In the prime time market share tables, we have calculated HHI figures since advertising prices define that period as a relevant antitrust market. The combined market share of the three major networks pushes the HHI above the safe harbor figure of 1000 cited in the U.S. Department of Justice's current merger guidelines, but below the 1,800 level demarcating moderately concentrated from highly concentrated markets.

A final point may be made concerning the market structure of syndicated programming itself, the issue opponents of PTAR have sought to raise. The FTC developed HHI calculations for the entire programming day in connection with the FISR proceeding, and found the market for syndicated programming to have a very low level of concentration, an HHI of 605 for 1989.[18] Our 1993 update of that calculation in **Table II.3** is also well under the Justice Department's strictest merger guideline figure of 1,000, namely 854.

In light of the above analysis, assertions that Fox, King World and Viacom have market power during the access period have no foundation. The four prime time hours, not the access period, is the relevant market. Even if one were to conclude (incorrectly) that the access period is a distinct market, there is no evidence to support a finding of market power. Our analysis of the one hour access period found that King World, Fox and Viacom/Paramount collectively accounted for 67.4 percent of the audience viewing, a percentage resembling the three networks' aggregate audience share over the entire four-hour prime time period (See **Table II.4.**). Also, local programming accounted for 15.2 percent of access viewing, an amount nearly double that attributable to Fox syndication. Finally, and perhaps most importantly, there is no evidence that the market share of any of these syndicators translates into the ability to raise national advertising rates during the access period or more generally throughout prime time.

[18]Federal Trade Commission, Bureau of Economics, Comments, in FCC, MM Docket 90 - 62, September 5, 1990, pp.

Table II.3

1993 Time Period Shares For Total Day Broadcasts*

Program Distributor to Television Stations	Adjusted Audience** (000's)	Time Period Share	HHI
TOTAL AUDIENCE	**560,464**	**100%**	**854**
TOP 5 SYNDICATORS	**308,756**	**55%**	**726**
TOP 10 SYNDICATORS	**426,256**	**76%**	**814**
KING WORLD PRODUCTIONS	**82,879**	**14.8%**	**218.7**
PARAMOUNT TELEVISION	**103,815**	**18.5%**	**343.1**
WARNER BROS. DOMESTIC TV DIST.	48,594	8.7%	75.2
BUENA VISTA TELEVISION	**43,321**	**7.7%**	**59.7**
VIACOM INTERNATIONAL	**30,147**	**5.4%**	**28.9**
20TH TELEVISION	**24,215**	**4.3%**	**18.7**
RYSHER TPE	25,699	4.6%	21.0
COLUMBIA/PICTURES TELEVISION	19,985	3.6%	12.7
MULTIMEDIA ENTERTAINMENT	25,068	4.5%	20.0
ALL AMERICAN TELEVISION	22,533	4.0%	16.2
TURNER PROGRAM SERIVCES	14,287	2.5%	6.5
MCA TV LTD	11,515	2.1%	4.2
GENESIS ENTERTAINMENT	8,760	1.6%	2.4
GROUP W PRODUCTIONS	11,029	2.0%	3.9
TRIBUNE ENTERTAINMENT	14,861	2.7%	7.0
BOHBOT COMMUNICATIONS	7,017	1.3%	1.6
PROGRAM EXCHANGE, THE	5,696	1.0%	1.0
CANNELL DISTRIBUTION	10,348	1.8%	3.4
CLASTER TELEVISION, INC.	4,882	0.9%	0.8
MTM/IFE	5,041	0.9%	0.8
SAMUEL GOLDWYN TELEVISION	6,471	1.2%	1.3
METRO-GOLDWYN-MAYER, INC.	6,489	1.2%	1.3
WORLDVISION ENTERPRISES, INC.	3,961	0.7%	0.5
ITC ENTERTAINMENT GROUP	2,829	0.5%	0.3
WESTERN INTERNATIONAL SYNDICATION	3,669	0.7%	0.4
JP SPORTS	10,710	1.9%	3.7
NEW LINE CINEMA	1,820	0.3%	0.1
TITAN SPORTS	3,414	0.6%	0.4
PRO SPORTS ENTERTAINMENT	1,409	0.3%	0.1

Notes: * Total Day is defined by Nielsen as Sunday through Saturday 6:00 AM through 2:00 AM through 2:00 AM in all time zones.
**The adjusted audience represents the total number of half-hours of programming watched by DMA households in a given week during the survey period of November 1993.

Source: Nielsen Station Index, *Report on Syndicated Programs*, November 1993
Nielsen Television Index, *National Audience Demographics Report*, November 1993

Table II.3 (cont.)

1993 Time Period Shares For Total Day Broadcasts*

Program Distributor to Television Stations	Adjusted Audience** (000's)	Time Period Share	HHI
ZODIAC ENTERTAINMENT, INC.	1,205	5.3%	28.3
SUMMIT MEDIA GROUP, INC.	1,728	7.6%	58.1
G.G.P.	1,045	0.2%	0.0
NEWS TRAVEL NETWORK	916	0.2%	0.0
DLT ENTERTAINMENT/LTD	883	0.2%	0.0
BERL ROTFELD PROD., INC.	854	0.1%	0.0
SYNDICOM	713	0.1%	0.0
MULLER MEDIA, INC.	707	0.1%	0.0
BIG EAST FOOTBALL CONFERENCE	3,948	0.7%	0.5
SABAN ENTERTAINMENT	576	0.1%	0.0
SELECT MEDIA	1,028	0.2%	0.0
COWBOYS FOOTBALL CLUB	490	0.1%	0.0
DOW JONES & COMPANY, INC.	480	0.1%	0.0
WTTV-TV	470	0.1%	0.0
KCNC-TV	451	0.1%	0.0
REPUBLIC PICTURES	850	0.1%	0.0
CARDINAL COMMUNICATIONS, INC.	364	0.1%	0.0
GROVE TELEVISION ENTERPROSES	349	0.1%	0.0
JOHNSON PUBLISHING CO., INC.	348	0.1%	0.0
PANDORA INTERNATION ENT. GROUP	328	0.1%	0.0
RAYCOM SPORTS	1,932	0.3%	0.1
PBS/POST NEWSWEEK	309	0.1%	0.0
CASH PLUS, INC.	301	0.1%	0.0
PHILLIPS PRODUCTIONS	301	0.1%	0.0
KOVR -TV	285	0.0%	0.0
ALBRITTON TELEVISION PRODUCTIONS	261	0.0%	0.0
ACTION MEDIA GROUP	253	0.0%	0.0
FOR KIDS BY KIDS, INC.	229	0.0%	0.0
KOST BROADCASTING SALES, INC.	224	0.0%	0.0
MEDSTAR COMMUNICATIONS, INC.	218	0.0%	0.0
SYNDICAST SERVICES, INC.	218	0.0%	0.0
MEDIACAST TV ENTERTAINMENT	198	0.0%	0.0
RAYMOND HORN	193	0.0%	0.0
MANHATTAN SIERRA ENTERTAINMENT	384	0.1%	0.0
PRO MARK	168	0.0%	0.0
TELEMEDIA	330	0.1%	0.0
WILLIE WILSON PRODUCTIONS	158	0.0%	0.0
VARIOUS	266	0.0%	0.0
ANDREWS ENTERTAINMENT	243	0.0%	0.0
FISHING THE WEST	139	0.0%	0.0
JALBERT PRODUCTIONS	139	0.0%	0.0
SKYLARK	137	0.0%	0.0
FLORIDA STATE UNIVERSITY	135	0.0%	0.0

Table II.3 (cont.)

