

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION**

The Consumer Electronics Manufacturers Association ("CEMA"), a sector of the Electronic Industries Association, hereby replies to the comments that were filed in response to the Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-captioned proceeding on April 15, 1996.¹ As set forth below, the record of this proceeding demonstrates the need for strong, straightforward rules that prohibit local governments and private entities from restricting the ability of consumers' to utilize Direct Broadcast Satellite ("DBS") antennas. The Commission should therefore modify Section 25.104 of its rules as CEMA and other commenters have proposed. These modifications will better effectuate the clear intent of Congress as expressed in Section 207 of the Telecommunications Act of 1996.²

¹ See *Preemption of Local Zoning Regulation of Satellite Earth Stations*, Report and Order/Further Notice of Proposed Rulemaking, FCC 96-78, IB Docket No. 95-59, DA 91-577, 45-DSS-MISC-93 (released Mar. 11, 1996).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 114 (1996) [hereinafter the "Telecommunications Act"].

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I. THE COMMISSION SHOULD STRENGTHEN AND SIMPLIFY ITS RULES TO PROHIBIT RESTRICTIONS ON THE INSTALLATION AND USE OF DBS ANTENNAS

Under Section 25.104 of the Commission's rules, local government restrictions on DBS and other small satellite antennas are presumptively preempted; local governments, however, can rebut the presumption with narrowly tailored health and safety regulations, or they can seek a waiver of the preemption for "unique" circumstances.³ In the *Further Notice*, the Commission has inquired whether Section 207 of the Telecommunications Act requires any modification of this recently adopted rule, and its extension to purely private restrictions on the use of DBS receive-only antennas.⁴

In its comments, CEMA urged the Commission to eliminate the rebuttable presumption and allow local governments to seek relief through its waiver procedures; to apply the preemption rule, as modified, to DBS antennas of all sizes; to clarify that private entities have the burden of showing that their restrictions do not impair access to DBS service; and to ensure that the DBS preemption rule is consistent with the rule eventually adopted in the Commission's concurrent proceeding, CS Docket No. 96-83 (concerning local government and private restrictions on television broadcast and multichannel multipoint distribution service ("MMDS") antennas).

³ *Further Notice* at Appendix II.

⁴ Section 207 directs the Commission to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." Telecommunications Act, 110 Stat. at 114.

The comments reflect widespread agreement that the Telecommunications Act requires the Commission to reexamine its rule. In particular, parties representing DBS interests uniformly agree that, to implement Section 207 properly, the Commission must ensure that consumers *throughout the Nation* can readily install and use receive-only antennas, without regard to whether they are used to receive DBS, television broadcast, or MMDS programming.⁵ As their comments make clear, these parties are intimately familiar with the difficulties which local government and private restrictions have created for consumers.

Like CEMA, these parties have urged the Commission to eliminate the rebuttable presumption of preemption and, instead, allow local governments to petition the Commission for a waiver, in specific cases, where narrowly tailored restrictions on DBS antennas can be shown to warrant such relief.⁶ The commenters point out that, as currently written, Section 25.104 will not provide consumers with true, nationwide relief because the rule will encourage local governments to pursue relief in local courts, where they will attempt to rebut the presumption of preemption.⁷ Inevitably, this process will exacerbate consumer confusion and frustration by creating a patchwork quilt of local rules, despite Congress' intent to alleviate that confusion and frustration.

⁵ See, e.g., Further Comments of Satellite Broadcasting and Communications Ass'n of America, IB Docket No. 95-59, at 7-8 (Apr. 15, 1996) [hereinafter "SBCA Comments"].

⁶ See, e.g., SBCA Comments at 10-13; Comments of United States Satellite Broadcasting Company, Inc., IB Docket No. 95-59, at 2 (Apr. 15, 1996).

⁷ See Comments of DIRECTV, Inc., IB Docket No. 95-59, at 10 (Apr. 15, 1996).

In addition, the DBS commenters have offered two further, practical steps to promote Congress' goals. First, they have urged the Commission to clarify that, in considering requests for waivers, it will expeditiously conduct brief and unburdensome "paper" proceedings.⁸ Second, the Commission should make clear that, if a waiver is granted, consumers that are in violation of the local rule will have at least 30 days to come into compliance and can not be subjected to retroactive penalties.⁹ CEMA endorses both of these recommendations. The two measures will help alleviate the chilling effect which fear of local government action may have on consumers as they consider their over-the-air video options.

The DBS commenters, as well as several consumers, also have urged the Commission to adopt its proposed *per se* prohibition of private restrictions on the use of DBS antennas. As these parties correctly note, private restrictions present the same impediments to enjoying this new, innovative technology as local government restrictions.¹⁰ If the Commission is to achieve Congress' goal of creating parity among over-the-air reception devices, the Commission must prohibit private entities from impairing consumer access to DBS antennas.

⁸ See, e.g., SBCA Comments at 27-29.

⁹ See, e.g., Comments of Primestar Partners, L.P., IB Docket No. 95-59, at 14 (Apr. 15, 1996).

¹⁰ See Comments of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc., IB Docket No. 95-59, at 3-5 (Apr. 15, 1996); Comments of National Rural Telecommunications Cooperative, IB Docket No. 95-59, at 5-6 (Apr. 15, 1996). See also Letter of Dr. Roop L. Jindal to the Secretary, IB Docket No. 95-59 (Apr. 9, 1996); Letter of Brad Wheeler to the Secretary, IB Docket No. 95-59 (Apr. 11, 1996); Letter of Mr. and Mrs. Jacob A. Saylor to the Secretary, IB Docket No. 95-59 (Apr. 11, 1996).

In correspondence produced by an obvious letter-writing campaign, as well as in a few lengthier comments, home owner associations and building managers have argued that the Commission's proposed prohibition on private restrictions would do everything from rewrite local building codes to unlawfully expose the federal government to liability for taking property without compensation.¹¹ CEMA understands that these allegations will be rebutted by other parties in their reply comments and, as a consequence, will not be addressed here. Suffice it to say that Congress has spoken with respect to both local government *and* private restrictions on the use of DBS antennas. It has confirmed that consumer freedom to employ over-the-air receive devices is a national goal. The Commission's final rules implementing this statute therefore should reflect the letter and spirit of this mandate.

¹¹ See, e.g., Joint Comments of National Apartment Association *et al.*, IB Docket No. 95-59, at 7-9 & 17-18 (Apr. 15, 1996).

II. CONCLUSION

For all of the reasons set forth above and in CEMA's initial comments, the Commission should modify its rules to eliminate the rebuttable presumption with regard to local government restrictions; to ensure its procedures for handling waiver requests are expeditious and minimally burdensome for *all* owners of DBS antennas; and to ensure private restrictions do not frustrate Congress' intent that consumers be able to readily access competing over-the-air video services.

Respectfully submitted,

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