BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming	)	**CS Docket No. 01-129**
	)	

To: The Commission

REPLY COMMENTS OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

1. The National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, is pleased to submit these Reply Comments regarding the Comments submitted in response to the Notice of Inquiry ("NOI") issued by the Commission on June 25, 2001.[1]

I. Summary.

**Competitors to cable agreed with NRTC that effective competition does not yet exist in the Multichannel Video Program Distribution ("MVPD") market -- and that the Program Access rules remain necessary to promote competition to cable.*

** NRTC and other MVPD providers recognized the competitive potential of satellite technology to deliver local television and High-Speed Internet Services to rural America.*

**NRTC and others in the Direct Broadcast Satellite ("DBS") industry expressed serious concerns regarding the interference potential of licensing Multichannel Video and Data Distribution Services ("MVDDS") on frequencies currently used to serve more than 16 million DBS subscribers.*

** DBS carriers confirmed NRTC's view that the satellite "must carry" rules will restrict local program offerings in lower density, rural markets.*

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[1] Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, FCC 01-191 (Released June 25, 2001).

** NRTC raised several important issues that were not addressed by any of the other Commenters. NRTC urges the Commission to explore them fully in order to evaluate their impact on the provision of programming services to rural America:*

** the significance of the cable industry's inflated estimate of Homes Passed by cable;*

** the importance of the Commission's involvement in implementing the recently enacted "Launching Our Communities' Access to Local Television Act of 2000" (the "LOCAL Act"); and*

** the status of the satellite Distant Network Signal Rules.*

II. Reply Comments.

A. There was a Broad Consensus Among Competitors to Cable Concerning the Need to Extend and Strengthen the Commission's Program Access Rules.

2. Virtually all competitors to cable joined NRTC in arguing that the Program Access rules continue to be necessary to promote competition.[2] DIRECTV, Inc. ("DIRECTV") noted that access to programming controlled by vertically integrated cable incumbents remains an absolutely crucial, ongoing issue for DBS operators.[3] EchoStar Satellite Corporation ("EchoStar") argued that cable operators continue to exert an unacceptably high degree of power in the market for delivery of mutichannel video programming to consumers.[4] The Satellite Broadcasting and Communications Association ("SBCA") pointed to the Commission's recent determination that cable still delivers multichannel video services to approximately 80% of the U.S. television households and argued that the Program Access rules remain necessary to promote competition by DBS.[5]

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[2] NRTC Comments, pp. 18-21.

[3] DIRECTV Comments, pp. 8-10.

[4] EchoStar Comments, pp. 5-9.

[5] SBCA Comments, p. 9. Even the National Cable Television Association ("NCTA") conceded that over one-third of the cable industry still remains vertically integrated and controls key programming sources. NCTA Comments, p. 30.

3. Cable system overbuilders also argued that the Program Access rules should be retained. RCN noted that access to high-quality programming is "the keystone to any successful MVPD offering."[6] Carolina Broadband, Inc., explained that the lack of Program Access rules would be seen by investors as an insurmountable barrier to entry.[7] The Wireless Communications Association International, Inc. ("WCA") stated that "[n]othing less than the economic survival" of fixed wireless competitors is at stake as the Commission reviews the extension of the Program Access rules.[8]

4. Given the powerful status of the vertically integrated cable industry, competitors to cable uniformly urged the Commission to extend the exclusivity provisions of the Program Access rules beyond their scheduled sunset date.[9] In addition, many supported the extension of the Program Access rules to cover programming delivered terrestrially as well as by satellite.[10]

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[6] RCN Comments, p. 9. RCN also stated that the ban on exclusivity is "absolutely vital if competition is to have any chance of success in the MVPD market." Id., p. 14.

[7] Comments of Carolina Broadband Inc., p. 10, stating that "[t]he Commission must continue to preserve and protect competition and diversity in the distribution of video programming, and it must continue the prohibition on exclusive program access contracts.".

[8] According to WCA, many of its members act as a "vital source of competitive [MVPD services] in smaller markets and rural areas where cable overbuilds and/or DBS "local-into-local" service may not be available for the foreseeable future." WCA Comments, p. 2.

