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

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulation of Satellite Earth Stations	)	
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 Service and Multichannel Multipoint Distribution Service	)	

COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

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Executive Summary of Comments by Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. in IB Docket No.95-59

Philips and Thomson believe that the benefits of new digital technologies like direct broadcast satellite service should be available to all American consumers. Section 207 of the Telecommunications Act of 1996 promotes this goal. It instructs the Federal Communications Commission to issue regulations prohibiting restrictions that "impair a viewer's ability to receive" programming services via the use of DBS dish antennas, and over-the-air broadcast and wireless cable antennas. Congress clearly stated its intent that this section preempt both private contractual restrictions on the use of DBS dish antennas as well as local zoning restrictions.

In the Second Further Notice in IB Docket No. 95-59, the Commission raises a host of questions regarding whether to extend its preemption rules to condominium owners and renters. There should be no doubt that the preemption rules should apply to condominium and apartment dwellers in order to implement Section 207 faithful to its letter and spirit. Otherwise, millions of renters and some condominium unit owners will continue to be subject to myriad private restrictions on their access to new video programming technologies. Moreover, any distinction between single family homeowners and condominium owners or renters would be wholly artificial and would unfairly deny millions of viewers access to DBS service, in direct contravention of the 1996 Act's explicit purpose to expand access to telecommunications services to all Americans. It would

engraft onto the legislation a distinction based on economic status of the viewer nowhere to be found in Section 207 and utterly at odds with Congressional intent throughout the 1996 Act to avoid creation of information "haves" and information "have nots."

Both Congress and the Commission have the legal authority to preempt private contractual restrictions on the use of DBS dish antennas by tenants. Congress' power to alter contractual relationships pursuant to its constitutional authority to regulate interstate commerce is well-established. The courts have also upheld the Commission's authority to modify private leasehold arrangements. Moreover, preempting such restrictions pursuant to Section 207 is not an unconstitutional taking under the Fifth Amendment. Even if landlords had a colorable basis for such a taking claim, their asserted interests do not outweigh the countervailing rights that their tenants possess under the First Amendment as viewers of electronic media.

Finally, contrary to the claims of landlords and condominium associations, it is technically feasible to provide DBS to apartment dwellers with the use of only a single DBS dish antenna on the roof of the building. Equipment to wire apartment buildings in such a configuration is widely available commercially and is currently in use.

Therefore, Philips and Thomson urge the Commission to extend its current preemption rules to cover all viewers, including all tenants and residents of multiple dwelling units whether

apartment buildings or condominiums. Only by extending the rules to cover all viewers will the Commission satisfy the letter and spirit of Section 207 of the 1996 Act.

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COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") submit comments in the above-captioned Further Notice of Proposed Rulemaking ("Second Further Notice") to implement Section 207 of the Telecommunications Act of 1996.

I. Philips and Thomson

Philips manufactures television sets and other consumer electronic products, semiconductors, diagnostic imaging systems and other professional equipment marketed under many familiar brand names including Philips, Magnavox and Norelco. Philips has long been a pioneer in the telecommunications and entertainment industries and also played a pivotal role in the development of

digital high definition television (HDTV) through the Grand Alliance. Philips manufactures and distributes DBS dish antennas for Primestar.

Thomson also manufactures and distributes television sets and other consumer electronics products under the well-known RCA, General Electric and ProScan brand names. In addition to its key role in the development of HDTV technology through the Grand Alliance, Thomson developed in cooperation with DIRECTV the first direct broadcast satellite (DBS) receiving system in the United States -- the DSS® system. Thomson has manufactured more than 3 million units since 1994.

Philips and Thomson believe that the benefits of new digital technologies like DBS should be available to all American consumers as soon as possible. Section 207 of the Telecommunications Act of 1996 ("1996 Act")[1/] promotes this goal. It instructs the Federal Communications Commission ("Commission") to issue regulations prohibiting restrictions that "impair a viewer's ability to receive" programming services via the use of DBS dish antennas, and over-the-air broadcast and wireless cable antennas. Congress clearly stated its intent that this statutory provision preempt both private contractual restrictions on the use of DBS dish antennas as well as local zoning restrictions.

