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December 18, 1998

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Room 222, 1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition for Reconsideration in the matters of Preemption of Local Zoning Regulations of Satellite Earth Stations, IB Docket No. 95-59, and Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services, CS Docket No. 96-83, FCC 96-151.

Dear Ms. Salas:

Pursuant to the FCC's administrative rules, the Community Associations Institute ("CAI") hereby respectfully submits an original and ten copies of the attached Petition for Reconsideration in the above-referenced proceeding.

CAI appreciates the opportunity to file a Petition of Reconsideration in this important proceeding.

Sincerely,

Rodney D. Clark
Vice President
Government & Public Affairs

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Attachments



FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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In the Matter of)	
)	
Preemption of Local Zoning Regulations Of Satellite Earth Stations)	IB Docket No. 95-59 DA 91-577
)	
and)	
)	
Implementation of Section 207 of the Telecommunications Act of 1996)	CS Docket No. 96-83 FCC 95-151
)	
Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service)	

PETITION FOR RECONSIDERATION

In response to the Second Report and Order released November 20, 1998, the Community Associations Institute ("CAI") hereby submits the following Petition for Reconsideration. CAI applauds the Federal Communications Commission's ("FCC") decision to refrain from permitting takings on common property, but petitions the reconsideration of the decision to permit tenants in community associations to install individual antennas without the permission of the home or unit owner¹ from whom they rent the home or unit. This ruling, which reverses one promulgated in the September 25, 1998 Order on Reconsideration, constitutes a deprivation of community association homeowners' private property rights and will hinder community associations' efforts to assign liability and collect for any damage to common property. Since homeowners who may lease their units or homes comprise one category of CAI's membership,²

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¹In planned communities, the owner of an individual lot is usually called a homeowner. In condominiums, an owner is called a unit owner, while in a cooperative, the stockholder is called a resident. For the purposes of this Petition, the term "homeowner" refers to homeowners, unit owners, or cooperative residents, each of whom has direct or indirect ownership interest in the association.

²CAI's multidisciplinary membership includes community associations, homeowners, and the professionals (attorneys, accountants, community association managers, insurance professionals, builders, etc.) who serve them.

CAI requests the FCC to reverse the decision to delete subsection (h)³ from the OTARD Rule, and reinstate this subsection to the Rule.

The Second Report and Order Prevents Homeowners from Protecting Their Investments

Community associations are not inhabited exclusively by homeowners. In many community associations, individual homeowners rent their units or homes to tenants. Therefore, the portions of the Second Report and Order that permit tenants to install antennas on leased exclusive use area property affect community associations as well as more traditional rental properties.

Homeowners who choose to rent their units or homes do so with the expectation that their investments will be protected. To that end, they use lease agreements that contain specific provisions designed to protect their property from damage. Some of these provisions may include prohibitions on making any permanent alterations to property without the homeowner's permission. In this way, homeowners can prevent damage to property by prohibiting alterations that would damage the property, while tenants can be protected against charges for damages to rental property due to unauthorized alterations.

Permitting tenants to install antennas on leased exclusive use area property without homeowners' permission deprives these homeowners of a fundamental right to protect their own property. Yet in the Second Report and Order, the FCC asserts that homeowners relinquish their rights to possess and use rented property when they rent the property to tenants. The FCC justifies this

³Subsection (h), added to the OTARD Rule in the Order on Reconsideration, provides:
So long as the property owner consents, a person residing on the property owner's property with the property owner's permission shall be treated as an antenna user covered by this rule and shall have the same rights as the property owner with regard to third parties, including but not limited to local governments and associations, other than the property owner.

assertion by claiming that tenants have the right to “make changes in the physical condition of leased property which are reasonably necessary in order for the tenant to use the leased property in a manner that is reasonable under all circumstances.”⁴ This is not the case. The existence of a lease does not eliminate the ownership interest that homeowners have in the leased property. Inherent among their ownership rights is the ability to prevent damage to leased property. It is inappropriate for the FCC to assert that homeowners relinquish this fundamental right to protect their own property or express preferences on how the property is used merely because a lease is in place.

