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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

October 28, 1996

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**By Hand**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking  
CS Docket No. 96-83

Dear Mr. Caton:

On behalf of CellularVision USA, Inc., enclosed please find an original and four (4) copies of its Reply Comments filed in the above-referenced rulemaking proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner  
Counsel for CellularVision USA, Inc.

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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OCT 28 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of )

Implementation of Section 207 of the )  
Telecommunications Act of 1996 )

Restrictions on Over-the-Air )  
Reception Devices: Television Broadcast )  
and Multichannel Multipoint Distribution )  
Service )  
\_\_\_\_\_

CS Docket No. 96-83

**REPLY COMMENTS OF CELLULARVISION USA, INC.**

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October 28, 1996

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## SUMMARY

Although CellularVision USA, Inc. (“CellularVision”) applauds the Commission’s efforts to develop a thorough record in this proceeding, the Commission’s adoption of the FNPRM arguably has created an unwarranted distinction between housing options that was never intended by Congress. Simply stated, Congress did not mandate or even suggest that the Commission treat similarly situated viewers differently based on the types of residences they occupy.

Rather, Section 207 explicitly speaks to protecting a *viewer’s* ability to receive video programming. Numerous commenters joined CellularVision in citing the troubling factual statistics that detail the genuine anti-competitive harm if the Commission were to exclude viewers residing in MDUs from the protections of Section 207. Most notably, MDU “viewers” comprising approximately 35% of the U.S. households would be left without the specific protections mandated by Congress. In addition, as the record demonstrates, a disproportionate number of the MDU renter population are low-income, minorities and/or single mothers — precisely those citizens who are in the greatest need of the protections contained in Section 207.

Finally, the Commission itself has acknowledged that it has no authority to declare the Congressional mandate contained in a statute to be unconstitutional. In addition, the Commission has already made the determination that it has the authority to preempt nongovernmental restrictions that are inconsistent with the federal directive in Section 207. The same sound legal analysis upon which the Commission

made this reasoned determination applies equally to situations involving the antenna placement for consumers residing in MDUs. Congress did not intend that the Commission discriminate against this large and most vulnerable consumer base.

Accordingly, the Commission should conclude this proceeding by implementing Section 207 in a way that ensures the equal protection of all *viewers*. The Commission's failure to include residents of MDUs under the regulatory protection of Section 207 would be arbitrary and grossly discriminatory to these citizens who often are most in need of the competitive video service alternatives that Congress intended that Section 207 would afford to all viewers in the United States.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**REPLY COMMENTS**

CellularVision USA, Inc.<sup>1</sup> ("CellularVision"), by its attorneys, hereby files Reply Comments in regard to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced proceeding.

**I. Introduction**

CellularVision is the parent of CellularVision of New York, L.P., which is commercially licensed to use the 27.5-28.5 GHz band in the New York Primary Metropolitan Statistical Area to operate a Local Multipoint Distribution Service ("LMDS") system. CellularVision is the recognized pioneer of LMDS technology, a wireless, multi-cell, two-way video, telephony and data service that the Commission is poised to license nationwide in the near term as a competitive alternative to

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<sup>1</sup> CellularVision USA, Inc. is publicly traded on the NASDAQ National Market under the symbol "CVUS."

services provided by both cable operators and local exchange carriers.<sup>2</sup> CellularVision's customer premises equipment includes a six-by-six inch flat antenna that typically receives the LMDS signal through a subscriber's window.

Throughout this proceeding, CellularVision has urged the Commission to promulgate rules that implement the explicit intent of Congress in Section 207 of the Telecommunications Act of 1996 ("Telecom Act") so that all viewers enjoy the unfettered ability on a non-discriminatory basis to receive any of the wireless video programming services generally available to consumers in the U.S. video marketplace.<sup>3</sup> In the Report and Order in this proceeding, the Commission adopted a rule that prohibits restrictions impairing the installation, maintenance or use of antennas designed to receive over-the-air and certain qualifying wireless video services, including Local Multipoint Distribution Service ("LMDS"), (hereinafter, "qualifying services").<sup>4</sup> In so doing, the Commission recognized that while Congress in Section 207 specifically included over-the-air broadcast, MMDS and DBS services,

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<sup>2</sup> See In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, First Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 92-297, FCC 96-311 (released July 22, 1996).

