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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Preemption of Local Zoning)
Regulation of Satellite)
Earth Stations)

IB Docket No. 95-59

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REPLY COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) respectfully submits these reply comments in the captioned proceeding. While MCI supports the Federal Communications Commission's (Commission's or FCC's) proposal for modifying Section 25.104 of its rules (47 C.F.R. §25.104), as explained below, it agrees with comments filed by numerous other parties that some clarification and modification in the language is appropriate.

Satellite technologies play a significant role in the delivery of communications to both homes and businesses. While an undeniable growth in the satellite industry has occurred, many local jurisdictions have passed or currently are enacting strict zoning ordinances to control installation and use of satellite antennas. These ordinances threaten to slow the growth of satellite services and may threaten the national interest in robust competition in telecommunications markets. Specifically, stringent local restrictions on the installation of direct broadcast

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satellite (DBS) receivers endanger its emergence as a real competitor to the entrenched wireline cable industry.

These local efforts are often the unfortunate result of a lack of understanding of new technologies. The size of satellite dishes is shrinking and yet local regulations often do not reflect this fact. Attempts to control installation of the large C-band satellite earth stations have extended to DBS receivers and very small aperture terminals (VSATs) where the justifications for zoning regulations are *de minimis*, if existent at all. Even recent attempts to enact specific ordinances for these small earth stations have failed to relieve many of the burdens involved. Parties previously commenting in this docket have provided thorough examples of restrictive ordinances.¹

Although the Commission is responding to the problem in the Notice of Proposed Rulemaking (Notice or NPRM), its response needs to be more vigorous. MCI therefore encourages the Commission to adopt the following revisions to Section 25.104.

I. The Commission Should Clarify the Cost Threshold under which Preemption Would Occur

The Commission's proposal, in Section 25.104(a), would preempt the state or local regulation when it "substantially limits reception" by receive-only antennas, or when it

¹ See Comments of United States Satellite Broadcasting Co. (USSB), filed July 14, 1995; and Comments of Midwest Star Satellite, filed July 13, 1995.

imposes "substantial costs" on users of these antennas.

MCI agrees with commenters that the standard for preemption needs to be clarified. Although the language proposed in subsection (a) is an improvement on former provisions, this vague reference to "substantial costs" will still lead to unnecessary costs and delays for satellite users. While the Commission may envision this proposed language as indicating a relatively low threshold,² it will not be clear to consumers or state/local authorities what "substantial" means. Because the consumer would not be armed with clear preemption language, the likely effect would be confusion and delay by the local authority and a corresponding chill in demand for the services.³

To clarify the provision, MCI suggests that the text of the rule itself and not merely Commission interpretations offered in the *NPRM* emphasize that, at most, only insubstantial fees may be imposed.⁴ MCI therefore endorses a change in line with approaches advocated by other commenters. For example, USSB (at 11-12) urges that

² *Notice of Proposed Rulemaking*, 60 Fed. Reg. 28077, (released May 15, 1995) at ¶58 (hereinafter "*NPRM*") ("It is a rather low threshold, indicating only that a federal interest has been burdened in a way that is not insignificant, and which therefore calls for justification.").

³ See Comments of DirectTV at 4, filed July 14, 1995 (noting that local officials likely would interpret "substantial costs" as indicating a greater burden than what the Commission discusses in the *NPRM*).

⁴ See, e.g., Comments of Primestar Partners L.P. at 6, filed July 17, 1995.

"substantial costs" be replaced with "more than minimal costs." GE Americom instead substitutes "material costs"⁵ and HBO suggests costs which "are more than *de minimis*."⁶ Primestar (at 7) suggests that the rule indicate that "substantial costs" is a low threshold, not insignificant, or *de minimis*. These proposals indicate a common belief that a narrowing of this language is necessary.⁷ MCI urges the Commission to adopt one of these approaches, or a similar one, because the lower threshold they urge must be clearly incorporated into this rule.

II. MCI Supports the Commission's Presumption that Certain Regulations of Receive-Only Earth Stations Are Unreasonable

The Commission proposes, in Section 25,104(b), that any regulation shall be presumed unreasonable if it affects the installation, maintenance or use of satellite receive-only earth station antennas of one meter or less in diameter in residential areas, or two meters or less in commercial and industrial areas.

The small satellite antennas which are primarily at issue in this proceeding, VSATs and DBS receivers, do not

⁵ Comments of GE American Communications, Inc. at 7, filed July 14, 1995.

⁶ Comments of Home Box Office (HBO) at 2-3, filed July 14, 1995.

