

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

In the Matter of:)
William Culver)
Petition for Declaratory Ruling Under 47 C.F.R. §) CSR 7925-O
1.4000)

DECLARATORY RULING

Adopted: July 28, 2009

Released: July 29, 2009

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. Petitioner William Culver ("Petitioner") filed a Petition for Declaratory Ruling ("Petition") seeking a determination that the antenna restrictions in the Amended Declaration for North Ridge Farms Homeowners' Association, Inc. ("Association") are prohibited by the Commission's Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000 ("Rule").

II. BACKGROUND

2. 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 was adopted by the Commission to implement Section 207 of the Telecommunications Act of 1996 (the "Act").

1Section 1.4000(e) provides that parties may petition the Commission for a declaratory ruling under Section 1.2 of the Commission's rules to determine whether a particular restriction is permissible or prohibited under the Rule.

2See Preemption of Local Zoning Regulation of Satellite Earth Stations and 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, 11 FCC Rcd 19276 (1996) ("Report and Order"), recon. granted in part and denied in part, 13 FCC Rcd 18962 (1998) ("Order on Reconsideration"), Second Report and Order, 13 FCC Rcd 23874 (1998) ("Second Report and Order").

3Section 207 requires 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.

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

3. The Rule applies to antennas that are one meter or less in diameter, or any size in Alaska, and are designed to receive or transmit direct broadcast satellite services; antennas that are one meter or less in diagonal measurement and are designed to receive or transmit video programming services through multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; and antennas designed to receive television broadcast signals.⁵ For the Rule to apply, the antenna must be installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property” upon which the antenna is located.⁶ The Rule does not apply to restrictions on installations in common areas.⁷ The Rule provides that a restriction impairs installation, maintenance, or use of a protected antenna 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.⁸ There are exceptions to the Rule for restrictions necessary to address valid and clearly articulated safety or historic preservation issues, provided such restrictions are as narrowly tailored as possible, impose as little burden as possible, and apply in a nondiscriminatory manner throughout the regulated area.⁹

4. The Rule provides that parties who are affected by antenna restrictions may petition the Commission to determine if the restrictions are permissible or prohibited by the Rule.¹⁰ The Rule places the burden of demonstrating that a challenged restriction complies with the Rule on the party seeking to impose the restriction.¹¹

III. DISCUSSION

5. Petitioner resides in a single family home located in Crestwood, Kentucky in the North Ridge Farms Homeowners Association.¹² Petitioner requested permission from the Association to install a digital television antenna on the side of his home near the roof peak, but his request was denied. The Association maintains that the Petitioner can receive an acceptable quality signal from a location at the back of the house below the roof line. Alternatively, the Association suggests that Petitioner purchase a new antenna from a list it provided. The Petitioner asks the Commission to find that the Association’s restrictions do not comply with the Rule.

6. The community is governed by the Association, which has adopted Amended Declarations of Restrictions (“Declarations”) that address, among other aspects of the community, the placement of antennas. The Declaration at issue here, adopted in 2002, reads as follows:¹³

⁵47 C.F.R. § 1.4000(a). In October, 2000, the Commission amended the Rule to apply also to antennas that are used to receive and transmit fixed wireless signals. *Promotion of Competitive Networks in Local Telecommunications Markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission’s Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services*, 15 FCC Rcd 22983 (2000).

⁶47 C.F.R. § 1.4000(a)(1).

⁷*Second Report and Order* at para 62.

⁸47 C.F.R. § 1.4000(a)(3).

⁹47 C.F.R. § 1.4000(b).

¹⁰47 C.F.R. § 1.4000(e).

¹¹47 C.F.R. § 1.4000(g).

¹²Petition at 1.

¹³Declaration at para 39.

Concerning the placement of satellite dishes, television antennas and wireless cable antennas, under no circumstances will satellite dishes greater than one (1) meter (39.37") in diameter, AM/FM radio antennas, amateur ("ham") radio antennas, Citizen's Band ("CB") antennas or Digital Audio Radio Services ("DARS") antennas be erected on any lot structure without the written approval of the Association. The Association advises all homeowners to place approved television and satellite dishes on their property in a manner that retains the overall attractiveness of the property and is in a location that is the least visible from the street.¹⁴

7. Petitioner has requested the Commission to find that he is entitled to install the digital television antenna that he has already purchased on the side of his house slightly above the roof peak so that he can receive television broadcast signals from all directions.¹⁵ The Association opposes the Petitioner's proposed antenna placement because, it asserts, this placement would put the antenna in an area with high visibility. The Association has suggested alternative placements which would be less visible. The Association claims that these alternatives would still allow the antenna to "achieve optimum signal strength."¹⁶

8. Petitioner argues that complying with the Association's request to place his antenna behind the center of his home, below his roof ridge, as instructed by the Association, would prevent him from receiving signals from all directions using the antenna he has already purchased.¹⁷ The Petitioner asserts that his antenna must be above the roof peak to have the proper "line of sight" needed to receive all over-the-air signals.¹⁸ Petitioner also argues that it would be cheaper and easier to install the antenna on the side of his house while also insuring the reception of a good signal.¹⁹ Finally, Petitioner argues that the Association's restrictions do not specifically prohibit him from placing the antenna on the side of his house.

