



BEFORE THE ARIZONA CORPORATION COMMISSION

39E

COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

JUL 28 2006

DOCKETED BY *nr*

IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.,
AND COX ARIZONA TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

NOTICE OF ERRATA

Cox Arizona Telcom, LLC, through undersigned counsel, hereby files pages from Exhibit
LT-28 of Linda Trickey's Rebuttal Testimony which were inadvertently omitted.

RESPECTFULLY SUBMITTED this 28th day of July 2006.

COX ARIZONA TELCOM, LLC.

By

[Signature] for

Michael W. Patten
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Attorneys for Cox Arizona Telcom, LLC

Original and 13 copies of the foregoing
filed this 28th day of July 2006 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

AZ CORP COMMISSION
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2006 JUL 28 P 12: 36

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ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Copy of the foregoing hand-delivered/
2 mailed this 28th day of July 2006 to:
3 Chairman Jeff Hatch-Miller
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007
7
8 Commissioner Marc Spitzer
9 Arizona Corporation Commission
10 1200 West Washington Street
11 Phoenix, Arizona 85007
12
13 Commissioner Mike Gleason
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17
18 Commissioner Kristin K. Mayes
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007
22
23 Dwight Nodes, Esq.
24 Administrative Law Judge
25 Hearing Division
26 Arizona Corporation Commission
27 1200 West Washington Street
Phoenix, Arizona 85007
28
29 Maureen A. Scott, Esq.
30 Legal Division
31 Arizona Corporation Commission
32 1200 West Washington Street
33 Phoenix, Arizona 85007
34
35 Ernest G. Johnson, Esq.
36 Director, Utilities Division
37 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO. 602-256-6100
FACSIMILE 602-256-6800

1 Martin A. Aronson
2 Morrill & Aronson, P.L.C.
3 One East Camelback Road, Suite 340
4 Phoenix, Arizona 85012

4 Michael M. Grant, Esq
5 Gallagher & Kennedy
6 2575 East Camelback Road
7 Phoenix, Arizona 85016

8 By 
9

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LT-28

Pages 1 through 14

Greenberg Traurig

Lesa J. Storey
Tel. (602) 445-8000
Fax (602) 445-8100
storeyl@gtlaw.com

REC'D OSBORN MALEDON P.A.

JUL 13 2006

delivered

July 13, 2006

VIA HAND DELIVERY

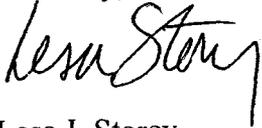
Dawn L. Dauphine
Osborn Maledon
2929 North Central Avenue
Twenty-First Floor
Phoenix, Arizona 85012-2793

Re: Vistancia; Materials from First Mile Technologies

Dear Dawn:

As we discussed in our telephone conversation this morning, enclosed are the written material that were provided to Shea Sunbelt Pleasant Point, LLC by First Mile Technologies. As I indicated to you, the CSER and other related documents used at Vistancia were developed by First Mile and its attorneys, and the enclosed materials set forth the structure of the documents and First Mile's assurances regarding the legality of same.

Sincerely,



Lesa J. Storey

cc: Curtis E. Smith (w/o enclosures)

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
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WEST PALM BEACH
ZURICH

*Strategic Alliances
Tokyo-Office/Strategic Alliance

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750 Liberty Drive
Westfield, IN 46074
T 317.569.7787
F 317.569.2805



Rick Andreen
Shea Homes
Via e-mail: rick.andreen@sheahomes.com

November 1, 2002

Dear Rick:

Per our conversations, we are interested in developing an offering that will mutually benefit both of us. This letter is an outline to create a solution for the land use process, independent of whom you pick for a Broadband services provider.

- **Land Use Language Process**

- Deliverables

- Licensing of a complete package of documents and the assistance required to implement FirstMile's patent pending Land Use Language Process. This package would include the following already completed document templates. (Access Fee Agreement, Common Services Easements and Restrictions Document, Non-Exclusive License Agreement, Development Services Agreement, Developer Technology and Marketing Agreement, Builder Model Technology and Marketing Agreement and others).
 - Assistance in the platting process and the development of the appropriate draft language to use with your MOD, declarations, common service easements and non-exclusive license agreements.
 - Assistance in working with the appropriate approval, regulatory and legal authorities
 - Establishment of an Access Entity to hold Vistancia's private easements in perpetuity.

