

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

In the Matter of:)
Brent Beumel, Jr.)
Petition for Declaratory Ruling Under 47 C.F.R. §)
1.4000) CSR 8487-O

DECLARATORY RULING

Adopted: February 23, 2016

Released: February 23, 2016

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we grant a Petition for Declaratory Ruling ("Petition") filed by Brent Beumel, Jr. ("Petitioner") and find that the antenna restrictions of R/C World I ("Association"), in Orlando, Florida are prohibited by the Commission's Over-the-Air Reception Devices Rule, 47 C.F.R. § 1.4000 ("Rule" or "OTARD").

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 used to receive video programming services through multipoint distribution services, including

1 Section 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).

2 See 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, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 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").

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 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).

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

multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; and antennas used 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 or transmission 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. In this case, the Petitioner owns a condominium located at R/C World I, Orlando, Florida.¹³ The Petitioner sought to install a satellite dish antenna on his property, initially inside his screened-in patio.¹⁴ However, the Petitioner was not able to receive a satellite signal in that location.¹⁵ Subsequently, Petitioner installed the antenna on a concrete slab outside the sliding glass door of his living/dining area.¹⁶ After installation, Petitioner received a letter¹⁷ asserting that he had “altered or

⁵ 47 C.F.R. § 1.4000(a).

⁶ 47 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. See *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 in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, 23027, ¶¶ 97-100 (2000).

⁷ 47 C.F.R. § 1.4000(a)(1).

⁸ *Second Report and Order*, 13 FCC Rcd at 23893, ¶¶ 35-36.

⁹ 47 C.F.R. § 1.4000(a)(3).

¹⁰ 47 C.F.R. § 1.4000(b).

¹¹ 47 C.F.R. § 1.4000(e). The Media Bureau routinely resolves OTARD petitions for declaratory ruling pursuant to its delegated authority. *Id.* § 0.283.

¹² 47 C.F.R. § 1.4000(g). Petitioner filed his petition with the Commission on August 9, 2010 (“Petition”). The Association filed a response to the Petition (“Association’s Response to Petition”), Petitioner filed a reply (“Petitioner’s Reply”), and the Association filed a response to Petitioner’s reply (“Association’s Response to Petitioner’s Reply”). DIRECTV, Inc. filed comments in support of the Petition.

¹³ Petition at 1.

¹⁴ Although the Petitioner and the Association often refer to this area as the “screened-in porch,” the area is identified on the Association’s Schedule A Floor Plan documents as a “patio.” See Petitioner’s Reply, CCR Exhibit B-2.

¹⁵ Petition at 1.

¹⁶ *Id.*

modified common elements” with his installation and that he was in violation of the Association’s covenants.¹⁸ The Association asserts that the concrete slab adjacent to the sliding glass door of Petitioner’s living/dining area is not a patio, but is instead a common area, and therefore restrictions on antenna placement in this area of Petitioner’s property are permissible.

III. DISCUSSION

6. For the reasons set forth below, we find that the Association improperly prohibited Petitioner’s antenna installation and, therefore, grant the Petitioner’s Petition. We find that the Rule applies to the Petitioner’s antenna installation. 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.”¹⁹ 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.”²⁰ In this case, the Petitioner contends that the concrete slab outside the sliding glass door of his condominium is his “patio” and that it is for his exclusive use and under his exclusive control. The Association contends that the area is not his “patio,” but rather a common area controlled by the Association.²¹

7. In order to resolve these differing interpretations, we follow established precedent and look to the controlling legal documents that the parties have submitted.²² The Covenants, Conditions, and Restrictions (“CCRs”) governing Petitioner’s condominium prohibit installation of antennas on the exterior of units.²³ The floor plan,²⁴ which is attached as an exhibit to the CCRs, identifies the interior living areas as well as the exterior areas that are included as part of the units.²⁵ The Petitioner resides in a first floor unit, identified in the Floor Plan as Unit A, First Floor Plan Typical.²⁶ This floor plan shows an area identified as a patio (first floor) which is a concrete slab adjacent to the Petitioner’s living/dining room area.²⁷ It is in this area that Petitioner installed his antenna. The CCRs indicate that a “unit” includes the interior portion of the dwelling as well as a balcony or patio that is to be maintained by the owner of the unit to which it is appurtenant.²⁸ The Floor Plan identifies both the screened-in patio²⁹ and

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¹⁷ Letter from Law Offices of John L. Masi, P.A., Counsel to R/C World I, to Brent Beumel, Jr. (July 26, 2010) (“July 26, 2010 Letter from Association’s Counsel”).

