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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Promotion of Competitive Networks)	WT Docket No. <u>99-217</u> /
in Local Telecommunications Markets)	
)	
Wireless Communications Association)	
International, Inc. Petition for Rulemaking)	
to Amend Section 1.4000 of the Commission's)	
Rules to Preempt Restrictions on Subscriber)	
Premises Reception or Transmission Antennas)	
Designed to Provide Fixed Wireless Services)	
)	
Cellular Telecommunications Industry)	
Association Petition for Rule Making and)	
Amendment of the Commission's Rules to)	
Preempt State and Local Imposition of)	
Discriminatory And/Or Excessive Taxes)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996)	

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby submits its reply to the oppositions filed by the Real Access Alliance ("RAA")^{1/} and the National Association of Telecommunications

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^{1/} Opposition of the Real Access Alliance to Petitions for Reconsideration, WT Docket No. 99-217 and CC Docket No. 96-98 (filed March 14, 2001) [hereinafter cited as "RAA Opposition"].

Officers and Advisors *et al.* (“NATOA”)^{2/} with respect to WCA’s Petition for Partial Reconsideration (“Petition”) in the above-captioned proceeding.

RAA and NATOA blatantly mischaracterize the nature of the relief requested in WCA’s Petition. At no point did WCA seek to rescind any rights that non-federal entities (including local governments, homeowners associations and landlords) may have under 47 C.F.R. § 1.4000 (the “Rule”) to impose professional installation requirements on small subscriber premises fixed wireless antennas that have transmit capability (“transceivers”).^{3/} Rather, WCA merely requested that the Commission clarify what is already implicit in the *First Report and Order*, *i.e.*, that non-federal professional installation requirements, *like all other safety-related restrictions permitted under the Rule*, must (1) serve a clearly defined, legitimate safety objective, (2) be narrowly tailored and (3) be no more burdensome than necessary.^{4/} Moreover, WCA’s Petition cannot be sensibly read as an attack on the safety exception itself - indeed, WCA’s Petition specifically notes that the *First Report and Order* preserves the safety exception in full, regardless of whether the antenna at issue has transmit capability.^{5/} RAA’s and NATOA’s suggestions to the contrary are misleading and should be rejected as such.^{6/}

^{2/} Opposition of NATOA, EMR Network and Council on Wireless Technology Impacts to Petitions for Reconsideration, WT Docket No. 99-217 and CC Docket No. 96-98 (filed March 14, 2001) [hereinafter cited as “NATOA Opposition”].

^{3/} See RAA Opposition at 7; NATOA Opposition at 2.

^{4/} See Petition at 5-9.

^{5/} *Id.* at 1-2.

^{6/} In addition, Commission precedent and other publicly available information puts the lie to NATOA’s assertion that the safety exception “has been scrutinized virtually out of existence.” See, *e.g.*, *Preemption of Local Zoning Regulation of Satellite Earth Stations; Implementation of Section 207 of the Telecommunications Act of 1996 - Restrictions on Over-the-Air Reception Devices: Television Broadcast*

NATOA also is plainly wrong when it contends that the *First Report and Order* establishes a “firm presumption” that the installation and use of a small subscriber premises transceiver creates a safety hazard, and that the Commission therefore should now turn the safety exception on its head and require fixed wireless providers to bear the burden of proving that a non-federal professional installation requirement violates the Rule.²⁷ The *First Report and Order* establishes no such presumption, and in fact assumes that fixed wireless transceivers will be installed in a safe and secure manner:

[W]e expect subscriber antennas to be installed so that neither subscribers nor other persons are easily able to venture into and interrupt the transmit beams. Such interruptions can degrade the quality of service to the subscriber and ultimately reduce the value of the carrier’s service. Thus, providers have economic incentives to avoid temporary interruptions of signal quality that are likely to motivate them to install antennas in locations where such interruptions are less likely to occur.²⁸

Furthermore, there is nothing in the record or, for that matter, NATOA’s opposition that would justify a reversal of the Commission’s previous finding that placing the burden of proof on fixed wireless providers would discourage consumers from subscribing to fixed wireless service and thus would defeat the pro-competitive objectives of the Rule.²⁹ As noted in WCA’s Petition, fixed wireless broadband subscribers will not tolerate delays in service created by arbitrary and

Service and Multichannel Multipoint Distribution Service, 11 FCC Rcd at 19276, 19290-91 (1996) [hereinafter cited as “*Section 207 Report and Order*”]; *Victor Frankfurt*, CSR-5238-O, DA 01-153, at ¶¶ 38, 42 and 49 (rel. Feb.7, 2001); Federal Communications Commission Fact Sheet, “Over-the-Air Reception Devices Rule,” at 3 (June 1999), at <http://www.fcc.gov/csb/facts/otard.html> (last visited March 28, 2001).

²⁷ NATOA Opposition at 7-8. Presently, under Section 1.4000(g), “the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section . . . shall be on the party that seeks to impose or maintain the restriction.” 47 C.F.R. § 1.4000(g).

²⁸ *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217 and CC Docket Nos. 96-98 and 88-57, FCC 00-366, at ¶ 117 (rel. Oct. 25, 2000).

²⁹ See, e.g., *Section 207 Report and Order*, 11 FCC Rcd at 19309.

inconsistent non-federal professional installation requirements, and this would be especially true if fixed wireless service providers were required to bear the additional burden of demonstrating that those requirements do not comply with the Rule.^{10/} WCA has already pointed out that the Commission's extension of the Rule in the *First Report and Order* to small subscriber premises fixed wireless broadband antennas is facilitating more rapid deployment of competitive broadband service.^{11/} Shifting the burden of proof to fixed wireless service providers would stop that trend in its tracks, since it would effectively give non-federal entities *carte blanche* to enforce illegal antenna restrictions indefinitely unless and until a fixed wireless service provider's burden has been sustained. The Commission has already determined that this scenario is contrary to the public interest, and there is no reason for the Commission to find otherwise now. NATOA's arguments to the contrary are meritless and should be dismissed accordingly.

^{10/} See Petition at 7; *Section 207 Report and Order* at 19287 (noting that prior approval and fee requirements "can impede a service provider's ability to compete, since customers will ordinarily select a service less subject to uncertainty and procedural requirements.").

^{11/} Petition at 3-4.

WHEREFORE, for the reasons set forth above, WCA requests that the Commission deny the above-cited oppositions submitted by the RAA and NATOA, and that the Commission grant WCA's Petition consistent with the recommendations set forth therein.

Respectfully submitted,

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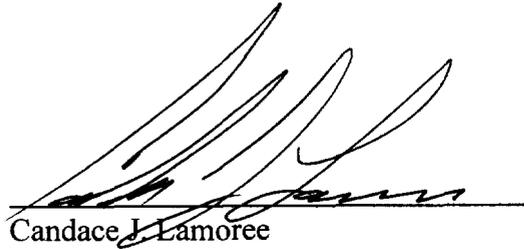
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March 28, 2001

CERTIFICATE OF SERVICE

I, Candace J. Lamoree, hereby certify that on this 28th day of March, 2001, copies of the foregoing "Reply to Oppositions to Petitions for Reconsideration" were sent via U.S. mail, first class, postage prepaid, upon the following:

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