STATE OF CALIFORNIA - THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
27-4863

C.J.Z.
4/22/99

Th4c

April 22, 1999

TO: Commissioners and Interested Persons

FROM: Tami Grove, Deputy Director
Charles Lester, District Manager
Rick Hyman, Coastal Program Analyst

RECORD PACKET COPY

SUBJECT: **MONTEREY COUNTY: LOCAL COASTAL PROGRAM MAJOR AMENDMENT NO. 1-98.** For public hearing and Commission action at its meeting of May 13, 1999 at the Flamingo Resort Hotel, 2777 Fourth Street, Santa Rosa

SUMMARY OF STAFF REPORT

DESCRIPTION OF AMENDMENT REQUEST

Monterey County is proposing to amend the Implementation portions of its Local Coastal Program to allow for **wireless communication facilities** under certain criteria in all coastal zoning districts, except "Resource Conservation." Proposed criteria include: integrate facilities into existing characteristics of the site; encourage co-location of facilities; site facilities below the ridgeline in sensitive visual areas; minimize ground disturbance; control night lighting; generally do not install in airport fly zones; do not site in Big Sur coast critical viewshed; generally do not locate in environmentally sensitive habitats; generally use non-flammable material; generally bury support facilities; and remove after abandoned. The standard of review for an Implementation Plan amendment is that it must be consistent with and adequate to carry out the policies of the certified Coastal Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the proposed amendments as submitted by the County **if modified** for the reasons given in this report. Although the proposal is essentially consistent with the County's four Land Use Plans, clarifications are needed regarding the applicability of land use plan visual policies, alternative siting considerations, changing technologies, suitability of environmentally sensitive habitats for wireless facilities, coastal permit requirements, compliance with the requirements of federal law and internal *Code* consistency.

SUMMARY OF ISSUES AND COMMENTS

There are no known unresolved issues with the proposed amendments. The participants in the local process supported the amendments.

ADDITIONAL INFORMATION

For further information about this report or the amendment process, please contact Rick Hyman or Charles Lester, Coastal Commission, 725 Front Street, Suite 300, Santa Cruz, CA 95060; Tel. (831) 427-4863.

TABLE OF CONTENTS

I. STAFF RECOMMENDATION 3
MOTIONS AND RESOLUTIONS 3
A. DENIAL OF IMPLEMENTATION PLAN AMENDMENT #1-98 AS SUBMITTED 3
B. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT #1-98 IF MODIFIED 3
II. RECOMMENDED MODIFICATIONS 4
III. RECOMMENDED FINDINGS 4
A. AMENDMENT DESCRIPTION: 4
B. ANALYSIS: REASONS FOR DENIAL AS SUBMITTED AND NECESSARY MODIFICATIONS: 5
1. CONSISTENCY WITH LAND USE DESIGNATIONS 5
2. FEDERAL PREEMPTION 6
3. COASTAL DEVELOPMENT PERMIT REQUIREMENTS 12
4. VISUAL RESOURCES: 13
5. ENVIRONMENTALLY SENSITIVE HABITATS: 17
6. PUBLIC ACCESS 18
7. CONCLUSION 18
C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 19

IV. APPENDIX A: SUGGESTED MODIFICATIONS
V. EXHIBITS

1. AMENDMENT AS PROPOSED BY MONTEREY COUNTY
2. PHOTOS OF VARIOUS WIRELESS FACILITIES
3. 47 USCA SEC. 332 (WIRELESS SERVICE FACILITIES)
4. 47 CFR CH. 1, SEC. 25.104, SATELLITE DISHES, 1-2 METERS IN DIAMETER
5. 47 CFR CH. 1, SEC. 1.4000, SATELLITE DISHES, 1 METER IN DIAMETER OR LESS
6. FEDERAL COMMUNICATIONS (FCC) RULING ON AMATEUR RADIO FACILITIES (1985)
7. FCC FACT SHEET, "OVER THE AIR RECEPTION DEVICES RULE, JANUARY 1999

I. STAFF RECOMMENDATION

MOTIONS AND RESOLUTIONS

A. DENIAL OF IMPLEMENTATION PLAN AMENDMENT #1-98 AS SUBMITTED

MOTION A:

"I move that the Commission ***reject*** *Major Amendment #1-98 to the Monterey County Local Coastal Program Implementation Plan as submitted by the County."*

Staff recommends a "YES" vote which would result in **denial** of this amendment as submitted. Only an affirmative (yes) vote on the motion by a majority of the Commissioners present can result in rejection of the amendment (otherwise the amendment is approved as submitted).

RESOLUTION A:

The Commission hereby **rejects** Major Amendment #1-98 to the implementation plan of the Monterey County local coastal program, as submitted, for the specific reasons discussed in the following findings, on the grounds that the amendment is not consistent with nor adequate to carry out the certified land use plans.

B. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT #1-98 IF MODIFIED

MOTION B:

"I move that the Commission approve Major Amendment #1-98 to the Monterey County Local Coastal Program Implementation Plan as submitted by the County and as modified according to Modifications A-F."

Staff recommends a "YES" vote which would result in **approval** of this amendment as submitted and as modified. An affirmative (yes) vote on the motion by a majority of the Commissioners present is needed to pass the motion.

RESOLUTION B:

The Commission hereby certifies Major Amendment #1-98 to the Implementation Plan of the Monterey County local coastal program, if modified according to Modifications A – F, for the specific reasons discussed in the following findings, on the grounds that, as modified, the amendment conforms with and is adequate to carry out the certified Land Use Plans; and approval of the amendment will not cause significant adverse environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

II. RECOMMENDED MODIFICATIONS

The Commission hereby suggests the changes to the proposed Local Coastal Program amendments which are necessary to make the requisite findings. If the local government accepts each the suggested modifications within six months of Commission action, by formal resolution of the Board of Supervisors, the corresponding amendment portion will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished. The complete text of the Suggested Modifications is found in Appendix A.

III. RECOMMENDED FINDINGS

The Commission finds and declares:

A. AMENDMENT DESCRIPTION:

The proposed amendment would establish new "wireless communication facilities" and "additions to existing approved wireless communication facilities" as allowed uses in all of the coastal zoning districts except "Resource Conservation." See Exhibit 1 for full text of the proposal. Where new wireless facilities would be principal permitted uses – in the Institutional Commercial (IC-CZ), Agricultural Industrial (AI-CZ); Light Industrial (LI-CZ), and Heavy Industrial (HI-CZ) districts -- additions to existing facilities would be principal permitted uses as well. In all the other districts, where allowed new facilities would be a conditional use (appealable to the Commission), additions to existing facilities would be principal permitted uses, except in the Agricultural Preserve District (CAP-CZ), where additions would also be conditional uses. (*Implementation Plan* Sections 20.10.040; 20.10.050; 20.12.040; 20.12.050; 20.14.040; 20.14.050; 20.16.040; 20.16.050; 20.17.040; 20.17.050; 20.18.50; 20.18.060; 20.20.050; 20.20.060;20.21.050; 20.22.050; 20.22.060; 20.24.050; 20.24.060; 20.26.050; 20.26.060; 20.28.050; 20.30.050; 20.32.040; 20.38.040; 20.40.040; 20.30.050).

In all cases wireless communication facilities would only be permitted if they met a series of standards, and if certain procedures were followed. In summary, the major proposed standards are:

- Integrate facilities into existing characteristics of the site;
- Encourage co-location of facilities;
- Site facilities below the ridgeline in sensitive visual areas;
- Minimize ground disturbance;
- Control night lighting;
- Generally do not install in airport fly zones;
- Do not site in Big Sur coast critical viewshed;
- Generally do not locate in environmentally sensitive habitats;
- Generally use non-flammable material;
- Generally bury support facilities. (new Section 20.64.310)

The ordinance proposed by this amendment will regulate the installation of a variety of wireless communication facilities including cellular radiotelephones service facilities, personal communications service facilities, amateur radio facilities, specialized mobile radio service facilities, and commercial paging service facilities. Components of these types of facilities can consist of the following: antennas, satellite dishes, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development. (new Section 20.64.310.F.18) (Please see Exhibit 2 for photographs of these types of facilities.)

The proposed amendment includes findings justifying the need for the amendment including: proliferation of wireless communications facilities could create adverse visual impacts; PUC General Order delegates regulatory responsibility for such facilities to the local level; and public health and safety and the environment need protection.

B. ANALYSIS: REASONS FOR DENIAL AS SUBMITTED AND NECESSARY MODIFICATIONS:

There are four governing Land Use Plans: *North County, Carmel Area, Del Monte Forest*, and *Big Sur Coast.* To be approved, the Commission must find that this implementation plan amendment is consistent with, and adequate to carry out, the provisions of these plans.

1. CONSISTENCY WITH LAND USE DESIGNATIONS

The proposed addition of wireless communication facilities as a land use and the accompanying standards is not inconsistent with any of the land use designations. First, each plan has a series of land use designations listing the generally permitted uses of each designation. These plan designations do not list any specific common utilities such as roads, utility poles, and septic systems. Instead, there are many references throughout the documents to these types of facilities, implying that they are permitted throughout the various designations. Wireless communication devices would appear to fall within that category. In addition, there is already a precedent in the certified *Coastal Implementation Plan* for allowing such uses without explicitly mentioning them in each land use plan designation description in that other public utility distribution and transmission facilities are permitted in all zoning districts.

Second, according to the amendment submittal, "since wireless communication was not in widespread use at the time the area LUPs were adopted, the use and technology was not specifically addressed [in the land use designations]" More important, as with other public facilities and infrastructure, allowing wireless communications does not create any inherent conflicts with any underlying land use plan designations. The exception is the "Resource Conservation" designation, and, therefore, the proposed amendment does not allow wireless devices in the corresponding "RC" zoning district. Finally, while both the *Carmel Area* and *Big Sur Coast Land Use Plans* have provisions noting that certain uses, such as intensive recreational uses and industrial uses, are not appropriate and hence not permitted in those segments, wireless communication facilities are not one of the uses listed as objectionable.

2. FEDERAL PREEMPTION

The County's LCP amendment proposes to regulate communication devices that are also regulated by federal law. These communication devices include: amateur radio antennas, satellite antenna and wireless services facilities. The consideration of this amendment is bound by federal law as summarized in the following chart and further discussed below. (Please see exhibits 3-7, for complete text of statute, regulations, FCC ruling and fact sheet relevant to this issue.)

Type of Communication Device	Federal Limitation on State and Local Regulation of Communication Device
1. Amateur Radio Antenna	1. State and local regulations that preclude amateur radio communications are preempted. 2. State and local regulation of the placement, screening, or height of antennas based on health, safety or aesthetic considerations is permitted if the regulation does not restrict the effectiveness of the amateur radio. 47 CFR Part 97.15 101 F.C.C. 2d 952 (See Exhibit 6)
1. Satellite Antennas Smaller Than 1 Meter Used to Receive Video Programming that are placed on property where the viewer has a property interest (ownership or leasehold) and exclusive use or control of the area where the antenna will be installed.	1. Federal Rule prohibits state and local aesthetic or visual restrictions that: (a) unreasonably delay or prevent installation, maintenance or use (such as the requirement to obtain a permit); (b) unreasonably increase the cost of installation, maintenance or use (such as the requirement to purchase an antenna of a different height); or (c) preclude reception of an acceptable quality signal. 47 CFR 1.4000 (See Exhibit 5)

3. Satellite Earth Station Antennas Larger Than 1 Meter	1. Federal rule prohibits state and local regulation of a satellite earth station antenna that is between one meter and two meters in diameter and is proposed to be located in any area where commercial or industrial uses are generally permitted by land use designation. 2. Federal rule prohibits state and local regulations that materially limit transmission or reception by satellite earth station antennas (other than those listed in 1 above) unless the regulation (a) has a clearly defined health, safety or aesthetic objective that is stated in the text of the regulation itself; and (b) furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access and promoting fair competition. 47 CFR 25.104 (See Exhibit 4)
4. Personal Wireless Services Facilities	1. Federal statute prohibits state and local regulations that prohibit or have the effect of prohibiting the provision of personal wireless services. 2. Federal statute prohibits state and local regulation of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. 3. Any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. 47 U.S.C. 332c (See Exhibit 3)

A. AMATEUR RADIO ANTENNA

Conflicts between amateur radio operators and governing authorities regarding regulation of radio antennas are common. The amateur radio operator is governed by the regulations contained in 47 C.F.R. Part 97. Those rules do not limit the height of an amateur radio antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for radio antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur radio antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur radio

operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their radio antennas is limited by a local ordinance.

By declaratory ruling, the FCC announced a limited preemption of state and local regulations governing amateur radio installation (101 F.C.C. 2d 952). The FCC stated that there is a strong federal interest in promoting amateur radio communications and that state and local regulations that preclude amateur radio communications are in direct conflict with federal objectives and must be preempted. However, regulation of such devices is permitted as long as the regulations do not restrict the effectiveness of the communications involved.

Because amateur radio communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Therefore, state or local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the governing authority's legitimate purpose.

B. ANTENNAS SMALLER THAN 1 METER USED TO RECEIVE VIDEO PROGRAMMING

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and non-governmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS"). (See 47 U.S.C. § 332.)

The rule is cited in 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal. The rule does not apply to devices that have transmission capability only. Also VSAT, a commercial satellite service that may use satellite antennas less than one meter in diameter, is not within the purview of the rule because it is not used to provide over-the-air video programming.

