

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

In the Matter of:)
Corey & Juanita Walker)
Petition for Declaratory Ruling Under 47 C.F.R. §) CSR 8477-O
1.4000)

DECLARATORY RULING

Adopted: July 27, 2011

Released: July 27, 2011

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we grant a Petition ("Petition") filed by Corey and Juanita Walker ("Petitioners") and find that the antenna restrictions of Carriage Homes @ Town Square Condominium Homeowners Association ("Association") in Virginia Beach, Virginia 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"). This provision was intended to advance one of the primary objectives of the Communications Act: "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 . . ."

3. The Rule applies to direct broadcast satellite antennas that are one meter or less in diameter or any size in Alaska; antennas that are one meter or less in diameter or diagonal measurement and are designed to receive or transmit video programming services through multipoint distribution

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). In this case, Carriage Homes @ Town Square Condominiums Homeowners Association ("Association") did not respond to the Petition. DIRECTV, Inc. filed comments in support of the Petition.

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 television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 (1996).

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

services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; and antennas designed to receive television broadcast signals.⁵ The Rule also applies to antennas used to receive fixed wireless or broadband Internet signals.⁶ 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.⁷ The Rule does not apply to restrictions on installations in common areas or elements.⁸ 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.⁹ 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.¹⁰

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.¹¹ The Rule places the burden of demonstrating that a challenged restriction complies with the Rule on the party seeking to impose the restriction.¹²

5. The record in this proceeding includes the following facts, which are deemed admitted by the Association as it failed to file an Opposition or Reply to the Petition. The Petitioners leased a condominium located at Carriage Homes @ Town Square Condominiums in Virginia Beach, Virginia (“Condominiums”). Earlier this year, the Petitioners installed a satellite dish antenna on the balcony of their condominium, completely inside the area within their exclusive use or control and part of the unit that they rented.¹³ After installation, a representative of the Association contacted the Petitioners and told them to remove the antenna.¹⁴ The next week, the Petitioners spoke with a representative of the Association’s management company who told them, among other things, that the Association was not governed by Commission rules and that the Petitioners had to remove their antenna.¹⁵ Finally, according to the Petition and not contradicted by the Association, someone entered the Petitioners condominium and took the antenna from their balcony, leaving the door to the unit open and frightening the Petitioners’ ten

⁵47 C.F.R. § 1.4000(a).

⁶47 C.F.R. § 1.4000(a)(1)(ii)(A). In October 2000, the Commission amended the Rule to apply 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).

⁷47 C.F.R. § 1.4000(a)(1).

⁸*Second Report and Order* at para 62.

⁹47 C.F.R. § 1.4000(a)(3).

¹⁰47 C.F.R. § 1.4000(b).

¹¹47 C.F.R. § 1.4000(e).

¹²47 C.F.R. § 1.4000(g).

¹³Petition at 1.

¹⁴*Id.*

¹⁵*Id.*

year old daughter when she returned home later from school.¹⁶

III. DISCUSSION

A. Application of the OTARD Rule to Petitioner's Balcony

6. We find that the OTARD rule applies to the Petitioner's balcony. In order to be covered by OTARD, an antenna must be installed on property within the exclusive use or control of an antenna user where he or she has a direct or indirect ownership or leasehold interest in the property. In adopting the rule, the Commission stated that "viewers who have exclusive use or control of property in which they have a direct or indirect ownership interest cannot be prohibited from installing antennas on this property where such a prohibition would impair reception, absent a safety or historic preservation purpose."¹⁷ The Commission further clarified the meaning of "exclusive use" in its *Order on Reconsideration*, stating that "the rule protects a viewer who has either exclusive use or exclusive control of property in which the viewer has a direct or indirect ownership interest. It is not necessary for a viewer to have exclusive control over the property to be protected by our Section 207 rules."¹⁸ The Media Bureau has ruled that in determining the area of exclusive use or control, it would rely upon the property description set forth in the lease or other controlling document.¹⁹ As noted by DIRECTV, Virginia condominium law provides that porches, balconies, patios, etc. designed to serve a single unit are limited common elements, reserved for the exclusive use of the owners of the unit in question.²⁰ In this case, the Association has not disputed the fact that the Petitioners' balcony is an area within their exclusive use or control nor has it disputed that they have a leasehold interest in the area. The OTARD rule thus applies to the balcony in question.

