Rule, and thus also restrict network program production and distribution. In addition, the consent decrees provide for further limitations on network program acquisition activities not addressed by the Commission's Rule. Thus, with very detailed provisions, the decrees govern and limit the timing and terms of network-program supplier agreements concerning program production, distribution, options, and exclusivity. For example, the ABC consent decree limits to four years the length of time the network can initially negotiate for exclusivity to keep a program out of daily (stripped) syndication. 15/ Thus, as the Commission noted in its Notice, "in all significant respects, the requirements of the consent decrees are more restrictive than or equivalent to the restrictions of our syndication and financial interest rule." 16/

Although the consent decrees incorporate the major provisions of the Commission's Syndication and Financial Rule, they are neither identical to the Rule nor should they be thought of as such. Although the two sets of limitations on network activities have much in common, they are separable and are not directly affected by the Commission's proceeding.

13/ United States v. National Broadcasting Co., 449 F. Supp. 1127 (C.D. Cal. 1978), aff'd mem., No. 77-3381 (9th Cir. April 12, 1978), cert. denied sub nom, CBS v. U.S. District Court for Central Division of Calif., 48 U.S.L.W. 3186 (1979).

14/ United States v. CBS, Inc., Civ. No. 74-3599-RJK (C.D. Cal. July 31, 1980), reprinted in 45 Fed. Reg. 34,463, 34,466 (1980); United States v. ABC, Inc., Civ. No. 74-3600-RJK (C.D. Cal.) reprinted in 45 Fed. Reg. 58,441 (1980).

15/ United States v. American Broadcasting Companies, Inc., supra, 45 Fed. Reg. at 58,443.

16/ Notice at ¶26.

MAJOR ISSUES

In its Notice, the Commission asked for comments on a number of pecific matters most of which can be grouped into four major iss es for the purpose of discussion and analysis: (1) Risk/Reward Sha ing; (2) Network Ability to Compete with New Technology; (3) Pro ucer versus Network Control; and (4) Program Warehousing. In add tion, the Commission inquired about the appropriateness of its inv lvement in this area. The four major issues can be viewed as fal ing into two basic categories: the first three address the net orks' ability to act as monopsonists (the ability to exercise mar et power as a buyer) in their relationships with program sup liers, and the fourth addresses the networks' potential to act as onopolists in the distribution of syndicated programming.

Appropriateness of Commission Action

One of the most important issues surrounding the Rule is whether it is appropriate for the Commission to regulate the private contractual relationships between producers and the networks. Those who argue that the Rule is necessary claim that the networks have an unfair advantage in their bargaining with producers. Proponents of repeal, however, argue that the relationship between producers and networks are really quite equal and therefore it is inappropriate for the Commission to regulate these private negotiations.

The Department of Commerce has taken the position that there are several reasons why the Commission should question the appropriateness of the Rule. First, allocative issues such as the redistribution of revenues and profits from the networks to program suppliers should not be a concern of the Commission. Second, and related to this first concern, it is inappropriate for the Commission to be concerned with success or failure of individual firms in a market as long as the overall market remains competitive. Finally, if, as has been alleged, the issue is not one of allocation, but rather protection against anticompetitive con uct as a result of network market power, then antitrust enf rcement by the Department of Justice is the appropriate remedy.

A primary intent, and result, of the Rule is redistribution of pro its from the networks to the major Hollywood producers. 17/ Thi , however, is an inappropriate topic for Commission concern.

17/ Amendment of Part 73 of the Commission's Rules and Regulations wit Respect to Competitiveness and Responsibility in Network Tel vision Broadcasting, Report and Order 23 FCC 2d 382, 399 (1970) (he einafter "Report and Order"); see also discussion in Special Sta f Analysis at 725-31.

It is widely agreed by producers and network representatives alike that the Commission should not be concerned with the division of revenues or profits in a healthy competitive market. Nor should the Commission be concerned with the success or failure of any individual firm as long as the overall market remains competitive. There is an understandable difference of opinion, however, as to what exactly constitutes an allocative issue.

Even if the Special Staff was wrong and the networks could distort the market by exercising market power, the Department of Commerce believes that it is the Antitrust Division of the Department of Justice and not the Commission that should be responsible for enforcing the nation's antitrust laws. Unless a compelling case can be made to the contrary, to the extent that protection against anticompetitive behavior and undue market power is required, sufficient remedies rest with the Department of Justice and private antitrust litigants exercising their rights under existing law. To the extent that the Rule is concerned with allocating revenues and profits among firms and industry segments, it is an inappropriate activity of a government agency.

In its comments to the FCC on the Rule, however, the Department of Justice Antitrust Division states:

> Opponents of the rules have argued that, even if such network collusion is possible, the antitrust laws would effectively forestall it. The antitrust laws, of course can effectively attack overtly anticompetitive actions [citing Unites States v. NAB, 536 F. Supp. 149 (D.D.C. 1982)]. It is unclear, however, how likely detection and effective prosecution would be under the Sherman Act in cases of tacit collusion without explicit agreement. The networks have engaged in many parallel practices, including the number of reruns aired, the number of commercial minutes run on network programs, and the production fees paid for programming. It is difficult to ascertain whether these practices are the result of vigorous competition by the networks or of tacit collusion that has reduced competition. The costs of litigation to determine whether parallel network conduct regarding release of off-network syndicated programming [is unlawful (?)] would be substantial. Thus, the Department is not confident that the antitrust laws can be relied upon as the most effective tool for ensuring against possible anticompetitive network practices in this area. 18/

18/ "Comments of the U.S. Department of Justice in FCC BC Docket No. 82-345 (filed January 26, 1983) at pp. 40-41.

Risk/Reward Sharing

The networks argue that since they assume the primary financial risk for developing new television series they should be permitted to share in any profits at the "backend" (after network first run). They argue that the producers would have no product to sell in syndication if networks had not taken the risk, financed the pilot, chosen the program for prime time broadcast, and kept the program on the air for at least three to five years. The networks go on to argue that if they were permitted to have a financial interest in programming and/or to acquire syndication rights, they would be able to pay producers more than just a license fee at the time of production. In addition, the networks argue that preventing them from having a financial interest, or sharing the risk, works to the disadvantage of new entrants because it keeps them from financing small independent producers who otherwise would have no source of capital with which to produce their project.

The major producers (studios) reject the networks' arguments by pointing out that they, as the supposed beneficiaries of increased "frontend" payments in exchange for sharing "backend" profits, are not interested in increasing "frontend" payments. They state that they would rather have the networks pay less at the outset but be able to keep the syndication rights for themselves. They go on to state that if the networks are allowed to obtain partial financial interest and syndication rights that producers will have no choice but to agree to network demands for such rights since the networks are monopsonists.

In addition, producers claim that the networks now are able to "share in the profits" from a successful program by virtue of the significant advertising revenue generated from selling time during and adjacent to prime time programs. In addition, producers claim that the networks are even able to recoup their investment in pilot programs not developed into series by airing them in the summer and offsetting some of their investment with advertising revenues such programs generate. Because of this revenue, the studios claim that the networks are not taking the bulk of the risk when financing a new series but, rather, are merely end users of a product.

This view ignores the significant investment that each network makes in new programming annually as well as the enormous uncertainty of success in the process. As an example, for the four seasons from 1978-1982, CBS commissioned a total of 805 scripts of which 160 were made into pilots and only 51 became series. Only 12 of these, less than 1.5 percent of the original scripts, were successful enough to be renewed for at least one season. Contrary to the producers' assertions, the networks make a significant investment in programming and take a substantial risk in program development. It is also questionable to assert that the networks

cover all their investment in program development by airing or "burning off" pilots and failed series during the summer. Shortly after Grant Tinker became president of NBC, that network wrote off approximately $38 million in programming that could not be used. Likewise, for 1981, ABC wrote off approximately $29 million in direct program development costs that could not be recouped (e.g., through summer broadcast). It should be noted that these costs reflect gross figures and do not include provisions for overhead or lost opportunities resulting from preemption of other (more popular) programs. To say that the networks do not take significant risks in the program development process is not accurate. To prohibit them from sharing in the potential rewards not only is unfair, but also threatens their future ability to compete effectively with unregulated competitors e.g., cable and pay networks) for new programming.

Network Ability to Compete with New Technology

The networks claim that they are at a disadvantage competing with new delivery systems such as cable television (HBO is the example often used), MDS, DBS, and STV for program rights. They argue that since these delivery systems can also participate in program production by obtaining a minority financial interest and syndication rights which provide backend profits, they can outbid the networks for product. The networks want the ability to obtain a financial interest, including syndication, in order to "level" the bargaining table. The networks state that they need to "amortize" product over several distribution media in order to pay for increasingly expensive programming. The networks point to theatrical films and some sports as examples of programming for which they can no longer successfully bid against cable and STV. Therefore, they argue that the rule is skewing the development of the new media by giving them an unfair bidding advantage against the networks. Further, the networks point to the drop in network audience share as evidence of their claim that the new media are succeeding in the marketplace.

Those in favor of retaining the rule disagree that the rule prevents the networks from competing with the new media. They point to the FCC's 1981 Declaratory Ruling allowing CBS to acquire nonbroadcast rights to television programs, for the now failed CBS Cable; CBS's proposed MDS venture with Contemporary Communications, Inc. and its recently announced joint venture with HBO and Columbia Pictures to build a movie studio; and, ABC's multiple nonbroadcast projects with Hearst, ESPN, Sony, and Group W Cable.19/ The only activity the networks are restrained from, they point out, is broadcast television program syndication.

19/ Declaratory Ruling on Section 73.658(j)(1)(ii), 87 F.C.C. 2d 30 (1981), aff'd sub nom. Viacom International, Inc. v. FCC, 672 F.2d 1034 (2nd Cir. 1982).

