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Farmers Telephone Cooperative, Inc.

"Where Traditional Values and Modern Technology Meet."

July 25, 1994

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AUG - 3 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Chairman Hundt:

This letter is in support of the Comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

Farmers Telephone Co-Op (FTC) is an NRTC Rural Telephone Member and an affiliate investor in the DIRECTV project delivering television programming to rural consumers who are largely not served by cable. Many of F.T.C. consumers live in rural areas that are too sparsely populated to receive cable TV. These rural households have little choice other than satellite for receiving television service.

We need complete access to all programming at a fair rate, comparable to those paid by our competition, in order to compete in our local marketplace.

Currently, we do not have DBS distribution rights for Time Warner and Viacom programming, like HBO, Showtime, Cinemax, the Movie Channel, VH-1, MTV, Nickelodeon, etc., because of the "exclusive" distribution arrangements they have made with United States Satellite Broadcasting Co. Inc. (USSB).

A very important example of how the lack of access to Time Warner and Viacom Programming would be detrimental to F.T.C. is consumers who are asking for their programming are unable to get it through us, which could be a loss for our co-op. Farmers Telephone Co-Op is the largest telephone co-op in Alabama which serves only a portion of DeKalb and Jackson Counties. We have purchased the rights to distribute DIRECTV to all of DeKalb and Jackson Counties, which consists of some 40,000 consumers. This is a very large investment for our co-op; especially if we do not have access to this programming.

Why does PrimeStar, wireless cable, cable TV companies, etc., have distribution rights to HBO and Showtime and F.T.C. does not?

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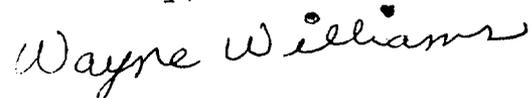
Honorable Reed Hundt
July 25, 1994
page 2

The lack of access to this programming hurts both us and the consumers because under the current USSB exclusive distribution arrangement, consumers interested in receiving Time Warner and Viacom programming must subscribe to two separate competing packages. Offering these services by both DIRECTV and USSB, consumers would be able to choose their service provider, resulting in the primary benefits of effective competition: lower prices and improved service.

None of the programming contracts with DIRECTV are exclusive, so USSB could offer these services if they wish to do so.

Farmers Telephone Co-Op agrees with NRTC's position that the FCC should act to enforce the wishes of Congress as put forth in the 1992 Cable Act. We ask that you monitor and combat the problem we have mentioned by banishing the type of exclusionary arrangement represented by the USSB/Time Warner/Viacom deal.

Sincerely,



Wayne Williams
DBS Supervisor

cc: The Hon. Tom Bevill
The Hon. Howell T. Heflin
The Hon. Bud Cramer
The Hon. Richard Shelby
William F. Caton, Secretary
The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Susan Ness
The Hon. Rachelle B. Chong



Farmers Telephone Cooperative, Inc.

P. O. Box 217 * Rainsville, Alabama 35986 * Telephone (205) 638-2144 * FAX (205) 638-4830

July 25, 1994

James Wilbanks, President
 Leo Grimes, Vice President
 Jerome Bryant, Secretary
 Gary Blevins, Treasurer
 Tommy A. Gilbert, Director
 T. E. Edd Whifton, Director
 Randy Wright, Director
 Morgan Weeks, Attorney

Gerald Lacey - General Manager

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed Hundt
 Chairman
 Federal Communications Commission
 1919 M Street, NW, Room 814
 Washington, DC 20554

Dear Chairman Hundt:

This letter is in support of the comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of the implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual assessment of the status of competition in the market for the delivery of video programming, CS Docket No. 94-48.

Farmers Telephone is an NRTC member investor in the direct TV project to provide television programming to mostly rural consumers in DeKalb and Jackson Counties in Alabama. Most of these consumers do not have access to cable TV. Most of these consumers live in sparsely populated areas and are unlikely to ever have access to cable, therefore their only choice to receive television service is by satellite. We need complete access to all programming at fair rates, comparable to those paid by our competition, in order to compete in our local market. We thought that Congress had already solved this problem two years ago with the passage of the 1992 Cable Act. We do not currently have DBS distribution rights for Time Warner and Viacom programming, like HBO, Showtime, Cinemax, the Movie Channel, VH-1, MTV, Nickelodeon, and others, because of the exclusive distribution arrangements they have made with United States Satellite Broadcasting Co., Inc. (USSB).

The lack of access to this programming is detrimental to our business and is hindering our ability to compete in our local area. Farmers Telephone Cooperative is owned by it's 16,000 members and has made a considerable investment in DBS to provide this service to them. It is hard to understand why PrimeStar, Wireless Cable and Cable TV companies should have access to this programming and we do not. The lack of this programming is unfair to our consumers because under the current USSB exclusive distribution arrangements, consumers interested in receiving Time Warner and Viacom programming must subscribe to two separate competing packages.

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Honorable Reed Hundt

July 25, 1994

page 2

If these services were provided by both Direct TV and USSB the consumer would be able to choose their service provider, resulting in effective competition, lower prices and improved service.

None of the contracts we have signed with Direct TV are exclusive, therefore USSB could offer the service if they choose to. We agree with NRTC's position that the FCC should act to enforce the wishes of Congress as put forth in the 1992 Cable Act.

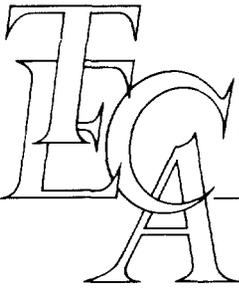
We request that you monitor and disallow the type of exclusionary arrangements represented by the USSB/Time Warner/Viacom deal.

