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FRANK R. JAZZO
CHARLES H. KENNEDY*
KATHRYN A. KLEIMAN
BARRY LAMBERGMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

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ROBERT L. HEALD
(1956-1983)
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RETIRED
RUSSELL ROWELL
EDWARD F. KENEHAN
FRANK U. FLETCHER

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

0415

RECEIVED

AUG 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE OR LATE FILED

August 19, 1994

ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Ex Parte Presentation - CS Docket No. 94-48

Dear Mr. Caton:

You are hereby advised that on this date the attached written ex parte presentation was made in the above-referenced, non-restricted proceeding, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), to the following Commission personnel:

Chairman Hundt
Commissioner Quello
Commissioner Barrett
Commissioner Chong
Commissioner Ness
William E. Kennard, Esquire
Meredith Jones, Esquire
James W. Olson, Esquire
Diane L. Hofbauer, Esquire
Nina M. Sandman, Esquire
Mr. Jerry Duvall
Mr. Jonathan D. Levy
Amy Zoslov, Esquire

USSB participated in the above-referenced proceeding by filing Consolidated Comments and Reply Comments on July 29, 1994. The attached presentation is submitted as a Supplement to USSB's Consolidated Comments and Reply Comments.

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FLETCHER, HEALD & HILDRETH

Mr. William F. Caton
August 19, 1994
Page 2

An original and one copy of this letter and two copies of the attached presentation are being filed. If additional copies of this filing are required, USSB will supply them immediately upon request.

Should any question arise concerning this matter, or should any additional information be necessary or desired, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH


Patricia A. Mahoney
Counsel for United States
Satellite Broadcasting
Company, Inc.

PAM:dlr

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
William E. Kennard, Esquire
Diane L. Hofbauer, Esquire
Meredith Jones, Esquire
James Olson, Esquire
Mr. Jerry Duvall
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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EDWARD F. KENEHAN
FRANK U. FLETCHER

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-0415

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS Docket No. 94-48

Dear Mr. Caton:

Transmitted herewith on behalf of United States Satellite Broadcasting Company, Inc. (USSB), are an original and four copies of its "Supplement to Consolidated Comments and Reply Comments" in the above-referenced proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney
Patricia A. Mahoney
Counsel for

United States Satellite
Broadcasting Company, Inc.

PAM/dlr

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
William E. Kennard, Esquire
Meredith Jones, Esquire
James Olson, Esquire
Mr. Jerry Duvall
Mr. Jonathan D. Levy
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EX PARTE OR LATE FILED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

AUG 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 19)	
of the Cable Television)	
Consumer Protection and)	
Competition Act of 1992)	
)	CS Docket No. 94-48
Annual Assessment of the)	
Status of Competition in the)	
Market for the Delivery of)	
Video Programming)	

Directed to: The Commission

SUPPLEMENT TO
CONSOLIDATED COMMENTS AND REPLY COMMENTS

United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, hereby respectfully submits this Supplement to its Consolidated Comments and Reply Comments filed July 29, 1994, in the above-captioned proceeding:¹

In its recent Notice of Inquiry, FCC 94-119 (released May 19, 1994) ("NOI"), in this proceeding, the Commission sought information on the status of competition in the market for the delivery of video programming, seeking responses to very specific questions designed to elicit information that would assist the Commission in preparing a report to Congress required by the Cable Act. In the NOI at 5, ¶11, the Commission recognized that the outcomes of several other ongoing proceedings could affect competition in the multichannel video programming marketplace and specifically

¹Because the notice and comment period in this non-restricted proceeding has ended, USSB is also filing this supplement as a **written ex parte presentation** in the above-captioned proceeding.

referenced MM Docket No. 92-265 as one such proceeding. The Commission emphasized that it did not "intend to consolidate any issues that may be pending in those proceedings within this inquiry." Notwithstanding this statement, DirecTv, Inc. (DirecTv) and the National Rural Telecommunications Cooperative (NRTC) devoted substantial portions of their comments (and NRTC devoted the majority of its reply comments) in this proceeding to arguments and allegations they previously presented in MM Docket 92-265. Indeed, rather than responding to any of the questions posed in the NOI, NRTC devoted most of its comments and reply comments in the above-captioned proceeding to its arguments in MM Docket 92-265.

