"TELECOMMUNICATIONS REFORM -
WHAT IT MEANS TO LOCAL GOVERNMENT"
THE TELECOMMUNICATIONS ACT OF 1996.
On February 8, 1996, President Clinton signed into law the long-awaited "Telecommunications Act of 1996" (the "Act"). The Act makes fundamental modifications to the legal and regulatory structure relating to the telecommunications industry and further blurs the lines among cable, telephony, print, and broadcast technologies. The Act eliminates or softens many of the legal barriers which have artificially precluded cross-industry competition between cable and telephony through a combination of federal preemption and statutory deregulation. Although local government has preserved right-of-way management control and certain compensation rights pursuant to the Act, it is clear that emerging communication technologies will be regulated, if at all, at the federal level.

The Act is extremely complex, interrelated, and ultimately must be read in conjunction with the Communications Act of 1934 (47 U.S.C. §§ 151, et seq. (the "1934 Act")). It will take many months, if not years, before the detailed nuances of the Act have been analyzed, explained, and interpreted. This paper is not intended to constitute a comprehensive survey or analysis of the Act but rather is designed to provide a preliminary overview of those provisions of primary concern to local government. Several provisions of the Act which have drawn national publicity, such as the television V-Chip requirement and the extension of criminal penalties to the dissemination of indecent materials upon the Internet, possess tremendous national importance but are of marginal direct significance to local government. The bulk of those provisions will be mentioned but not analyzed. Rather, I will attempt to focus upon those provisions of the Act which affect compensation and right-of-way regulation rights of local government as well as potentially modify the existing relationship between local government and its cable and telephone providers.

A. DEVELOPMENT OF COMPETITIVE MARKETS (PART II, SECTIONS 251 ET SEQ).

The Act generally relates to the provision of "Telecommunications". The term "Telecommunications" means "the transmission, between or among points specified by the user of information of the user's choosing, without change in the form or the content of the information as sent and received." (Section 3(a)(48)). All Telecommunication Carriers, which means "any provider of Telecommunications Services" (Section 3(a)(49)), possess a statutory duty to interconnect directly or indirectly with the facilities and equipment of other Telecommunications Carriers and to install networks that provide for interconnection flexibility. (Section 251(a)). Local exchange carriers, which are the traditional providers of local telephone service, also possess the statutory obligation to allow resale, number portability, dialing parity, access to rights-of-way and infrastructure, and reciprocal compensation obligations so as to allow connection to their facilities by competing providers such as cable operators or existing long-distance providers. (Section 251(b)). Local exchange carriers must now negotiate in good faith with potential

1 47 U.S.C. § 151 et seq.
2 All statutory references are to the Act unless otherwise noted.
3 Capitalized terms are defined in the Act.
competitive providers to allow access to their networks upon fair, reasonable, and non-discriminatory terms so that competitive access providers possess a realistic opportunity to offer local exchange services.

The regulations relating to open entry into the local exchange service market are phrased as broad policy oriented goals. Few specifics can be found in the Act. The Federal Communications Commission (the "Commission") has been mandated to develop implementing regulations within six (6) months of the date of enactment. In developing implementing regulations, the Commission has been directed not to preclude the enforcement of any state regulation or order that establishes access and interconnection obligations of local exchange carriers and is consistent with the general requirements of the Act. The Commission is directed to establish one or more impartial entities to administer telecommunications numbering and make telecommunication numbers available on an equitable basis.

Upon receiving a request for interconnection, services, or network elements, a local exchange carrier may voluntarily negotiate and enter into a binding agreement with the requesting Telecommunications Carrier without regard to the specific standards contained elsewhere in the Act. Voluntary interconnection agreements must include a detailed schedule of itemized charges for interconnection and must be approved by the appropriate state utilities commission. Agreements which cannot be achieved through voluntary negotiation or mediation are subject to binding arbitration pursuant to petition by either party. All interconnection agreements, whether adopted by negotiation or arbitration, require approval of the jurisdictional state utilities commission. A state utilities commission may reject the interconnection agreement if, among other things, it discriminates against a Telecommunications Carrier not a party to the agreement or is not consistent with the public interest, convenience, and necessity. If the state utilities commission does not act to approve or reject the agreement within certain time frames specified in the Act, the interconnection agreement will be deemed approved. State courts have been denied jurisdiction to review the action of a state utilities commission in approving or rejecting an interconnection agreement. As an exclusive remedy, the Commission may preempt the jurisdiction of the state utilities commission if it determines that the state utilities commission has failed to act to carry out its responsibility under the Act in relation to the approval of interconnection agreements.

A. REMOVALS OF BARRIERS TO ENTRY. (SECTION 253).

No state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate Telecommunications Service. (Section 253(a)). States, as opposed to local government, preserve the ability to impose, on a competitively neutral basis and consistent with Section 254 of the Act, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of Telecommunications Services, and safeguard the rights of consumers. Local government authority in these areas has been preemptively eliminated. (Section 253(b)).
On the other hand, nothing in Section 253 of the Act affects the authority of the state or local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of public rights of way on a non-discriminatory basis, if the compensation required is publicly disclosed by such government. (Section 253(c)).

If, after notice and an opportunity for public comment, the Commission determines that a state or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsections (a), (b) above, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency. (Section 253(d)).

