

Warner Cable"). The provision also was designed to "extend[] programming to areas not served by cable." Conference Report at 92, reprinted in 1992 U.S.C.C.A.N. at 1275.

In construing the statute, the Commission must ensure that the regulations it adopts further these underlying Congressional goals and policies.¹⁸ The Commission already has determined that it was the "use of exclusive contracts between vertically integrated programming vendors and cable operators [that] served to inhibit the development of competition among distributors."¹⁹ As demonstrated above, however, Viacom's exclusive arrangements with USSB will enhance diversity and strengthen competition within the developing DBS marketplace. Thus, Viacom submits, the Commission correctly designed Section 76.1002(c)(1) to limit exclusive grants to cable operators, while not restricting exclusive grants to emerging MVPD competitors, who lack cable's market power. By contrast, and as explained below,²⁰ the interpretation of the statute urged upon the Commission by NRTC and DirecTV would lead to the absurd result of placing cable

¹⁸ It is a fundamental tenet of statutory construction that a statute must be construed in a manner that will achieve a harmonious result among its various sections. 2A Sutherland Stat. Const. § 46.05 (5th ed. 1992). Similarly, a result that runs counter to the intent of the overall legislation cannot be favored. Id. Thus, in construing any provision of the 1992 Cable Act, it is imperative that the Commission look to its overall structure and intent in order to ensure that the core policies underlying the Act are fulfilled.

¹⁹ Time Warner Cable ¶ 23.

²⁰ See discussion at pages 19-21, infra.

operators in a more favored regulatory position than competing non-cable distributors -- a result that simply cannot be reconciled with the purposes of the 1992 Cable Act.

DirectTV and NRTC argue that exclusive contracts are prohibited, not only by the specific provisions of Sections 628(c)(2)(C) and (D), but also implicitly by the more general language of Sections 628(b) and 628(c)(2)(B). DirectTV Ex Parte Presentation at 5-6; Second NRTC Ex Parte Presentation at 10.²¹ As an initial matter, the position advanced by NRTC and DirectTV would effectively make the specific prohibition on exclusive grants to cable operators contained in subsection (C) superfluous. If the general language had been intended to prohibit all exclusives, as NRTC and DirectTV argue, it would have been totally unnecessary to structure specific prohibitions

²¹ NRTC also raises the specious argument that, because a vertically integrated programmer must, by definition, also be a cable operator, Section 628(c)(2)(C) applies to any arrangement by which a vertically integrated programmer grants exclusive distribution rights. First NRTC Ex Parte Presentation at 9-10. The 1992 Cable Act, however, clearly and consistently distinguishes between a vertically integrated programmer as the grantor of distribution rights and the cable operator itself as the grantee of such rights. As demonstrated herein, the program access provisions are designed to prevent cable operators from obtaining grants of exclusive distribution rights that served to prevent consumers living in non-cabled areas from receiving vertically integrated programming. The Commission should reject out of hand NRTC's facile attempt to blur the grantor/grantee distinction contained in the 1992 Cable Act.

against a particular category of exclusives elsewhere in the statute.²²

The fact remains that the only specific restrictions on exclusive contracts in the program access provisions are found in Sections 628(c)(2)(C) and (D). Further, only exclusive grants to cable operators are discussed in those provisions of the statute. Thus, Viacom submits, the Commission correctly determined that the 1992 Cable Act's restrictions on exclusive contracts were directed at exclusive grants to cable operators, whose market power Congress sought to limit. The Commission properly crafted its implementing regulations to address that objective. Indeed, the "presumption" against all exclusives advocated by NRTC/DirectV is totally without support in any provision of the statute. Moreover, as demonstrated below, under the NRTC/DirectV approach, Sections 628(c)(2)(C) and (D) would operate in combination to place cable operators in a more advantageous regulatory position than non-cable distributors -- the intended beneficiaries of the Congressional plan.

Section 628(c)(2)(D) states that cable operators may enter into exclusive arrangements within their service areas if the Commission determines that the public interest would be served. Indeed, the Commission already has found that at least one cable-exclusive distribution arrangement serves the public interest.

²² A reading of the statute that results in a provision being superfluous is not favored. 2A Sutherland Stat. Const. § 46.05 (5th ed. 1992).

