



The nation's voice for condominium, cooperative and homeowner associations

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 15, 1999

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
Portals, TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: Reply to Oppositions to Petition for Reconsideration in the Matter of Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services, CS Docket No. 96-83, FCC 96-151.

Dear Ms. Salas:

The Community Associations Institute ("CAI") hereby submits an original and ten copies of the attached Reply to Oppositions to Petition for Reconsideration in the above-referenced proceeding.

CAI appreciates the opportunity to file in this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Rodney D. Clark".

Rodney D. Clark
Vice President
Government & Public Affairs

Attachments

No. of Copies rec'd at 10
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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Implementation of Section 207 of the)
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air Reception)
Devices: Television Broadcast and)
Multichannel Multipoint Distribution)
Service)

CS Docket No. 96-83
FCC 95-151

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

Pursuant to the public notice published in the *Federal Register* January 20, 1999, the Community Associations Institute (CAI), joined by the National Association of Housing Cooperatives (NAHC), hereby files its Reply to the Oppositions filed by the Satellite Broadcasting and Communications Association (SBCA), the United States Satellite Broadcasting Company (USSB), and Winstar Communications Inc. (Winstar). For the foregoing reasons, CAI and NAHC urge the Federal Communications Commission (FCC) to reject the arguments raised in the Oppositions and amend the *Second Report and Order* to permit community association homeowners¹ who lease their homes² to tenants to protect their property from damage by requiring tenants to receive homeowners' approval prior to the installation of antennas covered under the Over-the-Air Reception Devices (OTARD) Rule.

¹ For purposes of this reply, "homeowner" refers to a unit owner in a condominium, a resident in a cooperative, or a homeowner in a homeowners association who leases his or her home or unit to a tenant.

I. THE FCC DID NOT ADEQUATELY CONSIDER HOMEOWNERS' PROBLEMS CREATED BY THE SECOND REPORT AND ORDER

SBCA and USSB both claim that the FCC adequately addressed the issues raised by CAI's Petition for Reconsideration in the *Second Report and Order*.³ CAI and NAHC respectfully disagree. The *Order on Reconsideration* released September 25, 1998 clearly addressed the rights of tenants in community associations to install antennas on exclusive use property as long as they had the permission of the homeowner.⁴ However, in the *Second Report and Order*, the FCC reversed this decision, equating homeowners with commercial landlords leasing great numbers of units. The *Second Report and Order* responded to arguments raised as to the rights of these traditional landlords. It only cursorily addressed the concerns of those homeowners who own one (or a small number) of leased homes. Since these homeowners are different than traditional landlords, lacking their professional and legal resources to repair damaged property and recover damages, the portions of the *Second Report and Order* relating to tenant installation do not resolve the issues that face homeowners who lease their homes. The *Second Report and Order* ignores the unique problems that these homeowners face. Therefore, since the FCC correctly determined in the *Order on Reconsideration* that tenants in community associations were required to obtain the homeowner's permission, it should reinstate subsection (h) to the OTARD Rule.

II. THE COST OF REPAIRS TO HOMES AND COMMUNITY ASSOCIATION COMMON PROPERTY CANNOT BE ADEQUATELY RECOVERED THROUGH TRADITIONAL LANDLORD-TENANT LAW

² For purposes of this reply, "home" refers to a condominium unit, cooperative apartment, or lot in a homeowners association that is leased to a tenant by an individual homeowner.

³ SBCA, Opposition 2; USSB Opposition, 1-2.

⁴ *Order on Reconsideration*, September 25, 1998, paragraph 77.

The Opposition comments have mischaracterized community associations' and homeowners' concerns about the increased probability of property damage raised by the *Second Report and Order*, treating these concerns as negligible or easily cured.⁵ The Oppositions show a misunderstanding of the relationship between homeowners and their tenants, as well as community associations and tenant residents.

The Oppositions argue that traditional landlord-tenant law will permit collection from tenants for any damage caused by improper installation.⁶ These parties do not recognize the fact that a tenancy in a community association is not a traditional landlord-tenant situation. While a lease in a community association is signed by only the homeowner and the tenant, the community association is necessarily involved in the rental situation because the tenants, by virtue of living in the association, are bound by the same rules and restrictions as the homeowner. Because of the differences in the rental situation in community associations, homeowners and community associations may not be protected from damage through traditional landlord-tenant law.

The *Second Report and Order* eviscerates homeowners' ability to prevent damage to their individually-owned property and common property. Without prior approval, homeowners will not be able to ensure that any antenna installation is performed correctly, thereby increasing the probability of damage to the property. If the installation damages common property, then the homeowner may find that the association seeks to recover costs from the homeowner, not the tenant, because the association cannot recover from the tenant. This places the homeowner in the untenable position of being responsible for damage caused by alterations that the homeowner

⁵ See, SBCA Opposition 4-6; USSB Opposition 4-5; Winstar Opposition, 2-3.

