

Before

The Federal Communications Commission

Washington, DC 20554

CHRISTOPHER ARCHIE and)	
ZLATINA GEORGIEVA,)	
)	
Petitioners,)	
)	
and)	Petition For OTARD Declaratory
)	Ruling Pursuant to 47 CFR 1.4000(d)
WOODLAND CREEK, LLC,)	
A Michigan Limited Liability Company, And)	
APARTMENT MANAGEMENT)	
PROFESSIONALS, LLC d/b/a)	
AMP RESIDENTIAL, An Indiana Limited)	
Liability Company,)	
)	
Respondents.)	

PETITIONERS, CHRISTOPHER ARCHIE AND ZLATINA GEORGIEVA ("Petitioners"), for their Petition for a Declaratory Ruling Pursuant to 47 CFR 1.4000(d) states as follows:

1. Petitioners are the occupants of a second-level apartment in a three-level Multi-Dwelling Unit ("MDU"), located at 4013 Woodland Creek Drive Southeast, Apartment #201, Kentwood, Michigan, 49512.
2. The MDU is one of many buildings that comprise an apartment complex with the assumed name of Woodland Creek Apartments ("WCA").
3. Upon information and belief, WCA is comprised of over 1,000 individual apartment units.
4. Upon information and belief, WCA is the "doing business-as-name" of Woodland Creek, LLC a Michigan Limited Liability Company, which is a wholly owned

subsidiary and/or an "alter ego" of Apartment Management Professionals, LLLC d/b/a AMP Residential, an Indiana Limited Liability Company.

5. Petitioners are seeking FCC action in an OTARD matter, pursuant to section 1.2 of the Commission's Rules.

6. Specifically, Petitioners seek a determination that WCA's Apartment Lease Contract, including its Lease Contract Addendum for Satellite Dish or Antenna (the "Satellite Addendum"), governing the above described property, impose unlawful restrictions and prohibitions restricting the use of externally mounted over-the-air video programming reception antennas in a manner prohibited by 47 C.F.R. 1.4000(d), the Commissions Over-The-Air Reception Devices (OTARD) Rule ("the Rule").

7. Further, Petitioners seek a Declaratory Ruling that these restrictions contravene the Rule and are therefore prohibited and unenforceable.

8. Finally Petitioners seek a Declaratory Ruling that these restrictions are prohibited and unenforceable as to any past or future WCA resident who's Apartment Lease Contract contains the Satellite Addendum.

9. Petitioners assert that WCA's Satellite Addendum unlawfully: (1) Requires advance prior approval, *in writing*, for the installation of any antenna or dish devices on resident property within resident's exclusive use and control, (2) Requires payment of required application fees (\$100) to obtain approval for such installations, (3) Limits the number of satellite dishes or antennas to "1"; (4) Requires compliance with restrictive subjective rules on placement, including screening and positioning on the property to satisfy aesthetic preferences, (5) Requires pre-approval of the strength and type of materials used for installation, (6) Requires that the person or company who will perform the installation be pre-approved by WCA, (7) Requires that residents obtain liability insurance as a pre-requisite for being permitted the installation of a satellite dish or

antenna; Prohibition entirely of tower support structures, despite their technical necessity in a wooded area, (8) Requires that residents delay satellite and antenna installations until such time as resident has provided written evidence of liability insurance, paid security deposit and all fees, has received written approval from WCA of the installation materials and person performing the installation.

FACTS

The Satellite Addendum, attached as Exhibit B to Mr. Archie's Affidavit, contains the following provisions:

3. **Number and size.** You may install 1 satellite dish(es) or antenna(s) on the leased premises. A satellite dish may not exceed one meter (3.3 feet) in diameter. Antennas that only transmit signals or that are not covered by 47 CFR § 1.4000 are prohibited.

5. **Safety and non-interference.** Your installation: (1) must comply with all applicable ordinances and laws and all reasonable safety standards; (2) may not interfere with our cable, telephone or electrical systems or those of neighboring properties; (3) may not be connected to our telecommunication systems; and (4) may not be connected to our electrical system except by plugging into a 110-volt duplex receptacle. If the satellite dish or antenna is placed in a permitted outside area, it must be safely secured by one of three methods: (1) securely attaching it to a portable, heavy object such as a small slab of concrete; (2) clamping it to a part of the building's exterior that lies within your leased premises (such as a balcony or patio railing); or (3) any other method approved by us in writing. No other methods are allowed. We may require reasonable screening of the satellite dish or antenna by plants, etc., so long as it does not impair reception.