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4 Section 253(c) presents a host of ambiguities and complexities for local government. First, the requirement that any compensation requirements be applied on a "competitively neutral and non-discriminatory basis" presents problems for California communities since our local exchange carriers cannot be charged a franchise fee by local government pursuant to their statewide constitutional franchise and Public Utilities Code Section 7901. Thus, it is unclear whether any alternative providers, such as cable operators providing telephony service, can be charged compensation based upon the existing state regulatory scheme. Section 253(c) may or may not preempt existing state law which preclude enforcement of compensation requirements upon local exchange carriers. In addition, the public disclosure language relating to compensation is ambiguous since it does not address the issue as to whom the disclosure must be made.
A. UNIVERSAL SERVICE (SECTION 254).

The Act establishes a comprehensive process to implement, as a nationwide goal, the extension of universal service to all segments of our society. A Federal-State Joint Board (the "Joint Board") shall be created to recommend implementing regulations to enhance the universal service mandates contained in the Act. The Commission shall initiate a single proceeding to implement the recommendations of the Joint Board and shall complete such proceeding within fifteen (15) months of the date of enactment of the Act. The Act sets forth numerous goals, in some cases conflicting, relating to universal service requirements which must be considered by the Joint Board and the Commission in establishing implementing regulations. Among the universal goals espoused by the Act are the extension of Telecommunication Services to schools, health care facilities, and libraries. All Telecommunications Carriers that provide interstate Telecommunication Services are required to contribute, on an equitable and non-discriminatory basis subject to further regulations by the Commission, to a fund established by the Commission to preserve and advance universal service. A state, but not local government, may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Within six (6) months after the date of enactment of the Act, the Commission must adopt rules that require that the rates charged by providers of interchange Telecommunication Services to subscribers in rural and high-cost areas shall be no higher than the rates charged by such providers to its residents in urban areas. The Act requires specific requirements for the extension of Telecommunication Services to certain health care providers in rural areas and also provides for the provision of Telecommunication Services to educational providers and libraries at a discounted rate to be determined pursuant to further rulemaking of the Commission. Cross-subsidy between competitive and non-competitive Telecommunication Services offered by the same provider is barred and the states, with respect to intrastate services, may establish any necessary cost allocation and accounting rules to prevent such subsidies. Cross-subsidies by interstate carriers shall be prohibited pursuant to regulations of the Commission.

A. MARKET ENTRY BARRIERS PROCEEDING (SECTION 257).

Within fifteen (15) months after the date of enactment of the Act, the Commission shall complete a proceeding for the purpose of identifying and adopting regulations to eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of Telecommunication Services and Information Services. The Commission is mandated to adopt regulations to promote policies and purposes favoring "diversity of media voices, vigorous economic competition, technological advancement and promotion of the public interest, convenience, and necessity."
A. **EFFECT ON OTHER REQUIREMENTS. (SECTION 261).**

Existing regulations of the Commission, to the extent that they are not inconsistent with the Act, are grandfathered. Likewise, nothing in the Act shall be construed to prohibit any state utilities commission from enforcing regulations prescribed prior to enactment of the Act, or from prescribing regulations after such date of enactment, if such regulations are not inconsistent with the Act. A state, but not local government, may impose additional requirements on a Telecommunication Carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access so long as such regulations are not inconsistent with the Act or the Commission's implementing regulations.

A. **BROADCAST OWNERSHIP (SECTION 202).**

1. **Ownership of Media Properties.**

   The Commission has been ordered to modify its existing regulations by eliminating any provisions limiting the number of AM or FM broadcast stations that may be owned or controlled by one entity nationally. In addition, the Commission has been mandated to liberalize its existing limitations regarding the number of commercial radio stations which may be owned by a single entity in a single market. The limitation upon the number of television stations which may be owned by a single entity nationwide has been eliminated and the national market share which may be achieved by any single entity has been increased to thirty-five percent (35%). The Commission has been ordered to modify its "one to a market" and dual network prohibitions so as to expand broadcast ownership potential. The Commission's regulation prohibiting a person or entity from owning or controlling a network of broadcast stations and a cable system has been eliminated. The Commission is required to review the entirety of its ownership rules to determine whether the continuation of any or all of such rules are necessary to preserve the public interest as a result of increased competition which will presumptively occur as a result of the Act.

1. **Broadcast License Renewals.**

Over-the-air broadcasters are now provided with a statutory expectancy of license renewal upon a determination that:

- The station has served the public interest, convenience, and necessity;
- There have been no serious violations of the Act or the rules and regulations of the Commission; and
- There have been no other violations of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.
Comparative renewal hearings are prohibited and the Commission is specifically barred from considering whether the public interest, convenience, and necessity might be better served by a grant of a license to a person other than the renewal applicant.

A. **DIRECT BROADCAST SATELLITE SERVICE (SECTION 205).**

The Commission has been granted exclusive jurisdiction to regulate the provision of direct-to-home satellite services. "Direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.\(^5\)

A. **CABLE ACT REFORM (SECTION 301).**

1. **Definition of "Cable Systems".**

   The definition of "Cable System" has been amended to make it clear that the critical jurisdictional element in establishing a cable system, or lack thereof, is the use of public rights-of-way.

1. **Rates.**

   Commission jurisdiction over Cable Programming Service Tier ("CPST") rates may now only be triggered through a complaint of the franchising authority as opposed to prior law where Commission jurisdiction was triggered by a complaint of "any subscriber, franchising authority, or other relevant state or local government entity. . . ." The Commission is required to review a CPST complaint and issue a final order within ninety (90) days after receipt of such a complaint unless the parties agree to extend the period for such a review. A franchising authority may not file a CPST complaint unless, within ninety (90) days after such increase becomes effective, it receives subscriber complaints. Finally, CPST rate regulation sunsets after March 31, 1999 and CPST rates will then become unregulated in all markets.