1/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

In the Second Further Notice in IB Docket No. 95-59, the Commission raises a host of questions regarding whether to extend its preemption rules to condominium owners and renters. Philips and Thomson strongly urge the Commission to extend its rules to these large categories of viewers. Otherwise, millions of renters and some condominium unit owners will continue to be subject to myriad private restrictions on their access to new video programming technologies. Moreover, any distinction between single family homeowners and condominium owners or renters would be wholly artificial and would unfairly deny millions of viewers access to DBS service, in direct contravention of the 1996 Act's explicit purpose to expand access to telecommunications services to all Americans. It would engraft onto the legislation a distinction based on economic status of the viewer nowhere to be found in Section 207 and utterly at odds with Congressional intent throughout the 1996 Act to avoid creation of information "haves" and information "have nots." Moreover, it would thwart the purpose of Section 207: to knock down yet another barrier to the development of robust competition in the multichannel video programming distribution market. By permitting the continuation of restrictions on DBS dish antennas in multiple dwelling units, the Commission would be an accomplice to limiting significantly market penetration of DBS service. Nothing could stray farther from the mandate Congress imposed on the Commission in enacting Section 207.

Philips and Thomson urge the Commission to extend its current preemption rules to cover all viewers, including all tenants and residents of multiple dwelling units whether apartment buildings or condominiums. Only by extending the rules to cover all viewers will the Commission satisfy the letter and spirit of Section 207 of the 1996 Act.

II. The Text and Legislative History of Section 207 Makes Clear That Private Restrictions on DBS Services Are Preempted.

Nothing in the text or legislative history of the Act supports the notion of applying Section 207 differently to viewers who own homes and viewers who rent. Section 207 requires the Commission to: "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for . . . direct broadcast satellite services."[2/] According to the text, Section 207 applies with regard to restrictions on viewers, not homeowners.

Similarly, the legislative history is devoid of any reference to type of property ownership or any basis for relegating renters to second class status not entitled to the benefits conferred by Section 207 upon "viewers." It states that Section 207 was intended:

> to preempt enforcement of . . . restrictive covenants or encumbrances that prevent the use of . . . satellite receivers designed for receipt of DBS services. Existing regulations, including but not limited to . . . restrictive covenants or homeowners' association

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2/ Pub. L. No. 104, 104th Cong., 1st Sess. § 207, 110 Stat. 56, 114 (1996).

> rules, shall be unenforceable to the extent contrary to this section.[3/]

Nothing in Section 207 or the Act's legislative history supports any distinction between viewers who are homeowners and viewers who are renters. To the contrary, the Act and the legislative history both clearly state that the purpose of the legislation is to increase access of all Americans to telecommunications services.[4/] Any implementing regulations permitting restrictions on non-homeowners' DBS access would fly in the face of law and congressional intent.

Moreover, such distinctions would be invidiously discriminatory. According to the most recently compiled information by the U.S. Census Bureau, approximately 35 million American households (roughly 35 percent) live in rented housing.[5/] Of these 35 million renter households, about one-

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3/ H.R. Rep. 104, Part 1, 104th Cong., 1st Sess. 123-124 (1995).

4/ See e.g., Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (providing in the preamble: "[a]n Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies"); see also, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996) (providing that the legislation is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

5/ See Second Quarter 1996: Press Release, U.S. Census Bureau, Table 3 - Estimates of Total Housing Inventory for the United States: Second Quarter 1996 and 1995 (released July 22, 1996) (available through the U.S. Census Bureau's website at http://www.census.gov.ftp/pub/hhes/housing/hvs/q296prss.html).

quarter of them are low-income.[6/] Two-thirds of single mothers must rent their housing.[7/] Thus, the Commission's proposed distinction based on home ownership would create the ultimate "have" and "have not" situation by denying many American families access to important communications services based on their economic status.

