

**Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
1B Docket No. 95-59 and CS Docket No. 96-83**

Aesthetics will not be addressed, except in general terms. It is our reading of Rule 96-328 that the FCC does not consider aesthetics, in itself, to be a determining factor as to the installation of Direct Satellite Dish Antenna.

For the purpose of this discussion, three types of installation will be considered:

- Ground mounted
- Roof mounted
- Building mounted (defined as not being roof mounted, but attached to the building).

Each mounting location has different, potential impacts depending on the type of Architecture (Row Townhouse, Condominium Flat, High-rise Structure).

For the purpose of this discussion we will use the following definitions:

- Townhouse design - an attached dwelling, with no other dwelling unit located above or below the dwelling in question, and with an independent roof over only the dwelling in question.
- Condominium Flat (apartment) design - an attached dwelling, with another dwelling unit located, in whole or in part, above or below the dwelling in question.
- High-rise Structure - a series of Condominium Flats, "stacked" vertically to a height in excess of three (3) stories.

In the case of Condominium Flats, and High-rise Structures, a roof (or segment of a roof) will be located over, but not necessarily directly above, more than one (1) dwelling unit.

Ground Mounted Direct Satellite Dish Antennae

In the case of ground mounted Direct Satellite Dish Antennae, it is Frost, Christenson & Associates' opinion that it is probably wise to avoid this type of installation.

- Ground mounting makes the installation susceptible to theft, vandalism, and damage during normal grounds maintenance and repair.
- Reasonable requirements for location (i.e. at the rear of a building), may interfere with line of sight requirements of the antenna.
- Direct burial of the cable will be required, and damage to the cable may occur during normal grounds maintenance, or during grading and drainage repairs or modifications.
- Direct Satellite Dish Antenna cable installation may damage existing underground utilities, irrigation systems, etc. (It is common for community associations, and for local development regulations, to require that no utilities be located above ground.)

Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 95-59 and CS Docket No. 96-83

In the case of a Homeowner Association, location at ground level does not interfere with the enjoyment of the Common Area(s) since the Unit Owner would also "own" the property (therefore, it is not a Common Area). However, the potential for theft, vandalism, and interference with normal grounds maintenance still exists. The latter issue directly affects those Homeowner Associations having maintenance requirements for exterior grounds, even though owned by the Unit Owner; an Association requirement which occurs at a majority of Homeowner Associations in New Jersey.

In the case of a Condominium, the grounds are Common Elements. While Townhouse style architecture (in Condominium form of ownership) may not differ from that of a Homeowner Association, and the grounds surrounding a Condominium Townhouse are frequently thought of as "front", "side" or "rear" "yards" (in some instances, some portion of the Common Elements are set aside as a Limited Common Element for the individual use and enjoyment of a single Unit Owner.), most, if not all of the "grounds" are for the enjoyment of the membership, not just the nearest Unit Owner.

In the case of this type of Condominium architecture (Townhouse design), the same practical problems will be encountered as with a Townhouse in a Homeowner Association form of ownership.

- Ground mounting makes the installation susceptible to theft, vandalism, and damage during normal grounds maintenance and repair.
- Reasonable requirements for location (i.e. at the rear of a building), may interfere with line of sight requirements of the antenna.
- Direct burial of the cable will be required, and damage to the cable may occur during normal grounds maintenance, or during grading and drainage repairs or modifications.
- Direct Satellite Dish Antenna cable installation may damage existing underground utilities, irrigation systems, etc. (It is common for community associations, and for local development regulations, to require that no utilities be located above ground.)

In the case of both the Homeowner Association and Condominium Townhouse architecture, location of the Direct Satellite Dish Antenna at ground level may be difficult due to existing landscaping, tree canopies, and distance from the building.

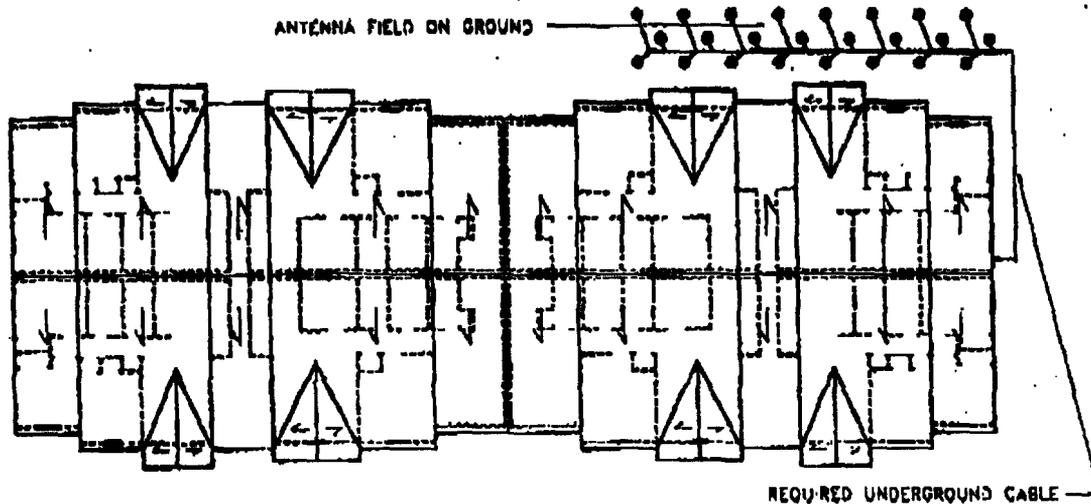
Association dwellings of a Condominium Flat or High-rise architecture result in significantly different considerations.

