

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Satellite Broadcasting & Communications) MB Docket No. 20-284
Association, DIRECTV, LLC, and DISH Network)
L.L.C.) CSR-8624-O
Petition for Declaratory Ruling Under 47 CFR §)
1.4000)

DECLARATORY RULING

Adopted: January 11, 2021

Released: January 11, 2021

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we grant a joint Petition for Declaratory Ruling (Petition) filed by the Satellite Broadcasting & Communications Association (SBCA), DIRECTV, LLC (DIRECTV), and DISH Network L.L.C. (DISH) (collectively, Petitioners)1 and find that an Ordinance adopted by the City of Chicago, Illinois (City or Chicago), is prohibited by the Commission’s Over-the-Air Reception Devices Rule (OTARD Rule).2 The OTARD Rule protects the ability of antenna users to install and use over-the-air-reception devices and thereby ensures greater video choice for consumers. We grant the Petition and conclude that the Ordinance is preempted by the OTARD Rule.

II. BACKGROUND

A. The Over-the-Air Reception Devices Rule

2. Subject to certain exceptions, the OTARD Rule prohibits governmental and nongovernmental restrictions that impair the ability of antenna users to install, maintain, or use over-the-air-reception devices.3 The Commission adopted the OTARD Rule to implement section 207 of the Telecommunications Act of 1996.4 The OTARD Rule advances one of the primary objectives of the

1 Petition of Satellite Broadcasting & Communications Association et al. for Declaratory Ruling Regarding Application of the Over-the-Air Reception Devices Rule to Certain Provisions of the Chicago Zoning Ordinance, CSR-8624-O (filed Apr. 19, 2012) (Petition).

2 47 CFR § 1.4000. Section 1.4000(e) provides that parties may petition the Commission for a declaratory ruling under section 1.2 of the Commission’s rules to determine whether a restriction is permissible or prohibited under the OTARD Rule. 47 CFR § 1.4000(e).

3 See 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 (1996) (OTARD Report and Order), recon. granted in part and denied in part, 13 FCC Rcd 18962 (1998) (Order on Reconsideration); Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services, Second Report and Order, 13 FCC Rcd 23874 (1998) (Second Report and Order).

4 Section 207 requires the Commission to “promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception of television

(continued....)

Communications Act: “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”⁵

3. The OTARD Rule applies to direct broadcast satellite antennas 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 designed to receive or transmit video programming services through multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services; and antennas designed to receive television broadcast signals.⁶ The OTARD Rule also applies to antennas used to receive fixed wireless or broadband Internet signals.⁷ For the OTARD Rule to apply, an 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.”⁸ The OTARD Rule does not apply to restrictions on antenna installations in common areas or elements.⁹ It provides that a restriction impairs installation, maintenance, or use of a protected antenna if it: (1) unreasonably 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.¹⁰ Certain restrictions may be permitted if necessary to address clearly defined, legitimate safety or historic preservation issues, provided such restrictions are narrowly tailored, impose as little burden as necessary to achieve the foregoing objectives, and apply in a nondiscriminatory manner throughout the regulated area.¹¹

4. The OTARD Rule provides that parties who are affected by antenna restrictions may petition the Commission to determine if the restrictions are permissible or prohibited by the rule.¹² The party seeking to impose the restriction bears the burden of demonstrating compliance with the OTARD Rule.¹³

broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.”
Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*) (1996 Act).

⁵ 47 U.S.C. § 151.

⁶ 47 CFR § 1.4000(a).

⁷ *Id.* § 1.4000(a)(1)(ii)(A). In 2000, the Commission amended the OTARD Rule to apply to antennas that are used to receive and transmit fixed wireless signals. *Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission’s Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983 (2000). The Commission is considering eliminating the restriction that currently excludes some hub and relay fixed wireless antennas from the scope of the OTARD Rule. *See Updating the Commission’s Rule for Over-the-Air Reception Devices*, Notice of Proposed Rulemaking, WT Docket No. 19-71, 34 FCC Rcd 2695 (2019).

