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

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In the Matter of	)	
	)	
Preemption of Local Zoning Regulation of Satellite Earth Stations	)	IB Docket No. 95-59
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	)	

FURTHER COMMENTS
OF THE
SATELLITE BROADCASTING
AND COMMUNICATIONS ASSOCIATION OF AMERICA

Pursuant to the Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("Order" or "Further Notice") released by the Commission on August 6, 1996 in the above-captioned proceeding, the Satellite Broadcasting and Communications Association of America ("SBCA") hereby submits these Further Comments.

I. INTRODUCTION

At the outset, SBCA acknowledges that the Commission's recently adopted preemption rule, as embodied in 47 C.F.R. § 1.4000, is a significant improvement over both its 1986 preemption rule and the preemption rule adopted in March of this year. The current iteration of the Commission's preemption rule demonstrates the Commission's support of the

twin goals of "ensur[ing] that consumers have access to a broad range of video programming services" and "foster[ing] full and fair competition among different types of video programming services."[1] In order to continue to implement faithfully the Congressional intent expressed in section 207 of the Telecommunications Act of 1996 ("1996 Act"), these twin goals should also guide the Commission's actions with respect to the issues raised in the Further Notice.

Specifically, in the Further Notice the Commission requests additional information regarding legal, technical and practical issues affecting extension of the preemption rule to rental property and common areas. In addition, the Commission seeks comment on a proposal posited by the Community Associations Institute, the American Resort Development Association and the National Association of Housing Cooperatives (collectively "CAI") that would permit landlords and community associations to prohibit satellite antennas in common areas or on individual rental property so long as the landlord or community association makes central video programming reception facilities available for resident use.

SBCA agrees with its member companies that a viewer's ability to receive video programming should not be contingent on landownership status. SBCA does not in these comments repeat the cogent and well-reasoned arguments set forth in those Further Comments, but SBCA highlights a few key issues.

[1] Order at ¶ 6.

II. ALL VIEWERS MEANS *ALL* VIEWERS, REGARDLESS OF LANDOWNERSHIP STATUS

Congress was clear in its mandate when it required 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] Congress drew no distinction between those viewers who are able to own their residences and those viewers who rent their homes, and neither should the Commission. Indeed, the Commission has no authority to exclude from the purview of its preemption rule almost half of the "viewer" population.[3] The Commission, therefore, should extend its preemption rule to cover *all* viewers, irrespective of whether they own or rent their homes.

Public policy reasons confirm the need to protect viewers who are not also landowners. Census Bureau data reveals, not surprisingly, that lower-income Americans comprise a significant proportion of the renting population.[4] It is these viewer/renters who stand to benefit the most from the lower prices that inevitably result from vigorous competition in the marketplace. Yet, it is precisely these viewers who would be excluded from the benefits of competition if the Commission's preemption rule excludes them.

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 564 (1996) (emphasis supplied) ("1996 Act").

[3] According to Census Bureau data, in 1993, 46 percent of the American population rented rather than owned their homes. *See* Table No. 1230, "Housing Units -- Summary of Characteristics and Equipment by Tenure and Region: 1993," Statistical Abstract of the United States 1995 (U.S. Dept. of Commerce, Bureau of the Census) ("Statistical Abstract").

[4] *Compare* Table No. 1231, "Occupied Housing Units -- Housing Value and Gross Rent, by Region: 1993," Statistical Abstract *with* Table No. 1237, "Recent Home Buyer -- General Characteristics: 1976-1994," Statistical Abstract.

Data from the Census Bureau also reveals that members of minority groups rent their homes in disproportionate numbers in comparison to the rest of the population.[5] In view of these statistics, SBCA echoes the concerns expressed by the Congressional Black Caucus that making viewers' rights contingent on landownership will unfairly discriminate against minorities.[6]

In addition, many minority viewers who rent rather than own their homes and are in search of foreign language programming will be deprived of the unique benefit derived from the diversity of programming services available from direct-to-home satellite service providers and other multi-channel video programming distributors ("MVPDs"). For example, SBCA reminds the Commission of Martin Garcia of East Dearborn, Michigan, who wanted to install a satellite antenna so that he and his family could enjoy Spanish-language programming that was not otherwise available from his cable company.[7] His local zoning board denied his request because, in its view, he did not "need" a satellite antenna because he and his family could all speak English.[8]

A variety of video programming sources will thus particularly benefit those viewers who want to pay competitive prices and watch programming not widely available from existing

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[5] Table No. 1225, "Occupied Housing Units -- Tenure, by Race of Householder: 1920-1993," Statistical Abstract.

[6] Letter from Congressional Black Caucus to The Honorable Reed E. Hundt, dated July 29, 1996.

[7] *See* Comments of the Satellite Broadcasting and Communications Association of America at 16-17 (July 14, 1995); Angela M. Duff, *Foreigners Find Freedom Doesn't Include Satellites,* TVRO Dealer, Nov. 1994, at 22.

[8] *Id.*

cable providers. For all of these reasons, *all* viewers, irrespective of landownership status, should be included within the scope of the Commission's preemption rule -- just as they were included by Congress within the purview of Section 207 of the 1996 Act.

III. VIEWERS IN MULTIPLE DWELLING UNITS ALSO MERIT PROTECTION UNDER THE STATUTE

SBCA acknowledges that, as a practical matter, multiple dwelling units ("MDUs") present a greater challenge. Specifically, it is easier to enable MDU dwellers who have access to an "exclusive use" area (*e.g.*, individuals with private balconies) to have access to the MVPD of their choice than those MDU dwellers who do not have access to an "exclusive use" area (*e.g.*, individuals with no balconies). In light of this distinction, SBCA endorses the dual (and statutorily consistent) course of action proposed by its member companies.

Specifically, the Commission should treat alike all viewers who have access to an exclusive use area. Thus, regardless of whether the viewer owns or rents his or her home, a viewer with access to an exclusive use area should be included within the scope of the Commission's preemption rule.[9] Accordingly, MDU dwellers (whether owners or renters) who have an exclusive use area that permits reception (*e.g.*, a private balcony with the prerequisite exposure) should be covered by the preemption rule. With respect to viewers who live in MDUs or otherwise need access to common areas to receive satellite signals (*e.g.*, MDU dwellers without a private balcony with the prerequisite exposure), the Commission

[9] To accomplish this end, SBCA supports the proposal set forth by DIRECTV that would eliminate the phrase "where the user has a direct or indirect ownership interest in property" from paragraph (a) of section 1.4000. This deletion would give all viewers with access to an exclusive use area, regardless of home ownership status, equal rights under the Commission's preemption rule.

should require landlords or community or condominium associations to make available, at the request of their residents, multiple MVPDs.

IV. CONCLUSION

For the reasons set forth in these Further Comments and in the Further Comments of our member companies, SBCA urges the Commission to extend its preemption rule to rental properties and common areas as discussed above.

Respectfully submitted,

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