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 anticompetitive 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

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

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.