   Section 623(d) now requires a cable operator to provide uniform rates throughout its geographic area. The Act amends this requirement to exclude any market subject to Effective Competition and also excepts video programming offered on a per channel or per program basis. Likewise, bulk discounts to multiple dwellings are not subject to this provision except for the cable operator that is not subject to an effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the Cable System shall have the burden of showing that its discounted price is

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\(^5\) See Section IV for discussion of implementing regulations.
not predatory. As a practical result of the amendments to Section 623(d), only regulated rates are now subject to the uniform pricing requirements of the 1992 Cable Act.

1. **Amendment of definition of Effective Competition.**

The definition of "Effective Competition" has been liberalized so that if a local exchange carrier (i.e. the local telephone company) or its affiliate (or any Multi-Channel Video Programming Distributor using the facilities thereof) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, Effective Competition is deemed to exist so long as the video programming services so offered are comparable to the video programming services provided by the unaffiliated cable operator in that area. Thus, at such point in time as the local telephone company offers some form of video programming services to telephone users which are comparable to the services offered by the cable operator, notwithstanding the penetration rate or lack thereof, Effective Competition is deemed to exist. The Act does not define the term "comparable" but regulations of the Commission have defined this concept in terms of the numbers of activated channels as opposed to the quality of programming offerings.

1. **Small Cable Operator Rate Deregulation.**

The CPST is deregulated for small systems immediately as well as any Basic Service Tier ("BST") that was the only service tier subject to regulation as of December 31, 1994. A "Small Cable Operator" means, in any franchise area in which the operator services fifty thousand (50,000) or fewer subscribers, a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent (1%) of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

1. **Technical Standards.**

Section 624(e) of the 1992 Act requires the Commission to establish minimum technical standards and allows a franchising authority to require as part of a franchise provisions for the enforcement of those standards. A franchising authority may apply to the Commission for a waiver to impose standards that are

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6  Order and Notice re Proposed Rulemaking (CS Pocket No. 96-85, FCC 96-154 April 9, 1996 (the "Cable Order" ¶ 12). Twelve (12) or more channels, at least some of which are over-the-air, are "comparable."

7  The term "affiliate" requires only a 10% ownership interest and the affiliate does not necessarily have to use the facilities of the Local Exchange Carrier. (Cable Order, ¶ 15-16). The cable industry has argued that an "affiliate" of a Local Exchange Carrier which offers over-the-air service via MMDS triggers complete deregulation. The Commission has not ruled upon this issue.

8  A city possesses 90 days to contest a deregulation certification or it is deemed granted (Cable Order, ¶ 28). The city may request supporting information from the cable operator. The cable operator may appeal a city order denying rate deregulation to the Commission within 30 days of its issuance. Rates are deregulated during the appeal subject to refund. (Cable Order, ¶ 29). It is unclear if buyers of the system, which do not independently qualify as Small Cable Operators, inherit any benefit of rate deregulation. Until this issue is clarified, cities should carefully review rate deregulation certificates of systems subject to an asset or stock purchase agreement.
more stringent than the standards prescribed by the Commission under this section. The authority of a franchising authority to require as part of a franchise provisions for the enforcement of technical standards as well as the ability of a franchising authority to apply to the Commission for permission to enforce more stringent standards has been eliminated. In its place, the Act provides that no state or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology. The combination of the deletion from the existing language of Section 624(e) and the prohibitory language contained in the Act may significantly undercut the ability of franchising authorities to impose technical design requirements as a condition of the grant or renewal of a franchise.

1. **Subscriber Notices.**

   The cable operator is authorized to provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. The cable operator is no longer required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by any federal, state, or local agency on the transaction between the operator and the subscriber.

1. **Anti-Trafficking-System Sales.**

   The three-year holding period which prohibited the sale of a cable system within a thirty-six (36) month period following either the acquisition or initial construction of a system absent a waiver of the Commission has been repealed and there is no longer any time constraint upon the ability of a cable operator to sell its cable system.

1. **Rate Regulation - Aggregation of Equipment Costs.**

   For the purposes of calculating maximum permitted rates, the Commission is ordered to allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category, provided, however, such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated Basic Service Tier.

1. **Rate Regulation - Treatment of Prior Year's Losses.**

   Losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, and the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation are lawful. This amendment shall take place on the date of enactment of the Act and shall be applicable to any rate proposal filed on or after September
4, 1993 upon which no final action has been taken by December 1, 1995.  This amendment may affect Cost of Service filings which had not been definitively resolved as of December 1, 1995 where the Cable Operator, which is the original operator as opposed to a sale assignee, has attempted to justify an above-benchmark rate utilizing accumulated losses in excess of the two-year standard currently in effect with the Commission.

A. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

1. The Statutory Scheme.

To the extent that a common carrier telephone company is providing transmission of Video Programming on a common carrier basis, such carrier shall be subject to the requirements of Title II (common carrier regulation) of the 1934 Act which shall not otherwise be subject to the requirements of Title VI (cable television regulation).  However, this paragraph shall not affect the treatment under Section 602(7)(c) of a facility of a common carrier as a cable system. Section 602(7)(c) provides that a common carrier facility shall be considered a cable system (other than for the purposes of Section 621(c)) to the extent that such facility is used in the transmission of video programming directly to subscribers. A common carrier telephone company can provide video programming pursuant to one of three models. First, as discussed above, it can provide common carrier video programming, which had prior been referred to as "Video Dialtone", without regulation akin to that afforded cable television operators. Second, a telephone company is now expressly authorized to provide editorial discretion-based programming as a franchised cable operator pursuant to Title VI of the 1934 Act. Third, a new analytical model entitled "Open Video Systems" allows a common carrier telephone company to escape some, but not all, aspects of Cable System regulation.

