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CS96-83

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: IB Docket No. 95-59 - Preemption of Local Zoning Regulation of Satellite Earth Stations

Dear Mr. Secretary:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB") are an original and four copies of its Reply Comments in the above-referenced docket.

Should there be any questions, please communicate with the undersigned.

Very truly yours,

HOLLAND & KNIGHT

By: Julie Chung Kim

Enclosures

cc: Stanley S. Hubbard; Stanley E. Hubbard; Robert W. Hubbard; David A. Jones; Ray Conover

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
	)	
Implementation of Section 207 of the Telecommunications Act of 1996	)	CS Docket No. 96-83

REPLY COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

1. United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, hereby files these Reply Comments to the Comments and Further Comments filed pursuant to the Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking released by the Commission in the above-referenced docket on August 6, 1996 (the "August 6th Order").

2. USSB begins by reiterating the points raised in its Further Comments filed pursuant to the August 6th Order. First, the plain language of Section 207 of the Telecommunications Act of 1996[1] (the "1996 Act") draws no distinction between viewers who own property and viewers who do not.[2] Second, the Commission should view Community's proposal -- that a restriction should not be prohibited on individually

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] Further Comments of USSB at ¶¶ 3-5.

owned or controlled property if a community association makes video programming available to any resident wishing to subscribe to such programming at no greater cost and with equivalent quality as would be available from an individual antenna installation -- with reservation because "equivalent quality" is an easily manipulable standard that opens the door to community associations to block access to DBS service, which may in many ways may be superior to a particular viewer.[3] Third, USSB and DIRECTV have devised ways to install DBS service in MDU's that make multiple antenna installation unnecessary and thus obviate community groups' aesthetic concerns.[4] Fourth, the Commission, to encourage the competition envisioned by the 1996 Act, should implement Section 207 with an eye toward guarding against exclusive deals between cable companies and building owners and/or property management companies.[5] Fifth, Section 1.4000 (Section 25.104 as amended in the August 6th Order) as applied to rented property does not effect a taking because it is viewers, not DBS service providers, who are granted the entitlement to install DBS equipment.[6] Sixth, failure to extend Section 1.4000's preemption to prohibitions that impair reception by viewers who rent would inflict a disparate hardship on poorer Americans

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[3] Id. at ¶¶ 6-7.

[4] Id. at ¶¶ 8-9.

[5] Id. at ¶ 10.

[6] Id. at ¶¶ 11-14.

who are largely renters and who can least afford to be denied the benefits of full competition in the video delivery marketplace.[7]

3. The final point raised in USSB's Further Comments, and which bears repeating in these Reply Comments, is that property owners should not be able to override Section 1.4000's preemption simply by asserting baldly that the preemption raises safety, security and aesthetic concerns, increases liability and insurance costs, and potentially causes property damage. Several parties insist that the preemption will rob them of control over which contractors will enter their premises to install DBS equipment.[8] Such lack of control, say these parties, creates the risk of slipshod work that can cause property damage and create other liabilities.[9] USSB believes that such concerns are illusory. As demonstrated in USSB's Further Comments, multiple antenna installation in a MDU may not be necessary.[10] Moreover, if a building owner contracts with a DBS service provider and equipment manufacturer to install DBS service, all of the necessary indemnities would presumably be in place before such

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[7] Id. at ¶ 16.

[8] See, e.g., Comments of the National Association of Home Builders, Part IV; Comments of Optel, Inc., Part II.B.; Comments of Southeast Realty Partners at 1; Comments of Arbors Apartments at 1; Joint Comments of the National Apartment Association et al. at 27; Comments of Community Associations Institute, Part VII; and Comments of the National Association of Realtors at 2.

[9] See, e.g., Joint Comments of the Rouse Company and The Columbia Association, Inc., Part II.2.; Comments of the Institute of Real Estate Management at 1-2; and Comments of Boston Financial at 1-2.

[10] Further Comments of USSB at ¶¶ 8-9.

installation would begin. Building owners would have the same rights and controls over multichannel video suppliers and their contractors as they would over any other third parties performing services in their buildings. The 1996 Act does not relieve multichannel video suppliers of their obligations to third parties.

4. With respect to the concern about the lack of control over contractors who install satellite services expressed by property owners and managers, USSB notes that one party has suggested a solution that may be workable. The National Association of Realtors has proposed that "the association or any other body charged with maintaining the integrity of the property should be allowed to control the selection of vendors and the installation process."[11] USSB supports this proposal to the extent the selection of vendors involves the application of standards that are non-discriminatory among multichannel video service providers. Indeed, USSB recognizes that quality installation should be one of the bases of competition among video delivery service providers.

5. Finally, the Commission should carefully consider whether restrictions by community groups and homeowners' associations purportedly necessary to accomplish a clearly defined safety objective pursuant to Section 1.4000(b)(1) should by themselves be exempted from Section 1.4000's preemption. Section 1.4000(b)(1) permits a restriction otherwise prohibited by Section 1.4000(a) if

[11] NAR Comments at 2.

> 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 . . . .

To the extent that nongovernmental entities, such as homeowners' associations, attempt to impose safety-based restrictions on DBS antennas that are more stringent than safety-based restrictions on similarly-sized appurtenances implemented by the local government, a question arises as to whether those nongovernmental restrictions are bona fide safety-based restrictions. USSB would submit that the Commission should apply a higher level of scrutiny to a safety-based restriction imposed by a nongovernmental entity that is more restrictive than safety-based regulations concerning similar appurtenances imposed by the local government. Moreover, the Commission should place the burden on the group seeking to impose the greater restriction to demonstrate with particularity why the more restrictive provision is necessary.

6. For the reasons set forth in these Reply Comments, the Commission should conclude that (1) concerns regarding the ability of landlords to contract with suitable installers of DBS equipment and to avoid property damage and other liabilities are illusory and should not be the basis for denying viewers who reside in MDU's the protection of Section 207, and (2) the Commission should apply a higher level of scrutiny to a safety-based restriction imposed by a nongovernmental entity that is more

restrictive than safety-based regulations concerning similar appurtenances imposed by the local government, and should place the burden on the group seeking to impose the greater restriction to demonstrate with particularity why the more restrictive provision is necessary.

Respectfully submitted,

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October 28, 1996

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