Secs. 3 and 4.
T. 93 S., R. 177 W., (Unsurveyed)
Sec. 8.
T. 93 S., R. 179 W., (Unsurveyed)
Sec. 28.

The areas described aggregate approximately 13,968.61 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make lands available for selection by the Atxam Corporation, to fulfill the entitlement of the village for Atka under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, pursuant to Sections 302(1), 303(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1988) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1988), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1988).

Dated: January 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–973 Filed 1–12–95; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–265; FCC 94–326]

Cable Television Act of 1992—Program Distribution and Carriage Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration; denial.

SUMMARY: In this Memorandum Opinion and Order (MO&O) the Commission denies a petition for reconsideration of its rule that prohibits exclusive programming contracts between cable operators and satellite cable or satellite broadcast programming vendors in which a cable operator has an attributable interest, in areas unserved by cable. The rule was promulgated to implement section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). The Commission held that the rule is a reasonable interpretation of the 1992 Cable Act and that there are other provisions in the Act under which a distributor can challenge a non-cable distributor's exclusive contract.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz or Maura Cantrill, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commissions Memorandum Opinion and Order adopted December 15, 1994 and released December 23, 1994. A synopsis of the First Report and Order (First R&O) that was reconsidered in the MO&O may be found at 58 FR 27658 (May 11, 1993). This action will not add or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. By this action, the Commission denies National Rural Telecommunications Cooperative's (NRTC) petition for reconsideration of the Commission's rule implementing section 628(c)(2)(C) of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).[1] The rule was adopted in the First Report and Order in MM Docket 92–265 (First R&O), 8 FCC Rcd 3359 (1993); 58 FR 27658 (May 11, 1993).

2. The 1992 Cable Act amended the Communications Act of 1934, in part, by adding a new section 628. Section 628 is intended to foster the development of competition to traditional cable systems by providing greater access by competing multichannel systems to cable programming services. Section 628(b) of the 1992 Cable Act generally prohibits ''unfair'' or ''deceptive'' practices the purpose or effect of which is to prevent a distributor from providing programming to subscribers or consumers and section 628(c) proscribes specific conduct that the Commission shall prohibit in its rules. The Act provides that the regulations promulgated to implement section 628(c)(2)(C) must:

> Prohibit 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 or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section.

Section 76.1002(c)(1) of the Commission's rules adopted in the First R&O to implement this section of the 1992 Cable Act prohibits exclusive contracts between cable operators and vertically integrated programmers in areas that are not served by cable operators. NRTC filed a petition for reconsideration of the First R&O, requesting the Commission to amend its implementing rule to include any behavior of a vertically integrated programmer that prevents any distributor from obtaining programming in areas not served by cable, and specifically exclusive contracts for the distribution of programming between direct broadcast satellite (''DBS'') distributors and vertically integrated satellite cable programming vendors.

II. Background

3. The 1992 Cable Act and its legislative history indicate that Congress

[1] Pub. L. No. 102–385, 106 Stat. 1460 section 19 (1992), amending Communications Act of 1934, section 628.

was concerned with expanding the availability of programming and eliminating unjustified discrimination in the price charged to non-cable technologies.[2] Congress noted that vertically integrated program suppliers have the incentive and ability to favor their affiliated cable operators over other multichannel video programming distributors (''MVPDs'').[3] Thus, Congress concluded that program access provisions targeted at breaking the ''stranglehold'' over programming created by those vertical relationships in the cable industry would lead to a more balanced competitive environment in the multichannel video programming marketplace.[4] Direct broadcast satellites were among the technologies that were to be fostered through the program access provisions of the 1992 Cable Act.[5]

4. As background on the DBS industry, the first DBS satellite (''DBS–1'') was launched in December 1993; it is co-owned and jointly operated by Hughes Communications Galaxy, Inc., (whose affiliated company, DirecTV, is the DBS provider) and United States Satellite Broadcasting, Inc. (''USSB''), which is owned by Hubbard Broadcasting, Inc. The satellite is situated at the 101° West Longitude orbital position. DirecTV owns eleven of the sixteen transponders on DBS–1 and USSB owns the remaining five. On June 17, 1994, DirecTV and USSB began providing DBS service to the entire continental United States. Currently, DirecTV offers 150 channels and USSB offers 20 channels. At present, DirecTV and USSB are the only entities offering high-power Ku-band (small dish) DBS service in the United States, although several other parties hold construction permits for other orbital locations.