In each case, the grounds are Common Elements. There is no semblance of an individual "yard". The grounds are for the enjoyment of all members of the Association. The Association is required to provide lawn maintenance, along with shrub and tree maintenance and replacement. Again, the Association is responsible for grading and drainage. Ground mounting is simply not practical.

In addition, the proliferation of Direct Satellite Dish Antennae, located in close proximity to the building must be considered. Figure 1 shows a hypothetical multi-plex (multi-unit)

Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 85-59 and CS Docket No. 96-83

building containing twenty-four (24) individual units. Shown on the drawing are twenty-four (24) Direct Satellite Dish Antenna. The interference with maintenance, and the visual impact is significant. In addition, the location of cable to each of the antennae must be controlled.



TYPICAL 24 UNIT MULTI-PLEX BUILDING
FIGURE 1 -- GROUND MOUNTED ANTENNAE

In our opinion, the location of Direct Satellite Dish Antennae at ground level is not practical, and prohibition in townhouse, multi-plex or high-rise architecture should be allowed.

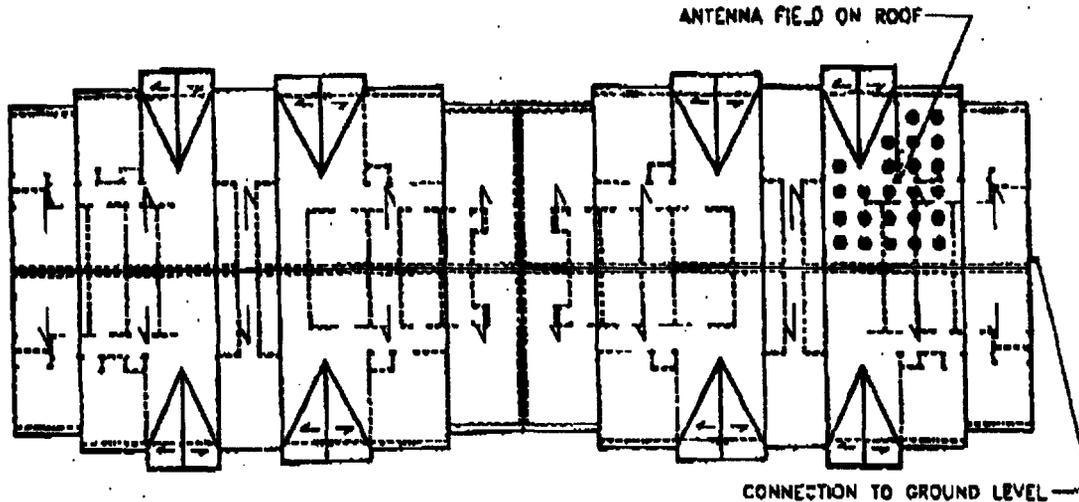
Roof Mounted Direct Satellite Dish Antennae

Again, the impacts of roof mounted Direct Satellite Dish Antennae also differ with the architectural design.

In the case of Townhouse-style architecture, reasonable requirements for roof mounting can be established, assuming that those reasonable requirements do not result in a problem with reception at a particular unit. For instance, if the requirement is for location on the rear roof plane of a unit, and this location precludes adequate reception, the only alternate is for mounting on the front plane of the roof, which will detract from the development scheme, or for mounting on the building or grounds.

The problem becomes significant when multi-plex (apartment) buildings are considered. Figure 2 shows, again, a hypothetical twenty-four (24) unit building. Twenty-four (24) Direct Satellite Dish Antennae are located on the rear roof plane. The location of these antennae reflect that the building is already "wired" for CATV, and that the cable enters the building at the end of the structure, near ground level. (It is our experience that most multi-plex buildings are already "wired" for CATV, and connection to the Direct Satellite Dish Antenna would utilize the existing cable.)

Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 95-59 and CS Docket No. 96-83



TYPICAL 24 UNIT MULTI-PLEX BUILDING
FIGURE 2 - ROOF MOUNTED ANTENNAE

In total, potentially, twenty-four (24) mounting brackets must be attached to the roof. This attachment should be to the roof rafters (or trusses), not to the sheathing alone (in accordance with manufacturer's installation specifications). Potentially, twenty-four (24) penetrations must be made through the roof to provide for cable attachment, and twenty-four (24) antennae must be grounded. This cabling must (probably) exit the end wall of the building, and be carried to ground level (in an enclosure), where it will ultimately extend to the appropriate connection.

Any time an attachment is made to a roof system, or a penetration is made through a roof system, the opportunity for a leak exists. However, in a multi-plex building, the leak, and resulting damage, will typically manifest itself in the dwelling unit directly below the installation, which, most likely, is not the dwelling unit of the owner of the Direct Satellite Dish Antenna. This creates a series of problems for the Association.

- Who is responsible for the damage and repair?
- If it is to be the owner of the Direct Satellite Dish Antenna, can it be determined which Direct Satellite Dish Antenna caused the leak? The potential for damage, and resultant disputes is significant.
- Should an Association be responsible for a faulty installation?
- Should the entire membership be responsible for the cost of damage caused by one Unit Owner?

