

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

In the Matter of:)	
)	
Victor Frankfurt)	CSR-5238-O
)	
Petition for Declaratory Ruling)	
Under 47 C.F.R. § 1.4000)	

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 2001

Released: February 7, 2001

By the Deputy Chief, Cable Services Bureau:

I. Introduction

1. Petitioner Victor Frankfurt ("Frankfurt" or "Petitioner") filed a Petition for Declaratory Ruling ("Petition") seeking a determination that the townhome rules (the "Guidelines") governing the installation of over-the-air reception antennas adopted by New Century Town Townhouse Association No. 2 ("New Century" or the "Association"), located in Vernon Hills, Illinois, are prohibited by the Commission's Over-the-Air Reception Devices Rule (the "Rule").¹ After reviewing the Guidelines, we find that the Guidelines contain some legitimate safety requirements and some safety requirements that are more burdensome than necessary to achieve their safety objective. Therefore, for the reasons discussed below, the petition is granted in part and denied in part.

II. Background

2. On August 6, 1996, the Commission issued a *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking* ("*Report and Order*") adopting the Rule, which prohibits governmental and private restrictions that impair the ability of antenna users to install, maintain, or use over-the-air reception devices.² This Rule was enacted pursuant to Section 207 of the Telecommunications Act of 1996 (the "1996 Act"), which required the Commission 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" certain enumerated services.³ The law is intended to

¹47 C.F.R. § 1.4000(a).

²See *In re Preemption of Local Zoning Regulation of Satellite Earth Stations and In re Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, IB Docket No. 95-59 and CS Docket No. 96-83, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276 (1996) (consolidated) ("*Report*"), on *Reconsideration*, CS Docket No. 96-83, FCC-98-214 (rel. Sept. 25, 1998) ("*Order on Reconsideration*"). The Rule became effective on October 14, 1996. Public Notice DA 96-1755 (October 23, 1996).

³Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 (1996).

promote one of the primary objectives of the Communications Act of 1934: "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."⁴

3. Paragraph (a) of the Rule provides that a restriction impairs installation, maintenance, or use of a protected antenna⁵ if it (1) unreasonably delays or prevents installation, maintenance, or use; (2) unreasonably increases the cost of installation, maintenance, or use; or (3) precludes reception of an acceptable quality signal.⁶ The Rule applies to restrictions on property within the exclusive use or control of an antenna user who has a direct or indirect ownership or leasehold interest in the property.⁷ The only exceptions to the Rule are restrictions that are necessitated by safety or historic preservation concerns, and even then, the restrictions must be as narrowly tailored as possible, impose as little burden as possible, and apply in a nondiscriminatory manner throughout the regulated area.⁸

4. The Rule provides parties who are affected by antenna restrictions the opportunity to petition the Commission to determine if the restrictions are permissible or prohibited by the Rule.⁹ The Rule places the burden of demonstrating that the challenged restriction complies with the Rule on the party seeking to impose the restriction.¹⁰ As permitted under the Rule, Petitioner filed his Petition with the Commission and served a copy on New Century.

5. New Century and the Community Associations Institute ("CAI") filed responses opposing the Petition, and the Satellite Broadcasting and Communications Association ("SBCA") filed a response supporting the Petition. The Wireless Cable Association International, Inc. ("WCA"), BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively "BellSouth"), New Century ("New Century Reply I"), SBCA and Frankfurt filed reply comments. New Century then filed a second reply ("New Century Reply II") after the close of the reply period in order to respond to the replies of Frankfurt, WCA and SBCA.¹¹

⁴Communications Act of 1934, § 1 as amended, 47 U.S.C. § 151.

⁵The Rule applies to antennas designed to receive direct broadcast satellite ("DBS") service that are one meter or less in diameter or located in Alaska; antennas designed to receive video programming services via multipoint distribution services ("MDS"), including multichannel multipoint distribution services ("MMDS"), instructional television fixed services ("ITFS"), and local multipoint distribution services ("LMDS") that are one meter or less in diameter or diagonal measurement; and antennas designed to receive television broadcast signals ("TVBS") (referred to herein collectively as "antennas"). 47 C.F.R. § 1.4000(a).

⁶47 C.F.R. § 1.4000(a).

⁷*See In re Preemption of Local Zoning Regulation of Satellite Earth Stations and In re Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Multichannel Multipoint Distribution and Direct Broadcast Services*, Second Report and Order, CS Docket No. 96-83, FCC 98-273 (rel. Nov. 20, 1998) (amending 47 C.F.R. § 1.4000 to cover leased property).

⁸47 C.F.R. § 1.4000(b).

⁹47 C.F.R. § 1.4000(d).

¹⁰47 C.F.R. § 1.4000(f).

¹¹In the interest of a complete record, we will exercise our discretion and accept the late filing.

III. PLEADINGS

A. The Petition

6. This is the second petition that Frankfurt has filed with the Commission. In his first petition, Frankfurt challenged a New Century restriction that forbid the installation of any antenna on his townhome.¹² In a *Memorandum Opinion and Order* released on October 31, 1997, the Cable Services Bureau found that the New Century restriction was prohibited by the Rule because the restriction created an absolute prohibition on antennas and New Century had not shown that an absolute prohibition was necessary for safety or historic preservation reasons.¹³ On November 18, 1997, after the order on Frankfurt's first petition was issued, the Association adopted new antenna Guidelines and restrictions that are the subject of Frankfurt's instant petition.¹⁴

7. Frankfurt asserts that New Century's Guidelines impair the installation, maintenance and use of a satellite dish on his townhome. The New Century Guidelines are set forth in Appendix A to this *Order*. Under the Guidelines, prior to installing an antenna, a townhome owner must seek New Century's approval and complete New Century's "Appearance and/or Architectural Change or Improvement Application" (the "Application"). The Application's requirements are set forth in Appendix B to this *Order*.

8. Frankfurt argues that the Guidelines' provisions requiring prior approval unreasonably delays installation, requiring antennas to exhibit a UL label prevents the installation of an antenna because antennas do not bear this label, and requiring antennas to withstand 50 mph winds unreasonably increases the cost of installation.¹⁵

B. Responses in Opposition to the Petition

9. In its response, New Century states that Frankfurt improperly installed his satellite dish on his townhome's balcony railing by securing the dish with six thin straps of unknown material.¹⁶ New Century further states that Frankfurt did not properly ground his satellite dish until after the city's electrical inspector had twice found that the dish installation did not meet the grounding requirements of the city's electrical code.¹⁷ The electrical inspector states that if lightning had struck the antenna, the electrical charge would have travelled into Frankfurt's townhome.¹⁸ New Century requested that Frankfurt complete the Application for installing the dish and issued an Association complaint against Frankfurt after he refused to do so. At a New Century board complaint hearing held on April 21, 1998 (after Frankfurt's

¹²See *In re Victor Frankfurt*, 12 FCC Rcd 17631 (1997).

