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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter Of

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 Service)
)
)

IB Docket No. 95-59

CS Docket No. 96-83

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COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS IN SUPPORT OF NASA PETITION FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION AND SUMMARY

As already has been documented in the record of this proceeding, for dozens of years the actions of local zoning authorities, the "restrictive covenants" of builders and homeowners associations and the policies of the owners of multiple dwelling unit structures have prevented members of the viewing public from employing outdoor receiving antennas to pick up over-the-air television broadcast stations. Broadcasters and the Federal Communications Commission now share a fundamental and statutory-based goal: to ensure that citizens residing in the service areas of local stations be able to construct and employ outdoor antennas to receive those signals licensed to serve them.

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However, the above-described actions of these non-federal officials and organizations often have thwarted this goal and have impaired full participation of the viewing audience in the receipt of free, over-the-air television.

As acknowledged above, this goal is shared as well by the United States Congress. In Section 207 of the Telecommunications Act of 1996,¹ the Legislature has required the FCC to begin and swiftly complete a rule making that will result in rules intended to ensure viewers' use of such antennas.² In the *Notice of Proposed Rule Making*³ in the above-captioned proceeding the Commission has instituted the required rule making. However, in the Commission's *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rule Making*,⁴ the agency has fallen short of meeting its responsibility of meeting this goal in what is now a bifurcated proceeding.⁵

The National Association of Broadcasters ("NAB")⁶ strongly believes that the Commission has no choice but to adopt rules that will implement the will of Congress fully. That Congressional mandate is for the FCC to promulgate rules that will "prohibit

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 114 (1996).

² That statutory provision also directs the FCC to adopt similar preemption rules for Direct Broadcast Satellite ("DBS") receive-only antennas and antennas used for the reception of the Multichannel Multipoint Distribution Service ("MMDS") signals.

³ *Notice of Proposed Rule Making* in CS Docket No. 96-83, FCC 96-151 (1996).

⁴ *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rule Making* in IB Docket No. 95-59 and CS Docket No. 96-83 ("*Order & Further Notice*"), 61 Fed. Reg. 46557 (September 4, 1996).

⁵ As discussed further below, the Commission's *Order* has not met fully the goal of adopting clear, effective and practical regulations. Moreover, the rules adopted in the *Order* apply only to situations where the viewer has a direct ownership interest in the property upon which the antenna is or would be constructed. The Commission's *Further Notice* has sought comments on the adoption of rules applicable to situations involving multiple dwelling units ("MDUs").

⁶ NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

restrictions that ‘impair’ a viewer’s ability to employ an outdoor antenna capable of receiving over-the-broadcast stations.⁷ For purposes of the rules that will apply to private homes and the like -- as well as to the MDU situations being addressed in the other phase of this proceeding -- the Commission must ensure that its rules are clear and effective, and that there is a *federal-only* mechanism for resolving disputes concerning the applicability of these rules.

Here NAB supports the Petition for Reconsideration and Clarification filed by the Network Affiliate Stations Alliance (“NASA”).⁸ In that petition NASA focuses on two significant areas where the FCC rules adopted for the “private homeowner” aspects of this proceeding must be altered and strengthened. NAB -- as set forth below -- concurs with this NASA view; but we also urge the Commission to ensure that the forthcoming rules dealing with MDUs and the like also will address these concerns and similarly will reflect a high degree of clarity and effectiveness.

⁷ See Section 207 of the Telecommunications Act of 1996, *supra* note 1.

⁸ NASA Petition for Reconsideration and Clarification, filed in the above-captioned proceeding on October 4, 1996. The Commission acknowledged the filing of this petition by way of Public Notice, “Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings,” 61 Fed. Reg. 56957 (November 5, 1996).

