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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matters of)
)
Preemption of Local Zoning Regulation)
of Satellite Earth Stations)
)
and)
)
Implementation of Section 207 of the)
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air Reception)
Devices: Television Broadcast and)
Multichannel Multipoint Distribution)
Service)

IB Docket No. 95-59

CS Docket No. 96-83

DOCKET FILE COPY ORIGINAL

To: The Commission

**COMMENTS OF ITFS PARTIES IN SUPPORT OF
JOINT PETITION FOR PARTIAL RECONSIDERATION**

The Alliance for Higher Education, Arizona Board of Regents for Benefit of the
University of Arizona, Board of Regents of the University of Wisconsin System, California State
University, Calnet, Catholic Telemedia Network, Escondido Union Elementary School District,
Greater Dayton Public Television, Inc., INTELECOM Intelligent Telecommunications, KCTS
Television, Long Beach Unified School District, Oceanside Unified School District, Oklahoma
State University, San Diego Community College District, San Diego County Office of
Education, San Diego State University, Santa Ana Unified School District, Santa Clara County
Office of Education, South Carolina Educational Television Commission, St. Louis Regional

Educational and Public Television Commission, State of Wisconsin--Educational Communications Board, University of Idaho, University of Southern California, University System of the Ana G. Mendez Educational Foundation and Washington State University (collectively, the "ITFS Parties"), by their counsel, submit these comments in support of the Joint Petition for Partial Reconsideration filed in this proceeding by the Wireless Cable Association International, Inc., Bell Atlantic Corporation, CAI Wireless Systems, Inc., CS Wireless Systems, Inc., National Wireless Holdings, Inc., NYNEX Corporation, Pacific Telesis Group and People's Choice TV Corp. (the "Joint Petition").

The ITFS Parties are public and private universities and university systems, school districts and offices of education, consortia of university campuses and community colleges, public broadcasters and governmental or non-profit educational telecommunications entities. Each is an experienced provider of educational services to its students and other learners in schools, workplaces and homes. Among the ITFS Parties are operators of some of the oldest, largest and most innovative ITFS systems in the country. Each of the ITFS Parties participates with wireless cable operators in the development and operation of ITFS/MMDS video systems, or contemplates doing so.

The ITFS Parties filed Comments in response to the Commission's *Notice of Proposed Rulemaking* in CS Docket No. 96-83, FCC 96-151, implementing Section 207 of the Telecommunications Act of 1996 with respect to restrictions on over-the-air reception devices for TV broadcast and Multichannel Multipoint Distribution Service. The ITFS Parties supported the Commission's proposal, but sought clarification (which was in fact made by the Commission in the *Report and Order*) that the rules include receive devices for ITFS as well as MMDS

facilities. The ITFS Parties believed that the Commission's proposal reflected the will of Congress, as reflected in Section 207 of the Telecommunications Act of 1996, that viewers' ability to receive video programming services from various sources should not be impaired by governmental policies not reasonably related to public health or safety or by private restrictions.

In its August 6, 1996 *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in this proceeding (the "*Report and Order*"), the Commission departed from its proposal in significant respects, adopting rules that go too far in permitting restrictions on the installation, maintenance and use of ITFS and MMDS receive antennas, including restrictions imposed by private parties. The rules also fail to provide for an exclusive role for the FCC in determining the permissibility of antennas restrictions and contain inadequate procedural protections for licensees that may face multiple, different regulatory regimes in various communities.

On October 4, 1996, the Wireless Cable Association International *et al.* filed their Joint Petition with respect to these issues. The Joint Petition argues that the Commission paid too much deference in certain respects to elements of a commonly-employed model building code. It also argues, among other things, that all nongovernmental restrictions on reception devices should be preempted, that the FCC should be the sole arbiter of the enforceability of restrictions by governmental entities, and that the burden of demonstrating that a restriction is enforceable should be placed on the proponent of the restriction. The Joint Petition further suggests that the rules should be expanded to protect transmission antennas installed at subscribers/receive sites, thus enhancing the prospect of interactive wireless communications.

The ITFS Parties fully support the Joint Petition and urge the Commission to grant partial

reconsideration of the *Report and Order* as urged by the Wireless Cable Association International, *et al.* Most particularly, the ITFS Parties urge the Commission not to lose sight of the fact that many substantial public interest concerns are furthered by eliminating restrictions on the use of MMDS/ITFS receiving devices, in addition to the advantages of enhanced competition in video delivery systems.

As they have previously shown, from their unique perspective, the ITFS Parties believe that the public interest is served by the widest possible availability of wireless cable system services. Wireless cable systems by necessity incorporate ITFS channels on which the ITFS Parties and other educators deliver in-school instructional and educational programming and administrative and training support, workplace training, and instructional, educational and cultural programming. Wireless cable systems offer educators many advantages, not the least of which is access to the public in their homes, thereby making possible the efficient delivery of educational services to a much wider audience. The potential audience should not be limited by unnecessary or unreasonable restrictions on the placement of receiving equipment.

Second, ITFS licensees in wireless cable systems benefit from the provision of facilities and operational, programmatic and financial support by their wireless cable operators, giving educators a strong interest in the success of the wireless cable operators' businesses. To the extent that the proposed regulations enhance the ability of wireless cable operators to thrive over the long term, educators are beneficiaries as well.

For these reasons, the ITFS Parties support the Joint Petition for Partial Reconsideration and urge the Commission swiftly to grant reconsideration as urged therein.

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Respectfully submitted,

ALLIANCE FOR HIGHER EDUCATION

ARIZONA BOARD OF REGENTS FOR
BENEFIT OF THE UNIVERSITY OF
ARIZONA

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM

CALIFORNIA STATE UNIVERSITY

CALNET

CATHOLIC TELEMEDIA NETWORK

ESCONDIDO UNION ELEMENTARY
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TELECOMMUNICATIONS

KCTS TELEVISION

LONG BEACH UNIFIED SCHOOL DISTRICT

OCEANSIDE UNIFIED SCHOOL DISTRICT

OKLAHOMA STATE UNIVERSITY

SAN DIEGO COMMUNITY COLLEGE
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SAN DIEGO COUNTY OFFICE OF
EDUCATION

SAN DIEGO STATE UNIVERSITY

SANTA ANA UNIFIED SCHOOL DISTRICT

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FOUNDATION

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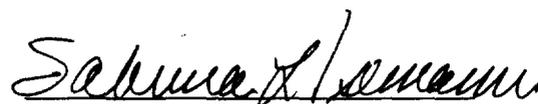
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of ITFS Parties in Support of Joint Petition for Partial Reconsideration" was served this 18th day of November, 1996, by first class United States mail, postage prepaid, upon the following:

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