Sincerely,

A handwritten signature in cursive script that reads "Gerald Lacey".

Gerald Lacey,
General Manager

sd



TENNESSEE ELECTRIC COOPERATIVE ASSOCIATION

710 SPENCE LANE / P. O. BOX 100912 / NASHVILLE, TENNESSEE 37224 / 615-367-9284

July 28, 1994

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AUG 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D. C. 20554

Dear Chairman Hundt:

I am writing this letter in support of the position taken by the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

As an Association representing 23 rural electric cooperatives in Tennessee, we are concerned about the fact that many of the consumers in the rural areas throughout our State do not have acceptable television reception and do not have access to cable television service. Many of those consumers have asked the electric cooperative industry to provide assistance, especially in the area of satellite dish programming services. We have responded to their requests through our national organization, NRTC, and are now delivering television programming to almost 1,200 rural consumers who are not served by cable.

However, over the past five years of providing this service, we have not been successful in gaining access to all programming, nor have we received fair rates, comparable to those paid by the cable television industry.

In making Congress aware of this problem that adversely impacts the rural people, we were quite pleased when the 1992 Cable Act was passed to solve such a disparity. However, since the passage of that law, we continue to pay significantly more for cable and broadcast programming than comparatively-sized cable companies in our respective areas. We are perplexed as to why cable companies in our area should be entitled to receive programming at lower rates than our system.

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The Honorable Reed Hundt
Page 2
July 28, 1994

Chairman Hundt, please understand that discriminatory pricing hurts our rural consumers, especially if they have no other choice for programming other than satellite. They are forced to pay higher rates than those who have access to cable.

In summary, our Association in Tennessee agrees with NRTC's position that the Federal Communications Commission should act to enforce the wishes of Congress as presented in the 1992 Cable Act. We ask your help in monitoring and combating these discriminatory problems by not allowing abusive practices by rule and by making it clear that damages will be awarded for Program Access violations.

Thank you for your help in this very important issue.

Respectfully yours,



Tom Purkey
Executive Vice President and
General Manager

jm

cc: Mr. William F. Caton
Secretary, FCC

The Honorable James H. Quello
Commissioner, FCC

The Honorable Andrew C. Barrett ✓
Commissioner, FCC

The Honorable Rachelle B. Chong
Commissioner, FCC

The Honorable Susan Ness
Commissioner, FCC



DUPLICATE FILE COPY ORIGINAL

North Dakota Association of Rural Electric Cooperatives

P.O. Box 727 • Mandan, ND 58554-0727 • (701) 663-6501 • (800) 234-0518 • FAX (701) 663-3745

July 27, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M St. NW, Rm. 814
Washington, DC 20554

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Chairman Hundt,

This letter is in support of the Comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

The North Dakota Association of Rural Electric Cooperatives has as members, twenty distribution electric cooperatives providing power to over 250,000 North Dakotans. Many of those cooperatives are also engaged in the delivery of television programming to rural consumers not served by cable.

The remote rural areas of our state make it impractical for our rural families to be served by cable. Their only alternative is to receive satellite television service.

We thought Congress had ensured access to programming at fair rates through passage of the 1992 Cable Act. However, we find we are still being charged significantly more for cable and broadcast programming than similar sized cable companies in our area.

Why should our rural North Dakotans not enjoy the same access and same prices for their programming that cable companies receive?

We urge you to combat the unfair pricing practices by awarding damages for Program Access violations. We feel that is in accord with the wishes of Congress as set out in the 1992 Cable Act.

If you have any questions, please contact me at the above address.

Sincerely,

Dennis Hill,
Executive vice president
and general manager

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Eastern Illini Electric Cooperative

330 West Ottawa Street • P.O. Box 96 • Paxton, Illinois 60957 • 217/379-2131 • FAX: 217/379-2936

July 29, 1994

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M. Street, NW, Room 814
Washington, DC 20554

Dear Chairman Hundt:

This letter is in support of the comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

Eastern Illini Electric Cooperative is a rural electric cooperative serving electricity to rural consumers in ten counties in East Central Illinois. EIEC is a member of the National Rural Telecommunications Cooperative (NRTC) and we provide television programming to rural consumers who are largely not served by cable television. Our consumers are rural families who have little choice other than satellite for receiving television services that is comparable with cable service.

EIEC is forced to pay significantly higher rates for popular programming than area cable companies. Since we are forced to pay these higher rates, we must also charge our customers more which has a detrimental effect on our ability to compete in our local market place. Because of this, many of EIEC's consumers cannot afford the home entertainment enjoyed by residents of nearby communities.

When the 1992 Cable Act became law, it was my impression that all distributors would be granted equal access to cable and broadcast programming services at nondiscriminatory rates. If that is true, why do cable companies in our area receive programming at a cheaper rate? I believe this is discrimination.

EIEC joins NRTC in calling on the FCC to enforce the intentions of Congress as put forth in the 1992 Cable Act. I feel that the FCC must prohibit abuses of the 1992 Cable Act by rule and make it clear that damages will be awarded for program access violations.

Thank you for your attention to this matter.