The rule applies to viewers who place video antennas on property that they own and/or rent and that is within their exclusive use or control, including condominium owners and cooperative owners or renters who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes. The rule does not apply to property not under the viewer's exclusive use or control such as common areas, for e.g., the roof or exterior walls of a multiple dwelling unit.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair installation, maintenance, or use of antennas and restrictions that are needed for safety or historic district preservation. The rule prohibits restrictions that impair a viewer's ability to install, maintain, or use a video antenna and restrictions that are imposed for other than safety or historic district preservations. Accordingly, restrictions for aesthetic or visual purposes are prohibited unless a local government receives a waiver of 47 CFR Section 1.4000. To request a waiver from the FCC, governmental and non-governmental entities must petition the FCC setting forth the specific local restriction in question and demonstrating good cause for the waiver, including a showing that the restriction is so vital to the local public interest as to outweigh the federal interest. The petition for waiver must be specific, narrowly targeted and served on all interested parties. The burden of proof is on the entity seeking to enforce the restriction (e.g., the local government). While the petition for waiver is pending with the FCC, the restriction cannot be enforced. To date, no waivers have been granted or processed by the FCC.

The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a viewer from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose. The safety or historic purpose must be clearly articulated, and the restriction must be tailored to achieve that specific purpose. No waiver is needed to enforce a restriction that is necessary for a legitimate, articulated safety or historic preservation purpose and that is no more burdensome than necessary to achieve the legitimate safety or historic preservation purpose.

Procedural requirements can unreasonably delay installation, maintenance or use of an antenna covered by this rule. A regulation or restriction that unreasonably delays or prevents antenna installation, maintenance or use will be found to impair reception. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Only permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible. Permits or prior approvals for aesthetic or visual purposes are not permissible unless a local government petitions the FCC for a waiver of 47 CFR Section 1.4000.

A restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission rule. However, a regulation for a legitimate safety or historic preservation purpose that requires that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited.

If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply. Restrictions cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. On the other hand, a requirement to paint an antenna in a fashion that will not interfere with reception so that it blends into the background against which it is mounted would likely be acceptable.

Finally, because masts are very often a necessary part of antennas covered by Section 1.4000, they are included in the definition of antennas. However, for safety purposes, state and local governments and associations may require antenna users to obtain a permit for masts that exceed twelve feet above the roofline.

C. TRANSMISSION OR RECEPTION BY SATELLITE ANTENNAS LARGER THAN 1 METER

The FCC adopted 47 CFR § 25.104 as an implementing regulation of the Communications Policy Act of 1984. The purpose of the regulation was to protect "the federally guaranteed right of earth station antenna users to receive certain satellite signals for home viewing. The rule was adopted in 1986 in response to evidence that state and local governments were, in some instances, imposing unreasonably restrictive burdens on the installation of satellite antennas. The 1986 rule preempted ordinances that discriminate against satellite antennas and impose unreasonable limitations on reception or unreasonable costs on users.

The satellite earth station antennas governed by the rule fall into two basic categories, depending on the service provided. The first category consists of antennas designed for direct-to-home (DTH) reception of video programming for home entertainment purposes. Service can be provided with antennas less than one meter in diameter. The second broad category of antennas is designed for two-way, commercial communications. Most VSAT antennas are less than two meters in diameter.

In crafting the preemption policies, the FCC attempted to reflect the differences in the antennas involved and tried to accommodate the varying local interests. The main state and local concerns regarding installation of satellite earth stations related to aesthetics, health, and safety. These concerns would appear to be greater for larger antennas, thus the rule permits greater local regulation for larger antennas. For smaller antennas, these interests are less compelling and, accordingly, the FCC has more narrowly defined permissible regulation.

Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable. Regulation of a satellite earth station antenna that is larger than one meter but is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by land-use regulation shall be presumed unreasonable and is also preempted.

Therefore, for satellite earth station antennas larger than one meter in residential areas and two meters in commercial and industrial areas, state and local governments can impose reasonable health, safety, or aesthetic regulations. It must be noted that unlike the FCC rule for antennas smaller than 1 meter used to receive video programming (see section 2 above), this rule allows a state or local government to regulate antennas larger than 1 meter in residential areas and antennas larger than 2 meters in industrial and commercial areas for aesthetic or visual purposes. Some set-back from a public road, for example, would appear to be a reasonable health and safety regulation under the rule as long as comparable setbacks are required for other visual obstructions. Finally, for truly unique situations, such as an architecturally historic area, a waiver procedure is available. Some examples of circumstances that might warrant consideration of a waiver, depending on the circumstances and on how other types of antennas or modern accoutrements are treated, are genuine historic districts, waterfront property, or environmentally sensitive areas.

D. WIRELESS SERVICE FACILITIES

Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers of personal wireless services, and any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. These provisions are similar to the requirements of California law, including the Coastal Act. The Telecommunications Act also prevents state and local governments from regulating the placement of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations of the Federal Communications Commission (FCC) concerning such emissions.

E. CONSISTENCY OF COUNTY SUBMITTAL WITH FEDERAL RULES

The County's proposed ordinance regarding the regulation of wireless communication facilities is generally consistent with the Federal Law summarized in the preceding paragraphs, however a few modifications are required to ensure complete compatibility. The permit requirement described in Section 20.64.310 C must be clarified to comply with the Federal law which prohibits regulatory schemes which would unreasonably discriminate against providers of functionally equivalent services or would have the effect of prohibiting personal wireless services in Monterey County. Specific standards for amateur radio facilities (antennas, by in large) and satellite dishes up to two meters in size and located in areas designated for industrial or commercial uses are also required. The exemption for small satellite dishes and home TV antennas must also be revised to be consistent with Federal law. Finally, Federal law requires that any local decision to deny a permit for the installation or placement of a personal wireless facility must be in writing and supported by substantial evidence. As modified, the proposed amendment is consistent with Federal law and regulations relevant to the regulation of these facilities. (Please see Modification One.)

3. COASTAL DEVELOPMENT PERMIT REQUIREMENTS

Antennas fall under the definition of development as defined in coastal act section 30106 and in section 20.06.310 of the Monterey County Code. Section 30106 states:

Section 30106.

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Section 20.06.310 of the Monterey County Code is nearly identical to section 30106. An antenna is a solid material. If a dish antenna were placed on the roof or exterior wall of a structure, it would increase its height as defined by the county zoning code. Section 20.70.025 of the Monterey County Code requires that a coastal development permit be obtained for all development "Except development exempted by section 20.70.120."

County IP section, 20.70.120, is based on Section 30610 of the Coastal Act and section 13250 and 13253 of the California Code of Regulations which exempt certain development, such as additions to existing structures, from coastal development permit requirements. Many antennas located on developed property would be considered additions to existing structures and thus exempt. Accordingly, those additions located (outside the appeal area) -- would not require coastal development permits under section 30610 of the Coastal Act, sections 13250 and 13253 of the Code of Regulations and subsection 20.69.120A of the IP.

However, some of these exempt facilities or additions may at times still require a coastal permit which must be processed by the Zoning Administrator (or Planning Commission). For example, if someone owned a vacant lot next to their home and decided to place a defined "exempt" facility there, it would require a coastal permit, unless preempted by federal law as discussed above. Or, a coastal permit in a visually sensitive area may be issued with a specific condition that any new facilities or additions to such facilities require review under a coastal permit amendment. Therefore, there is a potential inadequacy in the amendment to ensure that the land use plans are carried out.

To resolve this potential problem language should be added to Sections 20.64.310D (Introduction) and 20.64.310.I.a to clarify that the proposed regulations do not preempt

coastal permit authority (where it is not preempted by federal law). (see Modification One) Also, because some of these facilities are preempted by federal law, language needs to be added to the *Implementation Plan* section 20.70.120 indicating that coastal permits will not be required for them. (see Modification Two)

Internal Code Consistency: Second, as noted, the amendment contains language that states that its provisions prevail over any other part of the certified Implementation Plan if a conflict is found. This language is problematic because as noted, there are provisions that are not totally consistent with the Land Use Plan policies and provisions that can be read to imply that other necessary requirements (such as obtaining coastal permits) do not apply. A further example is that the current Monterey County *Coastal Implementation Plan* allows public utilities and infrastructure to be sited throughout the coastal zone (Section 20.64.160). A literal reading of this section would suggest that it does not encompass wireless devices. However, wireless communication devices have already been permitted by the County, presumably using the authority of this section.

To resolve this potential problem, language that says that the provisions of the proposed wireless communication chapter supercede any other provisions where there is a conflict should be removed. With the modifications described above, there should be no conflicts with either land use plan policies or coastal permit procedures. Nevertheless, someone reading this proposed wireless communication section with its preemption language in isolation from the rest of the *County Code* may get the impression that it alone governs wireless communication facilities. The introduction to Title 20 of the *County Code* (containing the coastal zone zoning ordinance) already has provisions addressing conflicts among *Code* provisions in Sections 20.02.060 D and 20.02.090. The proliferation of additional preemption provisions in individual chapters defeats the intent to have an integrated, internally consistent document where all relevant provisions are binding. Thus, this newly proposed preemption language should be eliminated, because it is unneeded and potentially confusing. (see Modification One). Concurrently, language should be added to the existing public utility section 20.64.160 (see Modification Three) referencing the proposed new section 20.64.310 as the section governing wireless facilities.

4. VISUAL RESOURCES:

Beyond the general designation of the Land Use Plans and the requirements of Federal law, the proposed standards to regulate wireless communication devices must also be consistent with and carry out the resource protection policies found in the plans. One important policy area concerns protection of the scenic resources in Monterey County coastal areas. Wireless communication facilities, particularly the larger towers can have adverse impacts on scenic areas and can affect views to and along the shoreline. The LUP contains a number of policies directed to preserving the scenic qualities within the four planning areas which make up Monterey County's coastal zone. The following visual resource policies are particularly relevant to an analysis of this amendment:

From the *North County Land Use Plan*:

2.2.2.4 The least visually obtrusive portion of a parcel should be considered the most desirable site for the location of new structures. Structures should be located where existing topography and vegetation provide natural screening.

2.2.2.3 Structures shall generally be sited so as not to block public views of the shoreline; development proposals shall be revised if necessary to accomplish this goal...

From the *Carmel Area Land Use Plan*:

2.2.3.2 New development on the scenic beaches and bluffs of Carmel River State Beach shall be located out of the public viewshed.

2.2.3.3. New development on slopes and ridges within the public viewshed shall be sited within existing forested areas or in areas where existing topography can ensure that structures and roads will not be visible from major public viewpoints and viewing corridors. Structures shall not be sited on non-forested slopes or silhouetted ridgelines...In all cases, the visual continuity and natural appearance of the ridgelines shall be protected.

2.2.3.4 The portion of a parcel least visible from public viewpoints and corridors shall be considered the most appropriate site for the location of new structures...

2.2.3.6 Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. Where necessary, modification of plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening.

2.2.4.6...New development along Highway 1 shall be sufficiently set back to preserve the forested corridor effect and minimize visual impact.

2.2.4.9 ...structures shall be sited to maximize plan policy....

2.2.4.10c Structures locate din the viewshed shall be designed so that they blend into the site and site surroundings...

From the *Del Monte Forest Land Use Plan*:

56. Design and siting of structures in scenic areas should not detract from scenic values of the forest, stream course, ridgelines, or shoreline. Structures....shall be subordinate to and blended into the environment, using appropriate materials which will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening.

57. Structures in scenic areas shall utilize native vegetation and topography to provide screening from the viewing areas. In such instances, the least visible portion of the property should be considered the most desirable building site location...

59. New development, including ancillary structures...between 17-Mile drive and the sea... shall be designed and sited to minimize obstructions of views from the road to the sea...

From the *Big Sur Coast Land Use Plan*:

3.2.1...prohibit all future...development visible from Highway 1 and major public viewing areas (the critical viewshed)..

3.2.4.A.1 ...the design and siting of structures ...shall not detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline.

3.2.4.A.2 ... The portion of a parcel least visible from public viewpoints and corridors will be considered the appropriate site for the location of new structures. New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges....

a. Siting Facilities

Land Use Plan Criteria: Generally, the proposed implementing standards reinforce and are consistent with the visual resource policies regarding siting. The amendment includes the following criteria: Integrate facilities into existing characteristics of the site; encourage co-location of facilities; site facilities below the ridgeline in sensitive visual areas; generally do not install in airport fly zones; and do not site in Big Sur coast critical viewshed. Nonetheless, some proposed language leaves the impression that wireless communication facilities can be sited wherever proposed (except in the Big Sur critical viewshed) by mitigating the visual impacts. This is contrary to some of the specific cited Land Use Plan policies, such as *North County* policy 2.2.3.3, which says that structures should be sited so as not to block public views of the ocean. This is not an outright prohibition against siting development in the shoreline viewshed, but a directive to first seek alternative locations. Similarly, *Carmel Area* policy 2.2.3.3 prohibits structures from being sited on non-forested slopes or silhouetted ridgelines. Proposed Section 20.64.310H.1.d which says to site below the ridgeline or be designed to minimize visual impact could be interpreted as not having to follow these directives. Therefore, there is a potential conflict with such Land Use Plan policies.

To resolve this potential problem, the siting criteria should be consistent with the Land Use Plans' visual policies. As will be further discussed below, there are already certified zoning provisions that expand upon these land use plan policies (*Implementation Plan* Sections 20.144.030; 20.145.030; 20.146.030; or 20.147.070). These should be cited as the appropriate standard for wireless facility siting determinations with regard to visual considerations (See Modification One).