5. NRTC is the exclusive marketer and distributor of DirecTV programming in certain specified rural areas. The DBS distribution agreement between DirecTV and NRTC requires DirecTV to obtain certain programming on behalf of NRTC. USSB entered into exclusive distribution agreements with Viacom and Time Warner, two vertically integrated satellite cable programming vendors, to carry HBO and Showtime, respectively, granting distribution rights at the 101° West Longitude orbital location.[6] The agreements do not restrict access to the programming by multichannel multipoint distribution services (''MMDS''), satellite master antenna television (''SMATV''), or C-band satellite distributors; and the agreements do not restrict access by any DBS distributor at any other orbital location.

III. Discussion

6. Because there are several possible interpretations of the statutory provisions involved here (sections 628(b) and (c)), to resolve this matter it is appropriate to rely not just on the language of the Act but also on a careful analysis of the structure, legislative history, and the underlying policy objectives of section 628 of the 1992 Cable Act. This is the process that previously has been followed in implementing the provisions of the 1992 Cable Act and in developing a coherent set of rules for their enforcement. Having made careful use of that process to assure that the various program access provisions of the 1992 Cable Act fit together in a coordinated fashion, failure to follow that course now could lead to anomalous results.

7. Based on a thorough review of these factors, we believe our initial interpretation of section 628(c)(2)(C) of the 1992 Cable Act, as reflected in implementing rule § 76.1002(c)(1), is reasonable and should stand. We believe that this interpretation is supported by the findings and policy set forth in the 1992 Cable Act and its legislative history and best fulfills the underlying purposes of the 1992 Cable Act—to foster competition to traditional cable systems. We note, however, that in declining to broaden the scope of § 76.1002(c)(1)—to prohibit *per se* the exclusive DBS contracts at issue—we do not preclude the petitioner or any other aggrieved party from seeking relief from such contracts through other appropriate provisions of the 1992 Cable Act. We further find that contrary to all parties' assertions, the final judgments issued in the federal antitrust actions against Primestar Partners, that involved allegations of anticompetitive restrictions on access to cable programming, have no relevance to the disposition of the issue before us. The *Primestar Final Judgment* specifically provides that the decrees do not preempt the 1992 Cable Act or the Commission's rules.[7]

8. We are not persuaded that section 628(c)(2)(C) is clear and unambiguous. Indeed, ambiguity exists when a statute is capable of being construed ''by reasonably well-informed persons in two or more different senses.'' [8] NRTC

[2] 1992 Cable Act, sections 2, 19, Communications Act section 628, 47 U.S.C. 548; House Comm. on Energy and Commerce, H.R. Rep. No. 102–862, (''Conference Report'') 102d Cong., 2d Sess. at 93 (1992); Senate Comm. on Commerce, Science and Transportation, S. Conf. Rep. No. 102–92, (''Senate Report''), 102d Cong., 1st Sess. at 23–29 (1991); House Comm. on Energy and Commerce, H.R. Rep. No. 102–628, (''House Report'') 102d Cong., 2d Sess. at 165–68 (1992); 138 Cong. Rec. H6487–6571 (daily ed. July 23, 1992).

[3] 1992 Cable Act, section 2(a)(5).

[4] *See* 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart in support of the Tauzin amendment).

[5] House Report at 165–66 (additional views of Messrs. Tauzin, Harris, Cooper, Synar, Eckart, Bruce, Slattery, Boucher, Hall, Holloway, Upton and Hastert).

