

fulfill its legal obligations to protect, preserve, and maintain the property values of all owners in the community.

C. Installation of Television Broadcast and MMDS Equipment of Unlimited Sizes and Heights Would Be Unreasonable

As currently drafted, Subsection (c) of the Proposed Rule preempts all association restrictions regulating television broadcast and MMDS equipment, regardless of the height or size of the antenna or tower to which the antenna is attached. Both Section 207 and the Rule omit any limitation from preemption based on height and size of this equipment. This omission will cause even more serious problems for associations. Since line of sight is necessary to obtain MMDS signal reception, the size and height of the antennas and towers could be tremendous in some areas. To obtain television service in some areas, television antennas would also have to be very large and tall.

Large antennas and the towers to which they would be attached pose numerous health and safety concerns for all associations, regardless of whether the equipment is installed on common property, limited common elements, or individual property. In areas exposed to strong winds or windstorms, the probability of wind shear detaching the antenna or tower from its mounting is very real: there is a greatly increased possibility that detachment would lead to personal injury and property damage, particularly if the association has no control over the method of installation. An improperly secured mast or tower could become detached, causing property damage, personal injury, or death. The association will have to

pay for any repairs to association property caused by such equipment, in many cases imposing a great expense upon the association. The association may be subjected to litigation from such injured parties, even though the association does not own the equipment that caused the damage.

In urban areas, the height of these antennas and towers may interfere with FAA flight paths and regulations.

Due to the enormity of the problems that associations will face in implementing this Rule in its current form, CAI, ARDA, and NAHC request that some type of reasonable height and size limitation be incorporated into the final Rule.

V. PROPOSED SOLUTIONS

In rulemaking, there are two possible approaches: the prescriptive method and the performance-based method. For the reasons listed below, the performance-based rule is a more effective method of achieving the goal of Subsection (c) of the Proposed Rule: to promote access to "video programming signals from over-the-air television broadcast or multichannel multipoint distribution service."

The prescriptive method of rulemaking mandates the exact result to be achieved by the rule, and the exact method of compliance with the rule. This type of rulemaking tends to be inflexible and unnecessarily restrictive, as those complying with the rule have only the methods enumerated in the rule in order to comply with the rule. The prescriptive method of rulemaking tends to stifle creative solutions to problems. Those complying with this type of

rule cannot react to changing technology which may render the specific method of rule compliance obsolete.

A performance-based rule clearly states the objective to be achieved by the rule. However, the rule does not specifically mandate the method to be used in reaching this objective. Creative and innovative techniques may then be used to achieve the purpose of the rule. Changes in technology also may be implemented much more quickly. Thus, this type of rule allows people to react more quickly to change.

Because the performance-based approach is more conducive to reacting to technological change, it is an effective method of achieving the purpose of this Subsection (c) of the Proposed Rule. CAI, ARDA, and NAHC propose the following suggestions for such a performance-based rule, which would permit community associations wishing to enforce their rules to make access to video programming signals available to their residents by whatever means possible. After having made available all services available in the area, the community association would then be able to enforce its restrictions.

For example, the community association could purchase and install one or more television broadcast antennas or MMDS devices which could receive service from all service providers available in the area. (In a condominium association, all of the unit owners would have to make that determination, due to the ownership interests that each owner has in the common elements.) Each individual resident would then be able to select and subscribe to the service of his or her choice. Since all residents would be connected to the television and MMDS services of their choice, there would be no need for individual installations. The

community association may then enforce its restrictions against individual property owners' installation of any television broadcast or MMDS equipment.

To that end, CAI, ARDA, and NAHC propose the following language, to be added to Subsection (c) of the Proposed Rule:

No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming signals from over-the-air television broadcast or multichannel multipoint distribution service located on the individual viewer's individual property: provided, however, that if a community association makes video programming services available, through any accessible means, to any association resident wishing to subscribe to such services, then such nongovernmental restrictions shall not be deemed to impair a viewer's ability to receive such service. Restrictions which limit the location or method of installation of television broadcast or MMDS equipment but which do not impair a viewer's ability to receive video programming signals through these devices shall be enforceable.

