(1) it is necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size, weight and appearance to these antennas and to which local regulation would normally apply; or

(2) it is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470a, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) it is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.

(c) Local governments or associations may apply to the Commission for a waiver of this rule under Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3. Waiver requests will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this rule. Petitions to the Commission will be put on public notice. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) In any Commission proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(f) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M St. N.W.; Washington, D.C. 20554. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

Part 25 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 25 - Satellite Communications

1. The authority citation for Part 25 continues to read as follows:

AUTHORITY: Sections 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 416-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.104 is amended by revising paragraph (b)(1) and adding paragraph (f) as follows:

§ 25.104 Preemption of Local Zoning of Earth Stations

* * * * *

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by non-federal land-use regulation shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(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 (e), or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to subparagraph (b)(2).

* * * * *

(f) a satellite earth station antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska is covered by the regulations in 47 C.F.R. Part 1, Subpart S Section 1.4000.

ATTACHMENT B

Comments in DBS Proceeding

AT&T
Brigantine Group (Brigantine)
C&G Investment Associates May and July Filings (C&G)
Carriage Park Condominium (Carriage)
Christianson, Ralph and Gwen (Christianson)
Cities of Texas, Tennessee, National Association of Counties and the United States Conference of Mayors (Mayors)
Community Associations Institute, American Resort Development Association and National Association of Housing Cooperatives[220] (Community)
Community Management Corporation (CMC)
Compass Retail, Inc. (Compass)
Consumer Electronics Manufacturers Association (CEMA)
Corporon, Hoehn, Svitavsky, Vaughters & Eyler LLC (Corporon)
Danberry Homeowners' Ass'n (Danberry)
DIRECTV (DIRECTV)
Drummer Boy Homes Assoc., Inc. (Drummer)
First Realty Management (FRM)
Foster City, City of
Haley Realty (Haley)
Hancock, Robert & Co. (Hancock)
Hendry Investments Inc. (Hendry)
Heritage Forest HomeOwners Assoc. (Heritage)
Jindal, Dr. Roop L. (Jindal)
Joint Comments[221] (NAA)
Kraegel, Becky (Kraegel)
Microcom (Microcom)
Montgomery Village Foundation (Montgomery Village)
Mount Vernon Square Townhouse Community Assoc. (Mount)
National Association of Home Builders (NAHB)
National Rural Telecommunications Cooperative (NRTC)

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[220]Community Associations Institute appended support letters from following commenters (in order of their appearance): James Reinhardt, Peterson Roofing, Premier Roofing, Fred M. Baron, Orange County CAI, Elisha et. al., Woodbridge Village, Corporon et. al., Hilltop Summit, Riverside Condos, Ali Ohana Property Management, Taber Income Tax Service, Coldwell Banker, Mililani Town, Great Northwest, Molly Rice, Robert Pigors, Montgomery Village, Kings Grant, Windgate of Arlington, Greenbelt Homes, Westridge Swim & Racquet, AV Builder.

[221] National Apartment Assoc., National Realty Council, Institute of Real Estate Management, International Council of Shopping Center, National Multi Housing Council, American Seniors Housing Council, and National Assoc. of Real Estate Investment Trusts (together, "Joint Comments").

O'Brien, Stewart, Esq. (O'Brien)
Oakland Mills Community Assoc., Inc. (Oakland)
Orten Hindman & Jordan (Orten)
Reston Home Owners Assoc. (Reston)
Southbridge Community Assoc. (Southbridge)
StoneCroft Condominium (Stonecroft)
Sully Station Community Ass'n (Sully Station)
Zalco Realty, Inc. (Zalco)
Commenters Submitting Similar Letters
Fifty community association management companies[222] (Mass)
Four hundred and sixty-one property management companies[223] (Coordinated)

[222]Mass includes the following companies: 4000 Tunlaw Road Condominium, Alexandria House Council of Owners, Alexandria Knolls West Condominium, Annandale Gardens Condominium, Arkansas Princess Condo HOA, Ashmere, Braemar Towers Condo Ass'n, Carelton Condos, Cascades, Catalina Shores, Clusters at Woodlawn Condominium, Comstock, Country Creek Ass'n, Danberry Homeowners Ass'n, Danberry Board of Directors, Daventry Park HOA (Daley, Feldman, Flynn, Shriver), Eastwood Owners Ass'n, Fairfax West Condominium, Fairlington Meadow Council of Co-Owners (Girovasi, Walker), Foxhall East Condominium, Gayton Station HOA, The Gibson Condominium, Highpointe Housing Corporation, Jamaica House Ass'n, Kentlands View Condominium Assoc., Lafayette Place HOA, Newgate, North Apple Creek HOA, Oak Park Condos, The Olympus, Park Place Condominium, Quaker Hill Community Assoc., River Oaks, Russett, Saxony Square Condominium, Seven Oaks, Sully Station (Community Ass'n, Board of Trustees, II), SummerRidge Condominium, Townes at Baldwin Grove, Troro HOA, Virginia Run, Watergate of Alexandria Condominium, Wellington Condominium Assoc., Wellington, Westlake Park Condominium B".