7. **Safety in installation.** In order to assure safety, the strength and type of materials used for installation must be approved by us. Installation must be done by a qualified person or company approved by us. Our approval will not be unreasonably withheld. An installer provided by the seller of the satellite dish or antenna is presumed to be qualified.

10. **Liability insurance.** You must take full responsibility for the satellite dish, antenna and related equipment. If the dish or antenna is installed at a height that could result in injury to others if it becomes unattached and falls, you must provide us with evidence of liability insurance (if available) to protect us against claims of personal injury and property damage to others, related to your satellite dish, antenna and related equipment. The insurance coverage must be \$ 100000.00 , which is an amount reasonably determined by us to accomplish that purpose. Factors affecting the amount of insurance include height of installation above ground level, potential wind velocities, risk of the dish/antenna becoming unattached and falling on someone, etc.

12. **When you may begin installation.** You may start installation of your satellite dish, antenna or related equipment only after you have: (1) signed this addendum; (2) provided us with written evidence of the liability insurance referred to in paragraph 10 of this addendum; (3) paid us the additional security deposit, if applicable, in paragraph 11; and (4) received our written approval of the installation materials and the person or company that will do the installation, which approval may not be unreasonably withheld.

14. **Special Provisions.** The following special provisions control over conflicting provisions of this printed form:

A \$100 one time fee is required to be paid at the time of installation.

It is important to note that the Petitioners were advised by WCA management that they may not install TV programming services with any other cable provider than Marrik Dish Company, LLC d/b/a Suite Solutions Technologies ("Suite Solutions"), because WCA had an exclusive contract with Suite Solutions, which prohibited any other cable service provider from providing cable television services to WCA residents. Upon information and belief, Suite Solutions is registered as FCC Form 499 Filer ID Number 827955, with its headquarters located at 4102 Monroe Street, Toledo, Ohio, 43606.

Petitioners have, on multiple occasions, advised WCA management, and its legal counsel, that (1) their policies on off-the-air antennas were unlawful and unenforceable and (2) their exclusivity contract with Suite Solutions was unlawful and unenforceable. Petitioners were verbally advised by WCA management that TV programming is an "amenity", not a "utility," and therefore, WCA was under no obligation to make these types of services "available" or "accessible" to residents. Petitioners were verbally advised by WCA management and WCA's counsel that the WCA position was lawful, that it would be enforced, and that the restrictions, fees, delays and other administrative restrictions would remain in place.

Because Petitioners were not permitted by WCA to install TV programming in their residence through a cable company, Petitioners decided to install satellite service TV programming. The Petitioners **had to pay the one-hundred dollar (\$100) fee, and to obtain liability insurance prior to being permitted by WCA management to schedule installation with the satellite dish provider.** However, due to the location of the Petitioners' apartment, which faces a heavily wooded area, no satellite dish provider was able to install a satellite dish or antenna in the area within the Petitioners' exclusive custody and control—the balcony that faced the wooded area—that would have any signal receivability.¹ Not being permitted to install cable TV services, and not being able to install a satellite dish or antenna that would receive any signal, if Petitioners wish to receive *any* TV programming services in their residence, they are forced to sign a contract with Suite Solutions.

¹ As such, at the request of Petitioners, the \$100-fee was refunded.

STANDARD OF REVIEW

The OTARD rule prohibits restrictions that impair the ability of antenna users to install, maintain, or use over-the-air reception devices.² The rule applies, *inter alia*, to an antenna used to receive video signals from a satellite if the antenna is one meter or less in diameter.³ For the rule to apply, the antenna must be installed "on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property" upon which the antenna is to be located.⁴

The OTARD rule preempts restrictions that impair installation, maintenance, or use of a protected antenna by unreasonably delaying, preventing, raising the cost of, or impairing the function of, an antenna.⁵ A party affected by an antenna restriction may petition the Commission to determine if the restriction is permissible or prohibited under the OTARD rule.⁶ In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section rests "on the party that seeks to impose or maintain the restriction."⁷

DISCUSSION

On the record before the Commission, the WCA Satellite Addendum provisions appear to constitute a textbook violation of the OTARD rules. The OTARD rule applies to Petitioners' installation. WCA's rules plainly raise the cost of, and add to the delay of,

² See *Preemption of Local Zoning Regulation of Satellite Earth Stations; Implementation of Section 207 of the Telecommunications Act of 1996*, 11 FCC Rcd. 19,276 (1996) ("OTARD Order"), *recon. granted in part and denied in part*, 13 FCC Rcd. 18,962 (1998) ("OTARD Reconsideration").

