

July 24, 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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

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

Today, the parties listed in Attachment A met with Jackie Chorney, Legal Advisor to Chairman Hundt and Suzanne Toller, Legal Advisor to Commissioner Chong. We also met, from the Cable Services Bureau, with Bill Johnson, Deputy Bureau Chief, Jackie Spindler, Deputy Chief, Consumer Protection Division, Randi Albert, staff attorney, and Ryan Wallach, legal extern; and from the International Bureau, with Rosalee Chiara and Joe Welch. We discussed issues summarized in Attachment B and reflected in Attachments C, D, E, F, and G (a video tape). Please include this material in 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,



Attachments A-G

- cc: R. Albert
- R. Chiara
- J. Chorney
- W. Johnson
- J. Spindler
- S. Toller
- R. Wallach
- J. Welch

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**Antenna Regulation Meeting
Attendees List
FCC July 24, 1996**

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Donald Brittingham
Director - Wireless Policy
Bell Atlantic
1133 Twentieth Street, N. W., Suite 810
Washington, DC 20036

C R Carrington
Director
Nynex
1300 I Street NW Suite 400 West
Washington, DC 20005

Albert Clark
Vice President
United Homeowners Association
1511 K Street NW, Suite 326
Washington DC 20005

Patricia Cuocco
Director, Information Technology, Policy and Analysis
California State University System
4665 Lampson Ave.
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310 985-9429

Julie Dodd-Thomas
Executive Director, External Affairs
Pacific Bell Video Services
2000 E. McFadden Suite 208
Santa Ana, CA 92705-4706

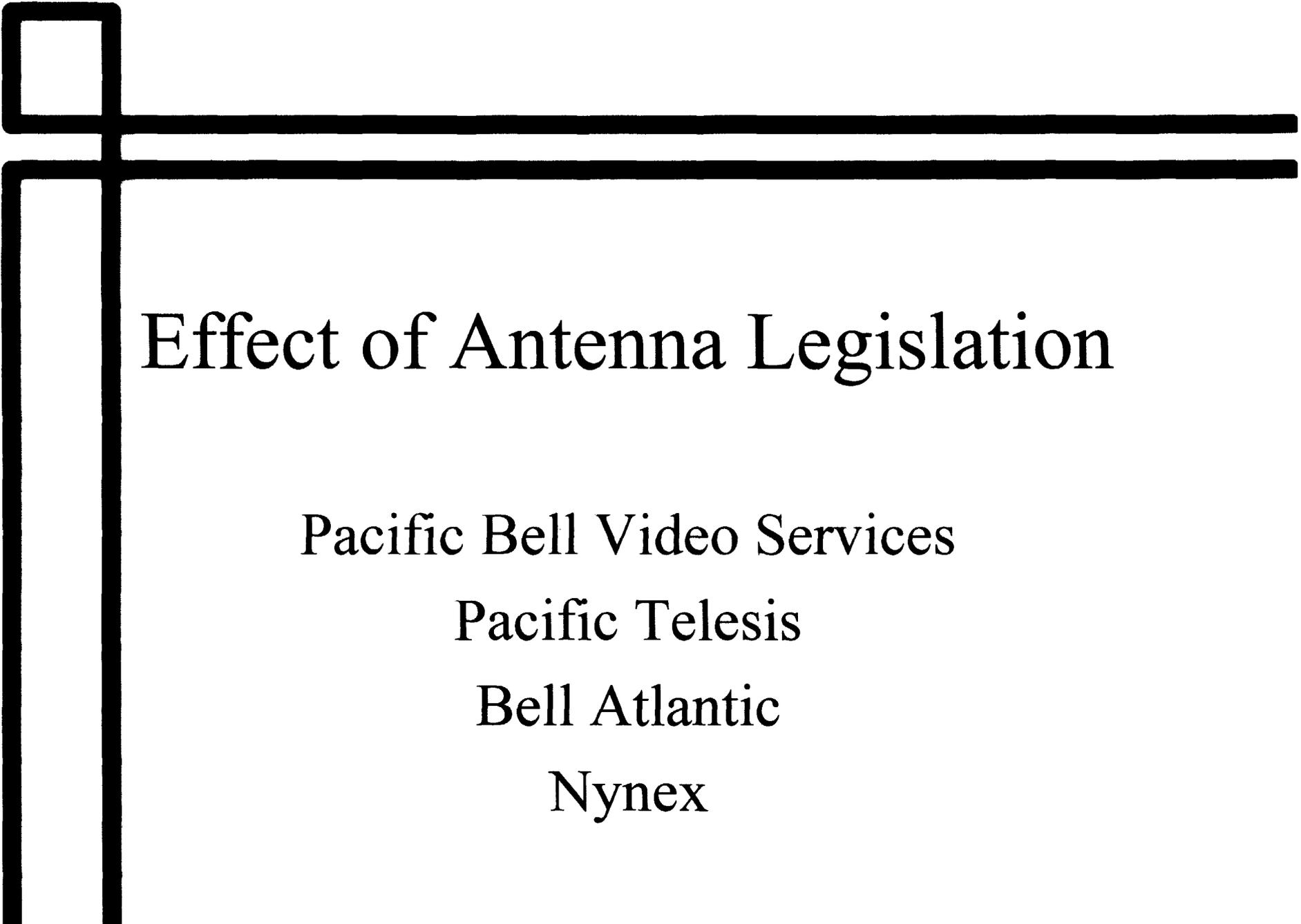
Gina Harrison
Director of Federal Regulations
Pacific Telesis
1275 Pennsylvania Avenue, N. W. Suite 400
Washington, D. C. 20004