[223]650 Fifth Avenue, AW Perry, Inc., A&G Rentals, Abbot's Cove, The Acadiana, Martin L. Adams Y Sons, Aetna Realty investors (Burrill, O'Keefe), The Affordable Housing Management Group, Allied Realty Services, Ltd., AMLI Residential, Ambassador (July 10), American international, American Apartment Communities, Amurcon Realty Group (April and July 9 filing), Apartment and Office Building Association of Metropolitan Washington, Apartment Association, Aranov (July 22), Arbour East (July 22), Ardenwood L.P., Arlington Properties, Inc., Armstrong Management (Armstrong, Wood), Artcraft Companies, Ash Tree Apartments, Ashley, Ardmore Terrace (July 10), Atlantic Gardens (July 15), Atlantic Realty Partners, Atlantic Terrace (July 10), Avalon Properties (Albert, Berman, Blair, Cote, Michaux, Slater, Sweeney), Baird & Warner Management Services, Inc., Basic Capital Management, Inc., Beacon Residential Management, Bear Capital, Belle View, Bellsford Landing, Ben-Steele Properties, Bernard/Finney Management, Bethel Bishop (July 15), Bluebonnet Ridge L.P., Bob Ross Realty (April and July filings), Boston Financial Property Managemant, Braden Fellman (July 10), Bradley Apartment Homes, Broad Viewe (July 15), Brodsky Organization, Burberry Court, Burns Properties, Cal-American Corp., Calder's Corner, Cambridge Courts, Cambridge Square, CAMCO (Kennedy, Mitchell), Candlestick Apartments, Capital Associates (Colella, Kupferberg, Pabian), Care Real Estate, Carlyn Place, Carmel, Casa de Monterey (July 22), Cathcart Properties, Inc., Cedarbrook Park (July 12), Centre Mortgage, Chalmers & Company, Chapel Ridge Apartment Community (Cotton, Garza, Kinslow, Robles, Vargas, Rodriquez, Raley, Vallardes, Ramirez), Charles E. Smith Companies (Kostyk, Taylor), Charlottesville Towers, Chateau Perry Apartments, Chelsea Place (July 22), Chesapeake Apartment Homes (July 12), Circle Apartments, Citadel Management, Clinton Manor (July 15), Cloverdale, Colavita, College Main Apartments, Colonial American (July 12), Colonial Manor, Columbus Apartment Ass'n (Garland, Graver, Thayer), Community Realty Company, Community Housing Improvement Program (July 10), Concord Mews, Copper Mill (July 12), Covington-Ring (July 10), Crosspointe, Crestview Villa (July 15),

