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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	**CS Docket No. 00-132**
Competition in Markets for the	)	
Delivery of Video Programming	)	

To: The Commission

COMMENTS OF THE
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

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SUMMARY

As the Commission evaluates the status of competition in markets for the delivery of video programming, NRTC is concerned that the percentage of "homes passed" by cable is not as high as the Commission has been led to believe. The cable industry has long maintained that the percentage of "homes passed," and subsequently cable's availability, is as high as 97%. The numbers provided by the National Cable Television Association ("NCTA") provide an overly optimistic view of cable coverage that is a dangerously misleading representation of the actual availability of cable services, particularly to rural Americans. According to a recent National Telecommunications and Information Administration ("NTIA") and Rural Utilities Service ("RUS") Report, the number of "homes passed" may actually be as low as 81%, thereby creating a wholly different market environment that should be of substantial concern to the Commission in evaluating the state of competition to cable.

Additionally, the Commission should ensure that local-to-local service is available by satellite throughout rural America. NRTC is concerned that the Commission's 'must-carry' rules will prevent rural Americans from receiving any local satellite serve. Although NRTC supports the underlying purpose of the must carry rules, satellite carriers will not provide local signals in lower population, lower-profit markets if they are statutorily required to carry all signals in those markets. There is not enough satellite capacity available, nor is there a large enough subscriber base. For rural America, "must carry" will mean "no carry." As a matter of national telecommunications policy, this expanding divide between information "haves" and "have-nots" should be of serious concern to the Commission.

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NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.430 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Comments in response to the Notice of Inquiry ("NOI") issued by the Commission in the above-captioned proceeding on August 1, 2000.[1] NRTC is concerned that the Commission's rules and policies continue to prevent consumers, especially those in rural areas, from enjoying the benefits of a fully competitive Multichannel Video Programming Distribution ("MVPD") market. NRTC encourages the Commission to amend its rules and adopt policies to ensure that all Americans benefit from advances in MVPD technology. In particular, the Commission should formulate any further courses of action based upon more accurate data regarding the actual number of "homes passed" by cable. Additionally, the Commission should ensure that rural Americans are not "left out" of the local-to-local signal plans of DBS licensees.

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1 5 Fed. Reg. 49804.

I. BACKGROUND

1. NRTC is a non-profit cooperative association comprised of 550 rural electric cooperatives and 279 rural telephone systems, as well as several non-member affiliate organizations, located throughout 48 states. NRTC's mission is to meet the telecommunications needs of American consumers living in rural areas. In furtherance of that mission, NRTC paid DIRECTV more than $100,000,000 in 1992 to capitalize the launch of the DIRECTV satellite business in 1994. In return, through a DBS Distribution Agreement between NRTC and Hughes Communications Galaxy, Inc. (DIRECTV's predecessor-in-interest), NRTC received program distribution and other rights to market and distribute DIRECTV programming services throughout large portions of rural America. Pursuant to that Agreement, NRTC, its members and affiliates currently market and distribute DIRECTV programming to more than 1,500,000 rural households using DBS technology. NRTC also distributes C-band satellite programming to some 50,000 subscribers.

2. During the 13 years since its inception, NRTC has participated extensively in Congressional hearings and Commission and Copyright Office proceedings to ensure that rural America receives the same access to programming that is available in urban areas. As satellite technology has developed and flourished, NRTC has decried the slow development of competition in providing rural consumers with choices in video program delivery. In each of the previous six years that the FCC has sought input from the public to prepare its assessment to Congress of the status of competition in markets for the delivery of video programming, NRTC

has filed Comments and Reply Comments urging the Commission to amend its rules and promote competition. Unfortunately for rural America, many of the issues raised by NRTC years ago remain unaddressed by the Commission today.