1993 Time Period Shares For Total Day Broadcasts*

U.S. CHAMBER OF COMMERCE	135	0.0%	0.0
WISN-TV	131	0.0%	0.0
COLBERT TV SALES/ORION ENTERTAINME	122	0.0%	0.0
MG/PERIN INC.	456	0.1%	0.0
OURTOWN TELEVISION PRODUCTIONS, LT	103	0.0%	0.0
ASSOCIATED TELEVISION INT'L	102	0.0%	0.0
SPORTS MEDIA MANAGEMENT	100	0.0%	0.0
CENTRAL CITY PRODUCTIONS	97	0.0%	0.0
CONUS COMMUNICATIONS	93	0.0%	0.0
1 ON 1 PRODUCTIONS	79	0.0%	0.0
ABN TELEVISION, INC.	75	0.0%	0.0
ORION ENTERTAINMENT	148	0.0%	0.0
AUBURN UNIVERSITY	69	0.0%	0.0
WTAE-TV	68	0.0%	0.0
VILLAGE SPORTS INC.	53	0.0%	0.0
ELECTRA PICTURES, INC.	47	0.0%	0.0
JOHNNY MOORE	45	0.0%	0.0
WGNO-TV	44	0.0%	0.0
PARAGON ENTERTAINMENT	43	0.0%	0.0
FISHING TEXAS	41	0.0%	0.0
GREENSTAR TELEVISION	40	0.0%	0.0
TOTAL COMMUNICATIONS	240	0.0%	0.0
UNIVERSITY OF GEORGIA	40	0.0%	0.0
FRANK WHITE PRODUCTIONS	37	0.0%	0.0
PARROT COMMUNICATIONS	34	0.0%	0.0
SUN SYNDICATION	34	0.0%	0.0
HEARST ENTERTAINMENT	33	0.0%	0.0
OUTDOOR GAZETTE	33	0.0%	0.0
PROGRAM PARTNERS	30	0.0%	0.0
C.T.C. SPORTS	29	0.0%	0.0
SPECTRA COMMUNICATIONS	26	0.0%	0.0
WEST VIRGINIA UNIVERSITY	25	0.0%	0.0
MULTIMEDIA PROGRAM PRODUCTIONS	19	0.0%	0.0
GEORGIA TECH. UNIVERSITY	19	0.0%	0.0
HIT VIDEO USA	18	0.0%	0.0
CBN SYNDICATION	16	0.0%	0.0
KEITH WILSON ADVERTISING	16	0.0%	0.0
MONITOR CHANNEL, THE	14	0.0%	0.0
SPORTSMAN'S SHOWCASE	13	0.0%	0.0
USA PRODUCTIONS INC.	12	0.0%	0.0
CONTINENTAL BROADCASTING NETWORI	10	0.0%	0.0
CALIFORNIA SERVICE AGENCY	7	0.0%	0.0
JOHN FOX EQUITABLE MANAGEMENT CO.	6	0.0%	0.0
PROGRAM SYNDICATION SERVICES, INC.	4	0.0%	0.0
TEXAS ANGLER TELEVISION	3	0.0%	0.0

Table II.4

1993 Time Period Shares For Prime Access Broadcasts: Weekdays

Program Distributor to Television Stations	Adjusted Audience* (000's)	Time Period Share
TOTAL AUDIENCE	**417,955**	**100%**
TOP 5 DISTRIBUTORS	**367,220**	**88%**
TOP 10 DISTRIBUTORS	**405,255**	**97%**
KING WORLD PRODUCTIONS	**147,090**	**35.2%**
PARAMOUNT TELEVISION	**71,990**	**17.2%**
LOCAL PROGRAMMING	**63,690**	**15.2%**
20TH TELEVISION	**35,340**	**8.5%**
VIACOM INTERNATIONAL	**27,020**	**6.5%**
COLUMBIA/PICTURES TELEVISION	**22,090**	**5.3%**
WARNER BROS. DOMESTIC TV DIST.	**19,400**	**4.6%**
MCA TV LTD	6,400	1.5%
NBC	**4,170**	**1.0%**
GENESIS ENTERTAINMENT	4,035	1.0%
ABC	**4,030**	**1.0%**
CBS	**3,415**	**0.8%**
MTM/IFE	3,405	0.8%
BUENA VISTA TELEVISION	2,320	0.6%
ALL AMERICAN TELEVISION	1,890	0.5%
METRO-GOLDWYN-MAYER, INC.	1,000	0.2%
WORLDVISION ENTERPRISES, INC.	250	0.1%
RYSHER TPE	130	0.0%
REPUBLIC PICTURES	100	0.0%
COLBERT TV SALES/ORION ENTERTAINMENT	80	0.0%
MULTIMEDIA ENTERTAINMENT	40	0.0%
HIT VIDEO USA	35	0.0%
WESTERN INTERNATIONAL SYNDICATION	35	0.0%

Notes: * The adjusted audience represents the total number of half-hours of programming watched by DMA households in a given week during the survey period of November 1993.

Source: Nielsen Station Index computer database, November 1993
Underlying data were programmed by King World Research using "SNAP" software.

B. AN ANALYSIS OF NATIONAL ADVERTISING MARKETS DEMONSTRATES THAT THE NETWORKS CONTINUED TO RAISE PRIME TIME RATES EVEN AS AUDIENCES DECLINED.

> Market power cannot be adequately assessed by mere reference to market shares, however, because other factors, such as barriers to entry, can influence the degree to which market share conveys market power. (FCC 94 - 322 at paragraph 21, page 12)

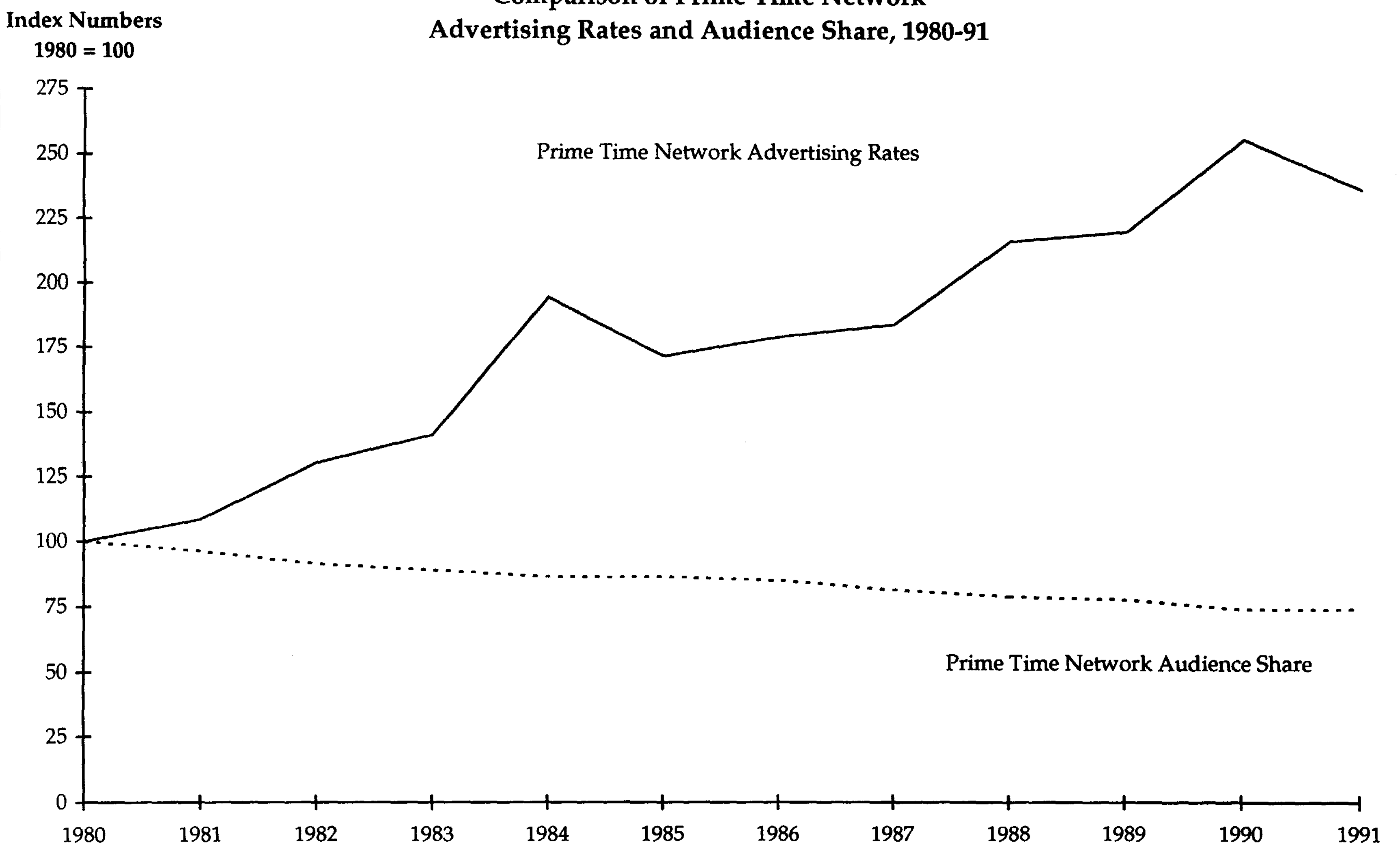
As we observed initially, the television industry is actually in the business of producing audiences for advertisers. Accordingly, advertising rates are a superior indicator of economic strength. In concluding that network dominance has declined, a fact that the FCC ignored in the Notice is the power of the broadcast networks to raise prime time national advertising rates, even though their audiences declined.

Figures II.1, II.2 and **II.3** enable us to shed considerable light on this issue. It is apparent from **Figure II.1** that loss of aggregate viewing share by the major broadcast networks over the 1980s did not translate into any competitive pressures to keep network prime time advertising rates down. The dynamics of price and quantity produced resemble what one would expect from an output restricting monopolist. The monopolist is able to charge higher and higher prices even at reduced volumes of output. The analogy is not perfect here since it is competition in the aggregate that reduced the networks' aggregate shares. But, the price increases made by the networks despite smaller audiences certainly raise competitive issues well beyond what the HHI numbers alone do.

