

Gina Harrison  
Director  
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., S. 1400  
Washington, D.C. 20004  
(202) 383-6473

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

June 19, 1996

**EX PARTE**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: CS Docket No. 96-83 Over-the-Air Reception Devices for MMDS

Yesterday, Don Brittingham, Director, Regulatory Affairs, Bell Atlantic, Lea Jones, Regulatory Director, Pacific Telesis Enhanced Services, Gary Tapia, Operations Manager, Cross Country Wireless Cable, and I met to discuss issues summarized in the attached materials with the following staff from the Cable Services Bureau: Meredith Jones, Chief, Bill Johnson, Deputy Chief, Meryl Icove, Legal Advisor, Gary Laden, Chief, Consumer Protection Division, Jackie Spindler, Deputy Chief, Consumer Protection Division, Randi Albert, staff attorney, and Ryan Wallach, legal extern. Please associate these materials with the above-referenced docket.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely,



Enclosure

cc: R. Albert  
M. Icove  
W. Johnson  
M. Jones  
G. Laden  
J. Spindler  
R. Wallach

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**“Restrictions On Over-The-Air Reception Devices:  
Multichannel Multipoint Distribution Services (MMDS)”**

CS Docket No. 96-83

Joint Ex Parte of Bell Atlantic and Pacific Telesis

(6/18/96)

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**The Commission’s proposed preemption policy will ensure that consumers have access to a broad range of video programming services, and will foster full and fair competition among video service providers.**

- Current state/local regulations and non-governmental restrictions severely hinder a consumer’s ability to access wireless video services.
  - Regulations should not be imposed on MMDS that disadvantage it vis-a-vis alternative video platforms.
1. **A presumptive approach for state/local regulation of MMDS antennas is appropriate.**
    - The presumption should only be rebuttable if the state/local authority can demonstrate that the regulation is both necessary to accomplish a compelling and expressly stated health or safety objective, and is as narrowly drawn as possible to accomplish that objective.
    - The presumption cannot be overcome on aesthetic grounds.
  2. **A per se preemption policy is appropriate and necessary for regulation by non-governmental entities such as homeowners’ associations.**
    - In many areas of the country, restrictions imposed by non-governmental entities are the biggest problems to overcome.
    - Health and safety concerns can be adequately addressed by state/local authorities, to the extent that any exist.
    - A federal preemption policy must not only eliminate the outright prohibitions on the use of wireless devices to access video services, but must also eliminate regulations that serve to “delay” access to such services. For example, regulations that require a consumer to submit to some type of application and review process would effectively restrict access to wireless video services vis-a-vis other video service options, even if there is no outright prohibition on the use of such wireless devices.
    - The burden of proof should be on the local entity, and not the consumer.

- The proposed rule under paragraph (c) [Appendix A] should be revised:
    - “No restrictive covenant, encumbrance, homeowners’ association rule, or other non-governmental restriction shall be enforceable to the extent it affects the installation, maintenance, or use of devices designed for over-the-air reception of television broadcast signals or multichannel multipoint distribution service”.
3. **It is important that all consumers have access to wireless video services, including those who live in multiple dwelling units (MDUs), e.g., apartments and condominiums.**
    - The Commission should adopt rules that prohibit landlords from establishing exclusive contracts with video service providers.
  4. **The Commission should not draw distinctions based on antenna size or mast height.**
    - The statute makes no size distinctions, and thus, any such distinctions would be inconsistent with Congressional intent.
    - Large antennas and/or large mast sizes will be the exception, and not the rule. To the extent that these types of installations impose a safety hazard, they can be adequately addressed through the rebuttal process.
    - The Commission’s proposed rule should be amended to explicitly incorporate masts as devices for which regulation is preempted.
  5. **The Commission should clarify that its preemption policy applies to the Multipoint Distribution Service (“MDS”), and not just MMDS, and therefore also includes the Local Multipoint Distribution Service (“LMDS”).**
    - MMDS is a subset of MDS (under Part 21, Subpart K of the Rules); designated as the E and F channels (E1-E4 and F1-F4).
    - Wireless cable operators use MMDS channels as well as other MDS channels. In addition, they lease capacity from licensees in the Instructional Television Fixed Service (“ITFS”). It was Congress’ intent to include all channels utilized by MDS operators, including ITFS channels. The Commission should clarify that it will apply the preemption policy to MDS, and not just MMDS, and that this will include all channels used by MDS operators, including ITFS.
    - The Commission should also clarify that it intends to include in its preemption policy another form of MDS called “Local” Multipoint Distribution Service (“LMDS”). Like MMDS, LMDS is a wireless cable service that will compete with alternative video platforms like cable TV and DBS. Applying the preemption policy to LMDS would be in the public interest because (1) it would ensure that competitive video services compete on an equal footing, and (2) the size of LMDS antennas are necessarily smaller than MMDS, thus reducing the concerns of local authorities.