⁸ 47 CFR § 1.4000(a)(1).

⁹ *Second Report and Order*, 13 FCC Rcd at 23891-907, paras. 33-62.

¹⁰ 47 CFR § 1.4000(a)(3).

¹¹ *Id.* § 1.4000(b).

¹² *Id.* § 1.4000(e).

¹³ *Id.* § 1.4000(g).

B. The Ordinance

5. On March 14, 2012, the Chicago City Council adopted Chapter 17-9-0203 of its municipal code, which amended the City's zoning code to regulate satellite dish antennas.¹⁴ The Ordinance took effect 90 days after it was passed and applied "retroactively and prospectively to satellite dish antennas installed before, on and after that effective date."¹⁵ Chapter 17-9-0203-A provides that "[s]atellite dish antennas up to one meter in diameter are permitted as accessory uses in all zoning districts."¹⁶ Further, it states, "[s]ubject to [the OTARD Rule], as amended, and other applicable law, and subject to lawful restrictions on the use of common areas, all satellite dish antennas up to one meter in diameter shall be installed and maintained as set forth in paragraphs (1) through (3)"¹⁷

6. Paragraph (1) of the Ordinance restricts placement of satellite dish antennas to "locations that are not visible from any street adjacent to the property on which such equipment is located."¹⁸ Further, this section provides that "no satellite dish antenna may be installed or placed between the façade of a building and any street adjacent to the subject property, unless the device is wholly within a balcony or patio area that is under the exclusive use or control of the user."¹⁹ Paragraph (1) states that "[i]f compliance . . . is not technically feasible, the television access provider or installer shall provide the user of the equipment with a signed statement certifying that the satellite dish antenna cannot be installed in compliance with Sec. 17-9-0203-A (1) based on actual testing conducted at the property," and requires, in such instances, that "[a] copy of the certification form shall be provided to the user, and a copy shall be maintained at the office of the installer or provider."²⁰ Paragraph (1) indicates that compliance may not be technically feasible if "i.e., compliance would result in a material delay or reduction in signal reception or significant additional cost to the user."²¹

7. Paragraph (2) of the Ordinance states that "[i]f compliance with paragraph (1) is not technically feasible, and the television access provider or installer has issued a certification in accordance with paragraph (1), satellite dish antennas may be placed in locations that are minimally visible from any street adjacent to the subject property."²² Paragraph (2) defines the "minimally visible standard" as requiring that the satellite dish antenna be "(a) shielded from view from adjacent streets to the greatest extent possible by landscaping, lattice, fencing or structural or architectural elements of the building on which the satellite dish antenna is located (e.g., a balcony, bay window, chimney, dormer or parapet), and (b) if side-mounted, attached to a building wall facing the subject property[]s interior side property line and set back a minimum of ten feet from any building wall facing an adjacent street."²³

¹⁴ Ordinance, Amending Title 17 of the Chicago Code, Chapter 9, section 0203 of the Chicago Zoning Code (Ordinance).

¹⁵ City Council, City of Chicago Report of the Committee on Zoning, Landmarks, and Building Standards at 2, Section 3 (Mar. 14, 2012).

¹⁶ Ordinance § 17-9-0203-A.

¹⁷ *Id.*

¹⁸ Ordinance § 17-9-0203-A (1).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Ordinance § 17-9-0203-A (2).

²³ *Id.*

8. Finally, Paragraph (3) of the Ordinance states, “[a]ll satellite dish antennas and associated mounting equipment and hardware shall be disconnected and removed when such devices are no longer in service.”²⁴

9. On April 19, 2012, the Petitioners²⁵ filed a Petition for Declaratory Ruling asking the Commission to find that the Ordinance is preempted by the OTARD Rule and is therefore unenforceable.²⁶ On April 23, 2012, the Media Bureau (Bureau) accepted the Petition for filing and directed Chicago to stay enforcement of the Ordinance while the Petition is pending.²⁷ On April 26, 2012, the Bureau placed the Petition on Public Notice.²⁸ However, on May 3, 2012, Petitioners and Chicago filed a joint motion with the Commission requesting a stay of the public comment period until after the Commission considered SBCA’s challenge to an ordinance enacted by the City of Philadelphia (Philadelphia Ordinance) given the similarity of the issues presented and the potential for a decision there to narrow or resolve the Chicago dispute.²⁹ On May 14, 2012, the Bureau granted the parties’ stay request and cancelled the Public Notice.³⁰