Lea Jones
Regulatory Director
Pacific Telesis Enhanced Services
2410 Camino Ramon 340U
San Ramon, California 94583

Doug Lichvar
Engineering Director, ITV Network
University of Southern California
3650 McClintock Ave., Olin Hall 108, mc 1455
Los Angeles, CA 90089-1455

Theresa Lichvar
Program Administrator, Dept. of Finance and Business Economics
University of Southern California
701 Exposition Blvd., Room 701
Los Angeles, CA 90089-1421

Gary Tapia
Operations Manager
Cross Country Wireless Cable
6177 River Crest Drive, Suite "B"
Riverside, CA 92507



Effect of Antenna Legislation

Pacific Bell Video Services

Pacific Telesis

Bell Atlantic

Nynex

Affordable Access Situation

- CSU experience with Instructional TV since 1960's; currently 22 campuses - 14 involved in ITFS
- Demographic challenges - "Tidal Wave II" and life long learning in the information age
- Potentially 450,000 students in 2005
- "Bricks and Mortar" solution is 10 new campuses at \$.5B each over next 10 years

Impacts to Higher Education

- For over 24 years some students denied access to courses due to antenna restrictions
- Students geographically distant from university location were unable to obtain continuing education training
- University expended time, energy and money only to be denied access to students

Impact to K-12 Education

- Support “Home School” market
- Develop parent student programming
- Increase access to college level courses
- Provide continuing education to faculty
- Meet CSU goal to support teacher alumni
(CSU has graduated 70% of teachers in CA)

Future Implications

- Follow the students into the homes
- Increase quantity and variety of courses
- Create new markets
- Communicate with alumni, potential students and faculty
- Benefit economic health of the entire state

Digital Video Benefits Education

- Provides affordable access to more students
- Increases corporate and student revenues to educational institutions
- Provides new sources of revenues to reinvest in education

Commission Preemption of Local Rules and Regulations is Reasonable

- This is a rational implementation of Congressional intent to “...prohibit restrictions that impair a viewer’s ability to receive video programming through devices designed for over-the-air reception.”
 - Permit waivers for compelling and expressly stated health or safety concerns.
 - Disallow aesthetic concerns portrayed as health or safety issues.
 - Allow homeowners associations with installations that impact health or safety to have local government file for a waiver.
 - No approval process (including building permits, applications, etc.) or fees should be required.

Homeowner Associations

- Restrictive covenants by homeowners associations inhibit the ability to receive video programming via MMDS.
 - Association Regulations:
 - » May result in denial of permission by the association
 - » May result in consumers having to go through a burdensome review process by the association in order to possibly get approval for installation
 - » Could result in higher costs or such obstacles to installation that the consumer would decide to use an alternative service such as cable
 - Obstacles such as these are in conflict with Section 207 of the Telecommunications Act of 1996

Commission's proposed preemption policy should ensure competitive options

- The final rules must not only eliminate outright prohibitions on use of wireless devices to access video services, it must also eliminate regulations that “delay” access, or increase the cost of access. (ie. building permits, applications, fees, etc.)
- The final rules should ensure consumers have access to a broad range of video programming services, and will foster full and fair competition among video service providers