Sufficient Sites Available: The consideration of this amendment is also bound by the requirements of federal law. Under section 307(c)(7)(B) of the Telecommunications Act of 1996, state and local governments may not unreasonably discriminate among providers of personal wireless services and any decision to deny a permit for a personal wireless service facility must be in writing and must be supported by substantial evidence. It is important, therefore, to consider whether compliance with these Land

Use Plan provisions would mean that there would be no suitable location to site such facilities. It is highly unlikely that this would be the case. Typically, wireless companies have sought to place their towers on ridges to maximize coverage and minimize the number of such facilities. Lacking ridgetops, other high elevations are sought. Generally, the lower the location, the greater the number of sites the wireless provider will need to cover a given area or route. There are no outright prohibitions against such ridgetop sitings in the *North County* and *Del Monte Forest Land Use Plans*. *County Code* Section 20.144.030.B.6 has criteria to be followed for allowing ridgetop development in the North County area. *Code* Section 20.147.070.C.3 has a similar provision for the Del Monte Forest area, except that it allows ridgetop development only if the parcel is otherwise undevelopable. However, "ridgetop development" is defined as that which is silhouetted against the sky. Since all of the ridges in Del Monte Forest are tree-covered, there are ample opportunities to site wireless communication facilities within the forest. Therefore, it would appear that the "prohibition" would not be a real barrier either within Del Monte Forest or North County.

There is a policy prohibiting ridgetop development in the *Carmel Area Land Use Plan* but it applies to only those locations in the defined public viewshed. There should be sufficient ridgetop locations available outside the public viewshed in the Carmel Area vicinity (including locations outside of the coastal zone), so that this provision does not preclude siting wireless facilities. *Code* Section 20.146.030.C.5 contains criteria governing ridgetop development in the Carmel Area.

The most limiting provisions are in the *Big Sur Coast Land Use Plan*. Generally, development is not allowed in the defined critical viewshed, and, consequently, this prohibition is incorporated into this amendment's standards for wireless communication facilities. However, additionally, *Big Sur Coast Land Use Plan* policy 3.2.4.A.2 applies to open hillsides and silhouetted ridgetops outside of the critical viewshed (i.e., throughout the rest of the Big Sur Coast). While this would further limit locations for wireless communication facilities, there would appear to be other locations along the Big Sur Coast that could accommodate them in a manner consistent with this policy. Such was the case for a Pacific Bell relay station situated unobtrusively on the vegetated hillside of Mount Manuel, above the Big Sur valley. If, in the future, the policy is determined to be too restrictive, then it would have to be modified through a land use plan amendment. For now, the Commission must ensure that the implementing provisions are consistent with the Land Use Plan provisions as written.

Overall, as noted, there is nothing in these proposed amendment provisions that would totally preclude wireless communication facilities. These provisions are reasonable restrictions that allow wireless communication facilities while protecting sensitive coastal visual resources.

Alternative Sites and Co-location: Finally, the proposed amendment does require that co-location of wireless facilities be pursued to the maximum extent feasible (Sections 20.64.310.C7 and H.1.b) and that consideration of alternative sites be considered to minimize visual impacts (Section 20.64.310.J.2). Typically, alternative siting considerations for new development are limited to the site that is being proposed for development. For example, if someone wants to build a home on a ridge, the County may require re-siting below the ridge on another portion of the applicant's property. For

proposed wireless communication facilities, though, the applicant often will be a company leasing a site or a portion of a site, that could be just large enough for the proposed facility. The standards do not make it clear that the visual resource protection siting criteria are paramount and take precedence over a pre-arranged lease or easement for a less appropriate site. As currently written, there is the potential for the policies of the individual Land Use Plans to not be applied.

To resolve this potential problem, the ordinance should make it clear that the siting criteria should be consulted prior to any arrangements securing a location for a wireless facility. Therefore, language should be added to Section 20.64.310G that requires the provider to consult with the Director or Planning and Building Inspection on site selection, prior to securing any sites that the provider does not already own or lease at the time of registration. Also, language should be added to Section 20.64.310H1, that indicates that alternative siting may involve property other than that in which applicant plans to have an interest. (See Modification One)

b. Updating and Removing Facilities

The proposed amendment includes a provision that the applicant shall enter into a site restoration agreement for restoration to its natural state within six months of termination of use or abandonment of the site. This provision mirrors a portion of the following standard permit condition that the Coastal Commission typically employs:

Prior to issuance of the coastal permit, the applicant shall agree in writing that where future technological advances would allow for reduced visual impacts resulting from the proposed wireless communication facility, the applicant agrees to make those modifications which would reduce the visual impact of the proposed facility. If in the future, the facility is no longer needed, the applicant agrees to abandon the facility and be responsible for removal of all permanent structures, and restoration of the site as needed to re-establish the area consistent with the character of the surrounding vegetation. Before performing any work in response to the requirements of this condition, the applicant shall contact the Director of Planning and Building Inspection to determine if an amendment to this coastal permit is necessary.

However, the proposed amendment does not include a provision regarding technological advances which often result in more compact facilities. Such a provision would help ensure implementation of the cited policies. Absent such a provision, the proposed amendment does not guarantee consistency with these policies over time.

To resolve this potential problem, language similar to that found in the Coastal Commission's standard condition should be added to the amendment (see Modification One).

5. ENVIRONMENTALLY SENSITIVE HABITATS:

North County Land Use Plan policy 2.3.2.1, *Del Monte Forest Land Use Plan* policy 8, and *Carmel Area Land Use Plan* policy 2.3.3.1 address environmentally sensitive

habitats in a manner that mirrors Coastal Act section 30240a. These provisions have two tests:

- environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and
- only uses dependent on those resources shall be allowed within those areas.

The proposed ordinance amendment appropriately does not allow for wireless communication facilities in the "RC(CZ)" Resource Conservation zoning district. (The Commission notes that the wireless facilities subject to this provision of the ordinance do not include satellite dishes or amateur radio antenna if preempted by Federal law.) Many, but by no means all, environmentally sensitive habitats fall under this designation. The proposed amendment also includes a standard that "no wireless communication facility be located in an environmentally sensitive habitat unless mitigation measures can be adopted which would reduce potential impacts to levels of non-significance." This satisfies the first test noted above, but not the second resource-dependent test. Since, wireless communications are not a resource-dependent use, there is an inconsistency with the cited land use plan policies.

To resolve this potential problem, the provision allowing location in environmentally sensitive habitats needs to be modified. There are already certified zoning provisions that expand upon the land use plan policies as to what is and is not allowed in sensitive habitats (*Implementation Plan* Sections 20.144.040; 20.145.040; 20.146.040; or 20.147.040). These should guide the siting of wireless communication facilities (see Modification One). If some type of wireless device could only be located in a sensitive habitat area, it would be considered "resource-dependent" and allowed by these provisions. Otherwise, sensitive habitats cover only a fraction of the County's coastal zone, so there would be ample sites elsewhere in which to locate these facilities.

6. PUBLIC ACCESS

New wireless facilities may potentially impact public access to the shoreline. There is no guarantee currently in the submitted amendment to avoid such impacts. Therefore, a modification is required to assure consistency with the LCP and Coastal Act Public Access policies (see Modification One).

7. CONCLUSION

The bulk of the proposed amendment's provisions are consistent with and adequate to carry out the coastal land use plans. They are well-written and well-organized. However, for the specific reasons stated above, the proposed amendment as submitted is not fully consistent with, nor fully adequate to carry out, the four land use plans and must be denied.

The findings also note ways to rectify each of the identified problems and reference the Suggested Modifications found in Appendix A. With these six modifications the proposed amendment can be approved because the Implementation Plan as amended

and modified will remain consistent with and adequate to carry out Monterey County's four certified land use plans.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's review and development process for Local Coastal Programs and amendments to them has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does utilize any environmental information that the local government has developed. In this case the County approved a Negative Declaration for the amendment finding that it did not generate any significant environmental impacts. The findings in this report are consistent with the County's environmental analysis. Modifications have been suggested that will further assure that any adverse environmental impacts will not occur or will be mitigated. Approval of the amendment, as modified, will not have significant environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

APPENDIX

RECOMMENDED MODIFICATIONS

MODIFICATION ONE: Revise Sec. 20.64.310 as follows:

SECTION 32. Section 20.64.310 is added to Title 20 to read as follows:

REGULATIONS FOR THE SITING, DESIGN, AND CONSTRUCTION OF WIRELESS COMMUNICATION FACILITIES

A. PURPOSE: The purpose of this Section is to establish the regulations, standards and circumstances for the siting, design, construction and maintenance of wireless communication facilities in the coastal areas of the unincorporated area of the County of Monterey.

It is also the purpose of this Chapter to assure, by the regulation of siting of wireless communications facilities, that the integrity and nature of residential, rural, commercial, and industrial areas are protected from the indiscriminate and inappropriate proliferation of wireless communication facilities while complying with the Federal Telecommunication Act of 1996, General Order 159A of the Public Utilities Commission of the State of California and the policies of Monterey County.

B. APPLICABILITY: The provisions of this Section are applicable in all zoning districts.

C. REGULATIONS: Wireless communication facilities shall be allowed on any lot or parcel in any zoning district, subject to a Coastal Administrative Permit or a Coastal Development Permit~~,~~ Facilities regulated by this ordinance include the construction, modification, and placement of all Federal Communication Commission (FCC) regulated amateur radio antenna, satellite dish antennas and any antennas used for multi-channel, multi-point distribution services (MMDS or "Wireless Cable" and personal wireless service facilities. ~~and The proposed~~ Wireless service facilities shall be subject to the following regulations~~:~~ to the extent that such requirements (1) do not unreasonably discriminate among providers of functionally equivalent services or (2) do not have the effect of prohibiting personal wireless services within Monterey County.

1. Wireless communication facilities shall comply with all applicable goals, objectives and policies of the general plan, area plans, zoning regulations and development standards.

2. Wireless communication facilities shall comply with all FCC rules, regulations, and standards.

3. Wireless communication facilities shall comply with all applicable criteria from the Federal Aviation Administration (FAA) and shall comply with the requirement of all Comprehensive Airport Land Use Plans adopted by the Monterey County Airport Land Use Commission (ALUC) unless the Board of Supervisors has overruled the adoption of said plans pursuant to California Public Utility Code section 21676.

4. Wireless communication facilities shall be sited in the least visually obtrusive location possible pursuant to Sections 20.64.310G and 20.64.310H1. Appropriate mitigation measures shall be applied in instances where the facility is visible from a designated scenic corridor or public viewing area.

5. A visual simulation of the wireless communication facility shall be provided. along with a written report from an installer showing all locations where an unimpaired signal can be received. Visual simulation can consist of either a physical mock-up of the facility, balloon simulation, computer simulation or other means. In instances where the wireless communication facility is located near or in a residential area, photos shall be submitted of the proposed wireless communication facility from the nearest residential neighbors. In instances where the wireless communication facility is located along a scenic corridor, critical viewshed area or within a designated historic resource site or district, a detailed visual analysis of the facility shall be submitted.

6. Where the wireless communication facility is proposed to be located within a designated historic resource site or district, the applicant shall comply with the regulations for historic resources pursuant to Chapter 20.54 and Chapters 18.25 and 18.26.

7. Where a wireless communication facility exists on the proposed site location, co-location shall be pursued to the maximum extent feasible. If a co-location agreement cannot be met, documentation of the effort and the reasons why co-location was not possible shall be submitted and reviewed by the Director of Planning and Building Inspection.

8. Other regulations enacted pursuant to the General Plan, Local Coastal Program and Area Plan may be applied to the proposed wireless communication facility, depending on the location, and type of facility.

D. EXEMPTIONS: The following types of wireless communications facilities are allowed in any zoning district and are exempt from the provisions of this chapter: Except that, if defined as development (Sec. 20.06.310), not exempted under Section 20.70.120 or preempted by federal law, a coastal permit will still be required.

1. Structure-mounted antennas as defined in Section 20.64.3 10 (F) (3) of this Chapter.

2. Ground-mounted antennas as defined in Section 20.64.3 10 0;) (4) of this Chapter.

3. A ground- or building-mounted citizens band or two-way radio antenna including any mast, provided the height of the antenna, including the tower, support structure, or post, does not exceed zoning district height requirements of the zoning district.

4. A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur or Business Radio Service, provided that its maximum height does not exceed the height requirements of the zoning district.

5. A ground- or building-mounted receive-only radio or television antenna which does not exceed 12' in height above the roofline or television satellite dish, which does not exceed one meter ~~thirteen feet (13')~~ in diameter~~,~~ if located on residential property within the exclusive use or control of the antenna user. ~~for the sole use of the resident occupying a residential parcel on which the radio or television antenna or satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel, including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located.~~

6. A television satellite dish which is between one and two meters in diameter and is located in any area where commercial or industrial uses are permitted by the land use designation.

~~6.~~ 7. Mobile services providing public information coverage of news events of a temporary nature.

~~7.~~ 8. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Planning Director.

E. FINDINGS :

1. The proliferation of antennas, towers, and or satellite dishes could create significant, adverse visual impacts; therefore, there is a need to regulate the siting, design, and construction of wireless communication facilities to insure that the appearance and integrity of the community is not marred by the cluttering of unsightly facilities.

2. General Order 159A of the Public Utilities Commission (PUC) of the State of California acknowledges that local citizens and local government are often in a better position than the Commission to measure local impact and to identify alternative sites. Accordingly, the Commission will generally defer to local

governments to regulate the location and design of cell sites, wireless communication facilities and MTSOs (mobile telephone switching office) including (a) the issuance of land use approvals; (b) acting as Lead Agency for purposes of satisfying the California Environmental Quality Act (CEQA) and, (c) the satisfaction of noticing procedures for both land use and CEQA procedures.

3. While the licensing of wireless communication facilities is under the control of the Federal Communication Commission (FCC) and Public Utilities Commission (PUC) of the State of California, local government must address public health, safety, welfare, zoning, and environmental concerns~~.~~ where not preempted by federal statute or regulation.

