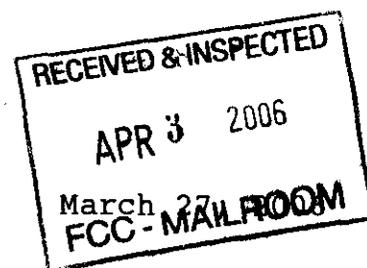


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Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: F.C.C. docket # 04-207, Cable and Satellite Subscriber Options

Gentlemen:

I was pleased to learn of the Commission's revised conclusion that "a la carte" pricing of cable television services could lower the average cable subscriber's monthly bill. There is no doubt that allowing individual consumers to select the programming that best suits their needs will stimulate competition in the telecommunications industry. It is my hope that regulations promoting "a la carte pricing" will also bring relief to captive cable television customers who are obligated to pay for programming and services that they do not need or want under the terms of bulk rate cable contracts.

Impact of Bulk Rate Cable Contracts

In the State of Florida, and perhaps in other states as well, local cable companies can establish mini-monopolies by contracting with individual condominium associations to provide "bulk rate" service on a mandatory basis to all unit owners. Essentially, this arrangement strips individual homeowners of the right to make their own decisions about cable service.

Once a condo or coop board adopts a bulk rate plan, individual unit owners have no incentive to choose service from satellite delivery companies, telephone companies, or other present or potential providers of telecommunications services. This, of course, limits competition between telecommunications providers and also serves to stifle technological innovation in the long run.

A permanent resident of New York State, my mother owns both a single family house here as well as a condo unit in a northern Florida town which she has not visited for several years. About nine years ago, her condominium board signed a bulk cable contract with Time Warner Communications, superseding contractual arrangements between Time Warner and individual unit owners. A budget incorporating bulk cable service fees was subsequently ratified at the next annual owners meeting.

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Prior to the institution of bulk rate services, my mother was able to purchase cable services when in residence, suspending service for the rest of the year. Under the bulk cable plan, the cost of cable service for twelve months was rolled into her maintenance fees, forcing her to pay for cable services she wasn't using. Based upon the condo association's annual budgets, I estimate that she has spent in excess of fifteen hundred dollars for unwanted cable services since bulk rate pricing took effect.

Freedom to Choose Appropriate Content

A neighbor in this condominium association, also a part-time resident, objected to the new arrangement on other grounds. He contended that the bulk service plan would force residents to accept not only a service provider, but also particular television content, some of which might be offensive to individual families. It was his view that any arrangement mandating the pumping of particular programming into his house wiring robbed him of choice and thereby trampled on his individual rights.

His concern is not trivial, since cable service, unlike broadcast radio and television, is not a traditional "free" communications medium. Such a captive consumer may choose to change the channel or turn his set off, but is nevertheless put into the unwilling position of subsidizing offensive programming by the mandatory nature of condo maintenance fees.

Discriminatory Impact of State Regulation

At the time the condo board approved the bulk rate cable deal, I learned that Florida Statute Section 718.115, a copy of which is attached, permitted condominium associations by majority rule to require a minority of part-time owners and residents to pay full-time rates for bulk cable services. Only the legally blind and the hearing impaired had the right to opt out, and then only if living alone or with other vision or hearing impaired persons. The effect was to convert what would ordinarily be considered a personal spending choice (how and when to spend a family's entertainment dollars) into a community decision, while at the same time requiring part-time owners and residents to subsidize a component of the assumed living costs of full-time residents.

Such arrangements are irresistible to the full-time residents who typically control condominium boards, and manifestly unfair to part-time residents, many of whom reside out of state and have no influence with local legislators. Many part-time residents are already paying for cable services at their permanent residences, and sometimes paying for service from the same cable company at each location, as my mother does.

Federal Regulatory Solution

Allowing cable companies to offer such irresistible inducements to condominium boards leads to the establishment of

defacto mini-monopolies in condominium communities. I believe that this runs contrary to the articulated public interest favoring the promotion of competition in the provision of telecommunications services. It is for this reason, primarily, that I think a federal solution to the problem is necessary.