⁷ See also Comments of Hughes Communications Galaxy, Inc. (HCG) at 5, filed July 14, 1995 (consumer would benefit from definition of "substantial costs" as any costs or fees, permit requirements, or mandatory hearings).

present the same health, safety, and aesthetic concerns that the large C-band antennas have generated in the past. For example, DBS receivers are typically 18 to 30 inches in diameter and thus are far less obtrusive. Antennas of this size also do not pose serious risks of physical harm. For these reasons, a presumption of unreasonableness would be justified.

III. The Commission Should Limit the State or Local Authority's Rebuttal to "Reasonable" Health or Safety Objectives

The Commission, in Section 25.104(c), affords state and local authorities the opportunity to rebut the presumption of unreasonableness by showing that the regulation is necessary to accomplish a clearly defined and expressly stated health or safety objective.

Because, as previously discussed, small satellite antennas do not raise the same concerns as larger ones, the factors necessary for the local authority to tip the balancing test of subsection (c) in its favor should be narrowed. This is especially true when the antennas are receive-only, such as with DBS, because radio frequency energy is not an issue.

MCI, therefore, agrees with USSB (at 14) that subsection (c)(1) should include "reasonable" as a modifier to "health or safety objective." A state or local administrative authority should not avoid the presumption of unreasonableness based on any supposed health or safety

objective, regardless of how well it is defined. Rather, only an objectively legitimate state or local interest should withstand federal scrutiny. MCI also agrees with HBO (at 7) that as written, this balancing test is incomplete. It fails to include among the showings necessary to rebut the presumption of unreasonableness that the local regulation must reasonably outweigh the federal interest in promoting competition in the reception of satellite communications.

IV. MCI Supports the Commission's Modified "Exhaustion of Remedies" Language in Subsection (e)

The Commission proposes, in Section 25.104(e), to allow an aggrieved party to pursue FCC review after (s)he has exhausted "all nonfederal administrative remedies."

MCI agrees with this modification. By requiring the exhaustion of "nonfederal" administrative remedies, the proposal removes litigation as a major obstacle to satellite implementation. Nevertheless, MCI believes the consumer would benefit from a period of substantially less than the 90 days proposed in subsection (e)(2) for triggering Commission review of an application pending before a state or local authority. MCI agrees with Primestar's suggestion (at 8) that a 30-day period from the date a local application is filed is sufficient to give authorities time for action when balanced against the need for prevention of unreasonable delay which could lead a consumer to abandon

the use of satellite technology.

MCI also urges the Commission to modify subsection (e)(3) which would allow FCC review upon "petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna." As an illustration, assume that total costs for a DBS system is \$700 and that the consumer is faced with a \$500 permit fee. Under subsection (e)(3) as proposed, review would not be available. That result simply does not support the Commission's objective of reducing regulatory burdens to allow competition to flourish.

MCI agrees with HBO (at 8-9) that, consistent with a modified subsection (a), the language here should speak in terms of a much lower cost threshold. MCI recommends language indicating that such fees could not exceed those imposed for installation of a typical outdoor television antenna.

V. The Commission Should Extend the Presumption of Unreasonableness to Antennas in Other Services

Finally, MCI views the current proposal as the launching pad for a broader policy of relaxing local regulations that impede the realization of an efficient interstate communications system. In addition to satellite services, local zoning laws may unfairly burden other communications services which necessarily rely on antennas, transmitters and towers. These services include cellular,

Personal Communications Service, microwave radio, business radio, Multichannel Multipoint Distribution Service, and advanced digital television service.⁸ Restrictive ordinances which are inconsistent from state to state will frustrate the achievement of competitive seamless national communications systems. Unreasonable local regulations should be curtailed, to the extent possible, for all of these services. MCI encourages the Commission to promptly begin a rulemaking to extend these principles to non-satellite communications services. Resolution of this problem is long overdue.⁹

⁸ See, e.g., Comments of Maximum Service Television, Inc. at 6, filed July 14, 1995; Wireless Cable Association International, Inc. at 3, filed July 14, 1995; ACS Enterprises, Inc. at 2, filed July 14, 1995; and Bell Atlantic at 1, filed July 14, 1995.

⁹ See, e.g., Comments of the National Association of Broadcasters at 4, filed July 14, 1995 (noting that NAB and others have petitioned this Commission for broad preemption of local laws interfering with the development of national communications).

Therefore, MCI supports the Commission's proposed modification of Section 25.104 of its rules, subject to the modifications discussed herein.

Respectfully submitted,

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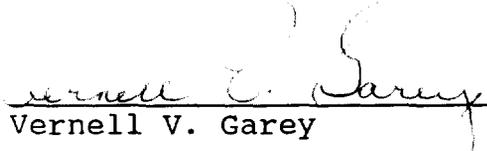
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Dated: August 15, 1995

CERTIFICATE OF SERVICE

I, Vernell V. Garey, hereby certify that the foregoing "REPLY COMMENTS" was served this 15th day of August 1995, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

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