## **Examples of Homeowner Associations Positions**

Red Hill Green Homeowners Association	Requested no new installations be made and that a survey be performed and submitted to Association
New Country Community Association	Threatens action against CCW if any further installations are made
Allied Property Management	Requested that all installations be removed
Brock Homes of Archibald Ranch	Antennas are prohibited
Victoria Communities	Notice to homeowners that their neighbors have the power to make a homeowner remove an antenna, and that if they install antenna, they may also have to continue to pay for cable service
Creekside West Village Master Association (multiple customer letters and letter to CCW)	Prohibits antennas and instructs a homeowner to remove the antenna that was installed
Marlborough Villas Homeowners Association	No exterior antenna installations are allowed
Lake Hills Maintenance Corporation	Must get written architectural approval
Morneo Valley Ranch Community Association	Requests removal of antenna that was installed

MORENO VALLEY RANCH ®  
COMMUNITY ASSOCIATION

March 5, 1996

Mr. John Holts  
25570 Camino Castillo  
Moreno Valley, CA 92551

RE: Violation Hearing -

Dear Mr. Holts:

On December 15, 1995, a letter was sent to you regarding the antenna that has been placed your house.

To date, compliance regarding matter has not been met. Therefore, pursuant to the enforcement proceedings outlined in the Rules and Regulations, you are requested to attend a hearing on March 19, 1996 at 5:00 PM.

Please complete the attached Notice of Defense and deliver to the clubhouse, 16010 Rancho del Lago, Moreno Valley, CA 92551 on or before March 19, 1996 so that your lot may be included in the agenda. If compliance is met prior to the hearing date, please supply evidence of compliance and the hearing attendance will be waived.

If you fail to appear at the hearing, return your Notice of Defense or supply evidence of compliance, you will have waived your right for a hearing, and the Moreno Valley Ranch Homeowner's Association will consider that you have admitted, by default, to the violation alleged in this letter. A fine will be assessed to your account and will double every month until compliance is met.

If the Notice of Defense is not submitted by the Committee will assume that you do not intend to appear at the meeting and will not schedule you on the agenda. Thank you for your prompt attention to this matter. Should you have any questions, please contact Diane Barnes, your Architectural Administrator, at 485-2020 for assistance.

The Board of Directors  
Moreno Valley Ranch Community Association



March 27, 1996

Gary Tapia  
Cross Country Wireless, Inc.  
6177 River Crest Dr., Ste B  
Riverside, CA 92507

Dear Mr. Tapia:

This is to notify you that I am discontinuing service with you effective immediately. Accordingly, I request that you promptly remove your antenna.

I am discontinuing your service solely because my homeowner's association has threatened to fine me \$30 amount per month, and then doubles each month (see attached). This issue is the location of your small antenna. For nine months, I have had your service. I have been completely satisfied with your service during that time period and over three years at a different address. For the first six months no one complained about the placement of your antenna. Then for some unknown reason I received a letter, dated 12/15/95 and again 3/15/96, complaining that the placement of the antenna violated the association's rules. As you know, I then notified you and you promptly moved the antenna so that it is no longer visible from the street. However, the association sent me another letter, still claiming that I am violating the association's rules.

While the association is being unreasonable, I do not want to take the risk of being fined and having a lien placed upon my home. Accordingly I am discontinuing your service, and will be obtaining service from the local cable company.