10. The Bureau subsequently issued the *Philadelphia Declaratory Ruling* in April 2018, agreeing with SBCA that certain provisions of the Philadelphia Ordinance violate the OTARD Rule and are therefore preempted.³¹ These provisions restricted antenna placement on the front façade of single and multi-family buildings, required actual testing and installer certification to deviate from the placement restrictions, imposed requirements for painting antennas, and mandated the removal of out-of-service antennas.³² On September 1, 2020, the Bureau issued a new Public Notice seeking comment on the Petition and explicitly requested that commenters distinguish the Chicago and Philadelphia Ordinances,

²⁴ Ordinance § 17-9-0203-A (3).

²⁵ Petitioner SBCA is a national trade organization which represents the consumer satellite industry. See SBCA – Satellite Broadcasting & Communications Association, *About SBCA*, <https://www.sbca.org/pages/About.cfm> (last visited Nov. 30, 2020). Petitioners DIRECTV and DISH are members of SBCA and providers of direct-to-consumer satellite services. *Id.*

²⁶ See generally Petition.

²⁷ Letter from John B. Norton, Deputy Division Chief, Policy Division, Media Bureau, FCC, to Lisa Volpe McCabe, Director, Public Policy & Outreach, Satellite Broadcasting & Communications Association (Apr. 23, 2012).

²⁸ *Media Bureau Seeks Comment on Petition for Declaratory Ruling that an Ordinance of the City of Chicago, Illinois is Preempted by the Commission’s Over-the-Air Reception Devices Rule*, Public Notice, 27 FCC Rcd 4348 (MB 2012).

²⁹ Joint Motion of SBCA, DIRECTV, LLC, DISH Network L.L.C., and the City of Chicago to Hold Comment Cycle in Abeyance, CSR-8624-O (filed May 3, 2012) (Joint Motion); see SBCA Reply Comments at 2 (rec. Oct. 16, 2020) (SBCA Reply).

³⁰ *Satellite Broadcasting and Communications Association*, Request for Stay of the Public Comment Period, 27 FCC Rcd 5195 (MB 2012).

³¹ *Satellite Broadcasting & Communications Association; Petition for Declaratory Ruling Under 47 C.F.R. § 1.4000*, Declaratory Ruling, 33 FCC Rcd 3797 (MB 2018) (*Philadelphia Declaratory Ruling*).

³² See *id.*

due to the substantially similar restrictions and requirements found in both.³³ Chicago submitted comments and SBCA submitted reply comments.³⁴

III. DISCUSSION

11. Consistent with our decision preempting provisions of a similar Ordinance adopted by the City of Philadelphia, we find that the provisions of Chicago's Ordinance impair the installation, maintenance, or use of satellite dishes protected under the OTARD Rule and are thus preempted. The City claims that the Ordinance solely expresses a placement preference for the purpose of "maintaining minimal aesthetic standards" by limiting the visibility of satellite dishes from adjacent streets.³⁵ However, the Ordinance also imposes requirements regarding certification, screening, and removal of satellite dish antennas.³⁶ Although Chicago can enact regulations that impose a placement preference for satellite dishes, such regulations must comply with the OTARD Rule. In this instance, we agree with the Petitioners that the specific restrictions imposed on satellite dishes in the Ordinance, including the prohibition on placement of satellite dishes in locations visible to adjacent streets, the installer certification based on actual testing, and the removal requirements, each constitute a violation of the OTARD Rule. Therefore, the Ordinance is preempted by Federal law and is unenforceable.

