

LAW OFFICES
FROMBERG, FROMBERG, LEWIS & BRECKER, P.A.
A PROFESSIONAL ASSOCIATION
AVENTURA CORPORATE CENTER, SUITE 505
20801 BISCAYNE BOULEVARD
AVENTURA, FLORIDA 33180-1422

JEFFREY R. MAZOR

RECEIVED

TELEPHONE (305) 933-2000

TELEFAX (305) 936-0101

April 10, 1996

MAY 13 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

Re: Preemption of Nongovernmental Restrictions on Satellite Earth Stations,
IB Docket No.95-59

Dear Mr. Caton:

We write in response to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of nongovernmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter, in addition to this original.

We represent clients in the commercial and residential real estate business - clients who in together represent millions of square feet of commercial property, and tens of thousands of residential units.

Our clients have invested their hearts, souls and fortunes into properties ranging from 50-story office buildings, and hundreds of thousands of square feet of industrial and retail space, and 10,000+ residential portfolios, to one-story office buildings, small industrial and strip shopping centers, and four-unit apartment buildings. Many of our client's projects fall within the definition of a "small business", i.e., one with an annual gross revenue of under \$5,000,000 per year.

Property Rights

Our clients have certain property rights, rights which induced them into investing millions of dollars in their various projects, and rights which must be protected if we are to continue to have a reliable and predictable market, and legal environment that will encourage private investment and entrepreneurial efforts, and not discourage it. It is imperative that our clients retain the authority to control the use of their property, for several reasons.

We are concerned that the proposed rule prohibiting enforcement of nongovernmental restrictions will adversely affect our clients, and needlessly raise additional legal issues. We question whether the Commission has the authority to require our clients to allow the physical invasion of their property in this way.

CLDVCATO.AB2

No. of Copies rec'd _____
List A B C D E

0

Marketability

The FNPRM incorrectly states that "nongovernmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic consideration trivial -- the appearance of a building directly affects its value to the business and general community, and therefor its marketability.

People generally prefer to live and work in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of units would not be appealing to present and future tenants. Thus, aesthetic considerations are actually economic considerations.

Structural and Safety Conditions

The indiscriminate placement of antennas on the exterior of our clients' buildings can also create serious structural hazards. For instance, there will be structural strain created by the weight and wind resistance of antennas installed on balcony railings. Exterior wall-mounted antennas will require drilled holes, create opportunities for water seepage into the structure, structural deficiencies, corrosion of metal mountings, and weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities can create serious safety hazards to neighbors and passersby, and new maintenance and repair costs that our clients will have to pay.

Tenant Frustration

The technical limitations of satellite technology will create management problems because there is no way to guarantee that all tenants will be able to receive all services. For example, when tenants on the south side of a building cannot receive the signals that tenants on the north side can, because there is no place to position an antenna to receive the signal, our clients will have to deal with the complaints. They will be powerless to change the laws of physics to satisfy the tenants, and they will suffer increased costs as angry tenants and tenants place additional demands on management or move to other buildings.

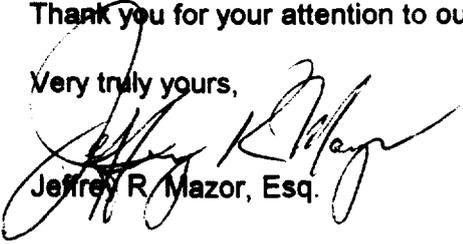
Conclusion

The American free enterprise system and open competition and market forces have served us well for hundreds of years, and taken us from the era of the town crier to the dawn of a space-based information age. Our client are perfectly capable of responding to their tenants' requirements in a free system that requires them to develop the means to balance all the competing business and market forces.

We urge the FCC to avoid interfering in our clients' business relationships with their tenants. All of the potential problems we cite will affect their our bottom line and their property rights.

Thank you for your attention to our concerns.

Very truly yours,


Jeffrey R. Mazor, Esq.

CLDVCATO.AB2

LAW OFFICES
Fromberg, Fromberg, Lewis & Brecker, P.A.

A PROFESSIONAL ASSOCIATION
AVENTURA CORPORATE CENTER, SUITE 505
20801 BISCAYNE BOULEVARD
MIAMI, FLORIDA 33180-1422

RECEIVED

MAY 13 1996

TELEPHONE: (305) 933-2000

TELEFAX: (305) 936-0101

JEFFREY R. MAZOR

FCC MAIL ROOM

May 7, 1996

Don Elliott
Regional Manager
Berkshire Properties
6310 NE 19th Avenue
Ft. Lauderdale, FL 33308

Dear Don:

I thought that you might find the following interesting. Also, we will move shortly and will provide you with our new address and phone numbers.

We will do a seminar entitled **"Protecting the Real Estate Commission"** for the Miami Commercial Society of Realtors starting at 8:30 a.m. on May 15th. This is an ideal educational opportunity for both brokers and for those who retain brokers in commercial sales and leasing transactions. We will also co-chair a two part seminar on **"Commercial Leasing and Management"** for the Miami Commercial Society of Realtors in the fall. For details, please contact Debra Spadafora at 854-2050.

We are looking into the possibility of doing another **"Residential Landlord-Tenant Law"** seminar for our clients and others. Please let us know if you would be interested.

Don, there is one other item that may be of interest. New satellite dish technology is generating new opportunities and new problems. For example, the Federal Communications Commission (FCC) has already preempted the ability of local governments to use zoning laws to prohibit the placement of satellite dishes one meter or smaller. Now, it has "tentatively" concluded that the Telecommunications Act requires it to promulgate a new rule prohibiting enforcement of nongovernmental restrictions on small antenna video reception. Specifically they propose:

"(f) No restrictive . . . nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter."

As you can see from the enclosed, we have formally registered our objections to this intrusion into private property owners' ability to control, protect, and manage their properties. We urge you to contact the FCC to register your views, and we would be happy to provide you with information on how to do so.

Very truly yours,


Jeffrey R. Mazor, Esq.

JRM: er
Enclosure