

BEFORE THE
Federal Communications Commission

WASHINGTON, DC 20554

In the Matter of)	
)	
Media Bureau Seeks Comment on Petition for)	MB Docket No. 12-121
Rulemaking Requesting that the Commission)	
Amend the Over-The-Air Reception Devices Rule)	
to Clarify the Extent to which Local Governments)	
Can Regulate Non-Exclusive Use Areas)	
)	
)	
To: Media Bureau)	

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association (“SIA”)¹ hereby submits comments in support of the above-captioned Petition for Rulemaking, in which Satellite Broadcasting and Communications

¹ SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. Since its creation more than fifteen years ago, SIA has become the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. SIA Executive Members include: Artel, Inc.; The Boeing Company; The DIRECTV Group; EchoStar Satellite Services LLC; Harris CapRock Communications; Hughes Network Systems, LLC; Intelsat, S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; LightSquared; Lockheed Martin Corporation.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES S.A.; and Space Systems/Loral. SIA Associate Members include: ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Eutelsat, Inc.; GE Satellite; Globecom Systems, Inc.; Glowlink Communications Technology, Inc.; iDirect Government Technologies; Inmarsat, Inc.; Marshall Communications Corporation.; MTN Government Services; NewSat America, Inc.; Orbital Sciences Corporation; Panasonic Avionics Corporation; Spacecom, Ltd.; Spacenet Inc.; TeleCommunication Systems, Inc.; Telesat Canada; Ultisat, Inc.; ViaSat, Inc., and XTAR, LLC. Additional information about SIA can be found at www.sia.org.

Association, DIRECTV, LLC, and DISH Network L.L.C. (collectively, “Petitioners”) seek to amend the Commission’s over-the-air reception devices (“OTARD”) rules.² Petitioners seek to amend the so-called “exclusive use” provision of those rules to apply only to restrictions on reception devices imposed by property owners or homeowners’ associations, and not to restrictions imposed by state or local governments.³ SIA agrees with the essence of Petitioners’ legal argument: (1) that the exclusive provision was created by the Commission to protect the property rights of property owners; and (2) that the exclusive use restriction serves no property interest at all where a municipality seeks to restrict antennas placed in common areas with the property owner’s permission. In such circumstances, the exclusive use restriction *hinders* property rights, as it allows municipalities to restrict property owners’ disposition of their own property. The exclusive use language appears nowhere in the statute, and it is impossible to imagine that Congress would have intended it to be used to block scrutiny of municipal satellite dish restrictions.

SIA is most concerned, however, with the practical implications of Commission inaction in this area. Although large cities have only recently implemented wholesale regulation of satellite antennas, the exclusivity provision allows them extraordinary power to restrict satellite service. The cities’ view is that the OTARD rule “does not protect” locations outside of the

² *Media Bureau Seeks Comment on Petition For Rulemaking Requesting That The Commission Amend The Over-The-Air Reception Devices Rule to Clarify The Extent To Which Local Governments Can Regulate Non-Exclusive Use Areas*, Public Notice, DA No. 12-728 at 1-2 (rel. May 8, 2012).

³ *Petition for Rulemaking to Amend the Commission’s Over the Air Reception Device (“OTARD”) Rules*, Satellite Broadcasting and Communications Association *et al.*, MB Docket No. 12-121 (filed Apr. 18, 2012).

exclusive use of tenants.⁴ If so, cities can go so far as to completely prohibit satellite dishes everywhere other than exclusive use areas, and OTARD does nothing to prevent it.

Particularly given recent activity in this area, such an interpretation of the law is problematic for the satellite industry and the hundreds of thousands of Americans it employs. The OTARD rules were designed to ensure that satellite could compete on an equal footing with cable. Under the cities' interpretation of the law, they can effectively shut down such competition within their borders. Moreover, as SIA members DIRECTV and DISH pointed out, all cities receiving cable franchise fees have structural incentives to favor cable over satellite.⁵

The Commission should therefore amend the OTARD rule and ensure that the protections intended by Congress are not undermined. The OTARD rule protects satellite subscribers from unreasonable restrictions by property owners but should not be used to eviscerate property rights of those property owners. Wholesale restriction of satellite use by municipalities cannot be a legitimate outcome under OTARD. Such a result would contravene Congressional intent and damage the competitive landscape and expanded choice that consumers currently enjoy.

⁴ *E.g.*, Letter from James Hobson to Marlene Dortch, File No. CSR-8541-O (Apr. 21, 2012).

⁵ Reply Comments of DIRECTV and DISH Network, CSR-8541-O, at iii (filed Jan. 6, 2012).

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

By: _____ /s/
Patricia Cooper
President

1200 18th Street, NW, Suite 1001
Washington, DC 20036
(202) 503-1561

June 7, 2012