A telephone company seeking Open Video System classification must file for certification with the Commission pursuant to Section 653 and will only be subject to Parts I through IV of Title VI of the 1934 Act as provided in Section 653(c). A local exchange carrier that provides cable service through an Open Video System or a cable system shall not be required to make capacity available on a non-discriminatory basis to any other person for the provision of Cable Service directly to subscribers.

A local exchange carrier, or any affiliate thereof, may not purchase or otherwise acquire, directly or indirectly, more than a ten percent (10%) financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service. Likewise, no cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a ten percent (10%) financial interest or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area. With certain
specified exceptions, local exchange carriers and cable operators who share a telephone service area and cable franchise area are prohibited from entry into joint venture or partnership agreements to provide Video Programming Services directly to subscribers or to provide Telecommunication Services within such market.

In relation to the establishment of Open Video Systems, the Commission is mandated to develop implementing regulations within six (6) months after the date of enactment of the Act. The regulations shall include, among other things, the following:

a) The prohibition from discriminating among Video Programming Providers with regard to carriage on its Open Video System and ensure that the rates, terms and conditions for such carriage are just and reasonable and not unjustly or unreasonably discriminatory.

a) If demand exceeds the channel capacity of the Open Video System, prohibit an operator from an Open Video System and its affiliates from selecting the Video Programming Services for carriage on more than one-third of the activated channel capacity of such system, but nothing in this subparagraph shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide directly to subscribers.

a) Permit an operator of an Open Video System to carry on only one channel any Video Programming Service that is offered by more than one Video Programming provider (including the local exchange carrier's video programming affiliate), provided, however, that subscribers have ready and immediate access to any such video programming service.

a) Extend to the distribution of Video Programming over Open Video Systems the Commission's regulations concerning sports exclusivity, network non-duplication, and syndicated exclusivity.

a) Prevent an operator of an Open Video System from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purpose of selecting programming on the Open Video System, or in the way such material or information is presented to subscribers.

Upon certification as an Open Video System, Sections 612 (leased access channels), 617 (sale of cable systems), and the bulk of Parts III and IV of Title 6 shall not apply. Most importantly, the provisions of the Cable Act relating to franchising requirements, franchise fees, and regulation of services, facilities, and equipment are not applicable, Section 611 relating to public, educational, and governmental channels and Sections 614-615 concerning carriage of local commercial television signals and carriage of non-commercial educational television channels shall apply only in accord with future regulations to be adopted by the Commission.
Although Section 622 relating to franchise fees is not directly applicable to Open Video Systems, the Act does provide that an operator of an Open Video System may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority in lieu of the franchise fees permitted under Section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area, as determined in accordance with the regulations prescribed by the Commission. An operator of an Open Video System may designate that portion of a subscriber bill attributable to the fees under this subparagraph as a separate item on the bill.

The Act expressly terminates the Commission's Video Dialtone Regulations although nothing in the Act shall be construed to require the termination of any Video Dialtone System that the Commission had approved prior to the date of enactment of the Act.

1. The Implementing Regulations.

In an order released on June 3, 1996 (the "OVS Order"), the Commission established the preliminary framework and rules that will govern Open Video Systems ("OVS").

a) Public, Educational and Governmental Access ("PEG").

The Commission rejected the argument that Congress limited an OVS operator's PEG obligations to the provision of capacity. The Act imposed a responsibility on OVS operators to contribute toward PEG services, facilities and equipment to the same extent as local cable operators.

To ensure compliance in each franchise area, OVS operators may, in the first instance, negotiate their PEG access obligations with the local franchising authority. If no agreement is reached, the OVS operator must satisfy the same access obligations as the local cable operator. The Commission stated that the OVS operator would accomplish this by connecting to the cable operator's access channel feeds and by sharing costs directly related to supporting PEG access. If the OVS operator and cable operator cannot agree on how the connection can best be accomplished, the Commission ruled that the local franchising authority may establish appropriate cost allocation rules.

If there is no incumbent cable operator, the OVS operator must provide a reasonable amount of capacity and support for PEG. The Commission stated that "reasonable" could be defined by the requirements found in a neighboring community. If an incumbent cable operator
converts to OVS, the operator will be required to maintain previously existing PEG obligations.

a) **Local Control of Rights-of-way.**

The Commission determined that local governments "may impose [on OVS operators] non-discriminatory and competitively neutral conditions or requirements that are necessary to manage the public right-of-way." The Commission further identified a number of actions as "falling squarely" within local governments' "legitimate management function." These functions include: (1) coordination of construction schedules, (2) establishment of standards and procedures for constructing lines across private property, (3) determination of insurance and indemnity requirements, (4) establishment of rules for local building codes, (5) scheduling common trenching and streets cuts, (6) repairing and resurfacing construction-damaged streets, (7) ensuring public safety in the use of rights-of-way and (8) keeping track of the various systems using the rights-of-way to prevent interference among facilities.