9. In opposition, the Association argues that it conducted its own research and discovered that the majority of high definition television broadcast transmitting antennas were within 25 miles of Petitioner's home, and Petitioner only needs a small antenna for good reception.²⁰ Moreover, the Association claims that a smaller antenna could be placed lower than the ridgeline of his roof.²¹ However, the only evidence that the Association presents to support its position is a hand drawn sketch showing its preferred location and the Petitioner's proposed location with the notation that the "same reception" can be achieved. It does not offer any technical or other information to support its claim.²² The Association points out that it provided the Petitioner with a list of antennas that could receive all of

¹⁴Amended Declaration of Restrictions for North Ridge Farms Homeowners' Association, pages 5-6 ¶ 39.

¹⁵Petition at 1. The Petitioner requested permission from the Association for this placement despite the fact that the Association's restrictions do not appear to require prior approval to install television broadcast antennas. Petition at 1.

¹⁶*Id.* at 2.

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰Association Response (Letter dated September 15, 2007 from North Ridge Farms Homeowners Association Inc. to William Culver) at 2.

²¹*Id.*

²²Association Response to the Petition, attachment.

the signals while being below the roof's ridgeline.²³ Finally, the Association argues that its Declaration requires that antennas "be placed in a location least visible from the street."²⁴

10. We find that Petitioner's television antenna to receive digital broadcast signals is covered by the Rule. We also find that the proposed antenna location is an area within his exclusive use or control where he has a direct ownership interest and is thus covered by our Rule. There is no dispute regarding Petitioner's right to place an antenna on his roof, however, the Association seeks to have the antenna placed in a location that is "least visible from the street."²⁵ The second sentence of the Association's Declaration, quoted above, expresses the Association's placement preference. A placement preference restriction is permitted provided it does not impair the antenna user's right to install, maintain, or use an antenna covered by the Rule.²⁶ A placement restriction impairs if it (1) unreasonably delays or prevents installation, maintenance, or use of the antenna, (2) unreasonably increases the cost of installation, maintenance or use of the antenna, or (3) prevents the antenna from receiving an acceptable quality signal.²⁷

11. In considering placement preference issues, we must rely on the particular facts presented by the parties. The Rule places the burden of demonstrating that a challenged restriction complies with the Rule on the party seeking to impose the restriction.²⁸ In this case, the Association has failed to meet this burden. For instance, the Association does not offer any evidence to rebut the Petitioner's claim that placing the antenna in the Association's preferred location, below the roof peak, will preclude reception of an acceptable quality signal. The Association does offer a hand drawn sketch showing its preferred location and the Petitioner's proposed location with the notation that the "same reception" can be achieved, but it does not offer any technical or other facts to support its claim. The Association asserts that, based on its research and given Petitioner's geographical location and the location of the majority of the digital television transmitting antennas within twenty-five miles of Petitioner's home, he only needs a small antenna for good reception. However, the Association does not offer any other technical information, e.g., signal measurement test, to support its contention that if the Petitioner placed the antenna where it suggests, he would be able to receive all of the local signals.²⁹ Furthermore, the Association failed to rebut Petitioner's claim that installation of the antenna on the rear of the house would be more costly, particularly given that the Association wants Petitioner to purchase a new antenna.³⁰ The Petitioner states that he would not be able to receive all the over-the-air signals if he complies with the Association's restrictions.³¹ The burden is on the Association and it has failed to carry its burden and establish that its placement restriction complies with our Rule. We find the Association's placement preference is unenforceable with respect to Petitioner's antenna installation.

²³Association Response (Letter dated September 15, 2007 from North Ridge Farms Homeowners Association Inc. to William Culver) at 2. .

²⁴Association Response at 1.

²⁵*Id.*

²⁶47 C.F.R. § 1.4000(a).

²⁷*In the Matter of James Sadler*, 13 FCC Rcd 12559, 12568 (MB 1998); 47 C.F.R. § 1.4000(a).

²⁸47 C.F.R. § 1.4000(g).

²⁹Association Response at 1.

³⁰Petition at 1.

³¹A computer mapping of Petitioner's address on the Commission's DTV.gov website indicates that his location should receive strong signals for WAVE (NBC), WMYO (MYTV), WDRB (FOX), WLKY (CBS), WHAS (ABC), and WKMJ (PBS), while receiving moderate signals for WKPC (PBS), WBNA (ION), and WBKI (CW). However, we do not have enough information to ascertain the signal strength at the locations proposed by either the Petitioner or the Association. www.fcc.gov/mb/engineering/maps/.

IV. ORDERING CLAUSES

12. 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 William Culver **IS GRANTED** with respect to preemption of Article 39 of the Amended Declaration for the North Ridge Farms Homeowners' Association, Inc.

13. This action is taken by the Acting Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.³²

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe
Acting Chief
Media Bureau

³²47 C.F.R. § 0.283.