Figure II.2 and **Figure II.3** indicate that the rates of price increases throughout the 1980's also raise competitive issues. In the face of all the growing competition allegedly faced by the networks, one would expect that their prime time advertising rates should have risen no more than the rate of general price inflation. Yet, this is not the case. Through the 1990 advertising recession, prime

Prime time network advertising rates increased substantially throughout the 1980's despite decreases in audience share.

Comparison of Prime Time Network Advertising Rates and Audience Share, 1980-91



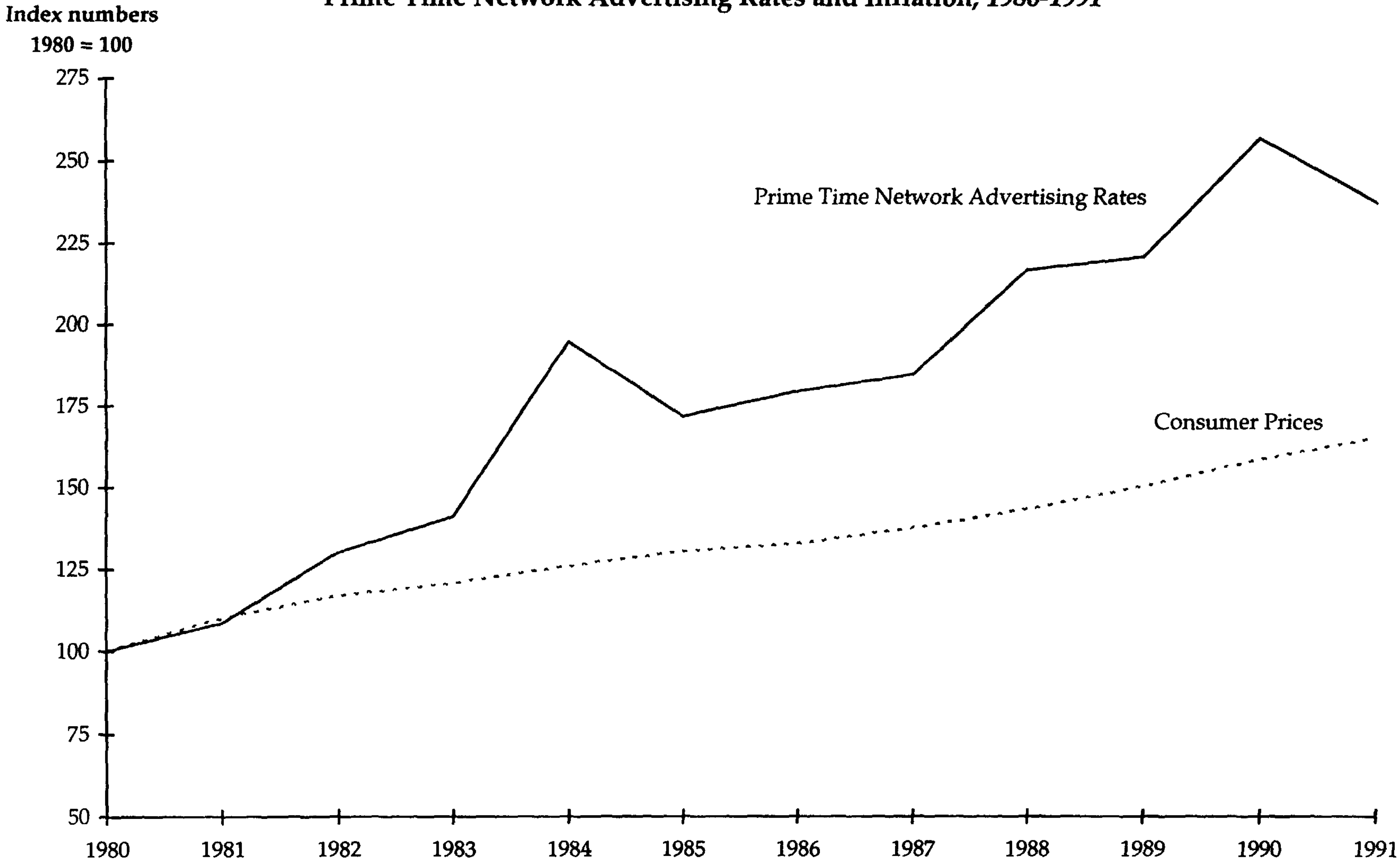
Note: Index numbers for prime time network advertising rates based on cost per 1000 homes.

Sources: Prime Time Network TV Ad Rates: A.C. Nielsen.
Prime Time Network Audience Share: Suhler & Associates, A.C. Nielsen, Wilkofsky Gruen & Associates.

Figure II.1

Increases in prime time network advertising rates have far outpaced the rate of inflation.

Prime Time Network Advertising Rates and Inflation, 1980-1991

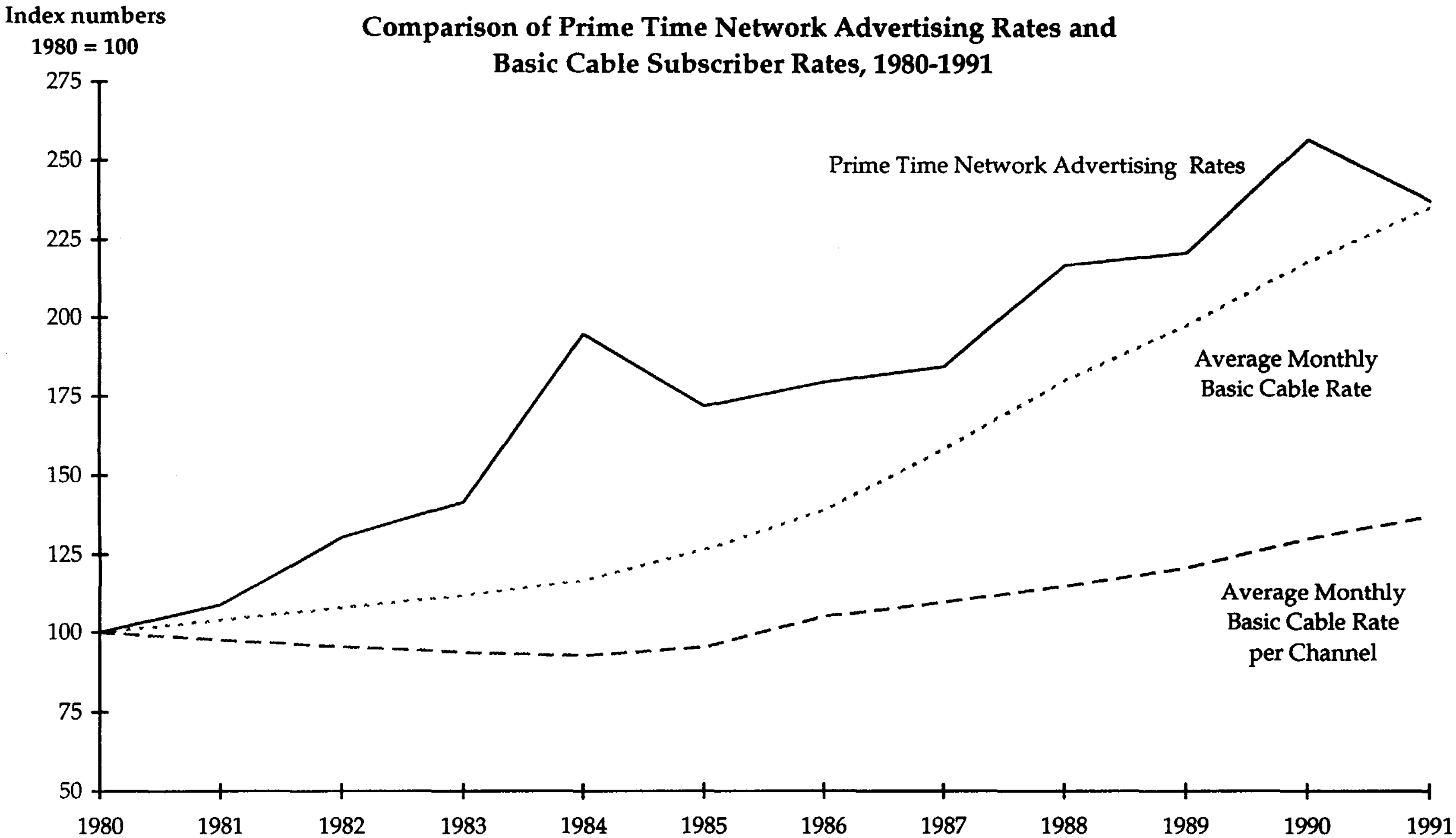


Note: Index numbers for prime time advertising rates based on cost per 1000 homes.

Sources: Prime Time Network Advertising Rates: A.C. Nielsen.
Consumer Price Index (CPI-U All Items): Council of Economic Advisors, Economic Report of the President, 1994.

Figure II.2

The rate of increase for prime time network advertising rates has exceeded that for basic cable.



