

Drummer Boy Homes Association, Inc.
13 Drummer Boy Way
Lexington, Massachusetts 02173-1201
Tel & Fax (617) 861-7066

FILED
OCT 28 1996

FCC MAIL ROOM

27 October 1996

Office Of The Secretary
Federal Communications Commission (FCC)
1919 M Street NW
Washington DC 20554-0003

DOCKET FILE COPY ORIGINAL

RE: Reply Comments on Further Notice of Proposed Rulemaking

- Refs:
- A. FCC 96-328, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (Adopted August 5, 1996; Released August 6, 1996) (the "FNPRM")
 - B. IB Docket No. 95-59, Preemption of Local Zoning Regulation of Satellite Earth Stations
 - C. CS Docket No. 96-83, Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service
 - D. Our Letter, 14 April 1996, Comments on Notices of Proposed Rulemaking [in response to Refs B & C]
 - E. Comments of the Community Associations Institute Joined by the American Resort Development Association and the National Association of Housing Cooperatives, September 27, 1996 [in response to Ref A and with regard to Refs B & C] ("Community")
 - F. Joint Comments of National Apartment Association et al., September 27, 1996 [submitted by Miller, Canfield, Paddock and Stone, P.L.C., in response to Ref A and with regard to Refs B & C] ("NAA")
 - G. Comments of Woodbridge Village Association, September 26, 1996 [in response to Ref A and with regard to Refs B & C] ("WVA")

Dear Commissioners,

1. We are the homeowner association for a 150-unit, townhouse-style, condominium complex. We have reviewed some of the comments submitted in response to the Commission's FNPRM and are very concerned that, based on some comments, the

Commission would be encouraged to extend the preemption beyond that adopted in your order of August 6, 1996, or to go even further and to direct the providing of video services. We strongly believe the reach of the preemption in that order—at least with regard to condominiums—was properly limited to “property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property” and that there is no legitimate basis for directing the providing of common antennas or video services.

2. Again focusing on condominiums, we find in the reviewed comments: (1) nothing showing Section 207 of the Telecommunications Act of 1996 (“the Act”) requires the Commission to go beyond the preemption already adopted; (2) nothing justifying Section 207 as granting the Commission the new express authority which would be required to extend the preemption to property that isn’t within the viewers exclusive use or control; (3) nothing authorizing the Commission to require associations to provide common antennas or video services; and, most important, (4) nothing warranting the Commission to find that interpretation of the public-policy objectives in the Act—no matter if seen as admirable—allows the Commission to have those objectives take precedence over constitutionally mandated private-property rights.

3. Furthermore, even in the light of the reviewed comments, we find that our initial comments on protection of fundamental private-property rights of others (Ref D) remain valid and ask that you continue to consider them as part of your current deliberations and decision making.

4. We specifically endorse the discussion, rationale, and conclusions presented in the Community, NAA, and WVA comments (Refs E–G). While we believe the legal and constitutional constraints against the Commission extending the preemption as explained in those comments—at least with regard to condominiums—are primary and ought to be sufficient by themselves, the reviewed comments by some of the supporters of extending the preemption and/or directing the providing of common antennas or video services prompt the following additional comments for your consideration:

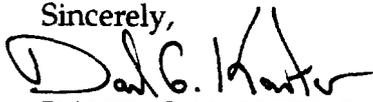
a. Air Rights: In discussing “property”, the Commission should explicitly address the issue of the “air rights” over each class of property. We believe it is important to clarify that when preemption has been directed (as in your order of August 6, 1996, regarding exclusive-use areas), unless explicitly stipulated, the preemption does not extend to any “air rights” over other property.

b. Purpose of Homeowner Agreements in Condominiums: Contrary to the opinions of some comments in support of extending preemption, such homeowner agreements are not necessarily just an economic relationship. “Viewers” who have individually and voluntarily entered into such agreements often do so for the totality of benefits they see as flowing from the terms and conditions of such agreements. It would not be appropriate to diminish the value of any non-direct-economic provisions to the “viewer”—especially as access to any specific video service is not the sole source of information and, in any case, does not unequivocally have a higher order of importance than do basic civil and property rights. Also, what begin as non-direct-economic benefits frequently affect the later economic value of the property.

c. Allocation of Expenses Incurred in Response to Any Further Preemption or to Directed Services is an Important Matter: Even if further preemption and/or directed services were legal and constitutional—which we feel they are not—the not-insignificant expenses which would be the consequence of further preemption or directed services would be passed to association members, whether or not they derive any benefit from or want to support the undertaking. Our association—as a non-profit entity—has no independent source of funds. All those expenses—whether direct or overhead to direct as would, for example, be the case if we're required to provide video services; or indirect, for example, if the increased liability raises insurance premiums—must be passed to our members. While having the association allocate expenses for undertakings which have been approved within the terms and conditions of its documents to which all its members have individually and voluntarily agreed is reasonable, imposing such an expense burden for the purpose of just video services is not reasonable.

5. In summary, we believe that at this time the Commission does not have the direction, authority, or necessity to extend the preemption beyond that already provided in your order of August 6, 1996, or to impose any requirement upon condominium associations to provide common antennas or video services to any of its members or unit residents. We ask that you conclude the same as a result of the deliberations contemplated by your FNPRM.

Sincerely,



DAVID G. KANTER, Treasurer

cc: David H. McClintock, President, Drummer Boy Homes Association, Inc
Jane H. Goode, Clerk, Drummer Boy Homes Association, Inc
Alan S. Parkes, Dep Treasurer, Drummer Boy Homes Association, Inc
Susan D. Erdos, Chairperson, Satellite TV Committee, Drummer Boy Homes Association, Inc.