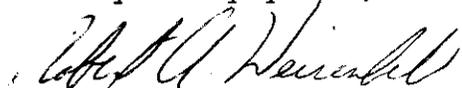
I propose that the F.C.C. promulgate such rules as are necessary to prohibit local cable companies from offering bulk rate contracts to cooperative, condominium and homeowners boards unless the contract terms permit individual families and homeowners to opt out. In order to make bulk rate cable plans truly voluntary, such a rule must also require cable companies to offer dissenting unit owners the right to choose any individual plan currently being offered to owners and residents of single family homes in the locality, along with any available "a la carte" pricing option, in lieu of service under the terms of any agreement negotiated by the coop or condo board.

The proposed rule should also have a look-back provision, the effect of which would be to annul, in every bulk rate cable contract presently in effect, any terms requiring the mandatory participation of all condo, coop or homeowners association members. The look-back provision would provide meaningful freedom of choice to condo and coop unit owners already governed by bulk rate cable contracts. Such a rule would still allow governing boards to negotiate bulk service rates for those owners who wish to avail themselves of the benefits of collective purchasing power, without burdening part-time residents and other dissenting homeowners with programming packages that they do not need or want.

The failure to adopt such a rule, however, could lead to undesirable unintended consequences, even if "a la carte" pricing becomes the industry standard. Under bulk rate cable contracts, coop and condo boards functioning as contracting parties would determine which of the many channels offered by cable companies unit owners could actually receive, not individual unit owners. Not only would this force some unit owners to pay for undesired programming, but it would also deny others access to specific programming that they actually want to receive. This would be a truly alarming development.

For the reasons stated above, the Commission should exercise its regulatory authority in furtherance of freedom of choice for all individual pay television subscribers, including individual coop and condo unit owners. Please feel free to contact me at the above address if you require any additional information. Thank you for the opportunity to comment on F.C.C. docket number # 04-207, Cable and Satellite Subscriber Options.

Very truly yours,



Robert A. Weisenfeld

Notes of Decisions

otions to common ele-

minium, Inc. v. Breiten-
So.2d 680 (1971), (main
254 So.2d 789.

section permitting condo-
display American flag did
act rights of condominium
merely recognized preex-
t. Gerber v. Longboat
nium, Inc., M.D.Fla.1989.
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1, eff. May 9, 1991; Laws
1991; Laws 1992, c. 92-280,

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§ 2, eff. Oct. 1, 1991,
the conduct of bingo

§ 5, eff. Dec. 20, 1991,
Laws 1991, c. 91-103, to
take effect April 1, 1992,

§ 2, eff. June 2, 1992, in
tuted "s. 849.0931" for "s.

§ 6, provided for repeal of
which amended this section,
provided for review by the
c. 93-160, § 1, repealed
-280.

Bingo games 8
Recreation arrangements 7

1. Construction with federal statutes

Buckley Towers Condominium, Inc. v. Buchwald, 1976, 533 F.2d 934, rehearing denied 540 F.2d 1084, certiorari denied 97 S.Ct. 1157, 429 U.S. 1121, 51 L.Ed.2d 571, rehearing denied (main volume) 97 S.Ct. 1611, 430 U.S. 960, 51 L.Ed.2d 811.

5. — Good faith and fair dealing, leases

Commodore Plaza at Century 21 Condominium Ass'n, Inc. v. Saul J. Morgan Enterprises, Inc., App. 3 Dist., 301 So.2d 783 (1974), (main volume) (Mainland 308 So.2d 538.

6. — Actions and proceedings, leases

Burleigh House Condominium, Inc. v. Buchwald, App. 3 Dist., 368 So.2d 1316 (1979), (main volume) certiorari denied 379 So.2d 203.

7. Recreation arrangements

Condominium recreation arrangements are not limited to property covered by recreational leasehold. Kesl, Inc. v. Racquet Club of Deer Creek II Condominium, Inc., App. 4 Dist., 574 So.2d 251 (1991).

Condominium recreation arrangement which meets statutory standards and which calls for purchase of both condominium units and recreational arrangements does not violate the antitrust laws;

authorized recreation arrangements, whether involving leases or recorded contracts, are exempt. Kesl, Inc. v. Racquet Club of Deer Creek II Condominium, Inc., App. 4 Dist., 574 So.2d 251 (1991).