Respectfully,

EASTERN ILLINI ELECTRIC COOPERATIVE

Wm. David Champion, Jr.
Executive Vice President
and General Manager

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WDC:jk



July 27, 1994

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AUG - 3 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, D.C. 20554

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Chairman Hundt:

This letter is a call for common sense to prevail over favoritism in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

An exclusive deal has been struck among United States Satellite Broadcasting Co., Inc. (USSB), Time Warner and Viacom programming. We are a member of the National Rural Telecommunications Cooperative (NRTC) and our customers are in rural Minnesota. The programming we offer, through the NRTC, is not exclusive. USSB could contract with any or all of the programmers we offer, but we can't offer theirs. Where is the common sense in that decision? Where is the level playing field? We welcome the competition offered by USSB, but only if we are able to price competitively.

We do not understand why PrimeStar, wireless, and cable have access to HBO and Showtime and we do not. We want to be able to offer our rural customers the same services that their urban neighbors have at comparable prices.

The FCC should be true to Congress's intent as put forth in the 1992 Cable Act. Please do not allow the exclusionary tactics as demonstrated in the USSB/Time Warner/Viacom deal.

Sincerely,

Jane L. Rush
Director of Public Affairs

JLR:ALJ

- cc: The Hon. Representative Tim Penny
- The Hon. Representative David Minge
- The Hon. Senator Paul Wellstone
- The Hon. Senator David Durenberger
- William F. Canton, Secretary
- The Hon. James Quello
- The Hon. Rachele Chong
- The Hon. Andrew Barrett
- The Hon. Susan Ness

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PANHANDLE TELECOMMUNICATION SYSTEMS, INC.
A Wholly Owned Subsidiary of PANHANDLE TELEPHONE COOPERATIVE, INC.

GARY KENNEDY
Chief Executive Officer

July 25, 1994

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The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street NW, Room 814
Washington, DC 20554

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Chairman Hundt:

As a telecommunications company, PTSI is an NRTC member providing television programming to customers in rural Oklahoma. We are writing to support the Comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

PTSI's consumers live in rural areas where families have little choice other than satellite for their television programming. With our consumers living in rural areas where cable service is not available, it is imperative that we have access to all programming at fair rates, analogous to rates paid by cable. At present, PTSI is being charged a higher rate for cable and broadcast programming than comparatively sized cable companies in our area.

Discriminatory pricing is not only harmful to the service provider, but it also hurts the consumer due to the higher rates they are forced to pay. Why should cable companies in our area receive programming at lower rates than PTSI?

It was PTSI's understanding that the discriminatory pricing issue had been resolved with the passage of the 1992 Cable Act. PTSI supports NRTC's position that the FCC should act to enforce the objectives of Congress as provided in the 1992 Cable Act.

Chairman Hundt, we urge you to oversee efforts to correct the problems created by discriminatory pricing in the cable and broadcast programming industry with the enforcement of rules and by making it clear that damages will be awarded for Program Access violations.

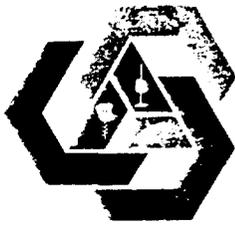
Very truly yours,

Gary Kennedy
Chief Executive Officer

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GK:ch



PENASCO TELECOM SYSTEMS

Cellular Telephones/Access • Paging
2-Way Radio • Mobile Telephone
Business Telephone Systems
Direct Broadcast Satellite TV

A Subsidiary of Penasco Valley Telephone Cooperative, Inc.

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July 28, 1994

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AUG - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M St., NW, Rm. 814
Washington, DC 20554

Dear Chairman Hundt:

I am writing this letter in support of the Comments of the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

Penasco Telecom Systems, Inc. is a wholly owned subsidiary of Penasco Valley Telephone Cooperative, Inc. As a Rural Telephone member of NRTC and feeling a need to provide another needed service to rural consumers, Penasco Telecom System invested in the Direct Broadcast Satellite Television Service (DBS) to distribute DIRECTV_™ programming to our rural consumers.

However, despite passage of the 1992 Cable Act, Penasco Telecom Systems' ability to compete in our local marketplace is being hampered by our lack of access to programming owned by Time Warner and Viacom.

This programming, which includes some of the most popular cable networks like HBO, Showtime, Cinemax, The Movie Channel, MTV, Nickelodeon and others, is available only to my principal competitor, the United States Satellite Broadcasting Co. (USSB), as a result of an "exclusive" contract signed between USSB and Time Warner/Viacom.

In contrast, none of the programming distribution contracts signed by DIRECTV_™ are exclusive in nature, and USSB is free to obtain distribution rights for any of the channels available on DIRECTV_™.

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Chairman Hundt

Page -2-

July 28, 1994

Mr. Hundt, our organization agrees with the NRTC that these exclusive programming contracts run counter to the intent of the 1992 Cable Act. We believe that the Act prohibits any arrangement that prevents any distributor from gaining access to programming to serve non cabled rural areas. Under the present circumstance, if one of our DIRECTV[™] subscribers also wishes to receive Time Warner/Viacom product, that subscriber must purchase a second subscription to the USSB service. This hinders effective competition, and as a consequence keeps the price of the Time Warner/Viacom channels unnecessarily high. It also increases consumer confusion at the retail level.

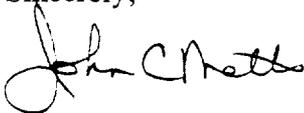
Not having access to the Time Warner/Viacom services has also adversely affected our ability to compete against other sources for television in my area. TCI, Post-Newsweek Cable, and other cable competitors in the area are able to offer more complete programming packages because they have access to programming which we are currently restricted from, at least at comparable costs. Consumers do not understand why they cannot get certain programming from us, and go elsewhere. This situation does not enhance competition.

