



INTERGOVERNMENTAL ADVISORY COMMITTEE

TO THE

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY RECOMMENDATION NUMBER 2013 - 4

Intergovernmental Matters Respecting the Commission's
Over-the-Air Reception Devices Rule

This recommendation relates to matters pending before the Commission in connection with three different complaints regarding satellite dish placement ordinances adopted by the cities of Philadelphia, Chicago and Boston. The complaints were filed not by consumers, but by the satellite industry's national associations and leading providers pursuant to the Commission's "Over the Air Reception Devices" or "OTARD" rule. (47 CFR 1.4000). We believe that the length of time that the Commission has taken in addressing the legality of these ordinances, while a stay of their enforcement pending such a resolution remains in effect, is inconsistent with the language and intent of the Commission's rule and reflects a lack of appropriate deference to the local legislative process in three major American cities.

On November 22, 2011 the satellite industry petitioned to have Philadelphia's satellite dish placement ordinance declared unlawful. Pleadings ensued and are finished, but there has been no decision in the matter.

The industry next challenged Chicago and Boston's satellite dish placement ordinances in the spring and early summer of 2012. Chicago joined the challengers in voluntarily suspending any pleadings pending resolution of the Philadelphia matter. It did so with the intention that the Commission would then focus its resources and issue a timely decision on the Philadelphia matter that might provide guidance to Chicago with respect to its ordinance. Chicago agreed to suspend the process in its matter to move the overall process forward and did not anticipate a delay of the current magnitude. Boston never agreed to any delay. More than eight months later, the challenge to the Boston ordinance has yet to be placed on public notice, the enforcement of the ordinance is stayed and has yet to be the subject of pleadings.

Adding to the delay was that while pleadings in the Philadelphia matter were still active, the satellite industry shifted course and asked the Commission to change the OTARD rule itself. Both Philadelphia and Boston opposed the rule change, and pleadings on that petition are finished.

Making these delays particularly problematic is that under the Commission's rules (47 CFR 1.4000(a)(4)) the mere filing of the industry challenges to the three ordinances suspends enforcement of those ordinances. Thus, for more than fifteen months in the case of Philadelphia, and over 240 days in the cases of Chicago and Boston, the satellite industry's challenges have delayed application of duly adopted local rules that the cities involved believe meet the OTARD standard.

The length of the current stay of lawful local government action in three of the country's largest cities, without any legal justification other than the filing of a complaint, is inappropriate, and the effect is inconsistent with the intent and language of the OTARD rule itself. The rule prohibits a local regulation only "to the extent" that it actually impairs the installation, maintenance or use of "an antenna" of the type described. Such language, limiting the preemption to the extent of a provision's real impairment of an actual antenna installation or use, is not consistent with the facially preemptive effect of the ongoing stay, nor is it consistent with any facial preemption of an ordinance or other preemptive action other than in response to actual cases of proposed installations or uses that are being impaired. To end this inappropriate suspension of duly adopted local laws, the FCC should either rule on these outstanding matters immediately or lift the stays of enforcement of the three ordinances pending the Commission's resolution of these matters. We further recommend that the Commission, consistent with the language of its rule, limit any substantive preemption with respect to the ordinances in question to cases of demonstrated impairment of antenna installation or use.

In light of the absence to date of acknowledgment from the Commission of its receipt or consideration of previous recommendations of this Committee, we also ask that, in consideration of the terms under which the IAC is organized and members appointed by the FCC Chairman, an acknowledgement of recommendations we forward and response to our suggestions is appropriate. We appreciate the opportunity to assist the Commissioners and staff in your deliberations and seek confirmation that our efforts have value in the decision-making process.

Approved on this 18th day of March, 2013.

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Joyce Dickerson, Chair