This proposed language would clarify the position that CAI, ARDA, and NAHC have taken relating to the inability of individual owners or residents to install television or MMDS equipment on common property. This language would also ensure that all owners have signal access, even those whose units are located in areas inaccessible to signal reception. Disputes between individual owners concerning placement of equipment would be eliminated. The community association's property interests would be protected, while assuring access to video programming signals for all owners and residents.

A much less desirable approach would be to permit an individual owner to install a television and MMDS equipment on limited common elements (exclusive use areas) serving his or her individual unit, but not on other common elements. The owner already has the exclusive or nearly exclusive use of these limited common elements. Therefore, other owners

will not be injured by the individual owner's use of the limited common element. The owner will, of course, be responsible for additional maintenance costs and should be liable for any property damage or personal injury caused by the installation of the television and MMDS equipment. Because these requirements will not impair access to service, the community association should still be entitled to regulate the method of installation on this limited common property, since it is responsible for the common property and the installation may affect other owners. However, this solution would balance the individual's right of absolute access and the community association's need to maintain and regulate the common property.

If the FCC does decide to interpret Section 207 to permit installation on limited common elements, then the language suggested by CAI, ARDA, and NAHC would read as follows:

No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming signals from over-the-air television broadcast or multichannel multipoint distribution service located on the individual viewer's individual property or exclusive use area: provided, however, that if a community association makes video programming services available, through any accessible means, to any association resident wishing to subscribe to such services, then such nongovernmental restrictions shall not be deemed to impair a viewer's ability to receive such service. Restrictions which limit the location or method of installation of television broadcast or MMDS equipment but which do not impair a viewer's ability to receive video programming signals through these devices shall be enforceable.

Due to the height and size of the television and MMDS equipment, community associations must be allowed to regulate the installation and maintenance of individual equipment, since the community association is liable for the management of and damage to the common property. Association regulation of installation and maintenance would ensure that equipment is installed safely, so that the equipment will pose minimal damage to

common property and to other owners of individual property. By coordinating installation, the association could help resolve disputes among owners. The community association should also be able to specify acceptable methods of installation to ensure that installation does not damage the building or pose hazards to property owned by the association and other owners. Coordinated installation managed by the community association would help provide access to the maximum number of owners and residents possible.

As an example of various possible approaches, CAI suggests the following ideas:

1. In community associations mostly comprised of common property, the association might designate certain common areas for television and MMDS equipment installation. Individuals can then install equipment on such designated areas, bearing all of the costs associated with the installation of such equipment.
2. In community associations mostly comprised of common property, the association might require all owners installing television and MMDS equipments on common property to remain liable for any damage to the common area or limited common elements due to the installation, usage, and maintenance of television and MMDS equipment.
3. In all community associations, the associations might regulate the location of installation to minimize violation of architectural controls.

The Proposed Rule as currently drafted would cause intractable problems for associations. There must be some type of height limitation included in the final Rule.

Unfortunately, CAI, ARDA, and NAHC have no easy solutions to suggest. The FCC will have to address the size and height limitations successfully if implementation of the rule in a reasonable way is to be practically feasible and legally defensible.

CAI, ARDA, and NAHC do have one suggestion for dealing with the height problem: if an owner or resident may receive the desired signal using an antenna of a certain height, then that owner should not be permitted to install equipment greater than that height. The individual would be able to receive the signals, but the equipment would pose the least hazard to the association community.

VI. CONCLUSION

Subsection (c) of the Proposed Rule, as currently drafted, is consistent with the intent of Congress to remove barriers to access to television and MMDS equipment. CAI, ARDA, and NAHC believe that the language which limits the FCC's preemption of private restrictions "to the extent" that they impair access to these services is basically acceptable, with the caveats listed below. CAI, ARDA, and NAHC believe, however, that the Proposed Rule cannot mandate installation of television broadcast and MMDS equipment of unlimited size and height.