We believe very strongly that the 1992 Cable Act flatly prohibits any exclusive arrangements that prevent any distributor from gaining access to cable programming to serve rural non-cabled areas. That is why we supported the Tauzin Amendment embodied in Section 19 of the Act.

We ask FCC to remedy these problems so that the effective competition requirements of Section 19 become a reality in rural America. We strongly urge you to banish the type of exclusionary arrangements represented by the USSB/Time Warner/Viacom deal.

Thank you for your consideration in this matter.

Sincerely,



John C. Metts

Executive Vice President/General Manager

JCM:hcs

cc:

The Honorable Representative Bill Richardson

The Honorable Representative Joe Skeen

The Honorable Representative Steve Schiff

The Honorable Senator Pete Domenici

The Honorable Senator Jeff Bingaman

William F. Caton, Secretary

The Honorable James H. Quello

The Honorable Andrew C. Barrett

The Honorable Susan Ness

The Honorable Rachelle B. Chong

RILLY TAUZIN
THIRD DISTRICT, LOUISIANA

ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON MARINE AND FISHERIES COMMITTEE
CHAIRMAN, COAST GUARD AND
NAVIGATION SUBCOMMITTEE

ADMINISTRATIVE OFFICE
TELEPHONE: 202-225-4031
2230 REVEREND MURPHY OFFICE BUILDING
WASHINGTON, DC 20515

Congress of the United States
House of Representatives
Washington, DC 20515-1803

June 15, 1994

DISTRICT OFFICES.

TELEPHONE: 504-886-8368
501 MARAQUEE STREET
SUITE 1061
NEW ORLEANS, LA 70130

TELEPHONE: 504-878-3033
FEDERAL BUILDING, SUITE 107
HOUMA, LA 70360

TELEPHONE: 318-387-8231
210 EAST MAIN STREET
NEW ORLEANS, LA 70660

TELEPHONE: 504-821-8430
MEMORIAL PARK CENTERHOUSE EAST
828 SOUTH IBERIA BLVD.
MONROE, LA 70737

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are writing to ask your help in strengthening the Commission's rulemaking on competition and diversity in video programming distribution.

During the past year a great deal of the energy has necessarily been devoted to the issue of cable rate regulation. Notwithstanding the immediate importance of that issue, many Members of Congress believe that the true answer to improving the video programming distribution marketplace is the promotion of real competition. In the long run we believe that competition - not regulation - will achieve the greatest benefits for consumers and result in greater vitality in the industry. Of the many provisions of the Cable Act that are designed to promote competition, none are more important than Section 19, which instructs the Commission to ensure nondiscriminatory access to cable programming by all distributors.

We strongly believe that section 19 is worthy of your serious and immediate attention. We respectfully request that you reexamine the Commission's First Report and Order implementing section 19 in order to eliminate potential loopholes that would permit the denial of programming to any non-cable distributor.

We wish to call to your attention certain disquieting developments heightening our concern about the FCC's program access regulations. We are troubled by the Primestar consent decrees and the effect they may have on program access. We believe the FCC's program access regulations need to be tightened if the full force and effect of Section 19 of the 1992 Cable Act is to be preserved.

As you may be aware, despite the Commission's well-reasoned brief opposing the entry of the state Primestar decree, the court entered final judgment. Among other things, the state consent decree will permit the vertically integrated cable programmers that own Primestar to enter into exclusive contracts with one direct broadcast satellite (DBS) operator to the exclusion of all other DBS providers at each orbital position. On the other hand, Primestar's ability to obtain all of the programming of its cable owners will be unimpeded by the state consent decree. In its opinion, the court made clear, however, that its ruling was in no way a judgment about the propriety of such exclusive contracts under Section 19 of the Cable Act

or the FCC's implementing regulations and specifically left that question open to be decided by the FCC.

In essence, the state consent decree gives Primestar's cable owners the ability to carve up the DBS market to the competitive disadvantage of non-cable owned DBS providers. This is directly contrary to the intent of Congress. In enacting the program access provisions, Congress specifically rejected the existing market structure in which vertically integrated cable companies controlled the distribution of programming. Congress and the FCC recognized that vertically integrated programmers had both the means and the incentives to use their control over program access to discriminate against cables' competitors and to choke off potential competition, even in unserved areas. Moreover, Congress looked to DBS as a primary source of competition to cable, not as a new technology to be captured by the cable industry.

Congress enacted very strong program access provisions and gave the Commission broad authority to regulate against anti-competitive and abusive practices by vertically integrated programmers. Section 628 (b) makes it unlawful for a cable operator or vertically integrated cable programmer "to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor" from providing cable or superstation programming to consumers. Section 628 (c) provides the Commission with the authority to promulgate regulations to effectuate the statutory prohibition and delineates their minimum content.

Upon examination of the program access regulations, we have discovered a critical loophole that seems ripe for exploitation by the cable industry and is directly applicable to exclusive contracts between vertically integrated cable programmers and DBS providers. Section 628 (c) (2) (c) of the 1992 Cable Act contains a broad per se prohibition on "practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest" for distribution in non-cabled areas. However, Section 76.1002 (c) (1) of the Commission's new rules covers only those exclusionary practices involving cable operators.

The Commission's rule in its present form is inconsistent with both the plain language of the statute and Congressional intent. The prohibition against all exclusionary practices by vertically integrated programmers in unserved areas is clear. While it certainly includes exclusive contracts between cable operators and vertically integrated programmers, the language of the statute does not limit the prohibition to that one example. The regulations incorrectly turn the illustrative example into the rule.