In each case, in our opinion, the answer should be no, unless the Association elects to accept that responsibility. Enforcement of 96-328 for Condominium Associations would require the installation of Direct Satellite Dish Antennae, and preempt the Association from accepting this responsibility (through establishment of Association regulations by the Board of Trustees) for any problems the Direct Satellite Dish Antennae installation causes.

Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 95-59 and CS Docket No. 98-83

In a Condominium form of ownership, and in the case of many Homeowner Associations, the Association is responsible for the maintenance, repair and replacement of the roof. These responsibilities are also a consideration. Who will remove (and reinstall) the Direct Satellite Dish Antennae when it is necessary to repair or replace the roof? While this can be handled through regulations by the Association, the possibility of as many as twenty-four (24) different contractors arriving at a building to remove the Direct Satellite Dish Antennae when the roof is to be replaced is not practical.

The same problems occur with initial installation. Who will install the Direct Satellite Dish Antenna? Will each Unit Owner engage a contractor to install his or her Direct Satellite Dish Antenna on the roof, and provide the cabling to the ground level? And who will be responsible if reception degrades for one Unit Owner, due to damage from installation of another Direct Satellite Dish Antenna. In our opinion, allowing installation of multiple Direct Satellite Dish Antenna on the roof surface of Condominium Flat multi-plex buildings and High-rise structures is not practical. At the very least, the Association should have the choice as to whether this will be permitted.

In the case of high-rise architectural design, the problems cited above all come into play. However, a more serious problem will also exist.

High-rise design buildings usually incorporate "flat" roofs. While "steep" roofs are designed to "shed" water, "flat" roofs are designed to be water tight (and function as a bathtub, with a drain to discharge the stormwater from the roof surface). It is significantly more difficult to attach to, and penetrate, a flat roof without resultant leaks, or without affecting the wind load resistance of the roof system. Further, the location of leaks in flat roofs is more difficult, and the cost to repair such damage is more costly. Finally, cable installation becomes a complicated, if not impossible task.

In our opinion, the installation of Direct Satellite Dish Antennae on flat roofs, as is the case with Condominium Flat design, should be decided by the Association, and should probably be denied for the preceding reasons.

Building Mounted Direct Satellite Dish Antennae

In our opinion, the practicality of building mounted Direct Satellite Dish Antennae is not affected by the architecture, but by the form of ownership.

In the case of Townhouse style architecture, mounting a Direct Satellite Dish Antenna on a balcony, chimney or wall can be accomplished with relative ease. However, there remains the potential for damage to the building. Mounting to the building penetrates the building envelope, as does the cable connection through the wall. Both the mounting and the cable penetration provide an opportunity for water penetration into the building wall cavity.

This problem may be more significant with Condominium Associations where the structural elements are the responsibility of the Association. At least in the case of a

**Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 95-59 and CS Docket No. 96-83**

Homeowner Association, any deterioration of the structural components is the responsibility of the Unit Owner.

As long as there is a clear delineation of responsibility for damage to the building, building mounting the direct satellite dish antenna may be appropriate, depending on the impact on the development scheme.

Community associations are planned around a development scheme. Architecture plays an important, if not the most important, role in defining the development scheme. Associations, both Homeowner and Condominium, control the development scheme through the enabling documents, typically through a Covenants Committee or Architectural Control Committee. The legal basis for this control is well established.

The maintenance of a development scheme does not rely on preventing any change to the building fenestration. It does, however, rely on uniformity. It will be impossible to maintain any uniformity of installation on patios, balconies, or exterior walls because a uniform location will not consistently provide the required line of sight (depending on building orientation).

In the case of a Homeowner Association with responsibility for maintenance of the building exterior, or of a Condominium with Townhouse style architecture, the ability exists to assess maintenance or repair costs to the individual Unit Owner for damage from the installation of a Direct Satellite Dish Antenna. Responsibility is not as easily assigned in Condominium Flat multi-plex or High-rise architecture.

As discussed, exterior mounted Direct Satellite Dish Antennae must be fastened to the building, and penetrate the building to allow cabling. In each case, the potential for water penetration into the building exists. Should this occur, the resulting leak frequently manifests itself well away from the source of water penetration. Damage will then be to property of someone other than the owner of the Direct Satellite Dish Antenna. In addition, water penetration through the building envelope can result in significant damage to the building's structure. Such damage may not become apparent until well after the owner of the Direct Satellite Dish Antenna has sold his or her unit. However, the Condominium Association will be responsible for repair to the structural components since they are part of the Common Elements.

In addition to the problems with installation, temporary removal for normal building maintenance and repair, etc., as discussed with roof mounted installations on Condominium Flat multi-plex or High-rise architecture, all exist.

Conclusions

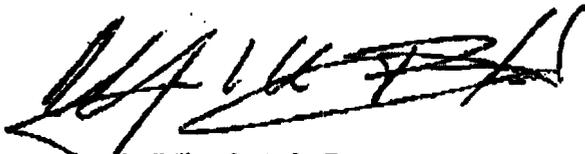
Each of the Association types (Homeowner Association, Condominium Association or Cooperative) reflects the form of ownership, not the architecture. In our opinion, both the form of ownership and the style of architecture must be considered in determining the potential impacts of the installation of Direct Satellite Dish Antennae.