Note: Index numbers for prime time advertising rates based on cost per 1000 homes.

Sources: Prime Time Network TV Ad Rates: A.C. Nielsen.

Average Monthly Basic Cable Rate: National Cable Television Association, Cable Television Developments, Fall 1994, p. 6-A.

Average Number of Basic Cable Channels: U.S. General Accounting Office, **Telecommuniciations, 1991 Survey of Cable Television Rates and Services**, July 1991.

Average Monthly Basic Cable Rate per Channel: Total Average Monthly Basic Cable Rate/Average Number of Basic Cable Channels.

Figure II.3

time advertising rates charged by the networks rose considerably faster than the rate of consumer price inflation.[19]

Figure II.3 shows that prime time advertising rates have grown much faster than basic cable rates adjusted for services through 1991, the last year cost per cable service data is available. Even ignoring quantity adjusted basic cable prices, the average monthly cable subscription fee has grown no more rapidly than or equally with network prime time advertising rates.

In sum, the evidence on pricing behavior as well as market shares in the prime time relevant market for national video advertising is a tacit indicator that the three major networks retain considerable market power despite structural changes in the broader video marketplace since PTAR was implemented in 1971.

C. NATIONALLY SYNDICATED PROGRAMMING AND EMERGING NETWORKS OFFER THE ONLY EFFECTIVE COMPETITIVE ALTERNATIVE TO THE THREE MAJOR NETWORKS FOR THE SALE OF NATIONAL ADVERTISING.

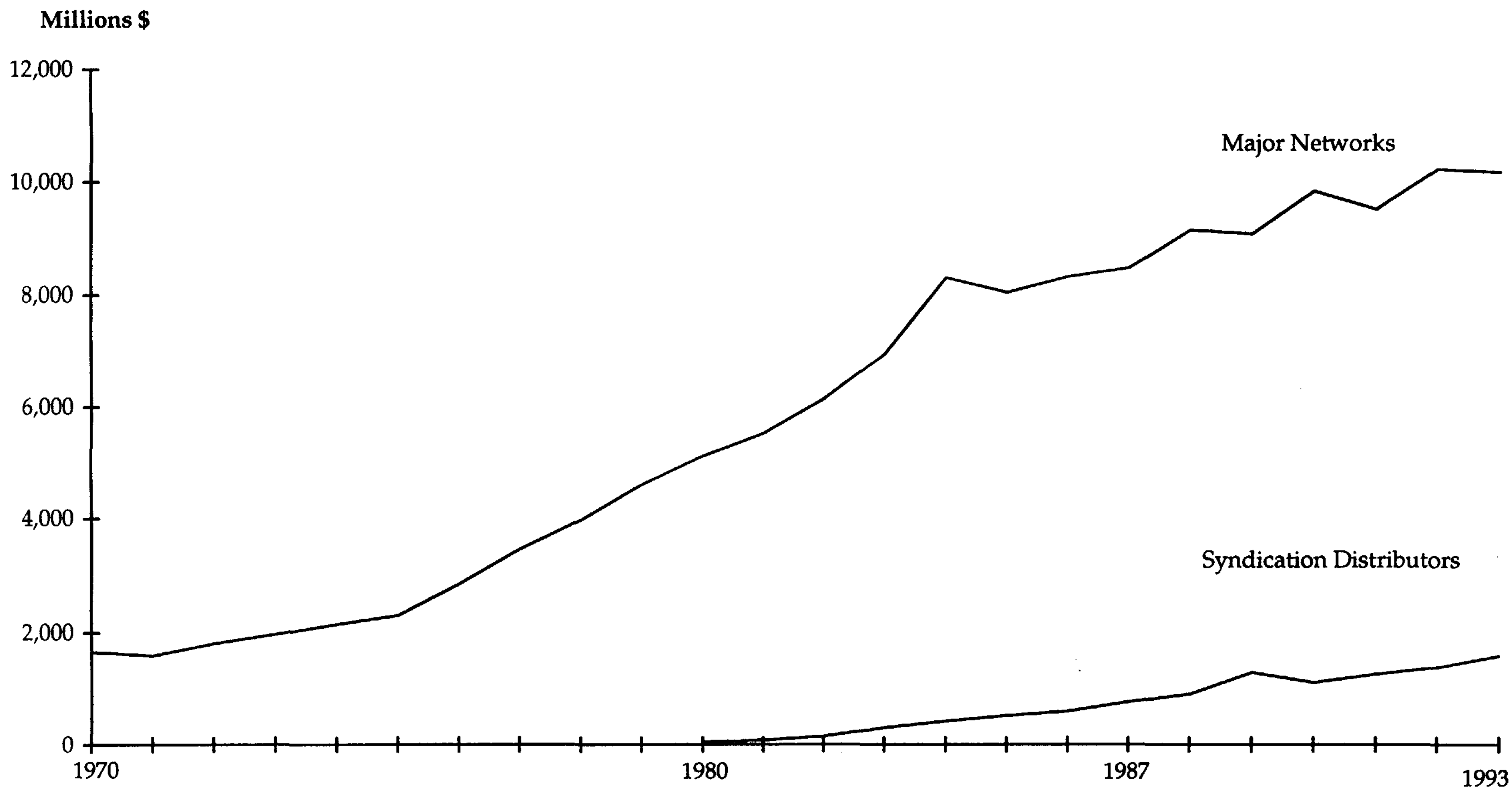
1. The national syndicated programming market may be just beginning to exert price discipline on national network advertising rates.

Using the Commission's delineations of national television advertising markets, we can look generally at the impact of PTAR. Starting with 1987, the network figures include Fox. In the national market for video advertising, **Figure II.4** shows significant entry by independent syndicators dates back to 1980. While we are not able to break these figures down into prime time, they are nonetheless indicative that the major networks have begun to face direct competition from national syndicators like King World and Viacom/Paramount.

[19] The CPI-U is the appropriate measure since almost all prime time advertising is for consumer goods or services, and since advertising costs are embedded in the costs of those same goods and services as part of the price charged to the consumer.

Syndicated distributors have gradually increased their presence in the national market for television advertising.

National Market Sales of Television Advertising, 1970-1993



Note: Major network sales include Fox after 1987. Sales by syndication distributors include all barter syndication sales.

Source: McCann-Erickson

Figure II.4

These syndication firms operate like "micro-networks" for a few highly rated first run programs during the prime access period.

Apart from the network programming that emerging networks develop national sponsors for, the only other close substitute for major network advertising is that done by syndicated distributors, and only for those programs that are popular enough to command a national audience.[20]

It took these syndicators many years to develop such programming formats for the access period in a way that attracted a national audience rivaling what the networks command during prime time[21]. The prime access versions of "Wheel of Fortune" and "Jeopardy!" first aired in the Fall of 1983 and 1984, respectively, well over a decade after PTAR was implemented. As **Figure II.4** indicates, even with the success of these programs, syndicators have not come close to competitive parity with the three major networks with respect to national advertising revenue.

Nevertheless, as a direct and indirect result of PTAR, competition with the major networks should have the effect of curtailing increases in prime time advertising prices. **Figure II.5** shows the trend in network prime time prices since 1987, the formative year of Fox as an emerging network. The drop in prime time national advertising rates during the 1990 economic recession is consistent with previous experience and during following recessions. It is generally the case that general recessions affect advertising markets at least as seriously as the market as a whole. However, as seen in **Figure II.6**, what is

