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LAW OFFICES OF  
**MILLER & VAN EATON, P.L.L.C.**

A PROFESSIONAL LIMITED LIABILITY CORPORATION

1225 NINETEENTH STREET, N.W.

SUITE 400

WASHINGTON, D.C. 20036

TELEPHONE (202) 785-0600

FAX (202) 785-1234

MATTHEW C. AMES  
FREDERICK E. ELLROD III  
WILLIAM R. MALONE

INCORPORATING THE PRACTICE OF  
MILLER & HOLBROOKE

NICHOLAS P. MILLER  
MARIA F. SILVEIRA  
JOSEPH VAN EATON

EX PARTE OR LATE FILED

June 23, 1997

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JUN 23 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE 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 ("BOMA"), the National Realty Committee ("NRC"), the National Multi Housing Council ("NMHC"), the National Apartment Association ("NAA"), the Institute of Real Estate Management ("IREM"), the International Council of Shopping Centers ("ICSC"), and the National Association of Real Estate Investment Trusts, (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 June 23, 1997, the attached letter responding to certain comments of the National Association of Broadcasters was delivered on behalf of the Real Estate Associations to Chairman Hundt.

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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: Hon. Reed E. Hundt

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MATTHEW C. AMES  
FREDERICK E. ELLROD III  
STEPHEN J. GUZZETTA  
WILLIAM R. MALONE

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MILLER & HOLBROOKE

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SUITE 400  
WASHINGTON, D.C. 20036

TELEPHONE (202) 785-0600  
FAX (202) 785-1234

NICHOLAS P. MILLER  
MARIA F. SILVEIRA\*  
JOSEPH VAN EATON

\* ADMITTED TO PRACTICE IN  
FLORIDA ONLY

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Hon. Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., # 814  
Washington, D.C. 20554

Re: Broadcast Antenna Rules - CS Docket No. 96-83

Dear Mr. Chairman:

This letter responds, on behalf of the associations representing the owners and managers of multi-tenant properties in CS Docket No. 96-83, to that section of Edward O. Fritts' letter to you dated May 30, 1997, entitled "Preemption of Restrictions that Impair Construction/Use of Receive Antennas." Mr. Fritts concludes that section by asserting that "the Commission is *required* by Congress to promulgate regulations that prohibit *all* restrictions that *impair* a viewer's ability to receive terrestrial TV signals through an over-the-air reception antenna." Mr. Fritts' argument misstates the legislative history and the meaning of the statute.

Significantly, Mr. Fritts' letter does not draw this supposed Congressional mandate from the statutory language of uncodified Section 207 of the 1996 Act. In fact, as the undersigned associations' joint comments and reply comments filed with the Commission last year demonstrated, Congress did not use in Section 207 the necessary statutory language the federal courts require to validate an agency taking of private property. Indeed, Mr. Fritts' use of the phrase "Congress has contemplated in its passage of the underlying statutory provision" concedes that the statutory language does not itself give either viewers statutory "rights to employ outside antennas" or require the Commission to "prohibit *all* restrictions that *impair*" over-the-air reception.

**Miller & Van Eaton, P.L.L.C.**

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It is one thing for the Commission to preempt governmental and quasi-governmental regulations limiting private property owners' freedom to use their own property, as it has done in the rules adopted August 5, 1997. But the Commission cannot "preempt" private property rights

It may only "take" private property, and then only pursuant to appropriate legislative authority. Mr. Fritts' letter illustrates that Section 207 does not meet the applicable judicial tests.

The Commission's careful consideration of its statutory authority with respect to the rights of private property owners -- rather than "an evasion of the Commission's statutory responsibility," as the letter charges -- must be as respectful of the Fifth Amendment as Mr. Fritts undoubtedly would claim the Commission should be of broadcasters' First Amendment rights.

Respectfully yours,



Nicholas P. Miller

Attorney for National Multi Housing Council,  
Building Owners and Managers Association  
International, National Realty Committee,  
International Council of Shopping Centers, Institute  
of Real Estate Management, National Apartment  
Association and National Association of Real Estate  
Investment Trusts

cc: Commissioner James H. Quello  
Commissioner Susan Ness  
Commissioner Rachelle B. Chong  
Ms. Beverly G. Baker  
William Kennard, Esq.  
Mr. Roy J. Stewart  
Henry L. Baumann, Esq.  
Mr. William F. Caton (2 copies)