<sup>3</sup> See Telecom Act, Pub. L. 104-104, 110 Stat. 56 (1996) §207.

<sup>4</sup> See 47 C.F.R. § 25.104(a)(2); see also Report and Order, CS Docket No. 96-83, FCC 96-328, ¶ 30 (released August 6, 1996).

“Congress did not mean to exclude closely-related services such as MDS, ITFS and LMDS.”<sup>5</sup>

In the FNPRM, the FCC solicited comments from consumers and the affected industry regarding the inclusion of viewers who do not own single family homes within the scope of its rules implementing Section 207. Specifically, the Commission is seeking to develop a record regarding the application of Section 207 to: (1) property not under the exclusive use and control of a person who has a direct or indirect ownership interest; and, (2) residential or commercial property subject to a lease agreement (hereinafter collectively referred to as “MDUs”).

Consistent with the Commission’s inclusive interpretation of the range of technologies covered by Section 207, the Commission must accord the protections of Section 207 equally to all viewers of qualifying services, regardless of whether they reside in single family homes or MDUs.<sup>6</sup> To limit the scope of the rules implementing Section 207 only to those viewers who live in single family homes would be inconsistent with the plain language of Section 207 and the record developed in response to the FNPRM in this proceeding. Moreover, such arbitrary action by the Commission would frustrate the intent of Congress by discriminating

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<sup>5</sup> Report and Order, ¶ 30.

<sup>6</sup> In practice, CellularVision does not oppose the concept of a “coordinated installation” approach managed by a community association or landlord as long as: (1) the installation complies with the requirements of Section 25.104(a) of the Commission’s rules; (2) antenna space for each qualifying service is accommodated; and, (3) individual viewers are not precluded from utilizing separate receive antennas either on the interior or exterior surfaces of their apartments.

against viewers who reside in MDUs, which comprise more than 35% of the U.S. households largely located in urban areas, and often are in the greatest need of these protections. Further, since the Commission has already made the determination that it has the authority to preempt nongovernmental restrictions that are inconsistent with Section 207, the *same* analysis should be applied to situations involving MDU antenna placement.<sup>7</sup> Accordingly, as discussed below, CellularVision urges the Commission to conclude this proceeding by including all viewers, regardless of type of residence, within the scope of its rules implementing Section 207.

## **II. The Plain Language and Legislative History of Section 207 Reflects Congressional Intent to Protect All Viewers, Regardless of Type of Residence**

In its Comments in response to the FNPRM, CellularVision argued that Congressional intent would be frustrated if the Commission created arbitrary exemptions to the broad scope of the preemption rule.<sup>8</sup> In directing the Commission to “promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive programming services,” Congress did not discriminate among “viewers” based on their type of residence, whether single family homes, MDUs, town homes, mobile

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<sup>7</sup> See Report and Order, ¶¶ 43-46.

<sup>8</sup> Importantly, as noted above, the Commission has already demonstrated appropriate sensitivity to implementing Section 207 consistent with Congressional intent by refusing to create arbitrary exemptions among similar types of video program providers. In fact, without a specific statutory mandate, the Commission included other video services such as LMDS not specifically enumerated in the statute. See Report and Order, ¶¶ 29-30. By contrast, in the instant case the statute is clear, as it explicitly protects all “viewers.”

home parks, etc.<sup>9</sup> Accordingly, in response to the FNPRM, CellularVision argued that the Commission's regulations implementing Section 207 must apply not only to single family homes, but also to rental property and to property owned by individuals where the roof or other exterior surface required for antenna placement is under the control of the landlord or is a common area.<sup>10</sup>

In addition to CellularVision, numerous other commenters in this proceeding argued that Section 207 is clear on its face, and that any attempt to create an artificial distinction between single family homes and MDUs is contrary to the statute and inconsistent with Congressional intent. These commenters, who include prominent public interest organizations, equipment manufacturers and broadcast and satellite industry trade associations, have argued as follows:

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.