12. As an initial matter, we reiterate our conclusion in the *Philadelphia Declaratory Ruling* that unless otherwise prohibited "regulations and restrictions come under the safety or historic exemption, they are subject to preemption."³⁷ Because Chicago's Ordinance clearly impacts the rights of antenna users and because Chicago does not assert that its Ordinance is exempt on public safety or historic

³³ *Media Bureau Resumes Seeking Comment on Petition for Declaratory Ruling that an Ordinance of the City of Chicago, Illinois is Preempted by the Commission's Over-the-Air Reception Devices Rule*, Public Notice, 35 FCC Rcd 9264 (MB Sept. 1, 2020). The Chicago Ordinance is slightly more limited in scope than the Philadelphia Ordinance because it addresses only satellite dishes, and not other covered antennas, but it does include the following issues that were addressed in the *Philadelphia Declaratory Ruling*: limiting placement of satellite dishes to non-visible locations with an exception for a balcony or patio; requiring certification with use of an impairment standard that deviates from the language of the OTARD Rule; requiring removal of unused dishes; and requiring painting of satellite dishes. Petitioners argue that the Ordinance "shares the Philadelphia ordinance's flaws [and] in some ways, it is even worse." Petition at Summary.

³⁴ SBCA requests that we "disregard Chicago's comments and declare Chicago's [O]rdinance unenforceable" for failing to follow the Public Notice's instruction to address any similarities or differences between the Philadelphia and Chicago Ordinances and, in fact, not mentioning the Philadelphia decision at all. SBCA Reply at 2-3. SBCA argues that "Chicago's ordinance was substantially similar to that enacted by Philadelphia," which was previously preempted by the Commission, and should be "invalidated for the same reasons." *Id.* at 2. SBCA also points out that "so similar was Chicago's [O]rdinance to Philadelphia's ordinance that Petitioners and Chicago agreed to stay this proceeding until the Commission ruled on the Philadelphia Ordinance." *Id.* Although SBCA is correct that the Chicago comments did not distinguish its Ordinance from the Philadelphia Ordinance, for purposes of having a full and complete record, we will consider the arguments raised in the Chicago Comments.

³⁵ City of Chicago, Illinois Comments at 2 (rec. Oct. 1, 2020) (Chicago Comments).

³⁶ Ordinance § 17-9-0203-A.

³⁷ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3803, para. 13. Chicago contends that the Ordinance is a valid exercise of the City's police power designed to further its "legitimate and recognized interest in maintaining certain minimal aesthetic standards within the City." Chicago Comments at 2. The Bureau agrees with Chicago that the City has the "authority to impose aesthetic-based land use restrictions so long as those regulations are not preempted by state or Federal law." *Id.* at 2, 7. Indeed, explicit in that argument is the recognition and acceptance that the OTARD Rule can, in fact, preempt an otherwise valid local ordinance that conflicts with the Federal law. *See Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3803, para. 13 ("The Commission thoroughly addressed the issue of preemption of local regulations . . . and concluded that such action was well within its authority and consistent with the U.S. Constitution."). The ability of the OTARD rule to preempt conflicting local restrictions remains settled and need not be addressed further here.

preservation grounds, it is subject to review for purposes of preemption.³⁸ Accordingly, for the reasons outlined below, the Bureau finds that Chicago enacted aesthetic restrictions in direct conflict with the OTARD Rule and, therefore, preemption analysis is appropriate.

A. Impairment of Installation, Maintenance, or Use

13. We find that the specific provisions of the Ordinance adopted by the City impair the installation, maintenance, or use of satellite dishes protected under the OTARD Rule. The OTARD Rule permits associations and municipalities to adopt placement preferences for preferred locations of antennas provided that they do not impair the installation, maintenance, or use of a covered antenna.³⁹ The Petitioners allege that the Ordinance impairs the installation, maintenance, or use of a satellite dish antenna by:

- 1) requiring the placement of a satellite dish in a location that is not visible from any street adjacent to the property on which such equipment is located, unless that alternative location is not technically feasible (i.e., compliance would result in a material delay or reduction in signal reception or significant additional cost to the user);
- 2) prohibiting the installation of a satellite dish between the façade of a building and any street adjacent to the subject property, unless the device is wholly within a balcony or patio area that is under the exclusive use or control of the user, and unless that alternative location is not technically feasible (i.e., compliance would result in a material delay or reduction in signal reception or significant additional cost to the user);
- 3) requiring a television access provider or installer to provide the satellite dish user with a signed certification based on actual testing conducted at the site that a satellite dish cannot be placed in a preferred, non-visible location without resulting in a material delay or reduction in signal reception or significant additional cost to the user;
- 4) requiring the screening of satellite dishes without regard to the impairment standard in the OTARD rule; and
- 5) requiring that all satellite dish antennas and associated mounting equipment and hardware shall be disconnected and removed when such devices are no longer in service.⁴⁰

14. SBCA argues that the *Philadelphia Declaratory Ruling* directly addressed almost identical restrictions, including the impairment standard, installer certification based on actual testing, and satellite dish removal requirements, and that a similar analysis should apply here.⁴¹ We address each of the issues raised by SBCA in turn and conclude that each constitutes a violation of the OTARD Rule. Therefore, we find that the Ordinance is preempted.

³⁸ Chicago argues that the OTARD Rule does not require it to justify its ordinance on public safety or historic preservation grounds as long as it is “prima facie reasonable and does not preclude [an] acceptable quality signal.” Chicago Comments at 2. We note that preclusion of an acceptable quality standard is only one of the three standards for impairment of installation, maintenance, or use of a protected antenna set forth in the rule. 47 CFR § 1.4000(a)(3). Further, the Bureau agrees that Chicago is not required to justify its Ordinance on public safety or historic preservation grounds if it can show that its Ordinance does not otherwise conflict with the OTARD Rule. Such justifications can, in some cases, provide a defense for an otherwise conflicting restriction, but nothing in the statute or the rules compels a party to assert such a defense. Consequently, the Bureau agrees with Chicago that the present inquiry is “not whether Chicago has offered an acceptable justification for their Ordinance, but whether Chicago’s Ordinance is prohibited, absent a justification, because it conflicts with the OTARD Rule’s primary . . . restrictions.” Chicago Comments at 4.

³⁹ *William Culver*, Declaratory Ruling, 24 FCC Rcd 9522, para. 10 (MB 2009).

⁴⁰ Petition at 10-17.

⁴¹ SBCA Reply at 3-5.

1. Prohibition on Placement of Satellite Dishes

15. We find that section 17-9-0203-A (1) of the Ordinance, which requires the placement of satellite dishes in locations that are not visible from any adjacent street and prohibits the installation of a satellite dish between the façade of a building and any adjacent street, violates the OTARD Rule because it (1) prohibits the placement of dishes in areas even within the exclusive control of the antenna user, and (2) does not limit placement restrictions to those situations where the user will not incur unreasonable delay or unreasonable costs, or will be able to receive an acceptable quality signal.⁴²

16. First, we find that because the Chicago Ordinance restricts the placement of satellite dishes in areas of exclusive use to the antenna user without providing exceptions for impairment consistent with the OTARD Rule, the Ordinance violates the Rule. As Petitioners contend, section 17-9-0203-A (1), applies to “exclusive-use and common areas alike,” given that there are many locations on a building that can be exclusive use areas other than balconies and patios.⁴³ Chicago does not dispute this assertion. In the *Philadelphia Declaratory Ruling*, the Bureau addressed an ordinance that similarly limited the placement of antennas in multi-family buildings “between the façade of the building and the street, unless the device is wholly within a balcony or patio area that is under the exclusive use or control of the unit owner or tenant.”⁴⁴ The Bureau concluded that this provision violated the OTARD Rule because “whether an area is within the exclusive use or control of an owner or leaseholder is a question of fact to be determined based upon a review of the ownership or leasehold documents.”⁴⁵ Because the Chicago Ordinance, like the Philadelphia Ordinance, would bar the installation of satellite dish antennas on all areas between the façade of the building with the exception of a balcony or patio and on any location where a satellite dish is visible from an adjacent street, without regard to whether those are areas of exclusive use, it fails for the same reason.