³ See 47 C.F.R. § 1.4000(a)(1)(i).

⁴ *Id.* § 1.4000(a)(1).

⁵ *Id.* § 1.4000(a)(1), (3).

⁶ *Id.* § 1.4000(e).

⁷ *Id.* § 1.4000(g).

dish installation. And WCA has not and cannot justify them on public safety or health grounds.

I. THE OTARD RULE APPLIES HERE.

The OTARD rule covers antennas used to receive video signals from a satellite if the antenna is one meter or less in diameter.⁸ There is no dispute that the antenna involved in this case satisfies this requirement.

The OTARD rule preempts restrictions of such antennas “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property” upon which the antenna is to be located.⁹ The WCA Satellite Addendum plainly applies in such areas—specifically so in Petitioners' case. The WCA Satellite Addendum, by its terms, applies to all satellite dish installations, wherever they might be located on WCA's grounds. This by definition includes areas within the exclusive use or control of the resident.

WCA seeks to apply its rules in this case to a satellite dish located to be located on the balcony/patio of Petitioners' apartment. Petitioners state: "We are the only ones that have use of the apartment, including the balcony/patio area. The balcony/patio area is not shared with any other WCA residents. The balcony/patio area is not accessible by other residents of WCA, and it is not a communal property."

On the record before the Commission, therefore, the balcony/patio area is within the Petitioners' exclusive use and control.

⁸ See 47 C.F.R. § 1.4000(a)(1)(i).

⁹ 47 C.F.R. § 1.4000(a)(1).

II. THE PROVISIONS OF WCA'S SATELLITE ADDENDUM IMPAIR INSTALLATION, MAINTENANCE, AND USE OF PROTECTED ANTENNAS.

The OTARD rule preempts restrictions that impair installation, maintenance, or use of a protected antenna by: (1) unreasonably delaying or preventing installation, maintenance, or use; (2) unreasonably increasing the cost of installation, maintenance, or use; or (3) precluding reception of an acceptable quality signal.¹⁰ Numerous aspects of the WCA's Satellite Addendum fail on these grounds.

Petitioners assert that WCA's Satellite Addendum restrictions do impair installation, maintenance, or use of protected antennas because they impose conditions of: (1) unreasonable delay and / or outright prohibition of effective installation, maintenance, or use; (2) unreasonable increased cost of installation, maintenance, or use; and (3) precludes reception of an acceptable quality signal.

III. WCA CANNOT JUSTIFY ITS RULES.

The OTARD rules permit restrictions if they are "necessary to accomplish a clearly defined, legitimate safety objective."¹¹ Safety objectives must be "either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users."¹²

In this instance, there are no existing exceptions to the Rule for restrictions necessary to achieve a valid and clearly articulated safety or historic preservation purpose. Neither can WCA assert such a claim, as such a justification would appear neither in the WCA's Lease or Satellite Addendum themselves nor in a comparable document.

¹⁰ 47 C.F.R § 1.4000(a)(3).

¹¹ 47 C.F.R. § 1.4000(b)(1).

¹² *Id.*

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Commission grant its petition and declare the provisions in WCA's Satellite Addendum regarding satellite-dish installation to be preempted and unenforceable.

Respectfully submitted,

By: 

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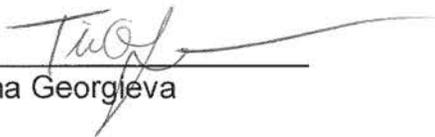
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CERTIFICATE OF SERVICE

I, Zlatina Georgieva, hereby certify that on this 15th Day of January, 2016, I sent a true and correct copy of the foregoing comments by email to the following:

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/s/ 
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