

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telecommunications Services)
Inside Wiring)
)
Customer Premises Equipment)
)
)
)
In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
And Competition Act of 1992:)
)
)
Cable Home Wiring)

CS Docket No. 95-18

MM Docket No. 92-260

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

In these brief comments, the National Association of Broadcasters ("NAB")¹ urges the Commission to take steps in the instant proceeding that will foster the ability of television viewers to exercise the rights conferred on them under Section 207 of the Telecommunications Act of 1996.² Section 207 of the 1996 Act requires the Commission to adopt rules that prohibit non-federal restrictions that impair the ability of viewers to employ, *inter alia*, an over-the-air television antenna to receive terrestrial television transmissions.

¹ NAB is a nonprofit, incorporated association of television and radio stations and networks which serves and represents the American broadcast industry.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

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Currently, the Commission is engaged in a multi-phased rule making proceeding³ aimed at the adoption of rules that will fulfill this Congressional mandate. By the *Report and Order and Memorandum Opinion and Order* portion of its action⁴ of this past summer, the Commission adopted its initial regulation to implement that part of the statute. Here the FCC adopted a rule that prohibits any state law or regulation, local law or regulation, or any private covenant, homeowners' association rule or similar restriction that impairs the installation, maintenance or use of antennas designed to receive over-the-air video signals, be they from terrestrial television stations, direct broadcast satellite ("DBS") facilities or Multipoint Multichannel Distribution Systems ("MMDS," also described as "wireless cable"). However, on the ground that the agency needed a more complete record upon to base a decision to apply the rule to "...situations in which antennae may be installed on common property for the benefit of one with an ownership interest or on a landlord's property for the benefit of a renter," the *Report and Order and Memorandum Opinion and Order* did not apply the adopted rule to apartment houses and other similar "multiple dwelling units" ("MDUs").

Instead, the Commission's *Further Notice of Proposed Rule Making* sought additional comment on how the statute should be implemented in the context of MDUs. Those comments have been received. Further, the Commission also has been requested, by a variety of parties,⁵ to reconsider several aspects of its *Report and Order and Memorandum Opinion and Order*.

³ See, e.g., *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in IB Docket No. 95-59 and CS Docket No. 96-83, FCC 96-328, ___ FCC Rcd ___ (1997).

⁴ *Id.*

⁵ Among other petitions for reconsideration is the Petition for Reconsideration and Clarification of the Network Television Stations Alliance ("NASA"), filed October 4, 1996. NAB has supported this petition. (See Comments of the National Association of Broadcasters in Support of NASA Petition for Reconsideration and Clarification, filed November 20, 1996.) Here NASA and NAB have urged the FCC

NAB has participated at every stage of the above-described "over-the-air reception device" or "OTARD" rule making. In all our filings⁶ NAB has urged the FCC to adopt rules that will ensure the right of all citizen viewers -- regardless of where they reside -- to have access to video programming services of their choosing. This is a right that is basic to bedrock Congressional communications policy and was further codified in Section 207.

Through its television channel allocation process -- which has governed the distribution of television frequencies in this country for decades -- the Commission consistently has taken steps designed to ensure that all communities and all citizens have access to free, over-the-air television service. Free, terrestrial, over-the-air television is the means by which all our citizens, regardless of financial means, can receive a panoply of news, information, entertainment and emergency announcements. Correspondingly, the Congress has, in Section 207, determined that all our citizens, whether they own or rent a single family home or live in a townhouse, condominium or apartment, should be able to employ an over-the-air reception antenna to receive free, terrestrial television stations serving their local community.

This is the position -- supported by clear statutory law and a long history of FCC policy and rule making -- that we have taken in our filings in the OTARD proceeding.⁷ And we believe the Commission should ensure that its ultimate decision in the OTARD

to adopt more effective and more clear preemption rules for the conferring of Section 207 preemption rights on "private homeowners."

⁶ See, e.g., Comments of NAB in CS Docket No. 96-83, filed May 6, 1996; Reply Comments of NAB in CS Docket No. 96-83, filed May 21, 1996; Comments of NAB in IB Docket No. 95-59 and CS Docket No. 96-83, filed September 27, 1996; Reply Comments of NAB in IB Docket No. 95-59 and CS Docket No. 96-83, filed October 28, 1996.

⁷ Similar policy consideration have attached to the Commission's adoption -- and the Supreme Court's repeated affirmance, of cable television "must carry" rules designed to assure cable provision of local broadcast signals to those members of the viewing audience who chose to subscribe to cable television.

proceeding is not compromised or constrained by actions the agency may take in the above-captioned "cable inside wiring" proceeding -- either this phase of the instant proceeding or any future phases.

In the Commission's *Further Notice of Proposed Rule Making* in this cable inside wiring proceeding, the agency seeks comment on a variety of issues related to inside wiring in MDUs. These include the disposition of ownership of "home run" wiring,⁸ particularly under circumstances where the incumbent video provider owns such wiring but does not -- or will not -- have a legally-enforceable right to remain on the premises. The FCC addresses this concept as it would apply on a "building-by-building" basis and on a "unit-by-unit" basis. In both the building-by-building and unit-by-unit scenarios, the FCC proposes that the MDU owner be given the initial option to negotiate for ownership and control of the home run wiring.⁹

At this juncture, and in this phase of the Commission's cable inside wiring proceeding, it is important for the FCC to ensure that the regulatory paths to be taken will guarantee that viewers in MDUs will enjoy the rights conferred under Section 207. Unfortunately, it appears that neither of the Commission's sets of proposals, that for the "building-by-building" situation nor for the "unit-by-unit" scenario, is geared to fostering these rights and ensuring true video competition. Moreover, the Commission's decisions here easily could result in a video bottleneck where individual viewers would not be afforded access to the over-the-air signals to which their Section 207 rights attach.