It would also have a disproportionate impact on minority households. According to U.S. Census Bureau data, approximately 35 percent of White households rent. By contrast, 57 percent of Black households, 58 percent of Hispanic households, and almost half of the Native American population, including American Indian, Eskimo, Aleut, and Pacific Islander households, rent.[8/] The impact on minority households of any home ownership distinction in implementing Section 207 is fundamentally at odds with Section 104 of the 1996 Act -- the newly enacted nondiscrimination provision which prohibits discrimination in the implementation of the Communications Act of 1934.[9/] It also

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6/ See Grall, Timothy S., "Our Nation's Housing in 1993," U.s. Bureau of the Census, Current Housing Reports, H121/95-2, U.S. Government Printing Office, Washington, D.C. (1995).

7/ Id. at 5.

8/ Id. at p. 19.

9/ See Telecommunications Act of 1996, § 104, 110 Stat. 56, 86(1996) (amending 47 U.S.C. § 151 to provide: "[f]or the purposes of regulating interstate and foreign commerce in communications by wire and radio so as **to make available**, so far as possible, **to all the people of the United States, without discrimination on the basis of race, color, religion, national origin or sex, a rapid, efficient, Nation-wide, and world wide wire and radio communication service** . . . .)(emphasis added).

ignores the fact that Section 207 was patterned after Civil Rights legislation prohibiting discrimination in private contracts in the sale or rental of housing. The reference in Section 207's legislative history to rendering unenforceable private covenants restricting access to DBS service purposefully tracks the cases rendering unenforceable racially restrictive covenants.[10/]

III. Congress and the Commission Have the Legal Authority to Preempt Landlord's Restrictions on DBS Access.

Landlords of rental properties have erroneously asserted that the Commission may not preempt private contractual restrictions on the use of DBS dish antennas by tenants. They incorrectly contend that the Commission may not issue regulations that impinge upon private contractual provisions between landlords and tenants that restrict tenants' access to DBS service because Congress lacks authority to affect such contracts. A long line of judicial precedents, however, reaches exactly the opposite conclusion. The courts agree that: (1) Congress may enact legislation modifying the rights of private parties reflected in contracts; (2) such legislation is not an unconstitutional taking; and (3) the Commission may promulgate regulations in accordance with such legislation. Preempting enforcement of private restrictions on DBS access is clearly

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10/ See Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972) (per curium) (permitting homeowners' challenge to legality of racially restrictive covenants) (citing Shelly v. Kraemer, 334 U.S. 1 (1948) (holding racially restrictive covenants judicially unenforceable)).

within the power of Congress, and Commission regulations implementing such a legislative preemption are lawful.

Congress' power to alter contractual relationships pursuant to its constitutional authority to regulate interstate commerce is firmly established. As the Supreme Court recently stated:

> Contracts, however express, cannot fetter the constitutional authority of Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.[11]

Retroactive application of statutes modifying contractual rights that predated the legislation is also entirely permissible.[12] No one seriously challenges Congress' authority to regulate access to telecommunications services.[13]

11/ Connolly v. Pension Benefit Guarantee Corp., 475 U.S. 211, 223-224 (1986). See also Concrete Pipe & Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 639-640 (1993) (federal legislation may modify existing contractual obligations); Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 16 (1975) (Congress has right to enact legislation altering the "rights and burdens" between private parties); Norman v. Baltimore & Ohio R.R. Co., 294 U.S. 240, 309-310 (1935) ("no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts,although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt"); Louisville & Nashville R.R. Co. v. Mottley, 219 U.S. 467, 482 (1911) ("contracts must be understood as made in reference to the possible exercise of the rightful authority of the government").

12/ See PBGC v. R.A. Gray & Co., 467 U.S. 717 (1984) (upholding retroactive application of ERISA amendments).

13/ See Congressional Research Service, The Constitution of the United States: Analysis and Interpretation 174 (1982) (Federal Communications Act of 1934 has "evoked no basic constitutional challenge.").