¹³*Id.* at 17636.

¹⁴Petition at App. 1.

¹⁵Petition at 1.

¹⁶New Century Response at 1.

¹⁷Response at 3; Affidavit of Charles Skinner at Ex. D.

¹⁸*Id.*

instant petition was filed on March 14, 1998), Frankfurt declined to tell the board how the antenna was grounded, mounted, and whether it could withstand winds of 50 mph. The Association then found that Frankfurt had installed the dish in an unsafe manner in violation of the Guidelines and fined him \$1000.¹⁹

10. New Century asserts that its Guidelines fall within the Rule's safety exception. New Century notes that the Guidelines' preamble states specifically that they are designed to promote the safety and welfare of the Association. With regard to particular Guidelines, New Century argues that, without its required application process, it will be unable to determine whether the applicant's proposed installation method meets the Guidelines' safety criteria and that its application process could avert injuries, deaths and property damage.²⁰ New Century asserts that it must be provided with evidence that the antenna will withstand wind, sun and other weather exposure.²¹ New Century argues that its 30 day prior approval system is not an unreasonable burden on the antenna user when weighed against the possibility of death, injury or property damage. Thirty days is not too long to require the antenna user to wait, New Century asserts, because if the antenna user can afford to purchase a satellite system, the antenna user can afford to pay for an additional thirty days of cable service.²²

11. In support of its argument that the Association's requirement that an antenna withstand 50 mph winds is reasonable, the Association states that according to the *National Roof Contractor's Association Residential Steep-Slope Roofing Materials Guide* most manufacturers warranty shingled roofing at winds up to 60 mph and that the *Uniform Building Code* has set a standard of 73.8 mph for minor structures such as signs and flag poles.²³ In addition, according to data collected from April 1997 to February 1998 by the National Climate Control Center for the Chicago O'Hare International Airport, the wind speed in New Century's area exceeded 50 mph on two occasions (56 and 52 mph).²⁴ New Century argues that its requirement that the antenna exhibit a UL label provides assurance that the antenna is reasonably safe in design and manufacture.

12. With regard to its antenna location Guidelines, New Century asserts that they do not impair under the Rule because the location Guidelines specifically state that if a location requirement impairs signal reception, then the antenna user may select another location for the antenna.

13. In its response in support of New Century, CAI states that, although the New Century Guidelines do not appear to reflect maximum compliance with the Rule, the Guidelines address legitimate safety concerns.²⁵ According to CAI, requiring antennas to withstand strong winds (to keep them from becoming airborne) and to be grounded (to keep them from conducting electricity into the dwelling) will

¹⁹*Id.* at 2; Ex. C.

²⁰*Id.* at 1, 6.

²¹*Id.* at 6.

²²*Id.* at 6.

²³*Id.* at 5; Exs. F and G.

²⁴*Id.* at 5; Ex. H.

²⁵CAI Response at 3.

prevent personal injury or property damage.²⁶ CAI states that it will not take a position on New Century's particular prior approval guidelines, but argues it is impossible for associations to enforce necessary and legitimate safety concerns if there is no prior approval process for ensuring that safety criteria are met before damage or an injury occurs.²⁷

C. Responses and Reply Comments in Support of the Petition

14. In their comments supporting the Petition, commenters argue that certain of the Guidelines impair under the Rule and that New Century has generally failed to show that the Guidelines are safety-related. SBCA, BellSouth, and WCA argue that New Century's declaration in the Guidelines' preamble that the Guidelines are for the "safety and welfare" of the Association does not articulate the specific safety objective of the Guidelines and accordingly the Guidelines are not protected by the Rule.²⁸ SBCA and WCA state that New Century's general reference to safety concerns does not meet the Rule's requirement that the safety concern be clearly defined and that the general safety reference is "so broad and ill-defined that it constitutes little more than a pro forma recitation."²⁹ WCA argues that the Association is attempting to prohibit antennas outright under the guise of purported safety concerns.³⁰

15. BellSouth argues that the Association has failed to carry its burden of proof by not providing any evidence or analysis of findings that its "purported" safety restrictions will serve safety objectives, and WCA states that the Association has not presented any evidence from any antenna manufacturer showing that antennas would not be wind resistant if installed pursuant to the manufacturer's specifications.³¹ BellSouth states that the Association fails to understand that it carries the burden of proof to show evidence under the Rule when the Association asserts that it was justified in assessing a penalty against Frankfurt because he provided no evidence that the antenna was safe from wind damage or that the antenna was properly grounded.³² BellSouth asserts that the Association, not Frankfurt, should demonstrate whether the antenna complies with the Guidelines.

16. SBCA argues that New Century has not articulated the safety objective of the prior approval process, and BellSouth argues that New Century must provide evidence that the process serves a "compelling safety need."³³ SBCA states that even if the Guidelines provided clearly defined safety

²⁶*Id.* at 3.

²⁷*Id.* at 4.

²⁸SBCA Response at 4 n.11 (*citing In re Michael J. MacDonald*, 13 FCC Rcd 4844, 4851 (1997)); WCA Reply Comments at 2-4; BellSouth Reply Comments at 4.

²⁹SBCA Response at 4 n.11 (*quoting In re Star Lambert and Satellite Broadcasting and Communications Ass'n of America*, 12 FCC Rcd 10455, 10469 (1997)); WCA Reply Comments at 3 n.6; BellSouth Reply Comments at 4-5; SBCA Reply Comments at 2.

³⁰WCA Reply Comments at 2.

³¹BellSouth Reply Comments at 9; WCA Reply Comments at 4 n.8.

³²BellSouth Reply Comments at 9-10 (*citing* New Century Response at 6).

