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October 31, 1996

Mr. William F. Caton
Acting Secretary, Office of the Secretary
Federal Communications Commission
Room 222, 1919 M Street, N.W.
Washington, D.C. 20554

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Re: In the Matter of: Preemption of Local Zoning Regulations of Satellite Earth Stations: IB Docket No. 95-59; 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 Services: CS Docket Number 96-83, FCC 96-151 Further Notice of Proposed Rulemaking

Dear Mr. Caton:

On October 24, 1996, Robert M. Diamond, President, Barbara Beach, Staff Vice President, Special Projects, and Lara Howley, Legislative and Public Affairs Coordinator, representing the Community Associations Institute (CAI), met with Jackie Chorney, Legal Advisor to Chairman Reed Hundt and David Siddall, Legal Advisor to Commissioner Susan Ness to discuss the issues raised in the Further Notice of Proposed Rulemaking as well as the issues raised by the petitions for reconsideration in the above proceeding.

At this meeting, CAI expressed its support for the rule issued August 6, 1996, which provides community associations with sufficient flexibility to accommodate their various development plans. CAI articulated concerns regarding the Petitions for Reconsideration filed in this proceeding, particularly its opposition to Petitions for Reconsideration that argued that the FCC should be the sole forum for adjudicating disputes concerning this rule.

CAI opposes this position since adjudicating cases before the FCC would impose a great burden upon community associations, as most are not located near Washington, D.C., and do not have legal counsel experienced in practicing before the FCC. The great distance between many associations and Washington poses great logistical problems in preparing and presenting testimony and exhibits. Associations do not have the financial or technical resources to overcome these disadvantages, particularly since the burden of demonstrating that an association regulation complies with the rule is on the association. Telecommunications service providers, on the other hand, almost universally are able to obtain counsel in Washington, D.C. experienced in FCC administrative law. This inequity places associations on unequal footing before the FCC.

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In addition, the definition of many terms relating to community associations is defined by state law. The FCC does not have the experience or expertise to adjudicate issues of state law. Therefore, the FCC should not rewrite the portion of the rule that permits recourse to local courts of competent jurisdiction. Also, the sheer number of cases likely to be filed would soon create staffing and budget problems for the FCC were it to be the sole forum.

During this meeting, CAI also mentioned that several organizations have interpreted the rule to mean that exclusive use contracts between cable companies and associations are now unenforceable. CAI would like to have this interpretation clarified by the FCC in two respects. First, CAI would like to insure that installation of telecommunications equipment on individually-owned or exclusive use area property would not be considered a violation of exclusive use contracts. Secondly, CAI would like such a clarification to provide that, if an association were to install a common or central antenna to provide telecommunications service for all members, that this installation would not violate exclusive use contracts. In this way, more community association residents would have access to telecommunications services.

CAI also reiterated the positions contained in CAI's Comments.

We appreciate the opportunity to meet with Ms. Chorney and Mr. Siddall.

Sincerely,

Barbara Beach

Barbara Beach, Staff Vice President
Special Projects