Likewise, the Commission has the legal authority to carry out Congress' mandate to preempt private leasehold restrictions on DBS dish antennas. The Commission's authority to modify private leasehold agreements is well recognized by the courts. Under the Pole Attachment Act, the Commission, in implementing an act of Congress, was authorized by Congress to regulate leasehold contracts between utility-pole owners and cable companies for space on the owner's poles.[14/] The Florida Power Corporation unsuccessfully challenged the Common Carrier Bureau's authority to regulate these rates. On review, the full Commission stated:

> It is well established that contracts made in areas of governmental regulation are subject to modification by subsequent legislation. . . . The ability of Congress to react to changing conditions and to legislate in the public interest cannot be restricted by private agreements. Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution.[15/]

IV. Preempting Landlord's Restrictions on Access to DBS Service is not an Unconstitutional Taking.

Landlords and condominium associations have also argued that any attempts by the Commission to preempt or limit restrictions on tenants' or unit owners' access to DBS service is a regulatory taking under the Fifth Amendment to the Constitution. Takings jurisprudence clearly shows that this is not the case.

14/ 47 U.S.C. § 224.

15/ Teleprompter Corp. and Teleprompter Southeast, Inc. v. Florida Power Corp., File No. PA-81-0008 et al., 1984 FCC LEXIS 1874 (Oct. 3, 1984), rev'd on other grounds sub nom Florida Power Corp. v. FCC, 772 F.2d 1537 (11th Cir. 1985), rev'd on other grounds by FCC v. Florida Power Corp., 480 U.S. 245 (1987) (leaving intact the Commission's original decision).

Preempting such restrictions pursuant to Section 207 of the Act is not an unconstitutional taking.

If Congress has the constitutional authority to enact a statute, application of that statute by regulation cannot be defeated by private contractual provisions.[16] "For the same reason, the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking."[17] In the case of Commission regulations that specifically modified leasehold agreements, the Supreme Court held in Florida Power Corp. that the Commission's regulations pursuant to the Pole Attachments Act, regulating the rates utility pole owners could charge companies for space on their poles, did not effect a taking of the pole owner's property.[18] The Court concluded that "statutes regulating economic relations of landlords and tenants are not per se takings."[19]

16/ Connolly, 475 U.S. at 224.

17/ Id.

18/ Florida Power Corp., 480 U.S. at 245.

19/ Id. at 252. The Court's opinion in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), is inapposite, because that case involved a state statute that permitted the physical invasion and occupation of the owners' property by third parties. The Loretto court specifically noted that the holding did not extend to the issue of regulatory modifications of rights between landlords and tenants. Id. at 439-441 n.19; see also Yee v. City of Escondido, 503 U.S. 519, 527 (1992) (holding in Loretto limited to physical takings when "government authorizes a compelled physical invasion of property").

Government regulation, so long as it is not excessive to accomplish a legitimate government purpose, does not rise to the level of a taking. Consequently, governments have wide latitude to issue regulations governing: (1) prices of rental property, so long as a reasonable rate of return is permitted to the landlord; and (2) health, safety, aesthetic and other regulations that fall into governments' "police powers" unless they reduce by a high percentage the value of the landlord's property.[20/] For example, the Supreme Court has concluded that no taking occurs where laws "merely regulate [the owner's] use of land by regulating the relationship between landlord and tenant."[21/] In such circumstances, the courts generally do not find a taking, unless the government regulation at issue: (1) allows a significant physical occupation of the owner's property by the government, a governmental agent, or the public; (2) the harm to the owner's property is a high percentage of its total value; or (3) the loss to the owner outweighs the gain to the public.[22/]

20/ Ralph E. Boyer et al., The Law of Property § 12.2 (1991); see also Pennell v. City of San Jose, 485 U.S. 1, 8-11 (1988) (outlining elements of regulatory takings); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. at 440 (reaffirming government authority to enforce building and fire codes and to require installation of mailboxes in apartment buildings); Penn Central Transp. Co. v New York City, 438 U.S. 104, 124 (1978) (outlining three-factor test for takings analysis).

