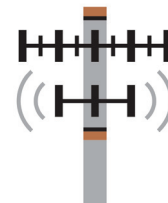




## PHILLIPS LYTLE LLP CLIENT ALERT TELECOMMUNICATIONS LAW



JANUARY 2021

### *FCC Releases Over-the-Air Reception Devices 2021 Report and Order*

On January 6, 2021, the Federal Communications Commission (FCC or “Commission”) adopted its *Updating the Commission’s Rule for Over-the-Air Reception Devices* Report and Order (OTARD R&O).<sup>1</sup> OTARD rule protections now apply to deployments of small antennas or dishes that send or receive broadband signals.

#### WHAT DOES THE OTARD RULE DO?

FCC rules for Over-the-Air Reception Devices (OTARD) protect the rights of property owners or tenants to install, maintain or use an antenna to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations on areas within the owner's or tenant's exclusive use. OTARD rules also apply to customer antennas that receive and transmit fixed wireless signals.

The OTARD rule also prohibits laws, regulations or restrictions imposed by state or local governments or private entities that impair the ability of antenna users to install, maintain or use over-the-air reception devices. The rule prohibits restrictions that unreasonably delay or prevent installation, maintenance or use of an antenna; unreasonably increase the cost of installation, maintenance or use of an antenna; or preclude reception of an acceptable quality signal. These include “[a]ny restriction by [a] ... State or local law or regulation, including zoning, land-use, or

building regulations, or any private covenant, contract provision, lease provision, homeowners’ association rule or similar restriction.”<sup>2</sup>

For the OTARD rule to apply, the 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” upon which the antenna is located.<sup>3</sup> There are exceptions to OTARD rules, including provisions for safety and preservation of historic areas.

#### PROCEDURAL HISTORY

This OTARD R&O is the Commission’s response to the Wireless Internet Service Providers Association’s (WISPA) request for the FCC to update its OTARD rule. The original rule applied only to antennas used to receive video programming signals, but the Commission expanded the rule to apply to “customer-end antennas used for transmitting or receiving fixed wireless signals” in its *2000 Competitive Networks First Report and Order* because of what it felt was unreasonable restrictions in those markets.<sup>4</sup> The Commission further revised its OTARD rule in 2004 to apply to hub and relay antennas that are “installed in order to serve the customer on such premises,” but it did not apply to hub and relay antennas designed “primarily” for use as hubs for distribution of service to multiple locations.<sup>5</sup>

<sup>1</sup> *In the Matter of Updating the Commission’s Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Report and Order, FCC-21-10 (2021). Available here: <https://www.fcc.gov/document/fcc-modernizes-siting-rule-small-hub-and-relay-wireless-antennas>.

<sup>2</sup> 47 C.F.R. § 1.4000(a)(1).

<sup>3</sup> *Id.*

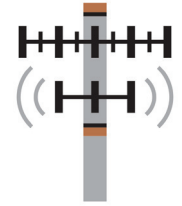
<sup>4</sup> *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217 et al., First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983, 23027–28, paras. 97-100 (2000) (2000 Competitive Networks First Report and Order).

<sup>5</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Order on Reconsideration, 19 FCC Rcd 5637, 5643-44, paras. 16–17 & n.42 (2004) (2004 Competitive Networks Reconsideration Order).



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In 2018, WISPA filed its request to change its rule so that it applies to “all fixed wireless transmitters and receivers, regardless of whether the equipment is used for reception, transmission, or both, so long as the equipment meets the existing size restrictions for customer-end equipment.”<sup>6</sup>

#### WHAT THE OTARD R&O DOES

Now, the OTARD rule applies to all hub and relay antennas that are used for the distribution of fixed wireless services to multiple customer locations, regardless of whether the OTARD are used for that purpose, so long as:

- The antenna serves a customer on whose premises it is located; and
- The service provided by the antenna is broadband only.

This OTARD R&O does not modify any other aspect of the current OTARD rule. Thus, the following rule requirements are still in place:

- Antennas must still be less than one meter in diameter or diagonal measurement;
- The rule applies to property where the user has a direct or indirect ownership or leasehold interest; and
- Restrictions necessary for safety and historic preservation remain exempted from the rule.

#### Additional Assistance

*For further assistance, please contact a member of the [Telecommunications Practice Team](#) or the [Phillips Lytle attorney with whom you have a relationship](#).* ■

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<sup>6</sup> OTARD R&O, at ¶ 5.



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