

(Catalog of Federal Domestic Assistance No. 83.100, \*Food Insurance.")

Dated: June 22, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95-16414 Filed 7-3-95; 8:45 am]

BILLING CODE 6718-03-P-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 95-90; FCC 95-226]

### Broadcast Services; Network/Affiliate Rule; Advertising

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking proposes to re-examine the Commission's rules prohibiting a broadcast television licensee from entering into agreements with a network that limits the licensee's ability to alter its advertising rates and from being represented for the sale of advertising by a network with which it is affiliated. This action is needed to determine if the costs of these rules exceed their benefits.

**DATES:** Comments are due by August 28, 1995, and reply comments are due by September 27, 1995.

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

**FOR FURTHER INFORMATION CONTACT:** Paul Gordon (202-776-1653) or Tracy Waldon (202-739-0769), Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 95-90, adopted June 14, 1995 and released June 14, 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, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

### Synopsis of Notice of Proposed Rule Making

1. With this *Notice of Proposed Rule Making (NPRM)*, the Commission continues its reexamination of the rules regulating broadcast television network/affiliate relationships in light of changes in the video marketplace. This *NPRM* takes a fresh look at 47 CFR 73.658 (h) and (i) (the Commission's "network

control of station advertising rates" rule and the "network advertising representation" rule, respectively). Section 73.658(h) prohibits agreements by which a network can influence or control the rates its affiliates set for the sale of their non-network broadcast time, and Section 73.658(i) prohibits broadcast television affiliates that are not owned by their networks from being represented by their networks for the sale of non-network advertising time. Both rules address station relationships with any broadcast television network, i.e., any organization that provides and identical program to be broadcast simultaneously by two or more stations.

2. In reconsidering these rules, our central focus is on whether they continue to effectively serve this Commission's cornerstone interests of promoting diversity and competition. In this *NPRM*, after first reviewing the initial premises for these rules, we will look at the changes in the competitive environment over the years since the rules were adopted, and we will consider the current marketplace in which they operate. We will inquire whether networks would have the capability and the incentive to exercise undue market or bargaining power in the absence of these rules and will examine public interest

3. The network rules governing control of station rates and network advertising representation were originally adopted to protect the ability of affiliates to serve as viable, independent sources of programming, and to foster competition in the provision of advertising. As the Commission stated in 1941, "[c]ompetition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers[,] which means competition for listeners[,] necessarily results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which necessarily results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting."<sup>1</sup> The Commission still believes, fifty years later, that healthy and vigorously competitive television advertising markets are in the public interest.

4. Having discussed why network influence over national spot advertising rates implicates our public interest

concerns, we turn to the practical questions of whether networks, under current market conditions, have the ability to exercise this influence, and whether they would choose to exercise it. The first question asks the degree to which a network could pressure its affiliates to act in a manner that benefits the network, but which may not be in the best interests of either the public or the licensee. The second question asks whether a network, even if it had such power, would have any incentive to exercise it. Finally, we request comment on whether the existing rules effectively perform their functions and whether elimination or modification of the rules would serve the public interest.

5. The public interest may be harmed if networks possess sufficient bargaining power over their affiliates such that exercise of this bargaining power would result in reductions of affiliate advertising revenues significant enough to inhibit the affiliate's ability to present programming that best serves its community. In order to assess whether networks today have a substantial degree of bargaining power with respect to their affiliates, we must define the relevant alternatives available to the two parties. To the extent that an affiliate has alternative opportunities to affiliate with a given network, network bargaining power could be reduced. In the same manner, it is also presumed that the more potential affiliates in a market, the more bargaining power the network will have.

6. We ask parties to comment on whether, and if so the extent to which, the balance of bargaining power has shifted toward affiliates in the years since these advertising rules were promulgated, and what effect the current balance of bargaining power has on our related public interest concerns of diversity and competition.

7. Even if a network has undue bargaining power over its affiliates, it may not have the incentive or ability to exercise that bargaining power to influence national video advertising rates in a way that would harm the public interest. Presumably, a network would find it in its interest to manipulate the national spot advertising rates of its affiliates only if it could earn higher profits by doing so. Whether a network could profit from this activity depends on the availability of other sources of advertising time to which advertisers can turn that are "reasonably interchangeable" with network advertising time. Understanding the goals of advertisers and the role of the national advertising representatives is critical in determining whether national spot advertisements are reasonably

<sup>1</sup> *Report on Chain Broadcasting*, Commission Order No. 37; Docket 5060, at 47, quoting *Spartanburg Advertising Co.*, Docket No. 5451, (January 9, 1940).