⁸ So-called "home run" wiring is the connection between the "riser" or "spine" cable running through a building and the premises of the individual dwelling unit.

⁹ It is our understanding that the Commission's ultimate decision in this phase of its rule making would be affected by a variety of state laws that address many of the issues involved here. For example, in some states, inside wiring is considered to be a "fixture" and is owned by the owner of the MDU. Also, a majority of states has passed legislation requiring MDUs to give cable operators access to the building.

In the building-by-building example the MDU owner would be given a "leg up" in purchasing wiring from an existing video provider -- usually a cable system. The MDU owner would then have the ability to contract with an MMDS or other provider to offer service to the entire building, employing the home run and other wiring. If the MDU owner would refuse to purchase the home run wiring, then the FCC would allow an alternative video provider to purchase the wiring.

In the unit-by-unit scenario, if the MDU owner exercises the *option* of permitting "head-to-head" competition among individual service providers, the FCC would adopt rules giving MDU owners and service providers a series alternatives that would govern these providers' competition for the individual dwelling unit.

While the Commission's proposals are characterized in the *Further Notice* as "pro-competitive," they fall short of affording true competition for individual viewers. In the building-by-building context the competition is between one multichannel video provider and another, with the usual scenario likely being the transfer of service from a cable system to an MMDS or SMATV system. In the unit-by-unit context there is lip service given to individual choice but the reality is that the MDU owner would control whether *any* choice would be offered to the MDU residents. Seemingly deferring to the MDU owners' reluctance to install multiple home run wires, the agency states its tentative conclusion that *some* choice is better than a "no choice at all" situation, which the Commission says is typical in today's cable-serviced MDUs.

Though the Commission does suggest that "subscribers" (viewers/residents) should have the right to purchase their "home wiring" (but not "home run" wiring), that is the only portion of the FCC's *Further Notice* in this proceeding that even

acknowledges the rights of the viewer. But, these rights *must* be fostered in this proceeding and all others that deal with viewers' access to video programming.

Under the mandate of Section 207, an MDU owner has some choices. It may allow residents to employ (at the residents' option) outdoor antennas on a deck or balcony, if such antennas at these locations would afford unimpaired reception. It also may satisfy its Section 207 obligation by allowing the installation of the tenants' own riser cable that would feed over-the-air signals from a rooftop antenna down the riser and through the home run wiring. The MDU owner also could, in compliance with Section 207, put an antenna on the roof and couple the signals of over-the-air broadcast stations with those other video signals¹⁰ being offered by the "service provider *du jour*." Each of these options would satisfy the Section 207 obligations of an MDU owner.

It is all the more important that these Section 207 viewer rights be recognized as over-the-air television stations and viewers transition to digital television ("DTV"). For some time it may be that *only* direct off-air reception will be the mechanism for consumer access to DTV. Cable television, MMDS and SMATV systems may be DTV bottlenecks themselves as they are unlikely to provide, any time soon, technologies that will allow complete pass through,¹¹ of the digital service offerings of a local broadcast station. That is, off-air reception may be, for the near and perhaps long term, the *only* reliable method for the consumer to benefit from digital television.

¹⁰ Such a "combining" of signals over a single wire is practical under most scenarios and may be the most simple method for an MDU owner who is dealing with one or a variety of services providers *but also* is complying with his or her Section 207 obligations.

¹¹ In this regard NAB eagerly awaits the Commission's promised institution of a rule making that will propose the adoption of "cable pass through" rules for digital must carry. (See *Fifth Report and Order* in MM Docket No. 87-268, released April 21, 1997.)

Residents of apartment houses and other MDUs should not be disenfranchised from the world of true digital television, which is becoming a reality in a very short while.

Therefore, we urge the Commission to take steps in all phases of this cable inside wiring proceeding to recognize the right of viewers to have access to over-the-air broadcast signals. This basic "consumer choice" concept is at the foundation of Section 207 of the 1996 Act. Moreover, the technology exists for such a right to be honored by owners of all MDUs, regardless of whether the MDU owner chooses to shuffle between video service providers on a building-by-building basis or otherwise.

CONCLUSION

For the reasons stated herein, we urge the Commission to be mindful of its obligation, in this proceeding and all other related ones, to adopt a well-crafted and coordinated regulatory plan that effectively will confer Section 207 rights of American television viewers to receive the over-the-air signals of local broadcast stations. To do

less would be an abrogation of the Commission's regulatory responsibility and a departure from longstanding communications policy designed to ensure citizen access to the programming offered by local stations licensed to serve these citizens.

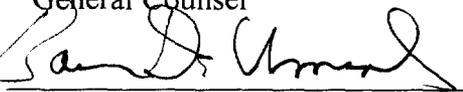
Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, N.W.
Washington, D.C. 20036



Henry L. Baumann
Executive Vice President and
General Counsel



Barry D. Umansky
Deputy General Counsel

Kelly T. Williams
Director of Engineering
NAB Science & Technology

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