3. For many years, NRTC has been a staunch advocate of providing rural Americans with programming and access to information that is so critical to the development of business, industry and education in today's information age. As a recent report by the Rural Utilities Service ("RUS") and the National Telecommunications and Information Administration ("NTIA") recognized,

> Availability of advanced telecommunications will become essential to the development of business, industry, shopping, and trade, as well as distance learning, telemedicine, and telecommuting. The rate of deployment therefore has implications for the welfare of Americans and the economic development of our nation's communities.[2]

4. In further support of this observation, the Commission recently released its Second Report on the deployment of advanced telecommunications capability ("Second Report").[3] In the Second Report, the Commission reached the "troubling conclusion, that in all likelihood, market forces alone will not guarantee that many rural Americans will have access to advanced services."[4] NRTC is hopeful that when the Commission considers future actions

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2 Second Report, at 87.

3 Federal Communications Commission, *Deployment of Advanced Telecommunications Capability: Second Report*, FCC 00-290 (Released August 21, 2000).

4 Id. at para. 220.

regarding competition in the cable market, it will first address the most basic problem of access to information throughout rural America.

5. Additionally, throughout NRTC's long history, we have advocated changes addressing Commission regulations and policies as well as Federal legislation that would ensure competitive services to rural Americans. NRTC first urged the Commission to resolve the distant network signal satellite retransmission problem in an Emergency Petition for Rulemaking filed in July, 1998. Although the Commission conducted a rulemaking proceeding responsive to NRTC's petition, the Commission refused to reassess and update its Grade B signal strength values for purposes of the Satellite Home Viewer Act ("SHVA"). As a result, millions of satellite subscribers have lost or will lose their distant network signals as a result of a Florida District Court's injunction.[5]

6. While the retransmission of local television signals by satellite to "served" households has gone from a Congressional proposal to legislative reality,[6] the problem of local signal access in rural America remains unsolved. Because the retransmission of local signals in sparsely populated markets is less lucrative than in urban markets, local signals will be unavailable by satellite to most rural viewers. Not only will rural viewers be deprived of access to local signals by satellite, but satellite as a technology will be unable to compete fully with

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5 CBS, Inc. et al. v. PrimeTime 24 Joint Venture, Order Affirming in Part and reversing in Part Magistrate Judge Johnson's Report and Recommendations, 9 F.Supp.2d 1333 (S.D. FL. May 13, 1998); CBS, Inc. et al. v. PrimeTime 24 Joint Venture, Supplemental Order Granting Plaintiff's Motion for Preliminary Injunction, Case No. 96-3650-Civ (S.D. FL. July 19, 1998) ("Supplemental Order").
6 See 47 U.S.C. 338(a).

cable offerings which include local signals in smaller markets. The lack of local satellite service also could endanger the economic viability of those broadcast stations in smaller markets that are not uplinked and retransmitted locally by satellite.

7. The Commission should ensure that local-to-local service is available by satellite throughout rural America. In order to assist the Commission in its assessment of cable competition, NRTC's Comments will focus on two specific issues: 1) the current state of "homes passed" by cable; and 2) the impact that the Commission's local-to-local rules will have on rural Americans.

II. COMMENTS

A. The Percentage of "Homes Passed" by Cable Is Not As High As the Commission Has Been Led to Believe.

8. The Commission seeks comment with regard to what, if any, barriers exist to entry in the cable market. Further comment is sought on the existence of any barriers to consumer choice within the market. On each of these issues, NRTC is concerned that the percentage of "homes passed" by cable is not as high as the Commission has been led to believe.

9. As the Commission has noted, market forces alone will not guarantee access to advanced services by many rural Americans. In essence, the greatest barrier to entry is the very nature of providing services to low population, geographically disperse rural markets.

10. NRTC draws the Commission's attention to the joint report released in April of 2000 by the NTIA and the RUS.[7] The report, labeled *Advanced Telecommunications in Rural America: the Challenge of Bringing Broadband Service to All Americans* ("NTIA/RUS Report"), is a response by the NTIA and the RUS to a request from ten U.S. Senators inquiring as to the status of broadband deployment in rural versus non-rural areas of the United States.[8] In the letter, the Senators requested recommendations for the "ubiquitous deployment of advanced telecommunications capability to all Americans, *particularly in rural areas*."[9] The letter also sought recommendations, either legislative or non-legislative, for the implementation of such services.[10] Furthermore, both NTIA and RUS were motivated to provide the report in response to a call by President Clinton and Vice President Gore to bridge the digital divide and create digital opportunities for more Americans.[11]

11. The NTIA/RUS Report is important, since it provides a detailed analysis and discussion of the state of advanced telecommunications services in rural America. The NTIA/RUC Report finds that rural areas are currently "lagging far behind urban areas in

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7 See National Telecommunications and Information Administration and Rural Utilities Service, *Advanced Telecommunications In Rural America: The Challenge of Bringing Broadband Service to All Americans*, April, 2000.