4. In order to protect the public health, safety and the environment, it is in the public interest for local government to establish rules and regulations addressing certain land use aspects relating to the construction, design, and siting of wireless communication facilities and the compatibility with surrounding land uses.

F. DEFINITIONS

1. ALUC - Airport Land Use Commission of Monterey County

2. Antennas - Any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure.

3. Antenna - Structure-Mounted - Any antenna, 10 feet or less tall and six inches or less in diameter, attached to a structure not exceeding the height limit for the zoning district.

4. Antenna - Ground-Mounted - Any antenna with its base placed directly on the ground or a mast less than 10 feet tall and six inches in diameter and not exceeding the height limit for the zoning district.

5. Cellular Service - A wireless telecommunications service that permits customers to use mobile telephones to connect, via low-power radio transmitter sites, either to the public-switched network or to other mobile cellular phones.

6. CEQA- California Environmental Quality Act

7. Co-located Facility - A communication facility comprised of a single tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

8. Equipment Building, Shelter or Cabinet - A cabinet or building used to house equipment used by wireless communication providers to house equipment at a facility.

9. FAA - Federal Aviation Administration

10. FCC - Federal Communications Commission

11. MTSOs-Mobile Telephone Switching Offices

12. Monopole - A structure erected on the ground to support wireless communication antennas and connecting appurtenances.

13. PCS - Personal Communications Services - Digital wireless communications technology such as portable phones, pagers, faxes and computers. Also known as Personal Communications Network (PCN).

14. PUC - California Public Utilities Commission

15. Satellite Dish - Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, or cornucopia-shaped and is used to transmit and/or receive electromagnetic signals.

16. Telecommunication Facility - A facility that transmits and/or receives electromagnetic signals including but not limited to antennas, microwave dishes,horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

17. Telecommunication Tower - A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas.

18. Wireless Communication Facility- An unstaffed facility for the transmission and reception of low-power radio signals. Wireless communication facilities include cellular radiotelephone service facilities; personal communications service facilities; specialized mobile radio service facilities and commercial paging service facilities. Components of these types of facilities can consist of the following: antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

19. Wireless Communication Facility - Commercial - A wireless communications facility that is operated primarily for a business purpose or purposes.

20. Wireless Communication Facility - Non-commercial - A wireless communication facility that is operated solely for a non-business purpose.

G. REGISTRATION REQUIREMENT

1. All wireless communications carriers and providers that offer or provide any wireless communication services for a fee directly to the public, within the unincorporated areas of the County of Monterey, shall register with the County pursuant to this Chapter on forms to be provided by the Director of Planning and Building Inspection and which shall include the following:

   a. The identity and legal status of the registrant, including any affiliates.

   b. The name, address, and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

   c. A narrative and map description of registrant's existing or proposed facilities within the unincorporated areas of the County of Monterey.

   d. A description of the wireless communication services that the registrant intends to offer to provide, or is currently offering or providing, to persons, firms, businesses or institutions within the unincorporated areas of the County of Monterey.

   e. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the California Public Utilities Commission to provide wireless communications services or facilities within the unincorporated areas of the County of Monterey

   f. Information sufficient to determined that the applicant has applied for and received any building permit, operating license or other approvals required by the Federal Telecommunications Commission (FCC) to provide services or facilities within the unincorporated areas of the County of Monterey.

   g. Such other information as the Director of Planning and Building Inspection may reasonably require.

2. The purpose of the registration under this Section is to:

   a. Provide the County with accurate and current information concerning the wireless communications carriers and providers who offer or provide communications services within the unincorporated areas of the County of Monterey, or that own or operate facilities within the unincorporated areas of the County of Monterey;

   b. Assist the County in the enforcement of this Chapter;

c. Assist the County in monitoring compliance with local, State and Federal laws.

3. Amendment. Each registrant shall inform the County, within sixty (60) days of any change of the information required pursuant to this Section.

4. The provider shall consult with the Director or Planning and Building Inspection on site selection, prior to securing any sites that the provider does not already own or lease at the time of initial registration.

H. GENERAL DEVELOPMENT STANDARDS

1. Site Location

The following criteria shall govern appropriate locations for wireless communication facilities and may require an alternative site other than the site shown on an initial permit application for a wireless facility:

a. Site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the specific parcel and surrounding land uses~~.~~ and shall not significantly impact public views to the ocean. Facilities shall be integrated to the maximum extent feasible to the existing characteristics of the site.

b. Co-location is encouraged when it will decrease visual impact and discouraged in cases when it will increase visual impact.

c. Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect specific views.

d. In designated visually sensitive areas, designated scenic corridors or areas of high visibility, wireless communication facilities shall be sited according to Sections 20.144.030; 20.145.030; 20.146.030; or 20.147.070. Furthermore, they should always be sited below the ridge line where possible ~~or~~ and be designed to minimize their visual impact.

e. Wireless communications facilities shall be screened from any designated scenic corridors or public viewing areas to the maximum extent feasible.

f. Disturbance of existing topography and on-site vegetation shall be minimized, unless such disturbance would substantially reduce the visual impacts of the facility.

g. Any exterior lighting, except as required for FAA regulations for airport safety, or as recommended by the ALUC, shall be manually operated and used only during night maintenance checks or in emergencies. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.

h. No wireless communication facility shall be installed within the safety zone or runway protection zone of any airport within Monterey County or any helipad unless the airport owner/operator indicates that it will not adversely affect the operation of the airport or helipad.

i. No wireless communication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless the applicant has demonstrated to the Director of Planning and Building Inspection, that the proposed location is the most feasible location for the provision of services as required by the FCC.

j. Per the policies contained in the Big Sur Coast Land Use Plan, no development, including telecommunications facilities, shall be located in the critical viewshed.

k. No wireless communication facility shall be located in an environmentally sensitive habitat unless found consistent with Sections 20.144.040; 20.145.040; 20.146.040; or 20.147.040 ~~mitigation measures can be adopted which would reduce potential impacts to levels of non-significance.~~

l. Any wireless communication facility between the first through public road and the sea shall be consistent with the access and recreation policies of the LCP and Chapter 3 of the Coastal Act. No portion of a wireless facility shall extend onto or impede access to a public beach.

2. Site Location: Satellite Dish and MMDS Antenna

The antenna shall comply with the following requirements only to the extent such requirements are necessary to find the development consistent with the visual, public view protection, hazard and access policies of the certified LUP.

a. The antenna complies with all applicable development standards of the base district in which it is located.

b. The antenna and associated equipment blends into the surrounding environment, or provides adequate concealment through architecturally integrated elements.

c. Where screening potential is low, innovative designs have been incorporated to reduce the visual impact.

d. The applicant has demonstrated good faith to collocate on existing facilities or sites.

e. The antenna does not significantly impact public views to the ocean.

~~2.~~ 3. Design Review Criteria

a. Towers and monopoles shall be constructed of non-flammable material, unless specifically approved and conditioned by the County to be otherwise.

b. Support facilities (i.e. vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed of non-flammable, non-reflective materials and shall be placed in underground vaults, unless otherwise approved by the County.

c. All support facilities ,poles, towers, antenna supports, antennas, and other components of communication facilities shall be of a color approved by the appropriate authority. If a facility is conditioned to require paint, it shall initially be painted with a flat paint color approved by the appropriate authority, and thereafter repainted as necessary with a flat paint color. Components of a telecommunication facility which will be viewed against soils, trees, or grasslands shall be of a color matching these landscapes.

d. Special design of wireless communication facilities may be required to mitigate potentially significant adverse visual impacts.

~~3.~~ 4. Requirements for Application Submittal

Applications for the use of wireless communication facilities shall be subject to the Planning and Building Inspection Department "Requirements for Application Submittal for the Development of Wireless Communication Facilities".

I. APPROPRIATE AUTHORITY:

a. The Planning Commission, the Zoning Administrator or the Director of Planning and Building Inspection shall be the Appropriate Authority to hear and decide all applications for Wireless Communication Facilities based on the following:

Planning Commission- The Planning Commission shall be the Appropriate Authority for applications for the installation of new, wireless communications facilities proposed in visually sensitive areas, critical viewsheds, scenic corridors and historic resource zoning districts.

Zoning Administrator The Zoning Administrator shall be the Appropriate Authority for applications for the installation of new wireless communications facilities proposed on existing buildings or structures and which exceed the height limit for the zoning district, co-located facilities, and facilities that have no significant adverse visual impact from any common public viewing area.

Director of Planning and Building Inspection- The Director of Planning and Building Inspection shall be the Appropriate Authority for additions/amendments to existing, approved wireless communications facilities. The Director of Planning and Building Inspection may refer a proposed project to the Zoning Administrator if the project is determined to be more than minor in nature~~.~~ or if a coastal permit or a non-minor or non-trivial coastal permit amendment is required and not preempted by Federal law, based on Sections 20.06.310, 20.70.120, 20.70.105, and/or 20.76.115 or conditions of previously-issued coastal permits."

b. Applications for wireless communication facilities that have the following characteristics shall be referred to the Monterey County Airport Land Use Commission for a report and recommendation prior to consideration by the appropriate authority:

1. Any structure penetrating a FAR Part 77 Imaginary Surface;
2. Any structure within 5 miles of an airport that exceeds 35 feet in height
3. All structures over 100 feet anywhere in the County if the application requires a Use Permit or Variance for a height exception;
4. Any structure that has the potential to present a hazard to aircraft in flight as determined by the Director of Planning and Building Inspection.

Applications shall also be referred to the local land use advisory committee, as appropriate.

c. The Director of Planning and Building Inspection, the Zoning Administrator or Planning Commission may impose such conditions deemed necessary to protect public health, safety, welfare, and the environment.

J. ACTION BY THE APPROPRIATE AUTHORITY

In order to grant any Coastal Administrative Permit or Coastal Development Permit, the Appropriate Authority shall make the following findings:

1. That the development of the proposed wireless communications facility will not significantly affect any designated public viewing area, scenic corridor or any identified environmentally sensitive area or resources as defined in the Monterey County General Plan and the Area Plan.

2. That the site is adequate for the development of the proposed wireless communications facility and that the applicant has demonstrated that there are not alternative sites for the proposed facility.

3. That the proposed wireless communication facility complies with all of the applicable requirements of Section20.64.3 10 of this Title.

4. That the subject property upon which the wireless communications facility is to be built is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of this Title and that all zoning violation abatement costs, if any have been paid.

5. That the proposed telecommunication facility will not create a hazard for aircraft in flight.

6. Any decision to deny a permit for a personal wireless service facility shall be in writing and shall be supported by substantial evidence and shall specifically identify the reasons for the decision, the evidence that led to the decision and the written record of all evidence.

K. SITE RESTORATION UPON TERMINATION/ABANDONMENT OF FACILITY

1. The site shall be restored to its natural state within six months of termination of use or abandonment of the site.

2. Applicant shall enter into a site restoration agreement subject to the approval of the Director of Planning and Building Inspection and County Counsel.

3. As part of the agreement, the applicant shall commit to the following: where future technological advances would allow for reduced visual impacts resulting from the proposed wireless communication facility, the applicant agrees to make those modifications that would reduce the visual impact of the proposed facility.

L. INDEMNIFICATION

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the applicant indemnify and hold harmless the county and its officers, agents, and employees from actions or claims of any description brought on account of any injury or damages sustained, by any person or property resulting from the issuance of the permit and the conduct of the activities authorized under said permit.

M. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shah not affect the validity of the remaining portions of this Section. The Board of Supervisors hereby declares that it would have passed this Section

and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

~~N. CONFLICTS WITH OTHER CHAPTERS~~

~~If this Section is found to be in conflict with any other Chapter, Section, Subsection, or Title, the provisions of this Section shall prevail.~~

~~Effective Date. This ordinance shall become effective on the thirty-first day after adoption or upon certification by the Coastal Commission, whichever date occurs last.~~

MODIFICATION TWO: Revise Section 20.70.120, "Exemptions from Coastal Development Permits" as follows:

Add underlined wording to Section 20.70.120 "Exemptions from Coastal Development Permits":

any project undertaken by a federal agency or exempt from local regulation pursuant to federal law.