Homeowner Association restrictions will continue, unless they are preempted

- California approved legislation effective January 1, 1996, to prohibit unreasonable restrictions on installation of antennas up to 36 inches (AB 104)
 - The new law has had little effect in curbing the homeowners associations from restricting installations
 - Homeowners do not have the time or money to fight against the associations restrictions
 - Homeowners can face additional penalties for delays in removing antennas while the review process is being conducted.
 - Per se preemptive is only practicable alternative

Examples of Homeowner Associations Positions

Red Hill Green Homeowners Requested no new installations be made and that a survey Association be performed and submitted to Association

New Country Community Association Threatens action against CCW if any further installations are made

~~Windsor Property Management Requested no antenna installations be made~~
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

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

Antenna Masts

- Masts are an integral part of the installation of antennas
 - Without sufficient height, a consumer will not be able to receive the video signals
 - 25' mast height per se preempted
 - Safety concerns for taller masts would continue to be addressed through the normal city or county permit process

- The Commission's proposed rule should be amended to explicitly incorporate masts as devices for which regulation is preempted

**“Concerns of a Highly Specialized or Unusual Nature”
(Notice, ¶ 8)**

- Guidelines for obtaining a waiver should be narrowly defined to ensure that consumers are not foreclosed from access to these new services.

Recommended Guideline:

Waivers filed under paragraph (b) of the proposed rule may be granted for areas where, to protect the historical appearance and value of an area, there is a general ban on visible modern accoutrements (e.g., telephone poles, overhead wires and cabling, electrical lighting, transformers, and air conditioning units).

Modifications to Proposed Rule (Appendix A of Notice: changes underlined):

- (a)(1) With the exception noted in paragraph (a)(3), any state or local zoning, land-use, building, or similar regulation, that affects the installation, maintenance, or use of devices designed for over-the-air reception of television broadcast signals, [“multi-channel” omitted] multipoint distribution service, or instructional television fixed service shall be presumed unreasonable and is therefore preempted subject to paragraph (a)(2). No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (b), or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (a)(2).
- (2) Any presumption arising from paragraph (a)(1) of this section may be rebutted upon a showing that the regulation in question:
- (A) is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;
- (B) is no more burdensome to television broadcast service, [“multichannel” omitted] multipoint distribution service, or instructional television fixed service reception device users than is necessary to achieve the health or safety objective; and
- (C) is specifically applicable on its face to devices designed for over-the-air reception of television broadcast signals, [“multichannel” omitted] multipoint distribution service, or instructional television fixed service.
- (3) Antenna masts exceeding 25 feet in height above the roof line may be regulated to ensure the safety of such installations, and the use of such masts may require review and approval by some state or local authority. In performing such a review, the promulgating authority must notify the applicant of its decision, including any special conditions or requirements, within 30 days of receiving applicant’s request.
- (b) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.
- (c) No restrictive covenant, encumbrance, homeowners’ association rule, or other non-governmental restriction shall be enforceable to the extent that it affects the installation, maintenance, or use of devices designed for over-the-air reception of television broadcast signals, [“multichannel” omitted] multipoint distribution service, or instructional television fixed service

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

In the Matter of)	
)	
Implementation of Section 207 of the Telecommunications Act of 1996)	CS Docket No. 96-83
)	
Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service)	
)	
To: The Commission		

COMMENTS OF ITFS PARTIES

The Alliance for Higher Education, Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, California State University, Calnet, Catholic Telemedia Network, Greater Dayton Public Television, Inc., INTELECOM Intelligent Telecommunications, KCTS Television, Long Beach Unified School District, Oklahoma State University, San Diego State University, Santa Ana Unified School District, Santa Clara County Office of Education, South Carolina Educational Television Commission, St. Louis Regional Educational and Public Television Commission, State of Wisconsin--Educational Communications Board, University of Idaho, University of Southern California, University System of the Ana G. Mendez Educational Foundation and Washington State University (collectively, the "ITFS Parties"), by their counsel, submit these comments in response to the Commission's *Notice of Proposed Rulemaking* in CS Docket No. 96-83, FCC 96-151, implementing Section 207 of the

Telecommunications Act of 1996, with respect to restrictions on over-the-air reception devices for TV broadcast and Multichannel Multipoint Distribution Service ("MMDS").

The ITFS Parties are public and private universities and university systems, school districts, consortia of university campuses and community colleges, public broadcasters and governmental or non-profit educational telecommunications entities. Each is an experienced licensee of one or more ITFS stations providing critical educational services to its students and other learners in schools, workplaces and homes; indeed, among the ITFS Parties are operators of some of the oldest, largest and most innovative ITFS systems in the country. Each of the ITFS Parties either contemplates or is already participating with wireless cable operators in the development and operation of ITFS/MMDS video systems.

