

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**Annual Assessment of the Status of** ) **MB Docket No. 04-227**  
**Competition in the Market for the** )  
**Delivery of Video Programming** )

**TO: THE COMMISSION**

**COMMENTS OF**  
**THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

**NATIONAL RURAL TELECOMMUNICATIONS  
COOPERATIVE  
2121 Cooperative Way, Suite 500  
HERNDON, VA 20171**

**Stephen M. Ryan  
Manatt, Phelps & Phillips  
1501 M Street, NW, Suite 700  
Washington, D.C. 20005**

**Jack Richards  
Kevin G. Rupy  
Keller and Heckman LLP  
1001 G Street, NW  
Washington, D.C. 20001**

**General Counsel  
(202) 463-4301**

**Its Attorneys  
(202) 434-4210**

**July 23, 2004**

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## SUMMARY

NRTC applauds the Commission's recent efforts to determine the actual number of homes capable of receiving cable services. An accurate "homes passed" statistic is necessary to assess the status of competition in the Multichannel Video Programming Distributor (MVPD) market in rural America.

Historically, the cable industry has vastly overinflated the number of homes passed, thereby creating a false impression of MVPD competition in many rural areas. The Commission should reject these inaccurate estimates and continue its efforts to confirm the actual number of homes passed throughout the country. Further, the Commission should not be content with a national "homes passed" number but should follow precedent and focus on the state of competition at the local level, where consumer choice occurs.

NRTC agrees with the Commission that the deployment of advanced broadband services throughout America will strengthen MVPD competition. Since no single technology can serve as the sole broadband solution for all markets, the deployment of multiple platforms will provide consumers -- particularly those in rural areas -- with new access to programming and advanced services.

The goal of universal access to broadband services should be attainable in the near future through WildBlue Communications, Inc. (WildBlue) and other Ka-band satellite services. Based on the successful launch of the Anik F2 satellite on July 16, 2004, WildBlue is expected to make available the first commercial, broadband Ka-band satellite services in early 2005. NRTC is a key investor in WildBlue, and two hundred and forty of its members spread across the rural U.S. have committed to become WildBlue distributors.

The next generation Ka-band satellite services will be an essential tool in achieving universal broadband deployment. For millions of rural Americans (*i.e.*, those beyond the reach

of cable modem and DSL services), WildBlue will offer the first available access to highspeed broadband services. As the first Ka-band licensee to launch its service, WildBlue will be ideally suited to close the digital divide for these unserved Americans.

The renewal of the Satellite Home Viewer Improvement Act (SHVIA) is an important legislative step that will have a profound impact on competition within the MVPD market. The SHVIA already has improved significantly MVPD competition by authorizing Direct Broadcast Satellite (DBS) providers to retransmit local television signals. A number of proposed amendments will greatly increase the statute's effect, including: 1) allowing DBS providers -- like their cable counterparts -- to offer programming that is significantly viewed in the local community, and 2) ensuring that local signals within a particular market are carried on a single satellite dish.

Access to local news and public affairs programming is an issue of critical importance to the safety, health and economic viability of each and every local community in the country, especially those in rural America with fewer media outlets. The Commission should continue to implement measures that will ensure the increased carriage of local broadcast signals by DBS providers. Some of these measures -- such as considering reduced orbital spacing -- may achieve substantial results in the years to come.

Meanwhile, we strongly urge the Commission to immediately approve DIRECTV Enterprises, LLC's request for special temporary authority to relocate the DIRECTV-5 satellite to the 72.5° WL orbital location. According to DIRECTV, grant of the *DIRECTV 5 STA* will enable DIRECTV to offer local signals in an additional twenty-four markets.

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1. 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) in the above-captioned proceeding.<sup>1</sup> NRTC applauds the Commission’s continued efforts to determine the actual number of homes “passed” by cable, which is essential for an accurate assessment of the status of competition for the delivery of video programming in rural areas. NRTC also believes that the deployment of advanced services in rural areas -- epitomized by the recent, successful launch of the Anik F-2 satellite carrying WildBlue Communications, Inc.’s (WildBlue’s) payload -- will have a positive effect on competition. Finally, NRTC supports renewal of the Satellite Home Viewer Improvement Act (SHVIA), as well as several additional proposals that NRTC believes will bolster the Commission’s efforts regarding increased localism and competition within the Multichannel Video Programming Distributor (MVPD) market.

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<sup>1</sup> Notice of Inquiry, *Annual Assessment Of The Status Of Competition In The Market For The Delivery Of Video Programming*, 69 FR 39930 (July 1, 2004) (NOI).