A. Subsection (c) of the Proposed Rule Does Not Permit Individuals to Install Telecommunications Equipment on Common Property

CAI, ARDA, and NAHC still have the following concerns. The FCC Rule may be interpreted to have a fundamental impact on established private property rights. If an individual owner of a condominium unit is permitted to install television or MMDS equipment on common property without the consent of the association or its members, then the association's interests in common property will be abrogated. The individual would gain extensive property rights in property he does not own, to the detriment of others who possess ownership rights in the same property. In cooperatives and planned communities, installing equipment on common property would give an individual owner rights in property in which he has no interest. The associations may be exposed to liability for damage caused by installation and the equipment itself that the association cannot control. Congress surely did not intend to fundamentally alter these property rights; to do so would be unconstitutional. Therefore, the FCC should clarify that the rule only applies to the installation of television and MMDS equipment on individually-owned property.

B. Allow Associations Which Make Television and MMDS Access Available to All Residents to Enforce Their Rules

Since individual owners will not be able to install their equipment on common property, some owners still may be unable to receive television broadcast or MMDS service.

A possible solution to this problem would be that associations would choose to make television and MMDS service available to all residents, even those who are now barred from access by the location of their units. If the FCC allows associations to enforce their restrictions as long as they make access available, the method of compliance should be left to the individual associations. Associations who choose to make such services available will do so in a flexible, creative way, lessening the FCC's enforcement burden.

In conclusion, CAI, ARDA, and NAHC support the goal of providing owners and residents of homes in community associations with the ability to receive video programming services over a television and MMDS equipment. Subsection (c) of the Proposed Rule, however, must address and eliminate the potential negative impact on association communities, owners, and residents. The public purpose of Section 207 of the Telecommunications Act and Subsection (c) of the Proposed Rule may be met without precluding the enforcement of restrictions on the installation of television and MMDS equipment on common property within community associations. If community associations make signal access available to their residents, then such community associations should retain the right to impose reasonable restrictions on the installation of television and MMDS equipment. CAI, ARDA, and NAHC also maintain that community associations should retain control over common property; individual owners should install equipment either on their individually-owned property or on limited common elements to which the owners have exclusive access.

Community associations are unique and specialized entities, now housing over 32 million Americans. Subsection (c) of the Proposed Rule must address the concerns of these homeowners. The rule as currently written may be interpreted to create severe problems for community associations to comply. The FCC should ensure that access to television and MMDS services is promoted more efficiently by adopting a performance-based approach, permitting community associations to make television and MMDS access available, and allowing those associations which do so to enforce their deed restrictions. CAI, ARDA, and NAHC therefore respectfully request that the FCC accept and implement the changes to Subsection (c) of the Proposed Rule suggested in these Comments.

CAI, ARDA, and NAHC appreciate the FCC's attention to these special concerns.

APPENDIX A

PETERSON

April 10, 1988

RE: FOOT TRAFFIC ON ROOFING PRODUCTS

To Whom It May Concern,

The following information is being provided by Peterson Roofing, Inc., a roofing company specializing in single family residential reroofing as well as homeowner association reroofing projects. Peterson Roofing, Inc. is a full service roofing contractor having been in business since 1969. The forthcoming is a general understanding of product warranty and workmanship warranties in relationship to roofing products and roofing installations.

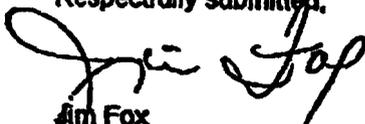
A general statement Peterson Roofing, Inc. would make to the homeowner or association having recently installed a new roof would be to at all cost minimize the amount of foot traffic on your new roofing system. Roofing materials are derived from basic materials such as asphalt, wood, fiber cement, concrete, clay, slate and metal such as aluminum and copper. Even though there are numerous building materials utilized in manufacturing roofing products, the manufacturer and the labor force do share some common recommendations regarding maximizing the life of your roofing system.

With respect to the manufacturer, manufacturers extend warranties to owners of the roofing system with one basic understanding that is uniform throughout the industry. A roof is designed to hold up for its projected life on the pretense that the roof is left undisturbed for the duration of the warranty. Such things as foot traffic, man made damage, acts of God such as hurricanes, earthquakes, tornadoes, etc. would in fact void out the manufacturers warranty. Their perspective is roofing is meant to keep water out of the structure and provide some added esthetic value to the home. It is not designed for excessive foot traffic although some foot traffic may result with respect to having a need for painters, plumbers, Christmas decorations, chimney sweeps and general maintenance on a roofing system. If in fact the product goes in the interim, it is in fact considered a defective product and is covered by the manufacturers warranty.