Cronheim (July 15), Crossings of Bellevue (July 22), Crosswood Park (July 22), Countryside Village (July 22), Dangel, Deerwood, Del Webb Corp., Desert Park, De Ville Southwest, Dietrich Apartments, Dominion Companies (Glaser, Keefe), Dominion Development Corp., Dominion Group, Donathan Properties, Donewald Property Management, Inc., Draper and Kramer, Drees Company, Drucker & Falk, Edgewood Management Corp. (April and July 10 filing), ElDorado Hills (July 11), Ellis Property Management Services, Engineered Concepts, Equitable Real Estate Investment Management Inc., Equity Capital Management Corp., Equity (Andren, Batchelor, Brackenridge, Brewer, Brown, Brucks, Buckley, Collins, Fabiani, Gawronski, Lavine, Layman, Navitsky, Monaco, Musen, Offenbacher, Pater, Salter, Santee, Smith, Swift, Toumi, Wakenight, Wetzel), Eugene Burger Management, Evans Withycombe Residential, Essex Partners (July 10), F&W Management Corp., FDC Managaement, Falls Chase, FDC Management, First Capital Property Group, First Capital Corp., First Lake (Artigues, Bandi, L'Hoste, McCormick, Kueter, Villarrubia) (April and July filings), First Worthing Co., Flint Building Co., Flournoy & Calhoun (April and July 8 filing), Fogelman Properties, Forest City Management (Cvijovic, Darcy, Meyers, Morren, Rosendale), Forest Glen Apartment, Forest Hill Gardens (July 22), Forest Hills Village (July 22), Four Seasons Apartments, Frankel Family Trust, Franklin Farm foundation, Gannon Management, Gates at westfalls, General Investment, Gentry Waipio CA, Gerson Bakar & Associates, Glenborough Corp., Glenwood Management Corp., Gold Crown, Great Eastern Management Co., Great West Management (July 22), Greater Las Vegas Ass'n of Realtors (July 10), Green Oaks, Grubb Management, H.N. Gorin, H&B Multifamily Management, Habitat Company, Hallcrest Heights Associates, Harbor Terrace, Harbor Village, Harold Apartments (July 15), Harrison & Lear, Harrison & Bates, Heitman Properties Ltd., Heritage Woods, Heritage Knoll, Hickory Woods, Hillwood at Landmark, HMB Property, Hoffman Architects, Holly Court (July 12), Host Apartments, Insignia Management Group (Gormaker, Shuler) (April and July filings), Intercity Investments, Inc., Investors Realty, Irwin R. Rose & Company, JBG Companies, Jon-Mark Properties, Julian LeCraw (July 12), Just enterprises, Kaiserman Management April and July filings), King Properties, King's Pointe, Knollwood Apartments (April and July filings), Kucera Management, La Plaza (July 10), Lake Forest, Lakes L.P., LakesII L.P., Lakeside Apartments, LAMCO, Lane Company, LCOR Inc. (Polich, Merkle, Lundahl, Hard), Langley Family Trust, Legow Management (April and July filings), Legum Norman, Lenox Gates, Live Oak Properties, Love Properties, Luke, Madison Square II L.P., Magnum Dallas Management, Inc., Mahaka Valley Towers (Doyle, Hankins, Jaran, Milligan), Management Specialists, Management Services (April and July filings), Manhattan Gardens, Mathews-Click BaumanInc., Maxim Property, Maywood, MBL Life Assurance, McCallister Co., McDougal Properties, McLean Chase, Medford Property, Merry Land & Investment, Metropolitan Life Insurance Co., Mid-America Apartment Communities, Mid-America Management, Mike Breeding state Farm, Mink & Mink, Mission Shadows, Morton G. Thalhimer, Morton M. Gerson, Mt. Zion (July 15), National Housing Corp., New America, Nordblom Company, Norris & Stevens, North Village, Northeast Louisiana, Northpointe, O & M Properties, Oak Park Apartments, Oaks Retirement Community, Oakwood Management, Oasis Residential, Inc., On-line Realty, Oxford Hill, Oxford Properties, The Palms, Paragon Group (Cobb, Lavin), Parc East, Parkdale (July 15), Park Spring, Park Place on Turtle Creek, Partners Management, Pecan Valley, Pecan Manor, Perrin Square, Pest Management, Picerne Development, Pinetree (July 15), Platinum Coast, Pleasant Hills, Pleasanton Village. Post Apartments, PRC Management, Preston Square, Principal Management, ProComm (Alba, Herrington, Maciorowski, Perez), Professional Property management Assoc, of San Francisco, Property Management Specialists (Also filed July 10), Property One, PW Funding, Rainbow Property, Raintree Properties, Rainy Meadows (July 15), Ralmor Corp., Realty One, The Real Estate Board of New York, Inc., Regency Gates, Regency windsor, Regency Palms, Ridpath, Donald and Rosemary, Ripley Wright Assoc., Riser Management, Robert Hancock, Roger C. Perry & Co. (April and July filings), Rose's Down Home, Rosslyn Heights (North, South, East), RPM ManagementRoachell, Beal), Rugby McIntyre, S.L. Nussbaum, S&S Property Management, SCG Realty Services, Samuel Geltman & Co, San Diego County AA, Santa Fe, SARES*REGIS Group, Sentinel (July 10), Sentry Property, Shannon Manor (July 15), Showe Management, Siara, Siegen Lane, Silver Shadow, Simon Companies, Simpson Housing, South West Property, Southern engineering, Southpark, Southwest Louisiana Apartment Assoc., Spradling & Biddinger, Springfield Green, St. Stephens (July 15), State Farm, Steppes of Barcroft, Stratton House, Stalworth Real Estate Services, Stone Hollow (July 15), Summers, Summerhouse, Summit Properties, Sun Wood, Sunburst, TCRS, Tecton, Terrace, Thomas Group, Thompson Place, Tiber View, Tonti Organizations, Tonti Realty, Town & Country Apartments (Boyce,

