

One significant finding from Appendix Table D.1. pertains to carry over ratings for the Fox stations. For the one half hour access period, the average ratings have been 6.23 whereas for all three half hour periods studied, the average ratings per half hour have been 7.53. The higher ratings over all three periods may indicate synergies between an emerging network and PTAR that carry over ratings from the access period to the remainder of prime time in a way that is not possible for a non-affiliated independent station. Thus, the formal regression estimates of carry over across all independents may understate the carry over ratings effect for emerging networks.⁵⁴

The critical importance of PTAR to the success of emerging networks is apparent from these carry over ratings statistics. Assuming the average ratings improvement holds across all remaining prime time periods, PTAR improves ratings of independent stations across each and every thirty minute period of prime time following prime access by half a ratings point.⁵⁵ The cumulative ratings impact is as significant as the access period itself.

Thus, for emerging networks, eliminating PTAR would materially reduce their chances for successful entry into the prime time national video advertising market. Without PTAR, the dominance of the major networks and their affiliates would be consolidated throughout prime time, not just the access period because of the carry over effect.

B. EMERGING NETWORKS BUILT AROUND UHF STATIONS ARE THE DIRECT LONG RUN RESULT OF PTAR, AND REPEAL WILL ADD SUBSTANTIALLY TO ALREADY FORMIDABLE ENTRY BARRIERS DUE TO SEVERE COMPETITIVE DISADVANTAGES VIS-A-VIS THE MAJOR NETWORKS

We have seen from the discussion in Section II that PTAR has had a long run pro-competitive impact on the prime time broadcast television market for national video advertising. Before PTAR that market was dominated exclusively

⁵⁴ In general we found the issue of carry-over ratings to be statistically complex. Considerably more work would have to be done to estimate these effects over time and across markets in order to better isolate the pure PTAR effect.

⁵⁵ The average is $0.32 + 0.68 = 1.00$ rating point divided by 2 equals 0.5 ratings points.

by the three major networks. As a result of PTAR, a number of independent syndicators and emerging networks have entered that national market, adding competition for the three major networks. However, emerging networks such as Fox, UPN, and WB add more competition against the major networks than do independent syndicators, at least potentially, since their networks should eventually enter and compete across the full range of prime time hours, not just the access period.⁵⁶

Even with PTAR, the emerging networks suffer severe competitive disadvantages by not having dominant local stations as their foundation. We have discussed these at length in **Section II. A.** Despite the growth of cable and increases in the number of independent stations in the top 50 markets, the major network affiliates' profitability has remained remarkably constant over time. By contrast, independent stations and UHF independents in particular have not closed their profitability gap with affiliates.

The growth of cable has not closed any purely UHF/VHF signal quality gap. Building a national broadcast network from primarily UHF stations remains a daunting task even with PTAR in place in light of the lower profitability of UHF stations discussed in **Section II. A.** Fox VHF affiliates outperform Fox UHF affiliates correcting for all other differences including program and time of day. For that reason Fox in 1994 sought to replace several of its UHF affiliates with VHF stations. Even so, Fox remains a predominantly UHF-based network with a significant ratings disadvantage relative to the major networks. Fox has 159 full time affiliates of which 131, or 82.4%, are UHF stations.

The UPN and WB networks launched in January, 1995, rely heavily on UHF stations in local markets. UHF stations constitute 83% of UPN's full time

⁵⁶ As discussed in **Section IV. B.** above, independent syndicators must maintain higher ratings thresholds than off-network programs in order to compete effectively with the latter nationally during the access period. They do not appear to have the option of competing during all of prime time by positioning themselves on independent stations because of the ratings disadvantages of independents, and the strength of the major networks' prime time schedules and the promotional efforts made by those networks in support of those schedules.

affiliates. As for the WB network, not only does it rely on UHF stations, but it must depend on cable penetration to reach 18% of its audience.

When compared to the local stations facilities underpinning the major networks, the emerging Fox, UPN and WB networks face a formidable challenge. Today, 69% of ABC's reach is through VHF facilities. For CBS, 84% of its facilities are VHF, and 74% of the NBC network utilizes VHF stations.

Our econometric studies of ratings and financial studies of profitability make it clear that repealing PTAR would have a negative impact on the financial health of Fox affiliates and the emerging UPN and WB networks, and threatens their entry into the national video advertising market.

We can draw together many of the analytical findings and perspectives in this report by asking directly: what will happen to emerging networks if PTAR is repealed? **Figure V.1** summarizes the short run and long run impacts of PTAR including the linkages which establish its importance to emerging networks.

