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May 31, 1996

FEDERAL COMMUNICATIONS COMMISSION

EDWARD W. HUMMERS, JR.
202-457-7145

VIA HAND DELIVERY

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

DOCKET FILE COPY ORIGINAL

Re: IB Docket No. 95-59
DA 91-577
45-DSS-MISC-93

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. are an original and 4 copies of its Reply to Opposition to Petition for Clarification in the above-referenced proceeding.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.
Counsel for
United States Satellite
Broadcasting Company, Inc.

ewh:ik
Enclosures

cc: Diane S. Killori, Esquire; Andy Paul, Esquire

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

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MAY 31 1996

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

**REPLY TO OPPOSITION TO
PETITION FOR CLARIFICATION
OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

United States Satellite Broadcasting Company, Inc. ("US Satellite Broadcasting") hereby files this reply to the oppositions filed by Michigan, Illinois and Texas Communities, *et al* and the National League of Cities *et al* (together "Communities") to the proposals, comments and reconsideration filed by US Satellite Broadcasting, the Satellite Broadcasting Communications Association of America and other parties.

I. Exclusive Jurisdiction

The substantial number of jurisdictions and entities opposing the rules and procedures proposed by the Commission and other parties herein and asserting the right to regulate DBS service clearly demonstrates why Congress found it necessary in Section 205 of the Telecommunications Act of 1996 ("1996 Act") to preempt local zoning regulation of direct-to-home satellite services. Unless the Commission asserts exclusive jurisdiction as directed by the 1996 Act, there will be a patch quilt of local

and state regulation¹ which will frustrate the Congressional purpose that there be "a unified, national system of rules reflecting the national, interstate nature of DBS service." H.R. Rep. No. 204 at 123. In their oppositions, Communities argue as if the Commission has discretion not to exercise exclusive jurisdiction in this area. However, this is clearly not the case, as Section 205 states "the Commission . . . **shall** [h]ave exclusive jurisdiction" and not "may exercise." The Commission must assert and exercise exclusive jurisdiction over DBS service as mandated by Congress.

II. Record Evidence

The National League of Cities complains that there has been no showing that the original rules permitting the Commission to intercede on a case-by-case basis are inadequate, that there is no "national problem," nor any evidence to demonstrate that the local regulation of DBS antennas impairs DBS service. Other statements of National League of Cities belie these assertions. The League states that there are more than 38,000 cities, towns and counties with local regulatory jurisdiction and that the zoning restrictions with regard to small DBS receiving antennas imposed by thousands of local governments will be voided by Section 25.104(b)(1). *A fortiori*, those thousands of zoning restrictions have denied thousands of individuals the right to install small DBS antennas to receive DBS service, and the fact that more than two million small DBS antennas have been installed does not refute this fact.

III. Health and Safety Issues

Communities assert that the public's health and safety will be jeopardized by the implementation of Section 25.104. No specific health and safety concerns are

¹ National League of Cities claims the proposed rules "effectively wipes out literally thousands of local laws overnight." (Emphasis in original) Petition for Reconsideration at 4, footnote 11.

raised, however. Indeed, none could be raised because none exists. RF radiation is not emitted from receive-only antennas and no other legitimate health basis for regulating receive-only antennas has been alleged or exists.

National League of Cities includes portions of the BOCA building code and a reference to Florida building codes to support its contention that the provisions of Section 25.104(b)(1) will adversely affect public safety.² A review of the material filed fails to support the contention. Two provisions of the BOCA code are cited, viz., Section 3109.3 with regard to wind and snow load and Section 3109.1 with regard to injury due to mounting.

Section 3109.3.1 specifically states that no zoning permit is required for dish antennas not more than two feet in diameter, erected and maintained on the roof of any building and nothing in the code provisions relating to snow load suggest that DBS antennas of one meter or less is of concern. Even a casual review of the BOCA code shows that the code is not addressing problems associated with DBS antennas of one meter or less. It is obvious that DBS antennas of one meter or less, with the dish mounted perpendicular to the ground, is not going to be subject to significant snow retention. With regard to Section 3109.1, it relates to roof installation of antenna structures not more than 12 feet in height for private radio or television reception. Whatever the relevance to satellite antennas, the limitations set forth therein would have no impact on the installation of DBS antennas of one meter or less. In short, there is no safety issue with regard to the installation of such DBS antennas.

² The League cites the National Electric Code but it does not provide any specifics as to how the installation of DBS antennas would conflict with Code provisions.

The reference to the Florida building codes provides even less information and should cause no concern. The Florida filing asks the Commission to reconsider that portion of its new rules "as would put in doubt the validity and enforceability of municipal building codes requiring that exterior antennae be safely constructed and maintained." Again no specifics are provided. Further, nothing in the proposed regulations limits the safe construction or maintenance of antennas. The filing goes on to state that Florida is "very conscious of the extensive damage inflicted on structures and objects, such as antennae mounted on roofs and wall of buildings and antennae installed on the ground in populated areas, as evidenced in storms like Hurricanes Andrew (1992), Erin and Opal (both 1995)." That hurricanes can damage antennas is self evident, but the Commission's preemption will not affect that outcome. The simple fact remains that DBS antennas of one meter or less can have no effect upon the health or safety of the public.

IV. Aesthetic Concerns

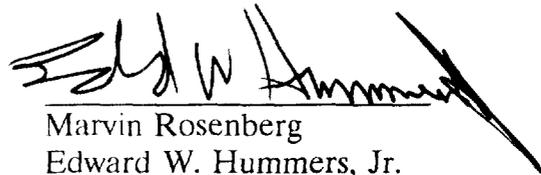
The National League of Cities states that "almost 4,000 historic districts have been designated by local governments around the country." Petition at 15. The fact, while interesting, is not very probative. An analysis of one of the many designated historic districts in Washington, D. C. demonstrates that such a designation, *per se*, gives little guidance as to whether specific homes or areas within the historic district are unique. For example, the Dupont Circle Historic District includes a substantial area surrounding Dupont Circle. See the geographic description and map attached hereto. A casual walk through that commercial and residential area will show numerous satellite antennas, from less than a meter to four meters in diameter.

Clearly the installation of those antennas was consistent with local zoning regulations notwithstanding the fact that they are located within an historic district. No presumption of uniqueness may flow from an historic district designation. Any general exemption for historic districts, *per se*, would be too broad and have a substantial adverse effect upon DBS service in contravention of the 1996 Act. Waivers may be granted only upon detailed and specific showings that the areas sought to be excluded from the rule are truly unique and deserving of protection.

V. Conclusion

For the reasons set forth previously in this proceeding and in this Reply, the Commission should modify Section 25.104 as set forth in the Petition for Reconsideration/Clarification and Further Comments of United States Satellite Broadcasting Company, Inc.

Respectively submitted,



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May 31, 1996

WAS-172528

CERTIFICATE OF SERVICE

I, Inder Kashyap, do hereby certify that the foregoing REPLY TO OPPOSITION TO PETITION FOR CLARIFICATION OF UNITED STATES SATELLITE BROADCASTING COMPANY, INC. has been furnished, via 1st class U.S. Mail, unless otherwise indicated, on this 31st day of May, 1996, to the following:

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Washington, D.C. 20554

Commissioner James H. Quello *
Federal Communications Commission
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Washington, D. C. 20554

Commissioner Rachelle B. Chong *
Federal Communications Commission
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Commissioner Susan Ness *
Federal Communications Commission
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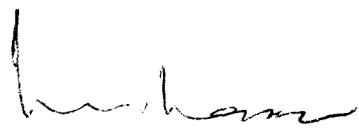
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