## I. NRTC BACKGROUND.

2. NRTC is a not-for-profit cooperative comprised of 736 rural electric cooperatives, 147 rural telephone cooperatives and 203 independent rural telephone companies located in 48 States. Since its founding in 1986, NRTC has been committed to fulfilling its mission of providing advanced technologies and telecommunications services to rural America.<sup>2</sup>

3. In 1994, NRTC assisted in capitalizing the launch of the DIRECTV, the country's first Direct Broadcast Satellite (DBS) service. Through a Distribution Agreement between NRTC and Hughes Communications Galaxy, Inc. (DIRECTV's predecessor-in-interest), NRTC received exclusive program distribution and other rights to market DIRECTV's programming and other services throughout much of rural America. NRTC, its members and affiliates currently distribute DIRECTV programming to more than 1,500,000 rural households. Recently, NRTC and DIRECTV agreed to end NRTC's exclusive distribution arrangement and to enter into a new relationship that will provide NRTC's members with an opportunity to continue participating in DBS as non-exclusive DIRECTV retailers and service providers through 2011 and likely much longer.<sup>3</sup>

4. During the past few years, NRTC has promoted the deployment of broadband services in rural America by supporting and serving its members who utilize wireline (DSL, cable modem) and wireless (terrestrial and satellite) technologies. NRTC provisions its members as Internet Service Providers and distributes broadband Internet access services via Ku-band satellite pursuant to agreements with StarBand Communications, Inc. and Hughes Network

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<sup>2</sup> NRTC has long represented the views of rural Americans before the FCC, the National Telecommunications and Information Agency and the United States Congress.

<sup>3</sup> See, NRTC News Release, "NRTC Enters Into New DBS Agreement With DIRECTV," June 2, 2004.

Systems.<sup>4</sup> NRTC and its members also are testing the feasibility of broadband delivery via electric power lines (BPL).<sup>5</sup>

5. Last year, NRTC joined Liberty Satellite, LLC and Intelsat USA Sales Corporation in investing \$156 million (NRTC itself invested \$29 million) in WildBlue, a Ka-band satellite licensee.<sup>6</sup> NRTC is excited to report that TeleSat Canada's Anik F2 satellite, which will support the first subscribers of WildBlue's broadband Internet service, was successfully launched on July 16, 2004. So far, 240 of NRTC's members have committed to become WildBlue distributors.

6. Early next year, WildBlue is expected to begin offering the first viable Ka-band satellite service using technology designed to lower the cost of providing consumers throughout the country with high-speed Internet access via satellite. NRTC is convinced that the Ka-band will be an essential tool for the deployment of advanced telecommunications services to rural Americans -- especially those who do not have ready access to cable modem or DSL services.

## II. COMMENTS.

### A. The Commission Should Continue Its Efforts To Confirm The Actual Number Of Homes Passed By Cable.

7. The number of homes passed (and, conversely, not passed) by cable remains an unresolved, critical issue that continues to draw the Commission's attention in its annual reports

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<sup>4</sup> NRTC also provides dial-up Internet access, 220 MHz wireless services, long distance telephone services, automated meter reading and other telecommunications services to its members and affiliates who in turn provide these services to rural consumers. See, NRTC website, *Your Telecommunications Cooperative, About Us*, <[http://www.nrtc.coop/us/main/about\\_nrtc/index.html](http://www.nrtc.coop/us/main/about_nrtc/index.html)> (visited July 15, 2004).

<sup>5</sup> See Joint Comments of The National Rural Telecommunications Cooperative And The National Rural Electric Cooperative Association, *In the Matter of Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems*, ET Docket No. 04-37 (submitted May 3, 2004).

<sup>6</sup> See, NRTC News Release, "NRTC To Offer WildBlue Satellite Broadband Services," March 25, 2003. See also Public Notice, *International Bureau Grants Consent To Transfer Of Control Of Space Station Licenses*, SAT-00142 Report No., DA 03-1010 (released March 27, 2003) (approving the transfer of control involving Intelsat USA Sales Corp. and NRTC).

to Congress on the status of competition in the MVPD market.<sup>7</sup> When the number of homes passed by cable is artificially inflated by inadequate or incorrect data, a false impression of MVPD competition is created.<sup>8</sup> Until the Commission can accurately and consistently determine the actual number of homes passed, it will be impossible to assess the true state of MVPD competition in rural America.

8. NRTC has previously submitted a detailed record to the Commission regarding the flaws contained in the cable industry's statistics.<sup>9</sup> As far back as 2001, the Commission recognized serious problems with the cable industry's traditional numbers.<sup>10</sup> Since then, the Commission has sought to determine more accurately the actual number of homes passed. NRTC applauds the Commission's continued efforts in this regard and urges the Commission to press forward until reliable numbers are finally confirmed.

