



Federal Communications Commission
Washington, D.C. 20554

DA 17-421

May 4, 2017

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Re: Petition for Declaratory Ruling - Multifamily Broadband Council

Dear Mr. Tramont:

This letter addresses a Petition for Declaratory Ruling that you filed with the Federal Communications Commission (Commission) on February 25, 2017 on behalf of your client, the Multifamily Broadband Council (MBC), alleging that Article 52 of the San Francisco Police Code (Article 52)¹ violates the Commission's Over-the-Air Reception Devices rule (OTARD Rule). For the reasons discussed below, we dismiss this Petition.

According to the Petition, MBC consists of non-franchised communications companies that provide broadband-related services to multifamily communities and their vendors through various technologies, such as wireless, cable modem, Digital Subscriber Line, Active Ethernet, and Fiber-to-the-Home.² MBC asserts that these services are delivered via antennas typically placed on rooftops or other common areas and that consumers sometimes use devices containing antennas (such as cordless telephone handsets and home Wi-Fi routers) in conjunction with the services provided by MBC's members.³ MBC states that Article 52 requires an owner of a "multiple occupancy building" to allow an unlimited number of additional communications service providers onto the property at the request of an occupant, while allowing any new provider to use the existing wiring owned by the building owner.⁴ It further states that Article 52 applies regardless of whether the property owner has existing contractual arrangements with other communications service providers, such as agreements for exclusive use of wiring, which MBC claims are necessary for smaller entities to secure financing for build-out and provision of service in multi-tenant buildings.⁵ It also argues that Article 52 "effectively denies" tenants the benefit of bulk

¹ Article 52 of the San Francisco Police Code, Ordinance No. 250-16: Occupant's Right to Choose a Communications Services Provider.

² Petition at 1, n.3.

³ Petition at 5, 10-14 & Ex. B (Terheggen Decl.).

⁴ *Id.* at 2-3. A "multiple occupancy building" is defined as (i) an apartment building, apartment complex, or any other group of residential units located upon a single premises or lot, provided that such multiple dwelling unit contains at least four separate units; and (ii) a multi-tenant building used for business purposes that has separate units occupied by at least four different persons. *Id.* at Exh. A (Article 52, Sec. 5200). The Petition also refers to such buildings as "multi-tenant buildings." *See, e.g., id.* at 1. "Existing wiring" means "both home run wiring and cable home wiring . . . , except that those terms as used herein shall apply only to the home run wiring or cable home wiring owned by a property owner." *Id.*

⁵ *Id.* at 3, 15-16.

billing arrangements under which all occupants of multi-tenant buildings are provided communications service from a single provider.⁶ MBC notes that a property owner could be subject to enforcement claims and penalties brought by providers and tenants of the building pursuant to Article 52.⁷

MBC contends that Article 52 “imposes severe constraints on the ability of competitive, antenna-based service providers to serve multi-tenant buildings,” and as such, impairs the installation, maintenance, and use of covered antennas in violation of the OTARD Rule.⁸ More specifically, MBC states that Article 52 prevents building owners from granting independent providers exclusive use of inside wiring, which it claims in turn jeopardizes these providers’ ability to continue providing service or to do so without raising rates; interferes with bulk billing arrangements that lower consumer costs; and enables interference with and termination of existing services when new service providers use existing wiring to provide other services.⁹

The OTARD Rule prohibits governmental and private entities from imposing “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” any restriction that impairs the installation, maintenance, or use of covered antennas. 47 C.F.R. § 1.4000(a)(1).¹⁰ Under the Rule, a restriction impairs the installation, maintenance, or use of antennas if it unreasonably delays or prevents installation, maintenance, or use; unreasonably increases the cost of installation, maintenance, or use; or prevents reception or transmission of an acceptable quality signal. *Id.* § 1.4000(a)(3).

