

MONTGOMERY CAPITAL CORPORATION

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September 16, 1996

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

DOCKET FILE COPY ORIGINAL

RE Preemption of Local Zoning Regulation of Satellite Earth Stations,  
IB Docket No. 95-59 and Implementation of Section 207 of the  
Telecommunications Act of 1996, CS Docket No. 96-83

Dear Mr. Caton:

We are writing in response to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on August 6, 1996, which asks for comments with regard to placement of an antenna on common areas of leased premises, property not within the exclusive control of a person with an ownership interest, where a landlord is legally responsible for maintenance and repair and can be liable for failure to perform its duties properly. We enclose six (6) copies of this letter, in addition to this original.

Montgomery Capital is in the commercial real estate business. We own and manage 50 properties in California and have approximately 2,000 tenants.

We are concerned that imposition of a rule granting persons a presumptive right to receive over-the-air signals -- persons who do not have an ownership interest in the property they occupy through lease agreement with a property owner -- will adversely affect the conduct of our business without justification and needlessly raise additional legal issues. We question whether the Commission has the authority to require us to allow the physical invasion of our property. We must retain the authority to control the use of our property, for several reasons.

The FCC should not extend regulations implementing Section 207 of the Telecommunications Act of 1996 to situations in which the viewer does not have exclusive use or control and a direct ownership interest in the property where the antenna is to be installed, used and maintained. There are many factors such as safety, security, aesthetics, liability, and insurance costs that a private property owner must consider and

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manage on a day-to-day basis. All of these factors are vital to the operation of an office building and cannot be discounted or properly compensated for on a uniform basis. The weight or wind resistance of a satellite and the quality of installation may create maintenance problems and -- more importantly -- a hazard to the safety of occupants, building employees, and passers-by. Damage to the property caused by water seepage into the building interior, corrosion of metal mounts, or weakening of concrete could lead to safety hazards and very costly maintenance and repair. Additionally, slipshod or faulty contractors might create safety problems during installation.

The technical limitations of satellite technology create problems because all of our tenants may not be able to receive certain services. It is our understanding that satellites are only positioned in certain areas, thus limiting access. But a building type of satellite dish or antenna mounted on the roof of our property is not necessarily the answer because of the great variation in condition and quality of roofs, and it may be totally impractical and uneconomical to provide service to a small universe of potential subscribers.

In conclusion, we urge the FCC to avoid interfering in our relationships with our tenants. All of the potential problems we cite will adversely affect the safety and security of our property as well as our bottom line and our property rights. Thank you for your attention to our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Emily Powell Palmer". The signature is written in dark ink and is positioned above the typed name and title.

Emily Powell Palmer  
Vice President

EPP:kd