

*The following article was originally published in the June 22, 2008 issue of The Record newspaper.*

### **Satellite Antenna Regulation**

By Eric F. Frizzell, Esq., Buckalew Frizzell & Crevina LLP

In the past decade, the growing popularity of satellite TV services has caused many owners of condominium and cooperative units to seek to install satellite antennas to serve their individual units. Although the boards of condominiums, cooperatives and other community associations often seek to regulate or even ban the installation of such exterior antennas, their power to do so is strictly limited by the Federal Communications Commission's (FCC) complicated "Over The Air Reception Devices" rule.

The FCC Rule prohibits any community association rule, covenant or other restriction to the extent it "impairs" the installation, maintenance or use of specified antennas on property within "the exclusive use or control" of an "antenna user" who has a "direct or indirect ownership interest in the property."

*What antennas are covered by the Rule?* The Rule applies to various kinds of antennas, including satellite dishes and wireless cable antennas one meter or less in diameter designed to receive video programming (such as direct broadcast satellite services and multichannel multipoint distribution services) and to transmit and receive Internet voice and data services, and television mast antennas designed to receive local television broadcast signals.

*What types of community association areas are in the "exclusive use or control" of an antenna user?* In most associations, patios and balconies are either part of an owner's unit, or, more commonly, a limited common element dedicated to the owner's "exclusive use," and therefore the Rule applies to those locations – even if the association has the duty under its governing documents to maintain or repair them. The Rule, however, does **not** limit an association's power to prohibit satellite antennas on **general** common elements. Therefore, in most associations, in which the exterior walls and roofs are general common elements, a unit owner has no right under the Rule to install a satellite antenna in those locations - even if the owner lacks a balcony, patio or other "exclusive use" area.

*When does a restriction unlawfully "impair" an antenna?* Under the FCC Rule, a restriction unlawfully "impairs" installation, maintenance or use of an antenna if it "(1) [u]nreasonably delays or prevents installation, maintenance or use, (2) unreasonably increases the cost of installation, maintenance or use or (3) precludes reception of an acceptable quality signal."

*Unreasonable delay.* One example of unlawful delay cited by the FCC is an association requiring a unit owner to seek prior board approval to install an antenna, unless justified by local safety conditions (or, for the rare association, historical preservation purposes); even then, the approval conditions must be no more burdensome than necessary to achieve the intended safety purpose. In all other situations, an association can mandate only that a unit owner provide it with prior notice of the intended installation.

*Unreasonable Cost.* The FCC does not apply a fixed formula to determine whether a particular cost resulting from an association restriction is unreasonable. By way of example, however, the FCC has stated that an association cannot command that a relatively unobtrusive antenna be screened or beautified with expensive landscaping, in light of the cost of the equipment/services and the antenna's visual impact, but "most likely" can require the user to paint the antenna so it blends into its mounting background, as long as doing so does not interfere with reception. The FCC also will review whether an association imposes similar conditions on devices such as air-conditioning units and trash receptacles that are comparable to an antenna in size, weight and appearance, and whether a restriction is justified by its visual impact.

*Precluding Acceptable Quality Signal.* An association's regulation cannot interfere with a unit owner receiving an "acceptable quality signal." An association can mandate that an antenna be placed in a specific location, e.g., not visible from the street, as long as reception is not impaired. Safety-related restrictions that impair reception will be allowed, however, if they: (1) serve permissible safety objectives such as keeping a minimum distance from power lines, preserving a clear sight line for drivers, or compelling adequate bolting; (2) are enforced in a non-discriminatory manner; (3) are written as narrowly as necessary to serve the objectives; and (4) the association clearly defines the restrictions and their objectives "in a document that is readily available to antenna users."

An association also may be able to restrict an individual's installation of an antenna if a central antenna providing the same desired service is available and various other requirements of the Rule are satisfied.

*Is a waiver of the Rule possible?* The FCC may grant a waiver if, as noted in a 2006 FCC decision, the applicant demonstrates that there are "local concerns" of a "highly specialized or unusual nature," good cause, and particular facts that would make strict compliance "inconsistent with the public interest." The FCC will become involved in a particular case only if an affected party files a petition with the FCC challenging the enforceability of a restriction.

The Rule is complex, as evidenced by the lengthy report that accompanied its issuance and the numerous contested cases in which the FCC has interpreted it. Therefore, this column is intended only to highlight some major points, and an association should consult with its legal counsel on satellite antenna issues.