- Benefits

- You will be enabled with the ability to control what service providers are allowed into your developments, and under what terms.
 - You will be postured to receive revenue share from licensed service providers.
 - You can avoid spending months of work developing a similar solution that will detract from the core business focus.
 - You can save legal and consulting fees by utilizing FirstMile's already developed solution versus attempting to reinvent it.
 - You will be implementing a proven solution that has already been "tested" and reviewed with regulatory authorities (FCC) and legal experts.

- Cost

- \$75,000 for a complete set of land use language process documents for initial development
 - \$40,000 paid up front
 - \$30,000 paid upon completion
 - Hourly compensation for assistance over 80 hours
 - Plus: Reimbursement of travel expenses
 - You are responsible for any of your own legal counsel expenses you decide to incur

NOTE: This is a service for use solely and exclusively in one development. The land use language and approach offered by FirstMile is proprietary. Purchaser is expressly prohibited from using this proprietary process in developments other than the one contracted for without FirstMile's express written consent.

We appreciate your interest and look forward to your response.

Sincerely,

Joe Muldoon

LS000002

FEDERAL COMMUNICATIONS COMMISSION



FACT SHEET

May 2001

Over-the-Air Reception Devices Rule

Preemption of Restrictions on Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service, and Television Broadcast Antennas

Quick Links to Document Sections Below

- [Questions and Answers](#)
- [Links to Relevant Orders and the Rule](#)
- [Guidance on Filing a Petition](#)
- [Where to Call for More Information](#)

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS").

The rule is cited as 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

Effective January 22, 1999, the Commission amended the rule so that it also applies to rental property where the renter has an exclusive use area, such as a balcony or patio.

On October 25, 2000, the Commission further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001.

The rule applies to viewers who place antennas that meet size limitations on property that they own or rent and that is within their exclusive use or control, including condominium owners and cooperative owners, and tenants who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair the installation, maintenance or use of the types of antennas described above, as well as restrictions needed for safety or historic preservation. In addition, under some circumstances, the

availability of a central or common antenna can be used by a community association or landlord to restrict the installation of individual antennas. In addition, the rule does not apply to common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners. Such common areas may include the roof or exterior wall of a multiple dwelling unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable.

This fact sheet provides general answers to questions that may arise about the implementation of the rule, but is not the rule itself. For further information or a copy of the rule, call the Federal Communications Commission at 888-CALLFCC (toll free) or (202) 418-7096. The rule is also available via the Internet by going to [links to relevant Orders and the rule](#).

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of video antennas:

(1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.

(3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

In addition, antennas covered by the rule may be mounted on "masts" to reach the height needed to receive or transmit an acceptable quality signal (e.g. maintain line-of-sight contact with the transmitter or view the satellite). Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes. Further, masts that extend beyond an exclusive use area may not be covered by this rule.

Q: What are "fixed wireless signals"?

A: "Fixed wireless signals" are any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Examples include wireless signals used to provide telephone service or high-speed Internet access to a fixed location. This definition does **not** include, among other things, AM/FM radio, amateur ("HAM") radio, Citizens Band ("CB") radio, and Digital Audio Radio Services ("DARS") signals.

Q: Does the rule apply to hub or relay antennas?

A: The rule applies to "customer-end antennas" which are antennas placed at a customer location for the purpose of providing service to customers at that location. The rule does not cover antennas used to transmit signals to and/or receive signals from multiple customer locations.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a person's ability to install, maintain, or use an antenna covered by the rule. The rule applies to state or local laws or regulations, including zoning, land-use or

building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: (1) unreasonably delays or prevents use of; (2) unreasonably increases the cost of; or (3) precludes a person from receiving or transmitting an acceptable quality signal from an antenna covered under the rule. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Q: What types of restrictions unreasonably delay or prevent viewers from using an antenna?

A: A local restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible.

Q: What is an unreasonable expense?

A: Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a local government, community association or landlord to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that expensive landscaping screen relatively unobtrusive DBS antennas. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: What restrictions prevent a viewer from receiving an acceptable quality signal?