By comparison, there is always a labor force involved that installs a roof. Should something they installed come undone or result in a leak, then that is where workmanship warranties come into play. On the other hand if man made damage is created such as kicking off a ridge cap or poking a hole in a roofing product, that is no fault of the workmanship or the manufacturer and in turn a need for repairs would not be covered under either product or workmanship warranties and would be billed on an individual basis under the pretense of a service call.

Peterson Roofing, Inc. would like to present this final conclusive comment. If and when ever possible, to maximize the life of your roofing system, we recommend to avoid any undue need to be on your roof.

Respectfully submitted,



Jim Fox
Vice President Residential/Maintenance

c:\w\word\jim\vrtrfc

CORPORATE OFFICES
549 WEST CENTRAL PARK AVE.
ANAHEIM, CA 92802-1415
(714)444-4444 FAX (714) 778-4428

L. A. COUNTY
(310)533-1111
FAX (310)533-1717

SAN DIEGO COUNTY
12526 HIGH BLUFF DR., SUITE 300
SAN DIEGO, CA 92130
(619)259-8311 FAX (619)259-6661

PREMIER ROOFING, INC.

State Contractors License Number 689726

LIMITED WARRANTY

Upon completion of construction by Premier Roofing, Inc. and payment in full by Buyer, subject to the limitations set forth below, Premier Roofing, Inc. warrants against roof leaks caused by defective workmanship or materials for a period of FIVE years from date of installation. If a roof leak covered by this warranty occurs, Premier Roofing, Inc. will repair the roof leak at no charge to Buyer. To obtain performance of this warranty Buyer must give written notice to Premier Roofing, Inc. identifying the sales transaction by providing a copy of the original contract and the nature of the problem. Such notice should be given to Premier Roofing, Inc. at 9054 Olive Drive, Spring Valley, CA 91977-2301. This warranty is limited to roof leaks caused by defective workmanship and materials used in the roof construction or repair performed by Premier Roofing, Inc. only and does not extend to leaks caused by acts of God, intentional or negligent acts or omissions of Buyer or persons subject to Buyer's control, or in those instances where the contract or sales proposal specifically excludes any type of warranty. Leaks which originate in sheet metal air conditioning ducts and or related sheet metal work are specifically excluded from this warranty.

PREMIER ROOFING, INC. SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, WATER DAMAGE TO FLOORS, CEILINGS, INTERIOR FURNITURE OR FURNISHINGS, EQUIPMENT, DOCUMENTS OR RECORDS, MERCHANDISE WITHIN THE BUILDING OR ANY OTHER CONTENTS OF THE BUILDING, OR FOR ANY HAZARDS OR INJURY TO OCCUPANTS RESULTING FROM WATER LEAKAGE.

THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION HEREIN, EXCEPT AS REQUIRED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR DESIGN. THE DURATION OF IMPLIED WARRANTIES SHALL NOT EXCEED THE WARRANTY PERIOD SPECIFIED ABOVE.

No other express warranty or guarantee, given by any person, firm or corporation with respect to this product will bind Premier Roofing, Inc. No employee of Premier Roofing, Inc. other than the president, is authorized to amend or change, in any way, the terms and conditions of this Limited Warranty.

This warranty gives you specific legal rights, and you may also have other rights that vary from state to state.

Buyer warrants that the structure on which the roof is to be erected has been constructed in accordance with applicable building code requirements and is suitable for the work to be accomplished by Premier Roofing, Inc. Unless otherwise specifically stated in the contract agreement, the work of Premier Roofing, Inc. on this roof specifically excludes the identification of ponding water areas or correction of same.