¹⁸ Petition at 1; see July 26, 2010 Letter from Association’s Counsel.

¹⁹ *Report and Order*, 11 FCC Rcd at 19307, ¶ 52.

²⁰ *Order on Reconsideration*, 13 FCC Rcd at 18995, ¶ 78.

²¹ Association’s Response to Petition at 6-7.

²² *In the Matter of Craig Wirth*, Declaratory Ruling, 25 FCC Rcd 15583 (MB 2010).

²³ Petition, Exhibit A. CCR Article 5.1(b) provides that “in order to preserve the architectural appearance of the Condominium as the same was originally designed and constructed, no owner shall change, modify or alter in any way or manner whatsoever the design and appearance of any of the exterior surfaces . . . nor install, erect or attach to any part of the exterior or roof of the unit any sort of radio or television aerial.” *Id.*

²⁴ Association’s Response to Petition, Schedule B, Exhibit B-2 (Floor Plan and Elevations) (“Floor Plan”).

²⁵ Association’s Response to Petition, Exhibit A.

²⁶ Association’s Response to Petition at 6; Petitioner’s Reply at 1.

²⁷ Petition at 1.

the slab area adjacent to the Petitioner's sliding glass door³⁰ as "patios." Both patios are exterior to the living unit. Therefore the Petitioner argues that he has two patios and can install an antenna in either location.

8. Based on a review of the controlling documents, we agree. Although the Association argues that the documents contemplate an owner having a single patio or balcony and not two patios, the Floor Plan is inconsistent with this interpretation.³¹ We disagree with the Association's conclusion that since the Petitioner lives on the first floor and his unit does not have a balcony, the exclusive use language could only be referring to the Petitioner's one screened-in patio.³² Based on the Floor Plan of the Petitioner's unit, the patio (concrete slab adjacent to his sliding glass door) is part of his unit boundaries.³³ Of further relevance, the Petitioner notes that the concrete slab adjacent to his unit is only accessible from his home and that other first floor unit owners have installed barbecue grills, patio furniture, and large potted plants on the concrete slabs adjacent to their property.³⁴

9. The Association's other arguments are also not persuasive. For example, the Association argues that all balconies and patios are screened-in and that this is reflected on the Floor Plan by marked solid black lines. This argument is not supported by the plain language of the relevant documents.³⁵ While we understand the Association's attempt to explain the Floor Plan from its perspective – black marked lines around one patio means one thing and hash marks around the concrete patio area means another – there is nothing in the CCRs or Floor Plan that would support the Association's contention. Neither the CCRs nor the accompanying map legend explain the difference between areas indicated by the black marked lines and the dashes. The Floor Plan for the Petitioner's unit type clearly identifies the concrete slab adjacent to the Petitioner's sliding glass door as a patio. We also disagree with the Association's assertion that if the Commission were to rule in the Petitioner's favor, it would be improperly interfering with property rights of the Association by revising the Association's CCRs. It is the Association's own document – the Floor Plan – that identifies the concrete slab as a patio, which by the terms of the CCR is part of Petitioner's exclusive use area because it is included in the exterior portion of the unit and therefore is a permissible location for a satellite antenna. The Association has offered no evidentiary support to buttress its argument that the concrete slab is not a patio as specified by the Floor Plan. To the extent the CCRs and the Floor Plan are inconsistent, the burden is on the Association to establish why the Floor Plan is incorrect. We find that it has not met its burden. For all of these reasons, the antenna restrictions of R/C World I, in Orlando, Florida 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 Brent Beumel, Jr. **IS GRANTED** with respect to

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²⁸ Petition, Exhibit A, Schedule A, Section 3(e).

²⁹ The CCRs and the floor plan identify the area referred to by the Petitioner and Association as the "screened-in porch" as a "patio."

³⁰ Petitioner's Reply at 1.

³¹ Association's Response to Petitioner's Reply at 3-4.

³² *Id.* at 4.

³³ *Id.*

³⁴ *Id.* See Comments of DIRECTV at 5 (arguing that this use is the essence of "exclusive use").

³⁵ Association's Response to Petitioner's Reply at 2.

antenna restrictions of the R/C World I, in Orlando, Florida, 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.³⁶

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Deputy Chief, Media Bureau

³⁶ 47 C.F.R. § 0.283.