In defining the limits of such management authority, the Commission ruled that state and local governments cannot require any OVS operator to obtain a Title VI franchise from a state or local authority for use of public rights-of-way. The Commission explained that any state or local requirements that seek to impose Title VI "franchise-like" requirements "would directly conflict with Congress' express direction that open video system operators need not obtain local franchises as envisioned by Title VI." The Commission cited the following as examples of such requirements: donating money to local educational or charitable institutions, institutional networks requirements, and specifying the amount or type of capacity that the system must possess.

a) **Cable System Conversion to OVS.**

The Commission concluded that any "person" can become an OVS operator, including a cable television system operator. A cable operator cannot convert to an OVS operator in its service area unless there is "Effective Competition." If a cable operator converts to OVS status, the cable operator remains bound by the terms of its existing franchise agreements.

a) **Franchise Fees.**

Pursuant to the Act, OVS operators may be required to pay "a fee in lieu of franchise fees" at the same rate as the local cable operator. The Commission determined that the "fee in lieu of franchise fees" should apply to all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming
providers. Revenue received by unaffiliated programmers from their subscribers would not be included in "gross revenue," potentially causing a reduction in franchise fees from current levels.

a) Certification Process.

An operator must submit a completed "Open Video System Certification of Compliance" (FCC Form 1275) to Commission prior to constructing and/or operating an OVS system. Certification is deemed approved if the application is not rejected by the Commission within ten days of the Commission's receipt of the form. Any party contesting the certification must file its comments within five days of the filing of the certification.

The Commission rejected arguments that the operator should have all required authorizations, including local authorizations, prior to filing the certification. It is permissible, but not necessary, for an operator to obtain prior to certification the consent of local authorities for use of public rights-of-way and the approval of local authorities regarding the manner in which the operator's PEG obligations will be fulfilled.

a) Allocation of Capacity.

Pursuant to the Act, an OVS operator must allocate two-thirds of the system's channel capacity to unaffiliated video programmers if demand for carriage exceeds the system's capacity. In the OVS order, the Commission adopted limited allocation guidelines. As part of those guidelines, the Commission ruled that the analog and digital portions of an open video system must be treated independently in allocating capacity. A provider can require programmers to buy capacity in full channel increments; and the OVS provider must provide a 90-day enrollment period for unaffiliated programmers to apply for capacity on the system. The enrollment period will begin when the OVS operator files a notice with the Commission.

a) OVS Rates.

An OVS operator must charge unaffiliated programmers rates that are just and reasonable and not unjustly or unreasonably discriminatory. The Commission established a presumption for determining just and reasonable rates. A rate is presumed just and reasonable if one unaffiliated programmer or unaffiliated programmers as a group occupy capacity equal to the lesser of one-third or that occupied by the OVS operator and where the rate complained of is no higher than the average of the rates paid by unaffiliated programmers receiving carriage. The Commission determined that operators may offer preferential rates for not-for-profits. The Commission also determined that contracts between the operator and its programmers do not have to be made publicly available.
a) Institutional Networks.

Institutional Network regulations may not be imposed. If an OVS operator voluntarily agrees to build an institutional network, then "the local franchising authority may require that educational and governmental access channels be designated on that network to the extent such channels are designated on the institutional network of the local cable operator."

A. PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATION SERVICES (SECTION 303).

If a cable operator or affiliate thereof is engaged in the provision of Telecommunication Services, such cable operator or affiliate is expressly exempted from the requirement to obtain a franchise and the provisions of Title VI relating to cable systems shall not apply to such cable operator or affiliate for the provision of Telecommunication Services. In addition, the franchising authority may not impose any requirement under this Title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a Telecommunication Service by a cable operator or an affiliate thereof. The franchising authority may not order a cable operator or affiliate thereof to discontinue the provision of a Telecommunication Service or to discontinue the operation of a cable system to the extent such cable system is used for the provision of a Telecommunication Service by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under Title VI with respect to the provision of such Telecommunication Service. A franchising authority may not require a cable operator to provide any Telecommunication Service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of franchise.

Finally, the definition of the term "Franchise Fees" is limited to the provision of "Cable Service" thus negating any argument that a franchise fee pursuant to a cable franchise can be applied to non-cable services. The Act is silent as to the grandfathering, or lack thereof, of existing franchise agreements which apply the gross revenue definition to non-cable services which now would be classified as Telecommunication Services.
A. COMMERCIAL AVAILABILITY OF VIDEO PROGRAMMING AND RECEPTION DEVICES (CONVERTERS AND DECODERS) (SECTION 629).

The Commission is directed to adopt regulations to assure the commercial availability to consumers of converter boxes, interactive communications equipment and other equipment used by consumers to access Multi-Channel Video Programming and other services offered over Multi-Channel Video Programming Systems from manufacturers, retailers, and other vendors not affiliated with any Multi-Channel Video Programming distributor. In essence, the Commission has been directed to ensure that consumers possess the competitive choice of purchasing system interface devices from retailers unaffiliated with the Cable Operator or Telecommunication Carrier or to purchase or rent those items from their local operator.

A. REGULATORY FORBEARANCE (SECTION 401).

In somewhat unique language, the Commission is directed to "forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunication service...in any or some of their geographic markets if the Commission determines that:"

1. Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunication service are just and reasonable and are not unjustly or unreasonably discriminatory;

1. Enforcement of such regulation or provision is not necessary for the protection of consumers; and

1. Forbearance from applying such provision or regulation is consistent with the public interest."

In making the determination under the criteria stated above, the Commission shall consider whether forbearance from enforcing the provisions or regulations will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of Telecommunication Services. If the Commission determines that such forbearance will promote competition among providers of Telecommunication Services, that determination may be the basis for a Commission finding that forbearance is in the public interest. Upon determination that a particular regulation or series of regulations should not be enforced, a state commission may not continue to apply or enforce any provisions of this Act that the Commission has determined to forbear from applying pursuant to the procedure described above. Thus, the Commission has been given the unique statutory authority from Congress to modify, on a case by case basis, the vast set of regulations established by the Act if it determines that such a modification or forbearance will be pro-competitive.
A. **PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES (SECTION 602).**

A provider of Direct-To-Home Satellite Service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on Direct-To-Home Satellite Service. The term "Local Taxing Jurisdiction" means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction or other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee but does not include a state. The terms "Tax and Fee" means any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a Local Taxing Jurisdiction.

