

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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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

FCC 96-151

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COMMENTS ON FCC PROPOSED REGULATIONS

Elisha, Ekimoto & Harada submitted comments previously to the proposed regulations relating to satellite dishes in IB Docket No. 95-59 (FCC 96-78) and the initial regulations which resulted in the FCC Report and Order adopted on August 5, 1996 ("FCC 8/5/96 Order"). We did not comment address the takings issue initially because we felt that our previous comments and the comments of the Community Associations Institute adequately addressed the takings issue. However comments from several companies have raised allegations of discrimination against minorities and first amendment concerns.¹

¹ See DirectTV, Inc. September 27, 1996 Comments at page 7; Philips Electronics North America Corporation, et. al. September 27, 1996 comments at pages 5 & 11; Pacific Telesis Group September 27, 1996 Comments at page 4; Consumer Federal of America, et. al. September 27, 1996 Comments at page 5; Satellite Broadcasting and Communications Association of America September 27, 1996 Comments at page 4; National Rural Telecommunications Cooperative September 27, 1996 Comments at pages 3 & 10.

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Because we felt that we had a special perspective on this issue we submit these comments and join in the Community Associations Institute's comments regarding the takings issues.

Many of the attorneys and staff at Elisha, Ekimoto & Harada (including a majority of the principals) belong to racial minorities. Too often we see companies attempt to elevate their financial self-interest by cloaking them in the guise of fighting discrimination or protecting free speech. We do not know if that is what is occurring here, but we do know that the claims of discrimination and free speech are misplaced. There is no evidence that we are aware of that the racial make-up of community associations differs substantially from the make-up of the population at large. Moreover, concerns raised by community associations and others about the impact of extending the FCC 8/5/96 Order beyond exclusive use areas are shared by owners belonging to racial minorities. While not scientific, we have had an opportunity to talk to many individuals who live in community associations. Both renters and owners of all kinds of ethnic backgrounds have indicated concerns about some of the potential effects of permitting the installation of antennas including increase maintenance costs for the buildings, loss of warranties, blocking of view planes for dwellings, diminution of property values, and reduction in the general quality of life. To suggest that these types of concerns are held only by whites or that persons of color are more concerned with watching television than quality of life is both untrue and insulting.

This is not a situation where individuals are being denied access to services. It is a situation where companies wish to deprive owners and renters of all racial backgrounds the right to fashion the type of community they wish to live in. If the intent of companies or the FCC is to meet the needs and concerns of people of color, taking

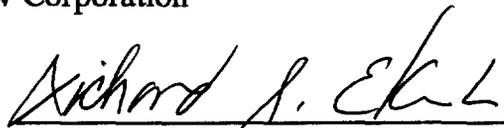
private property is not the answer. The FCC can establish and require all providers of video programming services to supply programming that meets the needs and concerns of all americans, including persons of color. In addition, expanding requirements for public access, including access to technical assistance and equipment will greatly enhance the availability of meaningful access for minorities.

First Amendment concerns are similarly exaggerated. The vast majority of the programming offered by providers are entertainment. While entertainment is important, it does raise the same types of issues as news, information and opinion. Moreover, it is becoming more and more difficult for anyone to honestly say that they do not have a means of receiving information on different points of views that they wish receive.

For these reasons, we respectfully request that the FCC consider the issues on the merits of the takings clause and legitimate concerns about the effect of the further rule making. Thank you for listening to our concerns.

Dated at Honolulu, Hawaii, October 28, 1996

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Its Vice President/Secretary