

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter Of)
)
Implementation of Section 207 of the)
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air)
Reception Devices: Television Broadcast)
and Multichannel Multipoint Distribution)
Service)

CS Docket No. 96-83

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

In initial comments filed in this proceeding in response to the Commission's *Notice*,¹ the National Association of Broadcasters ("NAB")² lent its support to the adoption of regulations that will implement the will of Congress, as set forth in Section 207 of the Telecommunications Act of 1996.³ Here NAB urged adoption of FCC regulations that will preempt local zoning and other state/local regulation, as well as private restrictive covenants, ordinances, etc. which, using the language of the statute, "impair" the viewer's ability to employ an outdoor antenna capable of receiving the signals of over-the-air, terrestrial television broadcast stations.

¹ *Notice of Proposed Rule Making ("Notice")* in CS Docket No. 96-83, FCC 96-151, released April 4, 1996.

² NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and major broadcast networks.

³ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 114 (1996).

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In other initial comments submitted in this proceeding, various parties also have urged Commission adoption of rules to implement the statute.⁴ However, other commenters have taken a different view. These parties largely consist of local governments, homeowners associations and residential building owners.

Some of these parties opposing the Commission's adoption of rules to implement the statute argue that the Commission simply should not -- or that the FCC does not have the authority to -- adopt preemption rules.⁵ But, the Commission has no discretion *not* to adopt such rules. The Congressional directive must be followed -- and by August 8, 1996.⁶

Other arguments employed by these opponents, particularly those representing "private" organizations, include those based on the theories: (1) that the FCC cannot adopt preemption rules because they would alter restrictive covenants, which, they contend, only may be altered by the majority vote of the members of the community association involved; (2) that the Congress did not expressly intend to override private covenants; and (3) that the "free market" in residential housing will ensure reception of television programming. Obviously, these arguments are unavailing in view of the clear Congressional intent to preempt such covenants, etc., where they "impair" viewers' ability to construct and use and outdoor television antennas. Moreover, and to the extent that

⁴ See, e.g., Comments of the Network Affiliated Stations Alliance, filed May 6, 1996; Comments of the Association for Maximum Service Television, filed May 6, 1996; Comments of the American Radio Relay League, filed May 6, 1996; Comments of the Wireless Cable Association, filed May 6, 1996; and the Joint Comments of the Public Broadcasting Service and the Association of America's Public Television Stations, filed May 6, 1996.

⁵ See, e.g., Comments of National League of Cities, filed May 6, 1996; and Comments of National Trust for Historic Preservation, filed May 6, 1996.

⁶ The Telecommunications Act of 1996 was signed into law by President Clinton on February 8, 1996. It set an 180-day deadline for, *inter alia*, the adoption of the preemption rules contemplated in Section 207.

these commenting parties opine on the availability of television programming to viewers, they either fail to comprehend the need for full competition among the various sources of such programming -- including over-the-air television stations, MMDS systems, cable system, DBS operations, MATV and SMATV systems, etc. -- or choose not to acknowledge their private interests in some of these video distribution systems, such as municipalities' collection of franchise fees from cable operations and building owners' operation and control of MATV and SMATV systems.

Again, the Commission has received its Congressional mandate and must act in a consistent manner within the next 11 weeks. While NAB acknowledges the many local governmental and private parties that wish to ignore that reality, the reality nonetheless exists and the Commission must act.

On the other hand, it is clear that the Commission can accept and consider "waiver requests" from municipalities and other governmental units that feel they are capable of showing either "special circumstances" or that the particular regulation, ordinance, etc., does not impair viewers' construction and use of outdoor television antennas.⁷ However, the burden of persuasion clearly will fall on the zoning board, municipality or other governmental organization, not on the viewing consumer.

⁷ However, and as spelled out in the legislative history of the Telecommunications Act of 1996, no such waiver opportunity shall be extended to private, non-governmental organizations seeking to adopt or enforce ordinances, covenants, etc. which impair outdoor television antenna use. *See Comments of NAB, supra*, at 5-6, for a discussion of how the Congressional *Conference Report* has rejected the notion of granting waivers to such private institutions and organizations.

CONCLUSION

For the reasons stated above, in NAB's initial comments and in the initial comments of other parties supporting federal preemption responsive to the Congressional directive embodied in Section 207 of the Telecommunications Act of 1996, we urge the Commission to move swiftly in its adoption of regulations that will preempt those local zoning ordinances, private homeowners' covenants and other government and private restrictions that impair the ability of the viewing public to employ an outdoor antenna to receive the signals of over-the-air, terrestrial television stations. Though several parties have filed comments recommending other courses of action -- or inaction -- their arguments are unavailing and cannot stand in the way of the FCC acting promptly, and in response to the clear Congressional mandate.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

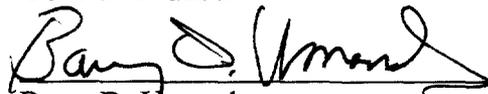
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