Nothing contained in Section 602 shall be construed to prevent taxation of a provider of Direct-To-Home Satellite Service by a state or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a state.

A. **PRIVACY OF CUSTOMER INFORMATION (SECTION 222).**

Every Telecommunication Carrier has a duty to protect the confidentiality of proprietary information of, or relating to, other Telecommunication Carriers, equipment manufacturers, and customers, including Telecommunication Carriers reselling Telecommunication Services provided by a Telecommunication Carrier. A Telecommunication Carrier that receives or obtains proprietary information from another carrier for purposes of providing any Telecommunications Service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

A. **POLE ATTACHMENTS (SECTION 703).**

Utilities, which means any person who is a local exchange carrier, or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communication, shall provide a cable system or any Telecommunication Carrier with non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this general requirement, utility providing electric service may deny a cable system or any Telecommunication Carrier access to its poles, ducts, conduits, or rights-of-way on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

In addition, a utility that engages in the provision of Telecommunications Services or cable services shall impute to its costs of providing such services and charge any affiliate, subsidiary, or associate company engaged in the provision of such services, an
equal amount to the pole attachment rate for which such company would be liable under this Section.

I. COMMUNICATIONS DECENCY ACT OF 1996 (THE "DECENCY ACT").

A. Prohibition of Indecent Communications.

In one of the most publicized provisions of the Decency Act, Congress extended criminal status to obscene or indecent communications to recipients who are under eighteen years of age. The intent of these provisions of the Decency Act is to extend criminal liability to the transmission to minors of indecent material upon the Internet and other Telecommunication Services. In addition to defenses which would be otherwise available at law, the Decency Act provides network owners and users with the following due diligence defenses:

1. The person has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a [prohibited] communication which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

1. The person has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

The Commission is empowered to prescribe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications. The Decency Act does not authorize the Commission to enforce said restrictions and the Commission is specifically restricted from any enforcement powers. Rather, the use of access restriction measures approved by the Commission shall be admitted as evidence of good faith efforts for the purpose of the defense described above.9

No state or local government may impose any liability for commercial activities or actions by commercial entities, non-profit libraries, or institutions of higher learning in connection with prohibited communications that is inconsistent with the treatment of those activities or actions under the Decency Act, provided, however, nothing in the Act shall preclude any state or local government from enacting and enforcing complimentary oversight, liability, and regulatory systems, procedures, and requirements relating to intrastate services which are not inconsistent with the Act's treatment of interstate

services. Likewise, nothing in this subsection precludes or preempts any state or local
government from governing conduct that is not covered by the Decency Act.

A. Scrambling of Sexually Explicit Adult Video Service Programming (Section 641).

Cable operators that provide sexually explicit adult programming or other
programming that is indecent on any channel shall fully scramble or otherwise fully block
the audio and video portion of such channel so that one not a subscriber to such channel
or programming does not receive it. Until a Multi-Channel Video Programming
distributor complies with this requirement, the distributor shall limit the access of
children to the adult programming by not providing such programming during the hours
of the day, as determined by the Commission, "when a significant number of children are
likely to view it." In addition, a cable operator is specifically authorized to refuse to
transmit any public access program or a portion of a public access program which
contains obscenity, indecency, or nudity. Similar censorship rights are extended to Cable
Operators in relation to lease access channels.10

A. Television Rating System.

The Commission is mandated to form an advisory committee to create guidelines
and recommended procedures for the identification and rating of video programming that
contains sexual, violent, or other indecent material about which parents should be
informed before it is displayed to children. In developing the rating system, political and
religious contents of the reviewed programming should not be considered. In addition,
the Commission has been directed, in consultation with the television industry, to
establish rules requiring distributors of such video programming to transmit such rating to
permit parents to block the display of video programming that they have determined is
inappropriate for their children.

A. The Television V-Chip.

In order to enforce the rating system described above, the Commission is further
required to develop regulations which would require, in the case of an apparatus designed
to receive television signals that are shipped in interstate commerce or manufactured in
the United States and that have a picture screen thirteen (13) inches or greater in size, that
some apparatus be equipped with a feature design to enable viewers to block display of
all programs with a common rating (the "V-Chip"). As new technology is developed, the
Commission shall take such action as the Commission determines appropriate to ensure
that blocking service continues to be available to subscribers. The Commission may
amend the rules requiring industry ratings and/or V-Chip technology upon a

10 A preliminary injunction has likewise been granted prohibiting the enforcement of this provision of the Decency Act.
(Playboy Entertainment Group, Inc. et al. v. United States of America et al. (Case No. 96-94/96-107-JJF, consolidated action) 918
F.Supp. 813 (D.C. Delaware - March 7, 1996). The ultimate constitutionality of scambling requirement is highly suspect after the
Supreme Court decision in Denver Area Educational Telecommunications Consortium, Inc. v. Federal Communications Commission
(96 Daily Journal D.A.R. 7697 (1996)).
determination that alternative blocking technology now exists which allows parents to block programming based on identifiable programs without ratings at a cost comparable to V-Chip technology.

The provisions relating to the establishment of a rating system and the implementation of V-Chip technology shall take effect one (1) year after the date of enactment of the Act but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not by such date:

1. Establish voluntary rules for rating video programming which contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

1. Agree voluntarily to broadcast signals that contain ratings of such programming.

The Commission is further authorized to establish an effective date for the absolute requirement of V-Chip technology which date shall not be less than two (2) years after enactment of the Act.

