

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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

CS Docket No. 96-83

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To the Commission:

**REPLY COMMENTS OF**  
**MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES CONSISTING OF:**

**Michigan:** City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, Baldwin Township, City of Battle Creek, City of Birmingham, Caledonia Township, Village of Chelsea, City of Coldwater, Coldwater Township, City of East Tawas, City of Escanaba, City of Ferndale, Georgetown Charter Township, Harrison Township, Holland Township, City of Ishpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Saline, City of Southfield, City of Wyoming, Zeeland Charter Township

**Illinois:** Illinois Chapter of NATOA, City of Chicago Heights, Village of Mount Prospect, Village of Skokie

**Texas:** City of Fort Worth, City of Arlington, City of Coppell, City of Flower Mound, City of Grand Prairie, City of Hurst, City of Kennedale, City of Longview, City of Louisville, City of Plano, City of University Park

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TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION .....	1
A. MIT Communities and Their Interest In This Matter. ....	1
II. REPLY COMMENTS. ....	2
A. Other Comments. ....	2
B. Building Codes. ....	3
C. Towers. ....	5
D. Building Codes Generally. ....	7
III. CONCLUSION. ....	8

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**MICHIGAN, ILLINOIS AND TEXAS COMMUNITIES CONSISTING OF:**

**I. INTRODUCTION**

**A. MIT Communities and Their Interest In This Matter.**

Michigan, Illinois and Texas communities (“MIT Communities”) submit these Reply Comments on behalf of the 42 communities and their approximately two million residents from three states as follows:

From Michigan, 28 communities;<sup>1</sup> from Illinois, 3 communities <sup>2</sup> plus the Illinois Chapter of the National Association of Telecommunications Officers and Advisors (NATOA); and from

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<sup>1</sup>City of Detroit, City of Grand Rapids, Ada Township, Alpine Township, Baldwin Township, City of Battle Creek, City of Birmingham, Caledonia Township, Village of Chelsea, City of Coldwater, Coldwater Township, City of East Tawas, City of Escanaba, City of Ferndale, Georgetown Charter Township, Harrison Township, Holland Township, City of Ishpeming, City of Kentwood, City of Livonia, City of Marquette, City of Plainwell, Richmond Township, Robinson Township, City of Saline, City of Southfield, City of Wyoming, Zeeland Charter Township

<sup>2</sup>Illinois Chapter of NATOA, City of Chicago Heights, Village of Mount Prospect, Village of Skokie

Texas, 11 communities.<sup>3</sup> Each of these municipalities has adopted zoning, building and land use codes which, among other things, affect or may affect TV and MMDS antennas in order to provide for orderly development within their community, protect the public health and safety, and regulate the use of property in the public interest. The Illinois Chapter of NATOA informs and participates in legislative, judicial, regulatory and technical developments that impact local governments on cable and telecommunications matters. Its membership includes municipal officials actively involved in and responsible for cable and telecommunications matters throughout the state of Illinois.

## **II. REPLY COMMENTS.**

### **A. Other Comments.**

The Commission's Notice of Proposed Rulemaking in this matter stated that it will consider comments received in the companion case relating to satellite antennas, IB Docket 95-59. MIT Communities thus do not repeat here the points made by them in their Opposition submitted concurrently in the satellite dish rulemaking.

MIT Communities simply note that they support the positions set forth by the City of Dallas and the National League of Cities et. al. in this docket that there is no evidence of any problem requiring Commission action, that the Commission's action exceeds that required or allowed by the statute; and that the Commission's action, proposed rule is unconstitutional under the recent U.S. Supreme Court Lopez case.

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<sup>3</sup>City of Fort Worth, City of Arlington, City of Coppell, City of Flower Mound, City of Grand Prairie, City of Hurst, City of Kennedale, City of Longview, City of Louisville, City of Plano, City of University Park

## **B. Building Codes.**

Several commenters have suggested changes in the Commission's rule which are patently and obviously unsafe, most notably those of Bell South (and others) stating that there can be no limit on the height of the supporting mast or tower for a TV or MMDS antenna. Bell South Comments at page 5, Consumer Electronics Manufacturers Association comments at pages 5-6. This approach is implicit also in the suggestion of several commenters that the Commission can make a presumption -- rebuttable or irrebuttable -- against all local restrictions affecting a TV and satellite antennas.

Such comments ignore the safety requirements applicable to TV antennas and towers. It is obvious that the commenters have elected not to bring them to the Commission's attention. These Reply Comments will correct that.

All States and municipalities have building codes. The most widely used building code is that promulgated by the Building Officials and Code Administrators International, Inc. commonly known as the BOCA Building Code. The principal provisions from the 1996 edition of that code relating to television antennas are sections 3109.1 and 3109.2

**“3109.1 Permits not required:** A building permit is not required for roof installation of antennal structures not more than 12 feet (3658 mm) in height for private radio or television reception. Such a structure shall not be erected so as to injure the roof covering, and when removed from the roof, the roof covering shall be repaired to maintain weather and water tightness. The installation of any antennal structure mounted on the roof of a building shall not be erected nearer to the *lot line* than the total height of the antennal structure above the roof, nor shall such structure be erected near electric power lines or encroach upon any street or other public space.