³³SBCA Response at 5-7; BellSouth Reply Comments at 8 ("prior approval requirements, absent a demonstration that they are necessary for safety or historic preservation, are prohibited") (*citing MacDonald*, 13 FCC Rcd 4844 at (continued...))

objectives, the use of a prior approval process is not necessary to ensure compliance with those Guidelines and subjects even prospective antenna users who intend to install their antennas appropriately to a lengthy application process.³⁴ SBCA argues that an application process inherently delays the installation of an antenna and therefore impairs under the Rule.³⁵ SBCA argues that the prior approval process demonstrates bias towards cable because the Association asserts in support of this process that an antenna user can simply purchase a month of cable while waiting for a decision on the antenna user's application.³⁶

17. Both SBCA and WCA state that, even if the Application process were justified by safety concerns, the Application process is overly burdensome.³⁷ SBCA and WCA state that it will take the applicant a significant amount of time and will likely cause the applicant to incur expenses by requiring the applicant to prepare the attachments required by the Application, such as the preparation of a sketch of the installation, a legal description of the property, and a property survey.³⁸ In addition, after the Application is submitted and expenses have been incurred to obtain the supporting documents, the applicant might be required to wait as long as 30 days for the Association to approve the Application.³⁹ WCA states that it is also burdensome to require the applicant to file an approved Application with the Recorder of Deeds and to submit proof of that filing to the Association.⁴⁰ Finally, WCA states that the Guidelines do not provide any standards by which the applications will be reviewed and do not provide that a technically qualified individual will review the applications.⁴¹

18. WCA states that the Association's other safety restrictions, setting windload and UL requirements, are more burdensome than necessary and are discriminatory. WCA argues that where a local government, which is charged with the protection of public safety, determines that a restriction is not necessary, the Commission should, as a matter of policy, accept this determination as dispositive evidence that the association restriction is more burdensome than necessary.⁴² Because there is no evidence that the local Vernon Hills government imposes windload or UL restrictions or has found that such restrictions are

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4852-53).

³⁴SBCA Reply Comments at 2-3.

³⁵SBCA Reply Comments at 3 n.5 (citing *Star Lambert*, 12 FCC Rcd at 10465; *MacDonald*, 13 FCC Rcd at 4853).

³⁶SBCA Reply Comments at 4 (citing *New Century Response* at 6).

³⁷WCA Reply Comments at 7; SBCA Response at 5-7 (arguing that the prior approval requirement unreasonably delays installation and imposes unreasonable costs on the antenna user); BellSouth Reply Comments at 9.

³⁸SBCA Response at 5-6; WCA Reply Comments at 7.

³⁹SBCA Response at 5-6; WCA Reply Comments at 7.

⁴⁰WCA Reply Comments at 7.

⁴¹WCA Reply Comments at 7-8. *See also* Frankfurt Response at 1 (asserting that New Century does not have the proper qualifications to decide whether an antenna is properly installed).

⁴²WCA Reply Comments at 4-5.

necessary, WCA argues that the Association restrictions are more burdensome than necessary.⁴³ The New Century Guidelines are also discriminatory, WCA and BellSouth argue, because there is no evidence in the record that New Century imposes similar safety requirements on other types of appurtenances, devices or fixtures that are comparable in size and weight.⁴⁴

19. Regarding the Guidelines' requirement that antennas carry a UL label, WCA and BellSouth state that the Association has provided no safety objective for this requirement and even if a safety objective were provided, New Century has not shown that the UL requirement is the least burdensome way to achieve that objective.⁴⁵ SBCA states that no satellite antennas carry the UL label and UL has never tested any satellite antennas.⁴⁶ WCA states that wireless cable antennas are not subject to safety testing by UL or any other private certifying entity.⁴⁷ Because antennas are not tested by UL, SBCA and BellSouth argue that the UL requirement operates as an outright prohibition on antennas which is impermissible under the Rule.⁴⁸ SBCA argues that the UL restriction is unnecessarily burdensome because it would require an antenna manufacturer to obtain a UL label to satisfy one homeowner's association's guidelines whereas SBCA is not aware of any homeowner's association or local government in the country that also imposes this restriction.⁴⁹

20. BellSouth and SBCA argue that certain mounting, height and location restrictions constitute impairments under the Rule. First, the guidelines barring the installation of free standing or pole mounted antennas impair because such installations might be the least expensive and best way for the antenna user to receive video programming services and New Century has not proffered any evidence why such an installation should be prohibited.⁵⁰ Second, BellSouth states that the Guidelines' prohibition against antennas over 12 feet is prohibited by the Rule because the prohibition might impair reception and the Commission has stated that it would find "unenforceable any restriction that establishes specific *per se* height limits."⁵¹ Third, although New Century permits the antenna user to install the antenna in locations other than those specified in the Guidelines if the antenna's signal would be impaired, the location guidelines are prohibited because they do not permit alternative installation locations where the required location would unreasonably delay or increase the cost of installation, which are the two additional types of

⁴³WCA Reply Comments at 4 n.8.

⁴⁴WCA Reply Comments at 6; BellSouth Reply Comments at 10.

⁴⁵WCA Reply Comments at 4 n.8; BellSouth Reply Comments at 7-8.

⁴⁶SBCA Response at 4-5.

⁴⁷WCA Reply Comments at 4 n.8; *see also* BellSouth Reply Comments at 7 ("DBS and wireless cable antennas generally are not rated by UL and do not carry a UL certification").

⁴⁸SBCA Response at 4-5; BellSouth Reply Comments at 7-8.

⁴⁹SBCA Reply Comments at 4.

⁵⁰BellSouth Reply Comments at 5; SBCA Response at 4 n.10.

⁵¹BellSouth Reply Comments at 6.

impairment.⁵²

21. In his reply, Frankfurt disputes the Association's assertion that his antenna was attached to the balcony railing by "six thin strips of unknown material" and states that his antenna was secured with six screws and that the six straps provided additional security.⁵³ Frankfurt also states that the city inspector confirmed that his antenna was installed properly.⁵⁴ Frankfurt asserts that he cannot be in violation of the Guidelines because they were passed after he installed the antenna.

D. Reply Comments in Opposition to the Petition

22. The Association argues that its Guidelines must be applied to Frankfurt's previously installed antenna because it has safety concerns.⁵⁵ The Association disagrees that the Guidelines' safety objectives regarding prior approval and installation are not clearly defined. The prior approval process is necessary so that the Association can determine whether the antenna installation will satisfy the safety guidelines and to ensure that the antenna is installed in a proper location.⁵⁶ That antennas do not exhibit UL labels confirms, the Association asserts, that a prior approval method is necessary to ensure that there is compliance with safety standards.⁵⁷ Concerning the installation guidelines, the Association states that they specifically address safety concerns regarding wind resistance, grounding, and reasonably adequate instructions on installation and maintenance.⁵⁸ Furthermore, the Association states that the Guidelines forbid pole mounts on balconies because such installations present safety concerns such as the depth of the pole mount and the amount of concrete necessary to support the mount.⁵⁹ The Association states that its Guidelines forbid installation on chimneys because New Century does not have chimneys as such but rather has sheet metal flue stacks. These flue stacks, New Century asserts, would fall off the roof if antennas are attached to them.⁶⁰

23. In response to SBCA's argument that a prior approval process is more burdensome than necessary to meet this safety goal, the Association states that SBCA has not presented any less restrictive methods that would achieve this goal.⁶¹ Responding to WCA's argument that the Association's prior

⁵²BellSouth Reply Comments at 7 n.25 (citing *Star Lambert*, 12 FCC Rcd at 10467).

