

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

In the Matter of
Mark and Cindy Key
v.
Fairways at Shining Rock Condominiums,
Northbridge, Massachusetts
CSR-8507-O
Docket No. 11-1264

ORDER OF DISMISSAL

Adopted: May 1, 2020

Released: May 1, 2020

By the Chief, Policy Division, Media Bureau:

1. Petitioners, Mark and Cindy Key, filed a Petition for Declaratory Ruling (Petition) asking the Commission to determine whether antenna installation rules of the Fairways at Shining Rock Condominiums (Fairways), Northbridge, Massachusetts, are preempted by section 1.4000 of the Commission’s Over-the-Air Reception Devices Rule (OTARD Rule).1 For the reasons discussed below, we dismiss the Petition without prejudice.

2. At the time that the Petitioners’ filed the Petition, they owned a condominium home located at the Fairways.2 Petitioners filed an initial petition seeking protection under the OTARD Rule for a satellite dish installed on the porch roof and challenging the Master Deed restrictions that require the Fairways’ approval prior to installation of an antenna or satellite dish. The Media Bureau (Bureau) dismissed the Petitioners’ initial petition because the satellite dish was installed in a location defined as a common area under the Fairways’ Master Deed.3 Petitioners subsequently filed the current Petition indicating that they planned to move their satellite dish to a new location in the driveway and seeking a finding that the Fairways cannot prohibit their installation of a satellite dish in this location because it is a limited common area within their exclusive use or control.

3. The Bureau initially issued a Public Notice seeking responses to the Petition.4 Given the passage of time since the Petition was filed and the record closed, Bureau staff attempted to reach Petitioners’ counsel in January 2020 in order to ascertain current and accurate information about the disposition of the dispute, and left a message requesting a return call. Subsequently, the Bureau sent a

1 47 CFR § 1.4000.

2 Petition at 1.

3 Letter from Rosalee Chiara, Senior Attorney, Media Bureau, Federal Communications Commission, to Mark and Cindy Key (Oct. 5, 2011); Petition at 5.

4 Media Bureau Seeks Comment on Petition for Declaratory Ruling that Rules of a Condominium Association in Northbridge, Massachusetts are Preempted by the Commission’s Over-The-Air Reception Devices Rule, CSR 8507-O, Public Notice, DA 11-1264 (MB 2011). The Bureau received two responses from the Fairways opposing the Petition. Three residents of the Fairways also filed oppositions to the Petition. DIRECTV filed comments in support of the Petition. 4

letter requesting the status of the matter to the parties on February 7, 2020.⁵ The letter sought to determine whether a controversy still existed and required a response by February 28, 2020. The letter noted that, if the parties failed to respond, the Bureau would close the matter and dismiss the Petition.⁶ The parties have not responded to the letter.

4. Bureau staff also attempted to contact counsel for the petitioners by e-mail on April 22, 2020. However, Bureau staff was unable to reach counsel using the contact information on record and counsel has not responded to voicemail and e-mail messages.⁷

5. In the absence of a response to the Bureau's letter and other messages, the Bureau lacks an understanding of the current facts regarding the dispute. As such, the Bureau is unable to render a decision on the merits of this matter. Without current and accurate facts, or even the knowledge of whether a controversy still exists, the Bureau must dismiss the Petition.

6. Accordingly, **IT IS ORDERED** that, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules,⁸ the Petition for Declaratory Ruling **IS DISMISSED WITHOUT PREJUDICE**.

7. **IT IS FURTHER ORDERED** that the above-referenced proceeding **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order of Dismissal shall be served via e-mail to Amanda Cooper, counsel for the Petitioners, Fairways at Shining Rock Condominiums Trust, Continuing Care Management, L.L.C., and Goodman, Shapiro & Lombardi, L.L.C., counsel for Fairways.

FEDERAL COMMUNICATIONS COMMISSION

Maria Mullarkey
Chief, Policy Division, Media Bureau

⁵ Letter from Michael Scurato, Acting Assistant Division Chief, Policy Division, FCC Media Bureau, to Amanda Cooper, Esq., Counsel for Petitioners (Feb. 7, 2020).

⁶ *Id.* The letter stated, in pertinent part, "If we do not hear from you by February 28, 2020, we will consider this matter closed and we will dismiss the Petition for failure to prosecute."

⁷ E-mail from Kenneth Lewis, Staff Attorney, Policy Division, FCC Media Bureau, to Amanda Cooper, Esq., Counsel for Petitioners (April 22, 2020).

⁸ 47 CFR §§ 0.61, 0.283.