

REBUTTABLE PRESUMPTION RULE

Section 25.104 is revised to read as follows:

(a) Any state or local land-use, building, or similar regulation that substantially limits transmission or reception by satellite antennas, or imposes substantial costs or delays on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable.

For purposes of this paragraph (a), "reasonable" means that:

- (1) the benefits to be derived from the regulation in achieving a health, safety, or aesthetic objective that is clearly defined and expressly stated within the text of the regulation itself are not outweighed by
- (2) the burdens imposed by the regulation on the federal interest in making available to all the people of the United States a rapid, efficient, Nation-wide, and world-wide radio communication service, including the federal interest in ensuring access to satellite-delivered communications services and to promoting fair and effective competition among competing communications service providers.

(b) Any state or local land-use, building, or similar regulation that substantially limits transmission or reception by satellite antennas, or imposes substantial costs or delays on users of such antennas, is hereby presumed unreasonable and is therefore preempted if it affects the installation, maintenance, or use of:

- (1) a satellite antenna that is two meters or less and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by local land-use regulation; or
- (2) a satellite antenna that is one meter or less in diameter in any area.

For purposes of this paragraph (b), the following costs and delays shall be deemed "substantial":

- (i) If the antenna is for business use:
 1. imposition of more than \$50 in direct or indirect costs, including governmental fees, engineering or legal fees, and the cost of any construction or alteration necessitated by the regulation;

2. being required to wait more than seven days for a permit or other authorization before installation is allowed; or
 3. being required to attend a hearing or meeting of any kind.
- (ii) If the antenna is for consumer use:
1. imposition of any costs or fees;
 2. being required to obtain any permit or other authorization; or
 3. being required to attend a hearing or meeting of any kind.

(c) Any presumption arising from paragraph (b) of this section may be rebutted if the issuing jurisdiction can demonstrate to the Commission that the regulation in question

- (1) is necessary to accomplish a health or safety objective that is clearly defined and expressly stated within the text of the regulation itself;
- (2) is no more burdensome to satellite users than is necessary achieve the health or safety objective;
- (3) is specifically applicable, both in application and on its face, to antennas of the class mentioned in paragraph (b); and
- (4) produces health or safety benefits that are not outweighed by the federal interest described in paragraph (a)(2) above.

For purposes of this section, "health and safety" objectives and benefits shall not include any objectives or benefits relating to the effects of radio frequency radiation.

(d) Any person aggrieved by the application or potential application a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when

- (1) the petitioner's application for a permit or other authorization required by the state or local authority has been

- (1) the petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal has been exhausted;
- (2) thirty days have passed since the petitioner filed its application for a permit or authorization with the state or local authority;
- (3) the petitioner has been informed, or otherwise has a good-faith belief, that obtaining a permit or other authorization required by the state or local authority will require the petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna; or
- (4) a state or local authority has notified the petitioner that fines will be levied against petitioner if it does not comply with the challenged regulations, or petitioner has a good-faith belief that administrative or judicial enforcement, including fines, confiscation, or civil or criminal action, is imminent.

(e) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create an overwhelming necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it includes the particular regulation for which waiver is sought. Waivers granted according to this rule shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

REBUTTABLE PRESUMPTION RULE

Section 25.104 is revised to read as follows:

(a) Any state or local land-use, building, or similar regulation that substantially limits transmission or reception by ~~receive-only~~ satellite antennas, or imposes substantial costs or delays on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable ~~in relation to:~~

For purposes of this paragraph (a), "reasonable" means that:

- (1) ~~the benefits to be derived from the regulation in achieving a clearly defined, and expressly stated health, safety, or aesthetic objective that is clearly defined and expressly stated within the text of the regulation itself are not outweighed by; and~~
- (2) ~~the burdens imposed by the regulation on the federal interest in making available to all the people of the United States a rapid, efficient, Nation-wide, and world-wide radio communication service, including the federal interest in ensuring access to satellite-delivered communications services and to promoting fair and effective competition among competing communications service providers.~~

(b) ~~Any regulation covered by paragraph (a) of this section shall be state or local land-use, building, or similar regulation that substantially limits transmission or reception by satellite antennas, or imposes substantial costs or delays on users of such antennas, is hereby presumed unreasonable and is therefore preempted if it affects the installation, maintenance, or use of:~~

- (1) a satellite ~~receive-only~~ antenna that is two meters or less and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by local land-use regulation; or
- (2) a satellite ~~receive-only~~ antenna that is one meter or less in diameter in any area.

For purposes of this paragraph (b), the following costs and delays shall be deemed "substantial":

- (i) If the antenna is for business use:

1. imposition of more than \$50 in direct or indirect costs, including governmental fees, engineering or legal fees, and the cost of any construction or alteration necessitated by the regulation;
2. being required to wait more than seven days for a permit or other authorization before installation is allowed; or
3. being required to attend a hearing or meeting of any kind.

(ii) If the antenna is for consumer use:

1. imposition of any costs or fees;
2. being required to obtain any permit or other authorization ; or
3. being required to attend a hearing or meeting of any kind.

(c) Any presumption arising from paragraph (b) of this section may be rebutted ~~upon a showing~~ if the issuing jurisdiction can demonstrate to the Commission that the regulation in question

(1) is necessary to accomplish a health or safety objective that is clearly defined and expressly stated ~~health or safety objective~~ within the text of the regulation itself ;

(2) is no more burdensome to satellite users ~~that~~ than is necessary achieve the health or safety objective;

(3) is specifically applicable , both in application and on its face, to antennas of the class mentioned in paragraph (b) ~~;~~ ; and

~~(d) Regulation of satellite transmitting antennas is preempted to the same extent as provided in paragraph (a) of this rule, except that state and local health and safety regulations relating to (4) produces health or safety benefits that are not outweighed by the federal interest described in paragraph (a)(2) above.~~

For purposes of this section, "health and safety" objectives and benefits shall not include any objectives or benefits relating to the effects of radio frequency radiation of transmitting antennas are not preempted by this rule .

~~(e)~~ (d) Any person aggrieved by the application or potential application a state or local zoning or other regulation in violation of paragraph (a) of this

section may, after exhausting ~~all~~ nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when

(1) the petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal has been exhausted;

(2) ~~the petitioner's thirty days have passed since the petitioner filed its application for a permit or other~~ authorization ~~required by~~ with the state or local authority ~~has been pending with that authority for ninety days ;~~

(3) the petitioner has been informed, or otherwise has a good-faith belief, that obtaining a permit or other authorization required by the state or local authority will ~~be conditioned upon~~ require the petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna; or

(4) a state or local authority has notified the petitioner ~~of impending~~ that fines will be levied against petitioner if it does not comply with the challenged regulations, or petitioner has a good-faith belief that administrative or judicial enforcement, including fines, confiscation, or civil or criminal action ~~in a court of law and there are no more nonfederal administrative steps to be taken.~~, is imminent.

~~(f)~~ (e) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create an overwhelming necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it includes the particular regulation for which waiver is sought. Waivers granted according to this rule shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.