8 Letter from Senators Baucus, Conrad, Daschle, Dorgan, Harkin, Johnson, Kerrey, Murray, Wellstone and Wyden, United States Senate, to Mr. Larry Irving (NTIA) and Mr. Walley Beyer (RUS) , May 20, 1999.

9 Id. (emphasis added).

10 Id.

11 See National Telecommunications and Information Administration and Rural Utilities Service, *Advanced Telecommunications In Rural America: The Challenge of Bringing Broadband Service to All Americans*, April, 2000, at iii.

broadband availability."[12] However, of additional interest, the report also discredits the cable industry's long-standing claim regarding the percentage of homes passed by cable.

12. The cable industry has long maintained that the percentage of "homes passed," and subsequently cable's availability, is as high as 97%.[13] This number has been readily accepted by the Commission in its past Cable Competition Reports to Congress.[14] However, the numbers provided by the cable industry through the National Cable Television Association ("NCTA") are disingenuous at best. The numbers provided by the NCTA provide a rose colored view of cable coverage that is a dangerously misleading representation on the actual availability of cable services, particularly to rural Americans.

13. As pointed out in the NTIA/RUS Report, statistics for the availability of cable vary according to whether a comparison is made using numbers from the following three categories: 1) TV Households; 2) All Households; or 3) Housing Units. The utilization of TV Households for purposes of analysis, provide the more favorable numbers sought by the Cable industry. Unfortunately, the use of TV Households also presents a skewed picture regarding nationwide access to cable services. The utilization of TV Households by the Cable industry results in ignoring approximately 2 million Households altogether, and a staggering 13 million

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12 Id.
13 See, *NCTA National Cable Television Developments*, (Summer, 1999); and see NCTA web site at <http://www.ncta.com/glance.html> (listing pass rate of 96.7%).
14 See, *Sixth Annual Report*, CS Docket Number 99-230, FCC 99-418 (January 14, 2000) at pp. 11-12.

Housing Units nationwide.[15] Perhaps more telling is the evidence that cable companies, while utilizing TV *Household* numbers for their 'bottom-line,' may actually be counting *Housing Units* to arrive at their final numbers.[16] The distinction is important: by counting Housing Units in its final analysis, the Cable industry is able to inflate its final numbers through utilization of Households that it normally does not, and would not, account for. The end result are numbers which paint a deceptively high picture on the availability of cable resources to rural Americans. The correct percentage of homes passed, according to the NTIA/RUS Report, could be as low as 81%.[17]

14. Despite which numbers are used, the NTIA/RUS Report demonstrates that rural areas outside of cities and towns have less access to cable TV. As with all types of wireline service, the costs of cable data deployment in rural areas are high. Because the subscriber base in rural areas is more dispersed than in more densely populated areas -- and the terrain often more irregular -- there is less economic incentive to connect rural areas. In fact, a previous report issued by the NTIA found that "Cable television providers are generally unwilling to extend their cables into rural areas where subscriber density is less than 10 per mile." [18]

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15 See. National Telecommunications and Information Administration and Rural Utilities Service, *Advanced Telecommunications In Rural America: The Challenge of Bringing Broadband Service to All Americans*, April, 2000, at fn 62.
16 Id.
17 Id.
18 Id. at fn. 63, Citing to National Telecommunications and Information Administration, U.S. Department of Commerce, *Survey of Rural Information Infrastructure Technologies*, September 1995, at 3-7.

15. Such observations and conclusions by the NTIA and the RUS further support the FCC's *own* conclusion, that market forces alone will not guarantee access to advanced services for rural Americans.[19] The hesitancy on the part of cable system providers to serve lower population areas, coupled with the close scrutiny of accurate cable "homes passed" rates, paints an unsettling picture on the availability of services in rural America. The Commission should consider the most accurate data in assessing the state of cable competition.

