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August 15, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: IB Docket No. 95-59
Preemption of Local Zoning Regulation of Satellite Earth
Stations

Dear Mr. Caton:

Transmitted herewith, on behalf of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. is an original and 4 copies of their Reply Comments in the above-referenced docket.

If you have any questions concerning this matter, please let me know.

Sincerely,

Lawrence R. Sidman

Lawrence R. Sidman

Counsel for Philips
Electronics North America
Corporation and Thomson
Consumer Electronics, Inc.

Enclosures

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

In the Matter of)	
)	IB Docket No. 95-59
Preemption of Local Zoning)	DA 91-577
Regulation of Satellite)	45-DSS-MISC-93
Earth Stations)	

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REPLY COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

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REPLY COMMENTS OF
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THOMSON CONSUMER ELECTRONICS, INC.

Pursuant to Section 1.415 of the Commission's Rules, Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") by their attorneys hereby submit reply comments in the above-captioned Notice of Proposed Rulemaking ("NPRM") to revise the rules regarding preemption of local zoning regulation of satellite earth stations.

I. Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc.

Philips manufactures television sets and other consumer electronic products, semiconductors, diagnostic imaging systems and other professional equipment marketed under many familiar brand names including Philips, Magnavox and Norelco. Philips has long been a pioneer in the telecommunications and entertainment industries and also played a pivotal role in the development of digital high definition television through the Grand Alliance. Philips now intends to enter a new market by manufacturing and distributing DBS receiving systems.

Thomson also manufactures and distributes television sets and other consumer electronics products under the well-known RCA,

General Electric and ProScan brand names. In addition to its key role in the development of HDTV technology through the Grand Alliance, Thomson developed in cooperation with DIRECTV the first direct broadcast satellite (DBS) receiving system in the United States -- the DSS® system. During 1994, the first year of its introduction, Thomson sold more than 590,000 DSS® units and over 1,000,000 units by April 20, 1995.

Philips and Thomson believe that the benefits of new digital technologies like DBS should be available to American consumers as soon as possible with little or no governmental interference in the market. DBS offers consumers exciting possibilities of greater choice and superior quality of picture and sound not available from other delivery systems. However, in those local communities in which a potential DBS subscriber would have to obtain zoning permission or a building/construction permit to mount a small, unobtrusive, 18-inch DBS dish, DBS is at a competitive disadvantage to the incumbent cable industry or another wireline provider of video programming. These local zoning laws and other local regulations create unnecessary barriers to the spread of this new technology.

Philips and Thomson support the Commission's efforts to clarify and strengthen its rules preempting unreasonable local regulation of small satellite antennas. However, Philips and Thomson agree with many of the commenters in this docket that there are certain improvements to the proposed rule that would

foster the widest possible availability of satellite technology to consumers.

II. The Commission Should Adopt a Per Se Preemption of Local Zoning Regulation of Small Receive-only Satellite Antennas.

Philips and Thomson agree with those commenters that urge the Commission to adopt a per se preemption of local regulation on small receive-only antennas, like DBS dishes used by consumers in residential areas to receive video programming services.^{1/} In particular, Philips and Thomson agree with DIRECTV's comments that the Commission should deem to be a "substantial burden" on users any regulation that would require a residential consumer to obtain a permit or other authorization, impose any cost or fees on a user, or require a user to attend a hearing or meeting.^{2/}

Philip's and Thomson's experience in manufacturing and distributing consumer electronics products for home use indicate that a potential DBS subscriber, like any other purchaser of consumer electronics products for home stereo or video use, could be dissuaded from purchasing DBS hardware if faced with a local governmental authorization or permitting process and/or processing fees or other costs of greater than a de minimis amount. If a consumer cannot buy a consumer electronics product off the shelf and install it at home without governmental intrusion, then that product is at a significant disadvantage

^{1/} See Satellite Broadcasting and Communications Association of America (SBCA) Comments at 30-32; DIRECTV Comments at 5-6; and United States Satellite Broadcasting Company, Inc. Comments at 9-12.

^{2/} See DIRECTV Comments at 4-5.

vis-a-vis competing products and services. In the case of DBS, local governmental authorization processes that impede the installation of DBS dishes in residential areas create a competitive disadvantage for DBS against existing cable systems or alternative methods of video programming distribution.

Moreover, Philips and Thomson believe that the rebuttable presumption for small antennas now proposed by the Commission fails to give local governments and consumers clear guidance about whether a particular local law or regulation is preempted and instead invites litigation.^{3/} The procedure could potentially force consumers to go through a time-consuming and costly local administrative procedure before a consumer could petition the Commission to challenge a local law or regulation that would appear on its face to violate the presumption. A per se preemption avoids the pitfalls and uncertainties created by a rebuttable presumption.

Finally, Philips and Thomson believe that a per se preemption for small receive-only satellite antennas, particularly 18-inch DBS antennas, is warranted because there simply are no rational health, safety or aesthetic concerns justifying local zoning regulation of receive-only, small, lightweight and unobtrusive DBS antennas.^{4/}

^{3/} See also DIRECTV Comments at 5.

^{4/} See also SBCA Comments at 26-27; Sony Comments at 3; DIRECTV Comments at 6.

III. The Commission Should Expand the Preemption to Include Antennas Designed for Off-the-Air Reception of Television Broadcast Signals.

Philips and Thomson also agree with those commenters that urge the Commission to expand the rule to include antennas designed for the off-the-air reception of television broadcast signals.^{5/} As Sony notes in its comments, the Satellite Home Viewers Act (17 U.S.C. § 119) effectively prohibits DBS providers from distributing network programming (NBC, CBS, ABC and Fox) to urban and suburban communities. DBS providers can lawfully deliver network programming only to those residences that cannot receive broadcast signals free, over-the-air and are not served by cable. Thus, consumers in non-rural areas who want to subscribe to DBS to obtain non-broadcast programming, pay-per-view movies and sports packages also need to be able to install television antennas to receive free, over-the-air local broadcast stations. The Commission should ensure in the revised rule that these residential consumers will have the ability to erect and use a television antenna free from government interference.

IV. The Commission Should Also Address the Problems Created by Private Restrictions on the Use of Small Satellite Dishes by Residential Consumers.

Philips and Thomson are also aware that in some communities deed covenants, homeowner's or condominium association rules, and other private restrictions on land use have created similar problems for residential users who want to subscribe to DBS or

^{5/} See The National Association of Broadcasters Comments; Sony Electronics, Inc. (Sony) Comments at 4-5.

other satellite-delivered video programming services. Philips and Thomson agree with those commenters that urge the Commission to address these private barriers to competition and consumer choice in a future proceeding very soon.^{6/} The public policy reasons for eliminating private restrictions on a consumer's ability to obtain information and entertainment via satellite-delivered programming services are the same as those prompting the current proceeding. Therefore, the Commission should examine and craft a remedy for these barriers to competition and new technology as well.

Respectfully submitted,
PHILIPS ELECTRONICS N.A.
THOMSON CONSUMER ELECTRONICS

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^{6/} See SBCA Comments at 45-52; DIRECTV Comments at 6-7; and Primestar Partners, L.P. Comments at 9, n. 10.