

August 5, 1996

**Separate Statement
of
Commissioner James H. Quello**

Re: In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and MMDS (CS Docket No. 96-83); Preemption of Local Zoning Regulation of Satellite Earth Stations (IB Docket No. 95-59).

This Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking takes several actions to implement the intent of Congress in the Telecommunications Act of 1996 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 service."¹

I previously expressed my concerns that the clear intent of Congress not be applied overbroadly to private, nongovernmental provisions restrictive covenants and homeowners' association rules that run to the placement of over-the-air television, MMDS, and DBS reception devices.²

With respect to the impact on private agreements, the Further Notice in this proceeding raises a range questions for further comment including the technical feasibility of providing service in common areas, and legal property issues for access in landlord -owned areas as well as common property for community associations. The issues identified for further comment also reflect an effort to respect rights of property owners as well as an effort to preempt provisions in private agreements only as necessary to preserve reception of signals.

Concerning the interests of localities as expressed in this proceeding, I believe that this decision takes appropriate steps in several respects. First, I support the action to eliminate the rebuttable presumption approach and prohibit only state or local laws that "impair", rather than "effect", the installation, maintenance, or use of the reception devices. I am pleased that this clarification will allow local governments more flexibility in traditional land use areas than the previous proposal. The decision also offers greater clarity and guidance to local jurisdictions for their application of the rules. Second, I anticipate that the decision's allowance of exemptions for purposes of safety, and preservation of historic areas

¹ 1996 Act, Section 207.

² See In the Matter of 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, Notice of Proposed Rulemaking, CS Docket No. 96-83, 11 FCC Rcd 6357 (1996), Separate Statement of Commissioner James H. Quello.

will allow local authorities to address the specific needs of their communities through their own rules.

In both of the above respects, I believe that the Commission is taking positive steps to address my previous concerns, and will work to resolve the land ownership issues after receiving further comment from interested parties. I also am aware that the issues I have highlighted must be balanced with the intent of Congress not to limit development of competing distributors in the multichannel video marketplace. This is particularly relevant in urban areas or densely populated areas with multiple dwelling units. Accordingly, I believe that this item takes fair and cautious steps to balance these ownership and jurisdictional issues with the minimal necessary conditions for use of reception devices.