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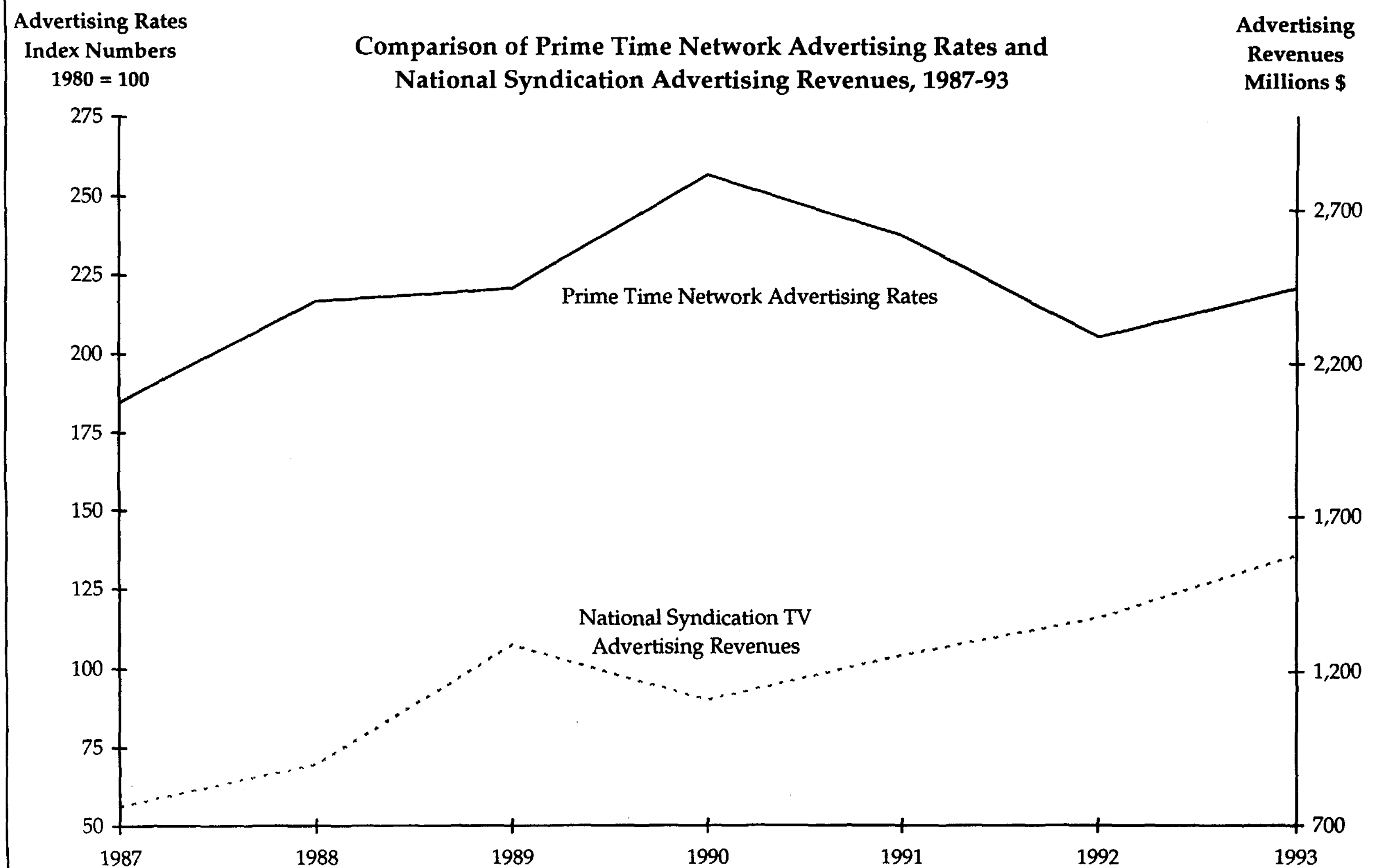
[20]The new United Paramount Network commenced network programming January 16, 1995, with two hours of network programming on Mondays and Tuesdays, 8 - 10 p.m. Eastern Time Zone, plus a regular Saturday afternoon movie block of time, 12 - 2 p.m. Fox began operation as an emerging network in November of 1987, with five hours a week of network programming. It now airs 15 hours per week of prime time network programming.

[21]One of the strongest opponents of PTAR, Disney, which also levels complaints about having to sell to "monopsonistic" networks, has apparently never persisted in trying to enter the market for national video advertising through the Monday-Friday access window. It has certainly been free to do so, and given the success of its half hour programming formats for networks like "Home Improvement" it certainly faces no great barrier to entry to launching access period first run syndicated programming.

National distribution of syndicated programs have contained the growth of prime time network advertising rates.

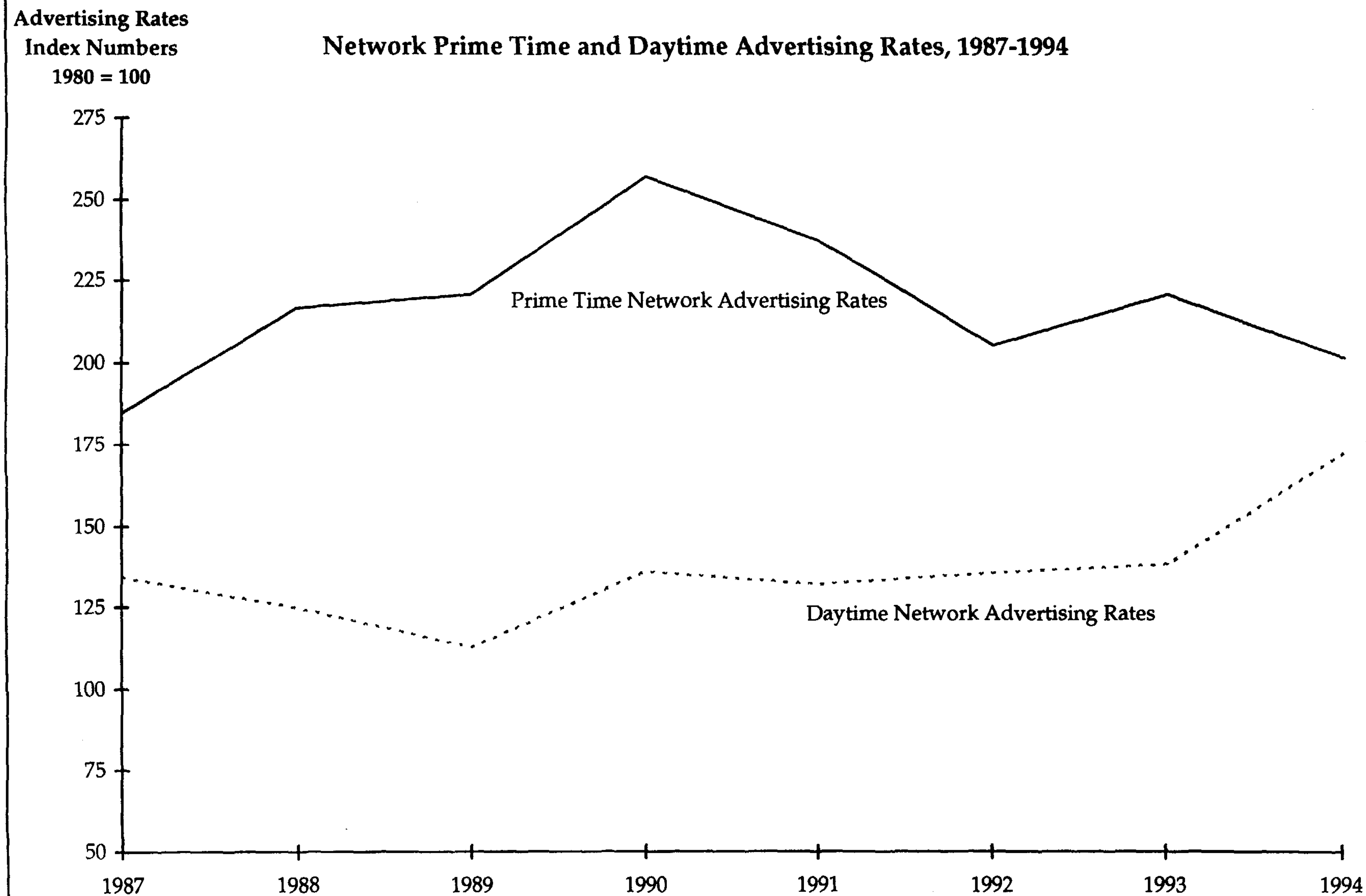


Note: Index numbers are based on cost per 1000 homes.

Sources: Prime Time Network TV Ad Rates: A.C. Nielsen.
Inflation (CPI-U All Items): Council of Economic Advisors, Economic Report of the President, 1994.
Advertising Volumes: Robert J. Coen, McCann-Erickson, Inc.

Figure II.5

Prime time network advertising rates continue to decrease although daytime network rates have clearly recovered from the most recent recession.



Note: Index numbers are based on cost per 1000 homes.

Source: A.C. Nielsen.

Figure II.6

unusual is that the prime time rates continued to drop or hold steady through 1994, while the daytime rates recovered after the recession in normal cyclical fashion. Part of the explanation for the decrease in prime time rates may be that, for the first time in their history, the three major networks actually face direct competition in the national video advertising market, from emerging networks like Fox (and, since earlier this year, United Paramount and Warner Brothers) as well as from syndicators like King World and Viacom/Paramount, which have been able to create network quality first run programs for prime access viewing.

The emerging networks appear to offer the potential for more direct competition with the major networks than the sellers of national syndicated advertising do. While the latter have access to this market through the major network affiliates during prime access and early fringe, the former have access <u>throughout</u> prime time. But, as will be discussed, <u>infra</u>, the development of these new networks and the competitive benefits they will inject into national advertising markets, is critically dependent on the PTAR.

2. Cable does not present a competitive challenge to the major networks in the market for national advertising.

While the <u>Notice</u> cites to the growth of cable television as a reason for the decline in network dominance, this approach is not supportable on close examination. As the Commission observed elsewhere, cable operators do not exist in the same advertising market.

> We tentatively exclude individual broadcast stations' and cable system operators' sale of advertising to media buyers (i.e. spot sales) from this (<u>national advertising</u>) market because spot sales of advertising to national advertisers are frequently made to allow the national advertisers to reach a more targeted geographical focus and not to reach a national audience . . .