It has come to USSB's attention that, in addition to filing comments and reply comments in the above-captioned proceeding, NRTC also urged its member cooperatives and affiliates throughout the country to send letters to the FCC and Capitol Hill on the topic of program access and USSB's exclusive programming agreements by the "deadline" of July 29, the date by which reply comments were due to be filed in this proceeding. As the Docket History for CS Docket 94-48 reflects, over 100 letters were filed at the Commission on or around July 29, 1994, by NRTC members, affiliates, and DBS franchisees, referring specifically to matters beyond the scope of this proceeding but at issue in MM Docket 92-265.

A copy of the "NRTC Memorandum" that was sent to "NRTC DBS Participant General Managers" is attached hereto as Exhibit 1. Also attached hereto in Exhibit 2 are a few, representative examples of the letters sent to CS Docket 94-48 at the specific "urgent" request of NRTC. As the NRTC Memorandum reflects, NRTC's

request to its members and affiliates included a summary of its filing, sample letters, and instructions for their "letter-writing campaign."

The attached samples of letters from the NRTC "letter writing campaign" contain several features in common, including the following statement:

"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."

See Exhibit 2. DirecTv has acknowledged in MM Docket 92-265 **that it sought and obtained exclusive programming distribution contracts.**² Thus, the statement quoted above is obviously false. This false statement, or statements nearly identical to it, appears in at least 37 of the NRTC "letter writing campaign" letters. Since this false statement appears in so many letters, it is obvious that it must have come from one or more of the sample letters sent by NRTC to its members and affiliates for the "letter writing campaign."

Another representation common to a substantial number of the letters (at least 37) is:

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

See Exhibit 2. This language, too, obviously comes from the "letter writing campaign" form letters, not from any real life experiences of the NRTC affiliates and cooperatives.

²It should also be noted that DirecTv's marketing/distribution arrangement with NRTC gives NRTC and its affiliates the **exclusive right to distribute DirecTv's programming** in the territories that they purchased from DirecTv.

The DSS™ receive system has only been available to consumers since June 17, 1994. Since that time, the demand for DSS™ units has far exceeded the supply. It would be surprising, given the short time that the service has been available and the limited supply of receive equipment, if any NRTC affiliate had at this time any real idea of how competitive its service will ultimately be in its marketplace. Moreover, the statements above are offered by persons and companies who were obviously not aware that they can offer USSB programming to their customers under USSB's open retail policy (see discussion at pages 5-6, infra). All non-NRTC DSS™ retailers are participating in USSB's open retail program and offering USSB programming to all of their customers. The exact same opportunity is available to all NRTC affiliates under USSB's open retail policy.

Additional false and misleading information was also apparently communicated to NRTC members and affiliates to incite them to action. For example, Interstate Satellite Services, Inc. (ISS) wrote to the Chairman of the FCC on July 20, 1994, in reference to CS 94-48 and NRTC's comments therein, concerning the inability of rural residents in eastern South Dakota to receive cable television or broadcast off-air signals. The letter states further that:

The have-nots cannot receive the Time Warner and Viacom programming, like HBO, Showtime, Cinemax, The Movie Channel, and other similar type programming because of the "exclusive" distribution arrangements that were made with United States Satellite Broadcasting Co., Inc. (USSB). It is unbelievable these rural households can finally have high quality TV programming delivered to their house at an affordable price and then they are excluded from many choices because of exclusivity. Can you imagine waiting 15-20 years for TV programming like their small town acquaintances have and then be denied full selectivity!

I have been told that none of the DirecTv programming contracts are exclusive contracts and they shouldn't be.

See Exhibit 3.

Obviously ISS believes that rural consumers **will be denied programming** as a result of USSB's contracts with the programming services of Time Warner and Viacom. That is simply not true. USSB's programming is available to every consumer, rural, urban, and suburban (in the 48 contiguous United States), who acquires a DSS™ receiver. In fact, USSB provides its entire programming package free for one month to every consumer who purchases a DSS™ receive system from whatever source.³ It is apparent that false and/or misleading information was provided to NRTC members and affiliates in order to enlist their support of NRTC's improper filings in this proceeding.

Similarly, it appears from some of the letters that the authors have been provided with false information about the ownership of Primestar and the programming carried on Primestar. Several of the letters include references to Viacom as an owner of Primestar and indicate that Viacom's programs are available on Primestar, as NRTC incorrectly stated in its comments in this proceeding. However, Viacom is not an owner of Primestar, and its programming is not available on Primestar.