[6] The DBS–1 satellite at the 101° West Longitude location can deliver a signal to the entire continental United States (''full-CONUS''). Under international treaties and agreements, the United States is assigned eight orbital locations for high-power DBS satellites. These eighth orbital locations are divided between eastern locations which provide signals to the eastern half of the continental United States (''half-CONUS'') and western locations which provide signals to the western half-CONUS. Three of the four eastern orbital locations (101° West Longitude, 110° West Longitude, and 119° West Longitude) can also deliver a full-CONUS signal. The fourth eastern orbital location, 61.5° West Longitude, may not be able to deliver an adequate full-CONUS signal.

[7] *United States* v. *Primestar Partners*, 1994–1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994); *State of New York ex rel. Abrams* v. *Primestar Partners*, 1993–2 Trade Cas. (CCH) ¶¶ 70,403, 404 (S.D.N.Y. 1993). *See also*, Transcript of Hearing on Proposed Consent Decree, *State of New York ex rel. Abrams* v. *Primestar Partners*, No. 93–3868, at 22–23 (S.D.N.Y. Sept. 3, 1993) (presiding judge stating ''there is nothing in this decree that binds the FCC in any way * * * nor should any finding I make in approving this decree be taken * * * as any imprimatur of approval or suggestion that the particular exclusive contracts are lawful or unlawful. That is a matter for the FCC and a matter as to which I would have to defer to the FCC''). Further, in its *Amicus Curiae Memorandum of Law*, the Commission specifically recommended against approval of the various decrees warning, *inter alia*, that the court's apparent blessing of exclusivity would encourage arguments by proponents of exclusivity that the Commission should find no need to prohibit exclusivity in light of the court's apparent willingness not to prohibit it. *Memorandum of Law of the Federal Communications Commission as Amicus Curiae* at 14, filed August 23, 1993, *State of New York ex rel. Abrams* v. *Primestar Partners*, No. 93–3868 (S.D.N.Y)(''*Memorandum*''). Indeed, in support of its position the Commission noted the reconsideration pending in this proceeding and referenced USSB's argument in this proceeding that the Primestar decrees essentially sanction exclusivity in the DBS context. *Memorandum* at n. 24.

[8] *United States* v. *Iron Mountain Mines, Inc.* 812 F. Supp. 1528, 1557 (E.D.Cal 1992) (citing Sutherland Stat. Const. § 46.04 at 99 (5th ed. 1992)). In this regard, we note that the Commission has received letters from members of Congress involved in legislative debates on the 1992 Cable Act that support conflicting interpretations of that provision. For example, *compare Ex Parte* Letter from Representatives Rick Boucher, Ron Wyden, Jim Slattery, Ralph Hall, Billy Tauzin, Jim Cooper, Blanche Lambert and Mike Synar to Chairman Hundt, June 15, 1994, *with Ex Parte* Letter from Senator Jeff Bingaman to Chairman Hundt, July 6, 1994; *Ex Parte* Letter from Rep. Al Swift to Chairman Hundt, July 8 1994; *Ex Parte* Letter from Rep. Henry A. Waxman to Chairman Hundt, Aug. 16, 1994; *Ex Parte* Letter from Senators Bob Packwood and Dan Coats to Chairman Hundt, Aug. 24, 1994; *Ex Parte* Letter from Rep. Thomas Manton to Chairman Hundt, Aug. 30, 1994; *Ex Parte* Letter from Representatives Harris W. Fawell, Philip M. Crane, Steven H. Schiff, Carlos J. Moorhead, Scott L. Klug, Cardiss Collins, Jack Fields and J. Dennis Hastert to Chairman Hundt, Aug. 24, 1994.