Our econometric results have shown that PTAR had an immediate impact on the ratings of independent stations, narrowing though not eliminating the ratings advantages of network affiliates during prime time. Those ratings improvements have persisted through time, improving independent stations' profitability and ability to air local content programming such as news. Eliminating PTAR would reduce the ratings of newly - networked independent stations, hurting the ability of the network to sell national advertising.

The econometric results also confirm that PTAR had a measurable long run impact on growth in the number of independent stations. This is consistent with what we would expect from economic theory. Higher profitability encourages entry. Much of this entry was in markets 31 - 50 in which entrants had the full advantage of PTAR including the off-network restriction. While independent station representation in all of the top 50 markets may not be an

PTAR has had a major and lasting impact on the structure of the country's television broadcasting markets.

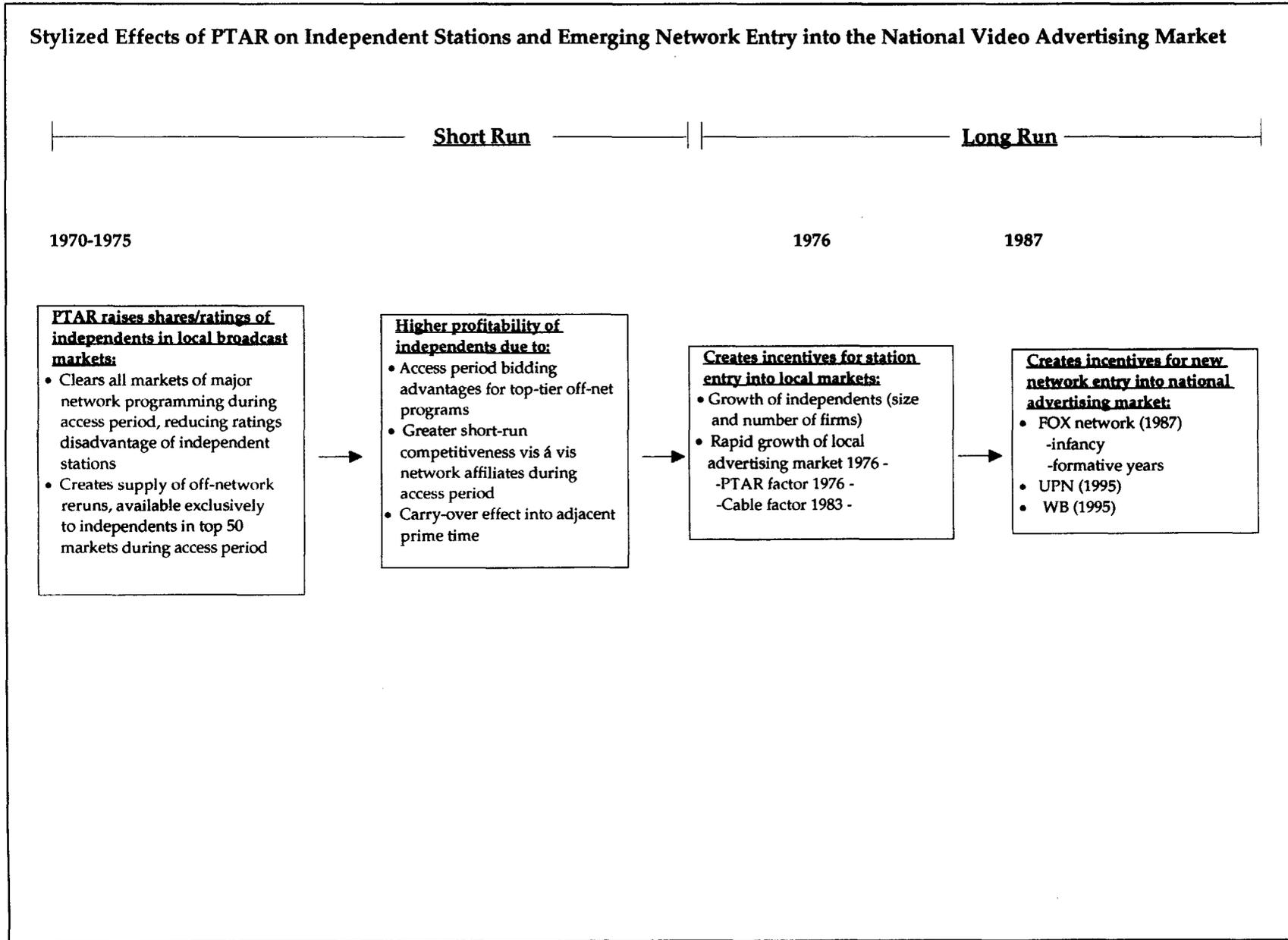


Figure V.1

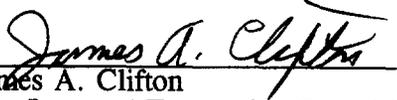
necessary condition. PTAR helped create this foundation for new networks by stimulating entry in the largest markets.