Having reviewed the letters recently filed in this proceeding as part of the "letter writing campaign," USSB has concluded that the authors may not be aware of USSB's open retail policy, although it has been well publicized. USSB's open retail policy provides that any satellite or consumer electronics retailer who qualifies as a DSS™

³The consumer or the dealer only needs to advise USSB that the consumer purchased a DSS™ system.

dealer for RCA or other brands, abides by USSB's policies and procedures, and maintains USSB's standards of customer service excellence will be able to offer USSB's programming packages in conjunction with DSS™ equipment sales. NRTC affiliates, consumer electronics dealers, and home satellite retailers who wish to take advantage of USSB's open retail policy can call USSB's toll-free dealer hot line. USSB has widely publicized its open retail policy and its toll-free dealer hot line.

USSB intends to contact the authors of the "letter writing campaign" letters to make them aware of USSB's open retail policy. It should be noted that some NRTC affiliates have already been in contact with USSB and are participating in USSB's open retail program, which allows them to offer USSB programming (in addition to DirecTV programming) and receive commissions from USSB.

It is clear that the letters solicited by NRTC are not proper comments or reply comments in CS Docket 94-48. It is also clear that the letters were induced by providing false and misleading information to the authors of those letters. The letters, therefore, should be totally ignored by the Commission as beyond the scope of CS Docket 94-48 and as inaccurate and unreliable.

Respectfully submitted,

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

FLETCHER, HEALD & HILDRETH
1300 N. 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

By: 
Marvin Rosenberg
Patricia A. Mahoney

Its Attorneys

August 19, 1994

EXHIBIT 1



2201 Cooperative Way
Suite 400
Herndon, Virginia 22071
Tel: (703) 787-0874
Fax: (703) 787-3355

**NRTC
MEMORANDUM**

TO: NRTC DBS Participant General Managers
FROM: Bob Phillips, Chief Executive Officer 
DATE: July 13, 1994
RE: Urgent Need for Letters to the FCC and Capitol Hill re: Program Access
Deadline for Action: July 29

Last week, you received a Regulatory Alert from NRTC concerning ~~our~~ immediate and critical need to make a strong impression at the FCC and on Capitol Hill in support of the Programming Access provisions of the 1992 Cable Act. NRTC has filed its comments (see attached) at the FCC. Now it's your turn to speak out on the "real life" consequences of exclusive programming agreements such as the ones signed between USSB, Time Warner and Viacom. To do so effectively, we need you to send letters to the FCC, your Senators and Members of Congress on this topic by July 29.

There is a great deal at stake here. The USSB agreement represents a flagrant manipulation of the intent of the 1992 cable law. It is important that we stand in unified opposition to it.

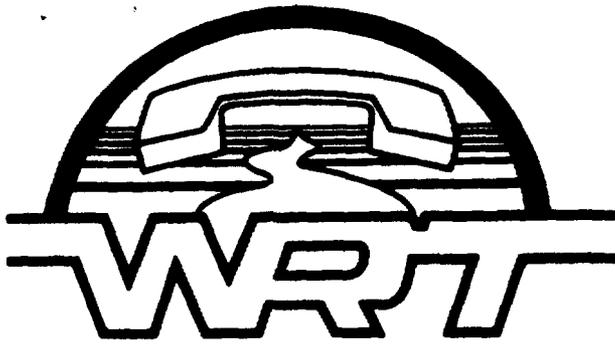
There is no doubt the USSB deal specifically affects your ability to provide your DIRECTV™ customers with the programming they want in a convenient and affordable fashion. Let the FCC and your congressional representatives know how this issue affects you in a real and tangible way.

We all have a stake in making sure the lobbyists from HBO, USSB, and other cable programmers do not convince the FCC and our friends on Capitol Hill that things are OK. Your actions are critical in bringing a grassroots reality to the legislative and regulatory process.

Your letters are also important because the FCC has changed since we initially worked on the bill. New FCC Chairman Reed Hundt, and new Commissioners Rachelle B. Chong and Susan Ness may not understand the important role you play with NRTC in rural video distribution. Your letter to Chairman Hundt, copied to Commissioners Chong and Ness, will help drive home the point.

Finally, your action will reinforce our filing at the FCC. Do not delay. To make this task easier for you, we have attached a summary of our filing, sample letters, and instructions for your letter-writing campaign. Thank you for your immediate attention.