⁵³Frankfurt Reply Comments at 1.

⁵⁴Frankfurt Response at 1, Att. 2 (field inspection report dated May 8, 1998 by Charles Skinner).

⁵⁵New Century Reply Comments II at 2.

⁵⁶New Century Reply Comments II at 2, 6.

⁵⁷*Id.* at 3. The Association states that while a UL label may not be an absolute guarantor of safety, a UL label is better than no safety guarantee. *Id.*

⁵⁸New Century Reply I at 1; New Century Reply Comments II at 2.

⁵⁹New Century Reply Comments II at 2. In addition, the Association asserts that mounts are more expensive than siding or balcony railing mounts. *Id.*

⁶⁰New Century Reply Comments II at 2.

⁶¹*Id.* at 2.

approval process is overly burdensome because the Association has not presented any evidence that Vernon Hills, the local government, requires prior approval for antenna installations, the Association states that many local governments have permit processes for safety purposes.⁶² In addition, the Association states that the prior approval process is not invalid, as WCA argues, merely because the process fails to set forth standards by which the applications will be reviewed.⁶³ The Association suggests that WCA would not be satisfied even if the Association specified that the applications would be reviewed by electrical or structural engineers.⁶⁴ The Association argues that because the restrictions governing where an antenna may be installed permit an antenna user to install an antenna on the front of a building, presumably an unattractive location, its Guidelines are not merely a pretext, as WCA and SBCA suggest, for imposing the Association's aesthetic concerns.⁶⁵

24. The Association argues that its Guidelines are not applied in a discriminatory fashion because the prior approval process has been in place for years and applies to all exterior modifications and a satellite dish presents a risk of attracting lightning that other modifications do not, such as wooden decks, landscape modifications and wooden plaques.⁶⁶

25. The Association challenges WCA's assertion that the Association must present evidence that satellite and wireless cable antennas would not be wind resistant if not installed pursuant to the manufacturer's specifications.⁶⁷ The Association asserts that the antenna manufacturer is the more appropriate entity to demonstrate windload compliance and that Frankfurt could meet this modest burden by simply giving the Association a copy of the antenna's installation and specifications brochure.⁶⁸

IV. Discussion

A. The Retroactive Application of Newly-Enacted Restrictions to Antennas Previously Installed

26. Frankfurt argues that the Association cannot charge him with violating the Guidelines because the Guidelines were enacted after his antenna was installed. The Association asserts that it may enforce the Guidelines against Frankfurt because the Guidelines were enacted to address safety concerns. We have previously ruled that an antenna user may challenge an association's restrictions that were enacted after the user's antenna was installed when the association attempts to enforce the restrictions against the antenna user.⁶⁹

⁶²New Century Reply Comments II at 6.

⁶³*Id.* (noting that most ordinances do not specify such detail).

⁶⁴*Id.*

⁶⁵*Id.* at 2.

⁶⁶*Id.* at 4-5.

⁶⁷*Id.* at 5.

⁶⁸*Id.*

⁶⁹*See In re James Sadler*, 13 FCC Rcd 12559, 12568 (1998).

27. Where a newly enacted restriction does not "impair," as that term is defined in the Rule,⁷⁰ or where the restriction falls within the Rule's safety or historic preservation exceptions,⁷¹ the newly enacted restriction may be applied retroactively to a previously installed antenna. For example, if a restriction required a homeowner to move an antenna from the back to the side of the house, such a restriction would be permissible if it did not impair (i.e. cause the homeowner unreasonable expense or prevent the reception of an acceptable quality signal) or if it fell within the Rule's safety or historic preservation restrictions. In this case, we will analyze whether the Guidelines are enforceable against Frankfurt because they fall, as New Century alleges, within the Rule's safety exception. If the Guidelines do not fall with the Rule's safety exception, we will then analyze whether New Century may nevertheless enforce them because they do not impair.

B. Summary of Decision

28. We find that the Association's mounting, windload, grounding and power line guidelines are intended to accomplish legitimate safety objectives. However, as discussed below, the windload and grounding guidelines as they are currently written are not enforceable against Frankfurt. In addition, the Association has not shown that Frankfurt installed his antenna in a manner that violated any of the Association's permissible guidelines. Given that Frankfurt has not violated any permissible guideline, the \$1000 fine against him is not enforceable.

C. The Rule's Safety Exception

1. The Elements of the Safety Exception

29. Although the Rule generally prohibits restrictions that impair the installation, maintenance and use of Section 207 reception devices, the Rule provides an exception for "legitimate safety goals . . . that serve a stated safety purpose."⁷² In order to satisfy this safety exception, the proponent of the safety restriction, in this case the Association, has the burden of demonstrating that the restriction satisfies four elements:⁷³

- 1) The legitimate safety objective of the restriction must be clearly defined;⁷⁴
- 2) the restriction must be necessary to accomplish the safety objective;⁷⁵
- 3) the restriction must be "no more burdensome to affected antenna users than is necessary to achieve" the defined safety objective;⁷⁶ and

⁷⁰See 47 C.F.R. § 1.4000(a).

⁷¹See 47 C.F.R. § 1.4000(b)(1), (2).

⁷²47 C.F.R. §1.4000(b)(1); *Report and Order*, 11 FCC Rcd at 19290; *Order on Reconsideration* at para. 12.

⁷³The proponent of a restriction has the burden of demonstrating that a restriction complies with the Rule. 47 C.F.R. § 1.4000(f).

⁷⁴47 C.F.R. §1.4000(b)(1); *Order on Reconsideration* at para. 12.

⁷⁵47 C.F.R. §1.4000(b)(1).

- 4) the restriction must not be discriminatory and should be "applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply."⁷⁷

The legitimate safety objective must be clearly defined in either (1) the text, preamble or legislative history of the restriction or (2) a separate document that is readily available to affected antenna users.⁷⁸ The definition must set forth the specific type of safety concern that the restriction is intended to address.⁷⁹ A general, passing statement that the restriction at issue serves a safety objective will not satisfy this element of the Rule,⁸⁰ for a "general statement of safety interests is so broad and ill-defined that it constitutes little more than a pro forma recitation."⁸¹

30. In this case, the statement in the Guidelines' preamble that the Guidelines have been enacted in the "interest of promoting the safety and welfare of the Association"⁸² is a general statement of safety that fails to set forth the specific safety objectives of the individual Guidelines.⁸³ Accordingly, the preamble's statement of "safety and welfare" alone will not bring all of the Guidelines within the Rule's safety exception. Nevertheless, where the safety objective of a particular restriction is clearly apparent on the face of the restriction, we can find that a safety objective is adequately defined. Thus, we will examine the individual guidelines to determine whether they satisfy this standard and the other elements of the safety exception.