B. The Association's Antenna Restrictions

7. We find that the Association's rules are invalid and unenforceable. The rules require that satellite antennas be placed in an area not visible from the street and that they be screened from view of any adjoining unit, street, or common area. The rules limit to one the number of antennas that can be installed, and do not appear to allow television broadcast antennas or other types of antennas that are covered by OTARD. The rules apply different restrictions to antennas 18 inches or less in diameter than are applied to antennas more than 18 inches and less than 40 inches. The rules require that installation in non-permitted areas is subject to prior approval from the Association's Architectural Review Board. The rules state that an antenna 18 inches or less may be located on the rear of the house below the roof ridge or on the fascia board below the eaves or within the rear yard and screened with landscaping. Antennas more than 18 inches but 40 inches or less may only be installed behind the rear foundation line of the house and may not be located in the rear yard or in an easement. These antennas must be fully screened with landscaping. The rules do not include balconies as permitted installation sites.²¹

8. These restrictions fail to meet the OTARD requirements in multiple ways. First, they do

¹⁶*Id.*

¹⁷*Report and Order* at 19307.

¹⁸*Order on Reconsideration* at 18995.

¹⁹*In the Matter of Phillip Wojcikiewicz*, 18 FCC Rcd 19523, 19525 (MB 2003); *In the Matter of James S. Bannister*, 24 FCC Rcd 9516 (MB 2009); *In the Matter of Craig With*, 25 FCC Rcd 5583 (MB 2010).

²⁰See DIRECTV Reply Comments citing the Virginia Condominium Act, Va. Code §§55-79.41; 55-79.41:1;55-79.50.

²¹ See *The Carriage Homes @ Towne Square Condominium Rules and Regulations* attached to the Petition.

not permit installation in areas such as balconies or patios that are within an antenna user's exclusive use or control.²² They restrict installation to areas where they cannot be seen from the street or other units without allowing deviation in situations where these "hidden" installations cannot accommodate reception of an acceptable quality signal. It is also unclear if these preferred locations are actually in common areas since the Petitioners assert that the balcony is the only appropriate location for a satellite dish within their exclusive use or control and there is no evidence in the record that this is not the case. Although an association can decide to allow antenna installation in common areas, which are not covered by OTARD, it cannot then prohibit installation in an area that is covered by OTARD and where the antenna will receive an acceptable signal.

9. In addition, the Association's rules limit the number of antennas that can be installed when Commission precedent holds that OTARD protects all antennas necessary to obtain the desired service.²³ Further, because all satellite antennas one meter or less are covered equally by OTARD, restrictions cannot differentiate and impose greater regulation on antennas over 18 inches but under 40 inches. Finally, although not at issue in the instant case, the Association does not address installation of television broadcast antennas or other OTARD covered devices and these types of antennas must also be allowed in areas within the exclusive use or control of an antenna user. For all of these reasons, the antenna restrictions of the Carriage Homes @ Town Square Condominiums are invalid and unenforceable

IV. ORDERING CLAUSES

10. 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 Corey and Juanita Walker **IS GRANTED** with respect to antenna restrictions of the Carriage Homes @ Town Square Condominiums in Virginia Beach, Virginia, as discussed herein, and such restrictions are unenforceable.

11. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁴

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Deputy Chief, Media Bureau

²²Id.

²³Id.;. See *In the Matter of Stanley & Vera Holliday*, 14 FCC Rcd 17167 (CSB 1999).

²⁴47 C.F.R. § 0.283.