This loophole must be closed and the program access regulation strengthened on Reconsideration. The Primestar consent decree alone makes it clear that the bare minimum regulation of exclusive contracts is insufficient to guard against anti-competitive practices by vertically integrated cable programmers. The Commission's final regulations should provide, as does the legislation, that all exclusive practices, understandings, arrangements and activities, including (but not limited to) exclusive contracts between vertically integrated video programmers and any multichannel video programming distributor are per se unlawful in non-cabled areas. In cabled areas, all such exclusive contracts should be subject to a public interest test with advanced approval required from the Commission.

The Honorable Reed Hundt
Page 3

There is one other vital point to note regarding the Commission's program access rules. It has become evident that the cable industry has been attempting to manipulate the Commission's reconsideration proceeding to obtain an overly broad Commission declaration as to the general propriety of exclusive contracts with non-cable multichannel video programming distributors. Any such pronouncement by the Commission would eviscerate the program access protections of the 1992 Cable Act.

Specifically, in addition to and independent of the explicit exclusive contracting limitations imposed by the Act, exclusive arrangements between vertically integrated programmers and non-cable multichannel video programming distributors (MVPD) in many circumstances also violate Section 628(b)'s general prohibition of "unfair practices" which hinder significantly or prevent any MVPD from obtaining access to cable programming. In addition, they may violate Section 628 (c)(2)(B)'s prohibition against discrimination by a vertically integrated satellite cable programming vendor in the prices, terms and conditions of sale or delivery of satellite cable programming "among or between cable systems, cable operators, or other multichannel video programming distributors." Accordingly, we urge the Commission to be extremely careful in its decision on reconsideration to avoid any ruling or language which could, in any way, limit the protections against discrimination afforded by Sections 628(b) and (c)(2)(B).

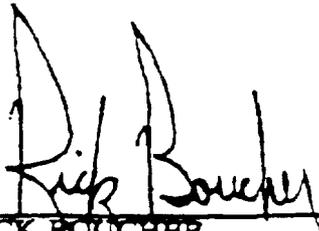
Lastly, Mr. Chairman, it is absolutely essential in overview that the Commission add regulatory "teeth" to its Program Access regulations. In the Program Access decision, the Commission generally declined to award damages as a result of a Program Access violation. Without the threat of damages, however, we see very little incentive for a programmer to comply with the rules. Nor is it practical to expect an aggrieved multichannel video programming distributor to incur the expense and inconvenience of prosecuting a complaint at the Commission without an expectation of an award of damages. There is ample statutory authority for the Commission to order "appropriate remedies" for program access violations, and we urge the Commission to use such authority to impose damages (including attorney fees) in appropriate cases. [See, 47 U.S.C. 548 (e) (1)].

DBS has long been viewed as a strong potential competitor to cable if it were able to obtain programming. In the 1992 Cable Act, Congress acted definitively to remove that barrier to full and fair DBS entry into the multichannel video programming distribution market. We think it is of the utmost importance that there be no loopholes which would allow cable or, in light of recent merger activity, cable-teleco combinations to dominate the DBS marketplace.

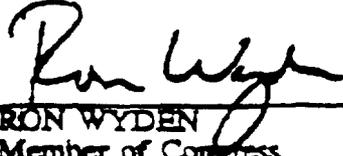
Thank you for your consideration.

Sincerely,

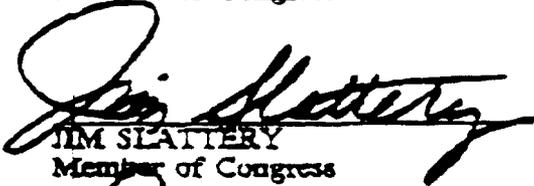
cc: The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Susan Ness
The Hon. Racheile B. Chong



RICK BOUCHER
Member of Congress



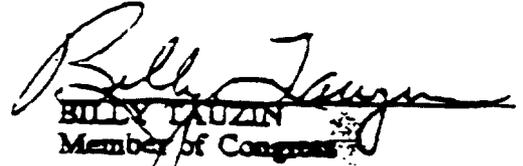
RON WYDEN
Member of Congress



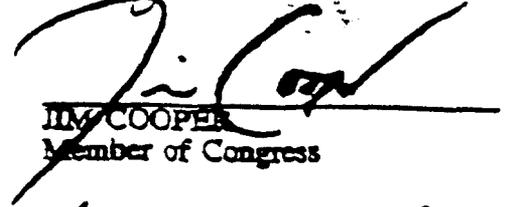
JIM SLATTERY
Member of Congress



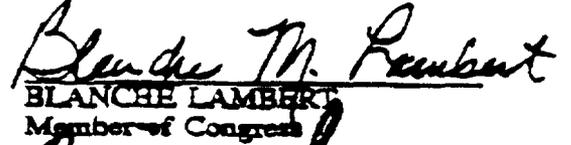
RALPH HALL
Member of Congress



BILLY TAUZIN
Member of Congress



JIM COOPER
Member of Congress



BLANCHE LAMBERT
Member of Congress



MIKE SYNAR
Member of Congress

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AUG 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

21 July 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

EX PARTE OR LATE FILED

RE: Implementation of Section 19 of the
Cable Television Consumer Protection
and Competition Act of 1992
CS Docket No. 94-48

Dear Chairman Hundt:

I have recently read and fully support the Comments of the National Rural Telecommunications Cooperative (NRTC) submitted to the FCC on 29 June 1994, regarding the implementation of Section 19 of the 1992 Cable Act.

