

**47 CFR Part 73**

[MM Docket No. 93-203, RM-8245, RM-8340; MM Docket No. 93-206, RM-8284; MM Docket No. 93-213, RM-8351; MM Docket 93-256, RM-8326]

**Radio Broadcasting Services; Isleboro and Winter Harbor, ME, Hermantown, MN, Balsam Lake, WI, Taylorville, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal of.

**SUMMARY:** The Commission grants the requests of Lakeside Broadcasting, Inc. and Christopher DiPaola to withdraw their petitions for reconsideration and motions for stay of the *Order* in the above-listed proceedings which announced a thirty-day application filing window opening on January 6, 1995, and closing on February 6, 1995. See 59 FR 61327, November 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93-203, et al., adopted March 24, 1995, and released April 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Douglas W. Webbink,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

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**47 CFR Part 73**

[MM Docket No. 95-39; FCC 95-144]

**Broadcast Services; Financial Interest and Syndication Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rule Making is needed to initiate the planned review of the FCC's financial interest and syndication rules prior to their

scheduled expiration date on November 10, 1995. The burden of proof in this proceeding is on those parties arguing for continuation of the rules; if these parties fail to carry this burden, the rules will be allowed to expire. The Commission also seeks comment on whether, in the event these parties do not meet their burden of proof, it should accelerate the expiration date of the rules.

**DATES:** Comments are due by May 30, 1995, and reply comments are due by June 14, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Charles Logan, (202) 776-1653.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 95-39, FCC 95-144, adopted and released on April 5, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

**Synopsis of Notice of Proposed Rule Making**

1. The Commission's financial interest and syndication ("fin/syn") rules, originally adopted in 1970, placed significant restrictions on the ability of the established networks (ABC, CBS, and NBC) to own television programming and engage in the practice of syndication. In the Second Report and Order in MM Docket No. 90-162, 58 FR 28927 (May 18, 1993) ("Second R&O"), recon. granted in part, Memorandum Opinion and Order, 58 FR 65132 (Dec. 13, 1993), the Commission eliminated certain aspects of the fin/syn rules immediately, including restrictions on network acquisition of financial interests and passive syndication rights in network programming. The Commission also established a timetable for the expiration of the remaining rules, which include restrictions on network involvement in the active syndication and first-run markets, as well as anti-warehousing safeguards. Under this timetable, these remaining rules are now set to expire on November 10, 1995. The Commission's decision in the Second R&O was upheld on appeal by the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit").

*Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

2. The Commission also determined in the Second R&O that, prior to the scheduled expiration of the remaining fin/syn rules, it would conduct a review of network activities in the financial interest and syndication areas, and that this review would be initiated no later than six months prior to the rules' scheduled expiration date, *i.e.*, no later than May 10, 1995. This Notice of Proposed Rule Making ("NPRM") initiates this planned review. It provides an opportunity for comment on the accuracy of the Commission's conclusion in the Second R&O that the remaining fin/syn restrictions should be eliminated. The NPRM states that comments submitted by parties who oppose the scheduled expiration of these restrictions will need to prove that, based on the current status of the program production and distribution markets and the activities of the networks since 1993, the Commission should continue regulation in this area. Parties arguing for retention of fin/syn restrictions should support their positions with empirical data and economic analysis.

3. The Commission lists the following factors as being relevant to its review of the rules: (1) The extent to which a network-owned program is syndicated primarily to that network's affiliates; (2) patterns that reveal daily in the introduction of network programs (in which the networks had financial interests or syndication rights) into the syndication market; (3) the percentage of network programming in which a network has obtained a financial interest or syndication right; (4) the relative change in the number of independent producers creating and selling television shows to the networks; (5) each network's share of the first-run syndicated programming domestic market; (6) concentration of ownership in the program production industry; (7) audience shares of first-run syndicated programming carried by non-network affiliated stations during prime time; (8) the overall business practices of emerging networks, such as Fox, in the network television and syndication business; (9) network negotiating patterns, particularly the manner in which networks obtain financial interests and syndication rights and the extent to which successful negotiations over back-end rights influence network buying decisions; (10) network syndication practices, to the extent they are permitted; (11) the relationship and business arrangements between networks and third-party syndicators of off-network programming; (12) mergers

