

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Satellite Broadcasting & Communications Association	)	CSR – 8541-O
	)	
Petition for Declaratory Ruling Regarding the Application of the Over-the-Air Reception Devices Rule To Certain Provisions of the Philadelphia, Pennsylvania Code	)	

**RESPONSE OF THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE NATIONAL  
ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES,  
AND THE UNITED STATES CONFERENCE OF MAYORS**

**I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors (“NATOA”),<sup>1</sup> the National Association of Counties (“NACo”),<sup>2</sup> the National League of Cities (“NLC”),<sup>3</sup> and

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<sup>1</sup> NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

<sup>2</sup> NACo represents county governments, and provides essential services to the nation’s 3,068 counties.

<sup>3</sup> The NLC serves as a resource to and an advocate for the more than 19,000 cities, villages, and towns it represents.

The United States Conference of Mayors (“USCM”)<sup>4</sup> submit this response to the Petition for Declaratory Ruling, released November 22, 2011, in the above-entitled proceeding. We strongly oppose the petition and urge the Commission to preserve local government authority under the Commission’s Over-the-Air Reception Devices (“OTARD”) Rule by allowing the imposition of reasonable placement preferences on satellite dish antennas. We believe the City of Philadelphia’s (the “City”) ordinance strikes the right balance between reasonable restrictions on satellite antenna placement and the ability of satellite providers to provide services to consumers.

## **II. DISCUSSION**

On October 20, 2011, after nearly a two-year legislative process, the City enacted an ordinance aimed at exerting lawful regulation over the placement of satellite dishes and antennas on the front of homes located throughout the City. The City took efforts to ensure that the ordinance complied with the OTARD Rule.<sup>5</sup> Shortly thereafter, the Satellite Broadcasting & Communications Association of America (“SBCA”) filed with the Commission a petition for a declaratory ruling that the City’s ordinance was preempted by the OTARD Rule.

### **A. The Commission Should Decline to Act Until Regulations Are Implemented**

Recognizing that the City has responded to each SBCA claim on the merits, we agree with the City that the Commission nevertheless could decline to act on the petition until the City has the opportunity to issue regulations that will implement the ordinance in question. Indeed, as the City points out, the issuance of a declaratory ruling is discretionary and the Commission should decline to act where there is a “possibility that subsequent events will alter” the “critical

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<sup>4</sup> The USCM is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,192 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

<sup>5</sup> See City of Philadelphia Response, CSR-8451-O, (December 22, 2011).

facts” underlying the petition.<sup>6</sup> In its response, the City points out a number of specific instances where its soon-to-be-issued regulations will allay the concerns raised by SBCA. For example, SBCA asserts that the ordinance is too broad in its definition of commonly-owned areas, thus exempting them from the OTARD rule. But as the City points out, the ordinance will be construed to “lawfully require that the tenant or unit occupant in a multiple dwelling building be allowed to install an antenna on any portion of the property that is under the user’s exclusive use or control.”<sup>7</sup> As such, we believe Commission action at this time is premature and that the better approach is for the Commission to reserve acting on the petition until the issuance of the City’s regulations.

**B. Local Governments Have the Duty to Protect the Quality of Life**

We agree with the City that local governments may play a vital role protecting the appearance and morale of their communities by “avoiding unnecessary cluttering of the streetscape.”<sup>8</sup> The City’s ordinance seeks to minimize the visual impact of dish antennas by carefully balancing the legislative goals of preserving the appearance – and property values – of all its neighborhoods with the interests of those seeking to obtain access to satellite services. A review of the City’s ordinance reveals that it does not interfere with the provision of such services, but rather establishes a placement preference for reception devices that does not impair the viewer’s ability to receive, select, and view over-the-air video programming signals. Indeed, the ordinance merely provides that satellite dish companies and installers consider alternative placement locations other than building facades, provided “an alternative location is available for

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<sup>6</sup> *Id.* at 29.

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.* at 3.

placement of a satellite dish or antenna, with no material delay or reduction in signal reception and at no significant cost to the owner or tenant.”<sup>9</sup> We believe these reasonable restrictions are permitted under the OTARD Rule.

### **III. CONCLUSION**

We urge the Commission not to act on SBCA’s petition until the City issues its regulations implementing the City’s ordinance. But, in any event, the Commission should uphold the City’s ordinance and preserve the right of local governments to impose reasonable placement preferences on satellite dish antennas, consistent with the OTARD Rule.

Respectfully submitted,



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<sup>9</sup> Ordinance, § PM-304.3.1(c).