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas, digital television ("DTV") antennas, and digital fixed wireless antennas. For a digital antenna to receive or transmit an acceptable quality signal, the antenna must be installed where it has an unobstructed, direct view of the satellite or other device from which signals are received or to which signals are to be transmitted. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented properly.

Q: Are all restrictions prohibited?

A: No, many restrictions are permitted. Clearly-defined, legitimate safety restrictions are permitted even if they impair installation, maintenance or use provided they are necessary to protect public safety and are no more burdensome than necessary to ensure safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes; restrictions requiring that a person not place an antenna within a certain distance from a power line; and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. Safety restrictions cannot discriminate between objects that are comparable in size and weight and pose the same or a similar safety risk as the antenna that is being restricted.

Restrictions necessary for historic preservation may also be permitted even if they impair installation, maintenance or use of the antenna. To qualify for this exemption, the property may be any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places. In addition, restrictions necessary for historic preservation must be no more burdensome than necessary to accomplish the historic preservation goal. They must also be imposed and enforced in a non-discriminatory manner, as compared to other modern structures that are comparable in size and weight and to which local regulation would normally apply.

Q: How does the rule apply to restrictions on radiofrequency (RF) exposure from antennas that have the capability to transmit signals?

A: All transmitters regulated by the Commission, including the customer-end fixed wireless antennas (either satellite or terrestrial) covered under the amended rule, are required to meet the applicable Commission guidelines regarding RF exposure limits. The limits established in the guidelines are designed to protect the public health with a large margin of safety. These limits have been endorsed by federal health and safety agencies, such as the Environmental Protection Agency and the Food and Drug Administration. The Commission requires that providers of fixed wireless service exercise reasonable care to protect users and the public from RF exposure in excess of the Commission's limits. In addition, as a condition of invoking protection under the rule from government, landlord, and association restrictions, a provider of fixed wireless service must ensure that customer-end antennas are labeled to give notice of potential RF safety hazards posed by these antennas.

It is recommended that antennas that both receive and transmit signals be installed by professional personnel to maximize effectiveness and minimize the possibility that the antenna will be placed in a location that is likely to expose subscribers or other persons to the transmit signal at close proximity and for an extended period of time. In general, associations, landlords, local governments and other restricting entities may not require professional installation for receive-only antennas, such as one-way DBS satellite dishes. However, local governments, associations, and property owners may require professional installation for **transmitting** antennas based on the safety exception to the rule. Such safety requirements must be: (1) clearly defined; (2) based on a legitimate safety objective (such as bona fide concerns about RF radiation) which is articulated in the restriction or readily available to antenna users; (3) applied in a non-discriminatory manner; and (4) no more burdensome than necessary to achieve the articulated objectives.

For additional information about the Commission's RF exposure limits, please visit <http://www.fcc.gov/oet/rfsafety> or call the RF Safety Information Line at 202-418-2464.

Q: Whose antenna restrictions are prohibited?

A: The rule applies to restrictions imposed by local governments, including zoning, land-use or building regulations; by homeowner, townhome, condominium or cooperative association rules, including deed restrictions, covenants, by-laws and similar restrictions; and by manufactured housing (mobile home) park owners and landlords, including lease restrictions. The rule only applies to restrictions on property where the viewer has an ownership or leasehold interest and exclusive use or control.

Q: If I live in a condominium or an apartment building, does this rule apply to me?

A: The rule applies to antenna users who live in a multiple dwelling unit building, such as a condominium or apartment building, if the antenna user has an exclusive use area in which to install the antenna. "Exclusive use" means an area of the property that only you, and persons you permit, may enter and use to the exclusion of other residents. For example, your condominium or apartment may include a balcony, terrace, deck or patio that only you can use, and the rule applies to these areas. The rule does not apply to common areas, such as the roof, the hallways, the walkways or the exterior walls of a condominium or apartment building. Restrictions on antennas installed in these common areas are not covered by the Commission's rule. For example, the rule would **not** apply to prohibit restrictions that prevent drilling through the exterior wall of a condominium or rental unit.

Q: Does the rule apply to condominiums or apartment buildings if the antenna is installed so that it hangs over or protrudes beyond the balcony railing or patio wall?

A: No. The rule does not prohibit restrictions on antennas installed beyond the balcony or patio of a condominium or apartment unit if such installation is in, on, or over a common area. An antenna that extends out beyond the balcony or patio is usually considered to be in a common area that is not within the scope of the rule. Therefore, the rule does not apply to a condominium or rental apartment unit unless the antenna is installed wholly within the exclusive use area, such as the balcony or patio.