9. The Commission notes in the NOI that the percentage of homes passed varies based on the universe used for the comparison, with estimates ranging from 96% to 79% -- which translates into a range of 4.3 million to 22.4 million households without access to cable.<sup>11</sup> In light

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<sup>7</sup> The Commission defines homes passed as "the total number of households capable of receiving cable television service." Tenth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, n. 24 (*Tenth Report*).

<sup>8</sup> For instance, the competitive picture in rural areas served only by two DBS providers, only one of which may provide local-into-local service, is vastly different than in areas served by two DBS providers AND a cable operator.

<sup>9</sup> Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132 (submitted September 8, 2000); Comments and Reply Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, (submitted August 3 and September 5, 2001); Petition to Deny of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted February 4, 2002) (*NRTC Petition*); Declaration of Dr. Paul W. MacAvoy, *The Effects of the Proposed EchoStar – DIRECTV Merger on Competition in Direct Broadcast Satellite Rural Markets Where Cable Is Not Available* (February 1, 2002) (Exhibit I to the *NRTC Petition*); Ex Parte Reply to Opposition of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted April 4, 2002).

<sup>10</sup> Seventh Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 16 FCC Rcd. 6005, ¶16 (released January 8, 2001) (*Seventh Report*).

<sup>11</sup> *NOI*, ¶42.

of the magnitude of this disparity, and the implications for MVPD competition, the Commission seeks further data for a more accurate calculation.<sup>12</sup>

10. Despite the cable industry's boast of virtually universal coverage, a full and fair accounting will show that many rural Americans -- up to 22.4 million households or 60.9 million population -- lack access to cable services.<sup>13</sup> The National Telecommunications and Information Agency, the Rural Utilities Services, Warren Publishing, Inc., the New York Times and others analyzing the homes passed issue agree with NRTC that Housing Units -- not Television Households -- is the most representative basis for determining the universe of homes passed by cable.<sup>14</sup> Yet, despite this background, the cable industry continues to combine and confuse TV Households with Occupied Homes.

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<sup>12</sup> Numbers provided by the United States Census Bureau's 2002 American Community Survey (2002 Survey). The 2002 Survey was conducted from November 2001 through December 2002. The scope of the 2002 Survey was limited to housing units, occupied and vacant. Further details and the referenced data sets can be obtained from the Census Bureau's website <[http://factfinder.census.gov/servlet/DatasetMainPageServlet?\\_program=ACS&\\_lang=en&\\_ts=107970413141](http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_lang=en&_ts=107970413141)> (visited July 15, 2004).

<sup>13</sup> Derived from the Census Bureau's July 2003 population estimate of 290,809,777 (available at <<http://eire.census.gov/popest/data/national/popbriefing.php>> (visited July 15, 2004)).

<sup>14</sup> Housing Units is the most easily identifiable statistic for cable operators and the Commission to confirm. See e.g., *Look, Up in the Sky! Big Bets on a Big Deal*, N.Y. Times, October 30, 2001, at C-1; 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, n. 62 (NTIA/RUS Report); Ex Parte Comments of the Rural Utilities Service (RUS), submitted June 23, 2000, in response to Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 99-230, FCC 99-148 (released June 23, 1999) (RUS Filing). For example, at the request of RUS, Warren Publishing, Inc. (Warren) clarified that its own use of the term "homes," actually means "housing units." Warren further conceded that "the wording is a bit confusing and therefore will be changed in the 2001 edition to read 'housing units.'" See Letter from Gary B. Allen, Chief Universal Services Branch, Rural Utilities Service, to Michael Taliaferro, Managing Editor and Assistant Publisher, Television & Cable Factbook, Warren Publishing, Inc. (April 18, 2000) (appended as "Attachment A" to the RUS Filing); Letter from Michael Taliaferro, Managing Editor and Assistant Publisher, Television & Cable Factbook, Warren Publishing, Inc., to Gary B. Allen, Chief Universal Services Branch, Rural Utilities Service (April 24, 2000) (appended as "Attachment B" to the RUS Filing).

11. The National Cable & Telecommunications Association (NCTA) now refers to “Occupied Homes Passed as a Percent of TV Households” and concludes that the Occupied Homes Passed rate is a remarkable 95%.<sup>15</sup> NCTA’s calculations, however, are flawed.

12. First, NCTA’s passage rate compares “Occupied Homes” (*i.e.* Census Bureau Households) with TV Households. This is an “apples to oranges” comparison, because NCTA’s numerator includes all occupied households (not just TV Households), while the denominator is limited to just TV Households .