Comments of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. ("Philips/Thomson"), September 27, 1996, p.5 (emphasis in original).

The language of the statute and the legislative intent indicate that Congress did not envision exceptions for specific classes of residents. Nothing in the legislative history suggests that Congress' concern extended only to those citizens who own their own single-family,

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<sup>9</sup> As the House Report stated, "[e]xisting regulations, *including but not limited to*, zoning laws, ordinances, restrictive covenants or home owners' association rules, shall be unenforceable to the extent contrary to this section." H.R. Report No. 204, 104th Cong., 1st Sess. 124 (1995) (emphasis added).

<sup>10</sup> See Comments of CellularVision, September 27, 1996, p. 4.

detached dwelling.

. . .

Section 207 requires the Commission to ensure that all citizens -- whether they own or rent -- are free to use an antenna to secure access to over-the-air television service.

Comments of the National Association of Broadcasters ("NAB"), September 27, 1996, pp.6-7.

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.

. . .

For all 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.

Further Comments of the Satellite Broadcasting and Communications Association of America ("SBCA"), September 27, 1996, pp.3-5. (emphasis in original).

. . . CEMA urges the Commission to assume its full legal authority under Section 207 of the Telecommunications Act, and to ensure that all renters and members of homeowner associations enjoy the same protection from private impediments to antenna placement as do those who own their property outright. Treating all viewers equally is essential to fulfill the intent of Section 207. According to the plain meaning of the statute, any restriction that impairs "a viewers ability to receive video programming" is to be prohibited. The statute creates no distinction based on a viewer's occupancy status.

Comments of the Consumer Electronics Manufacturers Association ("CEMA"), September 27, 1996, pp.2-3. (footnotes omitted).

The plain language of Section 207 expressly directs the Commission to create rules that prohibit restrictions on a "viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, [MMDS, or DBS]." The legislative history further underscores that Congress' intent in using this broad language was to cover all viewers and all restrictions, including restrictions by private entities like landlords. There is no indication that the term "viewers" could mean anything other than *all* viewers, renters and homeowners alike.

Comments of Consumer Federation of America, League of United Latin American Citizens, Minority Media Telecommunications Council, Office of Communications of the United Church of Christ, and Writers Guild of America East ("Joint Commenters"), September 27, 1996, Summary, ii.

Claims by some misguided commenters that Congress' failure to specifically reference MDUs in Section 207 confirms that the scope of protection should be solely limited to owners of single family homes are not persuasive. CellularVision and the other diverse commenters cited above have demonstrated convincingly that the plain language of Section 207 and its legislative history unequivocally includes all viewers without reference to property ownership or type of residence.<sup>11</sup> Had Congress intended to limit the scope of Section 207 to protect single family homeowners only, instead of protecting all "viewers," it could have done so. Congress chose not to, and under these circumstances, the Commission has no choice but to implement the explicit and unequivocal Congressional intent and apply Section 207's protections to all viewers, regardless of where they reside.<sup>12</sup>

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<sup>11</sup> Arguments that Congress would have specifically included "MDUs" by name *because* this group comprises such a large population are misplaced. See Comments of Independent Cable & Telecommunications Association ("ICTA"), September 27, 1996, p. 19. As CellularVision noted in its Comments, Congress could have easily qualified its preemption rule to apply solely to single family homes, or to situations involving both "an ownership interest and exclusive control." Comments of CellularVision, p. 7, fn. 17. In declining to make such a distinction, a Congress so keenly aware of mandatory access, as detailed by the ICTA in its Comments, expressly sought to protect all *viewers* regardless of property ownership.

<sup>12</sup> See Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 842-843 (1984). As the Joint Commenters correctly observe, ". . . the question in this proceeding is not even close." Comments of Joint Commenters, p.2.