2. Prior Approval Requirement

31. The Guidelines require that an antenna user submit an "Architectural and/or Appearance Application" (the "Application") to New Century for prior approval before the antenna user may install an

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⁷⁶47 C.F.R. §1.4000(b)(3).

⁷⁷47 C.F.R. §1.4000(b)(1).

⁷⁸47 C.F.R. §1.4000(b)(1). This second alternative was provided so that local governments and associations could comply with the Rule without being required to revise their regulations or restrictions in order to incorporate therein the definition of the legitimate, safety objective. *Report and Order*, 11 FCC Rcd at 19292.

⁷⁹*Star Lambert*, 12 FCC Rcd at 10469 (the ordinance in question did not "provide the specific guidelines and clear purpose . . . required by the Rule . . . [and did not] sufficiently identif[y] the type of safety concern" that the restriction was intended to address).

⁸⁰*MacDonald*, 13 FCC Rcd at 4851 (a "passing reference to 'safety'" did not articulate a safety objective which required that the restrictions at issue be imposed).

⁸¹*Star Lambert*, 12 FCC Rcd at 10469.

⁸²New Century Response at App. B.

⁸³*See Star Lambert*, 12 FCC Rcd at 10469 (ordinance's "general statement of 'health, safety and welfare interests'" did not satisfy the Rule).

antenna.⁸⁴ If a prior approval requirement falls within the Rule's safety or historic preservation exceptions, then the prior approval requirement is enforceable even if the requirement otherwise impairs under the Rule.⁸⁵ However, outside of the safety and historic preservation contexts, it is unreasonable under the Rule to subject viewers who install antennas according to the applicable association guidelines or local regulations to the delay and expense of obtaining prior approval in order to protect against the potential illegal actions of others.⁸⁶ New Century argues that its application requirement falls within the safety exception.⁸⁷ For the reasons set forth below, we find that the application requirement does not meet the elements of the safety exception.

32. New Century did not clearly define a legitimate safety objective for its application requirement in the Guidelines, the Application, or any other document that is readily available to antenna users.⁸⁸ Indeed, the very title of the Application, "Architectural and/or Appearance Application," suggests that the Application requirement is an impermissible pretext for imposing the Association's aesthetic preferences. However, in its response filed in this proceeding, New Century states that the application's safety objective is to allow New Century to review the application to determine whether the antenna user's proposed installation method meets New Century's alleged "safety" installation guidelines.

33. According to New Century and CAI, a prior approval process is the only way to ensure that New Century's safety installation guidelines are met before injuries or property damage occur. In order to determine whether the antenna user will install the antenna according to these safety guidelines, New Century's prior approval process requires the user to submit a brochure containing the antenna's specifications and installation instructions and a sketch demonstrating where the dish will be installed.⁸⁹ Although it is a legitimate safety objective for the Association to set forth a requirement to determine whether an installation meets its safety installation guidelines, we find, for three reasons, that New Century's prior approval process is not necessary to achieve compliance with this objective. A legitimate method for achieving compliance with safety installation guidelines would be for the Association to inspect the antenna installation after it is installed.

34. First, requiring a homeowner to submit a sketch and a copy of the antenna manufacturer's brochure will not ensure that the homeowner will install the antenna according to those documents. The only way New Century can truly ensure that an antenna installation satisfies New Century's safety installation Guidelines is to have a qualified person inspect the installation once the installation is complete. A legitimate restriction to ensure compliance with the safety restrictions would be to require the antenna user to notify the Association that the antenna user is installing an antenna and to submit the antenna's

⁸⁴New Century Response at App. B, Guideline 7.

⁸⁵*Order on Reconsideration* at para. 41 (permissible "safety or historic preservation objectives are enforceable even if they impair a viewer's ability to install, maintain or use a Section 207 reception device").

⁸⁶*Order on Reconsideration* at para. 41 ("it is an unreasonable delay to subject viewers who install reception devices in lawful locations to the delay and expense of obtaining a permit in order to protect against the potential illegal actions of others"); *see also id.* at para 41 n.20 and cases cited therein.

⁸⁷New Century does not argue that its Guidelines are necessary for historic preservation.

⁸⁸*See* 47 C.F.R. §1.4000(b)(1).

⁸⁹Petition at App. 2; New Century Response at 5-6; New Century Reply Comments II at 5.

brochure. After the installation, the Association could, if it desired, inspect the installation for compliance with the antenna brochure's installation instructions and the Guidelines.

35. Second, a sketch prepared pursuant to the Guidelines would not demonstrate compliance with the safety restrictions. In addition, the sketch requirement appears to be a pretext for imposing New Century's aesthetic preferences by way of a prior approval process, which the Rule forbids. The Application requires that the sketch show the antenna's colors, dimensions, and location with respect to property lines. The Application does require that the sketch show the antenna's location with respect to power lines, but this requirement is not necessary because the Guidelines already inform the homeowner that the antenna may not be installed near power lines. In addition, we agree with WCA and Frankfurt that the Application process would not achieve safety compliance because New Century does not have a procedure for someone technically qualified to review the sketch and determine whether the installation depicted in the sketch would be properly grounded and wind resistant. The Application process also does not provide any standards by which New Century would review the Application.

36. Third, it is unnecessary to require an antenna user to submit a sketch prior to installation simply to enable New Century to determine whether the antenna user is aware of the Guidelines. If New Century ensures that the Guidelines are disseminated to its homeowners, then the homeowner will already be aware of the Guidelines and will be able to determine whether the specifications of the antenna satisfy the Guidelines. After giving the Guidelines to the homeowner, it is unnecessary to require homeowners to spend time and money hiring a professional to draw a technically accurate installation sketch of the antenna in order to complete an application that merely asks the homeowner to give the Guidelines back to the Association. New Century's prior approval requirement differs significantly from a notification requirement that permissibly requires an antenna user to notify an association of his or her intention to install an antenna in order to afford the association an opportunity to give installation guidelines to the antenna user. If the association does not have a procedure in place for immediately giving installation guidelines to the antenna user, the antenna user is not required to wait for them and may proceed to install the antenna without delay.

37. Finally, the thirty day waiting period for the processing of the Application is clearly unnecessarily burdensome.⁹⁰ A review of two pieces of paper, the sketch and the antenna's brochure, by a technically qualified individual should not take thirty days.