Q: Does the fact that management or the association has the right to enter these areas mean that the resident does not have exclusive use?

A: No. The fact that the building management or the association may enter an area for the purpose of inspection and/or repair does not mean that the resident does not have exclusive use of that area. Likewise, if the landlord or association regulates other uses of the exclusive use area (e.g., banning grills on balconies), that does not affect the viewer's rights under the Commission's rule. This rule permits persons to install antennas on property over which the person has *either* exclusive use *or* exclusive control. Note, too, that nothing in this rule changes the landlord's or association's right to regulate use of exclusive use areas for other purposes. For example, if the lease prohibits antennas and flags on balconies, only the prohibition of antennas is eliminated by this rule; flags would still be prohibited.

Q: Does the rule apply to residents of rental property?

A: Yes. Effective January 22, 1999, renters may install antennas within their leasehold, which means inside the dwelling or on outdoor areas that are part of the tenant's leased space and which are under the exclusive use or control of the tenant. Typically, for apartments, these areas include balconies, balcony railings, and terraces. For rented single family homes or manufactured homes which sit on rented property, these areas include the home itself and patios, yards, gardens or other similar areas. If renters do not have access to these outside areas, the tenant may install the antenna inside the rental unit. Renters are not required to obtain the consent of the landlord prior to installing an antenna in these areas.

The rule does not apply to common areas, such as the roof or the exterior walls of an apartment building. Generally, balconies or patios that are shared with other people or are accessible from other units are not considered to be exclusive use areas.

Q: Are there restrictions that may be placed on residents of rental property?

A: Yes. A restriction necessary to prevent damage to leased property may be reasonable. For example, tenants could be prohibited from drilling holes through exterior walls or through the roof. However, a restriction designed to prevent ordinary wear and tear (*e.g.*, marks, scratches, and minor damage to carpets, walls and draperies) would likely not be reasonable provided the antenna is installed wholly within the antenna user's own exclusive use area.

In addition, rental property is subject to the same protection and exceptions to the rule as owned property. Thus, a landlord may impose other types of restrictions that do not impair installation, maintenance or use under the rule. The landlord may also impose restrictions necessary for safety or historic preservation.

Q: If I live in a condominium, cooperative, or other type of residence where certain areas have been designated as "common," do these rules apply to me?

A: The rules apply to residents of these types of buildings, but the rules do not permit you to install an antenna on a common area, such as a walkway, hallway, community garden, exterior wall or the roof. However, you may install the antenna wholly within a balcony, deck, patio, or other area where you have exclusive use.

Drilling through an exterior wall, *e.g.* to run the cable from the patio into the unit, is generally not within the protection of the rule because the exterior wall is generally a common element. You may wish to check with your retailer or installer for advice on how to install the antenna without drilling a hole. Alternatively, your landlord or association may grant permission for you to drill such a hole. The Commission's rules generally do not cover installations if you drill through a common element.

Q: If my association, building management, landlord, or property owner provides a central antenna, may I install an individual antenna?

A: Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation by individuals of antennas otherwise protected by the rule. Restrictions based on the availability of a central antenna will generally be permissible provided that: (1) the person receives the particular video programming or fixed wireless service that the person desires and could receive with an individual antenna covered under the rule (*e.g.*, the person would be entitled to receive service from a specific provider, not simply a provider selected by the association); (2) the signal quality of transmission to and from the person's home using the central antenna is as good as, or better than, than the quality the person could receive or transmit with an individual antenna covered by the rule; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna covered under the rule; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming or fixed wireless services.

Q: May the association, landlord, building management or property owner restrict the installation of an individual antenna because a central antenna will be available in the future?

A: It is not the intent of the Commission to deter or unreasonably delay the installation of individual antennas because a central antenna may become available. However, persons could be required to remove individual antennas once a central antenna is available if the cost of removal is paid by the landlord or association and the user is reimbursed for the value of the antenna. Further, an individual who wants video programming or fixed wireless services other than what is available through the central antenna should not be unreasonably delayed in obtaining the desired programming or services either through modifications to the central antenna, installation of an additional central antenna, or by using an individual antenna.