(FCC 94 - 322, December 15, 1994, pp. 18 - 19, emphasis added)

We do not agree with the Commission, however, that "national" cable advertising expenditures are part of the national broadcast market for video advertising. A common mistake in the analysis of the television industry is to assume that because cable systems are everywhere, they offer national advertising in the same sense that broadcast networks do. This reflects a confusion of national geographic coverage with national audience coverage. From an advertiser's perspective, it is the number of viewers reached (or not reached) that matters, not where they reside.

An increase in the aggregate market share of cable does not mean that the representative cable network is in a stronger competitive position in the "network" market relative to the major broadcast networks. With a 62.5 percent maximum possible national coverage, the representative cable network does not even deliver truly national audience levels. The Commission itself recognized that "less-than-national coverage is probably reflected in advertising rates" on cable networks (FCC, 94-322, p.19, footnote 66, January 17,1995).

Consistent with the Commission's own market definitions, and because cable penetration does not convey similar national audience coverage, all cable advertising is best compared with spot local or national spot broadcasting advertising. Indeed, as we will discuss, infra, cable's competitive impact is seen primarily at the local level and is particularly acute as applied to independent stations.

III. NETWORK AFFILIATES CONTINUE TO DOMINATE LOCAL BROADCASTING MARKETS

A. DURING THE 1980'S PERIOD OF RAPID CABLE GROWTH, UHF PROFITABILITY PLUMMETED, WIDENING THE ECONOMIC GAP BETWEEN AFFILIATES AND UHF INDEPENDENTS

In the Notice's "Proposed Analytical Framework for Evaluating the Efficacy of PTAR", the Commission places much weight on a presumption that the growth of cable systems has eliminated most or all of the economic handicap faced historically by UHF broadcast stations, the vast majority of which are independent television stations. At paragraph 36, the Notice implies that because the signal quality gap between UHF and VHF has been eliminated (for 62.5 percent of, but not all, U. S. households), independent stations no longer suffer a competitive disadvantage. Therefore, it concludes, independent programmers no longer need access to the top market affiliate stations, almost all of which are VHF.[22]

Addressing the Commission's UHF v. VHF presumptions requires a time series of UHF independents' performance measured against the performance of affiliates, most of which are VHF. The analysis must be designed to separate out the signal quality issue from the *sum total* of other economic disadvantages which UHF stations may face compared to VHF stations. These can be summarized by, for example, rate of return data. The most important period to examine is the 1980s, when the explosive growth in cable carriage occurred.

The economic disadvantages that UHF television stations are perceived to have suffered over the years can be summarized by comparing an appropriate measure of economic performance such as rate of return among station types. We employ direct financial comparisons, utilizing the Television Financial Report prepared annually for the National Association of Broadcasters. The NAB data enable some time series comparisons to be made based on a rate of return to sales measure. Although the data do not allow for a consistent measure over time of rate of return on equity or capital, the low fixed capital requirements to enter local broadcasting make rate-of-return on sales probably the best overall measure of economic performance.[23]

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[22] "Independent stations, however, have typically competed at a technological disadvantage (since most are UHF-based), and the argument has been made that the supply of independently produced programming would not have developed like it has if the independent programmers did not have access to the top market affiliates to launch and establish the platform for their programs' success. We ask whether in today's marketplace, particularly with cable leveling the technological differences between UHF and VHF stations for the 62.5 percent of television households that subscribe to cable, this dynamic still persists. Would the level of diversity of programming diminish if we eliminated PTAR?" Source: Notice, paragraph 36 at page 24.

[23] The nature of this data base, its possibilities and limitations for time series analysis are discussed in Appendix C.

The first two figures present a global look at the profitability of major network affiliate vs. independent stations, the practical issue of concern in the Notice. These also are a useful proxy for a UHF vs. VHF comparison since almost all affiliates are VHF and almost all independents are UHF.

Despite the rapid growth of cable in the 1980s, the economic gap between affiliates and UHF independents did not close. In fact, it widened. The worsening performance of UHF profitability evident in **Figure III.1** is associated with four distinct cycles: (1) an immediate post-PTAR effect; (2) a short run "antenna" cable effect; (3) a long run PTAR-induced entry and cable channel entry effect; and (4) an emerging network effect.

For four consecutive years, 1976 through 1979, after the regulatory form of PTAR had stabilized and successive challenges to the off-network provision had been defeated, the nationwide profitability of predominantly UHF independents was only marginally below that of predominantly VHF affiliates. In 1980, the profitability of independents plummeted, and the local market dominance of affiliates re-asserted itself.

The recovery in the profitability of independent stations that accompanies the early years of rapid cable growth in the 1980s is overshadowed by the growing financial insolvency of the universe of UHF independent stations from 1985 through 1991. This period is substantially longer and more severe in character than that for independents in the top markets, which benefit directly from both provisions of the prime time access rule, and not just the three-hour restriction.

It would be incorrect to infer from **Figure III.1** that since 1988, independents have been closing a UHF vs. VHF profitability gap with network affiliates nationwide. Nationwide, independent television stations as a whole have simply been fighting for survival -- a return to positive profitability or break-even status. A return to marginal positive profitability is shown for 1992, the last year available for this time series which includes Fox stations as independents.

UHF profitability plummeted during rapid cable growth in the mid 1980's and only returned to positive levels after 1991.

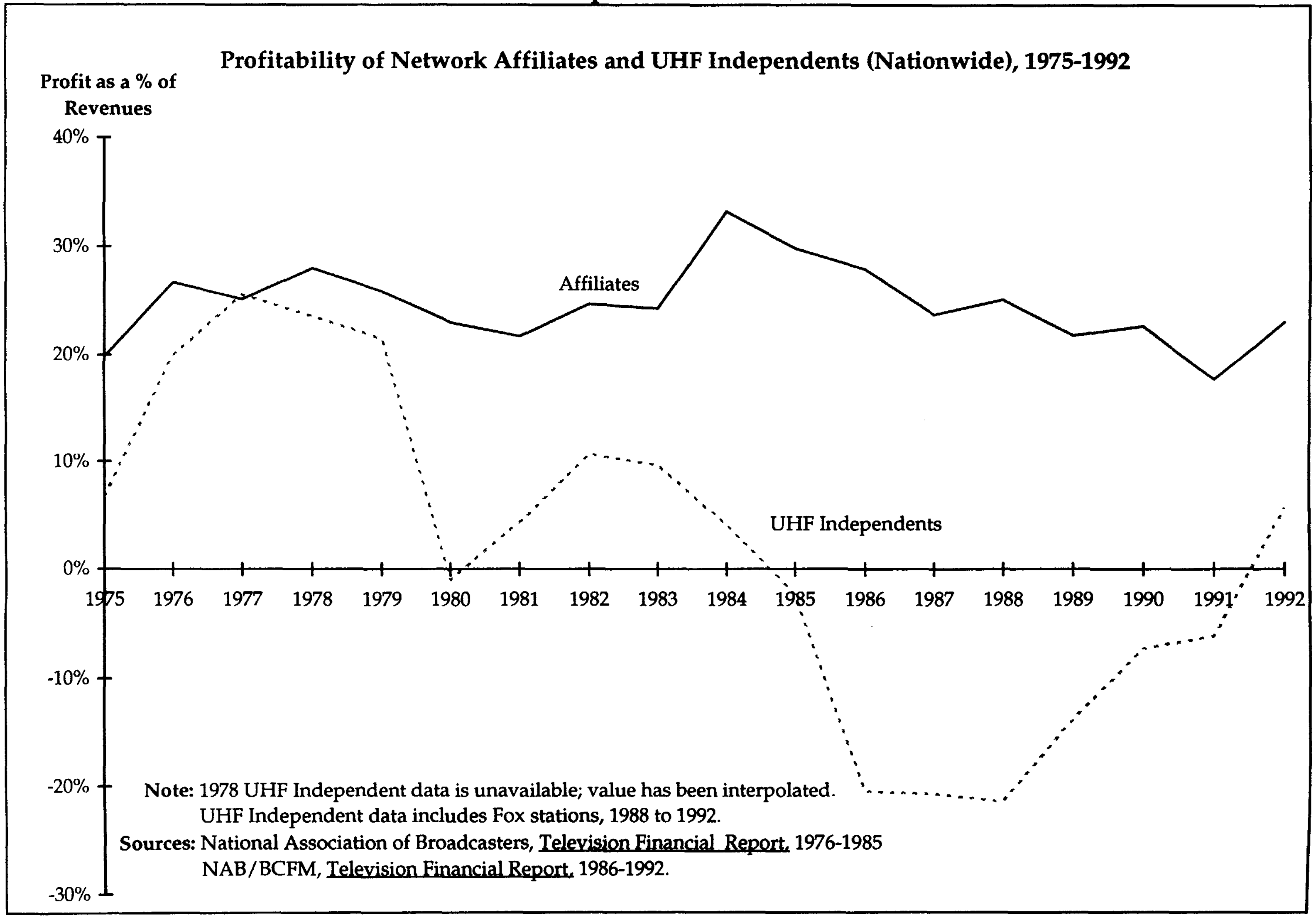


Figure III.1

B. In the Top Markets Where most VHF Independents Are Concentrated, the Economic Gap Has Widened Between Affiliates and Independents During the Period of Rapid Cable Growth, Indicating Continuing Structural Dominance of Affiliates in Local Broadcasting Markets

Total dollar profitability in **Figure III.2** is also a useful comparison to make in examining the relative impact of cable growth on affiliates and independents in the top markets affected by PTAR. While a top 50 market comparison would be ideal, the NAB data are not constructed in a way that allows a comparison of long enough duration as required. The inference that might be drawn is that the rapid growth of cable in the 1980s was healthier for large market affiliates of the broadcast networks than it was for independent television stations. In the long run, cable television did not prevent a widening of the overall economic gap between independents and affiliates.[24]

Another comparison can be made for those top markets in which it is accepted that independent television stations are strongest and best able to compete against network affiliates. Such a UHF vs. affiliate comparison is made in **Figure III.3** for the top 10 ADI markets for the period 1975 through 1992.