I. REGULATION OF CELLULAR TOWERS.

Local government possesses the authority to regulate cellular towers. This authority is supported by: 1) the Act; 2) the general practice of local communities regulating cellular towers without judicial interference; and 3) a recent judicial opinion which states that local governments can impose temporary moratoriums on cellular towers in order to develop appropriate regulations.

A. Local Governments Possess the Authority to Regulate the Placement of Cellular Telecommunication Towers.

The Act specifically addresses the issue of local land use regulation of wireless telecommunications equipment. The section of the Act which deals with local zoning authority over cellular telecommunications facilities reads as follows:

"Preservation of Local Zoning Authority

(A) General Authority - Except as provided in this paragraph, nothing in this act 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.

(47 U.S.C. § 332(c)(7))(1996)).

The Act governs regulations of "personal wireless service facilities". Cellular telephones and wireless paging services are included within the definition of personal wireless service facilities. Personal wireless service facilities include facilities used to transmit radio communication services carried on between either: 1) mobile stations or receivers and land stations; or, 2) mobile stations communicating amongst themselves. (47 U.S.C. § 153(n).) Cellular services are defined as "radio telecommunications services provided using a cellular system." (47 C.F.R. §22.99 (1995).) Paging services are defined as the "transmission of coded radio signals for the purpose of activating specific pagers..." (Ibid.) Therefore, the Act specifically allows local regulation of towers and/or antennae of the cellular telephone or paging industry. Indeed, the Commission has
specifically stated that local authorities have the authority to regulate the placement of cellular towers. (FCC Fact Sheet, "New National Wireless Tower Siting Policies" (April 23, 1996) p. 8.)

In summary, the Act allows local zoning regulation subject to the following conditions:

1) the local entity may not discriminate between different providers of personal wireless services, such as cellular, wide-area specialized mobil radio ("SMR") transmitters, or broadband personal communication services ("PCS");

2) the local entity may not take action that would ban altogether the construction, modification, or placement of cellular facilities in a particular area which would prohibit cellular communications in a certain area; and

3) the local entity may not regulate cellular facilities based on the effects of radiation more stringently than the standards promulgated by the FCC. (The FCC is mandated by law to have radiation standards promulgated by August, 1996.)

Cellular providers are also subject to regulation by the California Public Utilities Commission (CPUC). The CPUC's regulations concerning cellular towers were recently updated in General Order 159A on May 8, 1996. General Order 159A: 1) requires compliance with CEQA; 2) requires that individuals be given reasonable notice and input into the review process; 3) ensures that public health and local zoning concerns are addressed; 4) ensures that cellular providers are not unreasonably delayed by the review process; and 5) ensures cellular providers provide quality service to their residents.

General Order 159A states that the CPUC will generally defer to local agencies to regulate the location and design of cellular telecommunications facilities. However, the CPUC will preempt local government decisions if there is a clear conflict with the CPUC's above-stated goals and/or statewide interests. Preemption by the CPUC is a rare event - the CPUC has only preempted one local regulation of cellular providers.

A. Local Governments May Impose Temporary Moratoria on the Construction of Any Cellular Towers.

In the one judicial opinion which to date has interpreted the Act, the court held that a city could impose a temporary moratorium on the construction of any cellular towers in order to give the city time to develop appropriate local regulations regarding cellular towers. (Sprint Spectrum v. City of Medina (W.D. Wash. 1996) 1196 U.S. Dist. 6469.) In Sprint, the City of Medina adopted a six-month moratorium on issuing permits for additional wireless communications facilities. Sprint argued that the moratorium violated Section 704(a)(7)(B)(i)(II) of the Act which states that local governments shall not prohibit the provision of personal wireless services. (Id. at 11.)

The Court disagreed with Sprint and stated that a temporary moratorium does not "prohibit" cellular services, but merely delays cellular service until the city has developed
appropriate regulatory standards. (Ibid.) The Court noted that it was reasonable for the
city to act carefully in a field with rapidly evolving technology. (Id. at 12.) Sprint not
only allows a city to impose a temporary moratorium on cellular towers, but implicitly
recognizes the right of localities to impose reasonable regulations on cellular
telecommunications facilities.

A. Local Governments May Impose Prospective Conditions on
Antenna Towers Which Limit the Future Use of the Property.

One way to control the deleterious effects of cellular towers is to require that
applicants make modifications to cellular towers in the future if technology advances to
the point where cellular towers can be made safer or less visually obtrusive.

Local governments may impose conditions on development which limit the period
of time which that type of development can exist on the property. (Edmonds v. County of
Los Angeles (1953) 40 Cal.2d 642.) In Edmonds, the Board of Supervisors allowed the
applicant to install 30 additional trailers in a trailer park on the condition that after 3 years
all trailers would be removed from the property. At the end of the 3 year period, the
applicant argued that he did not have to remove the trailers from the property. The court
stated that since the applicant could only use the property subject to the conditions of the
conditional use permit ("CUP"), the terms of the CUP controlled the period of time for
the conditionally permitted use. (Id. at 653.)

Similarly, the city can include conditions in the CUP which the applicant must
perform at a future date. Generally, a city cannot modify a CUP once an applicant has
expended "substantial sums" in reliance on the CUP because the applicant has obtained
However, an applicant obtains no "vested rights" in a certain conditionally permitted use
if the CUP specifically imposes prospective conditions which the applicant must satisfy at
a future time. (Russ Bldg. Partnership v. City and County of San Francisco (1988) 44
881, 102 L.Ed.2d 201, 109 S.Ct. 209.)