### **III. A Significant Portion of the U.S. Population Resides in MDUs, Where Residents Are Most Often in Need of Section 207's Protection**

In addition to the inescapable fact that Congress sought to protect all “viewers” through enactment of Section 207, several fundamental public policy considerations mandate that the Commission afford the protections of Section 207 to all viewers regardless of the type of housing they choose, or are forced to choose in the case of lower income consumers. As CellularVision noted in its Comments, approximately 35% of the U.S. households consist of multi-unit residences which are largely located in urban areas;<sup>13</sup> several other commenters provided similar statistical evidence demonstrating that a large segment of the American population reside in MDUs, many on a rental basis.<sup>14</sup> Therefore, the unsupported application of Section 207 to only those persons owning single family homes would deny the important protections of Section 207 to a significant portion of the U.S. population, an arbitrary and discriminatory result that Congress could not have intended.

Should the Commission adopt this type of restrictive interpretation of Section 207, a large percentage of Americans would be denied a competitive choice in determining their video service provider — an anti-competitive result that is directly

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<sup>13</sup> See Comments of CellularVision, p.5; see also U.S. Department of Commerce “1990 Census of Housing, General Housing Characteristics,” Table 12 (approximately 80% of these multi-unit dwellings are located in urbanized areas).

<sup>14</sup> See e.g. Comments of Philips/Thomson, p.5 (“ . . . approximately 35 million American households (roughly 35 percent) live in rented housing.”); Comments of SBCA, p.3, n.3 (“According to Census Bureau data, in 1993, 46 percent of the American population rented rather than owned their homes.”); Comments of Joint Commenters, p.6 (citing a home ownership rate for the U.S. of 65.4 percent).

contrary to the Congressional policy underlying Section 207 “to ensure that consumers have access to a broad range of video programming services.”<sup>15</sup>

This absence of choice for consumers who reside in MDUs, as opposed to homeowners, would be particularly troubling in view of the fact that the record developed in response to the FNPRM confirms that a disproportionate percentage of U.S. consumers who rent their housing are low-income,<sup>16</sup> minorities<sup>17</sup> and/or single mothers.<sup>18</sup> As CellularVision explained, these Americans often enjoy very limited property rights, if any at all, and thus are especially in need of the protections of Section 207.<sup>19</sup> Additionally, as the record demonstrates, renters are often the very consumers who can benefit the most from access to lower prices available in a

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<sup>15</sup> Report and Order, ¶ 6.

<sup>16</sup> See Comments of Joint Commenters, pp.6-7 (“For example, the median annual family income among renters . . . was about one-half the median income for homeowners.”); Comments of Philips/Thomson, pp.5-6 (“Of these 35 million renter households, about one-quarter of them are low income.”).

<sup>17</sup> See Comments of Joint Commenters, p.6 (“ . . . the percentage of renters among the black and Hispanic communities is nearly twice the percentage among whites.”); Comments of Philips/Thomson, pp.5-6 (“ . . . 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.”).

<sup>18</sup> See Comments of Joint Commenters, p.7 (“Finally, single mothers constitute a large proportion of the renting population, with about one-third owning their homes.”); Comments of Philips/Thomson, p.6 (“Two-thirds of single mothers must rent their housing.”).

<sup>19</sup> See Comments of CellularVision, pp.5-6.

competitive market.<sup>20</sup> Likewise, as several commenters demonstrated, allowing landlords to restrict the video service choices of tenants would exacerbate the disparity in information “haves” and “have nots” by denying many Americans access to information choices based solely on the fact that they cannot afford to purchase their own homes. These consumers, with limited purchasing power, ironically are least able to obtain alternate and competitive video services.<sup>21</sup>

Based on the evidence in the record, the Commission’s creation of an artificial distinction between single family homes and MDUs in its implementation of Section 207 would have a devastating and discriminatory impact on approximately one-third of U.S. households.<sup>22</sup> Such action by the Commission would be contrary to Section 1 of the Communications Act of 1934, which, as amended by Section 104 of the Telecom Act, defines as the purpose of the Act:

[to] regulat[e] interstate and foreign commerce in communication 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 . . . .<sup>23</sup>

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<sup>20</sup> See *id.* Moreover, when MVPD competition exists as contemplated by Section 207, video programming offerings become more reasonably priced.