The problems for the networks, however, are not insignificant. Although it has been predicted that, because of growth in the general population and number of households, the networks' audience in terms of households and views will remain relatively constant and will not decline along with their shares, it also is predicted that network costs for programming will increase significantly. Without the increases in audiences they have enjoyed over the past thirty years, the networks may find it increasingly difficult to compete successfully for new programming. The networks' inability to share in syndication and other subsidiary rights because of the Rule has therefore become more than just an inconvenience. In order to pay the high prices prime time programming demands, the networks need to be able to share in the non-network revenues generated through exploitation of subsidiary rights. The only alternatives are either to raise advertising rates or purchase less expensive programming. Given the increasingly competitive nature of the advertising business, it is unlikely that the networks would be able to raise their rates sufficiently to cover their increasing program costs. An undesirable alternative would be to increase the number of minutes devoted to advertising each hour. This would likely be counter-productive since advertisers would resist increased "clutter" and viewers would have additional incentive to desert the networks for advertising-free subscription services. Nor is purchasing less expensive programs a viable solution. It is difficult to envision producers being able or willing to provide the kinds of network prime time drama and comedy that comprise the bulk of the networks' schedules for very much less than they now charge. It has been suggested that, in order to cut costs, the networks may have to begin scheduling game shows and other low budget programs in prime time. One potential outcome of Rule retention, therefore, is that the producers objecting to repeal might find themselves without customers for the very programming they argue needs protection. Not only would the networks and producers suffer from such cutbacks, but so too would the independent stations that depend on expensive off-network programming for much of their schedule. The ultimate loser, of course, would be the public.

Producer Versus Network Control

Program producers (both studio and independent) claim that if the networks are permitted to obtain a financial interest in programming and re-enter the syndication business, producers will be at a critical disadvantage in bargaining and negotiating with the networks. First, they claim they would be unable to resist network demands for financial participation and syndication rights. Second, and more important for some, producers fear losing creative control of their programs if the networks regain a financial interest.

Experience does not support these fears. Prior to adoption of the Rule, the networks did not obtain a financial interest in all

programs. While they commonly obtained syndication rights from producers who did not operate their own syndication business, this was not typically the case with programs produced by the major studios or other producers operating their own syndication business. Further, independents not desiring to negotiate directly with the networks could always enter into an "umbrella" agreement with a studio, much as they do today.

Regarding fears about creative control, with or without a financial interest in a program, the networks already have ultimate or final control over the nature of the programs they purchase for broadcast. Indeed, as a licensee (each with five owned and operated stations) with a responsibility to its affiliates, each network properly oversees the content of each program it broadcasts. It is in the mutual interest of networks and program suppliers to have successful programs. Disagreements about how to achieve that commercial success exist today and inevitably are part of the television program development and production process. It would be unfair, however, to characterize the network-producer relationship as an adversarial one in which all producers are in conflict with all three networks. To the contrary, most producer-network relationships are mutually beneficial. Repeal of the Financial Interest and Syndication Rule will not significantly alter these relationships.

The Commission has inquired about the imbalance in bargaining power between producers and the networks. Most producers as well as network representatives agree that while there may be an imbalance in favor of the network in initial negotiations, once a program qualifies as a "hit" (i.e., the network wants to renew it), the advantage shifts to the producer. Indeed, the Network Inquiry Special Staff found, that among the network-producer contracts that they examined, all had been amended for series appearing on the network for more than three years.20/ Therefore, to assert that the relationship between a network and a producer is one-way and imbalanced is to ignore industry practice. If the fear on the part of producers is that they will be forced into unfavorable contracts with the networks, they do not adequately recognize the shift in bargaining power that occurs when a program is successful enough to be renewed.

While the question of program control is an important one for producers, it is not addressed by the Rule in question. The networks today, with the Rule in place, appropriately control the programs they license and broadcast. Repeal of the Rule will not change the fundamental buyer-seller relationship between network and producer in which the networks have the ultimate control of choosing to broadcast or not to broadcast a particular program.

20/ Special Staff Analysis at 463.

Program Warehousing

The most difficult issue raised by proposals to repeal the Rule is whether independent television stations require special protection from potential network "warehousing" of programming. While the three preceding issues appear to be allocative and therefore outside proper government action, this issue potentially involves important competitive issues. However, as discussed below, there is little reason to believe that the potential for warehousing is a real threat and, more importantly, if it were to become a problem, the proper remedy lies more appropriately through antitrust enforcement by the Department of Justice rather than by Commission rule.

Independent television stations fear that if the networks are permitted to obtain syndication rights for network series and re-enter the syndication business, there will be a "conflict of interest" where the networks will control sale and use of programs used to compete with their network affiliate and O & O schedules. The independents claim that the networks would withhold popular programs from syndication in order to limit this competition. This claim goes on to argue that the result would be a lessening of competition in the program syndication business, weaker independent stations, and, therefore, higher overall advertising costs. There is little empirical support, however, for these claims, all of which hinge on the desire and ability of the networks to withhold programming.

Independent distributors also fear network reentry into syndication claiming that if the networks are able to obtain syndication rights at the time of initial negotiations for network first run, independent distributors will not have a chance to bid on such rights. They claim, therefore, that the syndication business would become more concentrated.

This alleged potential for withholding is based upon three questionable assumptions about network activity that, while theoretically possible, do not reflect the reality of sound business practice. First, the withholding argument is premised on the networks' ability to control virtually all off-network programming. In order to accomplish this, the networks would either have to buy syndication rights for all programs they develop or, since this would be prohibitively expensive, buy syndication rights only for those series that become hits. The problem with this assumption is that no one can predict which programs will be successful. One only has to look at the extremely high failure rate of program development to see the difficulty involved. The notion that the networks could control even a majority of syndicated programming is thus totally at odds with the state of the industry. The program syndication market is competitively structured and was so before the networks were restricted by the Rule.

The second questionable assumption underlying the alleged withholding threat is that the three networks will collusively form an undetected cartel to coordinate their syndication activities. Given the highly competitive nature of the television programming and syndication businesses, such coordinated action, or its potential success, is highly improbable. Not only would the networks have to avoid Justice Department detection and enforcement, they would have to avoid detection by potential private litigants. The latter problem would be particularly acute since the television distribution industry is extremely fluid with personnel moving among firms and industry segments many times during a career. Finally, the most difficult task for the cartel would be to enforce its agreements since the incentives to violate the agreement would be extremely high, given the assumed demand for scarce off-network programming. Those who argue that the networks would not have to act collusively, but only in parallel, fail to recognize the significant incentives to enter the syndication business, especially if there is a shortage of product.

The third questionable assumption is that the networks will engage in irrational business practices. That is, they would purchase, at considerable expense, program syndication rights and then choose not to exercise those rights. A primary reason the networks desire to reenter the syndication business, however, is to be able to share in the rewards associated with a successful television series by participating in syndication revenues. For the networks to "sit" on these rights, failing to exploit them, would be acting against their own and their stockholders' best interests. Further, since the networks would rarely be the sole owner of a program, they would open themselves up to lawsuits from partners if they were to act contrary to their partners' (and their own) interests. To argue that the networks would pay for rights they would not use is to ignore the fiscal necessities of the highly competitive television entertainment business.

Because of the highly unlikely event that the networks would have the desire or the ability to withhold programming, it is not even necessary to address claims that independent station viability would be harmed and therefore advertising rates would increase if the networks were permitted to engage in program syndication. It should be noted, however, that even if a convincing showing can be made that independent station strength is related to local market spot advertising rates, linking station health and advertising rates to any particular program or program type is a separate issue.

CONCLUSION

Although producer fears about repeal of the Commission's Financial Interest and Syndication Rule are genuine, they do not appear to be justified. Although some independent producers may find it difficult to remain "independent" (i.e., outside an "umbrella" arrangement with either a major studio or a network), it

is unlikely that the business of producing television programs, especially prime time series, will become any more concentrated. Although it is likely, as was the case before the Rule, that the networks will be able to obtain syndication rights from independent producers, there is no evidence such arrangements will do anything but shift a portion of the syndication business from the studios to the networks. However, if producers would rather work with the studios, there would be nothing preventing them from doing so through an "umbrella" arrangement giving the studios syndication rights.

Producer concerns about "creative control" are understandable but again unsupported. The networks already have significant control over program content and if producers fear network intrusion they will always be able to seek "insulation" by working through the studios as they do now.

Likewise, if individual program distributors fail because of the entry of more efficient competitors, this will not result in significant increases in concentration and, in any event,should not be the concern of an independent regulatory agency. If, on the other hand, business failure is the result of anticompetitive behavior and undue market power, then there are sufficient existing antitrust remedies available to the Department of Justice and private litigants.

Based upon available evidence, the only issue raised that may be more than allocative is the impact of eliminating or modifying the Rule on the availability of programming to independent television stations. If eliminating the Rule resulted in withholding popular off-network syndicated programs from syndication, then questions would have to be raised about network behavior. However, such an outcome is unlikely. And if the networks were able to create an effective cartel, they certainly would find themselves subject to Department of Justice and private antitrust litigant scrutiny and action.

The ability of the networks to withhold programming from the syndication market is based on three seemingly implausible assumptions: (1) networks would be able to control the vast majority of "important" programs in syndication; (2) networks would be able to maintain the cartel and avoid detection and (3) networks would act irrationally and not exploit a valuable property.

Summarizing, the Commission's Financial Interest and Syndication Rule never achieved its intended effect of increasing both the number of producers and the amount of programming available for both network broadcast and syndication. Both program supply and program syndication markets are competitively structured today and were so before the Rule was promulgated. Overall, therefore, the Rule appears to have had little impact on the program market other than skewing market shares in the direction of

producers, and permitting entry by some new firms. Repeal, however, would have the positive effect of promoting competition in program supply by permitting independent producers to work directly with the networks if they so desire. Repeal also would permit increased competition in program distribution by permitting three additional entities (i.e., the networks) to compete.

Perhaps most importantly, to the extent that the Rule is concerned with allocating revenues and profits among firms and industry segments, it is an inappropriate activity of a government agency. In addition, to the extent that protection against anticompetitive behavior and undue market power is required, sufficient remedies rest with the Department of Justice and private antitrust litigants exercising their rights under existing law.

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THE WHITE HOUSE

WASHINGTON

February 14, 1983

MEMORANDUM FOR MEMBERS OF THE CABINET COUNCIL ON COMMERCE AND TRADE

FROM: WENDELL GUNN
Executive Secretary

SUBJECT: Agenda for Meeting of February 16, 1983
8:45 am, Roosevelt Room

IAB did not attend

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THE SECRETARY OF COMMERCE
Washington, D.C. 20230

February 11, 1983

Memorandum for: Members, Cabinet Council on Commerce and Trade

From: MB Malcolm Baldrige
Chairman Pro Tempore

Subject: FCC Syndication and Financial Interest Rule

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program supply market."4/ The report stated that the Rule failed to increase competition in the syndication market because the market was competitively structured prior to its imposition.