In many cases, tenant antenna installations will require permanent alterations to leased property to affix antennas securely. These actions will alter and, in some instances, damage leased property. The Second Report and Order prevents homeowners from assenting to these alterations and mitigating any potential damage that could impair their investments in their properties. Homeowners should retain the right to prevent damage to their property by being able to control antenna installations.

Requiring Tenants to Ask Homeowners for Permission to Install Antennas is Not Burdensome

There are several risks inherent in antenna installation. Antennas must be installed correctly, posing no safety risk to the homeowner’s property, other association property, and association residents. Antenna installations in single family homes and townhomes can require puncturing of roofs or exterior surfaces, which requires proper sealing. Even with proper sealing, rooftop installations may void a roof warranty. Installations in multi-dwelling unit buildings must be located on exclusive use areas, not general common property. Since tenants do not own the

⁴ Second Report and Order, paragraph 19 and footnote 50.

property upon which they are installing antennas, they have less incentive to take precautions to avoid the problems listed above. The only way for homeowners to prevent damage to their own property is through prior approval of tenants' antenna installations. Since prior approval processes for alterations to rental property are often included in leases, it is no great burden for tenants to follow procedures that are required for any other alteration to rental property, especially when the alternative is a greatly increased risk of property damage through improper antenna installation. To protect homeowners and their investments, CAI respectfully requests the FCC to reinstate subsection (h) to the OTARD Rule.

The Second Report and Order Impairs Community Associations' Rights to Preserve and Protect Association Property

Tenant antenna installation without homeowners' permission will cause numerous problems for community associations in many cases due to the relationship between community associations and tenants. In many jurisdictions, due to association documents or state law, community associations do not have any relationship with or control over tenants' actions. Usually, associations may only act against homeowners, who then must act against the tenants. Under the Second Report and Order, however, it is unclear if community associations will be able to enforce their rules and prevent or recover damages for personal injury or destruction of property resulting from the tenant's antenna installation. If tenants cause damage to community association or other homeowners' property, community associations may only be able to act against homeowners, not tenants, because there is no relationship between associations and tenants. However, recovery for damages from homeowners may be impossible since homeowners are not required to approve the antenna installation. Consequently, community associations would be deprived of the right to collect for property damage.

It is also unclear whether community associations will be able to require tenants to sign indemnification agreements, since tenants are not association members. Community associations may also be barred from requiring homeowners to sign indemnification agreements, since the FCC is removing homeowners and their rights and responsibilities from the discussion of antenna installations. If associations cannot require indemnification agreements from tenants or homeowners, then they will be barred from protecting association or other homeowners' property.

Since the Second Report and Order could easily deprive associations of a remedy for personal injury or property damage, the OTARD Rule should be amended to reinstate the deleted subsection (h), which would permit recovery from homeowners who permit tenants to install antennas on leased property.

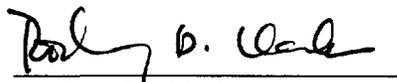
CONCLUSION

While CAI applauds the FCC decision to protect the integrity of community association common property, CAI urges the FCC to extend this protection to homeowners who rent their homes or units. The Second Report and Order deprives these homeowners of their fundamental property rights to protect their property from unwanted alteration and potential damage. The Second Report and Order also increases the possibilities that community associations will be harmed by antenna installations by tenants on property maintained by associations. If associations are not permitted by their documents or state law to recover damages from tenants, and cannot collect from their homeowners because the homeowners cannot permit or deny the installations, then

community associations will not be able to fulfill their obligations to protect association property.

In the Order on Reconsideration, the FCC correctly ruled that tenants should have to obtain their landlords' permission in order to install antennas on exclusive use area property. The FCC should revert to this position and reinstate subsection (h) to the OTARD Rule, since such a requirement is not burdensome and because it will protect the property of homeowners and community associations.

Respectfully submitted,



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