13. As a result, the Homes Passed calculation does not show that cable passes 95% *of TV Households*. Nor does it show that cable passes 95% of Occupied Homes. Instead, it shows that cable passes 95% *as many Occupied Homes as there are TV Households*.<sup>16</sup> This is a major distinction with serious repercussions, yet it is not addressed by NCTA in promoting “95% coverage.”<sup>17</sup>

14. Second, NCTA’s statistics continue to suffer from basic discrepancies with available Census data. NCTA -- relying on Nielsen Media Research -- once again overstates the number of TV Households in the United States as compared with Census Bureau Households for approximately the same period. Indeed, NCTA’s count of TV Households exceeds the Census Bureau’s estimate of *total* households in thirty-three states. NCTA’s numbers for TV

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<sup>15</sup> See NCTA website, *Industry Overview, Statistics & Resources*, <<http://www.ncta.com/Docs/PageContent.cfm?pageID=86>> (visited July 15, 2004).

<sup>16</sup> *RUS Filing*, p. 4.

<sup>17</sup> As RUS also emphasized, the FCC’s Homes Passed statistics have been presented in such a manner as to suggest that the ratio of “homes passed by cable” to “TV households” is a genuine measure of cable availability when it is actually a much less meaningful comparison of incompletely overlapping sets (*i.e.*, there are units in the numerator that are not in the denominator) (*RUS Filing*, n.17). After reviewing the headings in its FCC’s Reports (“Cable’s Capacity to Serve Television Households”) and its phraseology (*e.g.*, “the number of homes passed by cable as a proportion of the number of TV households”), RUS noted that the Commission implies that every “home passed by cable” is a “TV Household.” *Id.*

Households actually exceeds the Census Bureau's *high-end estimate* for total households in twenty instances.<sup>18</sup> A summary of these findings is attached as **Exhibit 1**.

15. NRTC urges the Commission to discount NCTA's numbers and to obtain alternate sources of information with respect to the actual count of homes passed. For example, the Commission's own reporting assets could be utilized,<sup>19</sup> or it could take steps to ensure a more accurate accounting from the cable industry.<sup>20</sup> Without an accurate count of homes passed, the Commission will never be positioned to evaluate with sufficient certainty the status of competition for the delivery of video programming in rural markets.

#### **B. MVPD Competition Should Be Evaluated At The Local Level.**

16. A national homes passed rate does little (if anything) to shed any substantive light on local competition, where individual consumer choices actually occur. As a result, the Commission has consistently analyzed MVPD competition at the *local* -- not *national* -- level.<sup>21</sup>

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<sup>18</sup> The Census Bureau's data contains three statistics: 1) Lower Bound Estimate; 2) Upper Bound Estimate; and 3) the Census Bureau's stated estimate. In arriving at these numbers, the Census Bureau utilizes a confidence interval which represents the degree of uncertainty about the estimate. The confidence interval computed in the Census Bureau statistics is a 90 percent confidence interval and can be interpreted roughly as providing 90 percent certainty that the true number (*i.e.* Household Estimate) falls between the Lower Bound Estimate and the Upper Bound Estimate. The NCTA's statistics exceed the Census Bureau's confidence interval.

<sup>19</sup> For example, the recent *Bandwidth Bridge Issue #1* suggested that the Commission utilize its own Form 325A for determining the number of Homes Passed.

<sup>20</sup> Based on a comparison of the Commission's Seventh and Eighth Video Competition Reports, the statistics for Households and Homes Passed provided by Kagan World Media (Kagan) to the Commission spiked retroactively from 2000 to 2001. As of June 2000, Kagan estimated 100.5 million Television Households and 97.1 Homes Passed for 2000. By 2001, *those numbers increased by 6,000,000 each*: 106.4 million Television Households and 103.2 million Homes Passed (increases of 6.4% and 6.8%, respectively) in the last six months of 2000. Neither the Commission or Kagan offered any explanation as to how such an unprecedented increase could have occurred. In each of the previous eight years, the annual increase in either category was less than 1.2% (Seventh Annual Report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 16 FCC Rcd. 6005, Appendix B, Table B-1 (released January 8, 2001) (*Seventh Annual Report*); Eighth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 1244, Appendix B, Table B-1 (released January 14, 2002) (*Eighth Annual Report*).

<sup>21</sup> See Memorandum Opinion and Order, *In the Matter of Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160 (February 18, 1999) at ¶21; Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547, ¶244 (January 22, 2001).

17. As recently as the proposed, unlawful merger between EchoStar Communications Corporation (EchoStar) and DIRECTV in 2002, the Commission analyzed MVPD competition at the local level. In its Hearing Designation Order in that proceeding, the Commission concluded that the relevant geographic market for competitive analysis was “technically . . . the residence of each customer.”<sup>22</sup> In fact, the Commission proposed to evaluate the level of MVPD competition in the EchoStar/DIRECTV proceeding based *exclusively* on a localized analysis.<sup>23</sup>

18. Examination of competition at the local level is consistent with the Commission’s Section 706 Reports (Advanced Services Deployment)<sup>24</sup> and Commercial Mobile Radio Service (CMRS) Reports,<sup>25</sup> both of which analyze competition at the state and local level. In fact, the Commission’s CMRS Report examines penetration rates, subscribers counts and population density down to the Economic Area level.<sup>26</sup> NRTC agrees with this assessment and recommends that the Commission -- consistent with its precedent -- focus its MVPD analysis of cable competition at the local level, where consumer choice occurs.