Building Owner: CHULA VISTA TOWNHOME HOA CHULA VISTA, CA 91911 Building Name: CHULA VISTA TOWNHOMES 139 4TH AVENUE CHULA VISTA CA 91911	SCHULLER Roofing Systems Gold Shield® Roofing System Guarantee	906021
Approved Roofing Contractor: PREMIER ROOFING, INC. 9054 OLIVE DRIVE SPRING VALLEY CA 91977	Guarantee Number: FNB0925290	Term & Maximum Monetary Obligation to Maintain a Watertight Roofing System Years: 10 \$ NO DOLLAR LIMIT TOTAL SQUARES: 81
Date of Completion: 12/30/94	COVERAGE The components of the Roofing System covered by this Guarantee are:	BUR 880 LINEAR FEET
Membrane Spec. and Type: 4GNG Flashing Spec. and Type: DFE-4, DFE-34H. Insulation Type: Accessories (Type and Quantity):	and ALL OTHER COMPONENTS OF THE OWNER'S	

APPENDIX B



CAPITAL CONSULTANTS MANAGEMENT CORPORATION

May 1, 1996

VIA FACSIMILE 703-684-1581

Ms. Becky Vensel
Community Associations Institute
Legislative Action Committee Coordinator
1630 Duke Street
Alexandria, Virginia 22314

RE: FCC/Telecommunications Act of 1996
CS Docket No. : 96-83, FCC 96-151

Dear Ms. Vensel:

The undersigned is the Property Manager for Capital Consultants Management Corporation, a property management company in Texas. Our firm represents numerous single family homeowner associations and condominium associations in the North Texas area. As such, our concerns expressed to you in this letter are shared by many of the individuals who are members of the condominium or homeowner associations we manage.

The purpose of this letter is to express our concern over the proposed rule promulgation by the FCC in conjunction with Section 207, Title II of the Telecommunication Act of 1996. The proposed rules with respect to satellite dishes and over-the-air reception devices seem to ignore the underlying purpose for which deed restricted subdivisions or condominium regimes were created.

Specifically, the rule which negates the enforceability of deed restrictions with respect to satellite antennas less than one meter in diameter or over-the-air reception devices needs to be limited to take into account the need to retain, as much as possible, the architectural integrity of a community. As you know, thousands of people have purchased property in deed restricted subdivisions or units subject to a condominium regime for the very reason that property values will be protected through the enforcement of deed restrictions pertaining to established architectural standards. In fact, developers in all probability charged enhanced prices for the privilege of living in a deed restricted subdivision or purchasing a

unit subject to a condominium regime. These people expect the architectural standards to be maintained.

It would be an infringement of property ownership rights to allow an owner to place a satellite dish or other reception device on common property which is either owned by other unit owners in undivided interests or by the association. The problems associated with control, maintenance and repair of the common property as a result of the installation of any of these devices are too numerous to discuss in detail. No owner should have an unfettered right to make use of another's private property under the subterfuge that to disallow such a use would impair such owners ability to receive video programming service through devices designed for over the air reception of television broadcast signals, multi-channel, multi-point distribution service, or direct broadcast satellite services. The rules to be promulgated by the FCC must take these factors in account.

Based on the mandate contained in Section 207 of the Telecommunications Act of 1996 and the rules proposed by the FCC, concerns about architectural control are significant. The rules promulgated by the FCC should place the burden on the individual who wishes to install these reception devices to demonstrate that these devices cannot be located in such a place without violating the existing architectural standards or deed restrictions because his or her ability to receive video programming services would be impaired, then the owner must be required to place the reception device in the least apparent location within his or her property.

These are reasonable requests which would balance the interests of implementing Section 207 and maintaining, to the greatest degree possible, the architectural standards and the integrity of the community or condominium association.

Please present our concerns to the FCC along with the comments filed by CAI.

Yours very truly,

CAPITAL CONSULTANTS MANAGEMENT CORPORATION


Dodie Slama, AMS
Property Supervisor

STOREY ARMSTRONG STEGER & MARTIN

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

4800 FOUNTAIN PLACE

1445 ROSS AVENUE

DALLAS, TEXAS 75202-2782

TELEPHONE (214) 855-8800

FACSIMILE (214) 855-8853

May 1, 1996

VIA FACSIMILE 703-684-1581

**Ms. Becky Vensel
Community Associations Institute
Legislative Action Committee Coordinator
1630 Duke Street
Alexandria, Virginia 22314**

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Yours very truly,

STOREY ARMSTRONG STEGER & MARTIN
a Professional Corporation

By


Judd A. Austin, Jr.

