

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 207 of the) CS Docket No. 96-83
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air Reception Devices:)
Television Broadcast, Multichannel Multipoint)
Distribution and Direct Broadcast Satellite)
Services)

OPPOSITION TO PETITION FOR RECONSIDERATION

The Satellite Broadcasting and Communications Association ("SBCA"), through its attorneys, hereby files this Opposition ("Opposition") to the Petition for Reconsideration ("Petition") filed by the Community Associations Institute ("CAI") in the above-captioned proceeding¹ on December 18, 1998.

INTRODUCTION AND SUMMARY

CAI has raised no new issues in its Petition that were not already carefully considered by the Commission. It is well-settled that reconsideration will not be granted merely to reargue matters previously considered and resolved.² For this reason alone, the Commission should deny the Petition.

¹ CAI also lists IB Docket No. 95-59 in the caption on its Petition, but the order for which CAI is requesting reconsideration was issued only in CS Docket No. 96-83, and the public notices of CAI's Petition similarly list only CS Docket No. 96-83. Should the Commission consider the Petition to also pertain to IB Docket No. 95-59, however, SBCA respectfully requests that this Opposition be made a part of the record in that proceeding as well.

² See *WWIZ, Inc.*, 37 F.C.C. 685 (1964), *aff'd sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

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The Second Report and Order released by the Commission in this proceeding on November 20, 1998 (“Order”) adopted a conservative, limited expansion of the scope of Section 1.4000 of its rules, 47 C.F.R. §1.4000 (the “Section 207 rules”), applicable only to a narrow class of over-the-air reception devices on rental property. In reaching this decision, the Commission carefully weighed all possible consequences of an expansion of the rule and considered the comments filed by all parties. In particular, the Commission assessed the scope of the governing statutory language, possible constitutional considerations, and practical considerations raised by such an expansion. After weighing all of these factors, the Commission balanced all of the competing concerns of landlords, tenants and direct broadcast satellite (“DBS”), broadcast and multichannel multipoint distribution service (“MMDS”) participants and ordered a very limited expansion of the Section 207 rules that will cover only rental property where the leasehold includes exclusive use property, such as a balcony, patio or yard (the “Revised Rule”). The Commission, conversely, declined to expand the scope of its Section 207 rules to cover common property or restricted access property in a leasehold. As a practical matter, the expansion of the Commission’s rules likely affects only a small percentage of rental properties nationwide.

In many respects, the Commission did not go far enough in expanding the scope of its Section 207 rules. As discussed below, the underlying statute directs the Commission to prohibit restrictions that impair any *viewer’s* ability to receive DBS, MMDS or television service, without distinction between owners or renters. The Commission accordingly should have expanded the scope of its Section 207 rules to cover *all* rental property. In any event, the resulting Order -- far from being the one-sided

deprivation of fundamental rights asserted by CAI -- appears to be a modest, well-justified change in the Commission's Section 207 rules. Given the broad scope of the statutory mandate contained in Section 207, the Commission should deny the Petition and reaffirm the very limited expansion of its Section 207 rules set forth in the Order.

ARGUMENT

I. SECTION 207 COVERS ALL VIEWERS, REGARDLESS OF HOMEOWNERSHIP STATUS

Congress was clear in its mandate when it required the Commission to “promulgate regulations to prohibit restrictions that impair a *viewer's* ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.”³ Congress accordingly drew no distinction between homeowners and renters. Nonetheless, CAI disregards entirely this statutory mandate, as well as the strong federal interest in assuring access by all Americans to a broad diversity of programming sources. Other public policy reasons also strongly support the need to protect viewers who are not homeowners. As SBCA pointed out in an earlier phase of this proceeding, lower-income Americans, minority viewers and single-parent-headed households make up a disproportionate share of the renting population.⁴

Accordingly, the Commission should deny CAI's request to roll back the limited application of the Section 207 rules to those tenants with appropriate exclusive use areas. Indeed, the Commission had no authority to exclude any of the population of renters from

³ Telecommunications Act of 1996, Pub. L. No. 104-104, §207, 110 Stat. 564 (1996) (emphasis added) (“Section 207” or the “Act”).

⁴ See Further Comments of the Satellite Broadcasting and Communications Association of America, at 3-5 (Sept. 27, 1996).

its Section 207 rules, and the Commission instead should have extended its Section 207 rules to cover *all* viewers, including all renters.