I am an investor in a small business which is affiliated with the NRTC and DIRECTV to provide Direct Broadcast Satellite (DBS) programming. Many of the customers we serve live in rural areas that do not have cable TV. When I was initially evaluating entry into the DIRECTV project, I was encouraged by provisions of the 1992 Cable Act which appeared to finally provide rural households the opportunity to receive competitively priced cable TV programming. However, as stated in the NRTC's comments to the FCC, certain exclusive distribution arrangements still remain, such as those between Time Warner/Viacom and United States Satellite Broadcasting (USSB) for HBO, Showtime, The Movie Channel, etc.

In our initial marketing effort for DIRECTV, we have found it difficult to explain to our customers why we cannot offer certain cable TV programming in our package. Our customers are unhappy that they must purchase two separate programming packages, at significantly more expense, to receive a full complement of programs that are usually provided on cable TV.

I hope you will carefully review the NRTC's comments regarding this issue and take the recommended steps to eliminate the remaining exclusive programming arrangements which currently exist. With your help, rural

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America could soon be enjoying competitively priced cable TV programming similar to the cabled areas of the nation.

My customers and I thank you for your consideration in this matter.

Sincerely,



**Judy S. Davisson
2308 Danbury Drive
Colleyville, Texas 76034**

c:

**The Hon. Representative Dick Armey
The Hon. Representative Joe L. Barton
The Hon. Representative Ralph Hall
The Hon. Representative James Hansen
The Hon. Representative Sam Johnson
The Hon. Representative Bill Orton
The Hon. Representative Karen Shepherd
The Hon. Senator Robert F. Bennett
The Hon. Senator Phil Gramm
The Hon. Senator Orrin G. Hatch
The Hon. Senator Kay Bailey Hutchison
William F. Caton, Secretary
✱—The Hon. Andrew C. Barrett
The Hon. Rachelle B. Chong
The Hon. Susan Ness
The Hon. James H. Quello**

RILLY TAUZIN
THIRD DISTRICT, LOUISIANA

(ENERGY AND COMMERCE COMMITTEE
MERCHANT MARINE AND FISHERIES COMMITTEE
CHAIRMAN COAST GUARD AND
NAVIGATION SUBCOMMITTEE

WASHINGTON OFFICE
TELEPHONE: 202-225-4031
2330 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

Congress of the United States
House of Representatives
Washington, DC 20515-1803

June 15, 1994

DISTRICT OFFICES.

TELEPHONE: 504-689-8388
801 MAGAZINE STREET
SUITE 1041
NEW ORLEANS, LA 70130

TELEPHONE: 504-476-3033
FEDERAL BUILDING, SUITE 107
MOBILE, LA 36680

TELEPHONE: 318-387-8231
210 EAST MAIN STREET
NEW ORLEANS, LA 70560

TELEPHONE: 504-421-8490
ANDREWS PARKER COUNTY ROAD EAST
828 SOUTH IRMA BLVD.
GONZALES, LA 70737

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are writing to ask your help in strengthening the Commission's rulemaking on competition and diversity in video programming distribution.

During the past year a great deal of the energy has necessarily been devoted to the issue of cable rate regulation. Notwithstanding the immediate importance of that issue, many Members of Congress believe that the true answer to improving the video programming distribution marketplace is the promotion of real competition. In the long run we believe that competition - not regulation - will achieve the greatest benefits for consumers and result in greater vitality in the industry. Of the many provisions of the Cable Act that are designed to promote competition, none are more important than Section 19, which instructs the Commission to ensure nondiscriminatory access to cable programming by all distributors.

We strongly believe that section 19 is worthy of your serious and immediate attention. We respectfully request that you reexamine the Commission's First Report and Order implementing section 19 in order to eliminate potential loopholes that would permit the denial of programming to any non-cable distributor.

We wish to call to your attention certain disquieting developments heightening our concern about the FCC's program access regulations. We are troubled by the Primestar consent decrees and the effect they may have on program access. We believe the FCC's program access regulations need to be tightened if the full force and effect of Section 19 of the 1992 Cable Act is to be preserved.

As you may be aware, despite the Commission's well-reasoned brief opposing the entry of the state Primestar decree, the court entered final judgment. Among other things, the state consent decree will permit the vertically integrated cable programmers that own Primestar to enter into exclusive contracts with one direct broadcast satellite (DBS) operator to the exclusion of all other DBS providers at each orbital position. On the other hand, Primestar's ability to obtain all of the programming of its cable owners will be unimpeded by the state consent decree. In its opinion, the court made clear, however, that its ruling was in no way a judgment about the propriety of such exclusive contracts under Section 19 of the Cable Act

or the FCC's implementing regulations and specifically left that question open to be decided by the FCC.

In essence, the state consent decree gives Primestar's cable owners the ability to carve up the DBS market to the competitive disadvantage of non-cable owned DBS providers. This is directly contrary to the intent of Congress. In enacting the program access provisions, Congress specifically rejected the existing market structure in which vertically integrated cable companies controlled the distribution of programming. Congress and the FCC recognized that vertically integrated programmers had both the means and the incentives to use their control over program access to discriminate against cables' competitors and to choke off potential competition, even in unserved areas. Moreover, Congress looked to DBS as a primary source of competition to cable, not as a new technology to be captured by the cable industry.

Congress enacted very strong program access provisions and gave the Commission broad authority to regulate against anti-competitive and abusive practices by vertically integrated programmers. Section 628 (b) makes it unlawful for a cable operator or vertically integrated cable programmer "to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor" from providing cable or superstation programming to consumers. Section 628 (c) provides the Commission with the authority to promulgate regulations to effectuate the statutory prohibition and delineates their minimum content.