<sup>21</sup> See Comments of Philips/Thomson, p.6; Comments of Joint Commenters, pp.7-8; Comments of SBCA, p.3.

<sup>22</sup> See Comments of CellularVision, p.6.

<sup>23</sup> 47 U.S.C. §151 (1996) (emphasis added); See also Comments of Philips/Thomson, p.6

#### **IV. The Commission Has the Statutory Obligation and Legal Authority to Pre-empt All Nongovernmental Restrictions**

In the Report and Order in this proceeding, the Commission correctly acknowledged that it “has no authority to declare the Congressional mandate contained in a statute to be unconstitutional.”<sup>24</sup> Moreover, the Commission has already made the determination that it has the authority to preempt “nongovernmental restrictions that are inconsistent with the federal directive written by Congress in Section 207 of the 1996 Act.”<sup>25</sup> The same sound legal analysis upon which the Commission made this determination should be applied to situations involving antenna placement within MDUs.<sup>26</sup>

Specifically, CellularVision supports the Commission’s original determination that the preemption of nongovernmental restrictions could not be classified as a Fifth Amendment taking and that the Commerce Clause permits Congress and the Commission to alter contractual relationships between private parties.<sup>27</sup> Other

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<sup>24</sup> Report and Order, ¶ 43 (citing GTE California, Inc. v. FCC, 39 F.3d 940, 946 (1994), citing Johnson v. Robinson, 415 U.S. 361, 368 (1974)).

<sup>25</sup> Report and Order, ¶ 41.

<sup>26</sup> See id. ¶¶ 43-46.

<sup>27</sup> See id. (citing PruneYard Shopping Ctr. V. Robbins, 447 U.S. 74, 83 (1980) (court’s “ad hoc inquiry” weighs the character of governmental action, its economic impact and its interference with reasonable investment-backed expectations); Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211, 223-24 (1986) (“[i]f a regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions”); FCC v. Florida Power Corp., 480 U.S. 245 (1987) (regulation of pole attachments as mandated by the Pole Attachment Act was upheld even though the regulation invalidated provisions contained in private contracts)).

commenters persuasively concur with this reasoned analysis.<sup>28</sup> As a result, the Commission should not alter its underlying legal findings in this proceeding.

Commenters attempting to obfuscate the explicit Congressional mandate argue that the Commission must distinguish among different property holdings to remain in compliance with the law. Nothing could be farther from the truth. As CellularVision and other commenters have argued, non-discriminatory implementation of Section 207 will not result in a Fifth Amendment taking under Loretto v. Teleprompter Manhattan CATV Corp. (“Loretto”).<sup>29</sup> Notwithstanding the fact that the Loretto court expressly warned of its “narrow” applicability, the case of a third-party cable operator seeking to mandate building access for commercial gain is clearly distinguishable from the instant situation involving an existing tenant, with an established landlord-tenant relationship, seeking protection mandated by Congress from restrictions impairing the “installation, maintenance or use” of a video programming receive antenna.<sup>30</sup>

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<sup>28</sup> See Comments of Philips/Thomson, pp.8-10 (Congress can alter contractual relationships, modify private leasehold agreements, and regulate the economic relations of landlords and tenants); Comments of NAB, pp.8, 12-13 (preemption of MDU restrictions is not a *per se* or ad hoc taking under the 5th Amendment); Comments of Joint Commenters, pp.10-11 (no Fifth Amendment taking).

<sup>29</sup> 458 U.S. 419 (1982). See Comments of CellularVision, pp.8-9; see also Comments of NAB pp.9-10; Comments of Philips, p.10, fn.19; Comments of CEMA, pp.5-8; Comments of Joint Commenters, p. 1; Comments of Pacific Telesis Group (“PacTel”), September 27, 1996, pp.2-4.