MODIFICATION THREE: Revise Section 20.64.160, "Location of Public Utility Distribution and Transmission Facilities" as follows:

Add the following underlined provision to the end of section 20.64.160 "Location of Public Utility Distribution and Transmission Facilities":

D. This Section does not apply to wireless communication facilities, which are instead governed by section 20.64.310.

ORDINANCE NO. 03937

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING SUBSECTION Q TO SECTION 20.10.040; SUBSECTION AA TO SECTION 20.10.050; SUBSECTION R TO SECTION 20.12.040; SUBSECTION AA TO SECTION 20.12.050; SUBSECTION V TO SECTION 20.14.040; SUBSECTION CC TO SECTION 20.14.050; SUBSECTION V TO SECTION 20.16.040; SUBSECTION RR TO SECTION 20.16.050; SUBSECTION V TO SECTION 20.17.040; SUBSECTION KK TO SECTION 20.17.050; SUBSECTION AA TO SECTION 20.18.050; SUBSECTION PP TO SECTION 20.18.060;; SUBSECTION T TO SECTION 20.20.050; SUBSECTION V TO SECTION 20.20.060; SUBSECTION F TO SECTION 20.21.050; SUBSECTION G TO SECTION 20.21.050; SUBSECTION F TO SECTION 20.22.050; SUBSECTION AA TO SECTION 20.22.060; SUBSECTION L TO SECTION 20.24.050; SUBSECTION M TO SECTION 20.24.050; SUBSECTION BB TO SECTION 20.26.050; SUBSECTION CC TO SECTION 20.26.050; SUBSECTION W TO SECTION 20.28.050; SUBSECTION X TO SECTION 20.28.050; SUBSECTION T TO SECTION 20.30.050; SUBSECTION DD TO SECTION 20.30.050; SUBSECTION T TO SECTION 20.32.040; SUBSECTION HH TO SECTION 20.32.050; SUBSECTION J TO SECTION 20.38.040; SUBSECTION T TO SECTION 20.38.050; SUBSECTION G TO SECTION 20.40.040; SUBSECTION S TO SECTION 20.40.050; SECTION 20.64.310 TO TITLE 20, OF THE MONTEREY COUNTY CODE, RELATING TO STANDARDS AND PROCEDURES REGARDING WIRELESS COMMUNICATION FACILITIES

County Counsel Synopsis

This ordinance adds Section 20.64.310 to Title 20 of the Monterey County Code and provides for minimum standards and procedures to be followed in the siting of wireless communication facilities.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1 Subsection Q is added to Section 20.10.040 of the Monterey County Code to read:

Q. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 2 Subsection AA is added to Section 20.10.050 of the Monterey County Code to read:

AA. Wireless communications facilities, pursuant to Section 20.64.310;

EXHIBIT 1
COUNTY PROPOSAL

SECTION 3 Subsection R is added to Section 20.12.040 of the Monterey County Code to read:

R. Additions to existing approved wireless communications facilities; pursuant to Section 20.64.310;

SECTION 4 Subsection AA is added to Section 20.12.050 of the Monterey County Code to read:

AA. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 5: Subsection V is added to Section 20.14.040 of the Monterey County Code to read:

V. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 6 Subsection CC is added to Section 20.14.050 of the Monterey County Code to read:

BB. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 7 Subsection V added to Section 20.16.040 of the Monterey County Code to read:

V. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 8 Subsection RR is added to Section 20.16.050 of the Monterey County Code to read:

RR. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 9 Subsection V is added to Section 20.17.040 of the Monterey County Code to read:

V. Additions to existing, approved wireless communications facilities; pursuant to Section 20.64.310;

SECTION 10 Subsection KK is added to Section 20.17.050 of the Monterey County Code to read:

KK. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 11 Subsection AA is added to Section 20.18.050 of the Monterey County Code to read:

AA. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 12 Subsection PP is added to Section 20.18.060 of the Monterey County Code to read:

PP. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 13 Subsection AA is added to Section 20.20.050 of the Monterey County Code to read:

AA. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 14 Subsection T is added to Section 20.20.050 of the Monterey County Code to read:

T. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 15 Subsection V is added to Section 20.20.060 of the Monterey County Code to read:

V. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 16 Subsection F is added to Section 20.21.050 of the Monterey County Code to read:

F. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 17 Subsection G is added to Section 20.21.050 of the Monterey County Code to read:

G. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 18 Subsection F is added to Section 20.22.060 of the Monterey County Code to read:

F. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 19 Subsection AA is added to Section 20.22.060 of the Monterey County Code to read:

AA. Wireless communications facilities (ZA); pursuant to Section 20.64.310;

SECTION 20 Subsection L is added to Section 20.24.050 of the Monterey County Code to read:

L. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 21 Subsection M is added to Section 20.24.050 of the Monterey County Code to read:

M. Wireless communications facilities; pursuant to Section 20.64.310;

SECTION 22 Subsection BB is added to Section 20.26.050 of the Monterey County Code to read:

BB. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 23 Subsection CC is added to Section 20.26.050 of the Monterey County Code to read:

CC. Wireless communications facilities, pursuant to Section 20.64.310;

SECTION 24 Subsection W is added to Section 20.28.050 of the Monterey County Code to read:

W. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 25 Subsection X is added to Section 20.28.050 of the Monterey County Code to read:

X. Wireless communications facilities; pursuant to Section 20.64.310;

SECTION 26 Subsection T is added to Section 20.30.040 of the Monterey County Code to read:

T. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 25 Subsection DD is added Section 20.30.050 of the Monterey County Code to read:

DD. Wireless communications facilities; pursuant to Section 20.64.310;

SECTION 26 Subsection T is added to Section 20.32.040 of the Monterey County Code to read:

T. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION 27 Subsection HH is added to Section 20.32.050.of the Monterey County Code to read:

HH. Wireless communication facilities pursuant to Section 20.64.310;

SECTION 28 Subsection J is added to Section 20.38.040 of the Monterey County Code to read:

J. Additions to existing, approved wireless communications facilities pursuant to Section 20.64.310;

SECTION29 Subsection T is added to Section 20.38.050 of the Monterey County Code to read:

T. Wireless communication facilities; pursuant to Section 20.64.310;

SECTION 30 Subsection G is added to Section 20.40.040 of the Monterey County Code to read:

G. Additions to existing, approved wireless communications facilities, pursuant to Section 20.64.310;

SECTION 31 Subsection S is added to Section 20.40.050 of the Monterey County Code to read:

S. Wireless communication facilities; pursuant to Section 20.64.310;

SECTION 32. Section 20.64.310 is added to Title 20 to read as follows:

REGULATIONS FOR THE SITING, DESIGN, AND CONSTRUCTION OF WIRELESS COMMUNICATION FACILITIES

A. PURPOSE: The purpose of this Section is to establish the regulations, standards and circumstances for the siting, design, construction and maintenance of wireless communication facilities in the coastal areas of the unincorporated area of the County of Monterey.

It is also the purpose of this Chapter to assure, by the regulation of siting of wireless communications facilities, that the integrity and nature of residential, rural, commercial, and industrial areas are protected from the indiscriminate and inappropriate proliferation of wireless communication facilities while complying with the Federal Telecommunication Act of 1996, General Order 159A of the Public Utilities Commission of the State of California and the policies of Monterey County.

B. APPLICABILITY: The provisions of this Section are applicable in all zoning districts.

C. REGULATIONS: Wireless communication facilities shall be allowed on any lot or parcel in any zoning district, subject to a Coastal Administrative Permit or a Coastal Development Permit, and subject to the following regulations:

1. Wireless communication facilities shall comply with all applicable goals, objectives and policies of the general plan, area plans, zoning regulations and development standards.

2. Wireless communication facilities shall comply with all FCC rules, regulations, and standards.

3. Wireless communication facilities shall comply with all applicable criteria from the Federal Aviation Administration (FAA) and shall comply with the requirement of all Comprehensive Airport Land Use Plans adopted by the Monterey County Airport Land Use Commission (ALUC) unless the Board of Supervisors has overruled the adoption of said plans pursuant to California Public Utility Code section 21676.

4. Wireless communication facilities shall be sited in the least visually obtrusive location possible. Appropriate mitigation measures shall be applied in instances where the facility is visible from a designated scenic corridor or public viewing area.

5. A visual simulation of the wireless communication facility shall be provided. Visual simulation can consist of either a physical mock-up of the facility, balloon simulation, computer simulation or other means. In instances where the wireless communication facility is located near or in a residential area, photos shall be submitted of the proposed wireless communication facility from the nearest residential neighbors. In instances where the wireless communication facility is located along a scenic corridor, critical viewshed area or within a designated historic resource site or district, a detailed visual analysis of the facility shall be submitted.

6. Where the wireless communication facility is proposed to be located within a designated historic resource site or district, the applicant shall comply with the

regulations for historic resources pursuant to Chapter 20.54 and Chapters 18.25 and 18.26.

7. Where a wireless communication facility exists on the proposed site location, co-location shall be pursued to the maximum extent feasible. If a co-location agreement cannot be met, documentation of the effort and the reasons why co-location was not possible shall be submitted and reviewed by the Director of Planning and Building Inspection.

8. Other regulations enacted pursuant to the General Plan, Local Coastal Program and Area Plan may be applied to the proposed wireless communication facility, depending on the location, and type of facility.

D. EXEMPTIONS: The following types of wireless communications facilities are allowed in any zoning district and are exempt from the provisions of this chapter:

1. Structure-mounted antennas as defined in Section 20.64.310 (F) (3) of this Chapter.

2. Ground-mounted antennas as defined in Section 20.64.310 (F) (4) of this Chapter.

3. A ground- or building-mounted citizens band or two-way radio antenna including any mast, provided the height of the antenna, including the tower, support structure, or post, does not exceed zoning district height requirements of the zoning district.

4. A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur or Business Radio Service, provided that its maximum height does not exceed the height requirements of the zoning district.

5. A ground- or building-mounted receive-only radio or television antenna or television satellite dish, which does not exceed thirteen feet (13') in diameter, for the sole use of the resident occupying a residential parcel on which the radio or television antenna or satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel, including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located.

6. Mobile services providing public information coverage of news events of a temporary nature.

7. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Planning Director.

E. FINDINGS:

1. The proliferation of antennas, towers, and or satellite dishes could create significant, adverse visual impacts; therefore, there is a need to regulate the siting, design, and construction of wireless communication facilities to insure that the appearance and integrity of the community is not marred by the cluttering of unsightly facilities.

2. General Order 159A of the Public Utilities Commission (PUC) of the State of California acknowledges that local citizens and local government are often in a better position than the Commission to measure local impact and to identify alternative sites. Accordingly, the Commission will generally defer to local governments to regulate the location and design of cell sites, wireless communication facilities and MTSOs (mobile telephone switching office) including (a) the issuance of land use approvals; (b) acting as Lead Agency for purposes of satisfying the California Environmental Quality Act (CEQA) and, (c) the satisfaction of noticing procedures for both land use and CEQA procedures.

3. While the licensing of wireless communication facilities is under the control of the Federal Communication Commission (FCC) and Public Utilities Commission (PUC) of the State of California, local government must address public health, safety, welfare, zoning, and environmental concerns.

4. In order to protect the public health, safety and the environment, it is in the public interest for local government to establish rules and regulations addressing certain land use aspects relating to the construction, design, and siting of wireless communication facilities and the compatibility with surrounding land uses.

F. DEFINITIONS

1. ALUC - Airport Land Use Commission of Monterey County

2. Antennas - Any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure.

3. Antenna - Structure-Mounted - Any antenna, 10 feet or less tall and six inches or less in diameter, attached to a structure not exceeding the height limit for the zoning district.

4. Antenna - Ground-Mounted - Any antenna with its base placed directly on the ground or a mast less than 10 feet tall and six inches in diameter and not exceeding the height limit for the zoning district.

5. Cellular Service - A wireless ~~tele~~communications service that permits customers to use mobile telephones to connect, via low-power radio transmitter sites, either to the public-switched network or to other mobile cellular phones.

6. CEQA- California Environmental Quality Act

7. Co-located Facility - A ~~tele~~communication facility comprised of a single tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

8. Equipment Building, Shelter or Cabinet - A cabinet or building used to house equipment used by wireless communication providers to house equipment at a facility.

9. FAA - Federal Aviation Administration

10. FCC - Federal Communications Commission

11. MTSOs - Mobile Telephone Switching Offices

12. Monopole - A structure erected on the ground to support wireless communication antennas and connecting appurtenances.

13. PCS - Personal Communications Services - Digital wireless communications technology such as portable phones, pagers, faxes and computers. Also known as Personal Communications Network (PCN).

14. PUC - California Public Utilities Commission

15. Satellite Dish - Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, or cornucopia-shaped and is used to transmit and/or receive electromagnetic signals.

16. Telecommunication Facility - A facility that transmits and/or receives electromagnetic signals including but not limited to antennas, microwave dishes,

horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

17. Telecommunication Tower - A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas.

18. Wireless Communication Facility- An unstaffed facility for the transmission and reception of low-power radio signals. Wireless communication facilities include cellular radiotelephone service facilities; personal communications service facilities; specialized mobile radio service facilities and commercial paging service facilities. Components of these types of facilities can consist of the following: antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

19. Wireless Communication Facility - Commercial - A wireless communications facility that is operated primarily for a business purpose or purposes.

20. Wireless Communication Facility - Non-commercial - A wireless communication facility that is operated solely for a non-business purpose.

G. REGISTRATION REQUIREMENT

1. All wireless communications carriers and providers that offer or provide any wireless communication services for a fee directly to the public, within the unincorporated areas of the County of Monterey, shall register with the County pursuant to this Chapter on forms to be provided by the Director of Planning and Building Inspection and which shall include the following:

    a. The identity and legal status of the registrant, including any affiliates.

    b. The name, address, and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

    c. A narrative and map description of registrant's existing or proposed facilities within the unincorporated areas of the County of Monterey.

    d. A description of the wireless communication services that the registrant intends to offer to provide, or is currently offering or providing, to persons,

firms, businesses or institutions within the unincorporated areas of the County of Monterey.

e. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the California Public Utilities Commission to provide wireless communications services or facilities within the unincorporated areas of the County of Monterey.

f. Information sufficient to determined that the applicant has applied for and received any building permit, operating license or other approvals required by the Federal Telecommunications Commission (FCC) to provide services or facilities within the unincorporated areas of the County of Monterey.

g. Such other information as the Director of Planning and Building Inspection may reasonably require.

2. The purpose of the registration under this Section is to:

a. Provide the County with accurate and current information concerning the wireless communications carriers and providers who offer or provide communications services within the unincorporated areas of the County of Monterey, or that own or operate facilities within the unincorporated areas of the County of Monterey;

b. Assist the County in the enforcement of this Chapter;

c. Assist the County in monitoring compliance with local, State and Federal laws.

3. Amendment. Each registrant shall inform the County, within sixty (60) days of any change of the information required pursuant to this Section.