Given the current low level of profitability of many independent stations due to structural changes in the marketplace, eliminating PTAR would likely cause many independents to go dark, leaving emerging networks with substantially less than national audience coverage. This would also tend to foreclose entry into the national advertising market for the emerging networks.

We have shown that the growth of cable in the long run has a negative impact on the prime time ratings of independent stations. Cable is a structural change in the marketplace that renders PTAR more important, not less important, to independent stations individually and to firms seeking to network them. In fact, as seen from Appendix Table D.4, over the access period and the follow-on hour, cable's negative impact is larger than PTAR's positive impact on independent station ratings. Thus, PTAR is needed more than in the past just to partially offset the advantages that multi-channel competitors have in local markets. Were PTAR to be repealed, emerging networks would suffer a dual competitive disadvantage: first, in relation to local broadcast affiliates; and second, in relation to cable networks.

In conclusion, PTAR is a critical wedge for emerging networks that could tip the balance between success and failure. Quite apart from PTAR's importance to individual independent television stations and syndicators of first-run programming, it is distinctly important to emerging networks being built from the weaker UHF stations with programming aired adjacent to the access period. Repealing PTAR could effectively block entry by these new networks into the lucrative prime time market for national video advertising, not only thwarting the diversity goals PTAR sought to achieve, but eliminating added competition against the major networks. Creating a new anti-competitive issue by repealing PTAR is neither in the Commission's nor the general public's interest.

Respectfully submitted,


James A. Clifton
The Law and Economics Consulting
Group Inc.
1775 Pennsylvania Avenue, N.W.
Suite 1200
Washington, D.C. 2006

March 7, 1995

Before the
Federal Communications Commission
Washington, D.C.

In re)
)
Review of the Prime Time) MM Docket No. 94-123
Access Rule, Section 73.658(k) of the)
Commission's Rules)

Appendices to Economic Report

**The Economic Effects of Repealing the Prime Time Access Rule:
Impact on Broadcasting Markets and the Syndicated Program
Market**

Prepared for :
Association of Independent Television Stations, Inc.
King World Productions
Viacom, Inc.

James A. Clifton
Raymond S. Hartman
Steven S. Wildman
The Law and Economics Consulting Group, Inc.
1775 Pennsylvania Avenue, N.W.
Suite 1200
Washington D.C. 20006

March 7, 1995

List of Appendices

	Appendix <u>Page</u>
A. The Rule: PTAR I, PTAR II, and PTAR III	1
B. Network Advertising Prices by Time Period	6
C. The NAB and Arbitron Data Base and Formal Arbitron UHF/VHF Regression Results	10
D. Predicting the Impact of Repealing PTAR: Econometric Evidence	35
E. Network Programming Schedules Before and After PTAR.....	69
F. Reply to the Disney Position Paper on PTAR.....	80

APPENDIX A

THE RULE: PTAR I, PTAR II, AND PTAR III

May 4, 1970 73.658 AFFILIATION AGREEMENTS AND PROGRAM PRACTICES

“(k) Prime time access rule

“(1) After September 1, 1971, no television stations, assigned to any of the top 50 markets in which there are three or more operating commercial television stations, shall broadcast network programs offered by any television network or networks for a total of more than three hours per day between the hours of 7 p.m. and 11 p.m. local time, except that in the central time zone the relevant period shall be between the hours of 6 p.m. and 10 p.m.

“(2) For the purpose of subparagraph (1) of this paragraph, network programs shall be defined to exclude special news programs dealing with fast breaking news events, on-the-spot coverage of news events and political broadcasts by legally qualified candidates for public office.

NOTE.-See also footnote 35, Report and Order, 35 F.R. —, for application of this paragraph to certain sports events.

“(3) The portion of time from which network programming is excluded by subparagraph (1) hereof may not be filled with off-network syndicated series programs, or feature films previously broadcast in the market.

“(4) The top 50 market shall be determined on an annual basis as of September 1 according to the most recent American Research Bureau prime time rankings (all home stations combined) throughout the United States.

“(5) Nothing in this paragraph shall be construed to apply to educational, noncommercial, or public broadcasting station licensees in their use and exhibition of program materials supplied through one or more noncommercial, educational, or public broadcasting television network systems.

August 7, 1970 73.658 AFFILIATION AGREEMENTS AND NETWORK
PROGRAM PRACTICES

(k) *Prime Time Access Rule*

(1) After October 1, 1971, * * *

(3) The portion of the time from which network programming is excluded by subparagraph (1) hereof may not after October 1, 1972, be filled with off-network programs; or feature films which within two years prior to the date of broadcast have been previously broadcast by a station in the market.