suggests that the meaning of Section 628(c)(2)(C) can best be revealed by a literal reading, without the parenthetical phrase beginning with ''including.'' NRTC regards this phrase as merely illustrative. While the use of the word ''including'' does support NRTC's interpretation that the reference to cable operators is simply an example,[9] NRTC's reading would eliminate the defining reference for the words ''such programming'' that immediately follow. An alternate interpretation of the section is that the ''including'' phrase supplies the definition for the whole section through the words ''such programming,'' i.e., programming that is the subject of an exclusive contract with a cable operator. Neither interpretation is perfect. NRTC's interpretation would negate the predicate for use of the phrase ''such programming.'' The alternative interpretation would negate the illustrative implication of the term ''including.'' The ''including'' and the ''such programming'' language cannot be reconciled simply from the statutory language. Although the language of section 628(c)(2)(C) is capable of being read to suggest that the Commission is required to consider practices other than exclusive contracts between cable operators and their affiliated programmers within the prohibition, because the legislative history is silent as to conduct that should be prohibited *per se*, other than cable operators' practices, the Commission believes that its current implementing rule is the most reasonable interpretation of Section 628(c)(2)(C).[10]

9. The legislative history of Section 628 specifically, and of the 1992 Cable Act in general, reveals that Congress was concerned with market power abuses exercised by cable operators and their affiliated programming suppliers that would deny programming to non-cable technologies, and did not address any such abuses exercised by non-cable technologies, such as DBS.

10. The legislative history of section 628(c)(2)(C) more particularly illustrates congressional concern over cable operators' use of exclusivity to stifle competition from other technologies. The Conference Report describes the House provisions on unserved areas (which ultimately were adopted in section 628(c)(2)(C) with modifications) as prohibiting ''exclusive contracts and other arrangements between a cable operator and a vendor.'' [11] During the House floor debates on the amendment, which ultimately was adopted in the House bill, the sponsor and supporters of the amendment emphasized its importance in lifting barriers to entry into the video distribution market by competing technologies imposed by the cable industry's ''stranglehold'' over programming through exclusivity.[12] In contrast, the legislative history is silent with respect to the use of exclusive programming contracts by non-cable competing technologies. While we recognize that silence as to non-cable technologies is not inherently dispositive in light of the ambiguous statutory language, we give great weight to the legislative history's emphasis on cable operators.

11. Our interpretation is bolstered by the fact that, given the statute's distinction between cable operators' exclusive contracts in areas served and unserved by cable, the Commission's inclusion of DBS exclusive contracts within the per se prohibition of section 628(c)(2)(C) could have an unintended effect on the DBS industry. While section 628(c)(2)(C) prohibits exclusive contracts between cable operators and programming vendors with cable affiliation in areas that are not served by cable, section 628(c)(2)(D) allows such contracts in areas that are served and where the Commission determines the contracts are in the public interest. Moreover, DBS distributors, unlike cable operators, would not be required to seek a public interest determination for areas served by cable because section 628(c)(2)(D) specifically applies only to cable operators' exclusive contracts. If section 628(c)(2)(C) is read to prohibit per se DBS exclusive contracts, such contracts would be completely permissible in served areas but prohibited in unserved areas. As a result, the DBS operators who do not possess the exclusive rights would have to identify and ''block out'' the served areas (where such exclusive contracts would be valid), while their distribution in the unserved areas could continue. There is no indication in the legislative history that Congress intended the DBS industry to engage in such an odd and potentially burdensome exercise. Nor is it clear why the DBS exclusive contracts, as opposed to cable exclusive contracts, would turn on whether the area is served by cable.

12. Our decision is supported by the rules of statutory construction that require us to examine the whole statute when interpreting a part.[13] While NRTC's interpretation of the ''including'' phrase, contained in section 628(c)(2)(C), is a plausible reading taken in isolation, we believe that the more compelling rule of statutory construction is to construe the language in section 628(c)(2)(C) in a manner most harmonious with the policies and the other provisions of the 1992 Cable Act. We agree with Opponents that section 628(c)(2)(C), read in conjunction with section 628(c)(2)(D), supports the common understanding of Congress' intent in this section to restrict cable operators' use of exclusive contracts in served and unserved areas.[14] The stated purpose of the program access provisions is to increase competition from non-cable technologies, to increase the availability of satellite programming to persons in rural areas and ''to spur the development of communications technology,'' [15] such as DBS. We believe that an outright ban on any MVPD exclusive contracts in areas unserved by cable, without any determination of the effect of such exclusivity on competition, defeats the very purpose of the 1992 Cable Act to foster competition from other non-cable technologies.