EXHIBIT 2



July 27, 1994

DOCKET FILE COPY ORIGINAL

WEST RIVER

TELECOMMUNICATIONS COOPERATIVE

P.O. BOX 467 HAZEN, NORTH DAKOTA 58545

TELEPHONE: (701) 748-2211

FAX: (701) 748-6800

RECEIVED

AUG 01 1994

FOG MAIL ROOM

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

**RE: Cable Competition Report
CS Docket No. 94-48**

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, CS Docket No. 94-48.

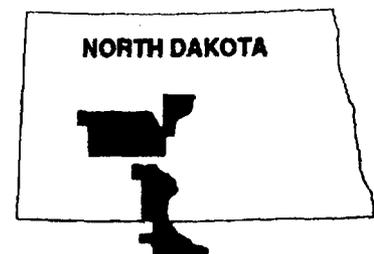
As a rural telephone member of NRTC and a distributor of the DIRECTV Direct Broadcast Satellite (DBS) television service, my company is directly involved in bringing satellite television to rural consumers in North and South Dakota.

However, despite passage of the 1992 Cable Act, my company'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 (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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SERVING THE AREA OF NORTH DAKOTA AND SOUTH DAKOTA ...

*The Honorable Reed Hundt, Chairman, FCC
July 27, 1994
Page 2*

Mr. Hundt, West River Telecommunications 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 circumstances, if one of my DIRECTV subscribers also wishes to receive Time Warner/Viacom product, that subscriber must purchase a second subscription to 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 my ability to compete against other sources for television in my area.

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 become a reality in rural America. I 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,

Rockne T. Bonsness

*Rockne T. Bonsness
Marketing Representative*

RTB/co

cc:

The Hon. Representative Earl Pomeroy, North Dakota

The Hon. Representative Tim Johnson, South Dakota

The Hon. Senator Kent Conrad, North Dakota

The Hon. Senator Byron Dorgan, North Dakota

The Hon. Senator Thomas Daschle, South Dakota

The Hon. Senator Larry Pressler, South Dakota

William F. Caton, Secretary

The Hon. James H. Quello

The Hon. Andrew C. Barrett

The Hon. Susan Ness

The Hon. Rachelle B. Chong



HUMBOLDT COUNTY RURAL ELECTRIC COOPERATIVE

HUMBOLDT, IOWA 50548

515-332-1616

July 28, 1994

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

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JUL 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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, CS Docket No. 94-48.

As a rural electric member of NRTC and distributor of the DIRECTV™ direct broadcast satellite (DBS) television service, our cooperative is directly involved in bringing satellite television to rural consumers.

However, despite passage of the 1992 Cable Act, our cooperative'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 our 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, our cooperative 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 our DIRECTV subscribers also wishes to receive a 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 our area.

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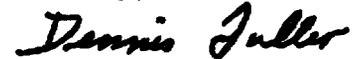
The Honorable Reed Hundt, Chairman
Federal Communications Commission
Page 2
July 28, 1994

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 the FCC to remedy these problems so that the effective competition requirements of Section 19 become a reality in rural America. I 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,



Dennis Fuller
Manager

cc: The Honorable Senator Charles Grassley
The Honorable Senator Tom Harkin

Suite 454
5 Radnor Corporate Center
100 Matsonford Road
Radnor, PA 19087



(610) 341-1801
(610) 341-1835 Fax

2

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July 26, 1994

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JUL 29 1994

FCC MAIL ROOM

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

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

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, CS Docket No. 94-48.

As a rural cable television provider, affiliate of the NRTC and provider/distributor of DIRECTV™ direct broadcast satellite (DBS) television service, my company is directly involved in bringing satellite television to rural consumers.

However, despite passage of the 1992 Cable Act, my company's ability to compete in our local DBS 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 such as HBO, Showtime, Cinemax, The Movie Channel, MTV, Nickelodeon and others is available to my principal competitors, United States Satellite Broadcasting Company (USSB) and Primestar. It is not available to Pegasus (or DIRECTV™) 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

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July 26, 1994

Page 2

programming to serve non-cabled rural areas. Under the present circumstance, if one of my 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 my ability to compete against other sources for television in my area.