\jc

CMA

May 1, 1996

VIA FACSIMILE 703 - 684-1581

Ms. Becky Vensel
Community Associations Institute
Legislative Action Committee Coordinator
1630 Duke Street
Alexandria, Virginia 22314

Re: FCC/Telecommunications Act of 1996
CS Docket No.: 96-83, FCC 96-151

Dear Ms. Vensel:

The undersigned is the President for RTI/Community Management Associates, Inc., a property management company in Texas. Our firm represents numerous single family homeowner associations in the North Texas area. As such, our concerns expressed to you in this letter are shared by many of the individuals who are members of the homeowner associations we manage.

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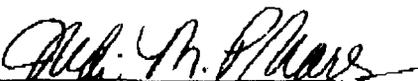
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These are reasonable requests which would balance the interest of implementing Section 207 and maintaining, to the greatest degree possible, the architectural standards and the integrity of the community.

Please present our concerns to the FCC along with the comments filed by CAI.

Yours very truly,


Judi M. Phares, PCAM®
President, CMA



MONTGOMERY VILLAGE FOUNDATION, INC.

10120 APPLE RIDGE ROAD
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(301) 948-0110 FAX (301) 990-7071

May 2, 1996

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Dear Sir/Madam:

Thank you for the opportunity to comment on FCC# 96-83, the proposed rule regarding nongovernmental restrictions on television broadcast signals (TVBS) and multichannel multipoint distribution service (MMDS) to Section 25.104 of Title 47 of the Code of Federal Regulations. Briefly, this proposal would render unenforceable any restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction which impairs a viewer's ability to receive video programming services from over-the-air television broadcast or multichannel multipoint distribution service.

The Montgomery Village Foundation is among the largest homeowners associations in the State of Maryland, with over 34,000 residents. Developed on the planned community model, Montgomery Village consists of 10,000 units represented on the neighborhood level by 20 sub-associations.

In submitting our comments, we note that the FCC proposes to adopt a rule allowing local governments to regulate on the basis of health and safety matters. We ask the FCC to modify the proposed rule in a manner which recognizes the legitimate interests of community associations in regulating health and safety matters, as well as maintaining property values through proper and reasonable emphasis on community aesthetics.

Specifically, we request that the FCC recognize the legitimate interest of community associations in health and safety concerns and accord community associations the same status as local government by deleting the paragraph (c) and adding the phrase "restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction" to the paragraphs (a) and (b) of the proposed rule.

In recommending the above, we make the following points:

1. Congress does not make a distinction between governmental and nongovernmental restrictions. We ask the FCC to do the same.
2. We ask that Congress' intent to ensure the viewer's ability to receive video programming be interpreted as pertaining to an individual's private property only.
3. We ask the FCC to reconsider the prohibition on regulations based on reasonable aesthetic concerns.

No Distinction Made By Congress

Congress, in enacting Section 207 of the Telecommunications Act, did not in any way, distinguish between state and local governments versus homeowner associations. In fact, the legislative history clearly indicates that Congress intended these entities and their respective enforcement mechanisms to be treated the same. The pertinent House Committee report on this legislation clearly indicates this intent.

"Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section." ¹

In controlling the placement and use of antenna systems, the homeowner associations perform exactly the same function as state and local governments, admittedly through different mechanisms: state and local governments under their police powers versus homeowner associations through private covenants and deed restrictions. For the purposes of FCC rulemaking in this area, we submit that the nature of this authority is irrelevant.

Clearly, in drafting the proposed rule, the FCC has made a distinction between local government and community associations in regulating antenna placement by holding that community association restrictions are based foremost on aesthetic considerations while local government restrictions are based on health and safety. On the basis of this assumption alone, the FCC concludes community association regulations could be accorded less deference. We ask that you reconsider this assumption.