Marshall Frost, P.E., P.P.
Frost, Christenson & Associates
IB Docket No. 95-89 and CS Docket No. 96-83

In our opinion, preclusion of any restrictions on the installation of Direct Satellite Dish Antennae should not be imposed on any Association which is responsible for the maintenance, repair and replacement of the components of the building envelope, whether it is a Homeowner Association, or a Condominium Association.

In the case of Condominium Flat multi-plex and High-rise architecture, regulations allowing the installation of Direct Satellite Dish Antennae should be controlled by the Association membership. Regulations prohibiting the installation of Direct Satellite Dish Antennae should be allowed, unless the Association elects to allow their installation, and assumes the problems associated with their installation. Otherwise, the Association will be required to deal with any and all problems resulting from the installation, and incur the related costs. These costs will be borne by the membership, with members without the Direct Satellite Dish Antennae effectively supporting those who elect to install the Direct Satellite Dish Antennae.

Submitted by:



Marshall Frost, P.E., P.P.
President
Frost, Christenson & Associates

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Preemption of Local Zoning Regulation of Satellite Earth Stations)	IB Docket No. 95-59
)	
In the Matter of)	
)	
Implementation of Section 207 of the Telecommunications Act of 1996)	CS Docket No. 96-83
)	
Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service)	FCC 96-328
)	

INTRODUCTION/INDIVIDUAL RIGHTS

The Woodbridge Village Association ("WVA"), Irvine, California, hereby submits the following comments on the Further Notice of Proposed Rulemaking released August 6, 1996, including those from a California perspective.

The basic assumption of Section 207 of the Telecommunications Act of 1966, we believe, is that the "viewer", referred to in that Section, already owns the sole right to decide if the devices referred to therein should be placed on his or her property, except for the described "restrictions". We do not believe the assumption was the viewer was acquiring new property control rights under Section 207 which he or she did not already own.

Clearly, if a co-tenant of a single family detached home, such as a husband and wife, as joint tenants, could not agree as to whether or not one of them could install a named antenna device, the FCC would not take the position that it could require one co-tenant to allow such an installation by the other co-tenant if both did not want it. Clearly such a dispute would be handled

elsewhere, such as in Family Court. So, does the ownership of an undivided interest in common property create greater rights than that situation? We submit it clearly does not with the following support in case law.

Under California case law, through contractual obligations and covenant restrictions, the use and maintenance of these individual interests in common are subject to joint control acting typically through a Board of Directors of a Common Interest Development Association.

In Posey v. Leavitt, 229 Cal.App.3d 1236 (1991), the Court observed that an encroachment into the common area impaired the easements of the other owners over the common area and thus actually required the consent of all of the condominium owners. Even the consent of the Association's Board of Directors was insufficient in that case.

While we realize that these antenna situations involve judgments as to materiality of the encroachment and the effect on other owners, we cannot believe that giving each individual co-owner the unregulated and unbridled right to install antenna type devices anywhere each would choose is reasonable, nor would such a result be allowed under the laws of co-tenancy. Simply put, the right of each of these co-tenants must be subject to review and approval or disapproval by the agreed to contractual method, that is the Association, usually acting through the Board of Directors or an Architectural Review Committee.

This principle was even more clearly expressed in the recent landmark California Supreme Court decision of Nahrstedt v. Lakeside Village Condominium Association, Inc. (1994) 8 Cal.4th361, 878 P.2d 1275; 33 Cal.Rptr 2d63.

In that case, the Court observed at Pg. 372 as follows:

Use restrictions are an inherent part of any common interest development and are crucial to the stable, planned environment of any shared ownership arrangement.

Further, the Court at 373 states:

The viability of shared ownership of improved real property rests on the existence of extensive reciprocal servitudes, together with the ability of each co-owner to prevent the property's partition. . . . The restrictions on the use of property in any common interest development may limit activities conducted in the common areas as well as in the confines of the home itself . . . Commonly, use restrictions preclude alteration of building exteriors, limit the number of persons that can occupy each unit, and place limitations on..or prohibit altogether..the keeping of pets.

The Court also cites with approval the Florida Court in Hidden Harbour Estates v. Norman (1970) 309 So.2d 180 which stated:

"[I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he (or she) might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization."

Also, we recognize that restrictions sometimes clearly conflict with sound public policy and should not be enforced. The Nahrstedt Court agreed and also pointed to Shelley v. Kraemer (1948) 334 U.S. 1 at 381, it said:

"This rule does not apply, however, when the restriction does not comport with public policy. (Ibid.) Equity will not enforce any restrictive covenant that violates public policy. (See Shelley v. Kraemer (1948) 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (racial restriction unenforceable).

That is precisely the point we wish to make. No such public policy was enunciated in Section 207 to eliminate all property rights to give a "viewer" rights with respect to property he or she does not own individually. Clearly, if Congress had intended to override such property rights, it would have clearly expressed it. It did not and as other commentators have noted and briefed, any usurping of such property rights must be narrowly construed. Even if Congress had, which it did not, such may be unconstitutional

This co-ownership of common area includes much more than just an equitable servitude or covenant running with the land. It is not just a "restriction" mentioned in Section 207. It is a form of ownership which Congress cannot disturb or void without such being a "taking" of private property.