II. THE COMMISSION MUST ADOPT CLEAR AND EFFECTIVE PREEMPTION RULES IN ALL PHASES OF THIS RULE MAKING

NAB filed comments and reply comments in response to the Commission's initial *Notice* issued following the passage of the Telecommunications Act.⁹ We also have filed comments and reply comments in response to the Commission's *Further Notice*.¹⁰

In all these filings NAB has stressed the importance of the Commission implementing the will of Congress and adopting rules that will clearly and effectively afford reasoned preemption of non-federal and private restrictions on outdoor antenna placement and use. In its petition, NASA reiterates the importance of the Commission giving clear guidance -- to non-federal governmental authorities, to homeowners associations and to television viewers -- as to which antenna restrictions will or will not be subject to the Commission's preemption order.

As NASA has explained, the Commission's *Order* leaves much to be desired, in terms of spelling out, with some level of certainty, the kinds of antenna restrictions which will be the subject of preemption under the Commission's rules. We join NASA in urging the FCC to revise its rules to offer that clarity and certainty. Moreover, we urge the Commission to take similar steps when it adopts rules -- in the other phase of this rulemaking proceeding -- applicable to viewers residing in MDUs.

⁹ Comments of NAB in CS Docket No. 96-83, filed May 6, 1996; Reply Comments of NAB in CS Docket No. 96-83, filed May 21, 1996.

¹⁰ Comments of NAB in IB Docket No. 95-59 and CS Docket No. 96-83, filed September 27, 1996; Reply Comments of NAB in IB Docket No. 95-59 and CS Docket No. 96-83, filed October 28, 1996.

III. THE COMMISSION MUST TAKE STEPS NOW TO AVOID THE DISPARATE RESULTS AND UNNECESSARY EXPENSE OF STATE COURT RESOLUTION OF PREEMPTION DISPUTES

In its petition, NASA offers compelling reasons for the Commission to reverse its decision, in the *Order*, to allow state courts to be the forum for resolution of disputes concerning the applicability of the Commission's preemption rules. Here too we lend our support for the position taken by NASA.

By leaving the resolution of such disputes to non-FCC and other non-federal forums, the Commission falls well short of adopting a practical, reasoned regulatory scheme which will meet the goal of effectively preempting the kinds of antenna restrictions that led to the Congressional adoption of Section 207 of the Telecommunications Act. Plainly said, allowing state courts to address and resolve disputes concerning the applicability and enforcement of the Commission's preemption rules only can result in a failure of these rules to be interpreted fairly and consistently. Such an approach also will impose unfair financial burdens on the intended beneficiaries of Section 207 and the relevant provisions of the Commission's rules: the viewers of over-the-air television stations (as well as MMDS and DBS services).

We strongly recommend that the Commission make these corrective actions now, and not leave the future effectiveness of its rules to a morass of state court litigation. Not to do so would amount to a clear abrogation of the agency's obligations under the Telecommunications Act.

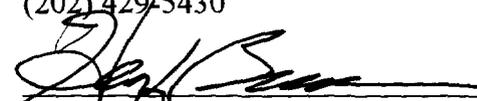
IV. CONCLUSION

For the reasons stated herein and the other pleadings NAB has filed all phases of this rule making -- including this reconsideration aspect of the FCC's adoption of rules applicable for "private home ownership" situations -- we urge the Commission to adopt and refine its rules such that the intended beneficiaries of Section 207 of the Telecommunications Act genuinely will be protected from the imposition of restrictions that impair a viewer's use of an outdoor antenna to receive over-the-air broadcast stations. Such clear and readily enforceable rules should be adopted for all televisions viewers, regardless of their "ownership-relation" to the property upon which the antenna is or should be placed.

Respectfully submitted,

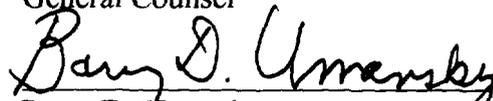
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November 20, 1996

CERTIFICATE OF SERVICE

I, Angela K. Adams, a secretary at the National Association of Broadcasters, do hereby certify that on this 20th day of November, 1996, I caused copies of the foregoing "Comments of the National Association of Broadcasters In Support of NASA Petition for Reconsideration and Clarification" to be mailed via U.S. Mail, postage pre-paid to the following:

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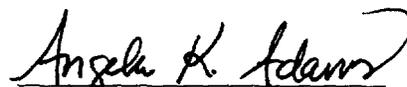
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