Specifically, the Network Inquiry Special Staff concluded: (1) the program supply market for prime time television was not concentrated prior to the Rule 5/; (2) the program supply market is competively structured today 6/; (3) the syndication market was competitive prior to the Rule 7/; (4) the syndication market remains competitive today 8/; (5) the Rule has resulted in inefficient risksharing by prohibiting network participation 9/; and (6) the Rule may have the unintended effect of handicapping the networks' ability to compete with new technologies. 10/

NETWORK ANTITRUST CONSENT DECREES

In 1972, the Department of Justice filed antitrust complaints against the three television networks charging violations of Sections 1 and 2 of the Sherman Act. The suits were dismissed without prejudice on procedural grounds 11/ but refiled in late 1974 12/ charging that: (1) ownership and control of prime time programming was concentrated among the networks; (2) the networks unreasonably restrained competition in the production,

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4/ Federal Communications Commission Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation ("New Television Networks") Vol. I at 510 (1980).

5/ Federal Communications Commission Network Inquiry Special Staff, Background Report, "An Analysis of Television Program Production, Acquisition and Distribution," (hereinafter "Special Staff Analysis") in New Television Networks, Vol. II, 293 at 556.

6/ Id. at 561.

7/ Id. at 532.

8/ Id. at 566.

9/ Id. at 622.

10/ New Television Networks at 518.

11/ United States v. National Broadcasting Co., 65 F.D.R. 415 (C.D. Cal. 1974).

12/ United States v. National Broadcasting Co., Civ. No. 74-3601-RJK (C.D. Cal., 1974); United States v. CBS, Inc., Civ. No. 74-3599-RJK (C.D. Cal., 1974); and United States v. American Broadcasting Companies, Inc., Civ. No. 74-3600-RJK (C.D. Cal., 1974).

distribution, and sale of entertainment programming; (3) program supply to the networks was unreasonably restrained; and (4) the public had been deprived of the benefits of free and open competition in the broadcast of television entertainment programming.

In late 1976, NBC and the Department of Justice filed a stipulation providing for the entry of a consent decree to settle the litigation. A little more than one year later, a modified version of the proposed consent decree was entered by the district court. 13/ Slightly more than two years after that, in mid-1980, first CBS, then ABC followed by entering into similar consent decrees with the Department of Justice. 14/

The consent decrees incorporate the major provisions of the Commission's Syndication and Financial Rule, and thus also restrict network program production and distribution. In addition, the consent decrees provide for further limitations on network program acquisition activities not addressed by the Commission's Rule. Thus, with very detailed provisions, the decrees govern and limit the timing and terms of network-program supplier agreements concerning program production, distribution, options, and exclusivity. For example, the ABC consent decree limits to four years the length of time the network can initially negotiate for exclusivity to keep a program out of daily (stripped) syndication. 15/ Thus, as the Commission noted in its Notice, "in all significant respects, the requirements of the consent decrees are more restrictive than or equivalent to the restrictions of our syndication and financial interest rule." 16/

Although the consent decrees incorporate the major provisions of the Commission's Syndication and Financial Rule, they are neither identical to the Rule nor should they be thought of as such. Although the two sets of limitations on network activities have much in common, they are separable and are not directly affected by the Commission's proceeding.

13/ United States v. National Broadcasting Co., 449 F. Supp. 1127 (C.D. Cal. 1978), aff'd mem., No. 77-3381 (9th Cir. April 12, 1978), cert. denied sub nom, CBS v. U.S. District Court for Central Division of Calif., 48 U.S.L.W. 3186 (1979).

14/ United States v. CBS, Inc., Civ. No. 74-3599-RJK (C.D. Cal. July 31, 1980), reprinted in 45 Fed. Reg. 34,463, 34,466 (1980); United States v. ABC, Inc., Civ. No. 74-3600-RJK (C.D. Cal.) reprinted in 45 Fed. Reg. 58,441 (1980).

15/ United States v. American Broadcasting Companies, Inc., supra, 45 Fed. Reg. at 58,443.

16/ Notice at ¶26.

MAJOR ISSUES

In its Notice, the Commission asked for comments on a number of specific matters most of which can be grouped into four major issues for the purpose of discussion and analysis: (1) Risk/Reward Sharing; (2) Network Ability to Compete with New Technology; (3) Producer versus Network Control; and (4) Program Warehousing. In addition, the Commission inquired about the appropriateness of its involvement in this area. The four major issues can be viewed as falling into two basic categories: the first three address the networks' ability to act as monopsonists (the ability to exercise market power as a buyer) in their relationships with program suppliers, and the fourth addresses the networks' potential to act as monopolists in the distribution of syndicated programming.

Appropriateness of Commission Action

One of the most important issues surrounding the Rule is whether it is appropriate for the Commission to regulate the private contractual relationships between producers and the networks. Those who argue that the Rule is necessary claim that the networks have an unfair advantage in their bargaining with producers. Proponents of repeal, however, argue that the relationship between producers and networks are really quite equal and therefore it is inappropriate for the Commission to regulate these private negotiations.

The Department of Commerce has taken the position that there are several reasons why the Commission should question the appropriateness of the Rule. First, allocative issues such as the redistribution of revenues and profits from the networks to program suppliers should not be a concern of the Commission. Second, and related to this first concern, it is inappropriate for the Commission to be concerned with success or failure of individual firms in a market as long as the overall market remains competitive. Finally, if, as has been alleged, the issue is not one of allocation, but rather protection against anticompetitive conduct as a result of network market power, then antitrust enforcement by the Department of Justice is the appropriate remedy.

A primary intent, and result, of the Rule is redistribution of profits from the networks to the major Hollywood producers. 17/ This, however, is an inappropriate topic for Commission concern.

17/ Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competitiveness and Responsibility in Network Television Broadcasting, Report and Order 23 FCC 2d 382, 399 (1970) (hereinafter "Report and Order"); see also discussion in Special Staff Analysis at 725-31.

It is widely agreed by producers and network representatives alike that the Commission should not be concerned with the division of revenues or profits in a healthy competitive market. Nor should the Commission be concerned with the success or failure of any individual firm as long as the overall market remains competitive. There is an understandable difference of opinion, however, as to what exactly constitutes an allocative issue.

Even if the Special Staff was wrong and the networks could distort the market by exercising market power, the Department of Commerce believes that it is the Antitrust Division of the Department of Justice and not the Commission that should be responsible for enforcing the nation's antitrust laws. Unless a compelling case can be made to the contrary, to the extent that protection against anticompetitive behavior and undue market power is required, sufficient remedies rest with the Department of Justice and private antitrust litigants exercising their rights under existing law. To the extent that the Rule is concerned with allocating revenues and profits among firms and industry segments, it is an inappropriate activity of a government agency.

In its comments to the FCC on the Rule, however, the Department of Justice Antitrust Division states:

> Opponents of the rules have argued that, even if such network collusion is possible, the antitrust laws would effectively forestall it. The antitrust laws, of course can effectively attack overtly anticompetitive actions [citing Unites States v. NAB, 536 F. Supp. 149 (D.D.C. 1982)]. It is unclear, however, how likely detection and effective prosecution would be under the Sherman Act in cases of tacit collusion without explicit agreement. The networks have engaged in many parallel practices, including the number of reruns aired, the number of commercial minutes run on network programs, and the production fees paid for programming. It is difficult to ascertain whether these practices are the result of vigorous competition by the networks or of tacit collusion that has reduced competition. The costs of litigation to determine whether parallel network conduct regarding release of off-network syndicated programming [is unlawful (?)] would be substantial. Thus, the Department is not confident that the antitrust laws can be relied upon as the most effective tool for ensuring against possible anticompetitive network practices in this area. 18/

18/ "Comments of the U.S. Department of Justice in FCC BC Docket No. 82-345 (filed January 26, 1983) at pp. 40-41.

Risk/Reward Sharing

The networks argue that since they assume the primary financial risk for developing new television series they should be permitted to share in any profits at the "backend" (after network first run). They argue that the producers would have no product to sell in syndication if networks had not taken the risk, financed the pilot, chosen the program for prime time broadcast, and kept the program on the air for at least three to five years. The networks go on to argue that if they were permitted to have a financial interest in programming and/or to acquire syndication rights, they would be able to pay producers more than just a license fee at the time of production. In addition, the networks argue that preventing them from having a financial interest, or sharing the risk, works to the disadvantage of new entrants because it keeps them from financing small independent producers who otherwise would have no source of capital with which to produce their project.

The major producers (studios) reject the networks' arguments by pointing out that they, as the supposed beneficiaries of increased "frontend" payments in exchange for sharing "backend" profits, are not interested in increasing "frontend" payments. They state that they would rather have the networks pay less at the outset but be able to keep the syndication rights for themselves. They go on to state that if the networks are allowed to obtain partial financial interest and syndication rights that producers will have no choice but to agree to network demands for such rights since the networks are monopsonists.

In addition, producers claim that the networks now are able to "share in the profits" from a successful program by virtue of the significant advertising revenue generated from selling time during and adjacent to prime time programs. In addition, producers claim that the networks are even able to recoup their investment in pilot programs not developed into series by airing them in the summer and offsetting some of their investment with advertising revenues such programs generate. Because of this revenue, the studios claim that the networks are not taking the bulk of the risk when financing a new series but, rather, are merely end users of a product.

This view ignores the significant investment that each network makes in new programming annually as well as the enormous uncertainty of success in the process. As an example, for the four seasons from 1978-1982, CBS commissioned a total of 805 scripts of which 160 were made into pilots and only 51 became series. Only 12 of these, less than 1.5 percent of the original scripts, were successful enough to be renewed for at least one season. Contrary to the producers' assertions, the networks make a significant investment in programming and take a substantial risk in program development. It is also questionable to assert that the networks

cover all their investment in program development by airing or "burning off" pilots and failed series during the summer. Shortly after Grant Tinker became president of NBC, that network wrote off approximately $38 million in programming that could not be used. Likewise, for 1981, ABC wrote off approximately $29 million in direct program development costs that could not be recouped (e.g., through summer broadcast). It should be noted that these costs reflect gross figures and do not include provisions for overhead or lost opportunities resulting from preemption of other (more popular) programs. To say that the networks do not take significant risks in the program development process is not accurate. To prohibit them from sharing in the potential rewards not only is unfair, but also threatens their future ability to compete effectively with unregulated competitors (e.g., cable and pay networks) for new programming.

