

in nature, although the number of firms actually populating the industry aggregated over all strategic groups may be quite numerous. The top-four networks compete largely among themselves for advertisers that seek to reach large, national, mass audiences—a significant portion of the national advertising market that provides the top-four networks with a significant portion of their profits. The Commission therefore concludes that a merger of two or more of the top-four networks would substantially lessen competition in the national advertising market, especially within the strategic group, with the concomitant harm to viewers described above. The Commission's analysis suggests that economic concentration within the strategic group for 2001, as measured by the HHI, is 2646. This is based on advertising revenue and on shares of the top-four broadcast networks.

455. The recent growth of cable and DBS does not alter this conclusion. Despite that growth, the top-four networks continue to provide the greatest reach of any medium of mass communications. The top-four networks attract much larger prime-time audiences in relation to advertisement-supported cable networks. For example, during the month of February, 2003 (1/27/03–2/23/03), CBS, NBC, ABC, and Fox delivered prime-time household ratings of 8.9, 8.1, 6.7, and 6.7, respectively, as compared to the top advertiser-supported cable network, TNT, which garnered a 1.8 share rating. (A rating point is equal to 1.067 million households.) Broadcasting's percentage share of advertising revenue continues to exceed its percentage share of viewing. Broadcasting's share of advertising revenue in 2001 was 71.5% whereas its audience share stood at 53.7%. In addition, the networks have been able to increase the quantity of advertising availabilities for sale by adding more commercial minutes per hour. Moreover, despite a decrease in audience share, the top-four networks continue to command increases in advertising rates, a further testament to the strength of broadcasting television as an advertising medium. The networks have raised prices for advertising on a cost per thousand ("CPM") viewers basis steadily. Prime-time broadcast network CPMs have increased from \$9.74 in 1990 to \$13.42 in 2000, an average annual growth rate of 3.8%.

456. The Commission agrees with NASA that despite the emergence of new media on cable, DBS, and the Internet, the top-four broadcast networks still have the largest concentration of viewers and television

economic power. A recent survey shows that each of the top twenty-five prime-time broadcast programs during the week of December 9–15, 2002, all of which were aired by CBS, ABC, NBC, or Fox, achieved considerably higher household ratings than any of the 25 highest ranked cable programs. The highest-ranked broadcast program had a rating larger than the top five cable programs' ratings combined. The Commission also agrees that as it becomes more difficult to reach a large number of viewers, television broadcasters that can still deliver a mass audience become more valuable.

457. The Commission further concludes, as it did in the *Dual Network Order*, that obtaining a sufficient number of affiliated stations remains a major obstacle to developing a new broadcast network capable of attracting national advertisers seeking to reach a mass audience. As long as mobility barriers (*i.e.* barriers to entry that deter the movement of a firm *within* a given industry from shifting from one strategic group to another) deter entry into the major network strategic group, the pricing of network advertising will be sensitive to the number of network competitors. The Commission therefore concludes that the current dual network rule is necessary to maintain competition in national advertising market.

458. *Localism.* The Commission concludes that the dual network rule also is necessary to retain the balance of bargaining power between the top-four networks and their affiliates. As noted in the national TV ownership rule section, the Commission concludes that affiliates play an important role in assuring that the needs and tastes of local viewers are served. Elimination of the dual network rule would harm localism by providing the top-four networks with increased economic leverage over their affiliates, thereby diminishing the ability of the affiliates to serve their communities.

459. The top-four networks have an economic incentive to promote the widest distribution nationwide of the programming that they produce and to assure that it is carried simultaneously across the country. To reach the most viewers, the top-four networks acquire their own stations ("O&Os"), usually in the largest television markets, and enter into affiliation agreements with station owners throughout the remainder of the country. Through affiliation, the networks benefit from the wide-area delivery of their programming. Network affiliates benefit, in turn, by gaining access to high-quality programming.

460. Affiliates have an economic incentive to tailor their programming to their local audiences. Affiliates can influence network programming decisions by joining forces with other network affiliates in collective negotiations to ensure that the programming provided by the network serves local needs and interests. The strength of an affiliate's influence with its network lies in its power as part of a "critical mass" to join forces with other network affiliates in collective negotiations to try to influence network programming. On an individual basis, affiliates may also decide to preempt network programming if other programming is available that better suits local needs.

461. As noted by NASA, because of the costs of programming and promotional expenses, network affiliation remains critical for the economic survival of most local television stations. NASA argues that if the dual network rule were eliminated, a top-four network merger would result in the networks gaining an unfair advantage over their affiliates, noting that a merger would reduce alternative choices of program providers for affiliates as the number of network owners decreases. As an example, NASA notes that if NBC and CBS were permitted to merge, a terminated CBS affiliate would no longer be able to turn to NBC for affiliation. The harm would be exacerbated if more than two of the top-four networks were to combine.

462. The Commission agrees with NASA that a top-four network merger would harm localism by providing the networks with undue economic leverage over their affiliates. While a top-four network merger may not result in fewer networks, it would result in fewer network owners. The Commission concludes that a top-four network merger would reduce the ability of affiliates to bargain with their network for favorable terms of affiliation, and would result in less influence of affiliates on network programming. As the number of network owners declines, affiliates lose the ability to use the availability of other top independently-owned networks as a bargaining tool with their own networks. In the same way, a combined top-four network's increased leverage could be used to overwhelm affiliate bargaining power with respect to programming issues. A top-four network merger would lead to fewer alternatives for affiliates, which would lead to reduced bargaining power of affiliates, and less influence of affiliates on network programming, including the ability to preempt network programming that affiliates find