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 noncable 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."<sup>11</sup> 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,"<sup>15</sup> 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

<sup>14</sup>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.").

<sup>15</sup> 47 U.S.C. 548(a).

<sup>&</sup>lt;sup>9</sup> 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.'')

<sup>&</sup>lt;sup>10</sup>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.

<sup>&</sup>lt;sup>11</sup>Conference Report at 92 (emphasis added).

<sup>&</sup>lt;sup>12</sup> 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).

<sup>&</sup>lt;sup>13</sup>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).