



**Satellite Broadcasting
and Communications
Association**

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**Testimony of Lisa V. McCabe
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Before the North Dakota Senate Judiciary Committee
Regarding House Bill No. 1387
March 2, 2009**

Thank you for the opportunity to testify before the Judiciary Committee. I am 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 North Dakota and employs hundreds of people in the state.

On behalf of the satellite industry, SBCA hereby testifies in opposition to House Bill No. 1387. This bill unfairly targets installers and is also in violation of federal law that provides consumers the right to get satellite service. More importantly, we believe that this is fundamentally a landlord-tenant issue that is more appropriately addressed in a lease agreement between the two parties.

The industry has a permission program in place

It is important to note that both Dish Network and DirecTV, satellite programming providers in North Dakota, currently have programs in place that ascertain information regarding whether the potential subscriber is a home owner or renter from consumers at the time of initializing service and provide documentation for the tenant to seek 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 consumers as a separate document for signature. Because a process is already in place to obtain landlord approval, legislation in this area is unnecessary.

This issue raised by the legislation can be addressed in North Dakota standard lease agreements

The proposed legislation addresses the contractual obligations a tenant has to inform its landlord. The standard North Dakota Residential lease agreement already exists and any notification regarding satellite dishes or any type of modification to the structure is already covered by the state’s standard lease language:

7. **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.

The proposed legislation violates federal law

Additionally, the notice requirement 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. Requiring the installer to track down a landlord for permission if they are out of the city, county, state or country would greatly delay installation.

Further, the damages specified in the bill seem harsh and unworkable. The bill makes the installer subject to damages caused by the installation. It is unclear as to how damages would be determined and making the installer the target of any litigation takes responsibility away from the tenant who would likely already be in violation of any tenant landlord agreement by having any changes made to a property without the landlord’s consent.

Thank you for the opportunity to testify regarding HB No. 1387. We are happy to answer any questions.