17. Second, we find that section 17-9-0203-A (1), which imposes a technical feasibility exception for satellite dishes placed in locations visible to an adjacent street, violates the OTARD Rule because it is inconsistent with the impairment standard in the Rule.⁴⁶ Section 17-9-0203-A (1) provides an exception to the prohibition on the installation of a satellite dish between the façade of a building and any adjacent street and on any location where a satellite dish is visible from an adjacent street, “[i]f compliance . . . is not technically feasible (i.e., compliance would result in a material delay or reduction in signal reception or significant additional cost to the user).”⁴⁷ Thus, according to Chicago, while its “Ordinance expresses a preference for satellite installations that are out of street view, it allows satellite dishes to be placed in view of the street if it is not technically feasible to do otherwise,” i.e., if compliance results in “a material delay or reduction in signal reception or significant additional cost to the user.”⁴⁸ On the other hand, the Petitioners argue that the language used for determining impairment differs significantly from the OTARD Rule and is more restrictive.⁴⁹ Chicago disagrees, stating that the Ordinance terms “material” and “significant” should be given a logical meaning, and interpreted consistently with the OTARD Rule.⁵⁰ Chicago also asserts that the Ordinance is not more restrictive, as it allows installation in non-preferred locations when there is a “reduction in signal reception,” rather than

⁴² Ordinance § 17-9-0203-A (1).

⁴³ Petition at 8.

⁴⁴ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3808-09, para. 25.

⁴⁵ *Id.*

⁴⁶ Ordinance § 17-9-0203-A (1).

⁴⁷ *Id.*

⁴⁸ Chicago Comments at 4-6; Ordinance § 17-9-0203-A (1).

⁴⁹ Petition at 10-11.

⁵⁰ Ordinance § 17-9-0203-A (1); Chicago Comments at 4-6.

when reception of an acceptable quality signal is precluded.⁵¹ SBCA responds that the Philadelphia Ordinance contained similar language, which was rejected in the *Philadelphia Declaratory Ruling* and that language should be rejected here as well.⁵² Chicago's Comments did not distinguish the *Philadelphia Declaratory Ruling*. SBCA argues that the application of the analysis deployed in the *Philadelphia Declaratory Ruling* to the current facts would fully address and prove fatal to Chicago's defense of the Ordinance.⁵³

18. Specifically, Philadelphia's ordinance provided an exception for its prohibition on the placement of antennas on the front façade of single-family dwellings if "the antenna could not be placed in a location other than between the façade and street without a material delay, material reduction in signal reception, or significant additional cost."⁵⁴ The Bureau concluded that the impairment standard contained in Philadelphia's Ordinance was inconsistent with the standard set forth in the OTARD Rule, which specifies that an impairment unreasonably delays or prevents installation, maintenance, or use; unreasonably increases the cost of installation, maintenance, or use; or precludes reception of an acceptable quality signal.⁵⁵ As stated in the *Philadelphia Declaratory Ruling*, "whereas the Commission has an established body of law regarding the meaning of its impairment standard, it is not clear what the terms 'material' or 'significant' mean as those terms are used in the Ordinance," and those terms have the potential to be more burdensome to antenna owners than is permissible under the OTARD Rule and could permit restrictions on the placement of satellite dishes and antennas that would be impermissible under the OTARD Rule.⁵⁶ The Chicago Ordinance is substantially similar to the Philadelphia Ordinance, and therefore we find that Chicago's impairment standard is similarly inconsistent with the OTARD Rule and unenforceable.

