

considers whether the local TV ownership rule continues to be "necessary in the public interest as a result of competition."

85. *Competition.* The Commission concludes that the current local TV ownership rule is not necessary to protect competition. By limiting common ownership of television stations in local markets where at least eight independently owned TV stations would remain post-merger, the current rule prohibits mergers that would increase efficiency in small and mid-sized markets—mergers that would thereby promote competition. In addition, by limiting common ownership to no more than two television stations, the current rule prohibits efficiency enhancing mergers in the largest markets. The current rule also prohibits mergers among the top four-ranked stations.⁹ After reviewing all of the record evidence, the Commission concludes that this restriction remains necessary to promote competition, so it is retaining a prohibition on mergers of the top four-ranked stations in the modified local TV ownership rule adopted in the R&O.

86. The NPRM requested comment on the definition of the product and geographic markets in which broadcast television stations compete. Based on the record, the Commission concludes that broadcast television stations operate in three product markets: a market for delivered video programming ("DVP"); a video advertising market; and a video program production market. Although each of these markets is discussed in the R&O, the Commission's primary concern is promoting competition for viewers. Therefore, the Commission will focus on competition in the DVP market. It is this market that directly affects viewers. The advertising market and the program production market are of concern to the Commission only to the extent that protecting competition in these markets may add an extra level of protection for the public and enable all television broadcasters to compete fairly for advertising revenue and programming. What is critical to our competition policy goals, however, is the assurance of a sufficient number of strong rivals actively engaged in competition for viewing audiences. As long as there are numerous rival firms in the DVP market,

viewers' interests will be advanced. The Commission first analyzes the DVP market.

87. *The DVP Market.* The evidence in the record suggests that television viewers do not consider non-video entertainment alternatives and non-delivered video to be good substitutes for watching television. In defining the market, the Commission asks whether the availability of entertainment alternatives is sufficient to prevent a significant and non-transitory increase in price. If they were good substitutes to watching television, relative changes in prices or other competitive variables should change household consumption of television. The record evidence suggests, however, that, while the price of subscribing to cable and DBS has increased faster than the rate of inflation, these price increases have not resulted in households dropping their subscriptions to cable and DBS, or reducing the amount of time households spend watching television. Thus, DVP providers have indeed been able to impose non-transitory price increases. This suggests that the relevant product market is no broader than DVP and should not include all entertainment activities.

88. For most viewers the programming choices offered by local broadcast television stations and cable networks represent good alternatives for one another. Most households subscribe to cable or DBS and receive DVP from cable networks and local broadcast television stations. These viewers need only touch their remote control to switch between the programming offered by cable networks and that of local broadcast television stations. The ease of switching from broadcast to cable networks for these households provides strong incentives for cable networks and local broadcast television stations to provide programs that attract viewers. The Commission thus finds that all the broadcast television stations and cable networks available to a significant number of cable subscribers in a DMA should be included as participants in the market for DVP.

89. The programming quality delivered to the minority of households that do not subscribe to cable or DBS is protected by the majority of households that do subscribe. Although non-subscribing households have fewer program choices than subscribing households, broadcasters cannot reduce the viewer appeal of their programming to non-subscribing households, without also reducing the viewer appeal of their programming to subscribing households. Broadcasters deliver the same programming to both subscribing

and non-subscribing households. Thus, the majority of households that subscribe to cable or DBS assure that non-subscribing households receive appealing programming.

90. Although viewers easily switch between the programming offered by broadcast television stations and the programming offered by cable networks, broadcast television stations and cable networks may respond differently to changes in local market concentration. Therefore, in formulating our revised local broadcast television ownership rules, the Commission continues to draw a distinction between television broadcast stations and cable networks. It is unlikely that mergers between broadcast television stations in any local market would alter the competitive strategy of a national cable network. In contrast, local broadcast television stations offer a mix of national programming and local programming in a geographic area typically no larger than a DMA. As such, local broadcast television stations have incentives to respond to conditions in local markets. It is the unilateral and coordinated responses of local broadcast television stations to mergers between local broadcast television stations that may result in potential competitive harms. Thus, the Commission focuses on ownership of television broadcast stations, not cable networks, to promote competition in local television markets.

91. *Geographic Market for DVP.* As the Commission evaluates the competitive effects of mergers between local broadcast television stations, it must define the relevant geographic market for the DVP market. Generally, cable systems carry all the broadcast stations assigned to the DMA in which they are located, pursuant to the Commission's must-carry/retransmission consent requirements. Cable systems providing service to the majority of households also carry most major cable networks. As such, the relevant geographic market for DVP is the DMA for most mergers between local broadcast television stations.

92. *Efficiencies of Common Ownership of Television Broadcast Stations in DVP Markets.* The Commission recognizes that common ownership of stations may result in consumer welfare enhancing efficiencies. First, common ownership of broadcast television stations in a local market can facilitate efficiencies and cost savings. Joint operations can eliminate redundant studio and office space, equipment, and personnel, and increase opportunities for cross-promotion and counter-programming. The Commission's current rule hinders

⁹ "The 'top four-ranked station' component of this standard is designed to ensure that the largest stations in the market do not combine and create potential competition concerns. These stations generally have a large share of the audience and advertising market in their area, and requiring them to operate independently will promote competition."