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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 21, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: IB Docket No. 95-59
Preemption of Local Zoning Regulation of Satellite Earth
Stations

Dear Mr. Caton:

Transmitted herewith, on behalf of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. is an original and 11 copies of their Opposition to Petitions for Reconsideration in the above-referenced docket.

If you have any questions concerning this matter, please let me know.

Sincerely,

Lawrence R. Sidman

Lawrence R. Sidman

Counsel for Philips
Electronics North America
Corporation and Thomson
Consumer Electronics, Inc.

Enclosures

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

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OFFICE OF SECRETARY

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

**OPPOSITION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION
AND THOMSON CONSUMER ELECTRONICS, INC.
TO PETITIONS FOR RECONSIDERATION**

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May 21, 1996

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

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**OPPOSITION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION
AND THOMSON CONSUMER ELECTRONICS, INC.
TO PETITIONS FOR RECONSIDERATION**

Pursuant to § 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") submit their opposition to the petitions for reconsideration filed by the National League of Cities, et al., the City of Dallas, et al., the County of Boulder, and the Florida League of Cities, Inc. in the above-captioned proceeding to revise the rules regarding preemption of local zoning regulation of satellite earth stations. The petitioners will be referred to collectively as "Local Government Petitioners."

Contrary to the arguments of the Local Government Petitioners, the Commission's adoption of rules preempting local zoning regulation of satellite antennas was well within its statutory authority. In addition to its existing general authority to regulate the direct-to-home (DTH) satellite industry^{1/}, Congress recently enacted new statutory authority

^{1/} 47 U.S.C. § 303.

that clarifies the Federal Communications Commission's jurisdiction. Section 205 of the Telecommunications Act of 1996 gives the Commission exclusive jurisdiction to regulate the provision of direct-to-home satellite services.^{2/} The legislative history of this section provides that federal jurisdiction over the DTH industry will ensure a "unified, national system of rules" reflecting the interstate nature of the service.^{3/} The Commission acted clearly within its authority when it exercised its federal jurisdiction to preempt local zoning regulation of DTH antennas.

With regard specifically to DBS antennas, Congress also enacted Section 207 of the Telecommunications Act of 1996^{4/} to mandate that the Commission preempt local zoning regulations and other governmental barriers to DBS antennas. Section 207 provides unambiguous direction to the Commission to prohibit all restrictions that "impair a viewer's ability to receive video programming services" through DBS antennas.^{5/} The legislative

^{2/} Telecommunications Act of 1996, § 205, 110 Stat. 56, 114 (1996). DTH services are defined as "the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving equipment, except at the subscriber's premises or in the uplink process to the satellite." *Id.* Direct broadcast satellite (DBS) services are encompassed within the definition of DTH services.

^{3/} H.R. Rep. No. 204, 104th Cong., 1st Sess. 123 (1996).

^{4/} Telecommunications Act of 1996, § 207, 110 Stat. at 144.

^{5/} *Id.*

history of this section states, in pertinent part:

The Committee intends this section to **preempt enforcement of State or local statutes and regulations, or State or local legal requirements**, or restrictive covenants or encumbrances that prevent the use of antennae designed for off-the-air reception of television broadcast signals or of satellite receivers designed for receipt of DBS services. **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.**^{6/}

In fact, Philips and Thomson believe that with regard to direct broadcast satellite (DBS) antennas, the current rule falls short of the statutory directive given the Commission in Section 207 of the newly enacted Telecommunications Act of 1996 and must be strengthened. Philips' and Thomson's position with regard to a simple, unequivocal preemption for DBS antennas is appropriately set forth in its comments and reply comments to the Further Notice in this docket.

Conclusion

The Local Government Petitioners' arguments that the Commission's preemption rules exceed its statutory authority are clearly specious in the face of the clear statutory authority that Congress has given the Commission to exercise exclusive jurisdiction over the DTH industry, and specifically, to preempt local zoning regulation of DBS antennas. The Commission should

^{6/} H. R. Rep. No. 204, 104th Cong., 1st Sess. 123-24 (1995) (emphasis added).

deny the petitions for reconsideration filed by the Local
Government Petitioners.

Respectfully submitted,
PHILIPS ELECTRONICS N.A.
THOMSON CONSUMER ELECTRONICS

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Dated: May 21, 1996

CERTIFICATE OF SERVICE

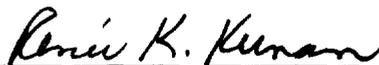
I, Renee K. Kernan, a secretary in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, hereby certifies that I have this date sent copies of the foregoing "Opposition of Philips Electronics North American Corporation and Thomson Consumer Electronics, Inc. to Petition for Reconsideration" to the following by First Class United States mail, postage prepaid:

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Dated: May 21, 1996