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

In the Matter of	)	
	)	
Preemption of Local Zoning Regulation of Satellite Earth Stations	)	IB Docket No. 95-59
	)	
In the Matter of	)	
	)	DOCKET FILE COPY ORIGINAL
Implementation of Section 207 of the Telecommunications Act of 1996	)	
	)	CS Docket No. 96-83
Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services	)	

REPLY COMMENTS OF THE
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION

The Consumer Electronics Manufacturers Association ("CEMA"), a sector of the Electronic Industries Association, hereby replies to the comments filed on September 27, 1996 in response to the Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-captioned proceeding.[1] As set forth more fully below, CEMA urges the Commission to reject the continued broad-brush efforts of landlords and homeowner associations ("HOAs") to undermine Section 207 of the Telecommunications Act of 1996. In addition, the Commission

[1] *See Preemption of Local Zoning Regulation of Satellite Earth Stations/Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, IB Docket No. 95-59 & CS Docket No. 96-83, FCC 96-328 (released Aug. 6, 1996). Unless indicated otherwise, references made herein to others' comments are to those filed in this proceeding on September 27, 1996.

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should reject HOA representatives' request that the Commission backtrack from its earlier decision confirming the right of homeowners to install antennas on their own property.

I. LANDLORDS AND HOAs CONTINUE TO OFFER NO RATIONALE THAT WOULD JUSTIFY EXCLUDING RENTERS OR HOA MEMBERS FROM THE BENEFITS OF SECTION 207

The comments in this phase of the proceeding manifest continuing disagreement over whether any use of landlord or common property for reception devices constitutes a taking under the *Loretto* doctrine. Like CEMA, other advocates of viewer interests have argued that extending the Commission's rule to encompass certain landlord or common property will not result in an unconstitutional taking because viewers will not be effecting a "permanent physical occupation of third-party property."[2] The comments also demonstrate the undesirable, disparate impact a contrary finding would have on minority groups and low-income families that make up a large percentage of the renting population.[3]

Landlords and HOAs, in contrast, continue to read *Loretto* more broadly than is justified. They argue that a taking will occur *any time* a tenant or HOA resident places an antenna on rental or common property. Landlords and HOAs also have repeated their practical

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[2] *See, e.g.*, Comments of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. at 9-11; Comments of DIRECTV, Inc. at 8-11; Comments of United States Satellite Broadcasting Company, Inc. at 6-9; Comments of National Association of Broadcasters at 8-16.

[3] *See, e.g.*, Comments of Consumer Federation of America, *et al.*, at 5-8 ("minorities, lower income households, and single mothers make up a large part of the renting population"); Comments of Satellite Broadcasting and Communications Association of America at 3-6.

concerns regarding the use of common property that were raised in this proceeding last spring.[4]

The legal and factual arguments are thus now before the Commission, and there is little need to elucidate them further. CEMA adds only that, in the period since the most recent comments were filed, the factual underpinnings of the landlords' and HOAs' arguments have become even weaker. Just last week, the trade press reported on the introduction of a 14-inch, portable DBS antenna -- *i.e.*, an antenna with a visual surface area smaller than two sheets of 8½ x 11 inch paper.[5] Under the landlords' and HOAs' theories, renters and many HOA residents would be foreclosed from using even this extraordinarily small device to obtain access to video programming.

II. THE COMMISSION SHOULD NOT RETREAT FROM ITS PREEMPTION OF RESTRICTIONS THAT AFFECT INDEPENDENTLY-OWNED PROPERTY

In their joint comments, the Community Associations Institute, the American Resort Development Association, and the National Association of Housing Cooperatives (collectively "CAI") also, in effect, seek reconsideration of part of the *Report and Order* in this proceeding. CAI suggests that, if an HOA makes common antennas available to its residents, it should be allowed to prohibit each individual resident from placing antennas on property exclusively owned and controlled *by the resident*. That is, CAI would exempt HOAs with common antennas from the Commission's preemption rule as it now stands.[6]

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[4] *See, e.g.*, Comments of National Association of Home Builders, *passim*; Comments of National Apartment Association, *et al.*, *passim*.

[5] "Satellites Go Portable," *TV Digest*, October 21, 1996 at 15.

[6] *See* CAI Comments at 36.

The Commission should not retreat from its earlier decision on this point. In the *Further Notice/Report and Order*, the Commission addressed this issue directly and concluded that "in light of the statutory language and legislative history . . . nongovernmental restrictions on antennas installed on [property exclusively owned by the viewer should be] limited in the same manner and governed by the same standards as governmental restrictions."[7] CAI provides no basis for reconsidering this conclusion. The fundamental purpose of Section 207 is to empower each viewer to improve his or her own access to video programming. The language of Section 207 is directed at "restrictions" in general, and does not differentiate between direct governmental restrictions and nongovernmental restrictions. Were the Commission to backtrack on this point, it would minimize individual property owners' ability to choose the terms under which they acquire and where they place antennas -- a result directly at odds with the spirit and language of the statute.

Indeed, like the Commission, CEMA views CAI's proposal as a possible compromise to address the needs of those who require access to *common property* to install reception devices.[8] If there is value in CAI's proposal, it is in this context only.

III. CONCLUSION

For the reasons set forth above and in CEMA's earlier comments, the Commission should ensure that its rules protect renters and all members of homeowner associations against

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[7] *Further Notice* at ¶ 51.

[8] *See id.* at ¶ 63. *See also* CEMA Comments at 10-11.

private restrictions on the installation and use of DBS, TVBS and MMDS antennas to the same degree that the Commission protects those with exclusive access to their property.

Respectfully submitted,

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