13. In addition to our interpretation of the statute, we find no evidence in the

[9] *Puerto Rico Maritime Shipping Authority* v. *Interstate Commerce Commission*, 645 F.2d 1102, 1112 n. 26 (D.C. Cir. 1981) (''It is hornbook law that the use of the word 'including' indicates that the specified list [] that follows is illustrative, not exclusive.'')

[10] Indeed, if NRTC's interpretation were adopted, it could be argued that NRTC's exclusive marketing agreements, *supra* ¶ 5, could themselves violate this provision of the 1992 Cable Act. Although DirecTV is not a satellite cable programming vendor in which a cable operator has an attributable interest, its exclusive agreement with NRTC precludes competitors of NRTC from accessing certain vertically integrated services that are distributed over DBS only by DirecTV.

[11] Conference Report at 92 (emphasis added).

[12] *See* 138 Cong. Rec. H6534 (daily ed. July 23, 1992) (statement of Rep. Tauzin); 138 Cong. Rec. H6537 (daily ed. July 23, 1992) (statement of Rep. Houghton); 138 Cong. Rec. H6539 (daily ed. July 23, 1992) (statement of Rep. Lancaster); 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart); 138 Cong. Rec. H6541 (daily ed. July 23, 1992) (statement of Rep. Harris).

[13] Sutherland Stat. Const. §§ 46.05, 4702 at 103, 139 (5th ed. 1992); *See Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974) (''When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute * * * and the objects and policy of the law, as indicated by its various provisions, and give to it such construction as will carry into execution the will of the legislature.''); *see also Richards* v. *United States*, 369 U.S. 1, 11 (1962); *Philbrook* v. *Glodgett*, 421 U.S. 707, 713 (1975).

[14] Indeed, the contemporaneous understanding of sections 628(c)(2) (C) and (D), that these sections only restricted cable operators' exclusive contracts, was articulated by most parties involved in the original rule making, including DirecTV. See Reply Comments of DirecTV in MM Docket 92–265, filed Feb. 16, 1993, at 12 n.11 and Appendix (summary of Tauzin amendment) (''The Commission is directed to prohibit any arrangement between a cable operator and a programming vendor, including exclusive contracts, which would prevent a distribution competitor from providing programming to persons unserved by a cable operator.'').

[15] 47 U.S.C. 548(a).

pleadings submitted in this proceeding that non-cable exclusive contracts of the type involved here are either harmful to the development of competition, ''unfair'' or ''deceptive,'' or have negative effects on consumers. The record does not demonstrate that such contracts will hinder the development of DBS as an effective competitor to cable; that USSB's contracts with Viacom and Time Warner have impeded the entry either of DirecTV or NRTC into the DBS marketplace; or that the contracts generally have harmed the entry of DBS service into the multichannel video programming marketplace. Indeed, the evidence presented suggests that a DBS distributor's exclusive contract for programming covering one orbital location may foster DBS as a significant competitor to cable. Such contracts may allow a distributor to distinguish its service from that of another, avoid duplication of programming, and eventually lead to more diversity in programming for the consumer. To the extent such contracts allow a greater number of DBS distributors to establish distinctive competing services, we believe they further congressional policy to ''rely on the marketplace, to the maximum extent feasible, to achieve greater availability of the relevant programming.'' [16] In contrast to cable exclusivity in areas unserved by cable, which would foreclose services from non-cable multichannel video programming distributors, consumers will be able to receive all DBS programming from one DBS provider or another by being able to select specific programming services without having to purchase entire programming packages. We agree with Opponents that prohibiting a DBS distributor's exclusive contract for programming covering one orbital location may in fact create unnecessary inefficiencies because the same programming could then occupy multiple transponders on the same satellite and decrease the diverse mix of programming available. Without prejudging any future complaints, we currently believe that the record before us provides no basis to conclude that the market power abuses, about which Congress was concerned, are present in the exclusive contracts at issue here.

