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

In the Matter of	)	
	)	
	)	
ANNUAL ASSESSMENT OF THE STATUS OF COMPETITION IN THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING	)	MB Docket No. 12-203
	)	
	)	
	)	

REPLY COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia, Pennsylvania ("City") hereby responds to the comments of DIRECTV in the captioned proceeding.

I. THE CITY OF PHILADELPHIA HAS NOT PLACED AN IMPROPER BURDEN ON DIRECTV.

DIRECTV lists perceived obstacles confronting Multi-Channel Video Programming Distributors ("MVPDs") in the contemporary video services market. One of those alleged obstacles is particular to satellite MVPDs: that the increased efforts of municipalities to "illegitimately"[1] and "severely"[2] restrict satellite antenna placement hinder the competitiveness of satellite MVPDs. DIRECTV names the City of Philadelphia as one of the municipalities enacting such restrictions. In this reply to those allegations, the City shows that the City's restrictions on satellite antenna placement are consistent with Section 1.4000 of the Commission's Rules, known as the "OTARD Rule,"[3] and are neither severe nor illegitimate.

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[1] COMMENTS OF DIRECTV, LLC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 2.
[2] COMMENTS OF DIRECTV, LLC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 20.
[3] 47 C.F.R. § 1.4000.

A. DIRECTV OVERSTATES THE SCOPE OF THE OTARD RULE.

Paragraph (a) of the OTARD Rule prohibits municipalities from unreasonably delaying or unreasonably increasing the cost of the installation, maintenance, or use of satellite antennae.[4] DIRECTV mischaracterizes the OTARD Rule as generally prohibiting *any* restrictions on satellite antenna placement "*unless* those restrictions address bona fide public safety or historic preservation considerations."[5] DIRECTV defends this apparently deliberate misinterpretation by referencing the public safety and historic preservation clauses in Paragraph (b) of the OTARD Rule. However, Paragraph (b) is only relevant when a regulation is prohibited by Paragraph (a).[6] And, as stated, Paragraph (a) of the OTARD Rule merely prohibits municipalities from *unreasonably* delaying or *unreasonably* increasing the cost of the installation, maintenance, or use of satellite antennae.[7] Thus, contrary to DIRECTV's reading, the OTARD Rule does not require that *any* restriction on satellite antenna placement be justified with public safety or historic preservation considerations, just that any *unreasonable* restriction on satellite antenna placement be so justified.

B. PHILADELPHIA'S RESTRICTIONS ARE REASONABLE, AND DO NOT VIOLATE THE OTARD RULE.

DIRECTV presents no evidence that any of the City's restrictions on satellite antenna placement are unreasonable. Further, DIRECTV flatly dismisses the notion that the City has a legitimate interest in maintaining certain minimal aesthetic standards, an interest recognized as appropriate by the United States Supreme Court[8] and evident elsewhere in the Philadelphia

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[4] 47 C.F.R. § 1.4000(a)(3).
[5] COMMENTS OF DIRECTV, LLC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 20 (emphasis added).
[6] 47 C.F.R. § 1.4000(b) ("Any restriction otherwise prohibited by paragraph (a) of this section is permitted if...").
[7] 47 C.F.R. § 1.4000(a)(3).
[8] *See, e.g., Berman v. Parker*, 348 U.S. 26, 33 (1954) ("The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, *aesthetic* as well as monetary. It is within the power of the

Code.[9] Thus, consistent with its powers under the U.S. Constitution, and in the interest of both maintaining certain minimal aesthetic standards and public safety, the City Council of the City of Philadelphia ("Council") passed by a vote of 17-0 amendments to The Philadelphia Code establishing appropriate procedures for satellite antenna placement.[10]

Aware of the OTARD Rule, the Council tailored the ordinance to balance the viewers' interest in obtaining access to satellite video programming and the City's legitimate interest in maintaining certain minimal aesthetic standards. The Council made sure not to impair viewers' abilities to select and receive satellite video programming in violation of the OTARD Rule. Thus, for all areas covered by the OTARD Rule – i.e., areas within the exclusive use and control of the antenna user[11] – the ordinance merely states a preference that satellite antennae be placed somewhere other than on street-facing façades.[12] For a two-family or multi-family property, the Philadelphia ordinance actually gives a satellite MVPD subscriber who is a property owner or tenant total discretion over satellite antenna placement within a balcony or patio or other area under his or her exclusive control. Outside such exclusive use areas, the ordinance directs that where an alternative location is available, a satellite antenna should not be placed on the street-facing façade. For a single-family property, where an owner or tenant generally exercises exclusive use or control over the entire property, the ordinance directs that where an alternative location is available, a satellite antenna should not be placed on a street-facing façade; but consistent with the OTARD Rule, permits an exception where meeting this location preference

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legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.") (internal citations omitted) (emphasis added).

[9] *See, e.g.,* The Philadelphia Code, § PM-311.0 (requiring an owner to remove graffiti from his or her building within five days if visible from the public right of way); § PM-302 (requiring exterior areas to be free from weeds, and porches and exterior areas to be free from unreasonable accumulation of personal property); and § 14-203 (restricting signage in residential areas).

[10] The Philadelphia Code, § PM-304.3.1; § 9-632.

[11] 47 C.F.R. § 1.4000(a)(1).

[12] *See* The Philadelphia Code, § PM-304.3.1(b) and (c); § 9-632(2) and (3).

would result in "material delay, material reduction in signal reception, or significant additional cost." [13] Under that exception, installers may place satellite antennae on street-facing façades so long as the installer certifies a factual basis for doing so, and delivers copies of that certification to the antenna user and the Department of Licenses & Inspections.[14]

Thus, the burden on satellite MVPDs, if any, is minimal; it cannot credibly be called "severe," despite DIRECTV'S claims.[15] The ordinance will never, as DIRECTV alleges, render a satellite MVPD "unable to provide service."[16] Given the City's appropriate interest in maintaining the character and aesthetic integrity of its neighborhoods, these restrictions are reasonable and certainly do not impair satellite MVPDs from delivering their service or their current and potential customers from receiving it.