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<sup>22</sup> Hearing Designation Order, *In the Matter of Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations)*, 17 FCC Rcd. 20559, ¶119 (released October 18, 2002) (*EchoStar HDO*).

<sup>23</sup> Relevant geographic markets were classified into three broad categories: 1) markets not served by any cable system; 2) markets served by a low-capacity cable system; and 3) markets served by high-capacity cable systems. The Commission rejected *any* analysis of competition at the national level, concluding instead that it was “critical” to determine the number of consumers, or households, that reside in each of the three relevant geographic markets. *EchoStar HDO*, ¶¶120, 121.

<sup>24</sup> See e.g., Report of the Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2003*, Tables 6 - 14, released June 8, 2004 (available at <[www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats)>) (*2004 High Speed Report*). The *2004 High Speed Report* analyzed the availability of advanced services at the state and zip code level.

<sup>25</sup> Eighth Report, *In the Matter of Implementation of Section 600(b) of the Omnibus Budget Reconciliation Act of 1993*, 18 FCC Rcd. 14783 (released July 14, 2003) (*Eighth Report*). Table 3 of the *Eighth Report*, labeled Economic Area Penetration Rates, contains a detailed analysis of CMRS penetration rates within each Economic Area (EA) of the United States. The table lists census population data, population density and number of subscribers. The *Eighth Report* also contains analyses at the state level (Table 2: FCC’s Semi-Annual Local Telephone Competition Survey), county level (Table 5: Estimated Mobile Telephone Rollouts by Number of Launches by County; Table 6: County Quartiles with Estimated Rollout by at least 3 Mobile Telephone Providers) and graphic maps reflecting various details on CMRS coverage (Appendix F).

<sup>26</sup> See Eighth CMRS Report, Table 3: Economic Area Penetration Rates FCC 03-150.

**C. Deployment Of Advanced Services In Rural Areas - - Including WildBlue's Ka Band Satellite Services - - Will Strengthen Broadband Competition.**

19. As the Commission notes in the NOI, an increasing number of broadband service providers (BSPs)<sup>27</sup> have the ability to serve subscribers in a number of areas with competitive alternatives to cable systems. NRTC agrees. No single technology can serve as the sole broadband solution for all markets.

20. The economics of deploying broadband services in rural America and satisfying various levels of consumer demand require hybrid solutions. In rural areas lacking access to cable, alternative MVPD and broadband platforms will provide rural consumers with new programming and advanced services options.

21. The goal of universal access to broadband services will be more attainable in the near future through the deployment of WildBlue and other Ka-band satellite services. TeleSat Canada's Anik F2 satellite, which will support the first subscribers of WildBlue's broadband Internet service, was successfully launched on July 16, 2004.

22. Under the current timetable, WildBlue will make available the first commercial, broadband Ka-band satellite services in early 2005, with full nationwide coverage to be completed by the second quarter of 2005. When both the Anik F2 and WildBlue-1 satellites are deployed, their combined capacities will support the provision of broadband satellite service to more than one million subscribers using technology designed to lower the cost of providing consumers throughout the country with high-speed Internet access via satellite.

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<sup>27</sup> Broadband service providers are facilities-based, hybrid providers of voice, video, and high-speed Internet access services. The Commission notes that "broadband service provider" is the term used by this class of new entrants to describe the range of services they offer; it is not intended to imply anything with respect to Commission policies that might involve broadband services. *2003 Report*, 19 FCC Rcd 1658 n. 338.

23. Next generation Ka-band satellite services will be an essential tool in achieving universal broadband deployment. For millions of rural Americans (*i.e.*, those beyond the reach of cable modem and DSL services), WildBlue will offer the first available access to high-speed broadband services. As the Commission has previously noted, “there is a great disparity in high-speed subscribership at different population densities with high-speed services reported more often in high-density areas than in less dense areas.”<sup>28</sup> As the first Ka-band licensee to launch its service, WildBlue will be ideally suited to close the digital divide for these unserved Americans.