TAKING ISSUES

We do not need to repeat the details contained in other commentator's briefs, especially the points made by Community Association Institute on the taking issue which is prohibited by the Fifth Amendment.

Clearly, we believe Loretto v. Teleprompter Manhattan CRTV Corp. (1982) 458 U.S. 419 expresses the law and prohibits the FCC from issuing a regulation which would, in effect, take other persons property in order to move forward its public policy of promoting a "viewers" ability to receive video programming!

COMMON ANTENNA REQUIREMENTS

WVA also believes the individual project accommodations of the viewer's ability to receive the video programming by antennas and other devices on common property is best left to each project. In some circumstances, the use of a common antenna is feasible. In many instances, it is not.

An "antenna farm" might be a solution to antenna access for a large, single building, or compact multi-building condominiums, but it is impracticable for many Condominiums, especially in California, and we expect elsewhere.

For example, the Woodbridge Village Association is a master association in Irvine, California, covering over 20% of the City of Irvine, California (9500 households) and is composed of 32 subassociations containing all together - 62% of the living units; single family detached houses containing - 19% of the units; and ten apartment complexes containing - 19% of

the units. All of the units have cable access built in, as does the rest of Irvine, and most of Southern California.

The apartment rental units are not included in FCC regulations so far. The single family detached units are covered. Most of the 32 subassociations are condominiums, although several are Planned Unit Developments (PUD's) where the residence and lot are owned in fee by the unit owners, although they belong to a subassociation due to lot size, and open space common area. Some of these membership PUDs cede roof maintenance and replacement to their subassociation, some do not. In that respect, therefore, they are like condominiums in that each has given up some property rights in exchange for common cost sharing.

Most of the condominium associations in Woodbridge are physically divided into several phases - from two to five. These phases are NOT contiguous. They are separated by other tracts and developments. The streets within each phase are generally private in ownership, but open to public access. Only two of the 32 have access gates.

The WVA owns over 180 parcels (lots). About 40 of these lots are WVA recreational facilities, parks with pools, parks with amenities other than pools, two large beach clubs, two 10 court tennis clubs, a headquarters building, and two lakes (25 and 30 acres each). The rest of the lots are scattered all over the village and are primarily landscaping areas between development fences and sidewalks. Each subassociation is a California non-profit corporation with its own Board of Directors. The sole linkage to the WVA, other than the requirement that all owners of residential lots must be WVA members (to share in the expense of the facilities) is to grant to the WVA aesthetic architectural control. The subassociation retains property rights control. For instance, the subassociation determines whether screen doors are allowed in their subassociation, but the WVA determines the color and style of the screen doors. Similar division is maintained for larger issues such as building additions, roofing materials, etc. The subassociation always has the right to contribute to the WVA Architectural Committee deliberation in the same manner as the home owner and his neighbors, but the aesthetic determination is made by the WVA Architectural Committee, or the WVA Board of Directors in the case of an appeal.

Thus there are WVA owned parcels all over the village, some substantial in size - and usually bounded by several subassociations, and many more as open space outside, but adjacent to the confines of either a subassociation or tract of single family homes or apartments.

For WVA subassociations, the necessity of having multiple antenna farms to include in their physically separated locations, the expense of erection and trenching, the necessity of accommodating VHS, UHS, MMDS, DSS (of various providers) and possibly cable (for associations in other areas of the country) make the feasibility and cost prohibitive. Also it would require a 67% vote of the subassociation membership to authorize and fund such an undertaking - an almost certain impossibility.

RESOLUTION

We believe, therefore, that the FCC Rules be restricted to those viewers who have the exclusive use or control of their areas and who maintain their own property and leave the regulation of other co-owned and co-controlled or co-maintained areas to those co-owners to decide how best to accommodate their members' wishes.

Respectfully submitted,

Woodbridge Village Association

By: _____
DON DAVIS
President

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of
Preemption of Local Zoning
Regulations of Satellite Earth
Stations

IB Docket No. 95-59
DA 91-577
45-DSS-MISC-93

AFFIDAVIT OF JAMES N. REINHARDT

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

JAMES N. REINHARDT, being first duly sworn on oath, deposes and says
that:

1. Affiant is a licensed architect in the State of Hawaii and a past president of the Hawaii Chapter of the American Institute of Architects.
2. Affiant has represented numerous clients with respect to the installation, maintenance and repair of all types of roofing systems.
3. Affiant has represented one client in a matter in which the installation of an antenna resulted in leaks into the building.
4. Installation of a satellite dish on the roof would require that holes be drilled into the roof or the walls of the building so that the dish can be connected to the apartment.

5. There is an increase in the cost of reroofing a building with satellite dishes on the roof because the roofer would be required to work around the satellite dish. The increase in cost would depend on the number of satellite dishes on the roof and on the details of the connections.

6. There is an increased likelihood of leaks in the roofs and walls whenever penetration through a roof or wall occur.

7. The cost of maintaining the penetrations through the roof is greater than the cost of maintaining the normal surface of the roof or wall.

8. Sealants used to seal holes in the roof and walls will typically degrade or shrink relatively quickly in comparison to the roof or walls.