Network Ability to Compete with New Technology

The networks claim that they are at a disadvantage competing with new delivery systems such as cable television (HBO is the example often used), MDS, DBS, and STV for program rights. They argue that since these delivery systems can also participate in program production by obtaining a minority financial interest and syndication rights which provide backend profits, they can outbid the networks for product. The networks want the ability to obtain a financial interest, including syndication, in order to "level" the bargaining table. The networks state that they need to "amortize" product over several distribution media in order to pay for increasingly expensive programming. The networks point to theatrical films and some sports as examples of programming for which they can no longer successfully bid against cable and STV. Therefore, they argue that the rule is skewing the development of the new media by giving them an unfair bidding advantage against the networks. Further, the networks point to the drop in network audience share as evidence of their claim that the new media are succeeding in the marketplace.

Those in favor of retaining the rule disagree that the rule prevents the networks from competing with the new media. They point to the FCC's 1981 Declaratory Ruling allowing CBS to acquire nonbroadcast rights to television programs, for the now failed CBS Cable; CBS's proposed MDS venture with Contemporary Communications, Inc. and its recently announced joint venture with HBO and Columbia Pictures to build a movie studio; and, ABC's multiple nonbroadcast projects with Hearst, ESPN, Sony, and Group W Cable.19/ The only activity the networks are restrained from, they point out, is broadcast television program syndication.

19/ Declaratory Ruling on Section 73.658(j)(1)(ii), 87 F.C.C. 2d 30 (1981), aff'd sub nom. Viacom International, Inc. v. FCC, 672 F.2d 1034 (2nd Cir. 1982).

The problems for the networks, however, are not insignificant. Although it has been predicted that, because of growth in the general population and number of households, the networks' audience in terms of households and viewers will remain relatively constant and will not decline along with their shares, it also is predicted that network costs for programming will increase significantly. Without the increases in audiences they have enjoyed over the past thirty years, the networks may find it increasingly difficult to compete successfully for new programming. The networks' inability to share in syndication and other subsidiary rights because of the Rule has therefore become more than just an inconvenience. In order to pay the high prices prime time programming demands, the networks need to be able to share in the non-network revenues generated through exploitation of subsidiary rights. The only alternatives are either to raise advertising rates or purchase less expensive programming. Given the increasingly competitive nature of the advertising business, it is unlikely that the networks would be able to raise their rates sufficiently to cover their increasing program costs. An undesirable alternative would be to increase the number of minutes devoted to advertising each hour. This would likely be counter-productive since advertisers would resist increased "clutter" and viewers would have additional incentive to desert the networks for advertising-free subscription services. Nor is purchasing less expensive programs a viable solution. It is difficult to envision producers being able or willing to provide the kinds of network prime time drama and comedy that comprise the bulk of the networks' schedules for very much less than they now charge. It has been suggested that, in order to cut costs, the networks may have to begin scheduling game shows and other low budget programs in prime time. One potential outcome of Rule retention, therefore, is that the producers objecting to repeal might find themselves without customers for the very programming they argue needs protection. Not only would the networks and producers suffer from such cutbacks, but so too would the independent stations that depend on expensive off-network programming for much of their schedule. The ultimate loser, of course, would be the public.

Producer Versus Network Control

Program producers (both studio and independent) claim that if the networks are permitted to obtain a financial interest in programming and re-enter the syndication business, producers will be at a critical disadvantage in bargaining and negotiating with the networks. First, they claim they would be unable to resist network demands for financial participation and syndication rights. Second, and more important for some, producers fear losing creative control of their programs if the networks regain a financial interest.

Experience does not support these fears. Prior to adoption of the Rule, the networks did not obtain a financial interest in all

programs. While they commonly obtained syndication rights from producers who did not operate their own syndication business, this was not typically the case with programs produced by the major studios or other producers operating their own syndication business. Further, independents not desiring to negotiate directly with the networks could always enter into an "umbrella" agreement with a studio, much as they do today.

Regarding fears about creative control, with or without a financial interest in a program, the networks already have ultimate or final control over the nature of the programs they purchase for broadcast. Indeed, as a licensee (each with five owned and operated stations) with a responsibility to its affiliates, each network properly oversees the content of each program it broadcasts. It is in the mutual interest of networks and program suppliers to have successful programs. Disagreements about how to achieve that commercial success exist today and inevitably are part of the television program development and production process. It would be unfair, however, to characterize the network-producer relationship as an adversarial one in which all producers are in conflict with all three networks. To the contrary, most producer-network relationships are mutually beneficial. Repeal of the Financial Interest and Syndication Rule will not significantly alter these relationships.

The Commission has inquired about the imbalance in bargaining power between producers and the networks. Most producers as well as network representatives agree that while there may be an imbalance in favor of the network in initial negotiations, once a program qualifies as a "hit" (i.e., the network wants to renew it), the advantage shifts to the producer. Indeed, the Network Inquiry Special Staff found, that among the network-producer contracts that they examined, all had been amended for series appearing on the network for more than three years.20/ Therefore, to assert that the relationship between a network and a producer is one-way and imbalanced is to ignore industry practice. If the fear on the part of producers is that they will be forced into unfavorable contracts with the networks, they do not adequately recognize the shift in bargaining power that occurs when a program is successful enough to be renewed.

While the question of program control is an important one for producers, it is not addressed by the Rule in question. The networks today, with the Rule in place, appropriately control the programs they license and broadcast. Repeal of the Rule will not change the fundamental buyer-seller relationship between network and producer in which the networks have the ultimate control of choosing to broadcast or not to broadcast a particular program.

20/ Special Staff Analysis at 463.

Program Warehousing

The most difficult issue raised by proposals to repeal the Rule is whether independent television stations require special protection from potential network "warehousing" of programming. While the three preceding issues appear to be allocative and therefore outside proper government action, this issue potentially involves important competitive issues. However, as discussed below, there is little reason to believe that the potential for warehousing is a real threat and, more importantly, if it were to become a problem, the proper remedy lies more appropriately through antitrust enforcement by the Department of Justice rather than by Commission rule.

Independent television stations fear that if the networks are permitted to obtain syndication rights for network series and re-enter the syndication business, there will be a "conflict of interest" where the networks will control sale and use of programs used to compete with their network affiliate and O & O schedules. The independents claim that the networks would withhold popular programs from syndication in order to limit this competition. This claim goes on to argue that the result would be a lessening of competition in the program syndication business, weaker independent stations, and, therefore, higher overall advertising costs. There is little empirical support, however, for these claims, all of which hinge on the desire and ability of the networks to withhold programming.

Independent distributors also fear network reentry into syndication claiming that if the networks are able to obtain syndication rights at the time of initial negotiations for network first run, independent distributors will not have a chance to bid on such rights. They claim, therefore, that the syndication business would become more concentrated.

This alleged potential for withholding is based upon three questionable assumptions about network activity that, while theoretically possible, do not reflect the reality of sound business practice. First, the withholding argument is premised on the networks' ability to control virtually all off-network programming. In order to accomplish this, the networks would either have to buy syndication rights for all programs they develop or, since this would be prohibitively expensive, buy syndication rights only for those series that become hits. The problem with this assumption is that no one can predict which programs will be successful. One only has to look at the extremely high failure rate of program development to see the difficulty involved. The notion that the networks could control even a majority of syndicated programming is thus totally at odds with the state of the industry. The program syndication market is competitively structured and was so before the networks were restricted by the Rule.

The second questionable assumption underlying the alleged withholding threat is that the three networks will collusively form an undetected cartel to coordinate their syndication activities. Given the highly competitive nature of the television programming and syndication businesses, such coordinated action, or its potential success, is highly improbable. Not only would the networks have to avoid Justice Department detection and enforcement, they would have to avoid detection by potential private litigants. The latter problem would be particularly acute since the television distribution industry is extremely fluid with personnel moving among firms and industry segments many times during a career. Finally, the most difficult task for the cartel would be to enforce its agreements since the incentives to violate the agreement would be extremely high, given the assumed demand for scarce off-network programming. Those who argue that the networks would not have to act collusively, but only in parallel, fail to recognize the significant incentives to enter the syndication business, especially if there is a shortage of product.

The third questionable assumption is that the networks will engage in irrational business practices. That is, they would purchase, at considerable expense, program syndication rights and then choose not to exercise those rights. A primary reason the networks desire to reenter the syndication business, however, is to be able to share in the rewards associated with a successful television series by participating in syndication revenues. For the networks to "sit" on these rights, failing to exploit them, would be acting against their own and their stockholders' best interests. Further, since the networks would rarely be the sole owner of a program, they would open themselves up to lawsuits from partners if they were to act contrary to their partners' (and their own) interests. To argue that the networks would pay for rights they would not use is to ignore the fiscal necessities of the highly competitive television entertainment business.

Because of the highly unlikely event that the networks would have the desire or the ability to withhold programming, it is not even necessary to address claims that independent station viability would be harmed and therefore advertising rates would increase if the networks were permitted to engage in program syndication. It should be noted, however, that even if a convincing showing can be made that independent station strength is related to local market spot advertising rates, linking station health and advertising rates to any particular program or program type is a separate issue.

CONCLUSION

Although producer fears about repeal of the Commission's Financial Interest and Syndication Rule are genuine, they do not appear to be justified. Although some independent producers may find it difficult to remain "independent" (i.e., outside an "umbrella" arrangement with either a major studio or a network), it

is unlikely that the business of producing television programs, especially prime time series, will become any more concentrated. Although it is likely, as was the case before the Rule, that the networks will be able to obtain syndication rights from independent producers, there is no evidence such arrangements will do anything but shift a portion of the syndication business from the studios to the networks. However, if producers would rather work with the studios, there would be nothing preventing them from doing so through an "umbrella" arrangement giving the studios syndication rights.

Producer concerns about "creative control" are understandable but again unsupported. The networks already have significant control over program content and if producers fear network intrusion they will always be able to seek "insulation" by working through the studios as they do now.

Likewise, if individual program distributors fail because of the entry of more efficient competitors, this will not result in significant increases in concentration and, in any event,should not be the concern of an independent regulatory agency. If, on the other hand, business failure is the result of anticompetitive behavior and undue market power, then there are sufficient existing antitrust remedies available to the Department of Justice and private litigants.