H. GENERAL DEVELOPMENT STANDARDS

1. <u>Site Location</u>

a. Site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the specific parcel and surrounding land uses. Facilities shall be integrated to the maximum extent feasible to the existing characteristics of the site.

b. Co-location is encouraged when it will decrease visual impact and discouraged in cases when it will increase visual impact.

c. Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect specific views.

d. In designated visually sensitive areas, designated scenic corridors or areas of high visibility, wireless communication facilities shall be sited below the ridge line or designed to minimize their visual impact.

e. Wireless communications facilities shall be screened from any designated scenic corridors or public viewing areas to the maximum extent feasible.

f. Disturbance of existing topography and on-site vegetation shall be minimized, unless such disturbance would substantially reduce the visual impacts of the facility.

g. Any exterior lighting, except as required for FAA regulations for airport safety, or as recommended by the ALUC, shall be manually operated and used only during night maintenance checks or in emergencies. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.

h. No wireless communication facility shall be installed within the safety zone or runway protection zone of any airport within Monterey County or any helipad unless the airport owner/operator indicates that it will not adversely affect the operation of the airport or helipad.

i. No wireless communication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless the applicant has demonstrated to the Director of Planning and Building Inspection, that the proposed location is the most feasible location for the provision of services as required by the FCC.

j. Per the policies contained in the Big Sur Coast Land Use Plan, no development, including telecommunications facilities, shall be located in the critical viewshed.

k. No wireless communication facility shall be located in an environmentally sensitive habitat unless mitigation measures can be adopted which would reduce potential impacts to levels of non-significance.

2. Design Review Criteria

a. Towers and monopoles shall be constructed of non-flammable material, unless specifically approved and conditioned by the County to be otherwise.

b. Support facilities (i.e. vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed of non-flammable, non-reflective materials and shall be placed in underground vaults, unless otherwise approved by the County.

c. All support facilities ,poles, towers, antenna supports, antennas, and other components of ~~tele~~communication facilities shall be of a color approved by the appropriate authority. If a facility is conditioned to require paint, it shall initially be painted with a flat paint color approved by the appropriate authority, and thereafter repainted as necessary with a flat paint color. Components of a telecommunication facility which will be viewed against soils, trees, or grasslands shall be of a color matching these landscapes.

d. Special design of wireless communication facilities may be required to mitigate potentially significant adverse visual impacts.

3. Requirements for Application Submittal

Applications for the use of wireless communication facilities shall be subject to the Planning and Building Inspection Department "Requirements for Application Submittal for the Development of Wireless Communication Facilities".

I. APPROPRIATE AUTHORITY:

a. The Planning Commission, the Zoning Administrator or the Director of Planning and Building Inspection shall be the Appropriate Authority to hear and decide all applications for Wireless Communication Facilities based on the following:

Planning Commission- The Planning Commission shall be the Appropriate Authority for applications for the installation of new, wireless communications facilities proposed in visually sensitive areas, critical viewsheds, scenic corridors and historic resource zoning districts.

Zoning Administrator- The Zoning Administrator shall be the Appropriate Authority for applications for the installation of new wireless communications facilities proposed on existing buildings or structures and which exceed the height

limit for the zoning district, co-located facilities, and facilities that have no significant adverse visual impact from any common public viewing area.

Director of Planning and Building Inspection- The Director of Planning and Building Inspection shall be the Appropriate Authority for additions/amendments to existing, approved wireless communications facilities. The Director of Planning and Building Inspection may refer a proposed project to the Zoning Administrator if the project is determined to be more than minor in nature.

b. Applications for wireless communication facilities that have the following characteristics shall be referred to the Monterey County Airport Land Use Commission for a report and recommendation prior to consideration by the appropriate authority:

1. Any structure penetrating a FAR Part 77 Imaginary Surface;
2. Any structure within 5 miles of an airport that exceeds 35 feet in height
3. All structures over 100 feet anywhere in the County if the application requires a Use Permit or Variance for a height exception;
4. Any structure that has the potential to present a hazard to aircraft in flight as determined by the Director of Planning and Building Inspection.

Applications shall also be referred to the local land use advisory committee, as appropriate.

c. The Director of Planning and Building Inspection, the Zoning Administrator or Planning Commission may impose such conditions deemed necessary to protect public health, safety, welfare, and the environment.

J. ACTION BY THE APPROPRIATE AUTHORITY

In order to grant any Coastal Administrative Permit or Coastal Development Permit, the Appropriate Authority shall make the following findings:

1. That the development of the proposed wireless communications facility will not significantly affect any designated public viewing area, scenic corridor or any identified environmentally sensitive area or resources as defined in the Monterey County General Plan and the Area Plan.

2. That the site is adequate for the development of the proposed wireless communications facility and that the applicant has demonstrated that there are not alternative sites for the proposed facility.

3. That the proposed wireless communication facility complies with all of the applicable requirements of Section20.64.310 of this Title.

4. That the subject property upon which the wireless communications facility is to be built is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of this Title and that all zoning violation abatement costs, if any have been paid.

5. That the proposed telecommunication facility will not create a hazard for aircraft in flight.

K. SITE RESTORATION UPON TERMINATION/ABANDONMENT OF FACILITY

1. The site shall be restored to its natural state within six months of termination of use or abandonment of the site.

2. Applicant shall enter into a site restoration agreement subject to the approval of the Director of Planning and Building Inspection and County Counsel.

L. INDEMNIFICATION

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the applicant indemnify and hold harmless the county and its officers, agents, and employees from actions or claims of any description brought on account of any injury or damages sustained, by any person or property resulting from the issuance of the permit and the conduct of the activities authorized under said permit.

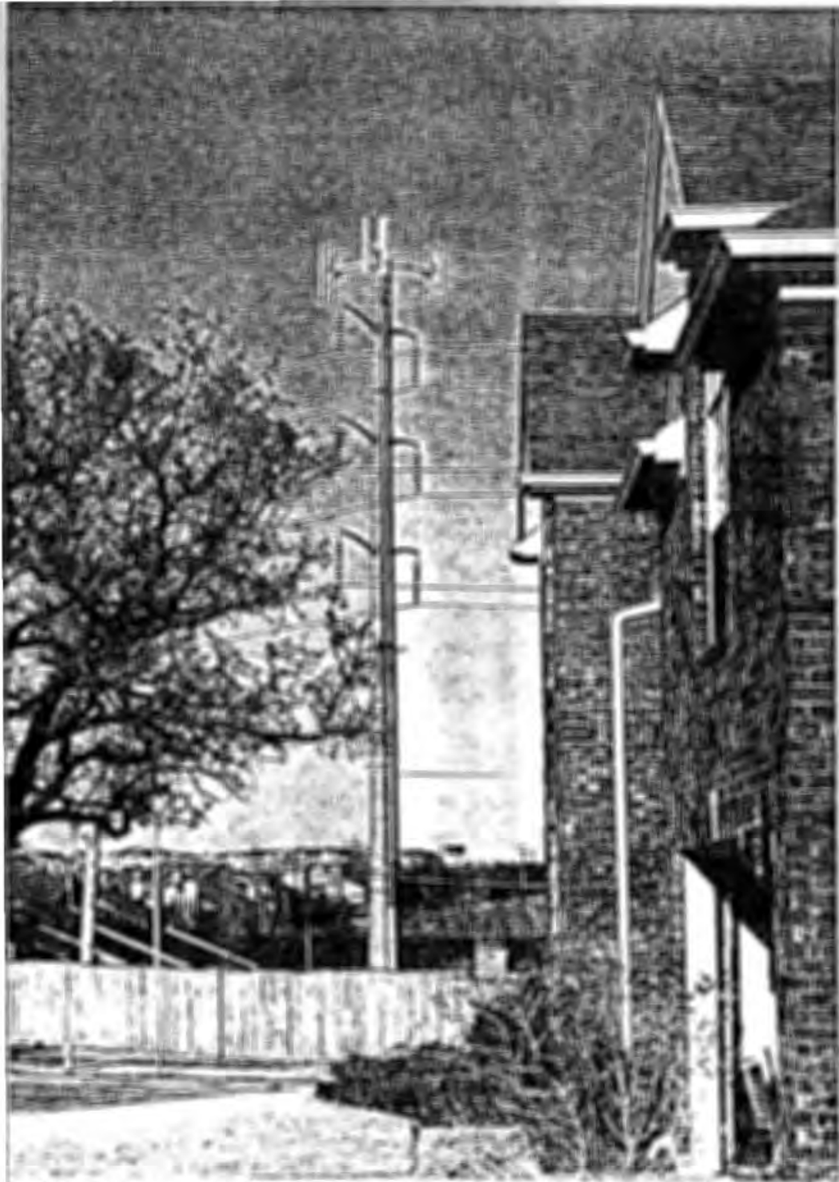
M. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The Board of Supervisors hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

N. CONFLICTS WITH OTHER CHAPTERS

If this Section is found to be in conflict with any other Chapter, Section, Subsection, or Title, the provisions of this Section shall prevail.

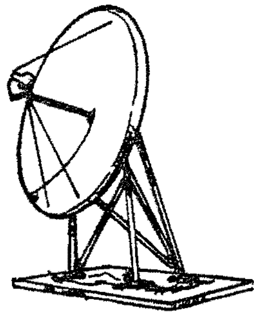
PG. 3

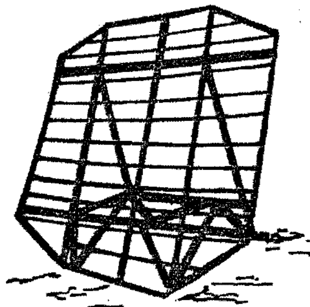

Antenna array installation on existing transmission tower.

Monopole with shelter.

EXHIBIT 2

WIRELESS SERVICE FACILITIES


PARABOLIC ANTENNA


SPHERICAL ANTENNA

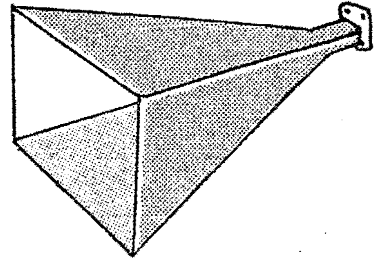
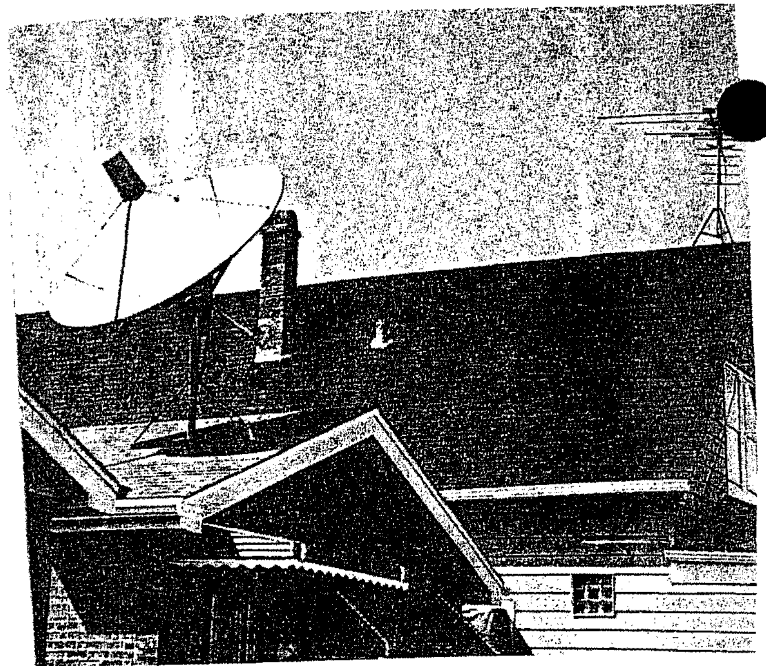

HORN ANTENNA

FIGURE 1. DISH ANTENNA SHAPES

Monopole disguised as a palm tree.

