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July 17, 1996

VIA HAND DELIVERY

David R. Siddall, Esq.
Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

FILED

JUL 17 1996

COMMUNICATIONS SECTION

Re: **Restrictions on Over-the-Air Reception Devices**
CS Docket No. 96-83
Written Ex Parte Presentation

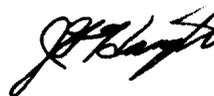
Dear Mr. Siddall:

I am writing to follow up to your meeting earlier this month with those of us representing broadcasters in the Commission's over-the-air reception devices proceeding. We have now prepared proposed rules and guidelines for unacceptable restrictions on the use of television broadcast antennas. A copy of the proposal is enclosed. This proposal also was provided to the Cable Services Bureau staff working on this proceeding earlier today. We believe this proposal provides an appropriate framework for implementing the Congressional directive to prevent restrictions that impair the reception of broadcast television and other over-the-air programming.

In accordance with the requirements of Section 1.1206(a) of the Commission's rules, two copies of this letter and the enclosure are being submitted to the Secretary's office on this date.

Please call me if any questions should arise in connection with these materials.

Sincerely,



J.G. Harrington

JGH/taf
Enclosure

cc (w/encl.): Mr. William F. Caton (2 copies)

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**PROPOSED RULES GOVERNING RESTRICTIONS ON
OVER-THE-AIR RECEPTION DEVICES**

§ 99.01 Private restrictions on over-the-air reception devices

(a) Any private restriction on the placement of television receiving antennas imposed by deed, covenant, easement, homeowners association agreement, lease or any similar instrument shall be deemed unenforceable, provided that a reasonable restriction on the placement of television receiving antennas in or on a multiple dwelling unit shall be enforceable if the signals of all television stations placing a predicted Grade B contour (as that term is defined in sections 73.683 and 73.684 of this chapter) or an actual Grade B signal as measured under the provisions of this chapter over the premises are transmitted without material degradation to all dwelling units subject to the restriction via a common antenna or other means without any separate charge to the owners or tenants of those dwelling units.

(b) [MMDS]

(c) [DBS]

§ 99.02 Governmental restrictions on over-the-air reception devices

(a) No state or local government may impose any restriction on the placement of television receiving antennas unless:

(1) The restriction is no more burdensome than the provisions of Section 3109 of the 1993 edition of the Building Officials Conference of America code, provided that any regulations governing roof-mounted antenna structures that exceed 3.658 meters (12 feet) in height shall not allow denial of a permit for any such structure based on the height of the structure; and

(2) The restriction does not have the effect of impairing the reception of signals from one or more television stations that place a predicted Grade B contour (as that term is defined in sections 73.683 and 73.684 of this chapter) or an actual Grade B signal as measured under the provisions of this chapter over the location where an antenna is to be placed.

(b) [MMDS]

(c) [DBS]

§ 99.03 Financially burdensome requirements

Notwithstanding any other provision of sections 99.01 and 99.02 of this chapter, any requirement, either governmental or private, that imposes an additional cost on the entity placing an over-the-air reception device of more than (i) the cost of the device and

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installation in accordance with reasonable industry-accepted standards and practices; or (ii) \$250, whichever is less, shall be deemed to be unenforceable.

§ 99.04 Interpretations and Waivers

In any proceeding regarding the scope or interpretation of any provision of this sub-part, the burden of demonstrating that a particular governmental or private requirement complies with this sub-part and does not impair a viewer's ability to receive video programming services through devices designed for over-the-air reception shall be on the party that seeks to impose or maintain the requirement.

UNACCEPTABLE RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES

The following are potential zoning or other government-imposed restrictions on the use of over-the-air reception devices that should be deemed to be unacceptable under the rules implementing Section 207 of the Telecommunications Act of 1996:

1. Any restriction that exceeds the requirements of the 1993 Building Officials Conference of America code, which are as follows:

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 dimensions. [Section 3108.3 requires construction with "approved corrosion-resistant noncombustible material" and the use of "Type 4" construction.]

[Note: As we understand it, BOCA would not allow a municipality to deny a permit request based on the height of an antenna structure alone.]

2. Any prohibition that is based on aesthetic grounds.
3. Any restriction that has the effect of preventing consumers from installing any antenna necessary to obtain a clear signal in an area within the predicted Grade B contour of a television station or any actual Grade B signal.
4. Restrictions based on the height of the antenna structure, the size of the antenna itself or on the ability to rotate the antenna to improve reception.
5. Restrictions that require placement of a television antenna inside, under or behind any structure on a roof or inside a single-family home or a multi-dwelling unit building.

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- 6. Restrictions that require screening of a television antenna with any material.**
- 7. Restrictions that require painting of a television antenna.**
- 8. Restrictions requiring placement of a television antenna at any place on a roof other than the highest point.**
- 9. Any requirement that imposes an additional cost on the placement of an antenna that exceeds the cost of the antenna and normal installation or \$250, whichever is less.**