Leora Hochstein
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Federal Regulatory

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August 9, 2006

Ex Parte

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television and Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch:

On August 8, 2006, Ed Shakin, Dee May, Will Johnson, Mahasti Pourdastan, and I met with Donna Gregg, Rosemary Harold, Mary Beth Murphy, John Norton, Holly Saurer, and Brendan Murray from the Media Bureau and Chris Killion and Matthew Berry from the Office of General Counsel to discuss the negative impact on competitive entry of exclusive access agreements entered into by incumbent cable operators with owners, managers, or developers of and multi-dwelling unit properties ("MDUs") or other real estate developments. We explained that given the anticompetitive effect of exclusive access agreements, it is Verizon's policy not to enter into such arrangements.[1] Consistent with the pro-competitive aims of this proceeding, we urged the Commission to address the issue of exclusive access arrangements in this rulemaking by issuing a rule prohibiting multichannel video programming distributors ("MVPDs") from entering into new, or enforcing existing, exclusive access agreements with owners, managers or developers of MDUs or other real estate developments.

As discussed more fully in our July 6, 2006 ex parte filing on this subject, exclusive access agreements have the anticompetitive effect of foreclosing competition for the residents of affected MDUs and developments, thereby denying these consumers of the benefits of video choice and making it more difficult for competitive providers to effectively enter the market and compete. In light of similar concerns, the Commission has already prohibited such agreements in the context of

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[1] In contrast, Verizon does enter exclusive marketing arrangements with some MDU owners, which agreements have pro-competitive benefits by educating consumers concerning available services.

telephone services being sold to tenants of commercial MDUs. The Commission should take the same step here pursuant to its authority under Section 628, which prohibits "unfair methods of competition or unfair or deceptive acts or practices" by cable operators.

With the deployment by Verizon of FiOS service, millions of consumers in Verizon's service areas now have, or will soon have, access to expanded cable choices. But a significant number of these consumers live in MDUs or other real estate developments and could be denied the benefits of video competition if incumbents are permitted to deny competitive providers access to these properties. In fact, approximately 30-35 percent of the U.S. population resides in MDUs.[2] Moreover, these consumers may also lose the benefits of the competition for other services enabled by Verizon's FTTP deployment – such as advanced broadband services – if cable incumbents are permitted to enforce exclusive access agreements for video services given the reduced investment incentive if Verizon is not permitted to offer all of its full range of services.

Verizon's experience as a new entrant in the market for video distribution services has revealed the significant barrier to competition that exclusive access arrangements create. As explained in its earlier letter, Verizon has repeatedly encountered exclusive access agreements for MDUs and other real estate developments. These agreements do not appear to be isolated incidents, but instead involve a variety of properties from locations throughout Verizon's service territory and most, if not all, of the large, incumbent cable operators. Some examples include:

- **Bright House.** Bright House demanded that Verizon stop marketing its video services to the residents of the River Chase apartment complex in Tampa, Florida in light of an agreement giving Bright House the "exclusive right to provide multi-channel video services to the property." *See Exhibit A to July 6, 2006 Ex Parte.* As a result, Verizon agreed "to suspend any marketing and provisioning activities for FiOS TV service in the River Chase Apartments." *See* Letter from James C. Stroo to Benjamin Shin, dated June 29, 2006, attached hereto as Exhibit A.

- **Comcast.** Verizon has been informed of several exclusive access agreements that Comcast has with MDU property owners in Maryland giving it the "exclusive right and license to construct, install, operate and maintain multi-channel video distribution facilities."

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[2] *See, e.g.* Robert Currey, Vice Chairman, RCN Corporation, Prepared Statement Before the Senate Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, *Cable and Video: Competitive Choices*, 107th Cong., S. Hrg. 107-248, at 31 (Apr. 4, 2001) ("About 30-35% of the total population lives in multiple dwelling units (MDUs), such as apartments, cooperatives or condominiums.").

- **Cox Communications.** In Virginia, Post Properties informed Verizon that the Post Tyson's Corner property was subject to a perpetual, exclusive access arrangement with Cox Communications, which agreement pre-dated Post's purchase of the property. Another MDU owner in the Norfolk, Virginia area similarly informed Verizon it had been approached by Cox concerning an exclusive access agreement, and that Cox is actively seeking exclusive access arrangements with other MDUs in the area.

- **BDR Broadband.** BDR Broadband, LLC informed Verizon that it had exclusive access agreements for two properties in Plano and Carrollton, Texas, and demanded that Verizon stop marketing its video services to residents of these properties. *See Exhibit B to July 6, 2006 Ex Parte.*

Moreover, this problem is not limited to a few isolated buildings or developments. The enormous potential anticompetitive effect of these exclusive access agreements is confirmed by an informal survey taken by Verizon of MDUs in Bright House's territory in and around Tampa, Florida. Verizon contacted the owners or managers of 133 MDU properties in that area – all of the MDU properties of which Verizon is aware – and asked whether such properties were subject to Bright House exclusive access agreements. These 133 properties comprise 42,040 living units. According to the property owners and managers, Bright House exclusive access agreements were in place for 46 properties making up nearly 42% of the surveyed living units (17,622 units). Moreover, for an additional 25 properties representing 15% of the surveyed living units (6,531 units), the owners or managers did not know or would not say whether Bright House exclusive access agreements were in effect.