Reply Comments in DBS Proceeding

Robert J. Abbott (Abbott)
Community Associations Institute (Community)
Consumer Electronic Manufacturers Association (CEMA)
DIRECTV, Inc. (DIRECTV)
Evermay Community Association (Evermay)
Independent Cable & Telecommunications Association (ICTA)
Local Communities and National League of Cities (NLC)
National Rural Telecommunications Cooperative (NRTC)
National Apartment Association, Building Owners & Managers Association, et. al. (NAA)
Philips Electronics & Thomson Consumer Electronics, Inc. (Philips)
PRIMESTAR Partners L.P. (PRIMESTAR)
Satellite Broadcasting and Communications Association (SBCA)

DBS *Ex Parte* Presentations

Community Associations Institute, Montgomery Village (Community *ex parte*)
Miller, Canfield, Paddock and Stone. (Miller, Canfield *ex parte*)
National Realty Committee, Rockefeller Group Telecommunications Services, Inc. (NRC *ex parte*)
National Apartment Association, National Multi Housing Council (NAA *ex parte*)
Satellite Broadcasting and Communications Association, DIRECTV, Inc., Hughes Network Systems (SBCA *ex parte*)

Edwards, Guerin, Milder, Ruff) (Also filed July 10), Towne Properties, Townhomes in the Pines (July 15), TownHomes Management, Trademark Properties, Trammel Crow Residential Services (Bunch, Chestnut, Durkin, Ford, Holland, Moriarty, Nolen, Simpson, Talbot, Valach, Ward, Wood), Tuck Investments (July 10), Tulsa Properties, TVO Realty, United Dominion (July 10), University Towers, USA Properties Fund (G.Brown, J.Brown, Gall, Herzog, May, McCleery, McCurdy, Stevenson), Vermont Gardens, Villa Solana, Villages at Falls Church, The Villas of Henderson Pass (Aldrich, Almaguer, Busby, Flores, Muniz, Muniz, Watson), Vintage Realty, Vista del lago, Waialae Gardens, Wallace H. Campbell, The Wallick Companies (Goldston, Phillips), Wapelton, Waterford at Blue Lagoon, Waterford, Wellsford, Wentworth Place, Westchase, Western Reserve (July 10), Westgate, Wilkinson Group, Willow Trace, Willow River, Wilton Companies, Windgate, Windward Towers, Winnsboro (July 15), Woodburn Village, Woodmont Real Estate Services, Worth Hallmark, Wymer (Abbot's Cove, Arbors, Ashberry Village, Asherton of Dublin,Autumn Chase, Cabot Cove, Colonial Village, Copperleaf, Danbury Meadows, Forest Creek, Greene Countrie, Hamilton Arms, Heather Glen, heritage Way, Hibernia, Highland Park, Karric Place, Lakes of Westdale, Lakeview square, Mallard's Run, Millington, Nicholas Square, Northland Square, Olde Cape Colony, Park Club, Ponderosa Village, Rosebrook Village, Sanctuary Village, Shannon Village, Silvertree, Springburne, Startford Village, Timber Creek, Westmont Village, Wexford Lakes, Williamsburg Square, Woodcrest, Woodland terrace, Wyandotte Village), Zalco Realty, Zehman-Wolf (July 10), Zink Partners, Zions Securities.

DBS Petitions for and Oppositions to Reconsideration

Alphastar (Alphastar)
Boulder, County of (Boulder)
Consumer Electronics Manufacturers Association (CEMA)
Cities of Texas, Tennessee, National Association of Counties and the United States Conference of Mayors (Mayors)
DIRECTV, Inc. (DIRECTV)
Florida League of Cities (FLC)
Hughes Network Systems, Inc. (HNS)
Michigan, Illinois, Texas Communities (MIT)
National League of Cities (NLC)
Philips Electronics & Thomson Consumer Electronics (Philips)
Primestar Partners L.P. (Primestar)
Satellite Broadcasting and Communications Association of America (SBCA)
United States Satellite Broadcasting Co. (USSB)

Supplemental Filings

Compilation of 432 letters and leases apparently submitted by members of National Apartment Association[224] (NAA Compilation)

