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July 22, 1996

**VIA HAND DELIVERY**Hon. Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554**RECEIVED****'JUL 23 1996**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARYRe: *Implementation of Section 207 of the Telecommunications Act of 1996:  
Restrictions on Over-the-Air Reception Devices: Television Broadcast and  
Multichannel Multipoint Distribution Service -- CS Docket No 96-83  
EX PARTE COMMUNICATION*

Dear Mr. Chairman:

I am writing on behalf of the Wireless Cable Association International, Inc. ("WCA") to reiterate WCA's opposition to any Commission action implementing Section 207 of the Telecommunications Act of 1996 that would permit local authorities to continue enforcement of the current Building Officials and Code Administrators International ("BOCA") model building code restrictions on wireless cable reception antennas. Simply stated, the current BOCA code is a significant part of the problem Congress sought to cure when it passed Section 207 -- it is not part of the solution.

There are two provisions of the current BOCA model building code that WCA finds particularly objectionable and impossible to square with Section 207 -- one that requires building permits for the installation of antennas extending more than 12 feet high and another that bars the installation of antenna masts closer to the lot line than the height of the antenna.

BOCA's absolute ban on antennas mounted closer to the lot line than the height of the antenna can and does prevent consumers from receiving wireless cable service. As such, it cannot pass muster under Section 207. The height of a wireless cable antenna installation is dictated by the laws of physics -- given the relatively low power at which the Commission allows wireless cable stations to operate, the reception antenna must be high enough to have a relatively unimpeded direct line to the transmission antenna. Often, there is no place on the rooftop where an antenna can be mounted that complies with the BOCA setback requirement. For example, in a community of attached town homes of 20 foot width (certainly not an unusual size), reception antennas of more

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than 10 feet in height are effectively banned by the BOCA code. It would be passing strange were the Commission to bless such a provision when Congress expressly mandated that the Commission "prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite service."

As Congress implicitly recognized when it adopted Section 207, BOCA's setback requirement is totally inappropriate. While it has been argued that this restriction is necessary to prevent antennas from collapsing onto adjoining buildings, that argument ignores the fact that **wireless cable antennas rarely fall and are of such light weight that they pose little threat of serious damage when they do fall.** Since wireless cable antennas are expensive, since they must remain standing in order to avoid outages, and since maintenance calls cause additional costs and are frustrating to consumers, wireless cable operators have every incentive to assure that antennas are mounted in a way to minimize safety risks. *There is not one piece of anecdotal evidence in the record of any damage being caused by a falling wireless cable antenna.* The risk of damage from a falling wireless cable antenna is minuscule compared to the risk posed by falling tree limbs -- which are more likely to fall and, when they do fall, cause far more damage due to their greater weight. As a society, we routinely accept the risk of falling tree limbs; with Section 207 Congress has now said we will also accept the relatively small additional risk of falling antennas in order to promote consumer choice in telecommunications providers.

BOCA's advance permit requirement for antennas mounted more than 12 feet high, with its attendant delays, is as anathema to consumer choice as an outright ban on wireless cable antennas. Wireless cable operators have consistently found that potential subscribers are often unwilling to wait for service while local authorities consider whether to permit the installation of reception equipment. The Commission mandates that cable operators install new service within seven business days of request,<sup>1/</sup> and consumers expect similar prompt service from cable's competitors. Moreover, there is nothing in WCA's experience or the record in this proceeding to suggest that local authorities have any legitimate reason for requiring case-by-case approval of wireless cable antennas prior to installation. To the contrary, local authorities can serve their legitimate safety concern in assuring that antennas are securely mounted, without imposing undue burden on potential wireless cable subscribers, by adopting appropriate mounting and wind loading standards and permitting the installation of antennas without prior approval, so long as they comport with those standards. WCA has previously offered to cooperate with BOCA in the development of model mounting standards that will permit installation of wireless cable antennas without prior approval, and reiterates that offer again.

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<sup>1/</sup>47 C.F.R. § 76.309 (c)(2)(i) (1995).

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WCA appreciates the difficult task the Commission faces in attempting to implement Section 207 without jeopardizing the public health and safety. While the wireless cable industry is not seeking *carte blanche* to erect reception antennas of unlimited height,<sup>2/</sup> the industry cannot possibly develop as a truly effective competitor to other service providers if these onerous BOCA restrictions are permitted to stand.

Please contact the undersigned should you have any questions regarding this *ex parte* presentation.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the Wireless Cable Association  
International, Inc.

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<sup>2/</sup>As WCA has previously pointed out to the Commission, the average height at which reception antennas must be installed varies from market to market, depending upon terrain and, most importantly, foliage. In many markets, the average antenna is mounted 25 feet or more above the highest point of the roofline, and the use of masts as tall as 40 feet is not atypical. While a preemption of local restrictions on only those reception antennas mounted 25 feet or less above the roofline would be a vast improvement over the current situation, the Commission should recognize that it would still prove harmful to the wireless cable industry. Were the Commission to permit impairment of antennas mounted more than 25 feet above the roofline, as many as one-half of the existing wireless cable subscriber base could find their right to unimpeded reception jeopardized.