Q: I live in a townhome community. Am I covered by the FCC rule?

A: Yes. If you own the whole townhouse, including the walls and the roof and the land under the building, then the rule applies just as it does for a single family home, and you may be able to put the antenna on the roof, the exterior wall, the backyard or any other place that is part of what you own. If the townhouse is a condominium, then the rule applies as it does for any other type of condominium, which means it applies only where you have an exclusive use area. If it is a condominium townhouse, you probably cannot use the roof, the chimney, or the exterior walls unless the condominium association gives you permission. You may want to check your ownership documents to determine what areas are owned by you or are reserved for your exclusive use.

Q: I live in a condominium with a balcony, but I cannot receive a signal from the satellite because my balcony faces north. Can I use the roof?

A: No. The roof of a condominium is generally a common area, not an area reserved for an individual's exclusive use. If the roof is a common area, you may not use it unless the condominium association gives you permission. The condominium is not obligated to provide a place for you to install an antenna if you do not have an exclusive use area.

Q: I live in a mobile home that I own but it is located in a park where I rent the lot. Am I covered by the FCC rule?

A: Yes. The rule applies if you install the antenna anywhere on the mobile or manufactured home that is owned by you. The rule also applies to antennas installed on the lot or pad that you rent, as well as to other areas that are under your exclusive use and control. However, the rule does not apply if you want to install the antenna in a common area or other area outside of what you rent.

Q: I want a conventional "stick" antenna to receive a distant over-the-air television signal. Does the rule apply to me?

A: No. The rule does not apply to television antennas used to receive a distant signal.

Q: I want to install an antenna for broadcast radio or amateur radio. Does the rule apply to me?

A: No. The rule does not apply to antennas used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS").

Q: I want to install an antenna to access the Internet. Does the rule apply to me?

A: Yes. Antennas designed to receive and/or transmit data services, including Internet access, are included in the rule.

Q: Does this mean that I can install an antenna that will be used for voice and data services even though it does not provide video transmissions?

A: Yes. The most recent amendment expands the rule and permits you to install an antenna that will be used to transmit and/or receive voice and data services, except as noted above. The rule will also continue to cover antennas used to receive video programming.

Q: I have already installed an antenna that is used solely for the purpose of receiving video programming. Am I affected by this amendment?

A: Persons who have already installed, or who plan to install, an antenna designed to receive only video programming are not affected by this amendment. The purpose of the amendment is to permit persons to install antennas that may be used for voice and data services, as well as for video programming services. The rules concerning restrictions on the placement of video antennas will apply equally to antennas that are used for voice and data services.

Q: I'm a board member of a homeowners' association, and we want to revise our restrictions so that they will comply with the FCC rule. Do you have guidelines you can send me?

A: We do not have sample guidelines because every community is different. We can send you the rule and the relevant orders, which will give you general guidance. (See list of documents at the end of this factsheet. Some communities have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the antenna. The residents should comply with the placement preferences provided the preferred placement does not impose unreasonable delay or expense or preclude reception of an acceptable quality signal.

Q: What restrictions are permitted if the antenna must be on a very tall mast to get a signal?

A: If you have an exclusive use area that is covered by the rule and need to put your antenna on a mast, the local government, community association or landlord may require you to apply for a permit for safety reasons if the mast extends more than 12 feet above the roofline. If you meet the safety requirements, the permit should be granted. Note that the Commission's rule only applies to antennas and masts installed wholly within the antenna user's exclusive use area. Masts that extend beyond the exclusive use area are outside the scope of the rule. For installations on single family homes, the "exclusive use area" generally would be anywhere on the home or lot and the mast height provision is usually most relevant in these situations. For example, if a homeowner needs to install an antenna on a mast that is more than 12 feet taller than the roof of the home, the homeowners' association or local zoning authority may require a permit to ensure the safety of such an installation, but may not prohibit the installation unless there is no way to install it safely. On the other hand, if the owner of a condominium in a building with multiple dwelling units needs to put the antenna on a mast that extends beyond the balcony boundaries, such installation would generally be outside the scope and protection of the rule, and the condominium association may impose any restrictions it wishes (including an outright prohibition) because the Commission rule does not apply in this situation.

Q: Does the rule apply to commercial property or only residential property?