[224]Acadian Oaks, ACCO Management, Altman Development Corp., Amberwood, Arbor Place, Arthur Mays Villas, ARV, Ashley Woods, Ambassador, Amurcon Realty Group, Arbour East, Ardmore Terrace, Arlington Properties, Armand Place, Aronov, Artcraft Companies, Arthur Mays Villas, Asbury Arms, Atlantic Gardens, Atlantic Terrace, Autumn Woods, Bay Crest Village, Bay Place, Benning Heights, Bethel Bishop, Bluffs, Bob Ross Realty, Braden Fellman, Bridgedale Terrace, Brighton Place, Boulder Springs, Broad Viewe, Barrington Place, Belmont/Foxwood, Bennington Square, Berger, Bethel, Bexley House, BH Equities, Big Walnut, Blakewood, Blythe Ocean View, BOCA East, Braeswood Harbor, Breakers, Breslyn House, Brittany Point, Broad Street Management, Broadmoor , Brookhollow, Buckeye Real Estate, Bull Creek, Burgundy Court, C&G Investment, Calibre Crossing, Casa de Monterey, Cedarbrook Park, Chambers Ridge, Chapel Ridge, Chasco Woods, Chelsea Place, Chesapeake Apartment Homes, Cheyenne Woods, City Heights, Clinton Manor, Cloverdale, Colonial American, Colony at Kenilworth, Community Realty Company, Community Housing Improvement Program, Concord Mews, Copper Mill, Country Place, Covington-Ring, Crestview Villa, Croft House, Cronheim, Crossings of Bellevue, Crosswood Park, Countryside Village, Covington-Wilson, Cambridge Place, Cardinal Realty, Carlton House, Caroline, Carriage House, Carriage Place, Carriage Hill, Carter Company, Cauwels & Associates, Central Court, Centreville Commons, Church Hill House, Churchill Park, Colony of Springdale, Columbus Court, Concierge, Connecticut Village, Contadora, Coopers Pointe, Cottonwood, Country Place, Country Oaks, Courtside at Olympia, Creekwood, Crossing, Crossroads, Deshler, Dial Communities, DMC Management, Dominion Companies, Dunlap & Magee, Day Holding Co., Day Two Properties, Deerfield, Delta View, DeSoto Estates, Driscoll Place, Drucker & Falk, Druid Hills, Drusilla , Dunbarton, Eastbrook, Eastridge, East Village, Edgewood Management Corp., ElDorado Hills, Ensor Forest, Essex Partners, Evans Withycombe, East Farm Village, Emberwood, Emerald Village, Emmanuel-Morris Brown-Ebenezer, Essex Park, Fairwood, FDC Management, First Lake, FlournoyProperties, Forest Hills Village, Forest Hill Gardens, Forest Park South, Favrot and Shane, Fieldcrest, First Management, Forest Park South, Forrest Grove, Fountain Lake , Foxfire, Giles County Housing, Glens, Glen Lakes, Gorsuch, Great West Management, Greater Las Vegas Ass'n of Realtors, Greenwood Park, G.T. Properties, Glendale Terrace, Glynn Place ,Goulds-Elderly, Harold Apartments,

