Satellite Broadcasting
and Communications
Association

Testimony of Lisa V. McCabe
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Before the State of Connecticut General Assembly
Joint Committee on Energy and Technology
Regarding Connecticut Proposed Bill No. 503

February 17, 2009

Thank you for the opportunity to testify before the Joint Committee. This testimony is submitted by Lisa McCabe, Director of Public Policy and Outreach for the Satellite Broadcasting & Communications Association of America ("SBCA").

The SBCA is the national trade organization representing all segments of the satellite industry. It is committed to expanding the utilization of satellite technology for the broadcast delivery of video, audio, data, music, voice, interactive and broadband services. SBCA is composed of satellite service providers, equipment manufacturers, distributors, retailers, and national and regional distribution companies that make up the satellite services industry. The satellite industry has over 100,000 subscribers in Connecticut and employs hundreds of people in the state.

On behalf of the satellite industry, SBCA hereby testifies in opposition to Proposed Bill No. 503. This bill unfairly targets just one provider of video services in the state and is also in violation of federal law that provides consumers the right to get satellite service and addresses an issue that can be rectified in a lease agreement.

The proposed legislation unfairly singles out one industry

It is important to note that both Dish Network and DirecTV, satellite programming providers in Connecticut, currently have programs in place that ascertain information regarding whether the consumer is a home owner or renter at the time of initializing service and provide documentation for landlord permission prior to installing equipment. This is part of a training requirement for both company-employed and contracted installers. This is provided to the consumer as a separate document for signature. Because a process is already in place to obtain landlord approval, legislation in this area is unnecessary.

The bill unfairly singles out satellite services and places a 10 day notice requirement before installation. This notice period is not required by renters who are requesting permission from their landlords to have cable services installed. This notice requirement puts satellite service providers at a competitive disadvantage to cable or fiber providers as it inhibits the speed at which they can deliver service to its customers.

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The proposed legislation violates federal law

Additionally, this 10 day notice period runs afoul of federal law as it is a restriction that unreasonably delays or prevents installation, maintenance or use of satellite services. The FCC derived its authority to create the OTARD Rule via the Telecommunications Act of 1996 ("1996 Act"). In Section 207 of the 1996 Act, Congress directed the FCC to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or digital broadcast satellite services."

The OTARD Rule was adopted on August 5, 1996 and as amended, applies to video antennas, including direct-to-home satellite dishes that are less than one meter in diameter, as well as TV antennas, and wireless cable antennas. The OTARD 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. Finally, the OTARD Rule supersedes restrictions by state and local governments, as well as non-governmental entities, including homeowner associations, community associations, and landlords.

Regarding the 10 day prior approval requirement contemplated in Bill No. 503, we believe amounts to an unreasonable delay in service to consumers in the state. The FCC has considered and ruled that such a requirement, whether if required by a governmental or non-governmental entity, is prohibited under the OTARD Rule. Such requirements for the installation of satellite dishes and antennas impose an unreasonable delay and expense on the viewer, and in effect prevents the viewer from accessing the video programming signals that Congress sought to protect under the Act. (August 6, 1996, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, IB Docket 95-59, CS Docket 95-83; October 14, 1997, Memorandum Opinion and Order, CSR-4922-0, *In the Matter of Michael J. MacDonald, Petition for Declaratory Ruling*; October 14, 1997, Memorandum Opinion and Order, CSR 4947-0, *In the Matter of CS Wireless Systems, Inc. d/b/a Omnivision of San Antonio, Petition for Declaratory Ruling*.)

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This issue raised by the legislation is already addressed in Connecticut standard lease agreements

The proposed legislation addresses the contractual obligations a tenant has to inform its landlord. The standard lease agreement for the State of Connecticut already exists and any notification regarding satellite dishes or <u>any</u> type of modification to the structure is already covered by the states standard lease language:

ALTERATIONS AND IMPROVEMENTS. Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

Legislation regarding this issue is unnecessary as it can be addressed by a landlord in the terms of the lease with tenants. In fact, the lease terms are the proper place to dictate what contractual obligations the tenant has to inform the landlord of ANY type of modification to the structure, if allowed at all, including running cable for any telecommunications service if it is not already there or installing an appliance, etc. Singling out a single industry in legislation is both unfair and not needed.

Further, regarding proposed Section (2) obtain the property owner's consent if the dish will be installed on a common element, including, but not limited to, the roof or the siding, we understand this to be limited to the multi-tenant environment such as an apartment building or other multiple dwelling unit. As stated earlier, the satellite industry has programs in place to address the issue of landlord permission, therefore making this unnecessary.

Thank you for the opportunity to testify regarding Proposed Bill No. 503. We are happy to answer any questions.

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