January 23, 1974 73.658 AFFILIATION AGREEMENTS AND NETWORK
PROGRAM PRACTICES.

(k) *Evening Programming Requirements.* The provisions of this paragraph apply to stations in the top-50 U.S. television markets (see NOTE below) which are regular affiliates of, or commonly owned with one of the three national television networks (as defined in paragraph (j) of this section), with respect to their evening programming starting on the date between September 1 and October 1, 1974, which their network designates as the start of its "new season".

(1) After such date in September 1974, each station shall devote not less than six (6) half-hours between 7:30 p.m. and 8:00 p.m. E.T. and P.T. (6:30 and 7:00 p.m. CT and M.T.) Monday through Saturday to programs which are not network, off-network or feature film; *Provided, however, That;*

(I) one (1) of the six (6) half-hours each week may consist of children's specials, documentaries or public affairs programming, either network originated or off-network.

(ii) "Documentary" programming means any program which is non-fictional and educational or informational, but not including programs where the information is used in a contest among participants.

(2) The following types of material are nor considered "network programming" for purposes of this paragraph, so that they may be presented without limitation during the Monday - Saturday time periods mentioned in subparagraph (1) hereof:

(i) "Runovers" of sports events carried on the network during late afternoon or early evening hours, if the telecast of the event (and accompanying pre-game and post-game material, if any) is scheduled so that in the normal course it would be concluded by 7:00 p.m., ET.

(ii) For stations in the Mountain and Pacific time zones, the "live" broadcasts of any "simultaneous" network programming, such as sports events or some other special events, which are broadcast simultaneously throughout the 48 contiguous states; provided the network's schedule for the evening including such telecasts complies with the provisions of this paragraph with respect to stations in the Eastern and Central time zones.

(iii) Telecasts of an international sports event such as the summer or winter Olympic games, New Year's Day college football games, or any other network programming of a "special" nature other than sports events or motion pictures, when the network devotes all of its time after 8 p.m. E.T. or P.T. (7 p.m. C.T. or M.T.) the same evening to the same programming, or all of it except brief incidental "fill" material.

(iv) "Pre-game shows" in connection with important sports events carried by the networks (e.g., the World Series), on no more than five occasions per broadcast year.

(v) Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or programming related to such events, and political broadcasts by or on behalf of legally qualified candidates for public office.

(iv) Material carried on a commercial or other network other than the three national networks as defined in paragraph (j) of this section.

(3) For those portions of the Eastern and Central time zones where "daylight saving time" is not observed for all or part of the year, during the portion of the year when it is not observed, the times which must be "cleared" of network, off-network and other feature film material shall be one hour earlier than those specified in subparagraph (1) of this paragraph, except for stations which regularly delay network evening programs and rebroadcast them an hour later.

Note.—For the purpose of this paragraph, the "top 50 U.S. television markets" are the 50 largest markets, in terms of average prime-time households,

listed each year by the American Research Bureau (ARB) in its publication *Television Market analysis*. Shortly after this publication is issued, the Commission will issue a public notice setting forth the top 50 markets as indicated in that publication. This listing will apply for the following "broadcast year", that period of about twelve months starting the following September on a date which each network designates as the beginning of its "new season".

January 16, 1975 73.658 AFFILIATION AGREEMENTS AND NETWORK
PROGRAM PRACTICES

(k) Effective September 8, 1975, television stations owned by or affiliated with a national television network in the 50 largest television markets (see NOTE 1 to this paragraph) shall devote, during the four hours of prime time (7-11 p.m. E.T. and P.T., 6-10 p.m. C.T. and M.T.), no more than three hours to the presentation of programs from a national network, programs formerly on a national network (off-network programs) or feature films which have previously appeared on a network: *provided, however,* That the following categories of programs need not be counted toward the three-hour limitation:

(1) Network or off-network programs designated for children, public affairs programs or documentary programs (see NOTE 2 to this paragraph for definitions).

(2) Special news programs dealing with fast-breaking news events, on-the-spot coverage of news events or other material related to such coverage, and political broadcasts by or on behalf of legally qualified candidates for public office.

(3) Regular network news broadcasts up to a half hour, when immediately adjacent to a full hour of contiguous locally produced news or locally produced public affairs programming.

(4) Runovers of live network broadcasts of sporting events, where the event has been reasonably scheduled to conclude before prime time or occupy only a certain amount of prime time, but the event has gone beyond its expected duration due to circumstances not reasonably foreseeable by the networks or under their control. This exemption does not apply to post-game material.

(5) In the case of stations in the Mountain and Pacific time zones, on evenings when network prime-time programming consists of a sports event or other program broadcast live and simultaneously throughout the contiguous 48 states, such stations may assume that the network's schedule that evening occupies no more of prime time in these time zones that it does in the Eastern and Central time zones.

(6) Network broadcasts of an international sports event (such as the Olympic Games), New Year's Day college football games, or any other network programming of a special nature other than motion pictures or other sports events, when the network devotes all of its time on the same evening to the same programming, except brief incidental fill material.

NOTE 1.--The top 50 markets to which this paragraph applies on the 50 largest markets in terms of prime time audience for all stations in the market, as listed each year in the Arbitron publication *Television Market Analysis*. This publication is currently issued each November, and shortly thereafter the Commission will issue a list of markets to which the rule will apply for the year starting the following September.

NOTE 2.--As used in this paragraph, the term, "programs designed for children" means programs primarily designed for children aged 2 through 12. The term "documentary programs" means programs which are non-fictional and educational or informational, but not including programs where the information is used as part of a contest among participants in the program, and not including programs related to the visual entertainment arts (stage, motion pictures or television) where more than 50% of the program is devoted to the presentation of entertainment material itself.

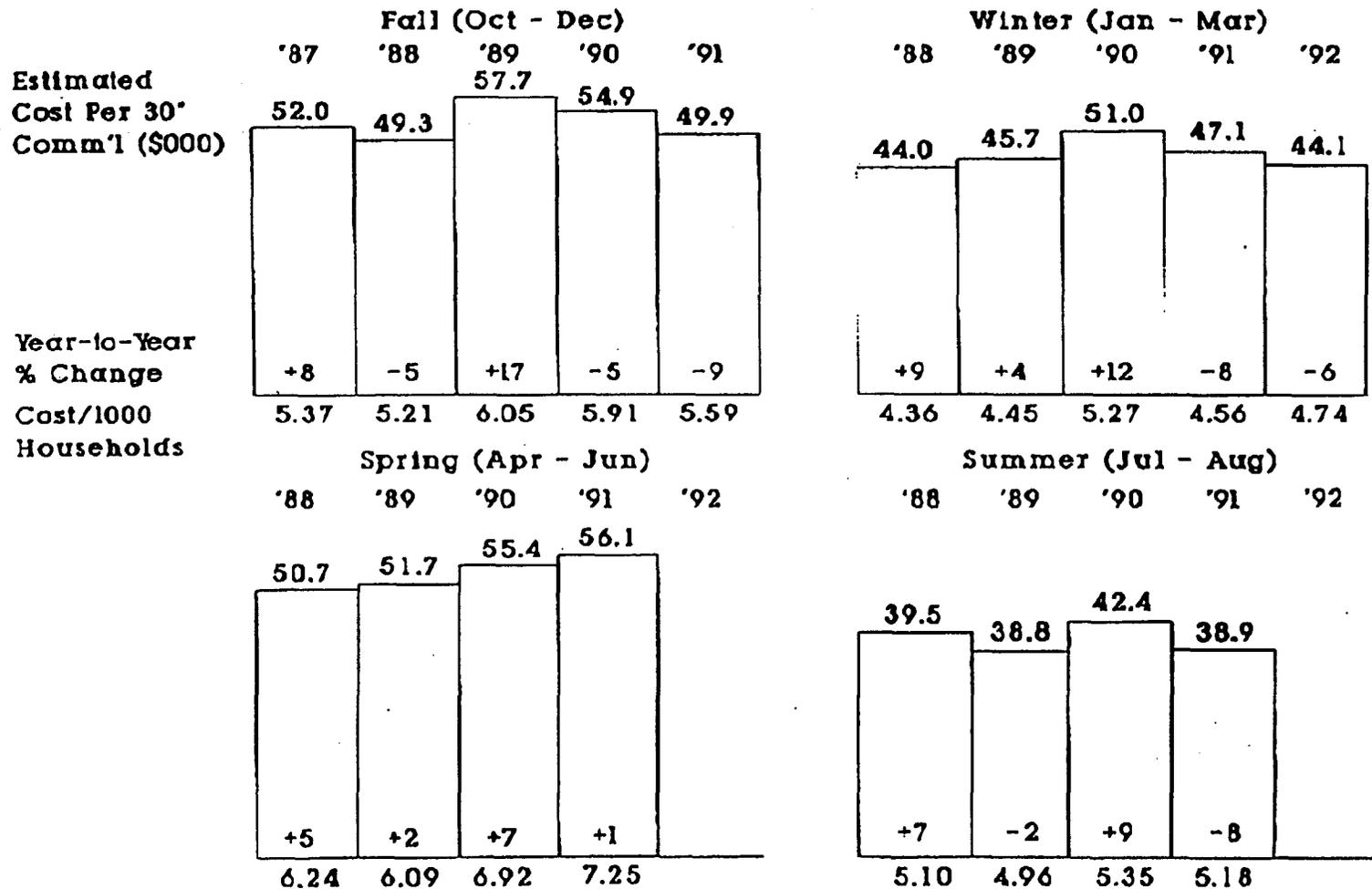
APPENDIX B

NETWORK ADVERTISING PRICES BY TIME PERIOD

Source: Network Television Association

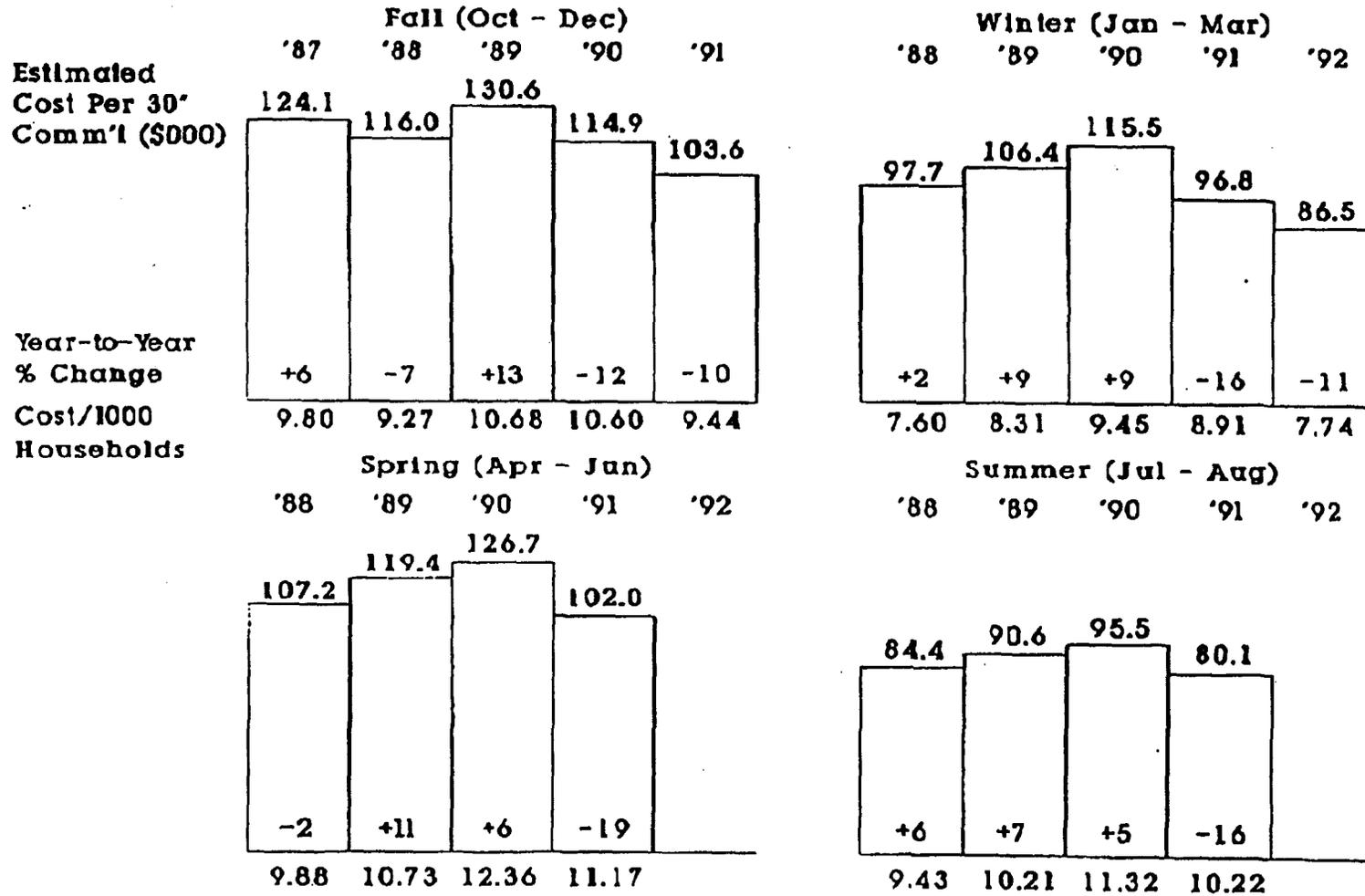
EARLY EVENING NEWS NETWORK TV COSTS - 5 YEARS

Regularly Scheduled Programs (6:30-7pm)



