

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Preemption of Local Zoning ) IB Docket No. 95-59  
Regulation of Satellite Earth )  
Stations )

To: The Commission

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REPLY COMMENTS  
OF  
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.415 of the Rules and Regulations of the Commission, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments concerning the Commission's Report and Order ("Order"), Memorandum Opinion and Order, and Further Notice of Proposed Rule Making ("Further Notice") in the above-captioned proceeding.<sup>1/</sup> NRTC filed Comments in this proceeding on September 27, 1996 in which NRTC strongly supported the Commission's decision to preempt restrictions which impair antenna reception of DBS programming by homeowners that exclusively control their homes and property. NRTC also urged the Commission to extend its preemption policy to include *all* viewers, regardless of their residential situation.

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<sup>1/</sup> Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rule Making, released August 6, 1996.

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## REPLY COMMENTS

1. NRTC reiterates its belief that the Commission has authority to preempt any and all restrictions that impair a viewer's ability to receive programming via DBS antennas, regardless of that viewer's residential status. As SBCA noted in its comments, Congress did not limit the term "viewer" to a certain type of citizen, such as homeowners or renters. SBCA at 3. Instead, Congress meant to protect all viewers. NRTC shares SBCA's view that lower-income Americans and minorities may be particularly disadvantaged if the Commission applies its preemption rules to protect only those citizens that own their own homes and exclusively control their property. SBCA at 3.

2. NRTC also agrees with DIRECTV that cable operators should not be permitted to exercise their market power by engaging landlords in exclusive contacts. DIRECTV at 19. Section 628 of the Communications Act prohibits any Multichannel Video Programming Distributor ("MVPD") from engaging in "unfair methods of competition" that prevent another MVPD from providing programming to subscribers or customers.<sup>2/</sup> The use of exclusive contracts by cable operators is a barrier to competition which must be prevented by the Commission in all instances where the

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<sup>2/</sup> Section 628(b) states that it "shall be unlawful for a cable operator. . .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 prevent any multichannel video programming distributor from providing programming to subscribers or customers." 47 U.S.C. § 548(b).

cable operator enjoys a monopolistic position in the video programming market. Thus, NRTC supports the position espoused by DIRECTV in its comments, that exclusive contracts between landlords and cable television companies are anticompetitive and should be preempted. DIRECTV at 18. Otherwise, the Commission's preemption policy will be circumvented in those many instances in which cable companies can utilize their extensive market power to engage landlords in exclusive contracts.

DIRECTV at 18.

### **CONCLUSION**

The Commission's Report and Order adopted a sound, well-reasoned policy for preemption of restrictions which impair viewers from receiving programming via DBS antennas. NRTC believes that this preemption policy should protect all viewers, not just those fortunate enough to own their own homes and exclusively control their property. Otherwise, the benefits of preemption will elude a significant portion of American society.

NRTC agrees with DIRECTV that the cable operators' use of market power to preclude competition violates the letter and spirit of Section 628 of the Communications Act. In most instances, exclusive contracts between landlords and cable television operators that preclude landlords from providing other MVPD services

to their residents are anticompetitive in nature simply because the cable operators enjoy a monopoly position in the video programming market.

**WHEREFORE, THE PREMISES CONSIDERED,** the National Rural Telecommunications Cooperative urges the Commission to consider these Reply Comments and to revise its rules in accordance with the views expressed herein.

**Respectfully submitted,**

**NATIONAL RURAL  
TELECOMMUNICATIONS COOPERATIVE**

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**Dated: October 28, 1996**