9. Roof surfaces deteriorate more rapidly when walked on. The more these surfaces are walked on, the more rapid the deterioration will be, causing the life of the roof to be shortened.

Further Affiant sayeth naught.

James N. Reinhardt

JAMES N. REINHARDT

Subscribed and sworn to before me this
12th day of April, 1996.

Leanne R.S. Cole
 Notary Public, State of Hawaii

My commission expires: 12/15/98



Fred M. Baron, AIA

Consulting Architect

■ 5850 Oberlin drive, suite 110 □ san diego, california 92121 □ (619) 535-3030 □ (619) 535-3017 fax ■

April 12, 1998

Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

**SUBJECT: PREEMPTION OF LOCAL ZONING REGULATION OF SATELLITE EARTH STATIONS, FCC 96-78
IB Docket No. 95-59**

Dear Secretary:

I am writing to express my concern regarding the proposed rule stating "No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter".

I was made aware of this proposed rule through the San Diego Chapter of the Community Associations Institute, of which I am a member. For the past ten years, I have provided roof consulting services, I have performed construction defect investigations, and I have served as a consultant and expert witness in homeowner and homeowner association disputes in the course of my practice as a consulting architect.

In my opinion, the vagueness of the proposed rule as it now reads would create several difficulties for community associations, as well as for individual members, and I believe the proposed rule will create a dramatic increase in homeowner/association disputes requiring resolution. Some of the concerns I have are as follows:

1. The proposed rule provides no guidelines to determine impairment of a viewer's ability to receive the services. The primary issue this will create is the need to determine whether increased cost is an impairment, since installations of such equipment that do violate an existing restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction are likely to be less expensive than installations which take these restrictions into account.
2. The proposed rule appears to permit viewers to install such equipment in violation of restrictions which would require greater than a lay person's knowledge of construction, particularly pertaining to roofing. In the many investigations of existing residential roofing I have performed, one recurring theme is the existence of unregulated installations of equipment (e.g., skylights, antennas, other electrical wiring) by individual homeowners. More often than not, these installations result in penetration of the roofing materials without proper sealing.

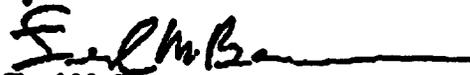
- 3. Although the proposed rule does not override governmental restrictions, building permits are the only governmental restrictions that come to mind, and they are not often required - and even less often obtained - for such installations. As a result, the creation of new paths for water intrusion is commonplace. In a single family dwelling, the owner does this at his/her own risk, but in a common interest development, such installations can and do result in penetrations creating paths for water intrusion in the roofs of neighboring homes under maintenance by a community association.
- 4. If the roof in question was under warranty, such installations will, in many instances, void that warranty for the entire building affected, not just for the installer of the satellite antenna.
- 5. Since the proposed rule specifically overrides restrictions which might provide some control over these installations, the only means of establishing whether or not an individual homeowner could be restricted to doing a correct installation would appear to be through the legal system, after the fact, by the filing of a lawsuit or initiation of an ADR procedure by the community association.

My commentary has been limited to these concerns that relate to those portions of my practice on which I provide consulting services and expert testimony. It is also my belief that many other issues on the periphery of my expertise will become the subject of future litigation if the proposed rule becomes law, such as those issues concerning the use and appearance of common property. To avoid an increase in water-related damage, homeowner/association disputes, and resulting legal costs, I recommend that the FCC reconsider this proposed rule, adopting the approach of carefully integrating the federal interest in widespread access to all forms of video delivery with the interests of the communities to be impacted.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Fred M. Baron, AIA a Consulting Architect

By 

Fred M. Baron,
Principal Architect
#C-10786

FMB/hs
CORRIGALTFCC.412

PETERSON

April 10, 1996

RE: FOOT TRAFFIC ON ROOFING PRODUCTS

To Whom It May Concern,

The following information is being provided by Peterson Roofing, Inc., a roofing company specializing in single family residential reroofing as well as homeowner association reroofing projects. Peterson Roofing, Inc. is a full service roofing contractor having been in business since 1969. The forthcoming is a general understanding of product warranty and workmanship warranties in relationship to roofing products and roofing installations.

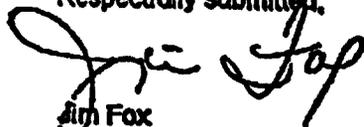
A general statement Peterson Roofing, Inc. would make to the homeowner or association having recently installed a new roof would be to at all cost minimize the amount of foot traffic on your new roofing system. Roofing materials are derived from basic materials such as asphalt, wood, fiber cement, concrete, clay, slate and metal such as aluminum and copper. Even though there are numerous building materials utilized in manufacturing roofing products, the manufacturer and the labor force do share some common recommendations regarding maximizing the life of your roofing system.

With respect to the manufacturer, manufacturers extend warranties to owners of the roofing system with one basic understanding that is uniform throughout the industry. A roof is designed to hold up for its projected life on the pretense that the roof is left undisturbed for the duration of the warranty. Such things as foot traffic, man made damage, acts of God such as hurricanes, earthquakes, tomadoes, etc. would in fact void out the manufacturers warranty. Their perspective is roofing is meant to keep water out of the structure and provide some added esthetic value to the home. It is not designed for excessive foot traffic although some foot traffic may result with respect to having a need for painters, plumbers, Christmas decorations, chimney sweeps and general maintenance on a roofing system. If in fact the product goes in the interim, it is in fact considered a defective product and is covered by the manufacturers warranty.