3. Requirement that the Antenna Withstand 50 MPH Winds

38. We find that the Guidelines' requirement that an antenna installation withstand 50 mph winds without becoming airborne is a clearly defined legitimate safety objective. However, the parties dispute how the homeowner may demonstrate that the installation is capable of withstanding 50 mph winds. In its reply comments, New Century states that the homeowner may demonstrate that the antenna complies with this restriction simply by giving the Association a copy of the antenna's installation and specifications brochure. We find that this would not be a burdensome method for requiring compliance if the Association were to implement such a requirement. Nevertheless, because this compliance method was not in place when Frankfurt installed his antenna, New Century may not fine him for noncompliance.

39. New Century has shown that a windload requirement of 50 mph is necessary to meet the safety objective in Vernon Hills, Illinois by providing data regarding local wind patterns. New Century

⁹⁰See 47 C.F.R. § 1.4000(b)(3).

provided April 1997 to February 1998 reports from the National Climate Control Center for the Chicago O'Hare International Airport that show that the wind at that airport exceeded 50 mph on two occasions.⁹¹ New Century also states that, according to the *National Roofing Contractor's Association Residential Steep-Slope Roofing Guide* most manufacturers guarantee shingle roofs up to 60 mph and that the *Uniform Building Code* sets a wind criteria for minor structures such as signs and flag poles at 73.8 mph.⁹² Nothing in the record suggests that 50 mph is unnecessarily high given that the *Uniform Building Code* has set its windload requirement at 73.8 mph and given that SBCA states that satellite antennas are designed to withstand winds up to 125 mph without becoming airborne.⁹³

40. BellSouth argues that New Century erroneously places the burden of proof on Frankfurt to demonstrate that the antenna meets this windload requirement.⁹⁴ New Century argues that the antenna manufacturer is the more appropriate entity to demonstrate that the antenna meets this requirement, and that an antenna user could meet this modest burden by simply giving the Association a copy of the antenna's installation brochure in order to demonstrate the antenna's windload specifications.⁹⁵ The Rule places the burden of proof on the homeowners' association to demonstrate that its restriction complies with the Rule.⁹⁶ However, where a valid safety requirement is at issue, and the association sets forth a reasonable mode of compliance that is no more burdensome than necessary to achieve the legitimate safety objective,⁹⁷ the antenna user must comply with the requirement. In this case, New Century expresses its willingness to accept an antenna installation and specification brochure as acceptable compliance with this requirement. New Century's Guidelines, however, are silent on this point and leave Frankfurt and other townhome owners with the mistaken impression that they are responsible for a burdensome test or other costly course of proof. If New Century had included reference to a brochure as an acceptable means of compliance, then the windload restriction would not have been unnecessarily burdensome. In the absence of this reference, an unnecessary burden is placed on the antenna user because the antenna user has no reasonable way to ascertain how to comply with this restriction. As written, the windload restriction

⁹¹New Century Response at 5, Ex. H (56 and 52 mph).

⁹²*Id.* at 5.

⁹³SBCA Reply Comments at 1.

⁹⁴BellSouth Reply Comments at 10 (under the Rule "[c]onsumers are not required. . . to plan, plead and argue a full-scale proceeding on the merits before he or she may install and use tested, widely-available consumer electronics products such as DBS or wireless cable receiving equipment").

⁹⁵New Century Reply Comments II at 5 (a homeowner's association should not be required to prove that an antenna is not wind resistant and "that the wind tunnel tests should be conducted by the manufacturer, not by the local governmental entity or association trying to determine whether the device can withstand a certain wind force").

⁹⁶In *In re Lubliner*, the antenna user installed his TVBS antenna on the roof in violation of the association's requirement that antennas be installed inside attics. The association argued that its requirement did not impair under the Rule because an antenna could receive an acceptable quality signal when installed in the attic. The Commission held that the association, not the antenna user, had the burden to prove that the antenna could receive an acceptable quality signal in the attic. *In re Lubliner*, 13 FCC Rcd 4834, 4841 (1997), *application for review denied*, FCC 98-201 (Aug. 21, 1998).

⁹⁷See 47 C.F.R. § 1.4000(b)(3).

appears calculated to deter any antenna installation rather than to promote safe antenna installations. Therefore, the restriction was unnecessarily burdensome when it was enforced against Frankfurt.

41. There is nothing in the record to suggest that New Century permits the installation of objects similar in size to antennas that pose the same risk of becoming airborne as do antennas; thus, we disagree that New Century's windload restriction discriminates against antennas.

4. Grounding Requirement

42. The grounding requirement requires that the antenna be "grounded in accordance with N.E.C. [National Electric Code] and local codes."⁹⁸ We find that it is clearly apparent on the face of the grounding requirement that the requirement's legitimate safety objective is to prevent lightning from travelling into the building; thus the requirement is not invalid because this objective is not stated in the Guidelines. The Association has also shown that a grounding requirement is necessary for an antenna installed on a balcony railing because the city electrical inspector stated that lightning could travel into the building via an antenna installed in that manner.

43. However, neither the grounding requirement nor the comments set forth verbatim the specific requirements of the N.E.C. or of any applicable local codes.⁹⁹ Without the language of the N.E.C. and local code sections before us, we cannot decide whether those sections contain clearly defined legitimate safety objectives or whether the requirements to achieve those objectives are unreasonably burdensome under the Rule; thus we cannot permit the Association to enforce the N.E.C. or the unspecified local codes.¹⁰⁰

44. There is nothing in the record to suggest that New Century permits the installation of other objects that would require grounding; thus, we reject arguments that New Century's grounding requirement is discriminatory.

5. Other Code Requirements

45. The Guidelines and the Application also require that the antenna be "installed in complete accordance with local codes and Requirements" and that the antenna "comply with all ordinances, laws, regulations and industry standards."¹⁰¹ It is unclear from New Century's Guidelines which codes, laws, regulations, ordinances, etc., an antenna user is required to obey. It is likewise unclear who or what the enforcing entity is with respect to these unspecified requirements. Because we have nothing in the record to enable us to determine whether the code sections are safety related or whether they otherwise impair

⁹⁸New Century Response at Ex. B, Guideline 5.a.

⁹⁹The question of whether the codes are enforceable by the local government is not before us.

¹⁰⁰*Star Lambert*, 12 FCC Rcd at 10468 (city could not enforce ordinance because specific language of ordinance was not presented for Commission review, and Commission therefore could not determine whether ordinance was permissible under the Rule); *Order on Reconsideration* at para. 36 (the Commission would preempt portions of the *Building Officials & Code Administrators International, Inc. Code* if the code established *per se* height limits in violation of the Rule).

¹⁰¹New Century Response at Ex. B, Guideline 5.b., 5.b.5.

installation, maintenance or use under the Rule, New Century cannot enforce them.¹⁰² In addition, these requirements are unenforceable because it is unnecessarily burdensome to require a homeowner to cull through all ordinances, laws, regulations and industry standards to determine which ones apply.