C. DIRECTV SIMPLY REPEATS INDUSTRY ARGUMENTS THE CITY HAS REFUTED IN PENDING OTARD PROCEEDINGS

DIRECTV, with the Satellite Broadcasting and Communications Association ("SBCA"), has elsewhere pressed the industry's incorrect argument that the OTARD Rule prohibits all municipal regulation of satellite antenna placement.[17] Effectively conceding the City's position that the OTARD Rule does not apply to areas of multi-family dwellings not under the exclusive use of the satellite customer,[18] leaving the City free to regulate in these "common areas," SBCA subsequently petitioned for an amendment that, in its overbroad construction of the Rule, would prohibit location preferences in "common areas" as well – but for local and state governments

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[13] The Philadelphia Code, § 9-632(4).
[14] *Id.*
[15] COMMENTS OF DIRECTV, LLC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 20.
[16] COMMENTS OF DIRECTV, LLC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 21.
[17] Satellite Broadcasting and Communications Association, *Petition for Declaratory Ruling Regarding Application of the Over-the-Air Reception Device Rule to Certain Provisions of the Philadelphia, Pennsylvania Code*, CSR-8541-O (filed Nov. 8, 2011).
[18] *Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121, at 4-7 (filed Apr. 18, 2012).

only, leaving the exception intact for private owners and homeowners associations.[19] DIRECTV here asks the Commission to adopt that amendment and, indeed, to apply the Rule to preclude all municipal regulation of satellite antenna placement.[20]

The City's submissions in those proceedings establish (i) that the OTARD Rule permits municipal regulation of satellite dish placement, subject to the Rule's reasonableness requirements described above[21]; (ii) that the placement preference provided in the City's ordinance fully satisfies these reasonableness standards and is permitted under the Rule[22]; and (iii) that the Commission was right not to apply the OTARD Rule to "common areas" of multi-family dwelling units.[23]

Now DIRECTV repeats the industry's erroneous and misleading construction of the OTARD Rule in this proceeding addressing video competition. The OTARD Rule ought to remain as written, to apply only to areas that are within the antenna user's exclusive use and control; and as set forth above and in the City's cited submissions, to permit the reasonable, OTARD-compliant placement preference provided in the City's ordinance. Regulation that, like the City's, does not preclude acceptable quality reception, or *unreasonably* delay or

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[19] *See Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121 (filed Apr. 18, 2012); *See Also* Comments of the City of Philadelphia in Opposition to Petition for Rulemaking, *Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121, at 5-8 (filed Jun. 7, 2012).

[20] Comments of DIRECTV, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, at 2-3 (filed Sept. 10, 2012).

[21] *See* Comments of the City of Philadelphia in Opposition to Petition for Rulemaking, *Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121, at 12-13 (filed Jun. 7, 2012); Response of the City of Philadelphia to Petition for Declaratory Ruling, *Petition for Declaratory Ruling Regarding the Application of the Over-the-Air Receptions Devices Rule to Certain Provisions of the Philadelphia, Pennsylvania Code*, CSR-8541-O, at 6 (filed Dec. 22, 2011).

[22] *See* Comments of the City of Philadelphia in Opposition to Petition for Rulemaking, *Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121, at 8-12 (filed Jun. 7, 2012); Response of the City of Philadelphia to Petition for Declaratory Ruling, *Petition for Declaratory Ruling Regarding the Application of the Over-the-Air Receptions Devices Rule to Certain Provisions of the Philadelphia, Pennsylvania Code*, CSR-8541-O, at 11-12 (filed Dec. 22, 2011).

[23] *See* Comments of the City of Philadelphia in Opposition to Petition for Rulemaking, *Petition for Rulemaking to Amend the Commission's Over-the-Air Reception Device Rules*, MB Docket No. 12-121, at 5-8 (filed Jun. 7, 2012).

unreasonably increase the cost of installation, maintenance, or use of satellite antennae,[24] does not impede satellite MVPDs from competing successfully in the video marketplace. Such reasonable regulation does afford full access to satellite MVPD service while meeting the legitimate, and traditional, objective of Philadelphia and other cities of protecting the appearance, character and aesthetic integrity of their neighborhoods – and thereby, the quality of life of their citizens.

CONCLUSION

For the reasons set forth above, the Commission should find that municipal ordinances such as that adopted by the City of Philadelphia do not impose a burden on the competitiveness of satellite MVPDs in the market for video programming. Nor should the Commission expand the Rule to apply to property outside the antenna user's exclusive use and control; or interpret the Rule to preclude ordinances that, like Philadelphia's placement preference, permit full access to satellite MVPD service while maintaining the aesthetic integrity and quality of life of the community.

Respectfully submitted,

CITY OF PHILADELPHIA
LAW DEPARTMENT
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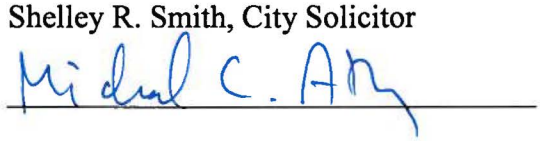

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[24] 47 C.F.R. § 1.4000(a)(3).

CERTIFICATE OF SERVICE

I, Robert A. Sutton, do hereby certify that on this 10th day of October 2012, a copy of the foregoing REPLY COMMENTS OF THE CITY OF PHILADELPHIA was sent via first-class U.S. mail, postage prepaid, on the individuals listed below:

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