Upon examination of the program access regulations, we have discovered a critical loophole that seems ripe for exploitation by the cable industry and is directly applicable to exclusive contracts between vertically integrated cable programmers and DBS providers. Section 628 (c) (2) (c) of the 1992 Cable Act contains a broad per se prohibition on "practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest" for distribution in non-cabled areas. However, Section 76.1002 (c) (1) of the Commission's new rules covers only those exclusionary practices involving cable operators.

The Commission's rule in its present form is inconsistent with both the plain language of the statute and Congressional intent. The prohibition against all exclusionary practices by vertically integrated programmers in unserved areas is clear. While it certainly includes exclusive contracts between cable operators and vertically integrated programmers, the language of the statute does not limit the prohibition to that one example. The regulations incorrectly turn the illustrative example into the rule.

This loophole must be closed and the program access regulation strengthened on Reconsideration. The Primestar consent decree alone makes it clear that the bare minimum regulation of exclusive contracts is insufficient to guard against anti-competitive practices by vertically integrated cable programmers. The Commission's final regulations should provide, as does the legislation, that all exclusive practices, understandings, arrangements and activities, including (but not limited to) exclusive contracts between vertically integrated video programmers and any multichannel video programming distributor are per se unlawful in non-cabled areas. In cabled areas, all such exclusive contracts should be subject to a public interest test with advanced approval required from the Commission.

There is one other vital point to note regarding the Commission's program access rules. It has become evident that the cable industry has been attempting to manipulate the Commission's reconsideration proceeding to obtain an overly broad Commission declaration as to the general propriety of exclusive contracts with non-cable multichannel video programming distributors. Any such pronouncement by the Commission would eviscerate the program access protections of the 1992 Cable Act.

Specifically, in addition to and independent of the explicit exclusive contracting limitations imposed by the Act, exclusive arrangements between vertically integrated programmers and non-cable multichannel video programming distributors (MVPD) in many circumstances also violate Section 628(b)'s general prohibition of "unfair practices" which hinder significantly or prevent any MVPD from obtaining access to cable programming. In addition, they may violate Section 628 (c)(2)(B)'s prohibition against discrimination by a vertically integrated satellite cable programming vendor in the prices, terms and conditions of sale or delivery of satellite cable programming "among or between cable systems, cable operators, or other multichannel video programming distributors." Accordingly, we urge the Commission to be extremely careful in its decision on reconsideration to avoid any ruling or language which could, in any way, limit the protections against discrimination afforded by Sections 628(b) and (c)(2)(B).

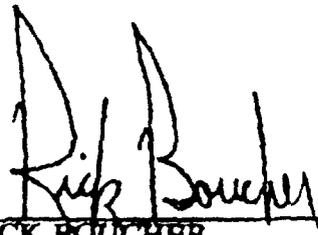
Lastly, Mr. Chairman, it is absolutely essential in overview that the Commission add regulatory "teeth" to its Program Access regulations. In the Program Access decision, the Commission generally declined to award damages as a result of a Program Access violation. Without the threat of damages, however, we see very little incentive for a programmer to comply with the rules. Nor is it practical to expect an aggrieved multichannel video programming distributor to incur the expense and inconvenience of prosecuting a complaint at the Commission without an expectation of an award of damages. There is ample statutory authority for the Commission to order "appropriate remedies" for program access violations, and we urge the Commission to use such authority to impose damages (including attorney fees) in appropriate cases. [See, 47 U.S.C. 548 (e) (i)].

DBS has long been viewed as a strong potential competitor to cable if it were able to obtain programming. In the 1992 Cable Act, Congress acted definitively to remove that barrier to full and fair DBS entry into the multichannel video programming distribution market. We think it is of the utmost importance that there be no loopholes which would allow cable or, in light of recent merger activity, cable-telco combinations to dominate the DBS marketplace.

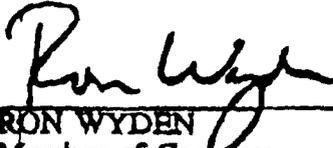
Thank you for your consideration.

Sincerely,

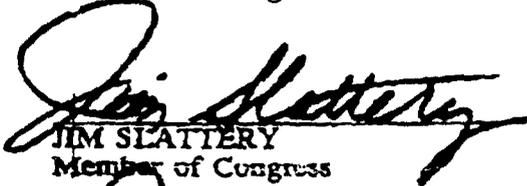
cc: The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Susan Ness
The Hon. Rachelle B. Chong



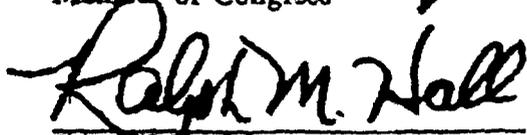
RICK BOUCHER
Member of Congress



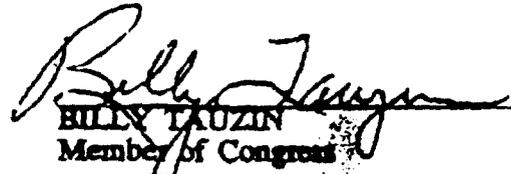
RON WYDEN
Member of Congress



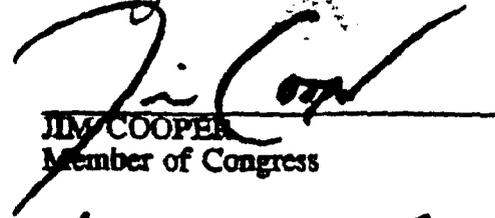
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Member of Congress