[9] NRTC Comments, pp. 18-21; DIRECTV Comments, pp. 8-10; EchoStar Comments, pp. 9-14; SBCA Comments, pp. 8-9; WCA, pgs. 1-9; Carolina Broadband, Inc. Comments, pp. 10-14; RCN Comments, pp. 9-16; Scottsboro Electric Power Board, pp. 8-9; and Utilicorp, p. 8.

[10] NRTC Comments, p.21 , DIRECTV Comments, pp. 8-10, 15; EchoStar Comments, pp. 10-13; SBCA Comments, p. 9. The National Association of Broadcasters ("NAB") even suggested that the scope of the Program Access rules should be expanded to prevent the cable industry from restricting the distribution of programming over the Internet. NAB Comments, pp. 6-7.

B. As Video and Internet Technologies Converge, Progressively Faster Broadband Services will Become Increasingly Important to the Economic and Social Well-Being of Rural America.

5. The Comments show that while the satellite industry is deploying broadband service throughout rural America,[11] the cable industry is limiting its broadband offerings almost exclusively to metropolitan areas. None of the broadband cable roll-out sites referenced by NCTA in its Comments are in lower population, rural areas.[12] AT&T "continues to experience strong consumer demand for [broadband] offerings," but it cites the roll-out of broadband packages only in Atlanta, Boston, Pittsburgh, Portland and San Francisco.[13] Similarly, Carolina Broadband, Inc. noted that its offering of broadband services will be available only in "major metropolitan areas."[14]

6. As noted in NRTC's Comments, satellite technology is uniquely situated to serve less populated, more remote areas with difficult geographic terrain, where ground-based technologies will not likely cover.[15] Satellite distribution technology -- not cable -- represents the best option available to provide High-Speed Internet Access as well as local television service throughout all of rural America.

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[11] EchoStar Comments, p. 1, n.2. SBCA also commented that "[f]or many sparsely populated areas, satellites will be the only realistic source for broadband services." SBCA Comments, p. 6. See also, DIRECTV Comments, pp. 12-13, noting that almost thirty percent of its DBS subscribers are unable to receive cable services.

[12] NCTA Comments, pp. 27-30.

[13] AT&T Comments pp. 25-26.

[14] Carolina Broadband Comments, p. 1 (stating that service will be offered in such areas as Raleigh/Durham, Winston-Salem/Greensboro, North Carolina and Columbia and Greenville/Spartanburg South Carolina).

[15] NRTC Comments, pp. 3-6.

C. In the Event that Terrestrial Services Can be Implemented *Safely* in the Ku-band, the Commission Should open a Filing Window, Accept Competing Applications and Conduct an Auction.

7. SBCA, EchoStar and DIRECTV shared NRTC's concern regarding the interference potential of licensing Northpoint Technology, Ltd. ("Northpoint") to provide Multichannel Video Data and Distribution Services ("MVDDS") on the same frequencies used to distribute DBS services to more than 16,000,000 subscribers.[16] No Comments were submitted in support of licensing MVDDS on frequencies used by DBS.

8. If the Commission determines that MVDDS can be implemented *safely* in the DBS band, NRTC urges the Commission to ensure that all would-be applicants have a full and fair opportunity to participate in providing these types of services.[17] By establishing an unambiguous Application Filing Window, accepting competing applications and conducting an auction, the Commission will maximize the public interest benefits inherent in the MVDDS.

D. Satellite Must-Carry Requirements will Limit the Availability of Local Satellite Signals in Rural America.

9. The Comments made clear that current satellite carriers will provide no local signals in lower-population markets if they are required to carry all signals in these markets. SBCA pointed out that must-carry requirements could result in the loss of local DBS service to more than 60 of the 210 Designated Market Areas ("DMAs"), and that growth of the DBS industry "would be greatly enhanced without the threat of satellite must-carry."[18] DIRECTV noted that

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[16] MITRE Technical Report, *Analysis of Potential MVDDS Interference to DBS in the 12.2–12.7 GHz Band*, which found that "MVDDS sharing of the 12.2–12.7 GHz band currently reserved for DBS poses a significant interference threat to DBS operation in many realistic operational situations,", p. 6-1 (April 2001); NRTC Comments, pp. 17-18; DIRECTV Comments, pp. 3-6; EchoStar Comments, pp. 14-15; SBCA Comments, pp. 10-14.

[17] NRTC Comments, pp. 17-18.