⁶ SBCA Opposition, 5; USSB Opposition, 4-5; Winstar Opposition 3.

could not control. If the tenant has already left the premises and is unreachable, the homeowner may not be able to recover damages from the tenant. This inequity should be remedied by requiring tenants to obtain the homeowner's permission before installing a covered antenna.

Winstar asserts that homeowners would use any prior approval process as a way to prohibit or impose insurmountable burdens to antenna installation.⁷ There is no basis for these comments, however. Homeowners need to protect their homes, which are often their most substantial investment. For tenants, who have little or no interest in maintaining leased property, to be permitted to make alterations without having to obtain the homeowner's permission would lead to serious damage to this leased property. It is for that reason alone that CAI and NAHC request the FCC to reinstate subsection (h) to the OTARD Rule.

The *Second Report and Order* creates great difficulties for community associations as well. If damage to common property occurs as a result of a tenant's installation, community associations will have great difficulty in collecting damages because of the lack of any legal relationship with the tenant. Additionally, community associations may not be able to seek recovery from homeowners, who may be able to successfully assert that they are free from liability due to their inability to control installations under the *Second Report and Order*. Community associations that are unable to recover damages would be forced to expend other homeowners' assessments for repairs. The FCC should avoid burdening other homeowners in this regard by reversing its decision to permit tenant installation without homeowner permission.

III. THE DAMAGE CAUSED BY IMPROPERLY INSTALLING COVERED ANTENNAS IS DIFFERENT THAN THAT CAUSED BY OTHER PROPERTY ALTERATIONS

SBCA contends that there is no difference in the damage caused by installing an antenna covered under the OTARD Rule (covered antenna) and damage caused by any other alteration to leased property.⁸ However, these situations are different. Most leases do not permit tenants to alter the property without the permission of the homeowner. Therefore, a homeowner can prohibit or control any alteration to the property, minimizing the risk of damage. Since the *Second Report and Order* prohibits this prior review, homeowners may only recover damages after the fact, not prevent the damage before it occurs. Recovery after the fact cannot truly compensate for damage and injury.

IV. SECTION 207 DOES NOT GRANT TENANTS RIGHTS OVER PROPERTY THEY DO NOT OWN OR CONTROL

SBCA and Winstar argue that the *Second Report and Order* did not go far enough in ensuring access to covered antennas.⁹ CAI and NAHC disagree with this assessment. With the exception of the issues raised by this Petition, CAI and NAHC applaud the *Second Report and Order*, which appropriately protected common property from individual antenna installation. The FCC correctly acknowledged that individuals could not use common property because they do not own or have the exclusive right to use or control common property. The FCC should not reverse this decision.

⁷ Winstar Opposition, 2.

⁸ SBCA Opposition, 5.

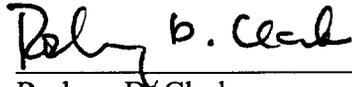
⁹ SBCA Opposition, 3; Winstar Opposition 1-2.

While the *Second Report and Order* recognized the property rights landlords and community associations have in common property, it did not adequately acknowledge the property rights homeowners have in their own property. Most leases provide a detailed description of the property to be leased, along with the permitted types of alterations and approval processes for these alterations. Leases grant tenants the right to use only the property included in the lease for the particular purpose listed in the lease. The *Second Report and Order* overturns traditional property law, however, by granting tenants additional property rights, beyond those included in their leases, to use leased property to make unauthorized alterations. Since Section 207 of the Telecommunications Act did not grant the FCC the authority to extend tenants' property rights, the FCC should not have done so in the *Second Report and Order*.

Conclusion

While CAI and NAHC welcome the FCC's decision to protect common property from individual antenna installation in the *Second Report and Order*, CAI and NAHC are greatly concerned that the OTARD Rule amendments deleting subsection (h) will increase the probability of damage to individually-owned and community association common property. Therefore, the FCC should reverse its decision in the *Second Report and Order* and should reinstate subsection (h) of the OTARD Rule as reflected in the *Order on Reconsideration*. In this way, homeowners and community associations will be able to protect their investments while still permitting tenants to install antennas safely.

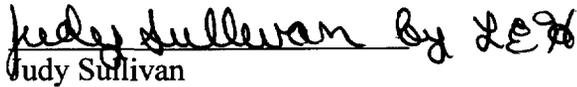
Respectfully submitted,



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February 15, 1999

CERTIFICATE OF SERVICE

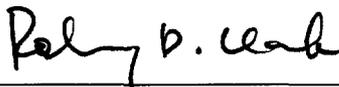
I, Rodney D. Clark, hereby certify that copies of the foregoing Reply to Oppositions to Petition for Reconsideration were mailed, postage prepaid, to the following individuals, on this 15th day of February 1999.

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