2. Certification Requirement

19. We next find that the certification requirement in section 17-9-0203-A (1), which requires a television access provider or installer to provide a written certification before installing a satellite dish between the building façade and street or in other areas where a satellite dish is visible from an adjacent street, violates the OTARD Rule. Petitioners argue that the certification requirement would make self-installation impossible as well as unreasonably increase the cost of and delay installation.⁵⁷ To the contrary, Chicago contends that "signing a certification is an insignificant burden and all that is required for actual testing is some attempt at securing an acceptable signal in an out-of-view location."⁵⁸ Then, Chicago asserts, "[i]f an acceptable signal cannot be secured after such an attempt, then the installer can determine that a street-facing installation is necessary, and they can sign a certification to that effect," which the city claims is not an unreasonable burden.⁵⁹ As noted by SBCA, the *Philadelphia Declaratory Ruling* addressed this issue, and we agree that similar reasoning should be used here.⁶⁰ The Bureau concluded in the *Philadelphia Declaratory Ruling* that this same type of certification requirement imposes unreasonable delay and unreasonable costs on the satellite dish user, either directly or through

⁵¹ Ordinance § 17-9-0203-A (1); Chicago Comments at 5.

⁵² SBCA Reply at 3.

⁵³ *Id.* at 4.

⁵⁴ Philadelphia Ordinance § 9-632(4); *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3807, para. 21.

⁵⁵ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3809-12, paras. 28-34.

⁵⁶ *Id.* at 3812, para. 34.

⁵⁷ Petition at 13-14.

⁵⁸ Chicago Comments at 6.

⁵⁹ *Id.*

⁶⁰ SBCA Reply at 4.

costs passed on to the user through the satellite dish installer.⁶¹ Moreover, the *Philadelphia Declaratory Ruling* concluded that a certification based on actual testing – such as that required here – violated the OTARD Rule because the standard is ambiguous, and installers may interpret it as requiring more onerous procedures that could impose unreasonable costs and prevent the installation of antennas.⁶² Chicago has made no attempt to distinguish its Ordinance from the preempted Philadelphia ordinance. In light of the substantial similarity, we find that the certification requirement in Chicago’s Ordinance is equally inconsistent with the OTARD Rule and unenforceable.

3. Screening Requirement

20. We find that the screening requirement in section 17-9-0203-A (2), which requires that a satellite dish be shielded from view from “adjacent streets to the greatest extent possible by landscaping, lattice, fencing or structural or architectural elements of the building” violates the OTARD Rule.⁶³ Petitioners argue that section 17-9-0203-A (2) limits satellite dish placement without creating any exception for impairment as required by the OTARD Rule.⁶⁴ We agree that this provision violates the OTARD Rule because it requires screening of all satellite dishes without exception, even if the requirement would unreasonably delay or increase the cost of installation or preclude reception of an acceptable quality signal.⁶⁵ While our precedent places no blanket prohibition on a screening requirement, Chicago’s Ordinance does not provide the required exceptions in cases where it would impair the installation or use of a covered antenna, and is therefore invalid and unenforceable.

4. Satellite Dish Removal Requirement

21. Finally, we find that provisions of the Ordinance that require removal of satellite dish antennas no longer in service violate the OTARD Rule.⁶⁶ Petitioners argue that section 17-9-0203-A (3) of the Ordinance, which imposes satellite dish removal requirements, violates the OTARD Rule because it applies without regard to whether the requirements will unreasonably delay or increase the cost of antenna use or preclude signal reception.⁶⁷ Chicago maintains that “unused equipment accumulating on building exteriors is clearly a source of blight and the City has a recognized and compelling interest in preventing blight.”⁶⁸ Chicago also claims that it is speculative on the Petitioners’ part to allege, “without offering any evidence, that the post-service removal requirement imposes a significant financial burden on low-income subscribers” while also suggesting that the satellite providers are required to remove unused dishes.⁶⁹ SBCA responds that the *Philadelphia Declaratory Ruling* addressed this issue, finding

⁶¹ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3813-16, paras. 35-42.

⁶² *Id.*

⁶³ Ordinance § 17-9-0203-A (2).

⁶⁴ Petition at 14-15.

⁶⁵ *CS Wireless Systems, Inc. d/b/a Omnivision of San Antonio*, Declaratory Ruling, 13 FCC Rcd 4826, para. 18 (1997) (“We note that mandatory screening of satellite dishes or other antennas would be permissible if the Covenants provided for exceptions to the screening requirement in situations where screening would unreasonably delay installation, or unreasonably increase the cost of installation, maintenance or use of the antenna, or preclude reception of an acceptable quality signal.”). Further, the requirement in paragraph 2(b) of the Chicago Ordinance similarly fails because it requires side-mounted satellite dishes to be setback 10 feet from the building wall without regard for cost or signal impact. Ordinance § 17-9-0203-A (2)(b).