Hayes Place, Hedges, Hickory Heights, Holly Court, Harbor Management Heritage Park, Heritage Park, Hibben Ferry, Hidden Pointe, High Ridge, Highland Hills, Highland Creek, Hill View Village, Holly Court, Homefinders , Houston Apartment Ass'n, Hunters Chase, Huntwick, Independence Hill, Insignia Management Group, Irwin R. Rose & Company, InterCapital, Ivory Canyon, Join the Community, Jonathan's Landing, Julian LeCraw, Jefferson West, Jenny Lind Hall, John B. Hughes, Johnson Court, Joseph Paul, Kaiserman Management, Kalmia, Knollwood Apartments, Kennedy Heights, Kenneth Court, Key Management, Kingsrow, La Plaza, Lafayette Square, Lakes at Sandy Forks, Lakeside Apartments, Lane Company, Lawn Wood, Legow Management, Lexington, Lincoln Property, Lockwood Group, Lynco, Lynnewood Gardens, L&B Multifamily Advisors, La Fontenay, Lake June Village, Lake Charles Realty Lakeville, Lakewood at Pelham, LasCasitas, Laurens Villa, Leawood, Lebanon Station, Lexington Green, Liberty Terrace, Lincoln, Lincoln Green, Live Oak, Management Support, Management Services, Meadows at Elk Creek, Meadow Terrace, Michelson Organization, Miramar University Apartments, Misty Woods, Mt. Zion, Meadow Wood, Metropolitan Management, Missouri Apartment Ass'n, Morningside, Mountain View, Mountainview Terrace, Mulberry Hill, Nashboro, National Realty Management, Northgate, Nottingham, Napa Valley, Newport Manor, Nob Hill Villa, North Dallas Crossing, Oakland, Oakwood Management, Oak Pointe, Oakbrook Village, Olentangy Commons, Oracle Villa, Orchard Park, Paddock Park, Palisades, Park Laureate, Parktown, Pathfinder Village, Pembroke Village, Picerne Development Corp., Pinehaven Villas, Playa Pacifica, Point West, Post Management, Presidential House, Paddock Club, The Park at Addison, Parkdale, Peppertree, Pierce Const., Pierce Properties, Pine Manor, Pinetree, Pinewood Park, Pinnacle, Plainview, Point James, Post Ridge, Property Asset Management, Property Management Specialists, Quantum Residential, Quail Ridge, Quail Woods, Quail Run, Quail Hollow, Raymonia, Remington Place, Rentmore Management, Richardson Highlands, Ridgecrest, River Oaks, Rivercrest Village, Riverdale, Ross Trust, Roxbury Park, Rainy Meadows, Randol Mill Terrace, The Real Estate Board of New York, Ridgecrest, Riverwalk, RMK Management, Rochester Apartments, Roger C. Perry & Co., RPM Management, Seasons, Sentinel, Shannon Manor, Sherril Oaks, Sherwood Apts, Sierra Pines, Society Park, Southern Hills, Spring Creek, St. Stephens, Starwood, Stone Hollow, Summit Properties, Summit Real Estate, Sunscape, Swift Creek, Salem Square, Samuel Kelsey, San Martin Twin Towers, Sand Pebble Village, SandLake Villa, Sandpiper, Sandy Hill Terrace, Schatten Properties Management, Scotchollow, Scottsdale Legacy, Seasons, Sequoia, Towers, Shadow Lake, Shadowlake, Shaker Square, Shanel, Snowden, South Pointe, Southridge I&II, Springfield Apartment & Housing Ass'n, Steeplechase, Stonebridge, Stonybrook, Summer lake, Suncrest, Sunflower Park, Sunrise, Sunset Village, Sutton Place, Tahoe Springs, Tahquitz Court, Tates Creek Village, Terry Hill, The Pavilion, The Landing, The Village, The Liberty, The Loft, The Meadows, The Village at Pennbrok, The Place, The Boston Land Co., The Glades, The Huntingdon, The Lake, The Gables, The Gallery, The Villas, The Meadowbrook, The Windemere, Tiger Plaza, Timber Ridge,Towne Centre Village, Trailridge, Trinity Methodist, Twin Lakes, Tennis World, Town & Country Apartments, Townhomes in the Pines, Trails, Trammel Crow Residential Services, Trestles, Trestletree, Tuck Investments, United Dominion, USA Wentworth, Vanderbilt Square, Villas of Henderson Pass, Villa Serena, Val Verde, Valley Creek Village, Venango House Associates, Village Green, Village Brooke, Village East Towers, Village Square, Walden, Wallingford, Waterford Square, Wellsford, Westlake, Westview, Westwick, Whispering Pines, Whisperwood, Wildewood Place, Wildwood Management, Willow Creek, Willow Bend Lake, Willowick, Wilshire Place, Wilshire Villa, Windrush, Wispillion, Woodcrest, Woodhaven, Woodland Village, Woodmere, Woodruff, Woods on the Fairway, Worthing Companies,Wallick Companies, Webster Court, Westchester Park, Western Reserve, Westwood/English Village, Wildwood, Wilton Companies, Winnsboro, Wiston, Woodland Apts., Woods of Inverness, Woodscape, Zehman-Wolf Management.

ATTACHMENT C

TVBS/MMDS Comments:

American Radio Relay League, Inc. (ARRL)
Association for Maximum Service Television, Inc. (MSTV)
Barrett, Loren
Bell Atlantic
BellSouth Corporation and BellSouth Interactive Media Services, Inc. (BellSouth)
Brody Group (Brody)
C & R Realty and Management Co., Inc. (C&R Realty)
CAI Wireless Systems, Inc., CS Wireless Systems, Inc. and Heartland Wireless Communications, Inc. (CAI Wireless)
Caughlin Ranch Homeowners' Association (Caughlin)
CellularVision, USA, Inc. (CellularVision)
Cities of Texas, Tennessee, National Association of Counties and the United States Conference of Mayors (Mayors)
Client Condominium Ass'n (Client)
Community Associations Institute (Community)
Community Broadcasters Association (CBA)
ComTech Associates, Inc. (ComTech)
Consumer Electronics Manufacturers Association (CEMA)
Drummer Boy Homes Ass'n (Drummer Boy)
Elisha, Ekimoto and Harada (Elisha)
Evermay Community Association (Evermay)
Georgia Municipal Association (Georgia)
Huckleberry Community Association, Inc. (Huckleberry)
Independent Cable & Telecommunications Association (ICTA)
Indianapolis, Indiana
Island Colony
ITFS Parties
Killeen, Texas
Leonard Kryfho (Kryfho)
National Apartment Association, *et al.* (NAA)
National Association of Broadcasters (NAB)
National ITFS Association (NIA)
National League of Cities *et al.* (NLC)
National Trust for Historic Preservation (National Trust)
Network Affiliated Stations Alliance (NASA)
NYNEX Corporation (NYNEX)
Pacific Bell Video Services (PacTel)
Parkfairfax Condominium Unit Owners Association (Parkfairfax)
Plano, Texas
Primestar Partners, L.P. (Primestar)