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 the FCC to remedy these problems so that the effective competition requirements of Section 19 become a reality in rural America. I 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,



Marshall W. Pagon
President, CEO

cc: ~~William F. Caton, Secretary~~
The Hon. James H. Quello
The Hon. Andrew C. Barrett
The Hon. Susan Ness
The Hon. Rachelle B. Chong

SOUTHWEST TEXAS COMMUNICATIONS, INC.

P.O. Box 347
Rocksprings, TX 78880
Phone: (210)683-2326

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July 22, 1994

RECEIVED
JUL 26 1994
FCC MAIL ROOM

William F. Caton
Secretary
Federal Communications Commission
1919 M St., NW, Rm. 222
Washington, DC 20554

Dear Secretary Caton:

Attached please find a copy of the letter I have sent to Chairman Reed Hundt concerning Section 19 of the 1992 Cable Act. As a rural telephone member of the National Rural Telecommunications Cooperative (NRTC), Southwest Texas Communications is a distributor of Direct Broadcast Satellite (DBS) television programming services to rural consumers. We would appreciate our opinion being strongly voiced concerning the matter addressed in the attached letter.

Thank you for your attention in this matter.

Sincerely,



Steven Smart
General Manager

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0

Your Authorized DIRECTV Distributor

RECEIVED

JULY 22, 1994

JUL 26 1994

FCC MAIL ROOM

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

**RE: Cable Competition Report
CS Docket No. 94-48**

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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 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

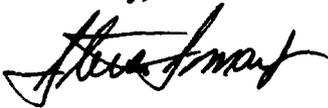
level. Not having access to the Time Warner/Viacom services has adversely affected my ability to compete against other sources for television in my area.

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 the FCC to remedy these problems so that the effective competition requirements of Section 19 become a reality in rural America. I 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,

A handwritten signature in black ink, appearing to read "Steven Smart", written in a cursive style.

Steven Smart

cc:

The Honorable Representative Henry Bonilla

The Honorable Senator Kay Hutchison

William F. Caton, Secretary

The Hon. James H. Quello

The Hon. Andrew C. Barrett

The Hon. Susan Ness

The Hon. Rachelle B. Chong

EXHIBIT 3



Interstate Satellite Services, Inc.
 305 3rd Ave. S. - P. O. Box 1008
 Clear Lake, South Dakota 57226-1008



July 20, 1994

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JUL 26 1994

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

FCC MAIL ROOM

Dear Chairman Hundt:

I am writing this letter to confirm my 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.

I have a vested interest in this docket as I am the General Manager of a telephone cooperative that formed a wholly owned subsidiary for the purpose of providing DIRECTV to rural residents in eastern South Dakota and western Minnesota. These rural customers do not and will not have access to cable TV plus their current off-air reception using roof-top antenna's varies from very poor to somewhat adequate. Even though the offerings we will be able to provide far surpass what these households currently receive, we, as yet, cannot provide these households with the same programming that their relatives and friends can obtain just because they live in a nearby community that has cable TV. This fact of life exists because we do not have access to all of the programmers the cable TV companies do. These folks simply want the same opportunity and you and the Commissioners can and must provide this.

The have-nots cannot receive the Time Warner and Viacom programming, like HBO, Showtime, Cinemax, The Movie Channel, and other similar type programming because of the "exclusive" distribution arrangements that were made with United States Satellite Broadcasting Co., Inc. (USSB). It is unbelievable these rural households can finally have high quality TV programming delivered to their house at an affordable price and then they are excluded from many choices because of exclusivity. Can you imagine waiting 15-20 years for TV programming like their small town acquaintances have and then be denied full selectivity!

I have been told that none of the DIRECTV programming contracts are exclusive contracts and they shouldn't be. Likewise, USSB

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should not be able to have exclusive programming rights. I ask you to examine this problem as soon as possible, take whatever action is necessary to correct the problem, and let's get on with providing rural folks the maximum choices available. Anything less is unacceptable.

Sincerely,

Dean E. Anderson
General Manager

cc: ✓ Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M St., NW, Room 222
Washington, DC 20554

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M St., NW, Room 802
Washington, DC 20554

The Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M St., NW, Room 826
Washington, DC 20554

The Honorable Susan Ness
Federal Communications Commission
1919 M St., NW, Room 832
Washington, DC 20554

The Honorable Rachelle B Chong
Commissioner
Federal Communications Commission
1919 M St., NW, Room 844
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