**“3109.2 Permits required:** Approval shall be secured for all roof-mounted antennal structures more than 12 feet (3658 mm) in height above the roof. The application shall be accompanied by detailed

**drawings of the structure and methods of anchorage. All connections to the roof structure shall be properly flashed to maintain water tightness. The design and materials of construction shall comply with the requirements of Section 3108.3 for character, quality and minimum dimension.”**

**As is apparent, the preceding restrictions are aimed solely at protecting the public health and safety. This is no surprise because since 1915 the Building Officials and Code Administrators International (a non-profit organization) has developed professional codes (building, plumbing, wiring and the like) that protect the public health, safety and welfare. Its membership includes both regulatory officials and a wide variety of private sector building and construction professionals, all of whom participate in the developing of these codes.**

**The result is that the BOCA codes are not only the oldest building codes in the United States, they are also the ones most widely utilized and adopted by this nation’s municipalities.**

**As has been set forth in the submittals of municipalities in this and the satellite dish rulemaking, MIT Communities believe that the 1996 Act only authorizes this Commission to address situations which “prohibit” antennas of the type in question. Industry representatives contend that the Commission’s power extends to local regulations which may “impair” such antennas. MIT Communities submit that under either standard, the BOCA Building Code sections set forth above are permissible and should be expressly recognized by this Commission as being appropriate under whatever rules it adopts.**

**Thus, even under the “impair” standard, Congress clearly intended this Commission to consider other interests, such as safety or intrusion on the property of others. In this regard, MIT Communities do not believe there can be any objection to the provisions of the preceding rules that among other things:**

- Do not require any permit for roof antennas less than 12 feet high;
- Require that the roof covering and its water and weather integrity not be affected;
- Require antennas to be erected no nearer to the lot line than the total height of the antenna (a safety related consideration to ensure that if the antenna collapses, it does not collapse onto adjoining buildings);
- Prohibit antennas from being erected near electric power lines (which could kill the person erecting the antenna);
- Require antennas to be erected without encroaching on any street or other public property.

The industry commenters have not objected to any of the preceding provisions (nor those relating to towers, discussed next) even though these code provisions have been utilized in most of the nation's municipalities for more than a decade. The obvious conclusion is that these safety-oriented provisions have not impaired TV (or MMDS) antennas. The general and bland statements of the industry to the effect that "local regulations should be overridden" thus should not apply to the provisions set forth above (or below) and the Commission should so state.

### **C. Towers.**

Similarly, many of the industry commenters appear to include not just antennas, but towers as well. Set forth below are the provisions from the 1996 BOCA Building Code relating to radio and television towers.

**"3108.1 General:** Subject to the structural provisions of Section 1609.0 for *wind loads* and the requirements of Section 1510.0 governing the fire resistance ratings of buildings for the support of roof structures, all radio and television towers shall be designed and constructed as herein provided.

**“3108.2 Location and access:** Towers shall be located and equipped with step bolts and ladders so as to provide ready access for inspection purposes. Guy wires or other accessories shall not cross or encroach upon any street or other public space, or over any electric power lines, or encroach upon any other privately owned property without *written* consent of the owner.

**“3108.3 Construction:** All towers shall be constructed of approved corrosion-resistant noncombustible material. The minimum type of construction of isolated radio towers not more than 100 feet (30480 mm) in height shall be Type 4.

**“3108.4 Loads:** Towers shall be designed to resist *wind loads* in accordance with EIA/TIA 222-E listed in Chapter 35. Consideration shall be given to conditions involving *wind load* on ice-covered sections in localities subject to sustained freezing temperatures.

**“3108.4.1 Dead load:** Towers shall be designed for the *dead load* plus the *ice load* in regions where ice formation occurs.

**“3108.4.2 Uplift:** Adequate foundations and anchorage shall be provided to resist two times the calculated wind uplift.

**“3108.5 Grounding:** All towers shall be permanently and effectively grounded.”

MIT Communities submit that for the same types of reasons the preceding safety oriented provisions of the 1996 BOCA Building Code should be expressly recognized by this Commission as being valid under whatever rules it may adopt. In this regard, for example, there can be no legitimate objection to such issues as:

- Wind loading, including both dead load and, where applicable, ice loading
- Fire resistance ratings
- Ready access for inspection
- Guy wires not encroaching on streets, power lines or the private property of third persons

- Corrosion resistance
- Uplift requirements for anchorages
- Effective grounding of the towers

**D. Building Codes Generally.**

The preceding illustrates a more general point: In both the satellite dish rulemaking and this rulemaking, the Commission has impermissibly ignored or confused building (and electric and fire) codes with zoning and land use codes. As is apparent from the preceding (which are the principal sections of the 1996 BOCA code affecting radio antennas and towers), building codes are totally different from zoning and land use codes.

Thus this Commission must recognize this difference and treat building, electric and fire codes totally separately from zoning and land use codes. The former types of codes should not in any way be preempted by this Commission so as to not adversely affect the safety of the public and of this nation's buildings.

**III. CONCLUSION.**

For the reasons set forth above, MIT Communities respectfully suggest that the Commission's proposed rule be changed as set forth above.

Respectfully submitted,

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May 20, 1996

  
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