21/ Yee, 503 U.S. at 519.

22/ See generally John E. Nowak et al., Constitutional Law § 11.12(e) (1986); see also Yee, 503 U.S. at 522 (takings analysis "necessarily entails complex factual assessments of the purposes and economic effects of government actions").

V. Section 207 Recognizes that Viewers' First Amendment Interests are Paramount.

Even if landlords and condominium associations had a colorable basis for their claims, a proposition Philips and Thomson unequivocally reject, their asserted interests do not outweigh the countervailing rights that their tenants and unit owners possess under the First Amendment as viewers of electronic video programming services. Section 207 is entirely consistent with a long line of legal precedent which provides that viewers have a "paramount" First Amendment right to receive a variety of information from diverse sources.

More than a quarter century ago, the Supreme Court first emphasized the primary role of viewers in effectuating the First Amendment's objective of "an uninhibited marketplace of ideas" in the context of broadcast communications, declaring the rights of viewers and listeners to be "paramount." Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 390 (1969). The Court stated that "[i]t is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here." Id. (emphasis added).

The paramount importance of viewers' right to access video programming was most recently reaffirmed by the Supreme Court in cases arising under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). In Turner Broadcasting System, Inc. v. Federal Communications Commission, ___ U.S. ___, 114 S. Ct. 2445 (1994), the Court confronted a

First Amendment challenge to the must-carry provisions of the 1992 Cable Act. Although the Court did not reach the ultimate merits of the constitutionality of the must-carry requirements -- owing to the existence of genuine issues of material fact -- it affirmed the paramount importance of viewers' access to information from diverse sources. The Court stated: "[a]ssuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment." Turner, 114 S.Ct. at 2470. The Court noted that "Congress' overriding objective in enacting must-carry was not to favor programming of a particular subject matter, viewpoint, or format, but rather to preserve access to free television programming for the 40 percent of Americans without cable." Turner Broadcasting System, 114 S. Ct. at 2461 (emphasis added). The Court specifically held that this objective -- "to ensure that every individual with a television set can obtain access to free television programming" -- was 'not only a permissible governmental justification, but an 'important and substantial federal interest.'" Id. (quoting Capital Cities Cable , Inc. v. Crisp, 467 U.S. 691, 714 (1984)).

Most recently, the D.C. Circuit Court of Appeals affirmed the Red Lion principle that viewers' First Amendment rights are paramount in the context of DBS service. Time Warner Entertainment Co. v. Federal Communications Commission, 1996 U.S. App. LEXIS 22387, *49 (D.C. Cir. 1996). In upholding Section 25 of the 1992 Cable Act which requires that DBS providers set aside

4 to 7 percent of their capacity for noncommercial educational programming, the court concluded that Section 25 is merely a new application of a "well-settled government policy of ensuring public access to noncommercial programming." Id. at *54.

Section 207 fulfills a congressional objective very much like that at issue in Turner Broadcasting and Time Warner, namely, ensuring viewers' access to video programming from a wide array of sources. The Commission cannot and must not subordinate this "important and substantial federal interest" to the dubious claims of landlords in implementing Section 207.

VI. It is Technically Feasible for a DBS Service Provider to Offer Programming to Apartment Dwellers through a Single Dish Antenna on the Roof and Such Equipment is Widely Available Commercially.

If the Commission extends its preemption rules to prevent landlords from enforcing restrictions which would impair a tenants' ability to receive direct broadcast satellite services, the landlord or condominium association could still have considerable discretion in determining the means by which tenants or unit owners could be provided access to DBS based upon the characteristics of the dwelling unit as long as tenants or unit owners could receive a quality signal. For example, in the case of a high rise apartment, Philips and Thomson do not envision a situation in which each tenant or unit owner would require his or her own dish antenna on the roof. Instead, Philips and Thomson contemplate that all tenants or unit owners in a high rise building electing to subscribe to a particular DBS service would be able to access that programming through a single common DBS

dish antenna on the rooftop. The signals could be distributed to individual units through wire using the same conduit utilized by an incumbent cable or SMATV operator. In the case of attached low rise units, such as townhouses, the landlord or condominium association might elect to require the tenant or unit owner to place the DBS dish antenna in the yard or on the patio, or alternatively, on the roof of his or her unit as long as the placement would not impair the viewer's ability to receive DBS service. Again, the Commission could provide for sufficient flexibility so as to indicate the paramount rights of the viewer to access DBS services while minimizing the extent of intrusion on the property owner's management of the property.