Public Broadcasting Service and the Association of America's Public Television Stations (PBS)
Reston Home Owners Association (Reston)
Scarinci & Hollenbeck (Scarinci)
Silverman & Schild, LLP (Silverman)
United Homeowners Association (UHA)
WANTV, American Telecasting, Inc. (WANTV)
Western Reserve
Wireless Cable Association International, Inc. (WCAI)
Woodburn Village

***TVBS/MMDS* Reply Comments**

Bell Atlantic/Bell Atlantic Video Services (Bell Atlantic)
CAI Wireless Systems, Inc. (CAI Wireless)
CellularVision USA, Inc. (CellularVision)
Community Associations Institute (Community)
ComTech Associates, Inc. (ComTech)
Consumer Electronics Manufacturers Association (CEMA)
Michigan, Illinois and Texas Communities (MIT)
National Apartment Association, et al. (NAA)
National Association of Broadcasters (NAB)
Network Affiliated Stations Alliance (NASA)
People's Choice TV Corp. (People's Choice)
Wireless Cable Association International, Inc. (WCAI)

***TVBS/MMDS Ex Parte* Presentations:**

Bell Atlantic (Bell Atlantic *ex parte*)
CAI Wireless (CAI Wireless *ex parte*)
ComTech (ComTech *ex parte*)
Community Associations Institute (Community *ex parte*)
Independent Cable & Telecommunications Association (ICTA *ex parte*)
National Apartment Association, et al. (NAA *ex parte*)
National Association of Broadcasters (NAB *ex parte*)
National Associaton of Telecommunications Officers and Advisors (NATOA *ex parte*)
National Realty Committee, International Council of Shopping Centers, National Multi Housing Council, National Apartment Association, Rockefeller Group (NRC *ex parte*)
NYNEX (NYNEX *ex parte*)
Pacific Telesis (PacTel *ex parte*)
People's Choice TV (People's Choice *ex parte*)
Wireless Cable Association International, Inc. (WCAI *ex parte*)

ATTACHMENT D

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act,[225] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the potential economic impact on small entities of the approach proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided above.

Reason for Action. The rulemaking is initiated to obtain comment on the implementation of Section 207 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, as it applies to the installation, maintenance or use of antennas on common areas or rental properties, property not within the exclusive control of a person with an ownership interest, where a community association or landlord is legally responsible for maintenance and repair.

Objectives. The Commission seeks to evaluate whether preempting non-federal restrictions on commonly owned property and property subject to lease agreements, would: 1) enhance viewers' ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals and multichannel multipoint distribution services; 2) provide an unreasonable management burden for parties owning and legally responsible for the property at issue; and 3) result in the Commission exceeding its statutory authority and Congress' constitutional authority.

Legal Basis. The proposed action is authorized under Section 1 of the Communications Act of 1934, *as amended*, 47 U.S.C. § 151, and Section 207 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56.

Reporting, Recordkeeping, and Other Compliance Requirements. Depending on the outcome of the Further Notice of Proposed Rulemaking, neighborhood associations, property management companies and individual landlords promulgating regulations that restrict the installation, maintenance or use of devices designed for receiving over-the-air signals of DBS, MMDS and TVBS may, in certain circumstances, request declaratory rulings from the Commission that their regulations are reasonable, or petition the Commission for waiver of the rule.

Federal Rules that Overlap, Duplicate or Conflict with These Requirements. None.

Description and Estimate of the Number of Small Entities Impacted. The Regulatory

[225] 5 U.S.C. § 603 (1996).

Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and "the same meaning as the term 'small business concern' under section 3 of the Small Business Act."[226] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[227] Neighborhood associations and property rental businesses may be affected by the ultimate outcome in the Further Notice of Proposed Rulemaking. These entities might need to revise their covenants and lease restrictions so that they conform with the rule.

Section 601(4) of the Regulatory Flexibility Act defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[228] This definition includes homeowner and condominium associations that operate as not-for-profit organizations. The Community Associations Institute estimates that there were 150,000 associations in 1993.[229]

The U.S. Small Business Administration classifies a small entity as a firm with fewer than 500 employees.[230] Utilizing the Standard Industrial Classification Codes for Real Estate Agents and Managers, 100,135 firms (of a total of 100,554) have fewer than 500 employees.[231] This number does include real estate agents, who would not be burdened by the proposed rule, but does not include sole proprietors engaged in leasing rental property, who might be burdened.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. This Notice solicits comments on a general approach only.

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[226]Regulatory Flexibility Act, 5 U.S.C. § 601(3) (1980).