6. Requirement that Antennas bear a UL Label or Equivalent

46. Guideline 5.b.4 requires all antennas to exhibit a "UL (Underwriters Laboratory) label or equivalent." The safety objective of this requirement is not defined in the requirement and is not clearly apparent on the face of the restriction. New Century states that the safety objective of this requirement is to ensure that the antenna is reasonably safe in design. However, New Century has not clearly defined a legitimate safety objective because it has not clarified the nature of the safety concern that would be addressed by a UL examination of the antenna. In other words, New Century has not shown how an examination of an antenna by UL is necessary to address a specific safety concern. New Century's assertion that a review by UL or an equivalent entity would ensure that the antenna is safe is nothing more than a "general statement of safety" that does not contain the level of specificity required by the Rule.¹⁰³

7. Requirement that Exterior Wiring Be Hidden

47. Guideline 5.b.10 requires that exterior wiring be "hidden from view as much as possible in order to prevent such wiring from coming loose and causing bodily injury or property damage." Although we find that it is conceivable that loose wiring could cause injury or damage, we do not believe that keeping the wiring hidden from view will achieve that objective and that this requirement is likely designed merely to satisfy New Century's aesthetic preferences. If the legitimate concern is that the wiring might become loose and cause harm, then an appropriate guideline would be to require specific installation procedures to prevent such an occurrence, such as securing the wiring tightly to the building in some manner. Thus, we find that this guideline does not have a legitimate safety objective. However, New Century may enforce this guideline as a non-safety restriction in order to enforce its aesthetic preferences so long as the guideline and its enforcement do not impair installation, maintenance or use of the antenna under the Rule.

8. Prohibition of Free Standing, Pole, Roof and Chimney Mounted Antenna Installations

48. Guideline 1 prohibits the installation of antennas on free standing mounts, poles, roofs and chimneys. We find that the flat prohibition on these types of installations does not have a legitimate safety objective.¹⁰⁴ Regarding pole mounts, New Century appears to argue that an antenna might topple over if the pole is not planted deeply enough in concrete. If ensuring the stability of the mount is its actual safety objective, then New Century may address this objective with a guideline less burdensome than a flat prohibition. For example, New Century could require the antenna user to install the pole in concrete according to the antenna manufacturer's depth standards. New Century has not shown any legitimate safety objectives for the remaining installation prohibitions.

9. Guidelines for Securing Antennas to their Mounts

¹⁰²See *Star Lambert*, 12 FCC Rcd at 10468; *Order on Reconsideration* at para. 31.

¹⁰³*Star Lambert*, 12 FCC Rcd at 10469; *MacDonald*, 13 FCC Rcd at 4851.

¹⁰⁴New Century's assertion that pole mounting is a more expensive way to install an antenna has no bearing on whether the restriction is safety-related.

49. Guidelines 5.b.1 and 5.b.2 set forth requirements for securing and fastening antennas to their mounts. Because it is clear on the face of these requirements that they are designed to prevent antennas from detaching from their mounts and possibly causing a safety hazard, we find that these requirements are enforceable under the Rule's safety exception.¹⁰⁵

10. Per se Height Restriction on Antenna Mounts

50. Guideline 2 prohibits the installation of any antenna on a mast that exceeds 12 feet above the roof level. This requirement is prohibited because it sets a *per se* bar to antennas over 12 feet, and an antenna exceeding this height that does not pose any safety risks may be necessary for the antenna user to receive an acceptable quality signal.¹⁰⁶

D. Non-Safety Restrictions

51. Regarding guidelines that were not specifically addressed in Section B above, New Century has not shown that these guidelines have clearly defined safety objectives; thus, those guidelines do not fall within the Rule's safety exception. Upon examining these remaining guidelines under the Rule's impairment standard, we find that two guidelines impair on their face and a third guideline may impair in the particular circumstances of its enforcement.¹⁰⁷

52. First, Guideline 4's required locations for antenna installations permit the antenna user to install an antenna in alternative locations if the antenna's signal would be impaired in the required locations. Nevertheless, this Guideline is unenforceable because requiring installation in the required locations may unreasonably delay or increase the costs of installation, maintenance or use of the antenna, which are the two other types of impairments that location requirements may create.¹⁰⁸ To be valid, a location requirement must permit exceptions where the required location would not provide an adequate quality signal or where the installation, maintenance or use of an antenna in that required location would cause the antenna user unreasonable delay or unreasonable costs.¹⁰⁹

53. Second, requiring the applicant to file an approved Application with the Recorder of Deeds is not safety related and constitutes an impairment under the Rule. The Association's stated purpose for the recording requirement is to inform potential purchasers of the property that the antenna is attached to the

¹⁰⁵*Report and Order* at para. 24 ("Safety regulations stipulating the adequate bolting or guying of antennas are enforceable. . .").

¹⁰⁶*Order on Reconsideration* at para. 19 ("If a local authority created a *per se* bar to antennas over a certain height, the restriction would be prohibited."); *Report and Order*, 11 FCC Rcd at 19299 ("we would find unenforceable any restriction that establishes specific *per se* height limits").

¹⁰⁷Frankfurt and the commenters do not argue that other guidelines impair.

¹⁰⁸*See Star Lambert*, 12 FCC Rcd at 10467 (although the city's location requirements allowed exceptions for cases where an antenna's signal would be impaired, the location requirements violated the Rule because they did not allow exceptions for cases where the required location would unreasonably delay or increase the cost of installation, maintenance or use).

¹⁰⁹*See* 47 C.F.R. § 1.4000(a).

townhome. This requirement subjects the antenna user to an unreasonable delay and expense to record the Application given that an antenna would be readily apparent to any purchaser and given that the antenna user would most likely not bestow personal property on a purchaser. Therefore, this guideline is prohibited.

54. Third, Guideline 4.e requires that a device not obstruct the exterior maintenance responsibilities of New Century. Although an association may have, under its by-laws, reasonable maintenance responsibilities that do not impair, if the Association were to use this Guideline in a manner that impaired an antenna user's installation, maintenance and use of an antenna, then the Guideline would be unenforceable under those circumstances. Thus, as written, Guideline 4.e does not impair; as implemented under particular circumstances, Guideline 4.e may impair.