Based upon available evidence, the only issue raised that may be more than allocative is the impact of eliminating or modifying the Rule on the availability of programming to independent television stations. If eliminating the Rule resulted in withholding popular off-network syndicated programs from syndication, then questions would have to be raised about network behavior. However, such an outcome is unlikely. And if the networks were able to create an effective cartel, they certainly would find themselves subject to Department of Justice and private antitrust litigant scrutiny and action.

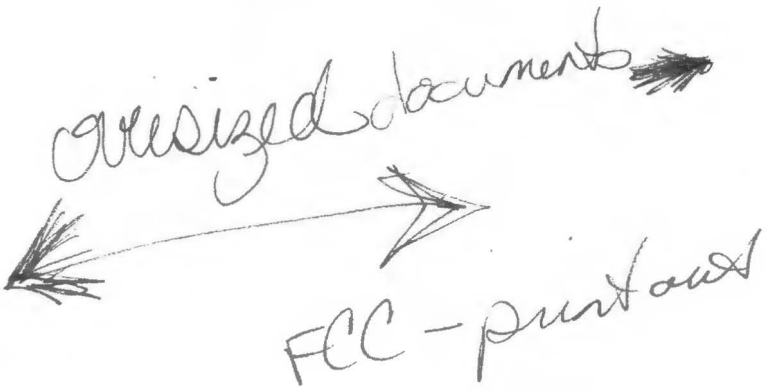
The ability of the networks to withhold programming from the syndication market is based on three seemingly implausible assumptions: (1) networks would be able to control the vast majority of "important" programs in syndication; (2) networks would be able to maintain the cartel and avoid detection; and (3) networks would act irrationally and not exploit a valuable property.

Summarizing, the Commission's Financial Interest and Syndication Rule never achieved its intended effect of increasing both the number of producers and the amount of programming available for both network broadcast and syndication. Both program supply and program syndication markets are competitively structured today and were so before the Rule was promulgated. Overall, therefore, the Rule appears to have had little impact on the program market other than skewing market shares in the direction of

producers, and permitting entry by some new firms. Repeal, however, would havethe positive effect of promoting competition in program supply by permitting independent producers to work directly with the networks if they so desire. Repeal also would permit increased competition in program distribution by permitting three additional entities (i.e., the networks) to compete.

Perhaps most importantly, to the extent that the Rule is concerned with allocating revenues and profits among firms and industry segments, it is an inappropriate activity of a government agency. In addition, to the extent that protection against anticompetitive behavior and undue market power is required, sufficient remedies rest with the Department of Justice and private antitrust litigants exercising their rights under existing law.

THE WHITE HOUSE
WASHINGTON



JAMES W. CICCONI
Office of James A. Baker, III
456-2174

THE WHITE HOUSE
WASHINGTON

Bud:

Fowler feels strongly about this issue and says he sees no action out of Schneiders' office at State, despite peridic reassurances.

I do not know the "other side" of the issue, and got into this only because Fowler asked for an appointment.

Thanks.

JF 4/11

THE WHITE HOUSE

WASHINGTON

April 11, 1983

MEMORANDUM FOR BUD MCFARLANE

FROM: Jim Cicconi
Kenneth Cribb

SUBJECT: INTELSAT

Last Friday, Mark Fowler, chairman of the FCC, met with us to relate his concerns about the impending election for the position of Director General of INTELSAT.

Fowler stressed that the organization is very important to the U.S., and that the position of Director General should, if at all possible, be filled by an American. He stated that most other nations are treating the issue at a high level in their foreign offices, but that the State Department (in his view) has not been as active on the matter as its importance would call for. The vote for Director General will take place in June, and two-thirds is required to be named. Other candidates are from Canada, Algeria, Thailand, and Australia.

The above is forwarded for whatever follow-up you deem appropriate. Attached is an action plan prepared by Fowler.

RECOMMENDED STATE DEPARTMENT ACTIONS
LISTED BY PRIORITY

U.K. - Highest level State/FCO contacts, including emphasis on no U.S. support for Delorme - talking papers

Japan - Highest level State/MFA contacts - if necessary provide talking papers

Germany - High level Embassy follow-ups with MFA per Alper/Steiner conversation - emphasize no U.S. support for Delorme; talking papers

Spain - Highest Embassy/MFA follow-ups, including no U.S. support for Delorme - provide comparison paper and talking paper

- Rest of Group - Embassy contacts in both Colombia and Peru to follow up on Johnson visits - emphasize need for strong INTELSAT to meet LDC needs

Argentina/Chile - High level Embassy follow ups to MFAs - talking papers; if necessary emphasize no U.S. support for Delorme

Brazil - If possible, use Ambassador/MFA conversation to achieve switch, even if only on 2nd ballot; talking paper and emphasis on no U.S. support for Delorme; Portugal - High level Embassy follow-ups at Marconi, Ministry of Communication and MFA - seek possible split from Brazil

Belgium - Strong high level Embassy contact at MFA and follow-up with RTT (Grainson) - talking paper and emphasis on no U.S. support for Delorme

- Netherlands - Embassy follow-up to keep early support expressed to COMSAT and Colino

Switzerland - State to send talking paper and comparison papers to Swaeke for use with ITU administrations; Embassy follow-ups with MFA and PTT with talking papers

- Greece - Embassy follow-up with MFA and other political levels to bolster OTE support for Colino

- Austria - Embassy follow-up with PTT and MFA - talking papers and emphasis on no U.S. Support for Delorme

Nordics - Embassies to follow up with PTTs and MFAs; talking papers and emphasis on no US support for Delorme

Saudi Arabia - Embassy follow-up with Zaidan; seek 2nd ballot switch to Colino - talking/comparison paper

Arab III - Embassy to forward comparison papers requested by Kuwait; seek 2nd ballot switch to Colino

Mexico	-	High level State contact with MFA - follow-up on Televisa contact with President; talking/comparison papers
	-	Ecuador - Embassy follow-up with MFA - where is the promised written confirmation of their commitment?
	-	Bolivia - Embassy contact with MFA and Communications Ministry
Korea	-	Embassy follow up with MFA and Ministry of Communications and urge group decision
	-	Pakistan - Embassy action - none known so far; give comparison paper
	-	Turkey - Embassy follow up to Johnson visit to reinforce positive reading and get group decision.
Asia/ Pacific	-	Embassy contacts in all countries (India, Sri Lanka, Bangladesh, Fiji, New Zealand) - LDC and comparison papers
Africa I	-	Embassy contacts in all countries, especially Zambia - LDC and comparison papers
Carrib- bean	-	?

COMSAT ACTIONS - LISTED BY PRIORITY

U.K.	-	continued phone contacts; contacts during April USG meetings and MS - emphasize no U.S. support for Delorme
Australia	-	discussions with Schmidt/Payne
Argentina-/Chile		follow-up with Entels at MS and by phone in May; talking papers if needed
Brazil/ Portugal	- -	approach Embratel at MS to see about switch to Colino discuss with Marconi at MS
Benelux	-	Discussions with all at MS and with Belgium and Netherlands by phone in May - provide talking papers and emphasize no U.S. support for Delorme
Austria /Greece/ Switzerland	- -	discuss with all at MS and follow-up by phone in May provide Austria and Switzerland with talking papers; emphasize no U.S. support for Delorme
Saudi Arabia	-	Charyk follow-up with Zaidan (no response to telex) at MS if possible - seek 2nd ballot switch - emphasize no U.S. support for Delorme
Arab III	-	Charyk follow-up with Al-Ghunaim (no response to telex) at MS if possible, otherwise by phone - seek 2nd ballot switch
Arab II	-	Alper follow-up with Fanous (no response to telex) at MS if possible, otherwise by phone - seek 2nd ballot switch
Arab I	-	MS discussions with Bairi
Spain/ Colombia/Peru	-	follow-up at MS - perhaps trip to Colombia & Peru
Nordic	-	follow-up at MS - provide talking papers
Central America	-	Charyk follow-up to telex (no response) to assure they will be present at BG and vote for Colino - phone calls in May
ASEAN	-	follow-ups at MS
Africa II	-	follow-ups at MS to ensure 2nd ballot switch to Colino

DG Candidate Comparison

Bairi	Colino
Over 17 years in telecommunications	Over 20 years in telecommunications
Representative to ICSC 1966-73*	Began negotiations of Interim Agreements in 1962 as Chairman of Working Committee which negotiated the Special Agreement. Representative to ICSC 1965-73
Member of ICSC Technical, Financial and Contract Committees, 1967-71	Chairman of ICSC Contracts Committee and Headquarters and Facilities Committee; Member of Planning, Patent and Data Committees, 1969-71.
Delegate to Pleny 1969-70	Delegate to Pleny 1969-70
Drafter of Definitive Arrangements	Drafter of Definitive Arrangements.
Governor on BG since 1973* (Attended 24 meetings from BG-1 thru BG-54)	Governor on BG 1973-79 (Attended 35 meetings from BG-1 to BG-36) Vice Chairman of BG, 1975-76 Chairman of BG 1976-77
Attended international conferences: TELECOM 79 (ITU) Twentieth Century Fund (New York) The Tobin Foundation (D.C.) Telebrasil (Rio de Janeiro) ENST Centennial ASBU (Arab States Broadcastig Union) UNESCO	Presented INTELSAT and satellite-related papers at international conferences: Xth Colloquium on the Law of Outer Space (Belgrade) 3rd Eurospace Conference (Munich) 4th Eurospace Conference (Venice) XIIIth Coloquium on the Law of Outer Space(Constance, Germany) International Conference on Communications IEEE - (Montreal) XVth Colloquium on the Law of Outer Space (Vienna) Conference on International Video Programming Markets (New York)

*CV placed this date at 1971, but documentation shows otherwise.