A: Nothing in the rule excludes antennas installed on commercial property. The rule applies to property used for commercial purposes in the same way it applies to residential property.

Q: What can a local government, association, or consumer do if there is a dispute over whether a

particular restriction is valid?

A: Restrictions that impair installation, maintenance or use of the antennas covered by the rule are preempted (unenforceable) unless they are no more burdensome than necessary for the articulated legitimate safety purpose or for preservation of a designated or eligible historic site or district. If a person believes a restriction is preempted, but the local government, community association, or landlord disagrees, either the person or the restricting entity may file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction. We encourage parties to attempt to resolve disputes prior to filing a petition. Often calling the FCC for information about how the rule works and applies in a particular situation can help to resolve the dispute. If a local government, community association, or landlord acknowledges that its restriction impairs installation, maintenance, or use and is preempted under the rule but believes it can demonstrate "highly specialized or unusual" concerns, the restricting entity may apply to the Commission for a waiver of the rule.

Q: What is the procedure for filing a petition or requesting a waiver at the Commission?

A: There is no special form for a petition. You may simply describe the facts, including the specific restriction(s) that you wish to challenge. If possible, attach a copy of the restriction(s) and any relevant correspondence. If this is not possible, be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Petitions for declaratory rulings and waivers must be served on all interested parties. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific resident, service must be made on that specific resident. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests foreseeably may be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (e.g., by placing a notice in a local newspaper of general circulation). Proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice reasonably might have reached.

Finally, if a person files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the person must serve the local government, association or landlord, as appropriate. You must include a "proof of service" with your petition. Generally, the "proof of service" is a statement indicating that on the same day that your petition was sent to the Commission, you provided a copy of your petition (and any attachments) to the person or entity that is seeking to enforce the antenna restriction. The proof of service should give the name and address of the parties served, the date served, and the method of service used (e.g., regular mail, personal service, certified mail).

All allegations of fact contained in petitions and related pleadings before the Commission must be supported by an affidavit signed by one or more persons who have actual knowledge of such facts. You must send an original and two copies of the petition and all attachments to: Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Media Bureau.

Q: Can I continue to use my antenna while the petition or waiver request is pending?

A: Yes, unless the restriction being challenged or for which a waiver is sought is necessary for reasons of safety or historic preservation. Otherwise, the restriction cannot be enforced while the petition is pending.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the local government, community association, property owner, or management entity that is trying to enforce the restriction has the burden of proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the entity seeking to enforce the restriction to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Can I be fined and required to remove my antenna immediately if the Commission determines that a restriction is valid?

A: If the Commission determines that the restriction is valid, you will have a minimum of 21 days to comply with this ruling. If you remove your antenna during this period, in most cases you cannot be fined. However, this 21-day grace period does not apply if the FCC rule does not apply to your installation (for example, if the antenna is installed on a condominium general common element or hanging outside beyond an apartment balcony. If the FCC rule does not apply at all in your case, the 21-day grace period does not apply.

Q: Who do I call if my town, community association or landlord is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (888) CALLFCC (888-225-5322), which is a toll-free number, or 202-418-7096, which is not toll-free. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service, television broadcast station, or fixed wireless company whose service is desired.

Links to Relevant Orders and the Rule

- (First) Report and Order, FCC 96-328, released August 6, 1996: [[Text Version](#) | [WordPerfect Version](#)]
- Declaratory Ruling, Star Lambert, DA 97-1554, released July 27, 1997: [[Text](#)]
- Declaratory Ruling, Jay Lubliner, DA 97-2188, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Michael MacDonald, DA 97-2189, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Omnivision, DA 97-2187, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Wireless Broadcasting Systems (WBSS), DA 97-2506, released November 28, 1997: [[WordPerfect](#) | [Text](#)]
- Declaratory Ruling, Victor Frankfurt, DA 97-2305, released December 31, 1997: [[Text](#)]
- Declaratory Ruling, Jason Peterson, DA 98-0188, released February 4, 1998: [[Text](#)]
- Declaratory Ruling, Jordan Lourie, DA 98-1170, released June 17, 1998: [[WordPerfect](#) | [Text](#)]
- Declaratory Ruling, James Sadler, DA 98-1284, released July 1, 1998: [[WordPerfect](#) | [Text](#)]
- Memorandum Opinion and Order, Denial of Application of Review of Declaratory Ruling for Jay Lubliner (above), FCC 98-201, released August 21, 1998: [[WordPerfect](#) | [Text](#)]

