

~~shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2). No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e), or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to subparagraph (b)(2).~~

~~(2) Any presumption arising from subparagraph (b)(1) of this section may be rebutted upon a showing that the regulation in question:~~

~~(A) is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;~~

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

~~(C) is specifically applicable on its face to antennas of the class described in paragraph (b)(1). is hereby preempted.~~

(c) Any person aggrieved by the application or potential application of 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 and variance procedure has been exhausted;

- (2) the petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;
 - (3) the petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna greater than the aggregate purchase or total lease cost of the equipment as normally installed; or
 - (4) a state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.
- (d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.
- (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. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise. ~~If a state or local authority has obtained a~~

waiver for its regulation pursuant to this Paragraph, it may not enforce such regulation or impose any penalties pursuant thereto until 30 days after it has provided written notice of such waiver to any satellite antenna user against whom it wishes to enforce the regulation.

(f) All restrictive covenants, encumbrances, home owners' association rules, and other nongovernmental restrictions affecting satellite antennas less than one meter in diameter used to receive video programming signals are hereby unenforceable.

(g) The sole forum for adjudicating any matters within this section shall be the Commission.

EXHIBIT B-1
Petition for Reconsideration and Clarification and
Comments to Further Notice of Proposed Rulemaking of DIRECTV
Rebuttable Presumption ("Red-Line")

Section 25.104: Preemption of Local Zoning of Earth Stations

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable~~{, except that nonfederal regulation of radio frequency emissions is not preempted by this rule}~~. For purposes of this paragraph (a), reasonable means that the local regulation:

- (1) has a clearly defined ~~{health}~~ [radio frequency emissions], safety, or aesthetic objective that is stated in the text of the regulation itself; and
- (2) furthers the stated ~~{health}~~ [radio frequency emissions], safety or aesthetic objective without unnecessarily burdening federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

(b)(1) Any state or local zoning, land-use, building or similar regulation that affects the installation, maintenance, or use of:

- (A) a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by nonfederal land-use regulation; or
- (B) a satellite earth station antenna that is one meter or less in diameter in any area, regardless of land use or zoning category

shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2). No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e), or a final declaration from the Commission ~~{or a court of competent jurisdiction}~~ that the presumption has been rebutted pursuant to subparagraph (b) (2).

(2) Any presumption arising from subparagraph (b)(1) of this section may be rebutted upon a showing ~~[to the Commission]~~ that the regulation in question:

- (A) is necessary to accomplish a clearly defined ~~{health}~~ ~~[radio frequency emissions]~~ or safety objective that is stated in the text of the regulation itself;
- (B) is no more burdensome to satellite users than is necessary to achieve the ~~{health}~~ ~~[radio frequency emissions]~~ or safety objective; and
- (C) is specifically applicable on its face to antennas of the class described in paragraph (b)(1).

(c) Any person aggrieved by the application or potential application of 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 and variance procedure has been exhausted;

- (2) the petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;
 - (3) the petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna greater than the aggregate purchase or total lease cost of the equipment as normally installed; or
 - (4) a state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.
- (d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.
- (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. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

[(f) All restrictive covenants, encumbrances, home owners' association rules, and other nongovernmental restrictions affecting satellite antennas less than one meter in diameter used to receive video programming signals are hereby unenforceable.

(g) The sole forum for adjudicating any matters within this section shall be the Commission.]

EXHIBIT B-2
Petition for Reconsideration and Clarification and
Comments to Further Notice of Proposed Rulemaking of DIRECTV
Rebuttable Presumption

Section 25.104: Preemption of Local Zoning of Earth Stations

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, ~~except that nonfederal regulation of radio frequency emissions is not preempted by this rule.~~ For purposes of this paragraph (a), reasonable means that the local regulation:

- (1) has a clearly defined ~~health radio frequency emissions~~, safety, or aesthetic objective that is stated in the text of the regulation itself; and
- (2) furthers the stated ~~health radio frequency emissions~~, safety or aesthetic objective without unnecessarily burdening federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

(b)(1) Any state or local zoning, land-use, building or similar regulation that affects the installation, maintenance, or use of:

- (A) a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by nonfederal land-use regulation; or
- (B) a satellite earth station antenna that is one meter or less in diameter in any area, regardless of land use or zoning category

shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2). No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e), or a final declaration from the Commission ~~or a court of competent jurisdiction~~ that the presumption has been rebutted pursuant to subparagraph (b)(2).

(2) Any presumption arising from subparagraph (b)(1) of this section may be rebutted upon a showing ~~to the Commission~~ that the regulation in question:

- (A) is necessary to accomplish a clearly defined ~~health~~ ~~radio frequency emissions~~ or safety objective that is stated in the text of the regulation itself;
- (B) is no more burdensome to satellite users than is necessary to achieve the ~~health~~ ~~radio frequency emissions~~ or safety objective; and
- (C) is specifically applicable on its face to antennas of the class described in paragraph (b)(1).

~~If a state or local authority has rebutted the presumption against its regulation pursuant to this Paragraph, it may not enforce such regulation or impose any penalties pursuant thereto until 30 days after it has provided written notice of such rebuttal to any satellite antenna user against whom it wishes to enforce the regulation.~~

(c) Any person aggrieved by the application or potential application of 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 and variance procedure has been exhausted;
- (2) the petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;
- (3) the petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna greater than the aggregate purchase or total lease cost of the equipment as normally installed; or
- (4) a state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.

(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. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise. If a state or local authority has obtained a waiver for its regulation pursuant to this Paragraph, it may not enforce such regulation or impose any penalties pursuant thereto until 30 days after it has provided written notice of such waiver to any satellite antenna user against whom it wishes to enforce the regulation.

(f) All restrictive covenants, encumbrances, home owners' association rules, and other nongovernmental restrictions affecting satellite antennas less than one meter in diameter used to receive video programming signals are hereby unenforceable.

(g) The sole forum for adjudicating any matters within this section shall be the Commission.