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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

MAY 13 1996

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In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulations	)	DA 91-577
of Satellite Earth Stations	)	45-DSS-MISC-93
	)	FCC 96-78

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**REPLY COMMENTS OF THE EVERMAY COMMUNITY ASSOCIATION**

I. Introduction

Pursuant to the Further Notice of Proposed Rulemaking released March 11, 1996, in the above-specified proceeding, the Evermay Community Association ("ECA") of McLean, Virginia, submits the following Reply Comments concerning proposed Section 25.104(f), Chapter 47 of the Code of Federal Regulations.

Specifically, these Reply Comments reference and support the timely filed Comments of the Community Associations Institute ("CAI") joined by the American Resort Development Association and the National Association of Housing Cooperatives, hereinafter referred to as "CAI Comments."

The ECA is an unincorporated, non-profit organization representing the owners and residents of Evermay, a community of 164 individually-owned, single-family homes constructed entirely by a single builder. Upon completion of construction, the builder formally assigned responsibility for enforcement of the Evermay Restrictive Covenants to ECA. Since accepting that responsibility about ten years ago, ECA has diligently enforced these covenants which, inter alia, deal with the erection of structures, external improvements and the placement and type of permissible fences. ECA's basic objective is to maintain the community as an attractive, desirable place to live in the interest of all of its residents and to preserve property values.

II. Discussion

The ECA concurs in the CAI Comments, but will focus and elaborate herein on aspects that are of particular concern to homeowner associations, like ECA, in communities comprised entirely or almost entirely of individually-owned, single-family detached homes, with little or no common property.

The CAI Comments of particular relevance to this type of community association are as follows:

[We] interpret this Proposed Rule to mean that associa-

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tion restrictions on satellite antennas will not be entirely precluded. Community associations will still be able to enforce restrictions on satellites one meter or more in diameter. In addition, [we] read the phrase "to the extent that" to mean that if one part of a restriction is preempted by the Proposed Rule, the other sections of the restriction remain in effect.

In the Proposed Rule, the word "impair" is not defined. Since there is no clear definition in the regulation, its interpretation will be very difficult and contentious. [We] suggest the following interpretation of the word "impair": a private restriction "impairs" access to satellite service if it: (1) precludes installation of DBS satellite devices and/or cabling through reasonable means or (2) materially increases the cost of installation of such equipment.

If there is a reasonable way in which a satellite antenna can be installed in compliance with existing architectural controls, owners can be required to comply. The association should preserve the right to enforce reasonable installation rules so long as enforcement does not impair access to service.

These CAI Comments appear to be reasonable interpretations, but we would go further and incorporate additional language (set forth below) in the Proposed Rule to say clearly what is intended. Only by doing so will future contention and litigation be avoided.

ECA recognizes the mandate in the Telecommunications Act of 1996 that a viewer's ability to receive direct broadcast services must not be impaired, and we take no issue with that. There are, however, many reasonable aspects of architectural control that could be implemented by a community association that would not jeopardize that objective. Requiring that satellite antennas be placed in back yards rather than in front yards where reception is possible in both locations is one example. Requiring screening, e.g., by use of evergreen bushes, to minimize visibility is another. The limits of these or other actions by community associations should be what is reasonable and what does not materially increase the cost of installation. The word "materially," however, does appear to require definition (see suggested language below).

ECA believes that these limits would leave substantial room for community associations to work with individuals wanting to receive video programming via direct broadcast service, with the objective of maintaining aesthetic and property values for all residents. For example, a community's architectural requirement might include the following language:

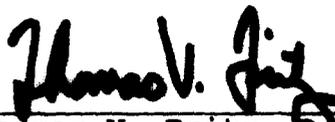
The Board, upon request for approval of a satellite antenna less than one meter in diameter, will waive the non-visibility requirement generally applicable to antennas if it can be shown that all feasible means to preclude antenna visibility to neighbors and the public have been considered and that reasonable steps, if available, to reduce visibility to a minimum will be taken (i.e., actions with additional costs, if any, not exceeding 25% of the total cost of the antenna, other material and installation labor).

In this example, the 25% cost limitation was determined subjectively on the basis of what seems reasonable; it is, of course, open to other views on the subject.

### III. Recommendation

ECA supports the CAI Comments, but recommends that the following language be added to the language proposed for inclusion in paragraph (f), Section 25.104 of the rules:

"Impair" means any requirement that: (1) precludes installation of DBS satellite devices and/or cabling through reasonable means or (2) materially increases the cost of installation of such equipment, i.e., by an amount exceeding 25% of the total cost of the antenna, other material and installation labor. Subject to this limitation, community or homeowner associations or other nongovernmental organizations with architectural controls may enforce reasonable installation requirements to protect and enhance aesthetic and other common interests of the community.

  
Thomas V. Fritz, President  
Evermay Community Association  
6303 Long Meadow Road  
McLean, Virginia 22101

May 2, 1996