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PETITION FOR RULEMAKING

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To: Federal Communications Commission

**Proposed Amendment to 47 CFR Part 1.4000**

It is proposed that the rules of the Federal Communication Commission, 47 CFR Part 1.4000, be amended substantially as indicated below:

Sec. 1.4000. Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

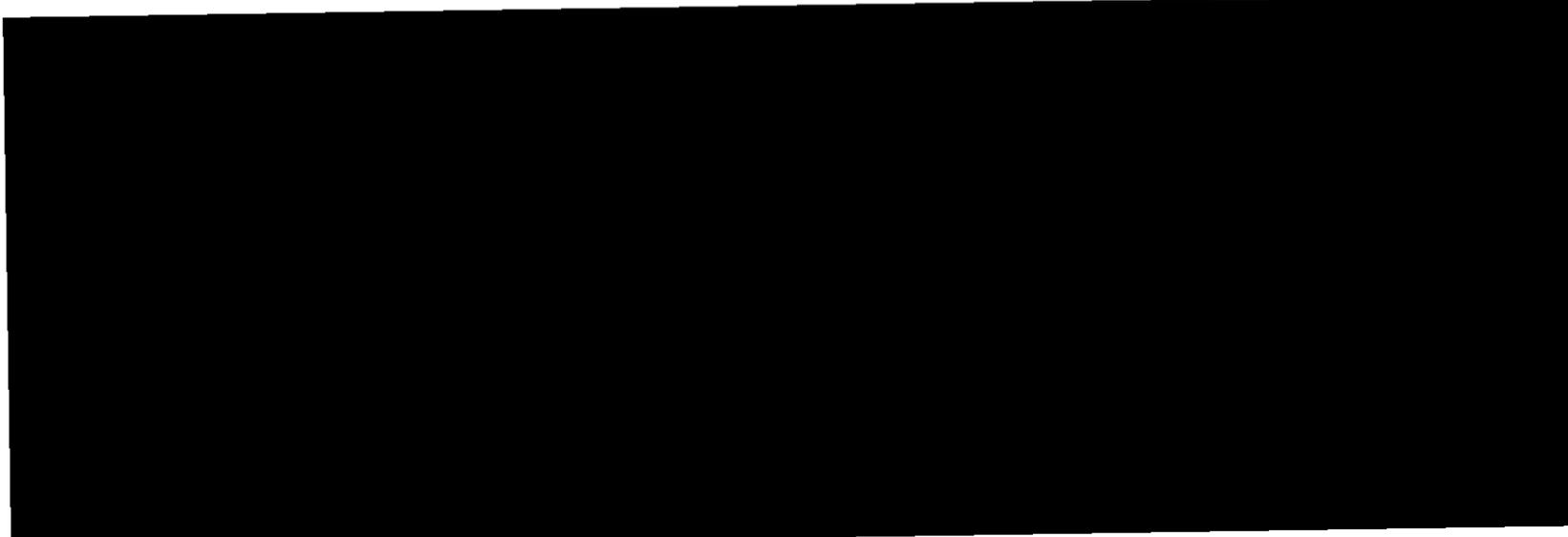
(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that unreasonably impairs the installation, maintenance, or use of: An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska; or an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or an antenna that is designed to receive television broadcast signals; is prohibited, to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it:

- (i) Unreasonably delays or prevents installation, maintenance or use,
  - (ii) Unreasonably increases the cost of installation, maintenance or use,
- or
- (iii) Precludes reception of an acceptable quality signal.

(3) For purposes of this section, a law, regulation or restriction does not unreasonably impair installation, maintenance or use of an antenna if the person seeking to install or maintain such antenna can demonstrate that such installation or maintenance would not cause significant damage to a common area. Significant damage is damage that would cause or lead to structural instability of the building, infiltration of precipitation, breach of

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insulation or weatherization treatment, or any damage that would require significant remediation of the building structure upon removal of the antenna, other than minor cosmetic restoration. Prior to such installation, a building owner or manager may require a reasonable damage deposit not to exceed the costs of removal of such antenna and any cosmetic restoration necessary to the common area.

(4) For purpose of this section, the installation and use of an antenna includes reasonable provision for running any necessary cable from the antenna to the interior of the living unit. This may include, for example, drilling a hole through the exterior wall with diameter no larger than necessary for insertion of the cable, or, at the option of the building owner or manager, some other reasonable accommodation to allow the signal received by the satellite to be transferred to televisions, converter boxes, computers, or other appliances.

### **Background and Purpose of the Proposed Amendment to the Rule**

Federal laws strongly encourage and direct the Federal Communications Commission and other federal agencies to promulgate rules and policies that allow for the greatest possible competition in the telecommunications sector. This includes providing, to the extent possible, alternatives for the reception of television and other digital signals by individual consumers. Current Federal Communications Regulations (FCC) are inconsistent with the Federal law because they leave gaping loopholes that allow certain consumers to be denied a reasonable range of alternative broadcast signals without any supporting statutory justification for such denial.

Case #1: A citizen lives in a condominium that does not have an exclusive use area that can access a broadcast satellite signal. However, the building does have a large robust protruding fire wall between each unit that provides the elevation needed to peer over the trees for a direct line of sight to broadcast satellites. A small satellite dish could be securely attached to this protrusion without any structural damage to the building. (In fact, one such dish could service all the individual units in the building.) Upon its removal in the future, the bolt holes could be filled with concrete and the surface repainted. The resident would be willing to put a reasonable damage deposit into escrow to provide financial assurance to cover any minor cosmetic restoration that might be necessary to the fire wall, should the next resident of the unit decide not to use the satellite dish.

Relying upon a strict interpretation of the current regulation rather than on the broader intent of the federal law, the condominium association does not allow for the installation of satellite dishes in this manner. This policy limits realistic options to a local cable television service that many believe provides inferior service and value in comparison to the broadcast satellite option. Once digital television is mandated within a few years, even interior antennas will probably not receive a strong enough signal and all residents will be required to access the cable signal in order to have any television reception at all.

The condominium association is not using the current version of the regulation to safeguard the integrity of the building structure. They are using it primarily to further their own aesthetic preference to tolerate dangling cable television wires and unsightly connection boxes on the premises, but not to allow small unobtrusive satellite dishes. While apparently consistent with the FCC's current rules, this prohibition appears to be diametrically opposed to Congress' longstanding objective to allow reasonable accommodation to further the means for effective competition in the broadcast sector. Where reasonable means are available for installing a satellite dish in the common area without significant and lasting damage to the building, then it furthers Congressional intent for the FCC to adopt reasonable rules to allow this to occur.

Case #2: A citizen lives in a high-rise apartment that does have a south-facing balcony. Consistent with the rules, the building manager allows residents to install self-standing satellite dishes on the balconies. However, the manager declines to allow residents to drill small holes through the wall to run the coaxial cable into the apartment. As a result, residents who elect to have satellite reception have to run the cable through the sliding glass door. No similar prohibition is applied to ingress of necessary wiring for cable television reception. Because of this, those who elect to have satellite reception can never completely close or lock their doors, raising security concerns and making their residences less efficient to heat and cool. In some areas of the nation with weather extremes, this is tantamount to denial of a satellite dish. Landlords are relying upon oversights and loopholes in the current regulation to effectively nullify the intent of the law. The regulation should be amended to address the reasonable installation of satellite dishes, which obviously includes reasonable provisions for necessary wiring.

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Respectfully submitted  
February 28, 2002,



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