⁶⁶ SBCA Reply at 5.

⁶⁷ Petition at 15-16.

⁶⁸ Chicago Comments at 8.

⁶⁹ *Id.* at 7.

that the removal requirement unreasonably increases the costs of using satellite dishes, and that the reasoning therein is applicable here.⁷⁰ We agree.

22. The *Philadelphia Declaratory Ruling* found that a provision in the Philadelphia ordinance requiring television access providers and installers to disconnect and remove out of service antennas violated the OTARD Rule because it would unreasonably increase the costs of using satellite dishes and antennas located in areas of exclusive use. The Bureau explained that the ordinance did not specify how the providers, who did not own the satellite dishes, could legally enter the property and remove the satellite dishes.⁷¹ Further, the Bureau found that the Philadelphia ordinance did not specify how the City, installers, or consumers can determine whether an antenna is “no longer in use” and therefore subject to the removal requirement, and this uncertainty could deter consumers from subscribing to satellite service, thereby frustrating the purpose of the OTARD Rule.⁷² We find that the Chicago Ordinance requirement to remove satellite dish antennas no longer in service is similarly vague and thus could deter consumers from subscribing to satellite service.⁷³ Notably, Chicago’s Ordinance does not specify who is responsible for disconnecting and removing satellite dishes that are no longer in service and does not specify what it means for a device to no longer be in service. Furthermore, as we stated in the *Philadelphia Declaratory Ruling*, a city may have other means under its local police power to address out-of-service satellite dishes that present a safety hazard or encroach into the public area.⁷⁴ The OTARD Rule does not prohibit Chicago from addressing satellite dishes that are a risk to public safety. Thus, we find that this requirement also violates the OTARD Rule and is unenforceable.

IV. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED**, pursuant to section 207 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 (1996), section 1.4000(d) of the Over-the-Air Reception Devices Rule, 47 CFR § 1.4000(d), and section 1.2 of the Commission’s rules, 47 CFR § 1.2, that the Petition for Declaratory Ruling filed by the Satellite Broadcasting & Communications Association, DIRECTV, LLC, and DISH Network L.L.C. **IS GRANTED** and Chapter 17-9-0203 of the Chicago Municipal Code **IS PREEMPTED**.

24. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20-284 **SHALL BE TERMINATED**, and the docket **CLOSED**.

⁷⁰ SBCA Reply at 5.

⁷¹ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3816-19, paras. 43-50. The Bureau also found that, as applied to intermittent users, for example, the removal requirement would unreasonably increase the cost of installation by necessitating re-installation of a removed antenna prior to resumption of service. *Id.* at 3819, para. 50.

⁷² *Id.*

⁷³ The Petition also asserts that the removal requirement would impair viewing for low-income subscribers who may have their service temporarily suspended due to an inability to pay and would have to pay for a new dish and installation each and every time service is temporarily stopped. *See* Petition at 15-16. Petitioners also cite a program that encourages movers to leave satellite dishes behind and assert that prohibiting such actions would unreasonably delay and increase the cost and use of antennas. *See id.*

⁷⁴ *Philadelphia Declaratory Ruling*, 33 FCC Rcd at 3819, para. 50. Chicago argues that “unused equipment accumulating on building exteriors is clearly a source of blight and the City has a recognized and compelling interest in preventing blight.” Chicago Comments at 8. However, as explained above, unless otherwise prohibited antenna restrictions come under the safety or historic exemption, they are subject to preemption; there is no exemption for “preventing blight.” *See supra* para. 12.

25. This action is taken by the Chief, Media Bureau, pursuant to authority delegated by section 0.283 of the Commission's rules.⁷⁵

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief
Media Bureau

⁷⁵ 47 CFR § 0.283.