E. The Penalty Against Frankfurt is Not Enforceable

55. New Century assessed a \$1000 fine against Frankfurt after New Century determined that Frankfurt had not shown that the antenna met the Associations' Application, windload, grounding, and mounting requirements.¹¹⁰ For the reasons set forth above, the Application requirement is not enforceable, and the windload and grounding requirements as they are currently written are not enforceable against Frankfurt. In addition, the Association has not shown that Frankfurt's antenna was not mounted in accordance with any of the Association's enforceable guidelines. Therefore, the Association had no basis for assessing the fine against Frankfurt, and the fine is not enforceable. Accordingly, we need not decide whether the size of the potential fine, \$1000, is unreasonably large and might constitute an impairment under the rule by deterring and thereby unreasonably preventing homeowners from installing antennas.¹¹¹

VI. Ordering Clauses

56. 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 Victor Frankfurt is **GRANTED IN PART AND DENIED IN PART** with respect to preemption of New Century Town Townhomes Association's Guidelines and Application, as discussed above.

57. This action is taken by the Deputy Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹¹⁰New Century Response at 2.

¹¹¹See 47 C.F.R. § 1.4000(a)(1).

Appendix A

New Century Town Townhouse Association Guidelines regarding the installation, maintenance and use of antenna devices read as follows:

[T]he following rules shall apply to devices covered by Section 207 of the [Telecommunications] Act [of 1996] in the interest of promoting the safety and welfare of the Association:

1. Type of Mountings Permitted/Prohibited.
 - a. Free standing on patio or deck - prohibited
 - b. Fence/railing - prohibited
 - c. Siding mounted - permitted
 - d. Roof mounts - prohibited
 - e. Fireplace chimney mounted - prohibited
 - f. Balcony mounts on railing or deck - permitted
 - g. Pole Mounted on detached footing - prohibited
2. Height Restrictions.
 - a. DBS - Not more than 12 feet above roof level.
 - b. MMDS - Not more than 12 feet above roof level.
 - c. TVBS - Not more than height limitations above roof level as specified in local BOCA Code.
 - d. Devices are to generally be mounted so they are not visible from front of unit.
 - e. Mounted devices shall only be as high as necessary above a structure surface to give the device the required clear view of the transmitting signal antenna/satellite.
3. Size Restrictions.
 - a. DBS - Dish shall not exceed 1 meter (39.37 inches) in diameter.
 - b. MMDS - Dish shall not exceed 1 meter (39.37 inches) in diameter or diagonally.
 - c. TVBS - Antennas shall be limited in size pursuant to local BOCA Code.
4. Location of Device.
 - a. Rear of dwelling unit unless signal would be impaired.
 - b. Device may be mounted on owners side of firewall toward rear of unit.
 - c. If rear of unit is not suitable, device shall be placed on side of dwelling unit or end unit.
 - d. If rear and side of dwelling unit is not suitable, device shall only then be permitted in front of dwelling unit in a location as inconspicuous as possible.
 - e. Device shall not interfere nor obstruct exterior maintenance responsibilities of Association.
 - f. Device shall not be located near power lines or other utilities, e.g. gas, water, phone, etc.
 - g. Device shall not extend beyond unit lot lines.
 - h. Devices are prohibited on Association common property.
5. Installation.
 - a. Device shall be grounded in accordance with N.E.C. and local codes.
 - b. Device shall be installed in complete accordance with local codes and requirements. It shall be securely fastened as follows:

1. Siding mounted devices shall be anchored securely to a wall stud with corrosive resistant fasteners.
 2. Mounting brackets and corrosive resistant fasteners (except those furnished with the antenna by its manufacturer) shall be painted to match the unit siding color. If desired the antenna and its factory furnished mounting materials (usually a medium gray color) may be painted to match the unit siding color. The goal of this painting requirement/permission is to help maintain the aesthetics of the community.
 3. All devices shall be able to withstand 50 mph winds without failure.
 4. All devices shall exhibit UL (Underwriters Laboratory) label or equivalent.
 5. All devices shall comply with all ordinances, laws, regulations and industry standards.
 6. Any permits required shall be at owner's expense.
 7. All energy needed to operate said device shall be at owner's expense.
 8. No device shall impair the signals of other devices or any other type of signal.
 9. Owner is responsible for maintaining the paint or other finishes on the device and its, brackets, fasteners, or other associated hardware so they do not rust and weaken over time.
 10. For safety, all exterior wiring shall be neatly attached to the device and building structure and hidden from view as much as possible to prevent such wiring from coming loose and causing bodily injury or property damage. If practical, wiring shall be run internally to prevent U.V. deterioration and wind damage.
6. Removal.
Should the device be removed, owner shall restore premises to condition it was in prior to installation, wear and tear excepted.
7. Architectural and/or Appearance Application.
Owner shall submit an Architectural and/or Appearance Application (Application) to the Association prior to installation. Said Application shall be acted upon by the Association no more than 30 days after receipt of a fully completed Application along with all required attachments.
8. Damage.
Owner is responsible for any damage caused directly or indirectly by the device or installation or removal thereof.
9. Severability.
Should any provision of this Resolution be found to be unenforceable, all other provisions shall remain in full force and effect.¹¹²

¹¹²New Century Response at Ex. B. In the Petition, Frankfurt submitted the Association rules adopted on November 18, 1997. In its response, New Century asserts that the November 18, 1997 rules contain typographical errors and should not have been mailed to Frankfurt. New Century Response at 5. New Century attaches its corrected version of the rules, which were readopted by the Association on April 21, 1998, to its response as Exhibit B. Because Exhibit B reflects the current rules of the Association that the Association is seeking to enforce against Frankfurt, we will examine the April 21, 1998 rules.

Appendix B

The New Century Town Townhouse Association's "Appearance or Architectural Change of Improvement Application" (the "Application") requires the homeowner to perform the following tasks in order to get prior approval for the installation of an antenna:

- submit a sketch of the antenna's installation; including its colors, construction materials and its location; a copy of the property's survey; and a legal description of the applicant's property;
- record the Application and supporting documents with the Recorder of Deeds and/or Registrar of Torrens within 14 days after the Association approves the Application, to supply the Association with a copy of the recording documents, and to bear the recording costs;
- agree to obtain and comply with applicable building codes;
- agree to comply with the Association's declarations, by-laws, rules and regulations regarding the antenna installation;
- agree to remove an antenna installation and bear the costs of such removal, or to have the Association remove the installation at the applicant's expense, if the installation interferes with the Association's maintenance responsibilities;
- indemnify the Association, its members, and agents from liability arising from the antenna installation;
- permit the Association access to the property for purposes of enforcing the Application;
- agree that failure to comply with any of the Application's requirements may result in revocation of the approval for the antenna installation and that the applicant will remove the installation at his or her own expense; and
- agree to permit the Association to enter the applicant's property in order to repair an antenna installation if the applicant does not repair the installation after 14 days written notice from the Association that the installation requires repair.¹¹³

¹¹³See Petition at App. 2.