[227]Small Business Act 15 U.S.C. § 632 (1996).

[228]5 U.S.C. § 601(4).

[229]Community DBS Comments at 2.

[230]United States Small Business Administration, *A Guide to the Regulatory Flexibility Act*, App. A (1996).

[231]United States Dept. of Commerce, Bureau of the Census, *1993 Census of Cable and Other Pay Television Services, quoted by*, Dr. William Whiston, Chief, Research Contracts Branch, Office of Advocacy for the Small Business Administration, July 31, 1996.

will allow local authorities to address the specific needs of their communities through their own rules.

In both of the above respects, I believe that the Commission is taking positive steps to address my previous concerns, and will work to resolve the land ownership issues after receiving further comment from interested parties. I also am aware that the issues I have highlighted must be balanced with the intent of Congress not to limit development of competing distributors in the multichannel video marketplace. This is particularly relevant in urban areas or densely populated areas with mulitple dwelling units. Accordingly, I believe that this item takes fair and cautious steps to balance these ownership and jurisdictional issues with the minimal necessary conditions for use of reception devices.

Separate Statement
of
Commissioner James H. Quello

Re: In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and MMDS (CS Docket No. 96-83); Preemption of Local Zoning Regulation of Satellite Earth Stations (IB Docket No. 95-59).

This Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking takes several actions to implement the intent of Congress in the Telecommunications Act of 1996 to "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."[1]

I previously expressed my concerns that the clear intent of Congress not be applied overbroadly to private, nongovernmental provisions restrictive covenants and homeowners' association rules that run to the placement of over-the-air televison, MMDS, and DBS reception devices.[2]

With respect to the impact on private agreements, the Further Notice in this proceeding raises a range questions for further comment including the technical feasibility of providing service in common areas, and legal property issues for access in landlord -owned areas as well as common property for community associations. The issues identified for further comment also reflect an effort to respect rights of property owners as well as an effort to preempt provisions in private agreements only as necessary to preserve reception of signals.

Concerning the interests of localities as expressed in this proceeding, I believe that this decision takes appropriate steps in several respects. First, I support the action to eliminate the rebuttable presumption approach and prohibit only state or local laws that "impair", rather than "effect", the installation, maintenance, or use of the reception devices. I am pleased that this clarification will allow local governments more flexibility in traditional land use areas than the previous proposal. The decision also offers greater clarity and guidance to local jurisdictions for their application of the rules. Second, I anticipate that the decision's allowance of exemptions for purposes of safety, and preservation of historic areas

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[1] 1996 Act, Section 207.

[2] See In the Matter of Implementation of Section 207 of the Telecommunicatins Act of 1996, Restrictions on Over-the-Air Reception Devices, Television Broadcast Service and Multichannel Multipoint Distribution Service, Notice of Proposed Rulemaking, CS Docket No. 96-83, 11 FCC Rcd 6357 (1996), Separate Statement of Commissioner James H. Quello.

SEPARATE STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

Re: Preemption of Local Regulation of Satellite Earth Stations, IB Docket No. 95-59, Implementation of Section 207 of the Telecommunications Act of 1996, CS Docket 96-83, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking

In this Report and Order, we implement Section 207 of the Telecommunications Act of 1996. Section 207 directs the Commission to preempt nonfederal restrictions on certain direct-to-home video services, including Direct Broadcast Satellite (DBS) services. I write separately to note my strong support of the rule we adopt today, which is simpler than the one we proposed in our Notice of Proposed Rulemaking. I believe that this rule will be easier to administer and will produce fair results consistent with the intent of Congress.

In crafting this rule, we have performed a delicate balancing act. On the one hand, we have weighed the federal interests of ensuring that all consumers have access to a broad range of video programming services and promoting competition among those services. On the other hand, we have weighed important local interests in safety and managing land use in their communities. Ultimately, we have decided to cleave to the language of the 1996 Act and preempt local restrictions that "impair" reception unless the restriction is narrowly tailored to serve public safety or historic preservation objectives. In my judgment, this is very fair to both important interests.

I note that we have not completed our work in this proceeding. The rule we adopt applies to governmental and nongovernmental restrictions on property within the exclusive use or control of the viewer, so long as the viewer has a direct or indirect ownership interest. Our Further Notice seeks comment on how Section 207 applies in rental and common ownership situations. This issue is a difficult one. Once again we have competing interests to balance. We must consider the information rights of viewers against the property rights of landlords and those with common ownership, such as condominium associations. It is my view that our resolution of this issue will benefit from a fuller record that fleshes out the legal and practical consequences of either preempting or not preempting in rental and common ownership situations. I encourage interested parties to fully discuss the options and consequences available to us.