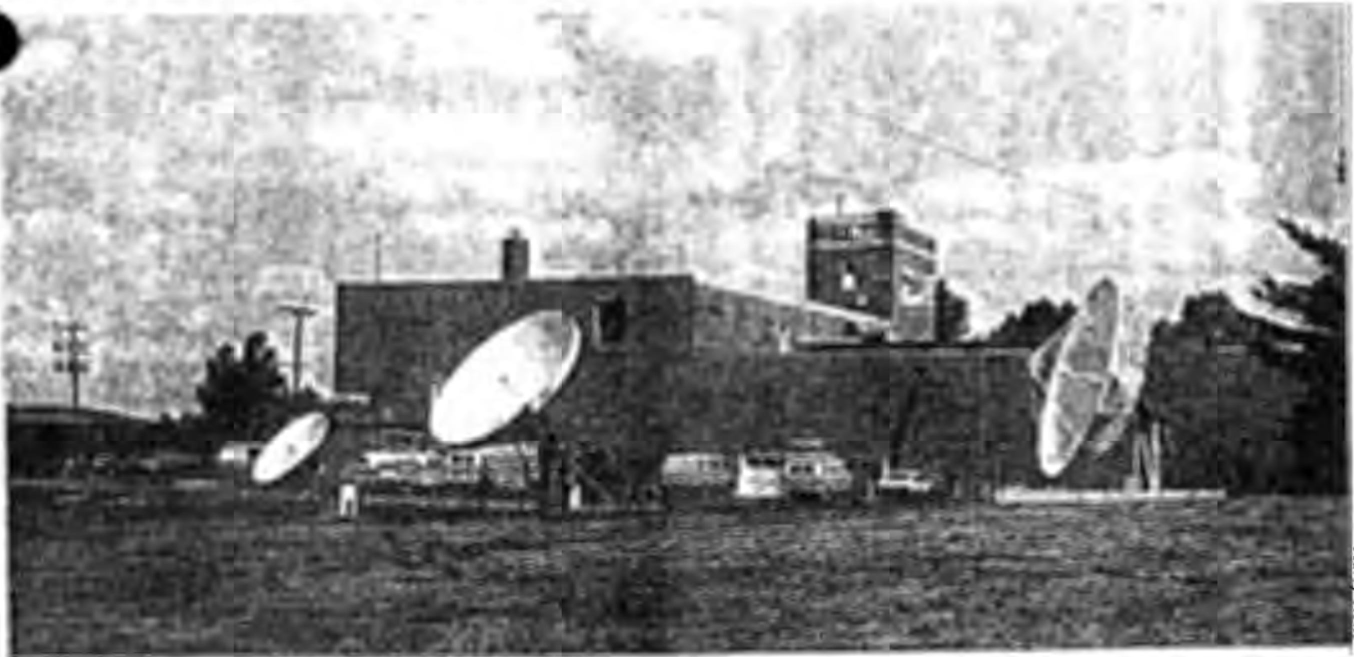


HOME SATELLITE DISH

WIRELESS SERVICES FACILITY

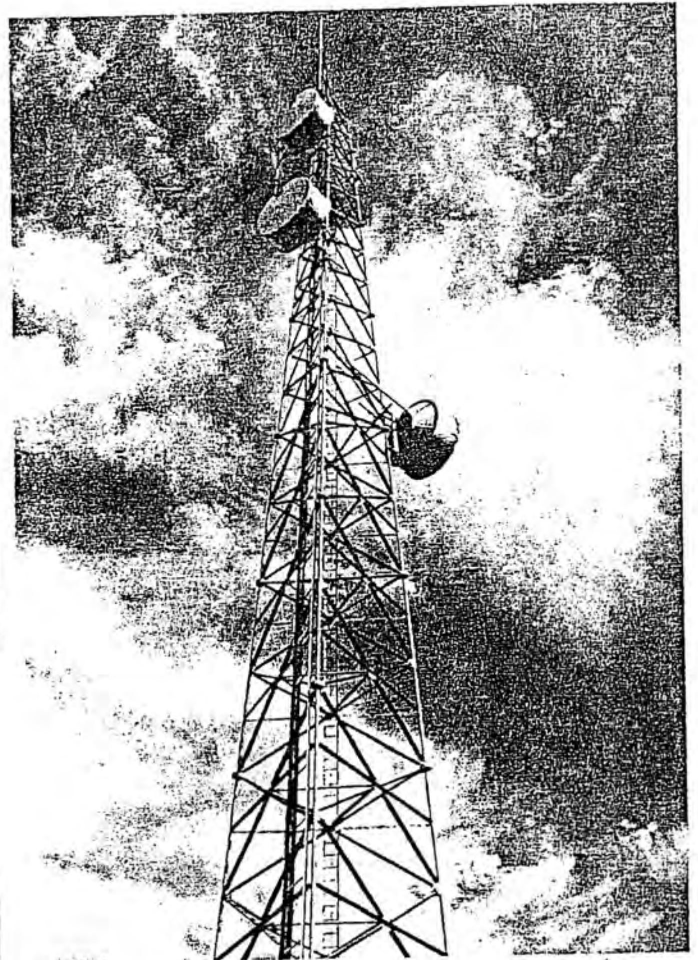
EXHIBIT 2

Businesses like this television station may require more than one antenna.



LARGE SATELLITE ANTENNA

Guyed tower.



Self-supporting tower.

WIRELESS SERVICES FACILITIES

EXHIBIT 2

WIRELESS SERVICE FACILITIES

UNITED STATES CODE ANNOTATED
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5--WIRE OR RADIO COMMUNICATION
SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO
PART I--GENERAL PROVISIONS

Copr. © West 1998. No Claim to Orig. U.S. Govt. Works

Current through P.L. 105-220, approved 8-7-1998

§ 332. Mobile services

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

SEE (c)(7), PG.4 FOR ZONING

Copr. © West 1998 No Claim to Orig. U.S. Govt. Works

EXHIBIT 3

WIRELESS SERVICE FACILITIES

UNITED STATES CODE ANNOTATED
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5--WIRE OR RADIO COMMUNICATION
SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO
PART I--GENERAL PROVISIONS

Copr. © West 1998. No Claim to Orig. U.S. Govt. Works

Current through P.L. 105-220, approved 8-7-1998

§ 332. Mobile services

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

SEE (c)(7), PG.4 FOR ZONING

Copr. © West 1998 No Claim to Orig. U.S. Govt. Works

EXHIBIT 3

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 3

such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C.A. § 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C.A. § 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 3

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to- home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 3

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B) of this section; and

(3) the term "private mobile service" means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

CREDIT(S)

1998 Electronic Update

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Sept. 13, 1982, Pub.L. 97-259, Title I, § 120(a), 96 Stat. 1096; renumbered § 332, Oct. 5, 1992, Pub.L. 102-385, § 25(b), 106 Stat. 1502, and amended Aug. 10, 1993, Pub.L. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 393; Feb. 8, 1996, Pub.L. 104-104, § 3(d)(2), Title VII, §§ 704(a), 705, 110 Stat. 61, 151, 153.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Act. Senate Report Nos. 97-191 and 97-404, and House Conference Report No. 97-765, see 1982 U.S.Code Cong. and Adm.News, p. 2237.

1992 Acts. Senate Report No. 102-92 and House Conference Report No. 10-862, see U.S. Code Cong. and Adm. News, p. 1133.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong. and Adm. News, p. 378.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

EXHIBIT 3

SATELLITE DISH: 1-2 METERS

company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with, any such carrier.

(b) *Authorized carrier.* (1) Except as provided in paragraph (b)(2) of this section, the term "authorized carrier" means a communications common carrier which is authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites.

(2) For the purposes of subpart H of this part, the term "authorized carrier" means a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation.

(c) *Communications satellite corporation.* (1) The terms "communications satellite corporation" or "corporation" as used in this part mean the corporation created pursuant to the provisions of Title III of the Communications Satellite Act of 1962.

(2) The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Satellite Act of 1962.

(d) *Communication-satellite earth station complex.* The term communication-satellite earth station complex includes transmitters, receivers, and communications antennas at the earth station site together with the interconnecting terrestrial facilities (cables, lines, or microwave facilities) and modulating and demodulating equipment necessary for processing of traffic received from the terrestrial distribution system(s) prior to transmission via satellite and of traffic received from the satellite prior to transfer of channels of communication to terrestrial distribution system(s).

(e) *Communication-satellite earth station complex functions.* The communication-satellite earth station complex interconnects with terminal equipment of common carriers or authorized entities at the interface; accepts traffic from such entities at the interface, processes for transmission via satellite and performs the transmission function; receives traffic from a satellite or satellites, processes it in a form necessary to deliver channels of communication to terrestrial common carriers or such other authorized entities and delivers the processed traffic to such entities at the interface.

(f) *Interface.* The point of interconnection between two distinct but adjacent communications systems having different functions. The interface in the communication-satellite service is that point where communications terminal equipment of the terrestrial common carriers or other authorized entities interconnects with the terminal equipment of the communication-satellite earth station complex. The interface in the communication-satellite service shall be located at the earth station site, or if this is impracticable, as close thereto as possible.

[28 FR 13037, Dec. 5, 1963, as amended at 31 FR 3289, Mar. 2, 1966]

SATELLITE DISHES

§25.104 Preemption of local zoning of earth stations.

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, except that non-federal regulation of radio frequency emissions is not preempted by this section. For purposes of this paragraph (a), reasonable means that the local regulation:

(1) Has a clearly defined health, safety, or aesthetic objective that is stated in the text of the regulation itself; and

(2) Furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally

EXHIBIT 4

SATELLITE DISH : 1-2 METERS

permitted by non-federal land-use regulation shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2) of this section. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e) of this section, or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (b)(2) of this section.

(2) Any presumption arising from paragraph (b)(1) of this section may be rebutted upon a showing that the regulation in question:

(i) Is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;

(ii) Is no more burdensome to satellite users than is necessary to achieve the health or safety objective; and

(iii) Is specifically applicable on its face to antennas of the class described in paragraph (b)(1) of this section.

(c) Any person aggrieved by the application or potential application of a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting all nonfederal administrative remedies, file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when:

(1) The petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal and variance procedure has been exhausted;

(2) The petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;

(3) The petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna, greater than the aggregate purchase or total lease cost of the equipment as normally installed; or

(4) A state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.

(e) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waivers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

(f) a satellite earth station antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska is covered by the regulations in § 1.4000 of this chapter.

[61 FR 10898, Mar. 18, 1996, as amended at 61 FR 46562, Sept. 4, 1996]

EFFECTIVE DATE NOTE: At 61 FR 46562, Sept. 4, 1996, § 25.104 was amended by revising paragraph (b)(1) and adding paragraph (f). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

EXHIBIT 4

SATELLITE DISH: 1 METER OR LESS

CODE OF FEDERAL REGULATIONS
TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER A--GENERAL
PART 1--PRACTICE AND PROCEDURE
SUBPART S--PREEMPTION OF RESTRICTIONS THAT "IMPAIR" A VIEWER'S ABILITY TO RECEIVE TELEVISION BROADCAST SIGNALS, DIRECT BROADCAST SATELLITE SERVICES OR MULTICHANNEL MULTIPOINT DISTRIBUTION SERVICES

Current through March 2, 1999; 64 FR 10194

SEC. 1.4000

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska;

(ii) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is designed to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii) or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (c) or (d) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a viewer, the viewer shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the viewer if the viewer complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the viewer's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users,

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 5

and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraph (b)(1) or (b) (2) of this section.

WAIVER

(c) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3. Waiver requests must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under § 1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(e) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(f) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th St. S.W., Washington, D.C. 20554, Attention: Cable Services Bureau. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

[63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998]

<<SUBPART S--PREEMPTION OF RESTRICTIONS THAT "IMPAIR" A VIEWER'S

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 5

Citation Found Document Rank 1 of 1 Database
1 F.C.C.2d 952 FCOM
58 Rad. Reg. 2d (P & F) 1452, 1985 WL 260421 (F.C.C.)

Amateur Operator
Amateur Radio Service
Antenna, Structure
Antenna, Tower

By declaratory ruling, Commission announced a limited preemption of state and local regulations governing amateur installations. The Commission said that there is a strong federal interest in promoting amateur communications and that state and local regulations that preclude amateur communications are in direct conflict with federal objectives and must be preempted.

--Amateur Radio Preemption

FCC 85-506 FCC RULING RE: AMATEUR FACILITIES

In the Matter of

Federal preemption of state and local regulations pertaining to Amateur radio facilities.

PRB-1

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985; Released: September 19, 1985

BY THE COMMISSION: COMMISSIONER RIVERA NOT PARTICIPATING.

Background

1. On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter. [FN1] With extension, comments were due on or before December 26, 1984 [FN2], with reply comments due on or before January 25, 1985. [FN3] Over sixteen hundred comments were filed.

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some amateur antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

.stances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition # 2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of free speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (televisions, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in it comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS) [FN4], Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support th ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed commer

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

support of the ARRL's request for a Federal preemption ruling. The commen[ts] from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.

We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of that regulation on Federal goals. Its position is that Federal preemption is warranted whenever local governmental regulations relate adversely to the operational aspects of amateur [co]mmunication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built a[s] long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a [g]iven site for different placement, and/or methods for aesthetic treatment.

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

[Th]us, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied.

A blanket ruling to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to ... legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a 'national policy'. However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face [l]ocal communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary However, the preservation of residential zoning districts as 'liveable' neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of these antennas.

... the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

..ate and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," Florida Lime & ..ocado Growers, Inc. v. Paul, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of full purposes .. objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes. Fidelity Federal Savings & Loan Association v. de la Cuesta, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of viewpoint as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address thei.. concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily availabl.. backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the ..gitimate interests of local governments in regulating local zoning matters.

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), we recognized that

... countervailing state interests inhere in the present situation ... For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. [FN5] Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

government may not regulate, nor will we suggest the precise language that mu be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. [FN6]

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and, in all other respects, IS DENIED.

DERAL COMMUNICATIONS COMMISSION
LLIAM J. TRICARICO, Secretary

FN1. Public Notice, August 30, 1984, Mimeo. No. 6299, 49 F.R. 36113, September 14, 1984.

FN2. Public Notice, December 19, 1984, Mimeo No. 1498.

FN3. Order, November 8, 1984, Mimeo. No. 770.

FN4. MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.

FN5. 47 CFR Part 97.

FN6. We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.

FCC

101 F.C.C.2d 952, 58 Rad. Reg. 2d (P & F) 1452, 1985 WL 260421 (F.C.C.)

D OF DOCUMENT

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

EXHIBIT 6

FEDERAL COMMUNICATIONS COMMISSION

FACT SHEET

January 1999

Over-the-Air Reception Devices Rule

Preemption of Restrictions on Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service, and Television Broadcast Antennas

Quick Links to Document Sections Below

- Questions and Answers
- Links to Relevant Orders and the Rule
- Guidance on Filing a Petition
- Where to Call for More Information

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS").

The rule is cited as 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to- home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

The rule applies to viewers who place video antennas on property that they own and that is within their exclusive use or control, including condominium owners and cooperative owners who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair, as well as restrictions needed for safety or historic preservation. In addition, under some circumstances, the availability of a central or common antenna can be used by a community association or landlord to restrict the installation of individual antennas. In addition, the rule does not apply to common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners. Therefore, restrictions on antennas installed in common areas are enforceable.