[18] SBCA Comments at p. 7.

the must-carry requirements could restrict not only the provision of local service in smaller markets but national offerings as well.[19]

10. Although not questioning the underlying purpose of the must-carry rules, NRTC remains concerned that no local signals will be provided via satellite in lower-population, lower-profit markets if satellite carriers are required to carry all signals in these markets.[20]

E. Several Important Issues Raised in NRTC's Comments went Unaddressed by Other Commenters.

11. In its Comments, NRTC raised several important issues that were not addressed by any of the other Commenters. We urge the Commission to explore these issues in depth in order to evaluate their impact of the provision of programming services to rural America.

1. Homes Passed by Cable.

12. As pointed out in NRTC's Comments, the Commission historically has accepted the cable industry's claim that cable service is available to approximately 97% of homes throughout the country.[21] In April of 2000, however, this number was seriously questioned by the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS"). NTIA and RUS found that the percentage of Homes Passed by cable may be as low as 81%. As noted by NRTC, the disparity of Homes Passed by cable may be even more pronounced in many individual states with significant rural populations, where as many as 30-50% of homes may not have access to cable.[22]

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[19] DIRECTV Comments at p. 8.

[20] NRTC Comments, pp. 15-16.

[21] NRTC Comments, pp. 6-11.

[22] Id., pp. 9-10.

13. Widespread acceptance of the cable industry's flawed 97% Homes Passed number has depicted an unduly robust state of video competition in rural America. This inaccurate number has created the understandable but false impression that "*there is competition, and there are services available, cable in 97 percent of the households, large areas of the country ... 97 percent of (consumers) have the ability to subscribe to cable.*"[23] In preparing this year's Annual Report to Congress on the state of competition to cable, NRTC urges the Commission to verify independently the actual number of Homes Passed by cable.

2. The LOCAL Act.

14. Many rural homes cannot receive High-Speed Internet or local television service via cable. As discussed in NRTC's Comments, the recently enacted "Launching Our Communities' Access to Local Television Act of 2000" (the "LOCAL Act"), will make available loan guarantees of up to 80% of $1.25 billion to facilitate the delivery of local broadcast signals to households located in nonserved and underserved areas.[24] The Commission is designated in the statute as an advisor to the Local Television Loan Guarantee Board charged with implementing the LOCAL Act..

15. In its Comments, NRTC urged the Commission -- as a statutory advisor to the Board -- to vigorously advocate the provision of local service throughout all of rural America. No other Commenters addressed the impact of the LOCAL Act or the Commission's important role in implementing it.

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[23] The Rural Local Broadcast Signal Act: Hearings on H.R. 3615, Before the Subcommittee on Telecommunications, Trade, and Consumer Protection, of the Committee on Commerce, 106th Cong. 16, (2000) (statement of Mr. Dan Crippen, Director, Congressional Budget Office, emphasis added).

[24] NRTC Comments, pp. 13-15.

3. Distant Network Signals.

16. NRTC noted in its Comments that 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.[25] The receipt of distant network signals by many satellite consumers also has been challenged by local broadcasters under the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). In addition, the grandfathering provisions of the SHVIA, whereby certain pre-existing subscribers are permitted to continue receiving distant network service, are scheduled to expire on December 31, 2004.[26]

17. The loss of distant network signals in combination with the unavailability of local signals could severely restrict programming choices in rural America. NRTC again urges the Commission to review the status of the distant network signal rules to ensure that programming choices in rural America are not unduly impacted.

III. Conclusion.

The Commission's next Cable Competition report to Congress should fully consider the lack of programming choices in rural America. The Commission should take all steps necessary to ensure that all Americans -- regardless of where they happen to live-- are able to receive all of the benefits of the modern video marketplace.

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[25] NRTC Comments, p. 16. See, NRTC Emergency Petition for Rulemaking, *In The Matter of Definition of Over-The-Air Signal of Grade B Intensity For Purposes of The Satellite Home Viewer Act*, Rm. No. 9335 (July 8, 1998); See e.g., *CBS Inc., et al. v. PrimeTime24 Joint Venture*, 9 F.Supp. 2d 1333 (S.D. FL. May 13, 1998).

[26] 17 U.S.C.A. §119(e).

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September 5, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September 2001, a true and correct copy of the foregoing **Reply Comments of the National Rural Telecommunications Cooperative in the Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming** was served via hand delivery upon the following:

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