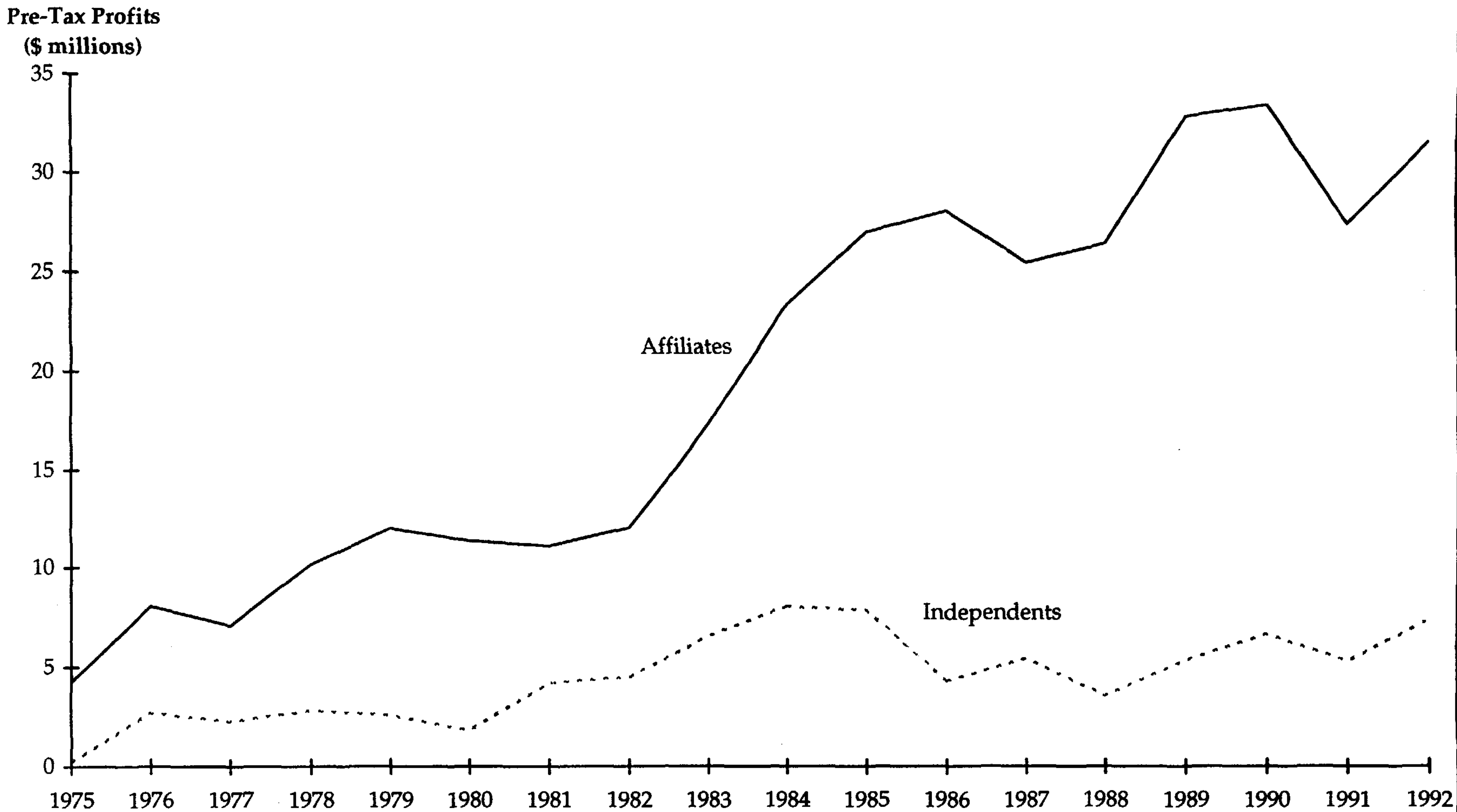
Recognizing that most affiliate stations are VHF, this particular UHF vs. VHF gap has widened since the last half of the 1970s. While the rate-of-return for top market affiliates has remained almost constant over the entire period, it has fallen for top market UHF independent stations over the entire period.

As with earlier nationwide comparisons, four wide swings in profitability are evident in top market UHF independents. They are: (1) a post-PTAR effect, 1975-1979; (2) a short run cable "antenna" effect, 1981-1984; (3) a long run cable "entry" effect, 1985-1989; (4) an emerging network effect, 1990-present.

[24] The FCC has recognized the advantage that cable brings to affiliated stations.

The profitability gap between network affiliates and all independents has increased in the top ten markets with the growth of cable systems.

Profitability of Network Affiliates and All Independents in the Top Ten Markets, 1975-1992

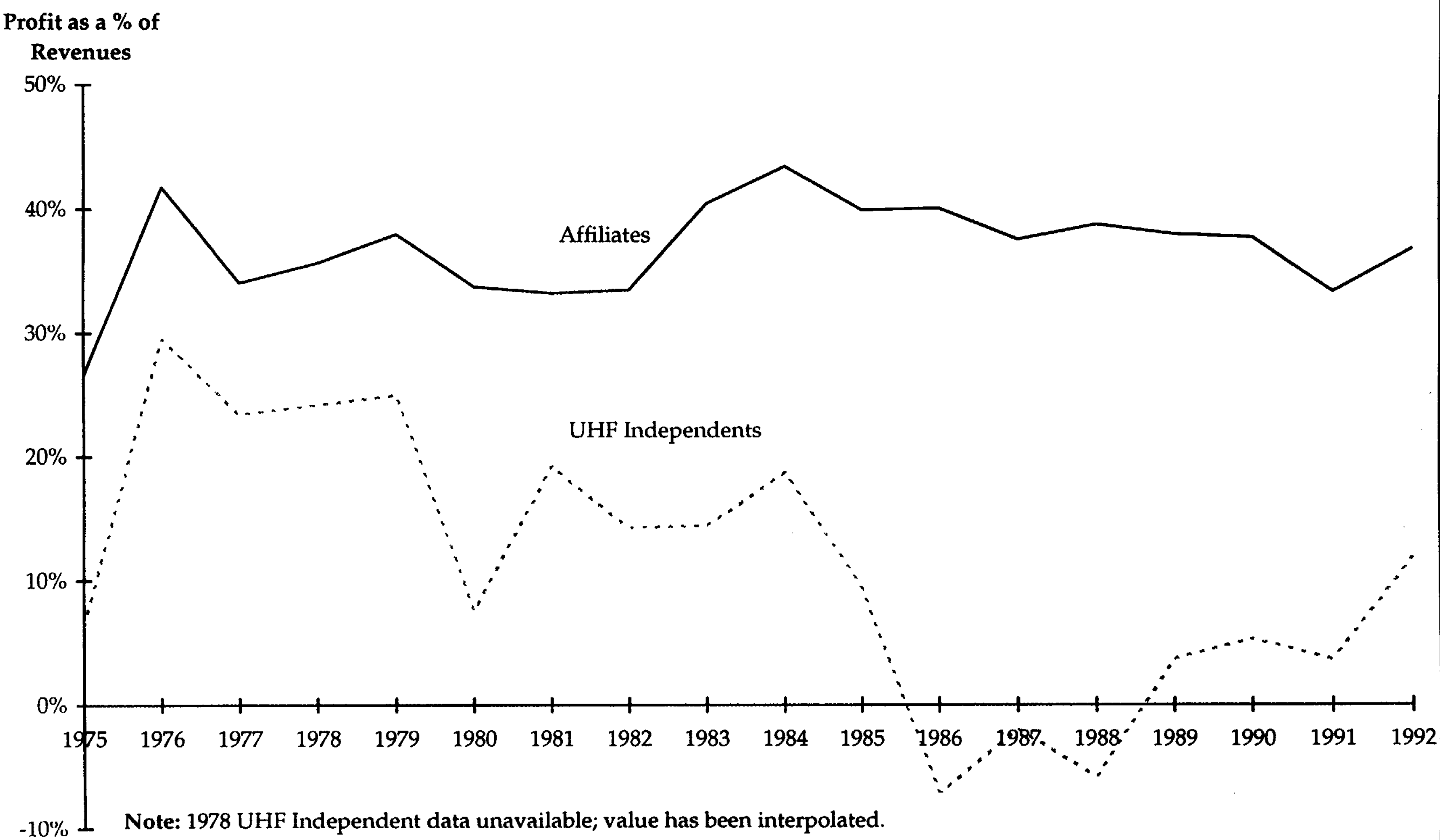


Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

Figure III.2

The profitability gap between network affiliates and UHF independents in the top ten markets has increased with the growth of cable systems.