24. Two hundred and forty of NRTC’s electric and telephone industry members have committed to become WildBlue distributors. Additional members are still joining the WildBlue project. Through WildBlue, NRTC and its members are looking forward to offering for the first time a truly affordable, broadband service to unserved rural households across the country.<sup>29</sup>

**D. The Satellite Home Viewer Improvement Act Should Be Renewed and Extended.**

25. Another issue of significant importance in the context of MVPD competition is the renewal of the SHVIA. The Commission has consistently attributed DBS’s significant subscriber growth in recent years to the enactment and implementation of the SHVIA, due in large part to its “local into local” provisions.<sup>30</sup>

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<sup>28</sup> Third Report, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion*, 17 FCC. Rcd. 2844, ¶35 (released February 6, 2002) (*Third Report*). In its *Third Report*, the Commission concluded that 22.2 % of zip did not have access to a high-speed service provider, while 20.3% of zip-codes had only one high-speed service provider. *Third Report*, Table 9, Percentage of Zip Codes with High-Speed Lines in Service.

<sup>29</sup> In addition to WildBlue, NRTC supports its members providing DSL and unlicensed wireless services. NRTC also is closely monitoring developments involving BPL technology. Terrestrial broadband technologies such as unlicensed wireless and BPL, however, are not expected to economically reach consumers residing in all areas of rural America.

<sup>30</sup> See *e.g.* *Tenth Report*, ¶65 (attributing the growth in DBS to -- among other things -- expansion of local-into-local service).

26. In addition to extending the term of the SHVIA, which is critical for the continued success of the satellite industry, a number of other important related issues are under consideration by Congress. Different versions of the SHVIA's renewal legislation pending in both the House and Senate contain several favorable amendments. Once enacted, NRTC urges the Commission to support and rapidly implement each of these provisions.

27. **Significantly Viewed Stations**. Like their cable counterparts, satellite providers should be afforded the ability to offer over-the-air programming that is significantly viewed in the local community. One version of the SHVIA renewal, the Satellite Home Viewer Enhancement and Reauthorization Act (SHVERA),<sup>31</sup> will accomplish this result and greatly enhance MVPD competition, especially in rural areas where programming alternatives are limited. Including significantly viewed programming within permissible local satellite retransmissions will buttress local content and empower consumers to receive the programming of their choice through the technology of their choice. The current inequity between satellite companies and entrenched cable providers (whereby satellite is prohibited from retransmitting significantly viewed programming while cable is not) is unnecessarily and inappropriately impeding the ability of DBS to compete with cable.

28. **Single Satellite Dish**. When the SHVIA became effective in January 1999, EchoStar Communications Corporation (EchoStar) implemented its two-dish plan, which splits local broadcast signals within the same Designated Market Area (DMA) between two dishes, each pointed toward a different satellite. One of the satellites uses a satellite at a primary orbital location; the other uses a satellite at a more limited wing slot.

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<sup>31</sup> H. R. 4501, 108th Cong. (2004).

29. NRTC shares the widely held view that EchoStar's two-dish practice is inconsistent with the language and spirit of the SHVIA, since it fails to provide consumers with access to local broadcast signals in a nondiscriminatory manner and at a nondiscriminatory price.<sup>32</sup> NRTC believes -- as do Commissioner Copps and Martin<sup>33</sup> -- that the nondiscrimination requirements of the SHVIA demand more than EchoStar's "two-dish" solution. The Commission should support Congressional efforts to ensure that Congressional intent as reflected in the SHVIA is clarified in the SHVERA.

**E. The Commission Should Continue To Promote The Delivery Of Local Satellite Service By, Among Other Things, Granting the DIRECTV 5 STA.**

30. The availability of local broadcast signals in rural communities is not just about the delivery of entertainment programming. To the contrary, access to local news and public affairs programming is an issue of critical importance to the safety, health and economic viability of each and every local community in the country, especially those in rural America with fewer media outlets. In fact, the Commission recently referred to localism as the "cornerstone of broadcast regulation for decades."<sup>34</sup>

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<sup>32</sup> See 47 U.S.C. § 338(d).

<sup>33</sup> See April 10, 2002 Statement of Commissioner Kevin J. Martin and Commissioner Michael J. Copps regarding, Declaratory Ruling and Order, *In the Matter of National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd. 6065, CSR-5865-Z, (released April 4, 2002).

<sup>34</sup> Notice of Inquiry, *In the Matter of Broadcast Localism*, FCC 04-129, ¶1 (released July 1, 2004). In its most recent biennial review, the Commission stated that "localism continues to be an important policy objective. Localism is rooted in Congressional directives to this Commission and has been affirmed as a valid regulatory objective many times by the courts. We hereby reaffirm our commitment to promoting localism in the broadcast media." Report and Order and Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, ¶73 (released July 2, 2003). See also, Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transfers And The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶333 (released January 14, 2004) (stating that the increase in local-into-local service "should benefit consumers through increased choice, lower prices, or both"); Fact Sheet: FCC's Conditioned Approval of News Corp - DIRECTV Merger, p. 1 (released December 19, 2003) (discussing the Commission's conclusion that "consumers will benefit, and the FCC's (continued . . .)