HOA's Have a Legitimate Interest in Health and Safety Matters

Similar to state and local governments, community associations have always had a legitimate interest in matters of "health and safety." These very words are reflected in association documents

¹ House of Representatives Report No. 104-204, p. 123-124 (1995).

and rules which routinely provide for the regulation or participation in such matters. Attachment 1 is an excerpt from the Articles of Incorporation of the Montgomery Village Foundation, Inc. which clearly states that, among other purposes, the corporation was formed to "promote the health, safety and welfare" of Village residents. Further, the documents empower the corporation to engage in the provision of basic "health and safety" functions: "to provide such facilities and services in connection therewith as permitted by law and including, but not limited to...garbage and trash collection, fire and police protection, maintenance of unkempt land...and other supplemental municipal services."

Paragraph (c) of the FCC's current proposal would call into question an association's ability to enact and enforce rules relating to the placement, professional installation, and routine maintenance and upkeep of antennas. Also at question would be rules relating to the removal of obsolete equipment and restoration of property.

It is our understanding that MMDS antennas can be either roof mounted or installed on towers, and can vary greatly in height and configuration. The FCC has asked for comment on whether distinctions based on size and height are justified. We submit that these distinctions are both justified and necessary. Attachment 2 contains two photographs of a four-antenna array on a home located in a residential zone, with neighboring homes less than 25 feet way.

While these photographs do not depict a MMDS antenna, they do provide a visual example of the likely consequences of the FCC's proposed rule. Clearly, restrictions to limit the size of "masts" or towers in residential neighborhoods are appropriate.

Community associations must be able to enforce reasonable covenants and rules to protect their members from the safety risks posed by oversized antennas and shoddy installation or maintenance.

Private Property Issues

Certain housing styles will, by their very nature, adversely impact a homeowner's ability to receive telecommunication signals. Many questions arise about FCC interpretation of its rule prohibiting restrictions which impair a viewer's ability to receive video signals. For example, while it is clear under the proposed rule that owners have the right to place TVBS and MMDS antennas on their own property,

- ▶ does this right extend to property owned *in common*, such as the exterior and grounds of condominium buildings?

- ▶ does this right extend to property owned *by others*, as is the case with apartment buildings and certain tri-plex or piggy-back townhouse styles?

We ask for clarification that the ability of a viewer to receive unimpaired video transmissions does not extend beyond the confines of the viewer's privately owned property. If this is considered too narrow an interpretation of Congress' intent, we ask for the following clarification:

►When unimpaired reception can only be accomplished through use of property owned in common, the association must be allowed to determine the method of providing access most suitable to the situation.

Property Values and Aesthetic Considerations

In April, the National League of Cities and dozens of municipal associations from around the country provided comment to the FCC regarding its preemption of local zoning regulation of satellite earth stations. The organizations opposed the FCC's rule arguing that aesthetics are a valid concern for our nation's neighborhoods and communities. They note that one-meter satellite dishes (over 3 feet wide) are obtrusive. We agree. We also believe that TV and MMDS antennas are equally obtrusive when unregulated and will cause a decline in property values based on aesthetics and perhaps safety.

As one example, the FCC should consider the impact of unfettered proliferation of antennas on historic areas. Is it truly Congress' intent to see antennas prominently installed on the roofs or facades of historic register homes? The concern over aesthetics is no less important to the homeowners who choose to live in community associations than it is to our nation's mayors and preservationists.

We ask that the FCC reconsider its hard-line stance on the value of aesthetics with regard to both governmental and nongovernmental regulation. We ask that the proposed rule be modified to eliminate the presumptive unreasonableness of all aesthetic considerations and allow for ordinances, covenants and rules which fairly regulate the placement and size of antennas to minimize their adverse impact on the community.

In conclusion, we ask that the FCC accord community associations the same status in regulating this matter as is accorded local and state governments. We ask the FCC to recognize the legitimate role of community associations in regulating health and safety concerns which are unique to planned community living. We ask the FCC to clarify the private property issues involved and address the right of viewers to place equipment on property which they do not own. Finally, we ask the FCC to reconsider its stance on the use of reasonable aesthetic factors in regulating the placement of antennas.