A typical equipment and wiring configuration for a multiple dwelling unit (MDU) setting (e.g. apartment buildings, condominiums, or townhouses) is demonstrated by the first diagram attached in the Appendix.[23/] As the diagram illustrates, any number of DBS set-top boxes[24/] may be connected to a single dish. To use a single dish, the dish must be equipped with a dual output LNB (low noise block). The distribution of the satellite signals is accomplished through the use of standard L-band distribution equipment. As the diagram shows, the installation begins with RG-6 cables connected to the two LNB

23/ This diagram (Fig. 4 "Multiple" Multiswitch Installation") is excerpted from the Thomson Technical Training Manual for "New Home Pre-Wiring and Distribution Systems."

24/ On the diagram, the term "receiver" is used to denote the set-top box.

outputs on the dish. The cables are then run to a Satellite IF Splitter (2202IFD). The function of the splitter is to allow for more than one multiswitch to be connected to a dish. Each multiswitch requires a left hand circular polarity (LHCP) feed, and a right hand circular polarity (RHCP) feed to provide all the signals to the set-top boxes that are connected to it. The two-way splitter shown provides for two LHCP feed and two RHCP feeds, necessary to drive two multiswitches. Up to four set-top boxes can be operated from each multiswitch.[25/] Each set-top box will operate independently and have access to all available satellite signals. In this particular diagram, an "off-air" signal is combined with the satellite signal in the multiswitch. At the location of the set-top box, this signal would be split out using the diplexer (4001IFD) shown.

The diagram shows a total of eight set-top boxes being fed by two multiswitches. This distribution system is expandable to accommodate any number of set-top boxes. The additional hardware required would include additional multiswitches and additional splitters, along with some various distribution hardware required for line amplification, and other special needs associated with a specific installation. However, only one dish, with a dual LNB, is required regardless of the number of set-top boxes connected.

25/ For a more detailed illustration of the configuration from a multiswitch, see the second diagram ("Multiple TV/Multiple Receiver/Dual Output LNB with Multiswitch") also excerpted from the Thomson Technical Training Manual for "New Home Pre-Wiring and Distribution Systems" and attached at the Appendix.

All of this equipment and hardware is widely available commercially[26/] and is in use in MDUs across the country. For example, Thomson recently provided the DSS® system to connect every unit at the Wellington Place complex in Fishers, Indiana in a configuration similar to the one described above. Wellington Place has approximately 500 units which are comprised of one, two, and three bedroom apartments and duplex townhomes. Each apartment building has eight apartments in it. Every unit is now wired to receive DSS® system using only a single dish on each building. From that dish, splitters and multi-switchers are used to provide the DBS feed to each unit. Local television signals are fed into the system using off air antennas located off-premises in an antenna farm.

Conclusion

For the reasons stated above, the Commission should not apply Section 207 of the Act in a disparate manner to homeowners and renters. Congress clearly stated that the Act applies equally to all viewers, without regard to whether or not they own their home. Any distinction based on property ownership, i.e., economic class, would be an invidious discrimination nowhere sanctioned in Section 207 and contrary to specific public policy goals the Commission has championed.

Congress' authority to regulate the public's access to video programming services is beyond reproach, as is the Commission's

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26/ See e.g., Thomson's RCA Commercial Products Guide for the DSS® System attached at the Appendix.

authority -- and duty -- to implement the Act as Congress intended. The minimal regulation of the landlord-tenant relationship entailed by Section 207 is not a taking in violation of the Fifth Amendment. Even if landlords and condominium associations had a colorable basis for their claim, which they do not, their asserted interest does not outweigh the countervailing rights that their tenants and unit owners possess under the First Amendment as viewers of electronic video programming services.