31. In any natural disaster situation, local news provides vital information on safety procedures, emergency shelter locations, and how to obtain much-needed assistance. In recognition of this fact, and as part of its homeland security efforts, the Commission created the Media Security and Reliability Council to address concerns regarding MVPD and broadcast capabilities “during terrorist attacks, natural disasters and all other threats or attacks nationwide.”<sup>35</sup> Access to local broadcast signals is a key component of that effort.

32. There are a number of steps the Commission can take to achieve its laudable goal of promoting localism through increased deployment of local broadcast signals. For example, the Commission is currently considering the possibility of reduced orbital spacing in order to make additional Ku-band spectrum available for increased DBS service.<sup>36</sup> In addition, the Commission recently concluded its spectrum auction for the Multichannel Video Distribution and Data Service, which conceivably could be used for local service.<sup>37</sup> Although the implementation of these solutions is likely years away, NRTC is encouraged that the Commission continues to examine them.

33. The pending request by DIRECTV Enterprises, LLC (DIRECTV Enterprises) for Special Temporary Authority (STA) to relocate DIRECTV 5 to 72.5° W.L (*DIRECTV 5 STA*),

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goals of promoting localism and competition will be furthered, by the company increasing the number of markets that can receive local broadcast channels from their satellite TV provider).

<sup>35</sup> Media Security and Reliability Council website, *Are We Ready* < <http://www.mediasecurity.org/>> (visited April 23, 2004). The Media Security and Reliability Council was created to assure the optimal reliability, robustness and security of the broadcast and multichannel video programming distribution industries. See FCC Press Release, FCC Announces Creation Of Media Security & Reliability Council; Tribune Company President Dennis Fitzsimons To Be Chairman (released February 28, 2002).

<sup>36</sup> See Public Notice, *International Bureau Seeks Comment On Proposals To Permit Reducing Orbital Spacings Between U. S. Direct Broadcast Satellites*, Report No. SPB-196, DA 03-3903 (released December 16, 2003).

<sup>37</sup> See Public Notice, *Multichannel Video Distribution And Data Service Spectrum Auction Closes, Winning Bidders Announced*, DA 04-215 (released February 2, 2004).

however, will have an immediate and tangible effect on numerous rural communities.<sup>38</sup>

According to DIRECTV Enterprises, the proposed relocation of DIRECTV 5 to this orbital location is specifically intended to “promote the dual policy goals of localism and competition in the [MVPD] marketplace” by increasing local channel service from 72.5° W.L.<sup>39</sup> According to DIRECTV, grant of the *DIRECTV 5 STA* will enable DIRECTV to offer local signals to an additional twenty-four markets.<sup>40</sup>

34. For many rural Americans, access to local broadcast signals has been -- and continues to be -- problematic. Some rural Americans cannot obtain local over-the-air signals due to distance or terrain shielding factors. Others may lack access to cable systems carrying local signals. Still others may reside in markets where neither DBS provider offers a local signal. DIRECTV Enterprises’s proposed use of the 72.5° W.L. Canadian BSS slot represents a timely and appropriate solution to this problem in many local areas.

### III. CONCLUSION.

35. NRTC urges the Commission to:

- determine with reasonable certainty the actual number of Homes Passed by cable;
- support the continued deployment of WildBlue and other advanced services in rural areas;
- strengthen MVPD competition by supporting the extension of the SHVIA and other amendments; and

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<sup>38</sup> *DIRECTV Enterprises, LLC Request For Special Temporary Authority To Relocate DIRECTV 5 To 72.5° WL and to Conduct Telemetry, Tracking and Command (TT&C) Operations For an Interim Period*, SAT-STA-20040107-00002. See Federal Communications Commission Report No. SAT-00187, *Satellite Space Applications Accepted for Filing*, SAT-STA-20040107-00002 (released January 15, 2004). See also Letter from Jack Richards and Kevin G. Rupy, Counsel for NRTC, to Marlene Dortch, Secretary, Federal Communications Commission, (April 28, 2004) (*NRTC Letter*). The *NRTC Letter* expressed support for grant of the *DIRECTV STA*.

<sup>39</sup> *DIRECTV STA*, p. 3.

<sup>40</sup> See DIRECTV Press Release, *DIRECTV to offer Local Channels in Wausau, Wisc.*, released May 24, 2004 (available at < [http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=05\\_24\\_2004B](http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=05_24_2004B) > (visited July 16, 2004).

- promote the availability of local broadcast signals via satellite through grant of the *DIRECTV 5 STA* and other means.