B. The Commission's 'Must Carry' Rules Will Prevent Many Rural Americans From Receiving Any Local Satellite Service.

16. In this proceeding, the Commission also seeks comment on any positive or negative effects that existing statutory provisions and Commission regulations will have on the market. In this context, NRTC is concerned that the Commission's 'must-carry' rules will prevent rural Americans from receiving any local satellite service.

17. The Commission is currently undertaking steps to implement Section 338(a)(1) of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), which provides that after December 31, 2001:[20]

> each satellite carrier providing [television broadcast signals under the compulsory copyright licensing system] to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) [retransmission consent requirement].

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19 See footnote 6, *supra*.
20 47 U.S.C. Section 338(a)(1).

18. This legislation requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals in local markets in which at least one broadcast station signal is carried pursuant to Section 122 of title 17, United States Code. The SHVIA requires the Commission to issue rules implementing this carriage requirement by November 29, 2000.

19. DIRECTV and EchoStar, the only two companies offering high-powered Direct Broadcast Satellite service nationwide, offer local-into-local service only in the top metropolitan areas. DIRECTV has announced its intention to provide local service to 37 out of a total of 210 markets. While duplicating many of the same local signals in many of the same markets served by DIRECTV, EchoStar also has announced that it will serve an additional 7 markets not served by DIRECTV. In combination, DIRECTV and EchoStar have announced plans to serve only 44 markets, or less than two-thirds of the TV Homes. Twenty states will receive no local-into-local service originating from within their states.

20. Even assuming that DIRECTV and EchoStar were to expand substantially their local service to cover 50 % more of the DMAs than they have announced, which is unlikely, their local service offerings would still cease to exist at Market #65. Under this unrealistically optimistic scenario, at least twenty-five million TV homes in Markets 65 and beyond, which includes virtually all of rural America and much in the middle, will still remain unserved. Up to one-third of the states -- Alaska, Delaware, Hawaii, Idaho, Iowa, Maine, Mississippi, Montana,

Nebraska, New Hampshire, New Jersey, North Dakota, South Carolina, South Dakota, Vermont and Wyoming -- will be excluded from receiving any local satellite service originating from within their states.

21. The satellite "must carry" rules will compound this problem. Although NRTC does not question the underlying purpose of the must carry rules, satellite carriers will not provide any local signals in lower population, lower-profit markets if they are statutorily required to carry all signals in these markets. There is not enough satellite capacity available, nor is there a large enough subscriber base. For rural America, "must carry" will mean "no carry."

22. This disenfranchisement of rural America comes at a particularly inopportune time. Within the last few years, Court decisions applying restrictions contained in the copyright laws have caused many rural consumers to lose access to their distant network signals at the same time they are being denied access to local signals by satellite.[21] The loss of distant network signals in combination with the unavailability of local signals will severely restrict programming choices in rural America.

23. As a matter of national telecommunications policy, this expanding divide between information "haves" and "have-nots" should be of serious concern to the Commission. Cut off from local broadcast signals, rural Americans living outside the top television markets will be unable to receive local community information that Americans in more populated parts of the

country take for granted. Critical information regarding local news, weather and other emergency conditions will be unavailable. Advance warnings of hurricanes, tornadoes, snowstorms and the like will be unavailable. Up-to-the-minute information necessary to protect property and save lives -- the type of information already available in urban America from a variety of sources -- will be unavailable throughout rural America.

III. CONCLUSION

24. In light of the foregoing, NRTC urges the Commission to take regulatory action where market forces are unable to ensure the availability of advanced telecommunications services to rural America. In particular, the Commission should ensure that rural Americans are not "left out" of the local-to-local signal plans of DBS licensees. Additionally, the Commission should formulate any proposed further courses of action based upon the most relevant and accurate data concerning homes actually passed by cable.

Respectfully submitted,

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September 8, 2000

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21 *Supra* at note 2.

CERTIFICATE OF SERVICE

I, Tammy Hines, do hereby certify that copies of the foregoing **Comments of the National Rural Telecommunications Cooperative** were sent, via hand delivery, this 8th day of September, 2000, to the following:

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