Agreement between condominium unit owners and owner of racquet club which encompassed a single leisure living package totally integrated with the condominium units and under which units and recreational arrangements were marketed and purchased as a total package did not violate this act. Kesl, Inc. v. Racquet Club of Deer Creek II Condominium, Inc., App. 4 Dist., 574 So.2d 251 (1991).

Developer may arrange a recreation contract package or plan which involves multiple users, including other condominium associations, private developers, or the public, if that multiple use is reasonably related to the overall scope of the facility's plan and complies with this act. Kesl, Inc. v. Racquet Club of Deer Creek II Condominium, Inc., App. 4 Dist., 574 So.2d 251 (1991).

8. Bingo games

Inasmuch as West's F.S.A. § 718.114 conditions a condominium association's right to conduct bingo games on the return of all gross, as opposed to net, receipts from such games to the players in the form of prizes, an association is not authorized to use a portion of the money collected in conducting such games to buy supplies. Op.Atty.Gen. 90-93, Nov. 7, 1990.

718.115. Common expenses and common surplus

(1)(a) Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

(b) If so provided in the declaration, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a common expense, and if not, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the master television antenna system or the cable television service. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after the effective date hereof for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel said contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable television.

(c) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters by the board pursuant to s. 718.113(5) shall constitute a common expense as defined herein and shall be collected as provided in this section. Notwithstanding the provisions of s. 718.116(9), a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(5) or laminated glass architecturally designed to function as hurricane protection which complies with the applicable building code shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner shall remain responsible for the pro rata share of expenses for hurricane shutters installed on common elements and association property by the board pursuant to s. 718.113(5), and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters.

(d) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.

(2) Except as otherwise provided by this chapter, funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages provided in the declaration. In a residential condominium, or mixed-use condominium created after January 1, 1996, unit owners' shares of common expenses and common surplus shall be in the same proportions as their ownership interest in the common elements.

[See main volume for (3)]

Amended by Laws 1988, c. 88-148, § 1, eff. July 1, 1988; Laws 1990, c. 90-151, § 11, eff. Oct. 1, 1990; Laws 1991, c. 91-103, § 8, eff. Jan. 1, 1992; Laws 1991, c. 91-116, § 3, eff. May 28, 1991; Laws 1992, c. 92-49, § 5, eff. April 2, 1992; Laws 1994, c. 94-350, § 9, eff. Oct. 1, 1994; Laws 1996, c. 96-396, § 3, eff. June 2, 1996.

Historical and Statutory Notes

Laws 1988, c. 88-148, § 1, eff. July 1, 1988, added the second and third sentences to subsec. (1).

Laws 1990, c. 90-151, § 11, eff. Oct. 1, 1990, in subsec. (1), in the first sentence, inserted ", or protection", inserted "and association property", inserted ", whether or not included in the foregoing", substituted "association" for "condominium"; and inserted the second sentence.

Laws 1991, c. 91-103, § 8, eff. April 1, 1992, in subsec. (1), designated par. (a); in par. (a), deleted a former second sentence, which read, "If approved by the board of administration, the cost of mangrove trimming and the cost of a master television antenna system or duly franchised cable television service obtained pursuant to a bulk contract or common expenses."; added par. (b); and, at the beginning of subsec. (2), added the exception.

Section 28 of Laws 1991, c. 91-103, provided that this section "shall take effect January 1, 1992." Laws 1991, c. 91-426, § 5, eff. Dec. 20, 1991,

amended section 28 of Laws 1991, c. 91-103, to read that such act shall take effect April 1, 1992, rather than Jan. 1, 1992.

Laws 1991, c. 91-116, § 3, eff. May 28, 1991, designated par. (a) and deleted the second sentence therefrom pertaining to mangrove trimming, master television antenna or cable television system services treated as common expenses, added par. (b), and inserted the introductory exception in subsec. (2).

Section 5 of Laws 1991, c. 91-116, provides:

"This act shall take effect upon becoming a law [May 28, 1991]."

Laws 1991, c. 91-426, § 8, provides:

"Notwithstanding the provisions of section 5 of this act, the provisions of s. 718.115, Florida Statutes, as amended by chapters 91-103 and 91-116, Laws of Florida, are effective as provided in chapter 91-116, Laws of Florida."

Laws 1992, c. 92-49, § 5, eff. April 2, 1992, in subsec. (1), added par. (c).