**Respectfully Submitted,**

**NATIONAL RURAL TELECOMMUNICATIONS  
COOPERATIVE  
2121 Cooperative Way, Suite 500  
HERNDON, VA 20171**

/s/ Stephen M. Ryan

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**Stephen M. Ryan  
Manatt, Phelps & Phillips  
1501 M Street, NW, Suite 700  
Washington, D.C. 20005**

**General Counsel  
(202) 463-4301**

/s/ Jack Richards

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**Jack Richards  
Kevin G. Rupy  
Keller and Heckman LLP  
1001 G Street, NW  
Washington, D.C. 20001**

**Its Attorneys  
(202) 434-4210**

**July 23, 2004**

## Exhibit 1

### NCTA TV Households Compared to Census Bureau Household Estimates

State	NCTA Estimate <sup>41</sup>	Census Bureau Estimate <sup>42</sup>	
	TV Households	Households	Upper Bound Estimate for Households
Alabama	1,768,300	1,729,893	1,752,094
Arizona	2,046,350	2,014,316	--
California	11,774,780	11,705,477	11,762,810
Connecticut	1,331,810	1,305,518	1,316,401
Delaware	313,630	306,205	309,465
District of Columbia	244,270	242,095	--
Florida	6,728,860	6,568,733	6,611,138
Georgia	3,195,950	3,078,258	--
Illinois	4,648,990	4,627,667	
Indiana	2,382,900	2,345,780	2,375,275
Iowa	1,152,630	1,145,564	--
Kentucky	1,624,650	1,599,319	1,612,037
Louisiana	1,667,710	1,664,877	1,677,292
Maryland	2,075,720	2,019,463	2,044,934
Massachusetts	2,487,160	2,432,176	2,447,071
Michigan	3,867,220	3,844,635	--
Mississippi	1,059,080	1,047,324	1,057,585
Nevada	833,960	808,077	816,672
New Hampshire	498,150	485,903	490,896
New Jersey	3,149,060	3,081,928	3,096,484
New Mexico	685,270	681,931	--
North Carolina	3,285,010	3,207,447	--
Ohio	4,506,760	4,447,307	4,484,807

<sup>41</sup> NCTA website, *Industry Overview, Statistics & Resources, State Data*, <  
<http://www.ncta.com/Docs/PageContent.cfm?pageID=302>> (visited July 15, 2004).

<sup>42</sup> U.S. Census Bureau website,

State	NCTA Estimate <sup>41</sup>	Census Bureau Estimate <sup>42</sup>	
	TV Households	Households	Upper Bound Estimate for Households
Oklahoma	1,358,210	1,338,651	1,350,765
Rhode Island	423,690	408,272	412,786
South Carolina	1,604,820	1,563,144	--
South Dakota	293,510	291,851	--
Tennessee	2,297,620	2,257,080	2,275,100
Texas	7,807,130	7,521,712	7,566,617
Vermont	243,040	242,201	--
Virginia	2,824,170	2,773,044	2,796,065
West Virginia	733,120	719,655	--
Wisconsin	2,148,430	2,142,645	--

\* \* \*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of July, 2004, a true and correct copy of the foregoing Comments of the National Rural Telecommunications Cooperative in the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (04-227) was submitted via the Electronic Comment Filing System to the Federal Communications Commission, and served via electronic mail upon the following:

**Served via Electronic Mail:**

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B201  
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A302  
Washington, D.C. 20554

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B115  
Washington, D.C. 20554

The Honorable Kevin J. Martin  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A302  
Washington, D.C. 20554

The Honorable Jonathan S. Adelstein  
Commissioner  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Served via Electronic Mail:**

Brian Tramont  
Senior Legal Advisor to Chairman Powell  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Matthew Brill  
Senior Legal Advisor to Commissioner  
Abernathy  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Stacy Robinson Fuller  
Mass Media Legal Advisor to  
Commissioner Abernathy  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Jordan Goldstein  
Senior Legal Advisor to Commissioner  
Copps  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

W. Kenneth Ferree  
Chief, Cable Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Served via Electronic Mail:**

Paul Margie  
Spectrum and International Legal Advisor  
to Commissioner Copps  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Daniel Gonzalez  
Senior Legal Advisor to Commissioner  
Martin  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Sam Feder  
Spectrum and International Legal Advisor  
to Commissioner Martin  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Catherine Crutcher Bohigian  
Mass Media Legal Advisor to  
Commissioner Martin  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Lisa Zaina  
Senior Legal Advisor to Commissioner  
Adelstein  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Barry Ohlson  
Spectrum and International Legal Advisor  
to Commissioner Adelstein  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Served via Electronic Mail:**

William H. Johnson  
Deputy Chief, Media Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Barbara Esbin  
Media Bureau  
Federal Communications Commission  
445 12 Street, S.W.  
Room 3-C458  
Washington, D.C. 20554

Marcia Glauberman  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 3-A738  
Washington, D.C. 20554

Royce Sherlock  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 3-A729  
Washington, D.C. 20554

/s/ Katherine C. Lucas  
Katherine C. Lucas