The ITFS Parties support the Commission's proposal in this proceeding, with one clarification as noted below. The proposal faithfully reflects the will of Congress as reflected in Section 207 of the Telecommunications Act of 1996 that viewers' ability to receive video programming services from various sources should not be impaired by governmental policies not reasonably related to public health or safety or by private restrictions. The proposal appears to set forth a well-defined standard and procedure for the implementation of Section 207, one which favors the widest possible availability of video signals.

The proposal is also clearly within the mandate of the Commission's public interest standard for the adoption of regulations. From their perspective, the ITFS parties believe that the public interest is served by the widest possible availability of wireless cable system services for at least two reasons. First, wireless cable systems by necessity incorporate ITFS channels on which the ITFS Parties and other educators deliver in-school instructional and educational programming and

administrative and training support, workplace training, and instructional, educational and cultural programming for individual viewers. Wireless cable systems offer educators many advantages, not the least of which is access to the public in their homes, thereby making possible the efficient delivery of their services to a much wider audience. This potential audience should not be limited by unnecessary or unreasonable restrictions on the placement of receiving equipment. The proposed regulation thus directly furthers the ITFS Parties' educational missions.

Second, ITFS licensees in wireless cable systems benefit from the provision of facilities and operational, programmatic and financial support by their wireless cable operators, giving them a strong interest in the success of the wireless cable operators' businesses. To the extent that the proposed regulations enhance the ability of wireless cable operators to thrive over the long term, educators are beneficiaries for this reason as well.

The ITFS Parties therefore support the proposed regulation. They request the Commission to consider one clarification, however--the inclusion of ITFS signals (and also single channel MDS signals) in the regulation. Although Section 207 of the Telecommunications Act of 1996 refers to reception of Multichannel Multipoint Distribution Service signals, the ITFS Parties urge that the effective intent was to encourage the widest dissemination of services in the MDS, MMDS and ITFS bands. Some wireless cable systems will not incorporate any stations actually licensed as MMDS stations (for example, in the Los Angeles area, where both the E and F MMDS channel groups are licensed as ITFS stations to campuses of California State University), and it makes no public policy sense to exclude such systems from the effect of the rule. Also, with the advent of affordable receive installations, some ITFS operators not necessarily working with wireless cable operators may seek access to homes and business sites that could be affected negatively by restrictions on receive

antennas. The rule should be written inclusively so as to permit all operators of MDS, ITFS and MMDS facilities to take advantage of its provisions, and to avoid potential disputes based on the licensed nature of any given point-to-multipoint facility.

For the foregoing reasons, and with the clarification requested above, the ITFS Parties support the proposed regulation in this proceeding and urge its speedy adoption.

Respectfully submitted,

ALLIANCE FOR HIGHER EDUCATION

ARIZONA BOARD OF REGENTS FOR
BENEFIT OF THE UNIVERSITY OF
ARIZONA

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM

CALIFORNIA STATE UNIVERSITY

CALNET

CATHOLIC TELEMEDIA NETWORK

GREATER DAYTON PUBLIC TELEVISION, INC.

INTELECOM INTELLIGENT
TELECOMMUNICATIONS

KCTS TELEVISION

LONG BEACH UNIFIED SCHOOL DISTRICT

OKLAHOMA STATE UNIVERSITY

SAN DIEGO STATE UNIVERSITY

SANTA ANA UNIFIED SCHOOL DISTRICT

SANTA CLARA COUNTY OFFICE OF
EDUCATION

SOUTH CAROLINA EDUCATIONAL TELEVISION
COMMISSION

ST. LOUIS REGIONAL EDUCATIONAL AND
PUBLIC TELEVISION COMMISSION

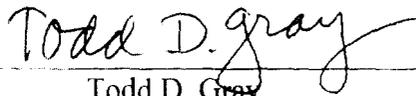
STATE OF WISCONSIN--EDUCATIONAL
COMMUNICATIONS BOARD

UNIVERSITY OF IDAHO

UNIVERSITY OF SOUTHERN CALIFORNIA

UNIVERSITY SYSTEM OF THE ANA G. MENDEZ
EDUCATIONAL FOUNDATION

WASHINGTON STATE UNIVERSITY

By: 

Todd D. Gray
Their Attorney

DOW, LOHNES & ALBERTSON
A Professional Limited Liability Company
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802

(202) 776-2571

May 3, 1996

AB 104

PAGE 1

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.

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~~o Microfilm, microform, certain photographs or videotape.~~

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