By comparison, there is always a labor force involved that installs a roof. Should something they installed come undone or result in a leak, then that is where workmanship warranties come into play. On the other hand if man made damage is created such as kicking off a ridge cap or poking a hole in a roofing product, that is no fault of the workmanship or the manufacturer and in turn a need for repairs would not be covered under either product or workmanship warranties and would be billed on an individual basis under the pretense of a service call.

Peterson Roofing, Inc. would like to present this final conclusive comment. If and when ever possible, to maximize the life of your roofing system, we recommend to avoid any undue need to be on your roof.

Respectfully submitted,



Jim Fox
Vice President Residential/Maintenance

c:\winword\jim\rfrc

CORPORATE OFFICES
549 WEST CENTRAL PARK AVE.
ANAHEIM, CA 92802-1415
(714)444-4444 FAX (714) 778-4429

L. A. COUNTY
(310)533-1111
FAX (310)533-1717

SAN DIEGO COUNTY
12528 HIGH BLUFF DR., SUITE 300
SAN DIEGO, CA 92130
(619)259-8311 FAX (619)259-6661

PREMIER ROOFING, INC.

State Contractors License Number 689726

LIMITED WARRANTY

Upon completion of construction by Premier Roofing, Inc. and payment in full by Buyer, subject to the limitations set forth below, Premier Roofing, Inc. warrants against roof leaks caused by defective workmanship or materials for a period of FIVE years from date of installation. If a roof leak covered by this warranty occurs, Premier Roofing, Inc. will repair the roof leak at no charge to Buyer. To obtain performance of this warranty Buyer must give written notice to Premier Roofing, Inc. identifying the sales transaction by providing a copy of the original contract and the nature of the problem. Such notice should be given to Premier Roofing, Inc. at 9054 Olive Drive, Spring Valley, CA 91977-2301. This warranty is limited to roof leaks caused by defective workmanship and materials used in the roof construction or repair performed by Premier Roofing, Inc. only and does not extend to leaks caused by acts of God, intentional or negligent acts or omissions of Buyer or persons subject to Buyer's control, or in those instances where the contract or sales proposal specifically excludes any type of warranty. Leaks which originate in sheet metal air conditioning ducts and or related sheet metal work are specifically excluded from this warranty.

PREMIER ROOFING, INC. SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, WATER DAMAGE TO FLOORS, CEILINGS, INTERIOR FURNITURE OR FURNISHINGS, EQUIPMENT, DOCUMENTS OR RECORDS, MERCHANDISE WITHIN THE BUILDING OR ANY OTHER CONTENTS OF THE BUILDING, OR FOR ANY HAZARDS OR INJURY TO OCCUPANTS RESULTING FROM WATER LEAKAGE.

THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION HEREIN, EXCEPT AS REQUIRED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR DESIGN. THE DURATION OF IMPLIED WARRANTIES SHALL NOT EXCEED THE WARRANTY PERIOD SPECIFIED ABOVE.

No other express warranty or guarantee, given by any person, firm or corporation with respect to this product will bind Premier Roofing, Inc. No employee of Premier Roofing, Inc. other than the president, is authorized to amend or change, in any way, the terms and conditions of this Limited Warranty.

This warranty gives you specific legal rights, and you may also have other rights that vary from state to state.

Buyer warrants that the structure on which the roof is to be erected has been constructed in accordance with applicable building code requirements and is suitable for the work to be accomplished by Premier Roofing, Inc. Unless otherwise specifically stated in the contract agreement, the work of Premier Roofing, Inc. on this roof specifically excludes the identification of ponding water areas or correction of same.

SCHULLER

906021

Building Owner:
CHULA VISTA TOWNHOME HOA
CHULA VISTA CA 91911

**Roofing Systems
Gold Shield®
Roofing System
Guarantee**

Building Name:
CHULA VISTA TOWNHOMES
139 4TH AVENUE
CHULA VISTA CA 91911

Guarantee Number: FNB0925290

Approved Roofing Contractor:
PREMIER ROOFING, INC.
9054 OLIVE DRIVE

SPRING VALLEY CA 91977

Term & Maximum Monetary Obligation to
Maintain a Watertight Roofing System

Date of Completion: 12/30/94

Years 10 \$
NO DOLLAR LIMIT
TOTAL SQUARES 81

COVERAGE
The components of the Roofing System covered by this Guarantee are:

Membrane Spec. and Type 4 GNS
Flashing Spec. and Type DFE-4, DFE-3WH.
Fasteners Type
Accessories (Type and Quantity)

BUR
580 LINEAR FEET

..... and all OTHER COMPONENTS OF THE GUARANTEE

Beauregard Heights

c/o Condominium Services, Inc.
4600 Duke St., Suite 331
Alexandria, Virginia 22304

September 18, 1996

Commissioners
Office of the Secretary
Federal Communications Commission
1919 M Street, NW # 222
Washington, D. C. 20554

Dear FCC Commissioners,

I am writing on behalf of the Board of Directors of the Beauregard Heights Condominium Association. Our Association is comprised of 104 townhouses on the west side of Alexandria, Virginia.