or acquisitions involving networks, studios, cable systems and other program providers since the Commission's 1993 fin/syn decision took effect; (13) the growth of additional networks, including the development of Fox and its position *vis-a-vis* the major three networks; and (14) the growth in the number and types of alternative outlets for sale of programming (e.g., the development of the Direct Broadcast Satellite service; cable penetration; wireless cable development). In addition to examining information submitted regarding the above factors, the Commission states that it will also take notice of the record developed in its pending proceeding regarding the Prime Time Access Rule to the extent it is relevant to its review of the fin/syn rules.

4. The NPRM provides that the burden in this proceeding will be on fin/syn proponents to demonstrate, as stated by the Seventh Circuit, "an excellent, a compelling reason" why the restrictions should be continued. *Capital Cities/ABC, Inc.*, 29 F.3d at 316. As the Commission stated in the Second R&O, it is prepared to presume that complete removal of all remaining restrictions will be appropriate, and is therefore placing the burden of proof on those that urge retaining fin/syn restrictions. If proponents of retaining the rules fail to demonstrate to the Commission that the rules should be left in place, or if the Commission does not take affirmative action to the contrary, the rules will automatically expire.

5. The Commission also seeks comment on whether, in the event parties arguing for the continuation of the fin/syn rules fail to carry their burden of proof, it should amend its rules to allow the remaining rules to expire before the presently scheduled expiration date of November 10, 1995. The Commission further seeks comment on whether doing so would unduly disrupt any business arrangements or practices that have been established in reliance on the presently scheduled expiration date.

#### Administrative Matters

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 30, 1995, and reply comments on or before June 14, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments and supporting comments. If parties want

each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. This is a non-restricted notice and comment rulemaking proceeding. Accordingly, *ex parte* presentations will be permitted, except during the Sunshine Agenda period, provided they are disclosed as set forth in the Commission's Rules. See 47 CFR 1.1202, 1.1203, 1.1206(a).

#### Initial Regulatory Flexibility Act Statement

8. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA")—set forth in Appendix A attached to the full text of the NPRM and set forth in paragraphs 10–15 below—of the expected impact on small entities of the proposal suggested in the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

9. Reason for Action and Objectives: This NPRM is initiated to conduct a review of the Commission's financial interest and syndication ("fin/syn") rules as part of the timetable the Commission has previously established in scheduling the elimination of the rules. It also seeks comment on whether to accelerate the scheduled expiration date of the fin/syn rules in the event parties opposed to their elimination fail to persuade the Commission that the rules should be continued.

10. Legal Basis: Authority for the action proposed in this proceeding is contained in Section 4(i), 4(j), 301, 303(i), 303(r), 313, and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313, and 314.

11. Reporting, Record Keeping, and Other Compliance Requirements: None.

12. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

13. Description, Potential Impact and Number of Small Entities Affected: The entities that could potentially be affected by this proceeding include television program producers and syndicators, television networks and their affiliate stations, and non-network television stations. It is anticipated that any rule changes arising out of this proceeding would have a minimal impact on the small entities that could be affected.

14. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: None.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.  
Federal Communications Commission.  
**William F. Caton,**  
*Acting Secretary.*  
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#### 47 CFR Part 73

[MM Docket Nos. 94–150, 92–51, 87–154; FCC 95–139]

#### Broadcast Services; Television and Radio Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of motion to accelerate comment period.

SUMMARY: The Commission denies a Motion to Establish an Accelerated Procedural Schedule for the Limited Liability Companies Issue, filed by the Association of Black Owned Television Stations in this proceeding. The action is taken to respond to this motion that the deadlines for comments and reply comments with respect to the issue of Limited Liability Companies be accelerated. The intended effect of the action is to permit commenters the full period specified in the Notice of Proposed Rule Making in which to file comments in the proceeding.

DATES: Comments (as extended in a separate decision printed elsewhere in this **Federal Register**) are due May 17, 1995, and reply comments are due June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Mass Media Bureau (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in