PRIME EVENING NETWORK TV COSTS - 5 YEARS*

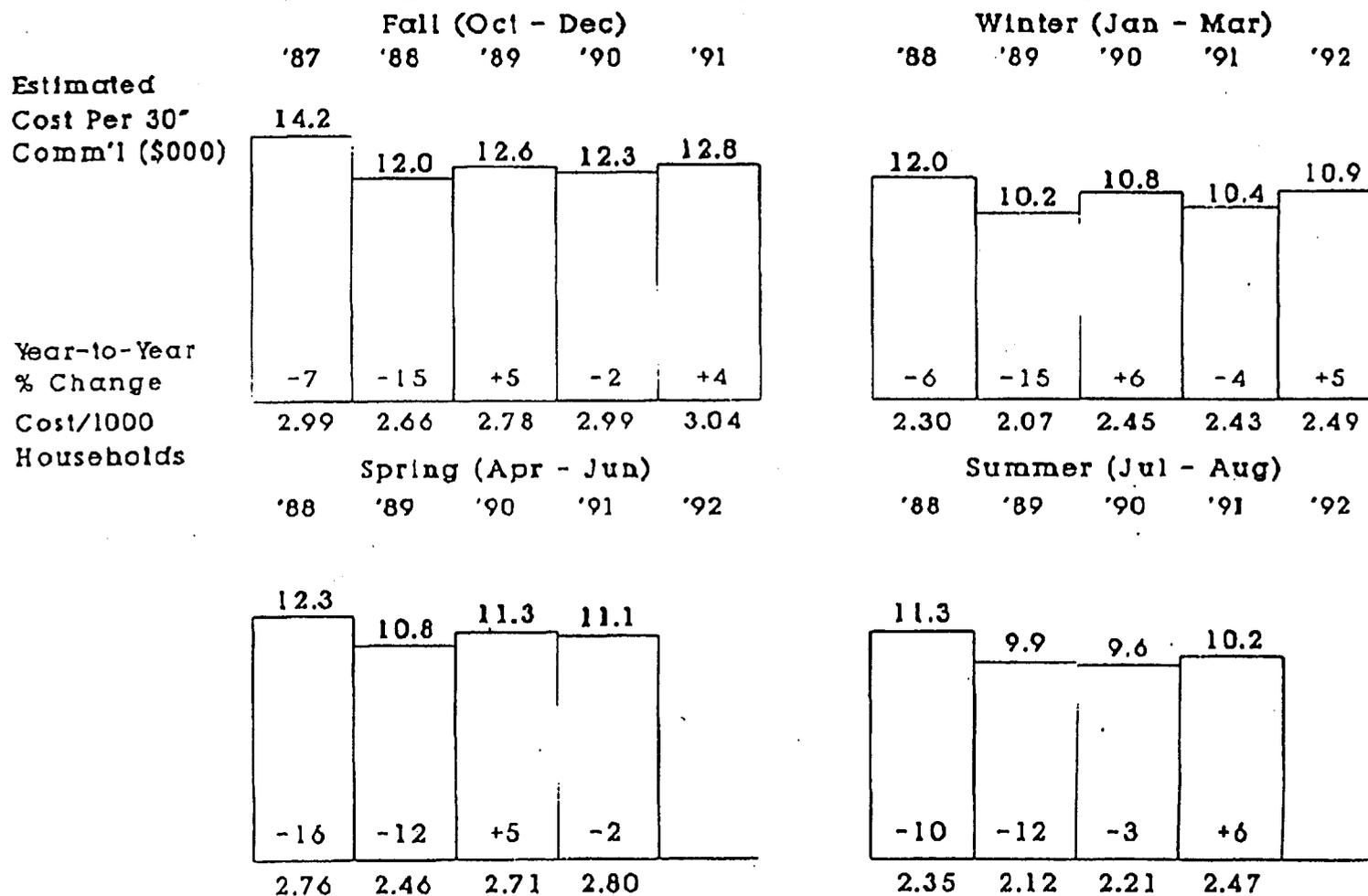
Regularly Scheduled Programs (7-11pm)



*FOX included as of Fall '90

ADULT WEEKDAY NETWORK TV COSTS - 5 YEARS'

Regularly Scheduled Programs (10am-4:30pm)



APPENDIX C

THE NAB AND ARBITRON DATA BASES AND FORMAL ARBITRON UHF/VHF REGRESSION RESULTS

I. INTRODUCTION

Much of the discussion in the economic report is based on analysis of sources of data related to television stations' financial performance, programming, and ratings. The first data base, from the National Association of Broadcasters (NAB), surveys the profits and expenses of broadcasts, in aggregated groups (e.g., affiliate or independent, UHF or VHF, size of market). However, the NAB data base does not include information on stations' programming choices or their ratings. Programming choices and ratings data are part of the Arbitron market studies which have been used, in conjunction with the NAB data, to analyze television stations' experience under PTAR.

