

HYPOTHETICAL HHI FOR PROGRAM ACQUISITION—Continued

[Data are year 2000 in millions of \$]

	Broadcast network	Broadcast station	Cable network	Total	Market share	Market share squared
Total	10,327	6,787	8,236.0	25,350	100.00	1,535.018

375. *National Advertising Market.* The Commission's focus is not on advertisers, but on the ability of broadcasters to compete for advertising revenues. Broadcast networks compete for advertising dollars by creating national audiences for their programming. If the networks cannot generate national audiences, their ability to compete for advertising revenues will decline, thereby diminishing their ability to invest in innovative programming. As a result, viewers will experience a decrease in programming choices and quality.

376. In its 1984 decision, the Commission determined that elimination of the national cap would not harm competition in the national advertising market. The Commission found that the number of firms in the market would ensure continued vigorous competition in that market. In the NPRM, the Commission sought information on whether the conclusion reached in 1984 continues to be valid. To analyze competition in this market, the Commission sought comment on the firms that compete in the national television advertising market, including the extent to which national spot advertisements and/or syndicated programming are fungible with network television advertising from the perspective of advertisers.³⁵ The national television advertising market brings together those advertisers wishing to reach a national audience with television networks that provide national exposure. Broadcast television networks are the leading suppliers of national television advertising.

377. The affiliates claim the record demonstrates that national spot advertising is competitive with national advertising. National advertisers can purchase advertising on a collection of local television stations that can approximate a national advertisement on a single network. Local television stations sell national spot advertising through advertising agencies, which aggregate the available advertising on local stations for national spot buyers.

³⁵ National spot advertising time is sold by stations to national advertisers, which aggregate national or regional coverage by purchasing advertising spots from stations in multiple markets. Syndication refers to advertisements sold in syndicated programs.

The affiliates contend that when demand for national advertising on a particular network show exceeds the available supply of national network advertising time, advertisers turn to the national spot advertising market to reach viewers. Television stations rely in part on the national spot advertising market for a portion of their advertising revenue. The affiliates argue that if the ownership cap is raised, the broadcast networks will increase their ownership of television stations and decrease the national spot availabilities to such an extent that the viability of the national spot market will be impaired.

Specifically, the affiliates contend that a network-owned station will not compete against its network for national (spot) advertising revenue. The result, according to the affiliates, is that competition in the national advertising market will be diminished by the decreased viability of national spot advertising as a substitute for network advertising. The affiliates assert that the resulting loss of revenue to local stations will harm their ability to compete with other delivered video providers.

378. *Discussion.* The Commission agrees that a strong national spot advertisement market is an important component of the financial stability and competitiveness of television station owners. The Commission finds, however, that the increase in the cap from 25% to 35% has not harmed national spot advertising revenues. Its analysis of advertising revenue data indicates that despite increases in ownership of stations by CBS, NBC and Fox since 1996, there has been no diminution in the national spot advertising market that can be reliably associated with an increase in network station ownership. With the exception of 2001, national spot advertising has experienced a relatively consistent growth.

379. Although the Commission agrees with the affiliates that network-owned stations have less incentive to compete directly with an affiliated broadcast network in the national advertising markets, it cannot agree that such competition in fact would not occur. If national advertisers are willing to pay a higher per-spot price to network-owned

stations than are local advertisers, network-owned stations might well accept the higher priced advertising. Thus, the profit-maximizing behavior of the network-owned stations might well serve as a substitute for national advertisers seeking to purchase national spot advertising. Such a response by network-owned stations would maintain the viability of national spot advertising as an option for national advertising regardless of the level of the national television cap. Moreover, even if the top four networks were to acquire additional local stations and declined to use the national spot advertising availabilities to compete with their own network's advertising availabilities, there is every reason to think the network-owned stations would seek to take national advertising dollars away from other broadcast networks. That is, even if an NBC-owned station sought not to compete with the NBC network for advertising dollars, the NBC-owned stations have incentives to compete in the national spot market for advertising dollars that might otherwise go to the CBS, ABC, and Fox networks. Consequently, the Commission cannot say that the national cap is necessary to protect competition in the national advertising market.

380. *Innovation.* In the NPRM, the Commission asked whether the national ownership cap promotes or hinders innovation in the media marketplace. Affiliates argue that non-network owners encourage innovation because affiliates provide a competitive outlet for innovative programming. The affiliates provide nine examples of innovation by non-network group owners, such as satellite newsgathering encouraged by affiliates to improve upon network-delivered news; the development of the local newsmagazine format; all-news cable channels developed for cable carriage; digital TV experiments such as the multicasting by several affiliates of the NCAA tournament; the delivery of local news in HDTV format; and the creation of iBlast, a joint venture between affiliates and an outside firm to develop new uses for digital spectrum.

381. Taking an opposing view, the networks contend that the cap limits networks' investment in innovative