On November 20, 1998, the Commission amended the rule so that it will also apply to rental property where the renter has exclusive use, such as a balcony or patio. The effective date of the amended rule is January 22, 1999.

This fact sheet provides general answers to questions that may arise about the implementation of the rule. For further information or a copy of the rule, call the Federal Communications Commission at

EXHIBIT 7

888-CALLFCC (toll free) or (202) 418-7096.

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of video antennas:

(1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on "masts" to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes.

(3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a viewer's ability to install, maintain, or use a video antenna. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a viewer from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Q: What types of restrictions unreasonably delay or prevent viewers from using an antenna?

A: A local restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible.

Q: What is an unreasonable expense?

A: Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a local government, community association or landlord to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: What restrictions prevent a viewer from receiving an acceptable quality signal?

EXHIBIT 7

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas and digital television ("DTV") antennas. For these antennas to receive an acceptable quality signal, a DBS antenna or other digital reception antenna covered by the rule must be installed where it has an unobstructed, direct view of the satellite or other device from which video programming service is received. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented for optimal reception.

Q: Are all restrictions prohibited?

A: No, many restrictions are permitted. Clearly-defined, legitimate safety restrictions are permitted even if they impair installation, maintenance or use because they are necessary to protect public safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes; restrictions requiring that a person not place an antenna within a certain distance from a power line; electrical code requirements to properly ground the antenna; and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. Safety restrictions cannot discriminate between objects that are comparable in size and weight and pose the same or a similar safety risk as the antenna that is being restricted. The safety restriction also cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions necessary for historic preservation may also be permitted even if they impair installation, maintenance or use of the antenna. To qualify for this exemption, the property may be any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places. In addition, restrictions necessary for historic preservation must be no more burdensome than necessary to accomplish the historic preservation goal. They must also be imposed and enforced in a non-discriminatory manner, as compared to other modern structures that are comparable in size and weight and to which local regulation would normally apply.

Q: Whose antenna restrictions are prohibited?

A: The rule applies to restrictions imposed by local governments, including zoning, land-use or building regulations; by homeowner, townhome, condominium or cooperative association rules, including deed restrictions, covenants, by-laws and similar restrictions; and by manufactured housing (mobile home) park owners and landlords, including lease restrictions. The rule only applies to restrictions on property where the viewer has an ownership or leasehold interest and exclusive use or control.

Q: If I live in a condominium or an apartment building, does this rule apply to me?

A: The rule applies to viewers who live in a multiple dwelling unit building, such as a condominium or apartment building, if the viewer has an exclusive use area in which to install the antenna.

EXHIBIT 7

"Exclusive use" means an area of the property that only you, and persons you permit, may enter and use to the exclusion of other residents. For example, your condominium or apartment may include a balcony, terrace, deck or patio that only you can use, and the rule applies to these areas. The rule does not apply to common areas, such as the roof, the hallways, the walkways or the exterior walls of a condominium or apartment building. Restrictions on antennas installed in these common areas are not covered by the Commission's rule.

Q: Does the fact that management or the association has the right to enter these areas mean that the resident does not have exclusive use?

A: No. The fact that the building management or the association may enter an area for the purpose of inspection and/or repair does not mean that the resident does not have exclusive use of that area. Likewise, if the landlord or association regulates other uses of the exclusive use area (e.g., banning grills on balconies), that does not affect the viewer's rights under the Commission's rule. This rule permits persons to install video antennas on property over which the person has *either* exclusive use *or* exclusive control. Note, too, that nothing in this rule changes the landlord's or association's right to regulate use of exclusive use areas for other purposes. For example, if the lease prohibits antennas and flags on balconies, only the prohibition of antennas is eliminated by this rule; flags would still be prohibited.

Q: Does the rule apply to residents of rental property?

A: Yes. The Commission recently amended the rule, and the effective date of the amendment is January 22, 1999. When the amendment takes effect, renters may install video antennas within their leasehold, which means inside the dwelling or on outdoor areas that are part of the tenant's rented space and which are under the exclusive use or control of the tenant. Typically, for apartments, these areas include balconies, balcony railings, and terraces. For rented single family homes or manufactured homes which sit on rented property, these areas include the home itself and patios, yards, gardens or other similar areas. If renters do not have access to these outside areas, the tenant may install the video antenna inside the rental unit. Renters are not required to obtain the consent of the landlord prior to installing a video antenna in these areas. The rule does not apply to common areas, such as the roof or the exterior walls of an apartment building.

Q: Are there restrictions that may be placed on residents of rental property?

A: Yes. A restriction necessary to prevent damage to leased property may be reasonable. For example, tenants could be prohibited from drilling holes through exterior walls or through the roof. However, a restriction designed to prevent ordinary wear and tear (*e.g.*, marks, scratches, and minor damage to carpets, walls and draperies) would likely not be reasonable.

In addition, rental property is subject to the same protection and exceptions to the rule as owned property. Thus, a landlord may impose other types of restrictions that do not impair installation, maintenance or use under the rule. The landlord may also impose restrictions necessary for safety or historic preservation.

Q: If I live in a condominium, cooperative, or other type of residence where certain areas have been designated as "common," do these rules apply to me?

A: No, not if the only place you can install an antenna is on a common area, such as a walkway, hallway, community garden, exterior wall or the roof. However, a resident of these types of buildings may install the video antenna on a balcony, deck, patio, or other area where the individual resident has exclusive use.

Q: If my association, building management, landlord, or property owner provides a central antenna for video programming, may I install an individual video antenna?

EXHIBIT 7

A: Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation of video antennas by individuals. Restrictions based on the availability of a central antenna will generally be permissible provided that: (1) the viewer receives the particular video programming service the viewer desires and could receive with an individual antenna (*e.g.*, the viewer would be entitled to receive service from a specific DBS provider, not simply a DBS provider selected by the association); (2) the video reception in the viewer's home using the central antenna is as good as, or better than, than the quality the viewer could receive with an individual antenna; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming.

Q: May the association, landlord, building management or property owner restrict the installation of an individual video antenna because a central antenna will be available in the future?

A: It is not the intent of the Commission to deter or unreasonably delay the installation of individual antennas because a central antenna may become available. However, viewers could be required to remove individual antennas once a central antenna is available if the cost of removal is paid by the landlord or association and the viewer is reimbursed for the value of the antenna. Further, an individual who wants video programming other than that available through the central antenna should not be unreasonably delayed in obtaining the desired programming either through modifications to the central antenna, installation of an additional central antenna, or by using an individual antenna.

Q: I live in a townhome community. Am I covered by the FCC rule?

A: Yes. If you own the whole townhouse, including the walls and the roof and the land under the building, then the rule applies just as it does for a single family home, and you may be able to put the antenna on the roof, the exterior wall, the backyard or any other place that is part of what you own. If the townhouse is a condominium, then the rule applies as it does for any other type of condominium, which means it applies only where you have an exclusive use area. If it is a condominium townhouse, you probably cannot use the roof or the exterior walls unless the condominium association gives you permission.

Q: I live in a condominium with a balcony, but I cannot receive a signal from the satellite because my balcony faces north. Can I use the roof?

A: No. The roof of a condominium is generally a common area, not an area reserved for an individual's exclusive use. If the roof is a common area, you may not use it unless the condominium association gives you permission.

Q: I live in a mobile home that I own but it is located in a park where I rent the lot. Am I covered by the FCC rule?

A: Yes. The rule applies if you install the antenna anywhere on the mobile or manufactured home that is owned by you. Beginning January 22, 1999, the rule will also apply to antennas installed on the lot or pad that you rent, as well as to other areas that are under your exclusive use and control. However, the rule does not apply if you want to install the antenna in a common area or other area outside of what you rent.

Q: I want an antenna to receive a distant television signal. Does the rule apply to me?

A: No. The rule does not apply to television antennas used to receive a distant signal.

EXHIBIT 7

Q: I want to install an antenna for radio, amateur radio or internet service. Does the rule apply to me?

A: No. The rule only applies to antennas used for video reception. Antennas for AM/FM radio, amateur ("ham") radio or internet are not covered by this rule.

Q: I'm a board member of a homeowners' association, and we want to revise our restrictions so that they will comply with the FCC rule. Do you have guidelines you can send me?

A: We do not have sample guidelines because every community is different. We can send you the rule and the first and second Report and Order and the Order on Reconsideration, which will give you general guidance. Some communities have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the antenna. The residents should comply with the placement preferences provided the preferred placement does not impose unreasonable delay or expense or preclude reception of an acceptable quality signal.

Q: What restrictions are permitted if the antenna must be on a very tall mast to get a signal?

A: If the mast is more than 12 feet above the roof line, the local government, community association or landlord may require you to apply for a permit for safety reasons. If you meet the safety requirements, the permit should be granted.

Q: Does the rule apply to commercial property or only residential property?

A: Nothing in Section 207 or the rule excludes antennas installed on commercial property. The rule applies to property used for commercial purposes in the same way it applies to residential property.

Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?

A: Restrictions that impair installation, maintenance or use of the antennas covered by the rule are preempted (unenforceable) unless they are no more burdensome than necessary for the articulated legitimate safety purpose or for preservation of a designated or eligible historic site or district. If a viewer believes a restriction is preempted, but the local government, community association, or landlord disagrees, either the viewer or the restricting entity may file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction. We encourage parties to attempt to resolve disputes prior to filing a petition. Often calling the FCC for information about how the rule works and applies in a particular situation can help to resolve the dispute. If a local government, community association, or landlord acknowledges that its restriction impairs and is preempted under the rule but can demonstrate "highly specialized or unusual" concerns, the restricting entity may apply to the Commission for a waiver of the rule.

Q: What is the procedure for filing a petition or requesting a waiver at the Commission?

A: Petitions for declaratory rulings and waivers must be served on all interested parties. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific viewer, service must be made on that specific viewer. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from

EXHIBIT 7

the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Finally, if a viewer files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the viewer must serve the local government, association or landlord, as appropriate.

All allegations of fact contained in petitions and related pleadings before the Commission must be supported by an affidavit signed by one or more persons who have actual knowledge of such facts. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Cable Services Bureau

Certificates of service and proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached.

Be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Q: Can I continue to use my antenna while the petition or waiver request is pending?

A: Yes, unless the restriction being challenged or for which a waiver is sought is necessary for reasons of safety or historic preservation. Otherwise, the restriction cannot be enforced while the petition is pending.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the local government, community association, property owner, or management entity that is trying to enforce the restriction has the burden of proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the entity seeking to enforce the restriction to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Can I be fined and required to remove my antenna immediately if the Commission determines that a restriction is valid?

A: You will have a minimum of 21 days to comply with an adverse ruling. If you remove your antenna during this period, in most cases you cannot be fined.

Q: Who do I call if my town, community association or landlord is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (888) CALLFCC (888-225-5322), which is a toll-free number, or 202-418-7096, which is not toll-free. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service or television broadcast station whose service is desired.

Links to Relevant Orders and the Rule

- (First) Report and Order, FCC 96-328, released August 6, 1996: [Text Version | WordPerfect Version]

EXHIBIT 7

- Order on Reconsideration, FCC 98-214, released September 25, 1998: [WordPerfect | Text]
- Second Report and Order, FCC 98-273, released November 20, 1998: [Text | WordPerfect | Acrobat | News Release and Statements]
- OTARD Rule, 47 C.F.R. Section 1.4000: [Text | Acrobat]

GUIDANCE ON FILING A PETITION

Q: What are the procedural requirements for filing a Petition for Declaratory Ruling or Waiver with the Commission?

A: If you wish to file either a Petition for Declaratory Ruling or a Petition for Waiver pursuant to the Commission's Over-the-Air Reception Devices Rule (47 CFR Section 1.4000), you must file an original and two copies of your Petition on the following address:

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Attn: Cable Services Bureau

Petitions for declaratory rulings and waivers must be served on all interested parties. If you are a viewer, you must serve a copy of the Petition on the entity seeking to enforce the restriction (i.e., the local government, community association or landlord). If you are a local government, community association or landlord, you must serve a copy of the Petition on the residents in the community who currently have or wish to install antennas that will be affected by the restriction your Petition seeks to maintain. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific viewer, service must be made on that specific viewer. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Finally, if a viewer files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the viewer must serve the local government, association or landlord, as appropriate.

An entity seeking to impose or maintain a restriction must include with its petition a proof of service that it has served the affected residents. Similarly, a viewer seeking to challenge the permissibility of a restriction must include with the petition a proof of service that the viewer has served the restricting entity with a copy of the Petition. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

Q: What are the substantive requirements for filing a petition for waiver or declaratory ruling?

A: To file a Petition for Waiver, follow the requirements in Section 1.4000(c) of the rule. The local government, community association or landlord requesting the waiver must demonstrate "local concerns of a highly specialized or unusual nature." The petition must also specify the restriction for which the waiver is sought, or the petition will not be considered.

To file a Petition for Declaratory Ruling, follow the requirements set forth in Section 1.4000(d) of the

EXHIBIT 7

rule. Set out the restriction in question so that we can determine whether it is permissible or prohibited under the rule. In a Petition for Declaratory Ruling, the burden of demonstrating that a particular restriction complies with the rule is on the entity seeking to impose the restriction (*e.g.*, the local government, community association or landlord).

While a petition for declaratory ruling or waiver is pending with the Commission or a court, the restriction in question may not be enforced unless it is necessary for safety or historic preservation. No fines or penalties, including attorneys fees, may be imposed by the restricting entity while a petition is pending. If the restriction is found to be permissible, the viewers subject to the ruling will generally have at least 21 days in which to comply before a fine or penalty is imposed.

- FCC -

EXHIBIT 7