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DON SUNDBQUIST  
U.S. HOUSE OF REPRESENTATIVES  
COMMUNICATIONS  
AND PUBLIC AFFAIRS  
SECTION  
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DOCKET FILE ONLY ORIGINAL  
**Congress of the United States**  
House of Representatives  
Washington, DC 20515-4207

September 21, 1994

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Chairman Reed Hundt  
Federal Communication Commission  
Office of Congressional and Public Affairs  
1919 M Street NW  
Washington, DC 20554

Dear Chairman Hundt:

I recently heard from a constituent of mine, Mr. Charles E. Grissom, who is concerned that the Federal Communications Commission is not enforcing Section 19 of the 1992 Cable Act.

I have enclosed a copy of Mr. Grissom's letter for your information. In order to ensure that my constituent receives the most timely response, please respond directly to Mr. Grissom and forward a copy of your reply to my Washington office.

Thank you for your time and attention to the concerns of my constituent.

Sincerely yours,

Don Sundquist, M.C.

DKS:mj

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JUL 26 1994

July 20, 1994

The Honorable Don Sundquist  
United States House of Representatives  
Washington, D.C. 20510

Dear Congressman Sundquist:

As a distributor of C-band satellite television programming through the National Rural Telecommunications Cooperative and Tennessee Electric Cooperative Association's TECA Telcom, Inc., I am concerned that the Federal Communications Commission is not enforcing Section 19 of the 1992 Cable Act.

Equal access to cable and broadcast programming at fair rates is essential for TECA Telcom and Duck River Electric to be competitive in our local market place.

The attached letters to FCC Chairman Reed Hundt from myself, in addition to Rep. Billy Tauzin and other members of Congress, spell out my concerns on this issue.

I would greatly appreciate your assistance on behalf of rural consumers in south central Tennessee in encouraging the FCC to correct this inequity.

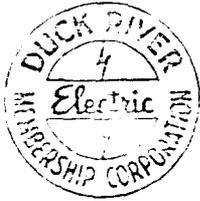
Yours very truly,

Duck River Electric  
Membership Corporation

C. E. Grissom  
General Manager

Enclosures

*Send to  
FCC*



1411 MADISON STREET P. O. Box 89  
SHELBYVILLE, TENNESSEE 37160  
PHONE 615 684-4621

July 20, 1994

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

Dear Chairman Hundt:

As general manager of a rural electric cooperative that is a member of the National Rural Telecommunications Cooperative (NRTC), I am writing in support of NRTC's comments as they relate to the Implementation of Section 19 of the Cable Television Consumer Protection and Competitive Act of 1992, Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, CS Docket No. 94-48.

Consumers served by our cooperative are mostly rural and do not have access to cable television. Therefore, many have home satellite dishes. These consumers should have access to all programming through NRTC at rates comparable to those charged by cable companies.

Although the 1992 Cable Act was a step in the right direction, there are programmers in the market place that have chosen to ignore the intent of the Act. Duck River Electric supports the position of NRTC that the FCC should act to enforce the wishes of Congress as outlined in the 1992 Cable Act.

We appreciate your attention to this matter and solicit your support in putting stronger teeth in the enforcement of the Act.

Yours very truly,

Duck River Electric  
Membership Corporation

C. E. Grissom  
General Manager

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 and 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 price, 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-teico 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*

RICK BOUCHER  
Member of Congress

*Ron Wyden*

RON WYDEN  
Member of Congress

*Jim Slattery*

JIM SLATTERY  
Member of Congress

*Ralph M. Hall*

RALPH HALL  
Member of Congress

*Billy Tauzin*

BILLY TAUZIN  
Member of Congress

*Jim Cooper*

JIM COOPER  
Member of Congress

*Blanche M. Lambert*

BLANCHE LAMBERT  
Member of Congress

*Mike Synar*

MIKE SYNAR  
Member of Congress

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

NOV 30 1994

IN REPLY REFER TO:  
CN-9404718

Mr. Charles E. Grissom  
General Manager  
1411 Madison Street  
P. O. Box 89  
Shelbyville, Tennessee 37160

Dear Mr. Grissom:

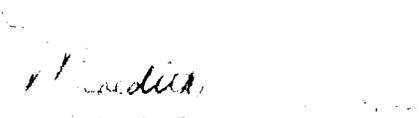
Thank you for your inquiry on behalf of Duck River Electric, an affiliate of the National Rural Telecommunications Cooperative (NRTC) and Tennessee Electric Cooperative Association's TECA Telcom, Inc. You have expressed a concern that as a distributor of C-band satellite programming, the Federal Communications Commission is not enforcing Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.

Your expression of support for the position of the NRTC concerning the Commission's interpretation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 has been noted. NRTC has requested that the Commission reexamine the legality of exclusive contracts between vertically integrated cable programmers and DBS providers in areas unserved by cable operators. NRTC has asked that the Commission determine that such contracts are prohibited.

NRTC's petition for reconsideration of the Commission's program access rulemaking proceeding is currently pending. As such, any discussion by Commission personnel concerning this issue outside the context of the rulemaking would be inappropriate. However, you may be assured that the Commission will take into account each of the arguments raised by NRTC and the other parties to the rulemaking concerning this issue to arrive at a reasoned decision on reconsideration.

I trust that this information will prove both informative and helpful.

Sincerely,



Merédith J. Jones  
Chief, Cable Services Bureau

cc: Congressman Don Sundquist