Profitability of Network Affiliates and UHF Independents in the Top Ten Markets, 1975-1992



Note: 1978 UHF Independent data unavailable; value has been interpolated.

Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

Figure III.3

C. THE ECONOMIC GAP BETWEEN VHF AND UHF AFFILIATES REMAINED CONSTANT DURING THE PERIOD OF RAPID CABLE GROWTH, SUGGESTING CABLE HAS NOT CLOSED ANY PURELY UHF VS. VHF GAP.

The practical issues explored above in UHF vs. VHF time series comparisons are really the local economic dominance of network affiliates (which are mainly VHF stations) compared to the marginal status of independent television stations (which are mainly UHF stations).

Such comparisons do not afford a *pure* test of the Commission's concern with whether (partial) elimination of signal carriage disadvantages of UHF stations due to the growth of cable has narrowed the UHF vs. VHF gap. The tests in **Figures III.1, III.2** and **III.3** above do not discriminate between signal carriage disadvantages as such and all other economic disadvantages which would affect rate of return differentials between affiliates and independents.

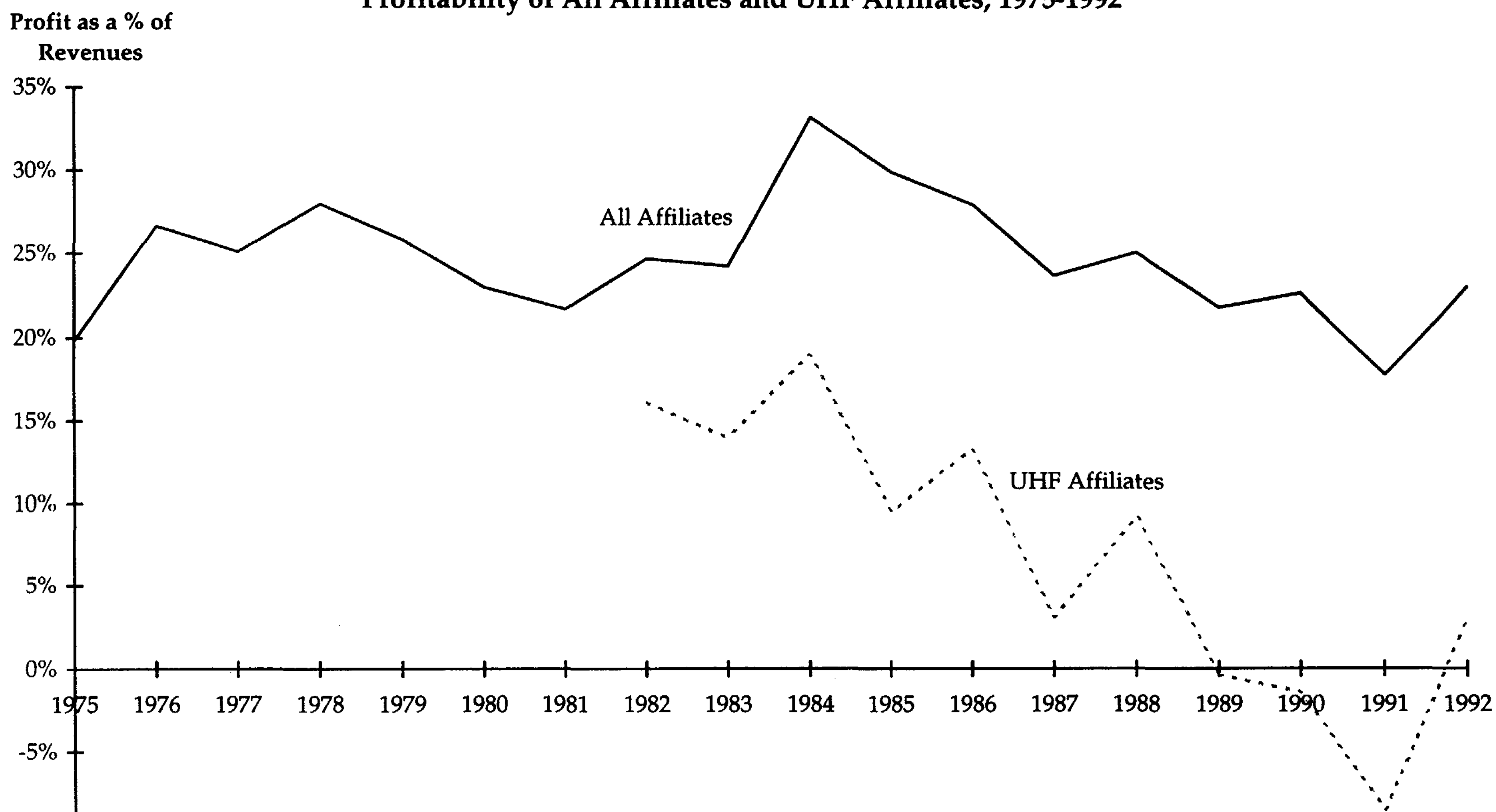
For years since 1981, the NAB database does enable us to control for affiliate vs. independent economic status. Ideally, two tests should be employed: (1) comparing rate of return trends for UHF vs. VHF independents; and (2) comparing rate-of-return trends for UHF vs. VHF affiliates. The NAB data, understandably, do not break out data for the relatively few VHF independents which exist. However, starting in 1982, NAB's Television Financial Report has presented annual data for UHF affiliates.

A comparison of rate of return data for UHF affiliates and all affiliates affords a conservative and useful test of whether cable growth during the 1980s has reduced the signal carriage disadvantage faced by UHF stations. In **Figure III.4,** such a test demonstrates clearly that over the past decade, the economic gap attributable to UHF vs. VHF status has not diminished.

Any economic advantage associated with being part of a national network is controlled for since the comparison in **Figure III.4** is only for affiliates. Similarly, any dominance affiliates possess in their local markets vis-a-vis independents is controlled for. No independent television stations are included

The growth of cable in the 1980's has not reduced the profitability gap between VHF and UHF affiliates, implying a UHF disadvantage remains.

Profitability of All Affiliates and UHF Affiliates, 1975-1992



Note: Insufficient data exist to compare UHF independents with VHF independents, or UHF with VHF affiliates. Thus, UHF affiliates and all affiliates are used. The spread illustrated above is a very conservative estimate of the actual profitability gap. An even wider gap would be evident if UHF affiliates were omitted from the all affiliate data.

Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

Figure III.4

in the UHF statistics, so the marked decline in rate of return on sales between 1982 and 1992 cannot be due to attributes of **independent** stations that might render them weak, notably their non-network status, weaker local financial base, lower audience shares, less attractive programming format, etc.

Overall, the growing prevalence of cable is associated with no decrease in the economic gap UHF stations face vis-a-vis VHF stations. One reason for this fact is that while UHF signal quality is improved by cable carriage, this is more than offset by the additional cable channels that are added when a home changes from a broadcast delivery system to a cable delivery system. Also, UHF stations have suffered historically from disadvantageous channel positioning on cable systems not to mention complete lack of carriage in many instances. Moreover, each cable channel reduces at the margin the shares and ratings of independent and affiliate broadcast stations, but is more competitive vis-a-vis independents than affiliates.

In **Table III.1**, we summarize more formal statistical tests based on the profitability data for **Figures III.1, III.3,** and **III.4.**[25] The statistical methods test (1) whether the profitability of affiliates nationwide or in the top 10 markets has been essentially constant over time; and (2) whether the profitability spread between affiliates and independents or between all affiliates and UHF affiliates has closed over time. The statistical results confirm what is shown in the corresponding Figures. Profitability for the affiliates has not changed significantly over time, showing small variations from its mean value. In contrast, the economic gap between UHF independents and affiliates, both nationwide and in the top 10 markets has grown over time. The profitability gap between VHF affiliates and UHF affiliates seems to have remained essentially constant.

[25] The formal statistical method used here tests whether the values of profitability or the profitability spread vary significantly from their average values over the time period. The test statistic is a chi square, the sum of the squared deviations of the value from its mean divided by the mean. Large values of the chi square indicate that the deviations are significant, i.e., the values are significantly different from their mean.