

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

In the Matter of:)
Constance M. Lane)
and) CSR 8190-O
Daniel F. Lane)
Petition for Declaratory Ruling)
Under 47 C.F.R. § 1.4000)

DECLARATORY RULING

Adopted: October 30, 2009

Released: October 30, 2009

By the Chief, Media Bureau:

I. Introduction

1. Petitioners Constance and Daniel Lane ("Petitioners") filed a Petition for Declaratory Ruling ("Petition") seeking a determination that the antenna restrictions of the Sutton Park Place Townhome Association ("Association"), Palatine, Illinois, are prohibited by the Commission's Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000 ("Rule").¹ The Association did not file a response to the Petition. DIRECTV and Dish Network LLC ("Dish") filed joint comments and the Satellite Broadcasting and Communications Association of America, Inc. ("SBCA") filed reply comments. For the reasons discussed below, we grant the petition.

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 devices² was adopted by the Commission to implement Section 207 of the Telecommunications Act of 1996 (the "Act").³ This provision was

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. 47 C.F.R. § 1.4000(e).

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*, IB Docket No. 95-59 and CS Docket No. 96-83, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking ("Report and Order"), 11 FCC Rcd. 19276 (1996) (consolidated), *on reconsideration*, 13 FCC Rcd. 18962 (1998) ("Order on Reconsideration"), Second Report and Order, 13 FCC Rcd. 23874 (1998) ("Second Report and Order"). The Rule became effective on October 14, 1996. Public Notice DA 96-1755 (Oct. 23, 1996).

³ Section 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

(continued...)

intended to advance 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. The Rule applies to antennas that are one meter or less in diameter, or any size in Alaska, and designed to receive or transmit direct broadcast satellite services; antennas that are one meter or less in diagonal measurement and 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 an antenna user where the user has a direct or indirect ownership or leasehold interest in the property."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

II. Discussion

5. The Petitioners have installed a television antenna on the roof of their townhome.¹² They state that they own a "deeded townhome" with exclusive use of their roof and the Association does not

(...continued from previous page)

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

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

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 wireless Internet 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*, First Report and Order and Further Notice of Proposed Rulemaking, 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).

¹² Petition.

dispute this assertion.¹³ The Association's rules require that antennas must be installed in the attic of a townhome and any deviation from this requirement must be approved by the Board of Directors except where an owner cannot get an acceptable signal in the attic.¹⁴ The Petitioners allege that they cannot get an acceptable quality signal in their attic and that therefore they have installed a roof mounted antenna.¹⁵ They state that the Association is imposing continuing fines with respect to this installation¹⁶ and the Petitioners request the Commission to prohibit the Association from enforcing its rule.¹⁷ DIRECTV and Dish as well as the SBCA filed comments supporting the Petitioners.

6. We grant the Petition. By its own terms, the Association's restriction permits an owner to install an antenna in a location other than the attic, without approval from the Board of Directors, if the owner cannot get an acceptable signal in the attic. The Petitioners claim that they cannot get a signal in their attic and, under the Rule, the Association has the burden to demonstrate otherwise if it wishes to enforce its placement preference.¹⁸ By declining to oppose the Petition, the Association has failed to carry its burden. We therefore conclude that the Petitioners' antenna installation on their roof is permissible under the Commission's Rule as well as the Association's rules.

III. Ordering Clauses

7. 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, the Petition is **GRANTED**.

8. This action is taken by the Chief, Media Bureau, pursuant to authority delegated by Section 0.283, 47 C.F.R. §0.283, of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William Lake
Chief, Media Bureau

¹³ Petition.

¹⁴ Association's Rule #2.

¹⁵ Petition

¹⁶ See letter of January 16, 2009 attached to the Petition.

¹⁷ Petition.

¹⁸ 47 C.F.R. § 1.4000(g).