

interchangeable substitutes for network advertisements. We must also consider whether there are products, in addition to national spot advertisements, that might substitute for broadcast television network advertising. If these other products provide competitive alternatives to network and national spot advertisements, the ability of a network to adversely influence rates in the national video advertising market will be substantially diminished.

8. In this regard, we propose to use the same analytical framework as in our pending television ownership proceeding.<sup>2</sup> In that item, we sought comment on whether the advertising time supplied by broadcast television networks, program syndicators, cable networks, and perhaps cable multiple system operators were reasonably interchangeable. We noted that the amounts of advertising time sold by other suppliers, such as direct broadcast satellite, wireless cable, or video dialtone program providers, were too small to have an appreciable effect on national broadcast advertising.

9. The *Report on Chain Broadcasting* argued that a network would exert pressure on its affiliates to raise their national spot ad rates so as to make network ads more attractive to advertisers, and thus more profitable. In this way, the network's profits would increase at the expense of its affiliates' profits. The 1980 *Network Inquiry Report*<sup>3</sup> argued that a network and its affiliates together had incentives to manipulate the network and national spot advertising rates so that all parties' profits increased. Under either of these scenarios, if networks or networks and their affiliates together have the incentive and the market power to manipulate national video advertising rates to their advantage, the Commission's goals of diversity and competition could be adversely affected in the absence of the rules.

10. The ability of a network or a network and its affiliates to influence national video advertising rates depends again upon the availability of reasonably interchangeable substitutes. If we were to conclude on the basis of the record that each network's advertising time competes vigorously with: (1) the advertising time of the other networks; (2) the advertising time for national spot ads sold by affiliates and independent stations; and (3) advertising time offered by syndicators and cable networks, then

networks, either with or without their affiliates, will likely be unable to affect prices significantly in the national video advertising market. Under this scenario, if a network, or a network and its affiliates, were to attempt to raise their advertising rates above competitive levels, national advertisers would have several alternative suppliers to go to, and they would likely switch their patronage to these alternatives. We request comment on the ability of advertisers to switch to these alternative advertising providers and the resulting effect on station revenues. Commenters should focus on the degree to which these potential and actual competitors limit the ability of a network and/or its affiliates from profitably raising national television advertising rates above competitive levels.

11. Alternatively, if we were to conclude on the basis of the record that networks face few competitors in the national video advertising market other than each other and broadcast television stations (through national spot sales), we must still determine whether a network, or a network and its affiliates, could affect national television advertising rates in a manner that should concern us. Including only these competitors in the relevant market, we seek comment on whether any network, or a network and its affiliates acting in concert, could adversely affect national video advertising rates.

12. Finally, the record that we develop in this proceeding may indicate that network and national spot advertisements do not compete for the same advertisers. Should that be the case, changes in the rates for national spot advertisements will likely have no impact on the demand for network advertising and, consequently, no impact on network advertising rates. Such a finding would lead us to question the continued need for our advertising rules. We seek comment on what basis if any exists that would support retention of our advertising rules if we determine that network advertising time and national spot advertising time do not compete with each other for the same advertisers.

13. We also seek comment and information on the nature and extent of the services currently provided by national television advertising representatives. If general industry practice is for a television licensee to instruct the representative what rates to charge (leaving the latter no discretion to alter them), we question what harm there would be in allowing networks to represent their affiliates. On the other hand, licensees might generally provide their representatives a range of rates

within which to charge advertisers, thereby giving the representatives some latitude in managing the stations' transactions. We ask whether this would facilitate the adverse consequences in the national television advertising market and the resulting public interest concerns that were previously discussed.

14. Finally, we must address the question of whether our rules effectively prevent the harms they were designed to redress. Can networks currently influence national spot advertising rates indirectly, by using mechanisms other than possible influence or control over affiliates' rates? For example, since a network currently can control the amount of national spot time its affiliates have available to sell during network programming, does this allow the network indirectly to control the affiliates' national spot rates? If we find that networks, with or without their affiliates, can easily circumvent the advertising rules, then eliminating those rules would appear to cause no additional harm.

15. Whether we repeal, modify, or retain the prohibitions on network control of station advertising rates and network representation of affiliates in the advertising market depends on the nature of the competitive advertising interrelationships among the various video program providers. Should the record indicate that neither television broadcast networks nor networks and their affiliates have the ability or incentive to manipulate the market price for network or national spot television advertising time, we would consider eliminating or modifying the rules if the record indicates that they are ineffective in correcting the public interest harm they were designed to remedy. On the other hand, should we determine that networks, or networks and their affiliates, have the ability and incentive to manipulate the market price for network or national spot television advertising time, and that these rules effectively address any resulting public interest harm, we would consider retaining the rules.

16. However, the record might indicate that we should eliminate one rule, but not the other. For example, we might determine on the basis of the record established that networks, acting as station advertising representatives, in fact have no influence over national spot rates of the stations they represent. If these representatives have no ability to affect their clients' rates, we would likely be inclined to eliminate the rule prohibiting network representation of affiliates in the national spot advertising market, even though we may wish to

<sup>2</sup> Further Notice of Proposed Rule Making in MM Docket 91-221, 60 FR 6490 (Feb 2, 1995).

<sup>3</sup> Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final Report*, (October 1990).