<sup>30</sup> Moreover, implementation of Section 207 is entirely unrelated to a “mandatory access” statute as suggested by the ICTA. See Comments of ICTA, p, 14. Section 207 does not address the rights of third-party cable operators vis-à-vis building owners, but focuses on the federal interests in allowing viewers to have access to a broad range of video services and merely seeks to protect viewers from

Equally important in Loretto, as CellularVision and numerous other commenters have noted, expressed federal powers under Section 207 are entirely consistent with the state's "broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails."<sup>31</sup> In fact, the preemption of restrictions impairing a viewer's installation, maintenance or use of a receive antenna is entirely consistent with similar obligations imposed upon landlords referred to in Loretto, such as regulations mandating that landlords comply with building codes and provide utility connections.<sup>32</sup>

Finally, CellularVision concurs with those commenters who note that Bell Atlantic Telephone Companies v. FCC ("Bell Atlantic") in no way adversely impacts the Commission's present statutory obligation to protect all viewers, regardless of type of residence, pursuant to Section 207.<sup>33</sup> In Bell Atlantic, the court reviewed the Commission's decision to mandate "physical co-location," instead of the less intrusive and subsequently adopted "virtual co-location" method, to effectuate local exchange carrier ("LEC") office interconnection by competitors pursuant to Section 201(a) of the Communications Act. In determining that "under *either* virtual or physical co-  

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unreasonable restrictions on receive antennas.

<sup>31</sup> Loretto, 458 U.S. at 440. See also Comments of NAB, p.10; Comments of CEMA, p.8; Comments of PacTel, p.3.

<sup>32</sup> See Loretto, 458 U.S. at 440.

<sup>33</sup> 24 F.3d 1441 (D.C. Cir. 1994); See also Comments of NAB, p.11; Comments of PacTel, p.5.

location the CAP physically connects to the LEC network...,“<sup>34</sup> thereby fulfilling the Congressional mandate, the court found that the Commission’s decision to mandate physical location exceeded the bounds of fair statutory interpretation and amounted solely to “an allocation of property rights *quite unrelated* to the issue of ‘physical connection’” as instructed by Congress.<sup>35</sup> Accordingly, the Commission’s claim that it had the statutory authority to order physical co-location was misplaced, given the fact that “physical connections” as mandated by Congress did not require actual physical co-location as interpreted by the Commission to effectuate Section 201(a) of the Communications Act.

By contrast, with regard to Section 207, Congress’ mandate to protect *all viewers* of video programming services is not only unambiguous on its face, it leaves the Commission with little interpretative leeway — clearly precluding the Commission from excluding, and therefore discriminating against, 35% of U.S. households from the protections of Section 207. As a result, the Commission’s adoption of a rule to protect *all viewers* of video programming services is consistent with Section 207 of the Telecom Act, and in effectuating this provision the Commission will not exceed its clearly defined statutory bounds.

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<sup>34</sup> Bell Atlantic, 24 F.3d at 1446.

<sup>35</sup> Id. (emphasis added).

**V. Conclusion**

Section 207 explicitly speaks to protecting a *viewer's* ability to receive video programming. Congress did not mandate that the Commission treat similarly situated viewers differently based on the types of residences they occupy. As the record demonstrates, if the Commission were to exclude viewers residing in MDUs from its rules, approximately 35% of the U.S. households — many of whom are in the greatest need — would be left without the specific protections mandated by Congress in Section 207. Accordingly, the Commission should conclude this proceeding by adopting a rule that ensures the equal protection of all *viewers*.

Respectfully submitted,  
CELLULARVISION USA, INC.

By: 

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Its Attorneys

October 28, 1996

Certificate of Service

I, Michael C. Gerdes, hereby certify that copies of the foregoing "Reply Comments" of CellularVision USA, Inc., were sent by first class U.S. mail, postage prepaid, on October 28, 1996, to the following:

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