Respectfully submitted,

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Dated: September 27, 1996

APPENDIX

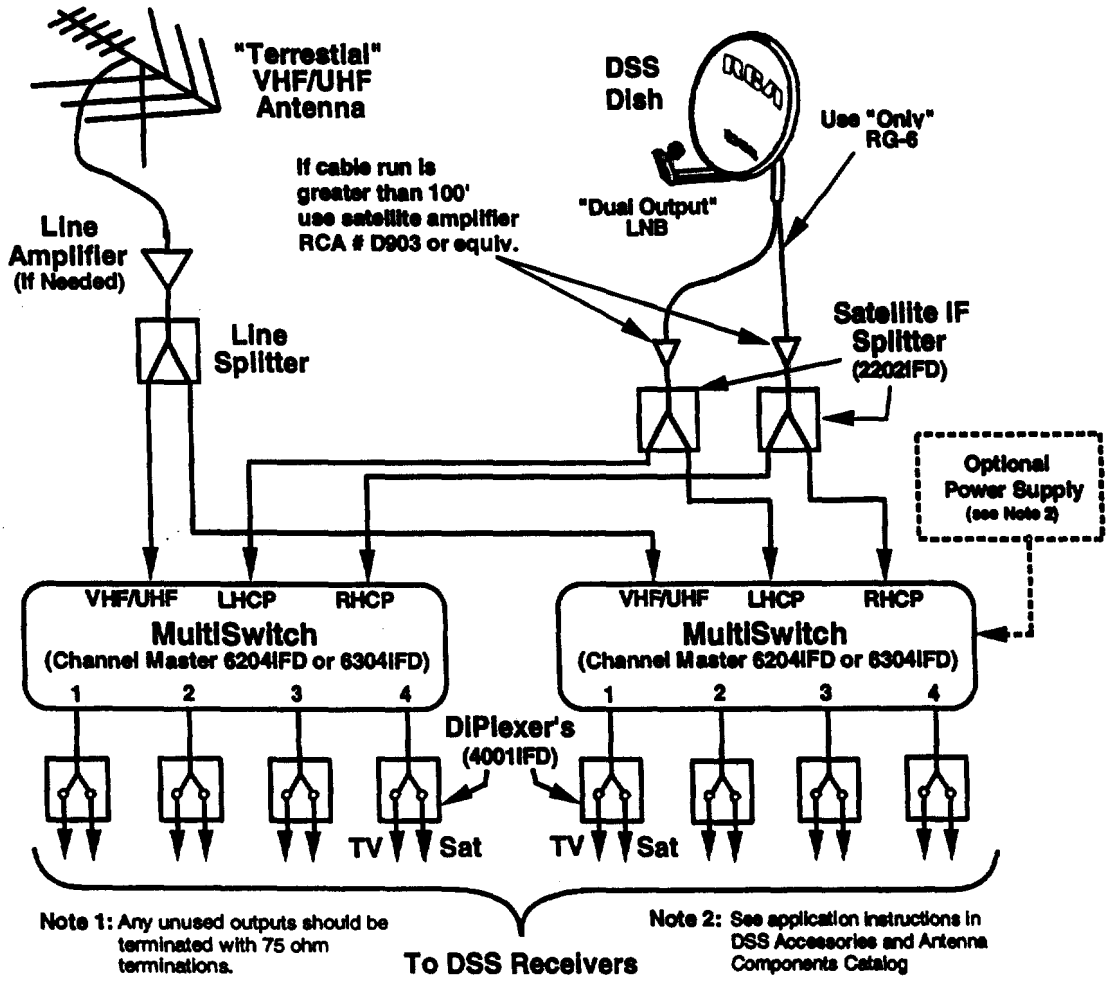

Fig. 4 "Multiple" MultiSwitch Installation