Bairi	Colino
1977-present - DG of Algerian PTT	1976-79 - VP & General Manager of COMSAT International Operations Division; producing at that time over 25% of INTELSAT utilization; operating 6 INTELSAT earth stations; responsible for $100M annual revenues, 300-400 staff, relations and business arrangements with 100 plus nations, Federal, state, and local governments, and INTELSAT.
1974-76-Director of Procurement, Telecommunications Studies and Planning	1971-76 - Assistant Vice President COMSAT International Systems Division. Growth in COMSAT and INTELSAT activities lead to change in divisional title to Assistant Vice President, U. S. INTELSAT Division. Became first Director of Corporate Planning and Development in 1974, responsible for short-term and strategic planning for growth and diversification and planning and use of computer facilities and operations.
1971-73-Inspector-General for Telecommunications	
1965-71 - Telecommunications Engineer	1967-71 - Director, COMSAT Office in Geneva, responsible for Europe, Mid-East, and Africa. 1962-67 - Negotiated Interim Agreements and Alternate U. S. Representative to ICSC.

Payne	Colino
As Director, Foreign Relations, in 1979, co-ordinated OTC's policies regarding participation in major international fora, including INTELSAT, INMARSAT, ITU & regional organizations.	As Vice-President, & General Manager, International Operations Division, from 1976-79, coordinated COMSAT policy regarding participation in INTELSAT and the North Atlantic Consultative Process. Earlier in Career with FCC, ca 1962-64, developed policy regarding ITU and INTELSAT Interim Agreements as Spokesman on U. S. Delegations. Later, played major role in negotiating the INTELSAT Agreements.
As AGM, International, in 1980, responsible for OTC international participation and coordination with government.	Beginning with position as Director, International Arrangements Division in 1965, and continuing through career at COMSAT as Vice President & General Manager, was directly involved with COMSAT's major role in INTELSAT, and relations, business arrangements, and coordination with foreign, Federal, state, and local governments.
From 1977-79 as Director, Marketing, was responsible for telecommunications product development, operations of international telecommunications service revenues, and related contractual arrangements.	Also while VP & GM from 1976-79, he was responsible for COMSAT Marketing activities, contractual and otherwise, which generated, at that time, over 25% of INTELSAT utilization and over $100M annual revenues for international satellite communications services.
BG Alternate or Governor since 1975 (20 meetings) BG Vice Chairman 1978-79 BG Chairman 1979-80	Governor on BG from 1973-1979 (35 meetings) BG Vice Chairman 1975-76 BG Chairman 1976-77 ICSC Representative 1965-1973
MS & AP Representative	MS & AP Representative
Understands and appreciates Agreement	Published definitive monograph on Agreements
Fluent in English-working knowledge of French	Fluent in English-working knowledge of French, Spanish and Italian.

Sukhanetr	Colino
Experience in satellites began in 1965.	Association with INTELSAT, as spokesman for U.S. delegation negotiating INTELSAT Interim Agreements, began in 1962.
Attended ICSC, Negotiations of Definitive Arrangements, BG (9 meetings), MS & AP.	Attended ICSC, Negotiations of Definitive Arrangements, BG (35 meetings), MS & AP plus held various leadership roles & Chairmanships.
Received letter of appreciation from Richard M. Nixon.	Received letter of appreciation from Richard M. Nixon (as did all members of Pleny) for negotiation of INTELSAT Agreements.
At age 30, Chief of International Relations Division	At age 29, Director, International Arrangements Division
At age 35, Deputy Director General, Post and Telegraph Department	At age 35, Assistant Vice President, COMSAT International Systems Division
At age 40, Director General of PTD	At age 40, Vice President & General Manager, COMSAT International Operations Division
At age 45, Deputy Chairman of the Board of Directors of Communications Authority of Thailand	At age 44, President and CEO of Dynacom Enterprises Ltd.
At PTD was in charge of charges and tariffs, revenues, traffic routing, bilateral and multilateral agreements, earth station implementation and procurement, and telephone system equipment procurement and operations.	While at FCC, 1962-64, worked on policy regarding rates and tariffs, services and facilities, radio-frequency and ITU and international satellite matters, including negotiation of the Interim Agreements. Career at COMSAT included active participation in negotiation and acceptance of all multilateral agreements which form INTELSAT, on the one hand; to direct responsibility for all U. S. Signatory operations and facilities including six U. S. INTELSAT earth stations which were then producing over 25% of INTELSAT utilization and over $100M annually in revenues; and for relations and business arrangements with over 100 countries, plus Federal, state, and local governments, and INTELSAT.

Delorme	Colino
Attended nuemrous MS and 2 BG meetings Chairman of MS-3	Attended numerous MS and AP plus BG and ICSC: Began negotiations of Interim Agreements in 1962 as Chairman of the negotiating working committee. Representative to ICSC 1965-73 Chairman of ICS Contracts and Headquarters and Facilities Committees; Member of Planning, Patent and Data Committees, 1969-71 Governor on BG 1973-79 (Attended 35 meetings from BG-1 to BG-36) Vice Chairman of BG, 1975-76 Chairman of BG 1976-77
Paid special attention to the development of efficient and effective planning, management and administrative systems and processes, to the establishment of constructive personnel policies and practices and to the development and coordination of external relations.	Became first Director of Corporate Planning and Development in 1974, responsible for short-term and strategic planning for growth and diversification; and planning and use of computer facilities and operations. Introduced several administrative and developmental programs as VP & General Manager of International Operations, including in-house and outside university training and development programs for technical and non-technical personnel; minority development and assistance programs; management training and implementation of programs for management by objectives/ results; reorganization of Division to reflect clearer lines of authority/ responsibility; five year forward business planning action programs and projects; project management for earth station projects including the first U. S. bid to provide TTC&M services to INTELSAT under contract (following successful competition with other Signatories); and tighter, more demanding, budgetary planning procedures and monitoring systems.
Involved in planning and negotiation of world's first geostationary domestic satellite system	Involved in planning and negotiation of world's first geostationary satellite system, international or domestic.
Bilingual - French and English	Fluent in English - working knowledge of French, Spanish, Italian

Delorme	Colino
Spearheaded improvements in CTO operational and administrative arrangements to enhance organizational efficiency.	As VP & General Manager of COMSAT's International Operations Division, was directly responsible for all U. S. Signatory systems and operations by providing international satellite services, and operating all U. S. INTELSAT earth stations and other telecommunications facilities which at the time produced over 25% of INTELSAT utilization.

U. S. POSITIONS ON INTELSAT'S FUTURE AND THE ADVANTAGES OF THE U.S. CANDIDATE FOR DIRECTOR GENERAL

- The primary challenge facing INTELSAT in the coming years is to continue to provide the highest quality and most reliable international telecommunicatisons services through the global network, with continuing expansion of services and coverage, to better serve the requirements of its owners and users. To meet this complex technical, operational, economic and policy challenge INTELSAT requires highly efficient, consolidated Executive Organ management.

- Mr. Colino is clearly the only candidate who is fully qualified to meet this challenge, as his experience and skills will enable him to assume the position of Director General and immediately take control of the Executive Organ and work effectively with the Board of Governors. He will require no "on-the-job training", as his participation in the development of INTELSAT gives him a clear understanding of the organization and the many elements balanced within it, and his general experience has given him strong management and operational skills, and knowledge of the changing tselecommunications industry.

- INTELSAT is now a mature, operating telecommunications organization. While it still faces issues of a political nature which must be addressed by the Assembly of Parties, and sometimes the Meeting of Signatories, the Board of Governors can and must now function on technical and operational grounds to ensure continued effective management of the global communications satellite system. Neither the Board of Governors nor the Executive Organ can afford to be controlled by political pressures; if they are, INTELSAT will fail to achieve its functional goals.

- The U. S., believing as it does in the functional importance of the Director General, has no intention of attempting to control an American Director General, just as it would not expect any other government to control its citizens on the Executive Organ staff. The Director General and his staff are, in effect, international civil servants, serving the Board of Governors, and this distinction must remain. Other candidates have, however, indicated a political nature to their candidacies, and implied that INTELSAT is primarily a political, not a business, organization. Such views appear to indicate that these candidates, unlike Mr. Colino, might be susceptible to political influences in addition or even in preference to operational motivations.

- For all of these reasons the U.S. is firmly convinced that Mr. Colino is the only candidate capable of meeting the challenges facing INTELSAT. Other candidates may have their own particular strengths, but these are not in the areas in which INTELSAT needs strength if it is to continue to grow and compete in the dynamic telecommunications business. The U.S. thus cannot see itself supporting any of the other candidates. While this U.S. commitment to achieving the best leadership for INTELSAT might, if not supported by enough other Signatories, have the unfortunate effect of leading to a stalemate in June, the U.S. sees no other choice without seriously compromising INTELSAT's future.

SPECIFIC TALKING POINTS

- Regional Systems - The United States has, from the beginning, been a proponent of the INTELSAT Organization and has lent broad support to the growth and success of the global satellite system, to the point where approximately two-thirds of the world's transoceanic communications are now carried via INTELSAT satellites. This support will continue. At the same time, the INTELSAT Agreements recognize that its members may decide to rely on space segment facilities separate from INTELSAT to meet their requirements, and in recent years a number of administrations have chosen to do so. The United States is among those administrations having recently coordinated with the INTELSAT Assembly of Parties the use of certain domestic satellites for service to neighboring countries. In the view of the United States, INTELSAT should continue to play a central role in meeting the international communications satellite requirements of its members, though it is clear that governments may also choose to take advantage of the economic and technical efficiencies which can exist in the use of other satellite facilities. Such use need not, however, represent a lessening of support for the INTELSAT global system.

- INTELSAT Procurement Policy - The evolution OF INTELSAT"S procurement policy, aimed at encouraging, in the best interests of INTELSAT, worldwide competition, seems clearly to have achieved its goal, including in the supply of space segment facilities. The growth in international participation in the supply of the space segment, from 1.6 percent of the INTELSAT II contract to 25 percent of the INTELSAT VI contract, is a fair indication of how the procurement policy has generated increased competition over time. The United States would always be prepared to consider ways to promote greater worldwide competition in INTELSAT consistent with Article XIII of the Agreements.

LDC Talking Paper

COMSAT, as the U.S. Signatory, to INTELSAT, together with the U.S. Party, is committed to ensuring the continuation of a strong INTELSAT, one which serves the needs and meets the objectives of small as well as large users. A major element in such an organization is, of course, efficient management and operations, and the U.S. has consistently worked within the various INTELSAT organs to seek actions which best ensure efficient and non-discriminatory system operations and planning, actions which are to the advantage of all INTELSAT members, regardless of size.