II. NATIONAL ASSOCIATION OF BROADCASTERS FINANCIAL REPORTS

The National Association of Broadcasters (NAB) publishes a yearly financial report that surveys the profits and expenses of broadcasters. Data were collected for each year since 1975. However, the specific line items in these reports and breakdowns by market strata and type of broadcast station have varied significantly (see Table C.1). This fluctuation in the contents of this report limits the time series tests and comparisons that can be conducted with these data.

While the affiliate stations tend to be neatly broken out, allowing for a top 50 market examination, this is not the case for the other categories. Independents are grouped in non-comparable ways in the mid-1980s. This makes top 50 market comparisons of affiliates and independents operating under PTAR impossible.

Most comparisons are done using either the top 10 markets in each category or the nationwide data. These two sets are the ones most consistent across time and category. While UHF independent data are available in most years, this is not the case for VHF affiliates, which are never reported as a separate category since most affiliates have been VHF. The best possible proxy for this category is that of all affiliates.

While the NAB conducted this study each year, in 1986 to 1990 (and again in 1993) they were joined by the Broadcast Financial Management Association (BFM). This organization changed its name in 1989 to the Broadcast and Cable Financial Management Association (BCFM). The details of the availability of the data are further explored in Table C.1. In each year, the table lists the markets for which the NAB conducted and published a study. Where a category is blank in any given year, there is no published data available.

Table C.1: NAB Financial Data Summary
Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1993	1-10	1-10			NATIONWIDE	
	11-20	11-25				
	21-30	26-50				
	31-40	51+				
	41-50					
	51-60					
	61-70					
	71-80					

Table C.1: NAB Financial Data Summary
Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1992	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	21-50	1-10		
	11-20	11-20	51-75	11-25		
	21-30	21-40		26-50		
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					
1991	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	21-50	1-10		
	11-20	11-20	51-75	11-25		
	21-30	21-40		26-50		
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					

Table C.1: NAB Financial Data Summary
Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1990	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	21-50	1-10		
	11-20	11-20	51-75	11-25		
	21-30	21-40		26-50		
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					
1989	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	21-50	1-10		
	11-20	11-20	51-75	11-25		
	21-30	21-40		26-50		
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					

Table C.1: NAB Financial Data Summary

Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1988	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE
	1-10	1-10	26-50	1-10	26-50	1-15
	11-20	11-20	51-75	11-25	51-75	16 +
	21-30	21-40	76-100	26-50	76-100	
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					
1987	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE
	1-10	1-10	26-50	1-10	26-50	1-10
	11-20	11-20	51-75	11-25	51-75	11 +
	21-30	21-40	76-100	26-50	76-100	
	31-40	41-60		51-100		
	41-50	61-80				
	51-60	81-100				
	61-70	101+				
	71-80					

Table C.1: NAB Financial Data Summary

Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1986	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	26-50	1-10		
	11-20	11-20	51-75	11-25		
	21-30	21-40		26-50		
	31-40	41-60		51-100		
	41-50	61-80				
	51-60					
	61-70					
	71-80					
1985	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE
	1-10	1-10	1-50	1-10	1-10	1-10
	11-20	11-20	51-100	11-25	11-25	11 +
	21-30	21-40		26-50	26-50	
	31-40	41-80		51 +	51-75	
	41-50				76-100	
	51-60					
	61-70					
	71-80					

Table C.1: NAB Financial Data Summary

Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1984	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE
	1-10	1-10	1-50	1-10	1-10	1-10
	11-20	11-20	51-100	11-25	11-25	11 +
	21-30	21-40		26-50	26-50	
	31-40	41-80		51 +	51-75	
	41-50				76-100	
	51-60					
	61-70					
	71-80					
1983	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	1-50	1-10		
	11-20	11-25	51-100	11-50		
	21-30	26-50		51-125		
	31-40	51 +				
	41-50					
	51-60					
	61-75					
	76-100					

Table C.1: NAB Financial Data Summary
Markets Detailed in Yearly Reports

YEAR	ALL AFFILIATES	ALL INDEPENDENTS	UHF AFFILIATES	UHF INDEPENDENTS	UHF STATIONS	VHF INDEPENDENTS
1982	NATIONWIDE	NATIONWIDE	NATIONWIDE	NATIONWIDE		
	1-10	1-10	1-50	1-10		
	11-20	11-25	51-100	11-50		
	21-30	26-50		REVENUE \$8 MILLION +		
	31-40	51 +				
	41-50					
	51-60					
	61-75					
	76-100					
	101-125					
1981	NATIONWIDE	NATIONWIDE		NATIONWIDE	NATIONWIDE	
	1-10	1-10		1-10	11-50	
	11-20	11-25		11-50	51-100	
	21-30	26-50		51-106		
	31-40	51-106				
	41-50					
	51-60					
	61-75					
	76-100					