II. THE REVISED RULE WILL NOT RESULT IN THE “PARADE OF HORRIBLES” ASSERTED IN THE CAI PETITION

CAI exaggerates the possible effects of the Revised Rule. For example, CAI asserts that the Revised Rule will permit permanent alterations and damage to leased property,⁵ including such things as the puncturing of roofs or exterior surfaces.⁶ In the Order, however, the Commission explicitly stated that:

A restriction barring damage to the structure of the leasehold . . . is likely to be a reasonable restriction on installation. . . . Thus, for example, tenants could be prohibited from drilling holes through the exterior walls of their apartments. In addition, tenants could be prohibited from piercing the roof of a rented house in any manner given the risk of serious damage.⁷

CAI also implies that the Revised Rule would not permit homeowners or associations to ensure that antennas are installed properly and safely.⁸ Again, however, the Order clearly notes that the Section 207 rules permit the enforcement of restrictions that address legitimate safety objectives.⁹ Accordingly, the “parade of horrors” asserted by CAI vastly overstates any possible effect of the Revised Rule’s very limited extension of the Section 207 rules.

⁵ Community Associations Institute, Petition for Reconsideration, IB Docket No. 95-59, CS Docket No. 96-83 at 3 (Dec. 18, 1998) (“Petition”).

⁶ *Id.*

⁷ *Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, Second Report and Order, CS Docket 96-83 at ¶ 32 (Nov. 20, 1998) (“Order”).

⁸ Petition at 3.

⁹ Order at ¶31.

III. LANDLORDS HAVE ADEQUATE MEASURES TO PROTECT THEIR PROPERTY

CAI's repeated assertions that, under the Revised Rule, homeowners and associations cannot prevent damage to their property¹⁰ ignore the careful analysis conducted by the Commission. For example, the Commission found that state landlord-tenant laws address many of these issues,¹¹ and noted that, at the termination of a lease, landlords can bring a cause of action against a tenant for waste in order to recover damages for "material and permanent" injury to the property.¹² The CAI Petition, however, fails to explain why those mechanisms would be inadequate.

Similarly, CAI fails to explain why damage caused by antenna installation (*e.g.*, piercing a roof to install a satellite dish where this is prohibited by the lease) is different from any other type of damage a tenant could inflict on the property (*e.g.*, piercing a roof to install a flagpole) for which a landlord could deduct the cost of repairs from the security deposit or recover damages in a civil suit. Accordingly, it is unclear why the mechanisms that exist to remedy the latter unauthorized damage would not work equally well when antennas are implicated.

IV. THE COMMISSION'S PREVIOUS DETERMINATION THAT A PRIOR APPROVAL REQUIREMENT VIOLATES THE STATUTE IS APPLICABLE HERE

Importantly, the Commission previously has found that prior approval requirements by definition delay and thus "impair" a viewer's ability to receive satellite

¹⁰ Petition at 3-4.

¹¹ Order at ¶31.

¹² *Id.* at ¶32 n.81.

signals in direct violation of Section 207.¹³ Still CAI requests that the Commission require prior approval in the rental context, ignoring previous Commission findings that such requirements are a direct violation of the statute. If a prior approval requirement violates the statutory mandate, it clearly cannot be applied in either an ownership or a leasehold context.

Further, CAI's repeated claim that the "only way" for landlords to protect their property is to require prior approval of antenna installations by tenants¹⁴ is another exaggeration that ignores the Commission's analysis. As set forth above, the Commission confirmed that landlords will retain the right to enforce reasonable restrictions that prohibit serious damage to the property, such as drilling holes through exterior walls or piercing the roof. In addition, as described above, the Commission found that state landlord-tenant laws provide remedies for many potential issues, and that state laws allow landlords to collect damages at the termination of a leasehold for any material or permanent damage to the property. Prior approval is thus only one of many mechanisms available to landlords for the protection of their property. Given that the Commission previously has concluded that prior approval violates Section 207, however, one of the many other mechanisms must suffice.

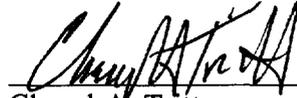
¹³ *Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 19276, 19286 (1996).

¹⁴ Petition at 3, 4.

CONCLUSION

For all of the reasons set forth above, the Commission should deny CAI's Petition and affirm that the statutory language of Section 207 requires the cautious and limited extension of the Section 207 rules to the narrow class of renters identified in the Order.

Respectfully submitted,



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Dated: February 4, 1999

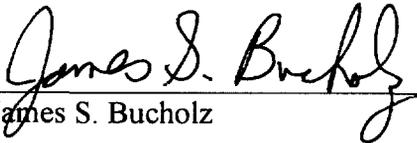
CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** were delivered, via hand delivery, on this 4th day of February, 1999, to the following:

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