We find that MBC has not established that it is entitled to relief under the OTARD Rule. We disagree with MBC that permitting additional communications service providers to serve multiple occupancy buildings at the request of occupants, as required under Article 52, impairs the ability of antenna users to install, maintain, or use an antenna covered by the OTARD Rule. Article 52 does not restrict the placement of antennas or any other aspect of antenna installation, use, or maintenance.¹¹

⁶ *Id.* at 4, 16-17.

⁷ *Id.* at 4-5, 21.

⁸ *Id.* at ii.

⁹ *Id.* at 14-18.

¹⁰ The OTARD Rule applies to direct broadcast satellite antennas or antennas used to receive or transmit fixed wireless signals that are one meter or less in diameter or any size in Alaska; antennas that are one meter or less in diameter or diagonal measurement and are used to receive video programming services through multipoint distribution services; and antennas used to receive television broadcast signals. 47 C.F.R. § 1.4000(a)(1)(i)-(iii). “Fixed wireless signals” are defined to include any commercial, non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. *Id.* § 1.4000(a)(2).

¹¹ See *Promotion of Competitive Networks*, 15 FCC Rcd 22983, 23025 (2000) (“We adopted Section 1.4000 pursuant to Section 303 of the Communications Act as directed by Section 207 of the 1996 Act, which applies to the placement of over-the-air reception devices (OTARDs) in order to receive television broadcast signals, direct broadcast satellite services, and multichannel multipoint distribution services.”). *Id.* at 23027 (“To the extent a restriction unreasonably limits a customer’s ability to place antennas to receive telecommunications or other services, whether imposed by government, homeowner associations, building owners, or other third parties, that restriction impedes the development of advanced, competitive services.”); *Preemption of Local Zoning Regulation of Satellite Earth Stations and Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 19276, 19307 (1996) (*OTARD Report and Order*) (“In addition to covering restrictions on antenna placement on property owned by the viewer, our rule will also apply where an individual who has a direct or indirect ownership interest in the property seeks to install an antenna in an area that is within his or her exclusive use or control.”).

Rather, Article 52 is directed at inside wiring. Specifically, it restricts a building owner's ability to grant exclusive rights to use its inside wiring or otherwise to interfere with an occupant's right to obtain communications services from any provider it chooses, absent physical limitations. Although inside wiring is used to access services that are delivered to building owners or consumers through antennas, or services that can be used with equipment that contains an antenna, nothing in Article 52 impairs the ability of antenna users to install, maintain, or use an antenna covered by the OTARD Rule. Thus, the MBC petition fails to establish an impairment under the OTARD Rule. Further, we reject MBC's assertion that an impairment occurs under the OTARD Rule because small, independent providers will not be able to obtain financing without "the ability to secure the exclusive right to use designated wiring," effectively excluding them from providing competitive services at multi-tenant locations.¹² Ultimately, the OTARD Rule exists to enable consumers to use the services of their choosing free from undue restrictions imposed by property owners or governmental authorities, and not to protect the ability of any particular service provider to secure financing by excluding others. Article 52 requires building owners to allow additional communications service providers to provide services requested by occupants and thus appears to support these objectives by promoting choice in the provision of communications services to consumers.¹³

Because MBC has not established, as a threshold matter, that Article 52 impairs an antenna user's ability to install, maintain, or use a covered antenna under the OTARD Rule, we are dismissing the Petition.

Should you have any questions on this matter, please contact Kenneth Lewis, the Commission attorney assigned to this case, at (202) 418-2622.

Sincerely,

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Assistant Division Chief, Policy Division
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cc: Mr. Dennis Herrera
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¹² Petition at 15-16.

¹³ See *OTARD Report and Order*, 11 FCC Rcd at 19281-82 ("We have thus attempted to implement Section 207 in a way that produces greater competition and consumer choice by ensuring viewers' ability to receive over-the-air signals, while preserving local control of regulation of safety and historic areas."); see also *id.*, Second Report and Order, 13 FCC Rcd 23874, 23875 (1998) (OTARD rule furthers the "two federal objectives of promoting competition among multichannel video providers and of providing viewers with access to multiple choices for video programming"), *recon. denied*, 14 FCC Rcd 19924 (1999).

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