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January 23, 1997

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**By Hand**

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

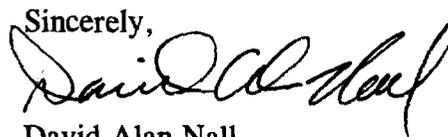
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Notice of Oral and Written Ex Parte Presentation: IB Docket No. 95-59,  
CS Docket No. 96-83; 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 Services

Dear Mr. Caton:

On January 23, 1996, representatives of the Consumer Electronics Manufacturers Association ("CEMA") met with Meredith Jones, William Johnson, Barbara Esbin, JoAnn Lucanik, Rick Chessen and Darryl Cooper of the Cable Services Bureau to discuss CEMA's position and petition for clarification and reconsideration in the above-referenced proceeding. The information discussed during the meeting is contained in CEMA's petition and in the comments and reply comments CEMA has filed in this proceeding. CEMA also made the points contained in the attached hand-out which was distributed at the meeting. Representing CEMA were CEMA officials Gary Klein and Michael Petricone, as well as the undersigned.

In accordance with Section 1.1206(a) of the Commission's rules, four copies of this notice and its attachment are being submitted for inclusion in the public record of the two dockets. Please contact me if you have any questions.

Sincerely,  


David Alan Nall

cc: Meredith Jones      Barbara Esbin      Rick Chessen  
William Johnson      JoAnn Lucanik      Darryl Cooper

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RECEIVED January 22, 1996

Ex Parte Meeting re:

JAN 23 1997

IB Docket No. 95-59  
CS Docket No. 96-83

FEDERAL COMMUNICATIONS COMMISSION  
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CEMA suggests that the Commission clarify and reconsider, in part, its August 6 Report and Order as described below:

**The Commission should clarify language in its Order and Rules that potentially undermines consumer interests. The Order and new Section 1.4000 of the Commission's rules introduce at least three ambiguities that require clarification if consumer interests, and the intent of Section 207, are to be served:**

- At paragraph 25 of the Order, the Commission suggests that it will permit local safety regulations so long as they do not discriminate among devices that are comparable "in size, weight, and appearance". The word "appearance" should be eliminated from the final rule to avoid any mistaken impression that an antenna's appearance can be taken into consideration to justify safety restrictions.
- At paragraph 20 of the Order, the Commission states that its new rule would only invalidate local restrictions that would require an antenna to be placed in a position where reception would be impossible or "substantially degraded". Section 207 clearly obliges the Commission to prohibit restrictions that "impair" a viewer's access to over-the-air programming. The Commission should not equate "impair" with "substantially degrade"--even "moderate" degradation will "impair" a viewer's access to over-the-air programming. The Commission should clarify that local restrictions on the placement of antennas (other than exempted safety and historic district restrictions) cannot require consumers to endure any signal degradation.
- At paragraph 37 of the Order, the Commission indicates that that the BOCA code's blanket restriction on size is "unacceptable", thus implying that it will prohibit enforcement of the BOCA code and any similar safety rules that restrict the installation and use of DBS antennas one meter or less in diameter and are based solely on the antenna's size or weight. The Commission should clarify the Order to expressly state that size-based restrictions are unenforceable to the extent they preclude installation of DBS antennas less than one meter in diameter.

..... The Sponsor and Producer of The Consumer  
Electronics Shows

**The Commission should plainly set forth what restrictions on over-the air reception devices are--or are not--permissible.**

In its Order, the Commission enumerates a number of restrictions on antenna placement that it finds to be unreasonable. CEMA encourages the Commission to separately state these findings--in plain language--in an addendum to its rules or in a public notice. Such a separate statement will make it clear as possible to consumers and local regulators what practices have already been found unreasonable, and, thereby, will minimize possible disputes and consumer frustration.

**The Commission should assert exclusive jurisdiction over disputes concerning antenna placement.**

The Commission's new rule retains the Commission's proposal to allow local courts of competent jurisdiction to hear disputes regarding antenna placement. CEMA suggests that the pro-consumer goals of section 207 can only be met under a national system of rules governing direct-to-home services. Should the Commission decline jurisdiction over antenna placement issues, local regulators will seek review of restrictions in local courts, which are largely sympathetic to local authorities. Local jurisdiction will lead to expensive, protracted decisionmaking processes and a high level of consumer frustration. The end result will be a "patchwork quilt" of diverse, contradictory, and hostile local rules governing Section 207.

**The Commission must ensure that all viewers--both renters and property owners--have access to the over the air video options of their choice.**

The conferment of the right to receive multi-channel video services based on home ownership is not in the public interest, and has a disparate impact on low income individuals. It is essential that all viewers, regardless of economic class, be able to enjoy the full benefit of a diverse marketplace in video services.

**There is ample legal authority for the Commission to prohibit nongovernmental restrictions that impair reception by viewers who rent.**

The minimal regulation of the landlord-tenant relationship entailed by section 207 does not rise to the level of a taking under the Fifth Amendment. No "significant occupation" of the owner's property would be necessary. Indeed, it is technically feasible for a DBS service provider to offer programming to tenants through a single common dish antenna on the building roof. Such an option would allow a landlord or condominium association considerable discretion in determining the means by which tenants could be provided access to DBS based upon the characteristics of the dwelling unit, so long as tenants or unit owners could receive a high-quality signal.

The revisions set forth above will ensure that the pro-consumer and pro-competitive purposes of Section 207 of the Telecommunications Act are fully effectuated.