Sincerely,



John Holt  
25570 Camino Castillo  
Moreno Valley, CA 92551

1 BILL NUMBER: AB 104 CHAPTERED 10/16/95  
2 BILL TEXT

3  
4 CHAPTER 978  
5 FILED WITH SECRETARY OF STATE OCTOBER 16, 1995  
6 APPROVED BY GOVERNOR OCTOBER 16, 1995  
7 PASSED THE ASSEMBLY SEPTEMBER 12, 1995  
8 PASSED THE SENATE SEPTEMBER 6, 1995  
9 AMENDED IN SENATE MAY 31, 1995  
10 AMENDED IN ASSEMBLY MAY 8, 1995  
11 AMENDED IN ASSEMBLY APRIL 24, 1995  
12

13 INTRODUCED BY Assembly Member Hauser  
14  
15 JANUARY 9, 1995  
16

17 An act to add Section 1376 to the Civil Code, relating to common  
18 interest developments.  
19

20  
21 LEGISLATIVE COUNSEL'S DIGEST  
22

23  
24 AB 104, Hauser. Common interest developments.  
25 Existing law provides that the covenants and restrictions  
26 contained in a declaration for a common interest development are  
27 enforceable equitable servitudes, unless unreasonable, and inure to  
28 the benefit of, and are binding upon, all owners of separate  
29 interests in the development.

30 This bill would provide that any prohibition against, or  
31 restriction on, the installation or use of a video or television  
32 antenna, including a satellite dish, or any prohibition against the  
33 attachment of that antenna to a structure, that is contained in a  
34 document that affects the transfer or sale of, or any interest in, a  
35 common interest development is void and unenforceable, as it relates  
36 to the installation or use of a video or television antenna that has  
37 a diameter or diagonal measurement of 36 inches or less, except as  
38 specified. The bill would, however, permit a common interest  
39 development association to impose reasonable restrictions on the  
40 installation or use of a video or television antenna.

41 The bill would also prohibit the willful delay of the issuance of  
42 a decision on an application for the approval of the installation of  
43 a video or television antenna. The bill would authorize the awarding  
44 of attorney's fees to the prevailing party in an action to enforce  
45 the provisions of the bill.  
46

47  
48 THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:  
49  
50

1 SECTION 1. Section 1376 is added to the Civil Code, to read:  
2 1376. (a) Any covenant, condition, or restriction contained in  
3 any deed, contract, security instrument, or other instrument  
4 affecting the transfer or sale of, or any interest in, a common  
5 interest development that effectively prohibits or restricts the  
6 installation or use of a video or television antenna, including a  
7 satellite dish, or that effectively prohibits or restricts the  
8 attachment of that antenna to a structure within that development  
9 where the antenna is not visible from any street or common area,  
10 except as otherwise prohibited or restricted by law, is void and  
11 unenforceable as to its application to the installation or use of a  
12 video or television antenna that has a diameter or diagonal  
13 measurement of 36 inches or less.  
14 (b) This section shall not apply to any covenant, condition, or  
15 restriction, as described in subdivision (a), that imposes reasonable  
16 restrictions on the installation or use of a video or television  
17 antenna, including a satellite dish, that has a diameter or diagonal  
18 measurement of 36 inches or less. For purposes of this section,  
19 "reasonable restrictions" means those restrictions that do not  
20 significantly increase the cost of the video or television antenna  
21 system, including all related equipment, or significantly decrease  
22 its efficiency or performance and include all of the following:  
23 (1) Requirements for application and notice to the association  
24 prior to the installation.  
25 (2) Requirement of the owner of a separate interest, as defined in  
26 Section 1351, to obtain the approval of the association for the  
27 installation of a video or television antenna that has a diameter or  
28 diagonal measurement of 36 inches or less on a separate interest  
29 owned by another.  
30 (3) Provision for the maintenance, repair, or replacement of roofs  
31 or other building components.  
32 (4) Requirements for installers of a video or television antenna  
33 to indemnify or reimburse the association or its members for loss or  
34 damage caused by the installation, maintenance, or use of a video or  
35 television antenna that has a diameter or diagonal measurement of 36  
36 inches or less.  
37 (c) Whenever approval is required for the installation or use of a  
38 video or television antenna, including a satellite dish, the  
39 application for approval shall be processed by the appropriate  
40 approving entity for the common interest development in the same  
41 manner as an application for approval of an architectural  
42 modification to the property, and the issuance of a decision on the  
43 application shall not be willfully delayed.  
44 (d) In any action to enforce compliance with this section, the  
45 prevailing party shall be awarded reasonable attorney's fees.