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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 24, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Implementation of Sections of the Cable
Television Consumer Protection and
Competition Act of 1992; Rate Regulation
(MM Docket No. 92-266); Ex Parte Letter

Dear Ms. Searcy:

The Satellite Broadcasting and Communications Association of America ("SBCA") submits this letter in the above-captioned docket to urge the Commission to require, under Section 623(a)(3) of the Cable Television Consumer Protection and Competition Act of 1992, local franchising authorities, as an express condition to engage in cable rate regulation, to verify that they have no regulations that would be preempted by the Commission's satellite antenna preemption rule, 47 C.F.R. (25.104 (1991). The SBCA believes that including this requirement as part of the cable rate regulation certification process is essential to promoting effective competition and program diversity in the video marketplace and thereby effectuating the purposes of the Cable Television Consumer Protection and Competition Act of 1992 ("Act").^{1/}

A significant impediment to program diversity and effective competition in the video marketplace is the existence of local zoning ordinances that discriminate

^{1/} "It is the policy of the Congress in this Act to . . . promote the availability to the public of a diversity of views and information through cable television and other video distribution media" Act at Section 2(b).

Satellite Broadcasting and Communications Association

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against satellite receive-only antennas.^{2/} Cognizant of this fact, in January of 1986 the Commission adopted its satellite antenna preemption rule, which provides that:

[R]egulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations: (a) Have a reasonable and clearly defined health, safety or aesthetic objective; and (b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals

47 C.F.R. (25.104 (1992)).

During the five years the Commission's rule has been in effect, the SBCA has witnessed little improvement in the willingness of many local communities to abide by the preemption policy. The satellite broadcast industry is replete with examples and complaints from retail dealers and their customers across the country who are encountering restrictive and discriminatory zoning codes, burdensome bureaucratic processes designed to discourage the installation of satellite dish systems, and even arrogance on the part of some local jurisdictions by their unwillingness to take into consideration the Commission's intent.

In light of these discriminatory practices by local communities -- which have the effect of harming competition in the video marketplace in direct contravention of the Act's intent -- it would be patently unfair to allow local communities to regulate the rates of cable service under the guise of promoting competition, unless the communities certify compliance with the Commission's preemption rule.

^{2/} Satellite transmissions offer American consumers a wide variety of news, sports, entertainment and educational programming. By limiting consumer access to these transmissions, local communities undermine the viability of satellite programming as a convenient and cost competitive alternative and effectively institute a de facto ban on satellite transmissions.

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Including this requirement as part of the certification process for rate regulation will not be difficult and will not impose any burden on the local communities.^{3/} The Commission could include a statement on the certification form, to be checked off by the franchisee, that states that the local community has no regulations that would be preempted under the Commission's rule. The same procedures established by the Commission for other disputes with respect to certification issues, or subsequent non-complying actions, should apply.

For all the foregoing reasons, the SBCA urges the Commission to require all local franchisees, as part of the cable rate regulation certification process, to verify that they have no regulations that would be preempted under the Commission's satellite antenna preemption rule.

Sincerely,


Andrew R. Paul
Senior Vice President

^{3/} The only "burden" will be on these communities who are violating the Commission's rule to bring themselves into compliance. That, however, is a burden that the Commission long ago decided was justified by the public interest benefits. And it was that should be borne equally by all communities.