

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of: )  
)  
Irvin and Barbara Guterman )  
) CSR 5503-O  
Petition for Declaratory Ruling )  
Pursuant to 47 C.F.R. § 1.4000 )

MEMORANDUM OPINION AND ORDER

Adopted: December 6, 2000

Released: December 12, 2000

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

I. BACKGROUND

1. Petitioners Irvin and Barbara Guterman (herein the “Gutermans”), filed a Petition for Declaratory Ruling<sup>1</sup> (“Petition”) seeking a determination whether Section 8 of the Dumont Oaks Corporation (“Dumont Oaks”) Declaration of Protective Covenants, Restriction and Easements (“CC&Rs) for the Palatine in Potomac, Maryland, is consistent with the Commission’s Over-the-Air Reception Devices Rule (the “Rule”).<sup>2</sup> Section 8 allows the installation of satellite dishes in certain locations if they are not visible from the street or another building site.<sup>3</sup> The Petition also sought a ruling regarding the validity of a letter sent by Counsel for the Palatine to the Gutermans requesting that they relocate the dish to an alternative location consistent with the provisions of Section 8.<sup>4</sup>

II. DISCUSSION

2. Section 1.4000(g) of the Commission’s rules requires that petitions for declaratory rulings be supported by affidavit.<sup>5</sup> Specifically, it requires that “[a]ll allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof.”<sup>6</sup> The required affidavit is particularly important when someone

<sup>1</sup> *In the Matter of Irvin and Barbara Guterman* [filed April 26, 1999][“Petition”].

<sup>2</sup> Petition at 1. 47 C.F.R. § 1.4000. The Rule prohibits governmental and private restrictions that impair the ability of an antenna user to install, maintain, or use over-the-air reception devices. Pursuant to the Commission’s declaratory ruling procedures, *see* 47 C.F.R. § 1.2, parties may petition the Commission to declare whether a particular restriction is permissible or prohibited under Section 1.4000. 47 C.F.R. § 1.4000(d).

<sup>3</sup> Petition at Exhibit B.

<sup>4</sup> Letter dated March 29, 1999, attached to petition and referred to as “Exhibit two.” Petition at 1.

<sup>5</sup> 47 C.F.R. § 1.4000(g).

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

other than the person with specific knowledge files the petition. In the instant case, the Gutermans filed their Petition through their attorney, but no affidavit was filed with the Petition. Despite two specific requests from the Commission, the Petition was neither supplemented nor amended with an affidavit. On September 13, 2000, Counsel for the Gutermans was notified that if the affidavit was not received by September 28, 2000, the Petition would be dismissed. A second letter, sent via Certified Mail, Return Receipt on October 23, 2000, established November 3, 2000 as the deadline for the filing of the affidavit. No response was received. Because the affidavit required by Section 1.4000(g) of the Commission's rules has not been filed with the Commission, we dismiss the Gutermans' Petition without prejudice.

### III. ORDERING CLAUSES

3. Accordingly, **IT IS ORDERED**, pursuant to Section 1.4000(d) of the Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000(d), and Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Declaratory Ruling filed by Irvin and Barbara Guterman on April 26, 1999, is **DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau