

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

In the Matter of	)	
	)	
Brian Smith	)	MB Docket No. 25-214
	)	
Petition for Declaratory Ruling Under 47 CFR §	)	CSR 9022-O
1.4000	)	

DECLARATORY RULING AND CITATION

Adopted: November 21, 2025**Released: November 21, 2025**

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we grant a Petition for Declaratory Ruling filed by Brian Smith (Petitioner)¹ and find that antenna restrictions of the Orangetree of Lake County Homeowners' Association (Association), Winter Garden, Florida, are prohibited by the Commission's Over-the-Air Reception Devices Rule (OTARD Rule).² In the attached Citation, we notify the Association that if it fails to comply with the Declaratory Ruling and the Commission's rules, it may be liable for significant fines.

II. BACKGROUND

2. The OTARD Rule prohibits governmental and private restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices.³ It was adopted by the Commission to implement section 207 of the Telecommunications Act of 1996.⁴ 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

¹ Petition of Brian Smith for Declaratory Ruling, MB Docket No. 25-214, CSR 9022-O (filed Jan. 13, 2025) (Petition).

² 47 CFR § 1.4000. 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 OTARD Rule. *Id.* § 1.4000(e).

³ See *Preemption of Local Zoning Regulation of Satellite Earth Stations; 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, CS Docket No. 96-83, 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*); *Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, Second Report and Order, 13 FCC Rcd 23874 (1998) (*Second Report and Order*).

⁴ 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).

and radio communication service with adequate facilities at reasonable charges. . . .”⁵

3. The OTARD 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 services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; and antennas designed to receive television broadcast signals.⁶ The OTARD Rule also applies to antennas used to receive fixed wireless or broadband Internet signals.⁷ For the OTARD 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.⁸ It does not apply to restrictions on installations in common areas or elements.⁹ The OTARD 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.¹⁰ There are exceptions to the OTARD 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.¹¹

4. The OTARD 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 OTARD Rule.¹² The OTARD Rule places the burden of demonstrating that a challenged restriction complies with the OTARD Rule on the party seeking to impose the restriction.¹³

5. The record in this proceeding sets forth the following facts, which are deemed admitted by the Association as it did not file an Opposition or Reply to the Petition.¹⁴ The Petitioner resides in a single family home in Clermont, Florida. Petitioner had a 25 inch over-the-air antenna installed on the roof of his home to receive television broadcast signals.¹⁵ Petitioner received a “Violation Notice” letter

⁵ Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. § 151.

⁶ 47 CFR § 1.4000(a).

⁷ *Id.* § 1.4000(a)(1)(ii)(A). In October 2000, the Commission amended the OTARD 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*, 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 (2000).

⁸ 47 CFR § 1.4000(a)(1).

⁹ *Second Report and Order*, 13 FCC Rcd at 23907, para. 62.

¹⁰ 47 CFR § 1.4000(a)(3).

¹¹ *Id.* § 1.4000(b).

¹² *Id.* § 1.4000(e).

¹³ *Id.* § 1.4000(g).

¹⁴ *See, e.g., In the Matter of Corey & Juanita Walker, Petition for Declaratory Ruling Under 47 § C.F.R. 1.4000*, Declaratory Ruling, 26 FCC Rcd 10531 (MB 2011) (granting a petition filed pursuant to the OTARD Rule, where the facts in the petition were deemed admitted by the association because it failed to file an opposition or reply to the petition).

¹⁵ Petition.

from the Association dated January 4, 2025, stating that his property was not in compliance with the community's rules and regulations because antennas and dishes are not allowed on the roof.¹⁶ More specifically, according to the Violation Notice, placement of Petitioner's antenna on the roof violates the Association's Declaration of Conditions, Covenants, Easements, and Restrictions (Deed Restrictions) Article VI, Section 6.17, which states: "No television or radio antenna shall be constructed or placed on the roof of any dwelling. No free-standing television or radio antenna shall be permitted on any lot unless (i) the location of such free-standing antenna is approved by the Architectural Control Committee and (ii) such free-standing antenna does not exceed five (5) feet in height above the highest point of the roof of the dwelling. Further, no television or radio dish antenna shall be permitted on any lot unless the appearance and location of such dish antenna is approved in advance by the Architectural Control Committee."¹⁷ The Violation Notice instructed Petitioner to submit written plans for the revised antenna installation to the Architectural Control Committee and requested correction of the violation by January 18, 2025.¹⁸ The Violation Notice also stated that failure to "comply fully" may result in daily fines of \$100 with an aggregate fine of up to \$1,000.¹⁹

6. Petitioner contends that the Association's suggested relocation of his antenna is infeasible. According to the Petition, the Association's antenna rules "ha[ve] forced homeowners to place[] antennas inside the attic," and Petitioner explains that doing so would require installation of a coaxial coupler outside of the house at the ground level, which would require Petitioner to drill a hole in the upper level of the house to run the cable.²⁰ Moreover, according to the Petition, there is no guarantee that relocation of the antenna would ensure reception of local television broadcast signals.²¹

7. As noted above, on January 13, 2025, Petitioner filed a Petition for Declaratory Ruling with the Commission, alleging that the Association's rule restricting the placement of antennas violates the OTARD Rule.²² On July 11, 2025, the Media Bureau issued a Public Notice seeking comment on the Petition.²³ No comments were filed. Following the close of the comment period, Petitioner submitted documentation of the Association's continued attempts to impose fines for the antenna. Specifically, Petitioner received a new Violation Notice dated September 2, 2025, based on "a routine site inspection performed on 8/27/2025," assessing a fine of \$1,000 for the antenna's violation of Article VI, Section 6.17 of the Deed Restrictions.²⁴

III. DECLARATORY RULING

8. For the reasons explained in detail below, we find that the Association's antenna restrictions in Article VI, Section 6.17 of the Deed Restrictions are prohibited by the Commission's OTARD Rule, and that the Association may not continue to assess fines against the Petitioner for

¹⁶ *Id.*

¹⁷ *Id.* (citing Article VI (Certain Rules and Regulations) § 6.17 of the Deed Restrictions).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See *supra* note 1.

²³ *Media Bureau Seeks Comment on Petition for Declaratory Ruling that the Rules of the Orangetree of Lake County Homeowners Association, Winter Garden, Florida, Are Preempted by the Commission's Over-the-air Reception Devices Rule*, DA 25-579, 2025 WL 1922290 (MB 2025) (Public Notice).

²⁴ Petitioner's email regarding this fine is available in the docket of this proceeding. See Email from Brian Smith to Kenneth Lewis, Attorney Advisor, Policy Division, Media Bureau; realservice@ciramail.com; and Orangetree of Lake County Homeowners' Association, dated Sept. 8, 2025, 12:04 pm (Brian Smith Email).

violation of this provision.

9. As an initial matter, we find that the OTARD Rule applies to the antenna placement restriction at issue in this case.²⁵ In order to be covered by the OTARD Rule, 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 OTARD 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.”²⁶ The Commission further clarified the meaning of “exclusive use” in its *Order on Reconsideration*, stating that “the [OTARD] rule protects a viewer who has either exclusive use or exclusive control of property in which the viewer has direct or indirect ownership interest. It is not necessary for a viewer to have exclusive control over the property to be protected by our [s]ection 207 rules.”²⁷ 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.²⁸ In this case, the Association has not disputed the fact that the Petitioner’s roof is an area within the property owner’s exclusive use or control, nor has it disputed that Petitioner has an ownership interest in the area. The OTARD Rule thus applies to the Association’s restriction on placement of the antenna on the Petitioner’s roof.

10. We find that the Association’s rules are invalid and unenforceable because they improperly restrict the placement of a covered antenna in an area of the Petitioner’s exclusive use or control without exception and because they require prior approval for antenna placement. Article VI, Section 6.17 of the Deed Restrictions sets forth a clear prohibition on the placement of antennas, stating that “[no] television or radio antenna shall be constructed or placed on the roof of any dwelling.”²⁹ The Violation Notice also states that the Association does not permit installation on the roof. Although an association may establish and enforce clearly delineated placement preferences, the OTARD Rule provides that installation in the preferred location shall not impose unreasonable expense or delay or preclude reception of an acceptable quality signal.³⁰ The Deed Restrictions, however, restrict the placement of antennas on the roof without exception and fail to recognize that there are situations where the roof might be the only location to receive an acceptable quality signal.³¹ Further, the Deed Restrictions violate the OTARD Rule by requiring advance approval of the antenna’s appearance and location by the Architectural Control Committee, without regard to delay, cost, or reception of an acceptable quality signal.³²

²⁵ There is no dispute that the Petitioner’s antenna is covered under the OTARD Rule since it is used to receive television broadcast signals. See 47 CFR § 1.4000(a)(1)(iii).

²⁶ *Report and Order*, 11 FCC Rcd at 19307, para. 52.

²⁷ *Order on Reconsideration*, 13 FCC Rcd at 18995, para. 78.

²⁸ *In the Matter of Phillip Wojcikiewicz*, Memorandum Opinion and Order, 18 FCC Rcd 19523, 19525 (MB 2003); *In the Matter of James S. Bannister*, Declaratory Ruling, 24 FCC Rcd 9516 (MB 2009); *In the Matter of Craig Wirth*, Declaratory Ruling, 25 FCC Rcd 15583 (MB 2010); *In the Matter of Brent Beumel, Jr.*, Declaratory Ruling, 31 FCC Rcd 1220 (MB 2016).

²⁹ Deed Restrictions at Article VI § 6.17.

³⁰ 47 CFR § 1.4000(a)(3).

³¹ Deed Restrictions at Article VI § 6.17. We note that the only way an antenna user can ensure that a relocation would produce an acceptable quality signal would be to hire a professional installer, but the OTARD rule does not require professional installation. See *In the Matter of Michael J. MacDonald*, Memorandum Opinion and Order, 13 FCC Rcd 4844, para. 28 (CSB 1997).

³² *In the Matter of James Sadler*, Memorandum Opinion and Order, 13 FCC Rcd 12559, 12568 (CSB 1998); 47 CFR § 1.4000(a).

11. The Association has also violated the OTARD Rule by continuing to assess fines in this matter. The OTARD Rule specifically provides that once a petition is filed with respect to antenna restrictions, the entity seeking to enforce these restrictions (e.g., the association, management company, etc.) must suspend all enforcement efforts pending completion of the review, and no fines, fees, or other penalties may accrue during this period.³³ The Association's continued imposition of a fine clearly violates this provision. Because we have concluded that the OTARD Rule preempts the Association's antenna restrictions, the Association has no legal basis for continuing to assess fines in this matter.

IV. NOTICE OF CITATION

12. This **CITATION** notifies Orangetree of Lake County Homeowners Association (Association), Winter Garden, Florida, that it failed to comply with the Commission's OTARD Rule. We direct the Association to take immediate steps to cease any attempts to enforce the above-preempted portion of the Deed Restrictions, Article VI, Section 6.17, and to rescind the imposition of any fines associated with that article. If the Association fails to comply with the OTARD Rule, it may be liable for significant fines of up to \$25,132 for each violation or for each day of a continuing violation.³⁴

13. **Notice of Duty to Comply with the Law.** We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.³⁵ Accordingly, the Association is hereby on notice that it must comply with section 1.4000(a)(4) of the Commission's rules.³⁶ If the Association subsequently engages in any conduct of the type this Citation describes — and specifically any violation of section 1.4000(a)(4) of the Commission's rules — the Association may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.³⁷

14. **Background.** We reiterate the information set forth in section II above, including the scope of the OTARD Rule and the background facts of this proceeding.

15. **Applicable Law and Violations.** Section 1.4000 of the Commission's rules, otherwise known as the OTARD Rule, prohibits governmental and private restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices.³⁸ As explained fully above, the OTARD Rule applies to Petitioner's roof, which is where the antenna in question is located.³⁹ We find, as explained above, that the Association's antenna rules are invalid and unenforceable because Article VI,

³³ 47 CFR § 1.4000(a)(4).

³⁴ 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). These amounts are subject to inflation adjustments. *See id.* at § 1.80(b)(12), Tbl. 5; *see also, e.g., Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 25-5, 2025 WL 100529 (EB Jan. 3, 2025); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 90 Fed. Reg. 3710 (Jan. 15, 2025) (setting January 15, 2025 as the effective date for the increases).

³⁵ *See* 47 U.S.C. § 503(b)(5).

³⁶ 47 CFR § 1.4000(a)(4).

³⁷ *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent.*") (emphasis added).

³⁸ 47 CFR § 1.4000.

³⁹ *See supra* section III.A.

Section 6.17 of the Deed Restrictions, and the Association's implementation of that provision, fail to permit any antenna installation on the roof and require advance approval of the antenna's appearance and location by the Architectural Control Committee, without regard to delay, cost, or reception of an acceptable quality signal.⁴⁰ The Bureau informed the Association in writing on two occasions that it was prohibited from imposing fines while the Petition was pending with the Commission. Nevertheless, the Association has continued issuing fines, including a new Violation Notice dated September 2, 2025 imposing a \$1,000 fine.⁴¹ In addition, all attempts by Media Bureau staff to speak with and correspond via email with the Association or its management company have elicited no response.

16. ***Opportunity to Respond to This Citation.***⁴² The Association may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to the Association's place of business. The Commission Field Office nearest to the Association is located in Miami, Florida.

17. If the Association requests a teleconference or personal interview, it may contact Kenneth Lewis at (202) 418-2622. We note that any teleconference or interview must take place within 30 calendar days of the release date of this Citation. If the Association prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact at the address and e-mail below.

18. All written communications should be sent to the addresses below.

Kenneth Lewis, Attorney Advisor
Media Bureau, Policy Division
Federal Communications Commission
45 L Street, N.E.
Washington, D.C. 20554
Kenneth.lewis@fcc.gov
Re: Brian Smith, MB Docket No. 25-214

19. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, the Association should provide a detailed description of the accommodation required and provide a telephone number and other contact information. The Association should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. The Association should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice).

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice).

20. We advise the Association that it is a violation of section 1.17 of the Commission's

⁴⁰ See *supra* section III.B.

⁴¹ As stated above, Petitioner's email regarding this fine is available in the docket of this proceeding. See Brian Smith Email.

⁴² Pursuant to section 1.1200(a) of the Commission's rules, the Commission may modify *ex parte* procedures in particular proceedings if the public interest so requires. 47 CFR § 1.1200(a). We announce that this citation proceeding will be governed by permit-but-disclose *ex parte* procedures, 47 CFR § 1.1206, because we find it in the public interest to ensure a consistent approach with the petition for declaratory ruling, to which this citation directly relates. See Public Notice at para. 2 ("The proceeding this Notice initiates shall be treated as a 'permit-but-disclose' proceeding in accordance with the Commission's *ex parte* rules.").

rules⁴³ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

21. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.⁴⁴

22. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

23. Finally, we warn the Association that, under the Privacy Act of 1974,⁴⁵ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure the Association's compliance with the Act and the Commission's rules.⁴⁶

24. **Future Violations.** If, after receipt of this Citation, the Association again violates section 1.4000(a)(4) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. The Commission may impose forfeitures not to exceed \$25,132 for each such violation or each day of a continuing violation, and up to \$188,491 for any single act or failure to act.⁴⁷ The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴⁸ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁴⁹

V. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED**, pursuant to section 1.4000(d) of the Over-the-Air Reception Devices Rule, 47 CFR § 1.4000(d), and section 1.2 of the Commission's rules, 47 CFR § 1.2, that the Petition for Declaratory Ruling filed by Brian Smith **IS GRANTED** with respect to antenna restrictions of the Orangetree of Lake County Homeowners' Association, as discussed herein, and such restrictions are unenforceable against any residents.

⁴³ 47 CFR § 1.17.

⁴⁴ 18 U.S.C. § 1001.

⁴⁵ 5 U.S.C. § 552a(e)(3).

⁴⁶ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

⁴⁷ See 47 U.S.C. § 503; 47 CFR § 1.80(b)(10). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(12).

⁴⁸ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11).

⁴⁹ See *supra* para. 13.

26. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,⁵⁰ Orangetree of Lake County Homeowners Association, Winter Garden, Florida, must cease and desist from imposing restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices, in violation of section 1.4000(a)(4) of the Commission's rules.⁵¹

27. **IT IS FURTHER ORDERED** that a copy of this Declaratory Order and Citation shall be sent by first class mail and certified mail, return receipt requested, to Pierre Rene, Community Association Manager, Orangetree of Lake County Homeowners' Association, 270 W. Plant Street, Suite 340, Winter Garden, FL 34787.

28. This action is taken by the Acting Chief, Media Bureau, pursuant to authority delegated by section 0.283 of the Commission's rules.⁵²

FEDERAL COMMUNICATIONS COMMISSION

Erin Boone
Acting Chief, Media Bureau

⁵⁰ 47 U.S.C. § 154(i), (j).

⁵¹ 47 CFR § 1.4000(a)(4).

⁵² 47 CFR § 0.283.