- Order on Reconsideration, FCC 98-214, released September 25, 1998: [[WordPerfect](#) | [Text](#)]
- Second Report and Order, FCC 98-273, released November 20, 1998: [[Text](#) | [WordPerfect](#) | [Acrobat](#) | [News Release and Statements](#)]
- Declaratory Ruling, Stanley and Vera Holliday, DA 99-2132, released October 8, 1999: [[MSWord](#) | [Acrobat](#)]
- Second Order on Reconsideration, FCC 99-360, released November 24, 1999: [[Text](#) | [MSWord](#)]
- Declaratory Ruling, Bell Atlantic Video, DA 00-927, released April 26, 2000: [[MSWord](#) | [Acrobat](#)]
- Competitive Networks Report and Order, FCC 00-366, released October 25, 2000: [[Text](#) | [MSWord](#) | [Acrobat](#) | [News Release and Statements](#)]
- Declaratory Ruling, Victor Frankfurt, DA 01-0153, released February 7, 2001: [[MSWord](#) | [Acrobat](#)]
- Declaratory Ruling, Corey Roberts, DA 01-1276, released May 24, 2001: [[MSWord](#) | [Acrobat](#)]
- OTARD Rule, 47 C.F.R. Section 1.4000.

GUIDANCE ON FILING A PETITION

Q: What are the procedural requirements for filing a Petition for Declaratory Ruling or Waiver with the Commission?

A: There is no special form for a petition. You may simply describe the facts, including the specific restriction(s) that you wish to challenge. If possible, attach a copy of the restriction(s) and any relevant correspondence. If this is not possible, be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Petitions for declaratory rulings and waivers must be served on all interested parties. An entity seeking to impose or maintain a restriction must include with its petition a proof of service that it has served the affected residents. Similarly, an antenna user seeking to challenge the permissibility of a restriction must include with the petition a proof of service that the antenna user has served the restricting entity with a copy of the Petition.

If you are an antenna user, you must serve a copy of the Petition on the entity seeking to enforce the restriction (*i.e.*, the local government, community association or landlord). If you are a local government, community association or landlord, you must serve a copy of the Petition on the residents in the community who currently have or wish to install antennas that will be affected by the restriction your Petition seeks to maintain. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific resident, service must be made on that specific resident. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached.

Finally, if a person files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the person must serve the local government, association or landlord, as appropriate. You must include a "proof of service" with your petition. Generally, the "proof of service" is a statement indicating that on the same day that your petition was sent to the Commission, you provided a copy of your petition (and any attachments) to the person or entity that is seeking to enforce the antenna restriction. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

If you wish to file either a Petition for Declaratory Ruling or a Petition for Waiver pursuant to the Commission's Over-the-Air Reception Devices Rule (47 CFR Section 1.4000), you must file an original and two copies of your Petition on the following address:

**Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Attn: Media Bureau**

Q: What are the substantive requirements for filing a petition for waiver or declaratory ruling?

A: To file a Petition for Waiver, follow the requirements in Section 1.4000(c) of the rule. The local government, community association or landlord requesting the waiver must demonstrate "local concerns of a highly specialized or unusual nature." The petition must also specify the restriction for which the waiver is sought, or the petition will not be considered.

To file a Petition for Declaratory Ruling, follow the requirements set forth in Section 1.4000(d) of the rule. Set out the restriction in question so that we can determine whether it is permissible or prohibited under the rule. In a Petition for Declaratory Ruling, the burden of demonstrating that a particular restriction complies with the rule is on the entity seeking to impose the restriction (*e.g.*, the local government, community association or landlord).

We recommend that you include the language of the restriction in question, as well as a daytime telephone number, with your petition.

While a petition for declaratory ruling or waiver is pending with the Commission or a court, the restriction in question may not be enforced unless it is necessary for safety or historic preservation. No fines or penalties, including attorneys fees, may be imposed by the restricting entity while a petition is pending. If the restriction is found to be permissible, the antenna users subject to the ruling will generally have at least 21 days in which to comply before a fine or penalty is imposed.

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