

continue to attract viewers to their channels. Although television station owners as a group are relatively significant purchasers of programming, the Commission has no evidence that they exercise market power in the program production market.

370. In considering the effect of the national television cap on competition in the program acquisition market, the Commission first must identify the market participants. The broadcast networks contend that the following categories of firms compete in the program acquisition market: broadcast television networks, individual television stations (and group owners thereof), non-broadcast program networks (*i.e.* cable networks), syndicators, pay-per-view systems, VHS and DVD rental stores. The affiliates counter that major broadcast networks are a discrete sub-market, or "strategic group," within the program purchasing market. The Commission generally agrees with the networks' definition of the relevant market participants, although it excludes video sales and rental stores. It disagrees with the networks' contention that such outlets are clearly a substitute for the delivered video programming of broadcast channels and cable channels. Those channels are the most conventional form of television viewing that can be substituted among by viewers almost instantly. It is possible to analyze the impact on the program acquisition market of relaxing the national television ownership cap by examining company expenditure shares. The following describes estimates of expenditure shares and calculation of a hypothetical HHI. The analysis assumes that the buyers in this market are broadcast networks, broadcast stations, and cable networks.<sup>34</sup> OPP Working Paper 37 (Table 32) provides estimates for the year 2000 of programming

expenditures by the Big Four commercial networks and by television stations.

371. The table included in this summary provides program expenditure data for the year 2000 for the Big Four broadcast networks in column 2 and for eight firms that own cable networks in column 4. The eight firms include the top four broadcast networks, the two biggest cable network owners that do not own television stations, and the two companies with the biggest cable network shares that also own television stations. There is also a residual category that includes all other cable network expenditures as "Other."

372. Column 3 includes some hypothetical broadcast station owner shares. The Commission does not know exactly how station expenditures are divided up among companies that own television stations. The numbers in this column represent a "worst case scenario" of what could happen if the national television cap were eliminated. In 2000 there were 1248 commercial television stations on the air. The Commission knows that the major commercial networks each reach virtually 100% of U.S. television households and that each network has roughly 200 affiliated stations. If stations were distributed evenly across markets, then there would be room for six television station companies each reaching all U.S. television households.

373. However, stations are not evenly distributed across markets. There are 50 Nielsen DMAs with fewer than four commercial stations, but they account for only 4.6% of U.S. television households, so, from the point of view of station programming expenditures, it is reasonable to assume that each of the top four broadcast networks could achieve 100% coverage of U.S. television households. However, there are 120 markets with fewer than six

commercial television stations, and those markets account for 19.7% of U.S. television households. So it is reasonable to assume that two additional station groups could grow to 80% coverage. This analysis assumes that television station program expenditures are divided among six firms: the four networks with 100% coverage, and Cox and Hearst, each with 80% coverage. The Commission assumes that expenditures are proportionate to coverage. The resulting expenditure estimates are in column 3. These estimates reflect a level of concentration that is higher than the true level. There are 63 markets with more than six commercial stations in them. Adding up the excess over six stations in each market yields a total of 259 stations. The Commission knows that a single company can own multiple stations in the same market, but it is likely that even with more companies owning two stations in a market that there will still be more than six station owners in some markets.

374. Column 5 contains hypothetical total programming expenditures for the eight firms, aggregating across broadcast network, broadcast station, and cable network categories, and using the hypothetical consolidated television station ownership pattern described above. Column 6 shows market shares and column 7 implements the HHI calculation by squaring and summing the market shares. The resulting "worst case" HHI of 1535 is in the moderately concentrated range. Even with the highly unrealistic assumption of a 100% national reach by four companies, and an 80% reach by two companies, these levels of market share provide us with no basis to conclude that the current 35% cap on national television ownership is needed to protect competition in the program acquisition market.

#### HYPOTHETICAL HHI FOR PROGRAM ACQUISITION

[Data are year 2000 in millions of \$]

	Broadcast network	Broadcast station	Cable network	Total	Market share	Market share squared
Cox .....	0	969.5	139.4	1,108.9	4.37	19.13502
Hearst .....	0	969.5	530.0	1,499.5	5.92	34.98944
ABC .....	2,581.75	1,212.0	1,276.7	5,070.45	20.00	400.071
Fox .....	2,581.75	1,212.0	521.8	4,315.55	17.02	289.812
GE .....	2,581.75	1,212.0	300.0	4,093.75	16.15	260.7875
Viacom .....	2,581.75	1,212.0	1,466.4	5,260.15	20.75	430.5666
Time Warner .....	0	0	2,162.9	2,162.9	8.53	72.79758
Liberty Media .....	0	0	786.3	786.3	3.10	9.621009
Other .....	0	0	1,052.5	1,052.5	4.15	17.23806

<sup>34</sup> Our market definition includes pay cable networks as well as pay-per-view networks, but in

the absence of data, they are excluded from this analysis