RALPH HALL
Member of Congress



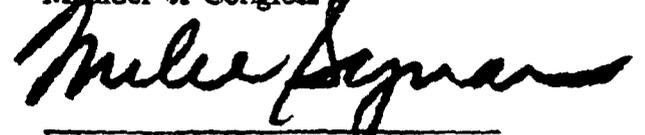
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Member of Congress



JIM COOPER
Member of Congress



BLANCHE LAMBERT
Member of Congress



MIKE SYNAR
Member of Congress



Association of Illinois Electric Cooperatives

SPRINGFIELD, ILLINOIS

MAIL REPLY TO: P. O. BOX 3787 SPRINGFIELD, ILLINOIS 62708

TELEPHONE: (217) 529-5561

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July 27, 1994

Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

EX PARTE OR LATE FILED

Re: Cable Competition Report
CS Docket No. 94-48

Dear Chairman Hundt:

I am writing this letter in support of the Comments filed by the National Rural Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48.

The Association of Illinois Electric Cooperatives (AIEC) is a service organization for the 28 electric and six telephone organizations operating in Illinois. A number of our member-cooperatives are directly involved in the distribution of C-band satellite television programming to rural consumers in Illinois. Currently, their cost for access to popular cable and broadcast programming is significantly more than what comparably sized cable companies pay. As a result they must in turn charge customers more for their service, a fact that has already had a detrimental affect on their ability to compete in the marketplace. Since many of the consumers served live in remote areas not served by cable and off-air television, these consumers are forced to pay higher rates than their urban counterparts for access to television than their urban counterparts.

We understood that in the 1992 Cable Act, Congress had mandated that all distributors--cable, satellite and otherwise--should be granted equal access to cable and broadcast programming services at non-discriminatory rates. If this is the case, I am perplexed as to why our member-cooperatives are still paying more for many programming services than do comparably sized cable companies.

The AIEC joins NRTC in calling on the FCC to ensure that the intentions of Congress are being upheld with regards to the 1992

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Cable Act. In particular, I feel the FCC must prohibit abuses of the program access provisions of the 1992 Cable Act by rule and make it clear that damages will be awarded to program access violations.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Earl Struck".

Earl Struck
Executive Vice President

ES/DW/ps

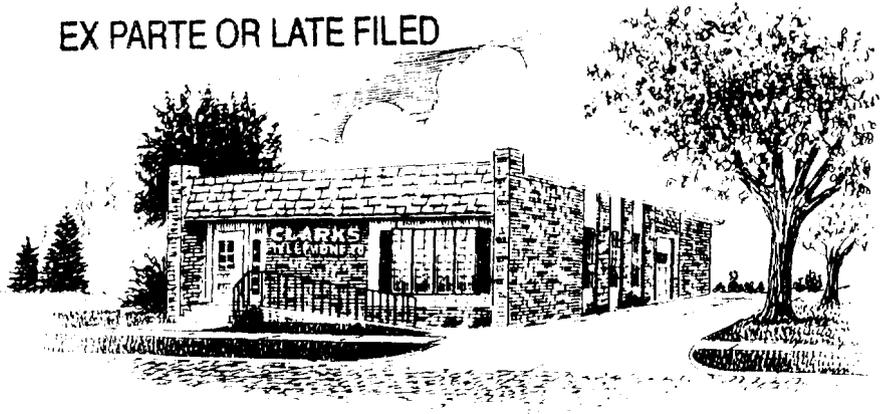
cc: Willlliam F. Caton, Secretary, FCC
Honorable James H. Quello, Commissioner, FCC
Honorable Rachelle B. Chong, Commissioner, FCC
Honorable Andrew C. Barrett, Commissioner, FCC
Honorable Susan Ness, Commissioner, FCC

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P.O. BOX 126
CLARKS, NE 68628
(308) 548-2251



The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Rm. 814
Washington, DC 20554

July 27, 1994

Dear Chairman Hundt:

I am writing this letter in support of the Comments of the National Rural
Telecommunications Cooperative (NRTC) in the matter of Implementation of Section 19
of the Cable Television Consumer protection and Competition Act of 1992, Annual
assessment of the Status of Competition in the Market for the Delivery of Video
Programming, DX Docket No. 94-48.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

As a rural telephone member, and affiliate, of NRTC and distributor of the
DIRECTV direct broadcast satellite (DBS) television service, Clarks Telephone is directly
involved in bringing satellite television to rural consumers.

However, despite passage of the 1992 Cable Act, Clarks Telephone's ability to
compete in our local marketplace is being hampered by our lack of access to programming
owned by Time Warner and Viacom.

This programming, which includes some of the most popular cable networks like
HBO, Showtime, Cinemax, The Movie Channel, MTV, Nickelodeon and others, is
available only to my principal competitor, The United States Satellite Broadcasting Co.
(USSB), as a result of an "exclusive" contract signed between USSB and Time
Warner/Viacom.

In contrast, none of the programming distribution contracts signed by DIRECTV
are exclusive in nature, and USSB is free to obtain distribution rights for any of the
channels available on DIRECTV.

Mr. Hundt, my organization agrees with the NRTC that these exclusive
programming contracts run counter to the intent of the 1992 Cable Act. I believe that the
Act prohibits any arrangement that prevents any distributor from gaining access to
programming to serve non-cabled rural areas. Under the present circumstance, if one of
my DIRECTV subscribers also wishes to receive TimeWarner/Viacom product, that
subscriber must purchase a second subscription to the USSB service. This hinders

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