I would hope that, in considering the selection of the next Director General, your Signatory and Party will focus on this relationship between strong, efficient management and protection of the interests of small as well as large system users. In this connection, it is important to note that of the candidates for Director General, the U.S. candidate, Mr. Richard R. Colino, brings to the position the most extensive operational and managerial background. It is, in fact, his combination of experience in these areas with his understanding of the workings of the INTELSAT organization which make Mr. Colino the strongest candidate, and the one who can best ensure that INTELSAT continues to operate in a manner which will ensure that all its members receive the full benefits of participation in the global system.

Mr. Delorme Discusses his Candidacy as INTELSAT Director General

"I've thought about this for a long time, for more than just a few years."

Jean-Claude Delorme is Canada's candidate and one of a total of five candidates for the position of Director General of INTELSAT.

The Director General is the highest management authority within the Organization and the primary point of contact for Signatories and users of the system. As the chief executive, he is the Organization's official spokesman in contacts with other international organizations. He assists the Board in determining the basic policies of the Organization and the planning of the system, in addition to ensuring the Board has the support it requires to implement INTELSAT policies.

The staff of INTELSAT consists of a multidisciplinary, multi-national complement of some 600 employees. The body's annual revenues and operating expenses are expected to rise from the currently projected levels of US$312 million and US$68 million in 1982 to about US$600 million and US$120 million respectively by the end of 1986. INTELSAT is highly capital intensive and in the five-year period 1982-1986, investment in major programs is projected to be approximately US$2 billion.

"The position represents a considerable challenge."

In the following interview, Mr. Delorme discusses both the position of Director General and why he decided to become a candidate.

You are a candidate, one of five, for the position of Director General of INTELSAT in Washington, D.C. When and why did you decide to undertake the arduous task of getting elected?

I've thought about this for a long time, for more than just a few years. I seriously considered becoming a candidate when the position of INTELSAT Director General was first opened in 1976. But for personal reasons, I decided against it at that time.

The position represents a considerable challenge. INTELSAT is an intergovernmental organization which operates on business principles and therefore must constantly function in such a way as to maintain a balance between priorities of a governmental nature, and the sometimes more tangible priorities of a business. In other words, the shareholders are not only the governments, but they are also sovereign. They have national

"The challenge for me is to reconcile the individual priorities of member countries with the more global priorities of INTELSAT."

political priorities which, while perfectly legitimate, may not be compatible with INTELSAT's own objectives. Therefore, if INTELSAT is to attain its original goal, arrangements must be worked out between the various members of the organization to reconcile their priorities with INTELSAT's objectives. This will be a major challenge for the Director General in coming years, especially since a number of extremely important changes will be taking place in the world of telecommunications.

The challenge facing Director General Santiago Astrain has been to set up INTELSAT as a strong administrative unit. What is the nature of the responsibilities of the Director General of INTELSAT in the new six-year term?

Mr. Astrain was the first person to hold this position and he had to establish the organization on a solid and independent footing. The responsibilities originally entrusted to Comsat, the manager of INTELSAT, were subsequently taken over by INTELSAT. I think Mr. Astrain did a tremendous job since,

"Let's face it! This is basically an election campaign."

without a doubt, INTELSAT has performed well and has been a success ever since it was founded.

My first aim therefore will be to maintain the quality and profitability of the INTELSAT organization in a changing environment, where technological developments will lead to more powerful satellites, where the competition will be more intense, and where some countries may decide to set up regional systems. INTELSAT is facing increased competition, which, it should be remembered, is the result of decisions made by INTELSAT's own members.

Getting back to the beginning of our discussion, the challenge is to reconcile the individual priorities of member countries with the more global priorities of INTELSAT. Some-

"Technical, operational and even political considerations all have a degree of influence on each country's decision."

times, this will be possible; at other times, more difficult. However, it should be possible to achieve, because I think all member countries have the survival of INTELSAT at heart.

There are other extremely difficult problems to be resolved, such as the expected congestion of the geostationary orbit. I think there is a need to integrate existing systems, so as to make the most efficient and economic use possible of this orbit, and to ensure INTELSAT's future requirements are properly met. The limited frequency spectrum is another topic currently being discussed in international forums. In this respect, INTELSAT must contribute to the search for techniques making possible the optimum use of the frequency spectrum. These are some of the challenges that INTELSAT has to meet and which, I am sure, it will be able to meet. I think the Director General has a very

"I was encouraged by the representatives of certain countries to become a candidate."

important role to play in this regard and this is the kind of challenge that appeals to me.

What are the politics of getting elected given the proportional vote accorded each member of the 26-person Board of Governors?

Let's face it: this is basically an election campaign. The Government of Canada has nominated its candidate. I am that person. But there are also four other countries involved: the United States, Algeria, Thailand and Australia are each nominating a candidate. The candidates from these countries not only have extensive experience in telecommunications but also have the backing of their respective governments, which obviously would like to see them win. Each government will therefore campaign for its own candidate.

Personal qualifications are important, but of course technical, operational and even political considerations are

also involved. These latter aspects all have a degree of influence on each country's decision. In my case, I know that the Canadian government is making every effort to back me and to enlist the support of other countries for my candidacy. The other goverments are doing the same. The process goes like this: the External Affairs Department, in close cooperation with the Department of Communications and

Teleglobe Canada, has drawn up plans for an election campaign which includes formal representations to the member countries of INTELSAT through diplomatic channels. Once this has been done, we will have a better idea of the kind of support my candidacy is likely to receive. Insofar as my duties as President of

"It's because I am confident about my chances that I am a candidate."

Teleglobe Canada allow, I will also be visiting a certain number of administrations to discuss my candidacy and obtain their support. The election by the Board of Governors will take place in June, but it must be confirmed in October by the member countries of INTELSAT.

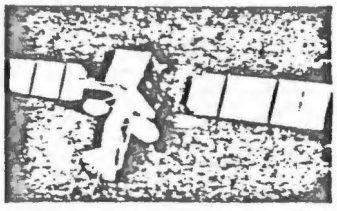
The American candidate is obviously backed by a very strong government, all the more so since the American Signatory holds a 24 percent share of the total vote. The vote will be weighted. In other words, each Signatory represented on the Board has a vote which is proportional to its investment in INTELSAT. The American candidate therefore has a definite advantage to start with, since the Canadian Signatory only holds 2.4 percent of the voting shares. On the other hand, that still leaves around 75 percent of the votes to be accounted for. In addition, I was encouraged by the representatives of certain countries to become a candidate . Since then, I have had the chance to meet with representatives from many foreign administrations and their reactions have been very favorable. However, I am not about to say that the election is a foregone conclusion. On the contrary: no effort can be spared because political

"If I am not elected, I will continue working at Teleglobe."

considerations are very difficult to evaluate. But of course I wouldn't be a candidate if I didn't think I could win. It's because I am confident about my chances that I am a candidate.

What about your familiy? If you are elected would you all move to Washington?
Of course, if I win, I will be moving to Washington with my family. My daughters are fairly well along in their studies and I think it would be quite an experience for them to go to school in Washington, a city with a lot to offer in terms of education, culture, the arts and social activities. We really look forward to the possibility of living in Washington, which does not mean we are not happy here. Quite the opposite. I should also add, in view of some comments I have received from Teleglobe employees concerning my candidacy, that there was nothing negative in my decision. In fact, if I am not elected, I will be more than happy to remain at Teleglobe and continue with what I have been doing.

Teleglobe's new parent company, the Canada Development Investment Corporation, and the news of your candidacy for INTELSAT are two recent events at Teleglobe. Are they related?
No, it was pure coincidence. I had to make a decision concerning INTELSAT at about the same time as the CDIC



was set up. Therefore, I did not make my decision after the government decided to create the CDIC. In fact, when the CDIC was created, I had more or less made up my mind to seek the INTELSAT position. That was at the end of November. But I was not in a position to announce my candidacy at that time. The creation of the CDIC even made me hesitate, because I saw in it an opportunity for Teleglobe to make a new start. After weighing the matter carefully, I decided to stick with my original plan to move towards INTELSAT. But once again, if I am not elected, I will continue working at Teleglobe. And it would not be a case of "coming back" to Teleglobe, since I would never have left it in the first place.

If elected, what will be for you the major transitional challenge from your responsibilities at Teleglobe to those at INTELSAT?
Being Director General of INTELSAT is quite a demanding job. I won't have any trouble keeping busy. I will be moving from one extremely demanding job to another. On the other hand, I will be dealing with basically the same people, and the field of endeavour is much the same.

In philosophical terms, INTELSAT is a prime example of what can be accomplished when the world's nations cooperate to achieve a common practical objective. Have you any comment?
What you say is very true. While a lot of organizations are paralysed by ideological or political conflicts, INTELSAT continues to function effectively, probably because the organization has a very specific purpose and all countries recognize the

"INTELSAT represents a large number of nations and each has something to gain."

need to work together to set up a common world-wide telecommunications system. This is obviously an objective that must be retained while ensuring the organization's profitability.

However, as I said before, there are some very complex problems on the horizon, because there is no such thing as a perfect world. These problems are not for the most part due to political factors. They are mostly the result of differing priorities, such as the industrial policies of certain countries. For the most part these problems stem from the different priorities and different industrial policies of the various countries. It is clear that INTELSAT cannot meet all satellite communication needs, and nor should it be expected to. Nevertheless, it is up to INTELSAT to propose effective ways of responding to the needs of member countries, in order to obtain maximum benefit from their participation in groups and thereby provide their respective populations with efficient telecommunications services. I believe the national objectives of member countries must be reconciled with the objectives they themselves have assigned to INTELSAT, insofar as the global network is able to meet the needs of the various countries.

INTELSAT represents a large number of the world's industrialized and developing nations. Each has something to gain by being a member

and each can benefit from the pooling of individual resources. INTELSAT is an example of international cooperation to achieve very concrete objectives in a business environment.

The letter to all Signatories asking for their nominations states: "...candidates should have a number of years of executive management experience in the field of telecommunications, preferably in an operating environment, and possess a demonstrable knowledge of international telecommunications issues."

Mr. Delorme's background in relation to the above requirements is as President and Chief Executive Officer of Teleglobe Canada since 1971, and Vice-President, Administration as well as Secretary and General Counsel of Telesat Canada from 1969 to 1971. Internationally, he received wide exposure in a number of international forums including the Commonwealth Telecommunications Council (CTC) where he served as Chairman from 1973 to 1980. States Mr. Seguin, Vice-President, International Affairs, and Teleglobe's representative on INTELSAT's Board of Governors: "It is for his abilities to bring about consensus on controversial issues, as well as his proven track record as the head of a successful international operating agency that INTELSAT members will sit up and take note."