New England Cable News § 53 (allowing New England Cable News to enter into exclusive distribution agreements with cable operators). By its terms, however, Section 628(c)(2)(D) applies only to cable operators. There simply is no parallel provision concerning exclusive arrangements with non-cable distributors. Accordingly, only cable operators are provided a mechanism under the statute to demonstrate that the public interest would be served by an exclusive distribution arrangement.

Thus, the end result of the NRTC/DirectV interpretation is that, although the FCC might allow a cable operator to obtain exclusivity within its service area, the Commission would lack the power to permit a grant of similar exclusive rights to a non-cable distributor, even if the Commission determined that such a grant would serve the public interest.²³ Under the NRTC/DirectV view of the statute, therefore, an MMDS operator seeking to compete with cable operators in the New England area would be prohibited from obtaining the same type of exclusive rights that the Commission has determined may be granted to cable operators.

²³ NRTC/DirectV must either acknowledge this illogical result or argue that Congress expressly required a public interest showing to be made by a cable operator in Section 628(c)(2)(D) and implicitly mandated the same showing for non-cable distributors elsewhere in the statute. There is no evidence in either the 1992 Cable Act itself or its legislative history, however, that the public interest standard applicable to cable operators was to be used to determine whether non-cable distributors could enter into exclusive arrangements as well. The absence of a parallel "safety valve" provision for non-cable exclusives provides compelling support for the Commission's determination, in adopting Section 76.1002(c)(1), that Congress did not intend to limit such arrangements.

Such a result is so antithetical to the purposes of the 1992 Cable Act that Viacom submits that it cannot be countenanced. Rather, the better interpretation of the statute is the one taken by the Commission in its rules -- that the provisions of Section 628(c)(2)(C) and (D) were intended to limit the ability of cable operators to obtain exclusive rights to vertically integrated programming. More specifically, Section 628(c)(2)(C) was designed to prevent cable operators from obtaining exclusive rights with respect to areas unserved by cable, thus ensuring that consumers in such areas would be able to obtain from a non-cable distributor the same programming available to consumers in areas served by cable. Section 628(c)(2)(D) in turn creates a limited opportunity for cable operators to obtain exclusive rights, but only within areas served by cable and only if the Commission determines that the public interest would be served by such arrangements. Exclusive arrangements with emerging non-cable distributors, that lack the market power of their established cable competitors, clearly do not pose the same anticompetitive threat. Thus, the Commission correctly concluded, in promulgating Section 76.1002(c)(1) to implement Section 628(c), that non-cable exclusives are not prohibited by the statute.

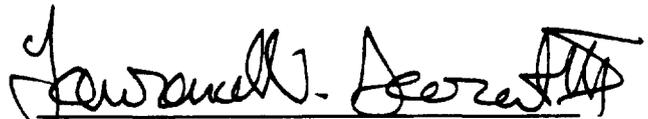
V. Conclusion

In Section 76.1002(c) of its rules, the Commission has properly determined Congressional intent with respect to the ability of vertically integrated programmers to grant exclusive distribution rights to non-cable distributors. These arrangements will help to create competition in the distribution of programming via DBS, to the benefit of consumers and programmers. Accordingly, Viacom once again respectfully urges the Commission to deny NRTC's petition for reconsideration with respect to exclusive arrangements with non-cable distributors.

Respectfully submitted,

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ATTACHMENT A

DISTRIBUTOR	LOCATION	NUMBER OF ADVERTISER-SUPPORTED SATELLITE SERVICES	NUMBER OF PREMIUM SERVICES	TOTAL PRICE ¹
Continental	Los Angeles, CA	25	7	\$67.49
Cable TV Montgomery	Montgomery County, MD	23	9	\$96.55
Cable TV Arlington	Arlington, VA	29	7	\$75.95
Cablevision of Boston	Boston, MA	37	7	\$79.80
Greater Media	Philadelphia, PA	38	6	\$75.95
Prime Cable of Chicago	Chicago, IL	32	6	\$74.00
Cablevision Systems Corp.	Greenwich, CT	25	8	\$68.25
Time Warner	New York, NY	37	8	\$80.53
Paragon	Manhattan, NY	33	5	\$87.60
McLean Hunter Cable TV	Detroit, MI	29	7	\$89.72
Adelphia Communications Corp.	Miami, FL	34	5	\$106.70
Time Warner	San Diego, CA	25	6	\$69.23

¹ Price may include cost of remote and converter.