

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
	)	
Petition of WISP Seeking Declaratory Ruling	)	
that City of Fountain Valley's Denial of a	)	WT Docket No. 19-270
Conditional Use Permit allowing Operation of	)	
Wireless Facilities is Precluded By the	)	
Commission's OTARD Rule	)	
	)	

**COMMENTS OF COMMUNITY ASSOCIATIONS INSTITUTE**

Dawn M. Bauman, CAE  
Senior Vice President, Government Affairs  
Community Associations Institute

on behalf of

Community Associations Institute  
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## **Summary**

### **CAI Members Reiterate Support for Existing OTARD Regulatory Framework**

CAI members strongly support retention of the underlying regulatory framework for Over-the-Air-Reception-Devices (OTARD). Current OTARD rules prioritize important private property rights protections for community association common property and provide appropriate means for community association residents to receive video programming services at their residence as Congress intended.

Section 207 of the Telecommunications Act of 1996 is a limited grant of authority, constraining Commission discretion. Extending the Section 207 to broadcast wireless facilities facially conflicts with statutory law. The lack of statutory authority prevents the Commission from exercising ancillary authority to extend Section 207 preemptions to broadcast wireless facilities. CAI urges denial of the Petition.

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**COMMENTS OF COMMUNITY ASSOCIATIONS INSTITUTE**

Community Associations Institute (CAI)<sup>1</sup> submits these comments in response to a Commission public notice (DA 19-922, Rel. Sept. 18, 2019). These comments are in reply to the request of the Wireless Telecommunications Bureau in the above referenced docket.

**I. Incorporation of Prior Comments of the Community Associations Institute**

CAI incorporates its comments and reply comments submitted to the Commission in response to WT Docket No. 19-71 in these comments.<sup>2</sup> CAI supports development of wireless broadband facilities consistent with statutory law and urges wireless internet service providers (WISPs) to cooperate with community associations to achieve common goals.

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<sup>1</sup> Based in Falls Church, VA, CAI is the only national organization dedicated to fostering competent, well-governed community associations (homeowner associations, condominium associations, and housing cooperatives) that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's more than 40,000 members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

<sup>2</sup> Comments of the Community Associations Institute: WT Docket No. 19-71 (June 3, 2019) and Reply Comments of the Community Associations Institute: WT Docket No. 19-71 (June 17, 2019).

## **II. Commission Lacks Statutory Authority to Grant Relief Sought by Petitioner**

Section 207 of the Telecommunications Act of 1996 (P.L. No. 104-104, 110 Stat. 114) is a limited grant of authority and therefore its application is constrained. The Section 207 preemption is limited to restrictions impairing reception of video programming through certain enumerated services. Facially, the statute does not extend preemption authority to dual use facilities that broadcast signals.

There is a material difference between a communications facility that allows an end consumer to receive video programming services and a communications facility that serves a dual function such as broadcasting. Section 207 applies to the former, not the latter.

Section 207 preempts restrictions that impair reception of one-way video programming service signals. A fundamental purpose of dual use wireless facilities is broadcasting, which is wholly unrelated to a consumer's reception of one-way video programming services at their home or property. A consumer does not typically broadcast the one-way video programming services they consume.

Petitioner pleads with the Commission to adopt by order a rule proposed in WT Docket No. 19-71. Such an order (and also the Commission's proposal) will merge the pecuniary interests of WISPs with those of their consumers, extending to WISPs consumer rights not granted by statute. This is impermissible under Section 207.

Congress granted a limited preemption authority in Section 207—the preemption is precise and narrow. If Congress granted the Commission under authority under Section 207 to preempt restrictions it believes impair broadcasting and receiving video programming services over multichannel multipoint distribution services, the statute would reflect this grant of authority. It does not. There is no basis in Section 207 for relief Petitioner seeks.

### **III. Commission Lacks Ancillary Authority to Grant Relief Sought by Petitioner**

The clear language of Section 207 is a constraint on the Commission's ancillary authority to grant relief sought by Petitioner. Courts have rejected arguments the Commission's ancillary authority is unbounded, requiring a basis in statute if ancillary authority is to be lawfully exercised.<sup>3</sup> There is no grant of statutory authority by the Congress to extend Section 207 preemption authority to benefit wireless broadcasting facilities. Accordingly, there is no basis for the Commission to invoke ancillary authority to grant relief sought by Petitioner.

### **IV. Conclusion**

The Commission lacks direct or ancillary authority to extend Section 207 to wireless broadcasting facilities. CAI urges denial of the Petition.

Respectfully submitted,

/s/ Dawn M. Bauman, CAE

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October 18, 2019

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<sup>3</sup> *Verizon v. FCC*, 740 F.3d 623, 629-634 (D.C. Cir. 2014).