I. REGULATION OF SATELLITE DISHES.

The Act directed the Commission to promulgate regulations to prohibits
restrictions that impair a viewer's ability to receive video programming services through
signals designed for over-the-air reception of television broadcast signals, multi-channel,
multi-point distribution service, or direct broadcast satellite services. (Act, Section 207.)
In Report and Order and Further Notice of Proposed Rulemaking (FCC 96-76, released
March 11, 1996, 661 F.R. 10710 (the "Order and Further Notice"), The Commission
established a legal presumption that restrictive state or local regulations are unreasonable,
and therefore preempt them, if they affect the installation, maintenance, or use of a
satellite earth station antennae that is one meter or less in diameter irrespective of land
use or zoning category. Likewise, state and local zoning, land use, building, or similar
regulations that materially limit transmission or reception by satellite earth station
antennas, or imposes more than minimal cost on users of such antennas, are preempted as
to satellite earth station antenna that are two meters or less in diameter and are located or
are proposed to be located in any area where commercial or industrial uses are generally
permitted by non-federal land use regulation. (47 C.F.R. § 25.104(b)(1).) Irrespective of
antenna size, the burden of proof is upon the land use authority to demonstrate the
"reasonableness" of its regulation. "Reasonable" for the purpose of the Commission's
regulations, means that the local regulation:

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

(2) Furthers the stated health, safety or aesthetic objective without
unnecessarily burdening the federal interest and ensuring access to satellite
services and in promoting fair and effective competition among competing
communication service providers." (47 C.F.R. Section 25.104(a).)

To the extent that the proposed satellite earth station antenna is one meter or less
or two meters or less and located within a commercial or industrial zone, a restrictive
regulation is presumed unreasonable and cannot be enforced unless the city has obtained
a waiver from the Commission or a final declaration from the Commission or a court of
competent jurisdiction that the presumption of unreasonableness has been effectively
rebutted. (47 C.F.R. § 25.104(b)(1).) In order to rebut the presumption of
unreasonableness relating to small size satellite dishes, the city must show that the
regulation in question:

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

(2) Is not more burdensome to satellite users than is necessary to
achieve the health or safety objective;

(3) Is specifically applicable on its face to the class of antenna
described above. (C.F.R. § 25.104(b)(2).)

A person aggrieved by a local land use regulation which restricts the installation
or placement of a satellite dish must exhaust all non-federal administrative remedies.
Subsequent to said exhaustion, the aggrieved party may file a petition with the
Commission requesting a declaration that the state or local regulation in question is
preempted. Nonfederal administrative remedies specifically do not include judicial
appeals of administrative determinations and are statutorily deemed exhausted when:

"(1) The application for a permit or other authorization required by the
State or Local Authority has been denied and any administrative appeal and
variance procedures has been exhausted.

(2) The application for a permit or other authorization required by the
State or Local Authority has been on file for 90 days without final action;
(3) The applicant 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, pullmount, or otherwise specially install the antenna, greater than the aggregate purchase or total lease costs of the equipment as normally installed; or

(4) A State or Local Authority has notified the Petitioner of impending similar criminal actions. (47 CFR § 25.104(c))."

To the extent that a city wishes to maintain and enforce zoning or other regulations inconsistent with these regulations, the City may apply to the Commission for a full or partial waiver. Such waivers will only be granted upon a showing that specific local concerns exist and that the local concerns are of a highly specialized and unusual nature which create a necessity for regulation inconsistent with the federal mandate. (47 CFR § 25.104(e)).

The Commission has issued a Notice of Proposed Rulemaking proposing to extend the preemption of local land use restrictions upon satellite dish antennas to private nongovernmental restrictions such as those contained in Homeowners Association Rules or CC&Rs. (Notice of Proposed Rulemaking, Docket No. 95-59; FCC 96-78, 61 F.R. 10710, released March 15, 1996).

In a Public Notice released on April 17, 1996, the Commission defined the procedure for filing waivers of the rules. Petitions for Waivers must identify the regulation the City wishes to enforce and must demonstrate that the local concerns which are served by enforcing the regulation are of a highly specialized or unusual nature. City's must submit an original and two copies of the Waiver Petition to the Secretary of the Commission, Attention: Satellite Policy Branch, International Bureau. Oppositions to Waiver requests are due 30 days after release of a public notice of the filing of the Petition, and Replies are due 15 days after the date for filing oppositions expires.

In the same Public Notice, the Commission defined the procedures for filing petitions for declaratory relief of local zoning regulations. The Commission requires Petitioners, i.e., those "aggrieved" by the application or potential application of a local zoning regulation, to show that a copy of the Petition, a copy of the Commission's April 17, 1996 Public Notice, and a copy of the Commission's Order were served on the appropriate local officials. The Commission will issue a Public Notice when petitions are filed and will send a copy of the notice to the parties. Oppositions to the Petition must be filed within 30 days after receipt of the appropriate public notice.
The Commission has also adopted a rule for television antennas and MMBS dishes that is similar to the rule it adopted for satellite dishes. (C.S. Docket No. 96-83; FCC 96-151; 61 FR 16890, released April 18, 1996). If adopted, these regulations will extend preemptive treatment to all regulations, whether imposed by nonfederal agencies or private contract, which restrict satellite dishes, over-the-air reception antennas, and MMDS dishes.11

11 In August of 1996, the Commission extended its preemptive regulations to all forms of public and private restrictions including private CC&R's. However, some degree of local control was returned in the area of historical districts and safety.
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