

## **Controlling Rogue Access Points on Campus: A Summary of the OTARD Ruling**

### ***Legislative History***

The OTARD (over the air receiving devices) ruling at the FCC (Federal Communications Commission) governs a person's ability to place antennae and other reception devices on their premises despite the objections of parties such as landlords, homeowner's associations, or simply disgruntled neighbors. The legal authority for the ruling is Section 207<sup>1</sup> of the Telecommunications Act, and the FCC ruling is often referred to as the "protections of the 207 rules"<sup>2</sup>, or a viewer's right to receive broadcast signals.

The OTARD ruling, originally issued in 1996, has gone through several amendments, including one that extends it to wireless access points. The ruling itself dates back to the issue of satellite dish installation. Considered unsightly, local governments as well as landlords had tried to restrict their use. The FCC ruled that as long as a tenant had signed an agreement granting them "exclusive rights" over the property on which they installed the antennae, then the landlord could not restrict them. The ruling spells out the maximum allowable dimensions of the antennae and what constitutes a location that the tenant has the right to use (i.e. a balcony is okay, an exterior wall of a multi-tenant building is not).

### ***Recent Airline Case***

On June 24, 2004, OTARD was used to decide a case of whether or not an airline, that leased a location at an airport, had the right to install its own wireless access points. The airport claimed they should be required to use the airport's wireless network and cited radio frequency interference as a concern. The airport lost, and in the ruling the FCC clarified that this applies to wireless access points in a variety of multi-tenant environments such as hotels, conference centers, and colleges and universities. They also reconfirmed the exclusive right of the FCC to decide matters involving radio frequency interference when unlicensed devices are being used, "regardless of venue".

### ***Exception for University Dormitories***

Important for universities is the fact that the FCC, in 1998, recognized an exception in the case of campus dormitories that remains in effect after the airline case. Purdue University

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<sup>1</sup> SEC. 207 of the Telecommunications Act of 1996. Restrictions on over-the-air reception devices.

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, 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 broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services

<sup>2</sup> Section 207 rules are codified at [47 CFR §1.4000](#).

petitioned the FCC and argued that college housing is unique and unlike the typical residential rental arrangement. The FCC agreed and exempted dormitories from the rule. However, when the university rents or leases property and, through contract, the tenant is granted “exclusive use” (i.e. faculty housing, married student apartments, etc.) then the OTARD rule still applies. Therefore, whether or not the university can restrict the use of access points in college housing depends on the rental/lease agreement the resident is asked to sign. The contractual terms that govern “exclusive use” are key.<sup>3</sup>

### *Adopting policies on campus*

Universities have the right to restrict access to the university’s network. In most situations, including student dorms, the university also retains the right to limit devices placed or used on university property. However, the FCC claims the exclusive right to govern issues of radio frequency interference. Therefore, terminology is important. Ideally, university policies should be drafted in terms of controlling access to the network and the use of particular devices, but avoid references to “controlling spectrum” or preventing interference.

The FCC has a helpful “facts sheet” regarding OTARD, with links to the relevant documents, at <http://www.fcc.gov/mb/facts/otard.html>.

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<sup>3</sup> This exception was made in a *Second Report and Order* on Implementation of Section 207 of the Telecommunications Act of 1996 ( CS Docket No. 96-83, Adopted Oct. 14, 1998, released Nov. 20, 1998); The relevant section is footnote 73: In the current record, we decline to extend the protections of our Section 207 rules to college dormitories. Purdue University argues that college housing is unique and, as such, should be exempt from our rules... No one responded to Purdue's comments, and because no one has shown that a university has the same relationship to a dormitory resident as a landlord to a tenant, that a dormitory room is a leasehold, that landlord-tenant law applies equally to dormitories, or that the practical problems associated with extending our rules to leaseholds can be similarly resolved with respect to dormitories, we have no basis to cover college dormitories by our Section 207 rules at this time. Where, however, the relationship between a university and a viewer bears sufficient attributes of a commercial landlord-tenant relationship (e.g., where a university leases a single family home to a faculty member), our Section 207 rules will apply."