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April 21, 1997

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

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

Re: Ex Parte Presentation in CS Docket 96-83

Dear Mr. Secretary:

Pursuant to 47 C.F.R. § 1.1206, the Building Owners and Managers Association International, the National Realty Council, the National Multi Housing Council, the National Apartment Association, the International Council of Shopping Centers, and the Institute of Real Estate Management (jointly, the "Real Estate Associations"), through undersigned counsel, submit this original and one copy of a letter disclosing a written ex parte presentation in the above-captioned proceeding.

On April 21, 1997, the attached letter addressing statutes requiring the installation of mailboxes in multiple dwelling units was delivered on behalf of the Real Estate Associations to the following members of the Cable Services Bureau staff: Meredith Jones, William Johnson, JoAnn Lucanik, Rick Chessen, Donnajean Ward and Darryl Cooper.

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Please contact the undersigned with any questions.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By Matthew C. Ames

Enclosure

cc: Meredith J. Jones, Esq.
William Johnson, Esq.
JoAnn Lucanik, Esq.
Rick Chessen, Esq.
Donnajean Ward, Esq.
Darryl Cooper, Esq.

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April 21, 1997

BY HAND DELIVERY

Mr. Darryl Cooper
Cable Services Bureau
Federal Communications Commission
2033 M Street
Washington, D.C. 20554

Re: CS Docket 96-83

Dear Mr. Cooper:

It was a pleasure to meet you earlier this month during our discussion of issues related to the placement of over-the-air reception devices on leased property.

You may recall that you asked if we were aware of any precedent supporting the proposition that requiring a building owner to install mailboxes for the benefit of its tenants would not constitute a "taking" under the Fifth Amendment to the U.S. Constitution. As we were not, we offered to look into the matter further.

After an extensive search, we have been unable to identify any case that addresses the constitutionality of a statute requiring building owners to install mailboxes. Indeed, as the discussion below indicates, it appears that we are not alone in this regard.

Your question presumably stemmed from the following passage in *Loretto v Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982):

> our holding today in no way alters the analysis governing the State's power to require landlords to comply with building codes and provide utility connections mailboxes, smoke detectors, fire extinguishers, and the like in the common area of a building.

Id. at 440.

Interestingly enough, this passage appears to have been drawn from similar language in briefs filed with the Court. *See* Brief for the New York State Cable Television Association as Amicus Curiae, *Loretto*, 458 U.S. 419 (1982), at Part II. Neither the Court's decision nor the briefs, however, cite any case that actually addresses the issue. In fact, counsel for Mrs. Loretto noted that "we find no New York or federal law or Postal Service regulation which would permit anyone to install a mailbox outside of the tenant's apartment without landlord consent or without compensation to the landlord." Reply Brief, *Loretto*, 458 U.S. 419 (1982), at Part II.B.2.

Our research seems to establish that there is no federal requirement that a building owner install mailboxes for its residents. We have reviewed the U.S. Code and Title 39 of the Code of Federal Regulations and found no statute or rule requiring any person to install a mail box. Indeed, it appears that the Postal Service does not require individuals to install their own mailboxes.

For example, in *U.S. Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114 (1981), the Court stated:

> Nothing in any of the legislation or regulations cited [in the decision] requires any person to become a postal customer. Anyone is free to live in any part of the country without having letters or packages delivered or received by the Postal Service by simply failing to provide the receptacle for those letters and packages which the statutes and regulations require [referring to specifications for such receptacles, not their actual installation]. Indeed, the provision for "General Delivery" in most post offices enables a person to take advantage of the facilities of the Postal Service without ever providing a receptacle at or near his premises conforming to the regulations of the Postal Service. What the legislation and regulations do require is that those persons who do wish to receive and deposit their mail at their home or business do so under the direction and control of the Postal Service.

Id. at 125-126.

In another case, a court has held that there is no "right to door-to-door mail service" even if a building contains approved mail boxes. *Egger v. U.S. Postal Service*, 436 F. Supp. 138 (W.D. Va. 1977).

If the Postal Service does not require individuals to install their own boxes and reserves the right not to use boxes even when they are available, it seems unlikely that the Postal Service would require building owners to provide boxes for their tenants.

It may be that one or more state or local governments has, in the exercise of its police powers, established such a requirement. We have not looked for such statutes, but have searched for decisions on their constitutionality. We have found none. This does not mean none exists, of course -- but the fact that neither the Supreme Court in *Loretto*, counsel before the Supreme Court in that case, nor the other parties to this proceeding have apparently succeeded in actually identifying such a case is significant.

In addition, any such case that may exist is likely to be limited in precedential value, because, as we noted during our meeting, the federal government has no police power.

Accordingly, we urge the Bureau to recognize the limits of Congressional authority and avoid adopting any rule that would alter any lease provisions governing the placement of antennas. Please let me know if you have any further questions.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By Matthew C. Ames

cc: Meredith J. Jones, Esq.
William Johnson, Esq.
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