14. Our reaffirmation of our interpretation of section 628(c)(2)(C) does not foreclose all remedies to an MVPD who claims to be aggrieved by an exclusive contract between a non-cable MVPD and a vertically integrated satellite cable programming vendor. In the *First R&O*, we previously determined that while section 628(b) does not specify types of ''unfair'' practices that are prohibited, it ''is a clear repository of Commission jurisdiction to adopt additional rules or to take additional action to accomplish statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast programming.'' [17] The Commission did not sanction exclusive contracts between non-cable MVPDs and vertically integrated cable programming vendors, thus leaving open the possibility that such contracts could be challenged on the basis that they involve non-price discrimination or ''unfair practices.'' Section 628(b) of the 1992 Cable Act and the Commission's implementing rule, § 76.1001, provide a broad prohibition against ''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 satellite cable programming or satellite broadcast programming to subscribers or consumers.'' [18] Also in the *First R&O*, the Commission stated that section 628(b) does not prescribe specific practices (in contract to section 628(c)), but does require a showing of anti-competitive harm, i.e., that the purpose or effect of the complained of conduct is to ''hinder significantly or to prevent an MVPD from providing programming to subscribers or customers.'' [19] The Commission has stated that the objectives of the ''unfair practices'' provision are to provide a mechanism for addressing conduct, primarily associated with horizontal and vertical concentration within the cable and satellite cable programming fields, that inhibits the development of multichannel video programming distribution competition.[20] Therefore, where future contracts cause a restriction in the availability of programming to alternative distributors and their subscribers, an aggrieved MVPD could seek redress by filing an ''unfair practices'' complaint under § 76.1001 of the Commission's rules.

15. Finally, we believe that using § 76.1001 as an avenue to address non-cable exclusive contracts, such as those at issue here, will afford the Commission the opportunity to consider all the ramifications of such contracts, including the effect on competition, based upon the particular facts of each case. This case-by-case review will avoid amending a Commission rule to create an overly broad per se prohibition appears to be contrary to Congress' intent.

16. For the reasons discussed above, we reaffirm our interpretation of section 628(c)(2)(C) as reflected in our implementing rule. We believe that this is the most reasonable interpretation based on the fact that Congress specifically directed the Commission to prohibit exclusive contracts between cable operators and vertically integrated programming vendors in unserved areas, but did not specifically address the inclusion of exclusive contracts between non-cable MVPDs and vertically integrated programming vendors within section 628(c)(2)(C)'s prohibition. We believe that any complaints regarding exclusive agreements are more appropriately addressed through other provisions of the statute. Thus, the Commission denies NRTC's request.

IV. Ordering Clause

17. Accordingly, it is ordered, that the Petition for Reconsideration of the National Rural Telecommunications Cooperative is denied.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–894 Filed 1–12–95; 8:45 am]

BILLING CODE 6712–01–M

[16] First R&O, 8 FCC Rcd at 3369 (citing 1992 Cable Act section (2)(b)(2)).

[17] Id. at 3374.

[18] 47 U.S.C. 548(b); 47 CFR 76.1001.

[19] First R&O, 8 FCC Rcd at 3377.

[20] Id. at 3373.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950109008–5008–01; I.D. 122894A]

Northeast Multispecies Fishery; Amendment to an Emergency Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; amendment.

SUMMARY: NMFS issues this emergency interim rule to amend an existing emergency interim rule concerning the Northeast Multispecies Fishery. This