The current Director General, Santiago Astrain of Chile, will step down on December 30, 1983. The incumbent will take up his new position on December 31, 1983.

Interview by
John Fleming

THE WHITE HOUSE
WASHINGTON

March 25, 1983

TO: DAVE GERGEN

Mark Fowler raised the attached points in a meeting with Baker and myself.

No response is necessary, but I thought you or your staff might want to take a look at this.

Thanks.

Jim Cicconi

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

March 7, 1983

OFFICE OF
THE CHAIRMAN

Honorable James A. Baker, III
Chief of Staff and Assistant
to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Jim:

Several economic indicators bespeak the emergence of a rebounding and healthy economy for the nation during the next twelve to twenty-four months. I think, therefore, that the time is opportune for the President and his spokesmen to restore and to buttress the credibility of his presidency by forthrightly predicting this economic comeback months in advance of its actual appearance. Accordingly, I have attached for your consideration a catalog of talking points for the White House that might be employed in this endeavor.

I believe that such a program of public education is indispensable to ensuring that the President obtains full credit for the success of his economic philosophy and complimentary legislative and administrative programs, and to prevent the President's adversaries from claiming the economic recovery is attributable to their ill-conceived attempts at bloating the budget with costly and ineffectual public works job. Moreover, I believe that unmuted economic optimism voiced by the President at this time will create a climate of self-fulfilling prophecy within the business world and accelerate plans for business expansion and consumer expenditures to the benefit of the nation's prosperity.

Sincerely,

Mark S. Fowler
Chairman

Enclosure

The Success of President Reagan's Economic Program

I. The deregulation of crude oil prices. In January 1981, the President removed price controls on crude oil that had been inherited from the prior Administration. This action encouraged the exploration and production of new oil and the conservation of energy that has toppled the OPEC Cartel, has yielded gasoline and heating oil prices well below one dollar per gallon, and has injected more than $50 billion into the domestic economy because of less dollars exported to pay for imported oil. The deregulation has further made the Persian Gulf of less strategic importance to the United States and thus lessened the risks of war and the need for costly United States military capability in the area. In 1978, Jimmy Carter declared that any Soviet movement into the Persian Gulf would be a cause for war, a reckless action attributable to his own misconceived regulation of oil that produced gas lines, plummeting reserves, and increased dependency on foreign oil. Reagan's successful oil program is astonishing in view of the approximately 5 million barrels of oil per day that has been removed from world oil markets because of the Iran-Iraqi war.

II. Deregulation of financial services. The President has obtained legislation to remove artificial controls on financial institutions. The result has been a bonanza for the saver, including the elderly, who are reaping the benefits of increased interest payments derived from new competitive forces within the financial markets. Interest earned by the elderly and others is at an historic peak.

III. Providing incentives to save. Through lowering taxes on interest income and increasing the real return on savings, the President has assembled a pool of funds for business investment and consequent increased employment. Moreover, increased savings reduces the type of bloated consumer demand that is a catalyst for inflation.

IV. Cutting taxes on individuals and small businesses. Real personal income is growing for the first time in many years because of the President's tax cutting measures and stimulants to productivity. Moreover, increases in real personal income leads to greater consumer demand and the generation of jobs to fulfill that demand.

V. Record high stock market values. The Dow Jones Industrial Average has reached record high levels because of the confidence in the President's economic program. Stock market prices are especially important to the working man and retired worker whose pensions are critically dependent on the investment returns of pension funds. Furthermore, high stock prices enable business to raise the capital necessary for new investment and new jobs.

VI. Precipitous interest rate declines. The President's economic program has reduced short and long term interest rates to the lowest levels in many years. Treasury bonds with 30 year maturities now yield only 10.60%, and 91-day T-bills auction at less than 8%. The President's programs

have given rebirth to a long-term bond market for municipalities and corporations, many of which would have been insolvent if the bond market had continued the moribund existence caused by the Carter Administration. Mortgage rate reductions to 12% have placed home ownership within reach of millions, and short term interest rate decreases have established the foundation for revitalizing the auto industry by making credit purchases available at 11%, a rate affordable by millions of consumers.

VII. A strong Dollar. The President has restored international confidence and strength in the dollar. A strong dollar is indispensable to flourishing international trade, of vital importance to the millions of workers involved in export industries. A strong dollar also provides an inflationary check on domestic prices by reducing the cost of imports.

VIII. Tumbling inflation. The President has produced a precipitous decline in inflation to less than 4% that is the envy of the international community. Low inflation is especially beneficial to the elderly who generally rely on fixed incomes. Low inflation also stimulates investment and jobs by reducing business uncertainty. The President has resisted partisan calls for quotas or other protectionist measures that would reignite inflation and jeopardize the jobs of millions of U.S. workers involved in the distribution and sales of imported goods, and

further resisted misguided regulation of natural gas which would usher in an era of rationing and plummeting supplies and reserves.

The President's steadfast economic program has restored business confidence that is the midwife for additional investments and jobs. The importance of business confidence in the President is dramatically underscored by comparing the situation abroad. In West Germany, countless business contracts have recently been concluded which provide for nullification in the event that the Social Democrats, who promise bloated government spending, win the March 6 parliamentary elections over the Christian Democrats, whose economic philosophy echoes that of the President. Moreover, capital in France, Canada, the Netherlands, and several other countries have been invested in the United States by the billions because the President has created such a sound economic climate. The investment capital translates into jobs, greater productivity, lower interest rates, and lower inflation.

THE WHITE HOUSE

WASHINGTON

March 7, 1983

MEMORANDUM FOR HELENE VON DAMM

FROM: Jim Cicconi

SUBJECT: David Markey

JAB asked that I forward to you the attached concerning David Markey.

The subject of Markey's candidacy for the Commerce job was raised by Mark Fowler during a meeting with JAB today. Needless to say, Fowler is very high on Markey.

Assistant Secretary of Commerce for
Communications and Information

1. Principal office for counsel and advice to the President for telecommunications issues.

2. Responsible for overseeing spectrum allocation among Federal agencies.

3. Responsible for coordinating preparation for international meetings.

4. Responsible for providing research in policy and technical matters involving telecommunications for the Executive Branch of Government.

RESUME

David John Markey
4743 Massachusetts Avenue, N.W.
Washington, D.C. 20016
(202) 244-6489

Business Address: and phone

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C.
(202) 632-6600

Education

1963-1967 J.D., University of Maryland School of Law (Member of Maryland Bar, 1967)

1959-1963 B.S., Western Maryland College

Employment

January 1983 to present

Legal Assistant to Chairman of Federal Communications Commission. Responsibilities:

- Provide assistance, advice and counsel on matters coming before the Commission for decision.
- Provide legal analysis of specific Telecommunications issues
- Provide direct communication between Chairman's office and Congress on Telecommunications matters.
- Review adjudicatory decisions and recommend final disposition.
- Maintain contacts with public groups, industries, Associations and others affected by Commission policies and rulemakings.
- Oversee implementation of Management by Objectives program for several Commission Bureaus.

February 1971 to January 1983

Chief of Staff and Legislative Director -- Senator Frank Murkowski of Alaska. Responsibilities:

- Chief Administrative Officer -- provided overall management of staff. (35-40 people)

- Provided direction for legislative staff -- reviewed their work daily and oversaw all phases of legislative operation.
- Provided political and policy advice to Senator on daily basis.
- Maintained constant contact and supervision over 5 offices in state.
- Met frequently with those wishing to see Senator on legislative or constituent matters.
- Traveled extensively through the state on Senator's behalf which included making speaking appearances.

June 1974
to February 1981

Vice President, Congressional Relations, National Association of Broadcasters. Responsibilities:

- Began as Legislative Counsel in 1974 and advanced to V.P. Congressional Relations in 1980.
- Worked closely with Congressional Committees, Government agencies and other industries in representing broadcasters.
- Worked to increase industry activity and contacts with Congress and F.C.C.
- Drafted legislative proposals and briefing materials necessary to advocate broadcast positions.
- Worked closely with NAB Executive Committee and Board to develop and implement industry-wide policy.
- Traveled extensively throughout the country to inform membership of Government initiatives and NAB legislative activities.
- Was actively involved in working on:
  -- Copyright Revision Legislation
  -- License Renewal Legislation
  -- FTC Rulemaking Amendments
  -- Rewrite of Communications Act
  -- Performers Royalty Legislation

January 1969
to June 1974

Administrative Assistant, Senator J. Glenn Beall, Jr. of Maryland. Responsibilities:

- Began with Senator Beall in the House in 1969 in same capacity.
- Moved to Senate as Senior Staff person after working in 1970 campaign.
- Provided overall management of staff of approximately 40 people including two state offices.

- Provided policy and political advice on a daily basis.
- Maintained continual contacts with state groups, organizations and industries.
- Drafted most of Senator's speeches and handled much of his correspondence.
- Worked with Commerce Committee -- most particularly the Sub-committee on Communications.

January 1967 to January 1969

Legislative Officer, Staff of Governor Spiro T. Agnew. Responsibilities:

- Maintained constant contact with Maryland legislature -- monitored all General Assembly activities.
- Worked closely with state Departments to coordinate Governor's policy and department legislative proposals.
- Appeared before Legislative Committees to promote legislative proposals of the Governor.
- Provided legal research on number of policy matters.
- Assumed number of other duties from mid-year 1968 when Governor was candidate for Vice President, in absence of those campaigning.

August 1965 to 1967 (while still in law school)

Law Clerk, Honorable Stewart Day, Chief Judge, Third Judicial Circuit of Maryland (Harford County-Baltimore County, Maryland). Drafted opinions, did legal research and assisted in Court.

January 1965 to August 1965 (while in law school)

Law Clerk, Judge Edward S. Northrup, Chief Judge, U.S. District Court for the District of Maryland. Provided legal research, assisted in the Court room, and drafted opinions in cases involving Federal habeas corpus pleas.

Martial Status:

Married -- Patricia E. Markey, Consultant, United Distribution Companies (Consortium of gas suppliers/distributors), Michigan Consolidated Gas Company

Military Service:

U.S. Army, six months active duty. Four and a half years active reserve.

References:

Upon request.