We are very concerned about the decisions you may make concerning individual installation of antennas on the common property of our association. Under Virginia law and the Bylaws of our Association, Common property is defined as the outside structure of each of our 104 units. This includes the roof, windows, doors, gutters, eaves, and all land outside the units. For this reason, we have restrictions on changes made to the common property. And for this reason, the Association pays for the painting, tuckpointing, etc. on the outside of the structure whenever it is needed. We also pay for the landscaping and up-keep of the common property.

Because of our responsibility for the common property, we insure the common property. I am sure that we would either be uninsurable or have to pay a prohibitively large premium if any resident could add an antenna to the roof or outside structure.

It has been the aim of our owners to not permit antennas of any kind on the outside of the units or on the common property. We do not permit banners, signs, or any other additions to the common property. All of the services into the units are underground, including the new fiber-optics recently introduced by Jones Intercable.

We urge you to carefully consider the tangle of responsibility and liability that would occur if any resident would have the right to add an antenna to the roof, outside structure or any other part of the common property

Sincerely,

A handwritten signature in cursive script that reads "Lee Ann Elliott". The signature is fluid and connected, with a large initial "L" and "E".

Lee Ann Elliott
President

The Willoughby of Chevy Chase CONDOMINIUM

August 28, 1996

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

**RE: DOCKET No. 95-59
FCC 96-78**

Dear Sir/Madam:

The Willoughby of Chevy Chase Condominium is a high rise building encompassing over 800 residential units on 19 floors. Any FCC rule requiring this condominium to permit the installation of satellite antennas by residents on the various membrane roof sections of our building would pose enormous practical problems as well as unreasonable additional expenses even for those owners who do not own a satellite antenna.

(1) It is probable there will ultimately be so many satellite antennas on the roof that they will present a serious and costly impediment to essential ongoing maintenance of the roof membrane itself.

(2) Installations and periodic maintenance service of roof antennas by many residents and/or their contractors will inevitably lead to damage to the roof membrane resulting in leaks through the roof into top floor residential hallways and living units. Tracing such leaks and assigning responsibility for the cost of their repair and attendant damages will often prove impossible. Thus, even owners without satellite antennas will have to pay for roof repairs and attendant damages caused by those owners who have satellite antennas.

(3) We will eventually need to perform large scale roof repairs or replacement. We will inevitably face higher costs because roofing contractors can be expected to charge much higher prices for projects where the roof has a number of satellite antennas, mounting devices and connecting cabling than they would charge to work on a roof unobstructed by such impediments.

(4) Rooftop installations will require running a cable from residential living units to the rooftop. In the absence of convenient vertical conduits (our 30+ year old building was not designed with satellite antenna installations in mind, and even our internal television antenna coaxial system is problematic), we would have to allow residents to either install cable on common area hallway walls or attach it to the building exterior. This will ultimately adversely impact the property values of the units in our building. Installations on the exterior of the building will result in higher maintenance costs due to deterioration of the relatively fragile exterior concrete surfaces. It will be impossible to

determine whether deterioration of exterior concrete surfaces resulted from the cable installations or is due to normal aging of the building.

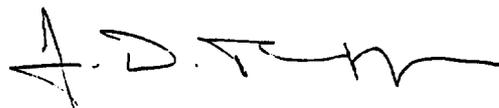
There is also the issue of satellite antenna installation on balconies, which arguably may already be required under newly adopted Section 1.4000. Concrete balconies are relatively fragile structures, subject to rapid deterioration due to water penetration of the concrete, and repairs to concrete balconies are extremely expensive. We are engaged in an ongoing campaign to prevent our balconies from succumbing to this fate. When satellite antennas are fastened to concrete balcony walls and floors, additional water penetration is likely. Yet, it will probably be impossible to prove whether premature deterioration resulted from such an installation or normal aging and deterioration.

A satellite antenna will have to be securely mounted somewhere to avoid the risk of being blown away by a strong wind, possibly to cause injury or damage to someone or some other part of our building or a neighboring building. Mounting on our building exterior walls will result in additional maintenance cost of the exterior surfaces. This will also adversely impact the property values of the units in our building.

Finally, we question the wisdom of any law or regulation which interferes in the contract that exists between our owners. That contract, known as our Declaration and By-laws, constitutes an agreement all owners willingly enter into as a condition of their purchase of a condominium unit. Requiring our condominium to permit the installation of satellite antennas on commonly owned property, even when such property is reserved for the exclusive use of one resident, violates the terms of that contract in a manner that benefits a minority of our owners and penalizes the majority. Such action completely refutes the entire underlying principle of condominium ownership and will result in financial loss for all our owners.

For these reasons, the Board of Directors of The Willoughby of Chevy Chase Condominium strongly urges the Federal Communications Commission to refrain from adopting any new rule that would require condominiums to permit rooftop installations of satellite antennas, and to revise Section 1.4000, already adopted, to clarify that balcony installations of satellite antennas are not permitted on common property. Enclosed is a photograph of our building to assist you in visualizing the nature of our particular circumstances.

Sincerely yours,



**J. Douglass Ruff
President**

**cc: Hon. Paul Sarbanes, U.S. Senator
Hon. Barbara Mikulski, U.S. Senator
Hon. Constance Morella, U.S. Representative
Mr. Robert Diamond, President,
Community Associations Institute**