While Verizon's survey was confined to a single location, it confirms the huge numbers of consumers who will be denied the benefits of video competition if incumbent cable providers are permitted to enter exclusive access agreements that foreclose large portions of the market at a time when new entrants are first seeking to compete for those customers.

Moreover, there is every reason to believe that incumbent cable providers exploit the delay caused by the local franchising process in order to secure advantages through exclusive access agreements. In fact, many of the exclusive access agreements that Verizon has encountered were from recent months. For example, the exclusive access agreement for River Chase in Temple Terrace, Florida appears to have been signed in December 2005 – just two weeks before Verizon began offering its FiOS TV service in that area. *Exhibit A to July 6, 2006 Ex Parte.* Similarly, Verizon has also obtained copies of two other exclusive access agreements by Bright House for two MDU properties in Tampa, each of which is dated May 17, 2006. *See* Exhibit B. These agreements would grant Bright House "the exclusive right for the first Fifteen (15) years of this Agreement . . . to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services [and] . . . to offer and provide Multi-Channel Video Services," and would prohibit the MDU owner from "permit[ting] other parties to . . . promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services." The timing of these agreements suggests that incumbents pursue

exclusive access arrangements in order to "lock up" consumers prior to, or at least in response to, the onset of competition.

A recent article in the *San Francisco Chronicle* suggests that Comcast is engaging in a similar approach. *See* "Comcast Throws a Curve in Its Broadband Pitch," *San Francisco Chronicle*, at C1 (July 19, 2006), attached hereto as Exhibit C. According to this article, Comcast has attempted to get MDU owners in the San Francisco area to sign 10-year exclusive access agreements that would specify that Comcast be the exclusive provider of all "high-speed data, Internet, multichannel video programming, and other lawful services and applications that the company may provide now or in the future." The article notes that this "move is an example of skirmishing under way nationwide as the phone and cable industries face off for control of a new generation of digital technology piped into people's homes." According to the article, "Comcast's exclusivity would be clear to building owners only if they take the time to read the contract, which is written in occasionally dense legalese and printed in small text," while the "more plainly written cover letter . . . makes no mention of 10-year exclusivity or specific services." The article notes that Comcast also offered gift cards to property managers who returned "unaltered" agreements. The executive director of the California Apartment Association is quoted in the article as saying that "[i]t looks like Comcast is trying to secure customers in anticipation of the new competition coming down the road."

Based on this evidence, Verizon respectfully urges the Commission to take up this issue in this docket, and to issue a rule barring the future execution or enforcement of exclusive access contracts between MVPDs and owners, managers, or developers of MDUs or other real estate developments.

Sincerely,

ATTACHMENT A

James C. Stroo
Associate General Counsel - Mass Markets

600 Hidden Ridge
HQE03J11
Irving, TX 75038

Phone: 972-718-1070
Fax: 972-718-6372
jim.stroo@verizon.com

June 29, 2006

VIA DHL

Benjamin J. Shin
Sabin, Bermant & Gould
Four Times Square
New York, NY 10036-6526

Re: **River Chase Apartments in Tampa, FL**

Dear Mr. Shin:

We have received your letter of June 13, 2006, and Verizon is in the process of analyzing the claims made by Bright House in your letter While we are analyzing your claims, Verizon has decided to suspend any marketing and provisioning activities for FiOS TV service in the River Chase Apartments in Tampa, Florida.

We will respond more completely when we finish our analysis. If you have any questions, please feel free to call me.

Very truly yours,

James C. Stroo/jvn

James C. Stroo
Associate General Counsel – Mass Markets

JCS:jvn

c: Jeffrey E. Proske

ATTACHMENT B

EASEMENT AND RIGHT OF ENTRY AGREEMENT

DATE: May 17, 2006

PARTIES

Operator:

Bright House Networks, LLC
2728 S Falkenburg Rd Riverview, FL 33569
Contact Person: Mark Demasi
Telephone: 813- 436 2197
Facsimile: 813- 628 4091_

Owner:

Rosewood LLC, a Florida Limited Liability Corp
«O_Ad1»
«O_City», «O_State» «O_Zip»
Contact Person: «OContact»
Telephone: «OC_Phone»
Facsimile:

PROPERTY:

Rosewood Apartments
8525 N Armenia Avenue
Tampa FL, 33604
Units 66
Contact Person:
Telephone:
Facsimile:

RECITALS

- Owner owns the Multi-Family residential community and underlying land referred to above (the **"Property"**) and as further described in the legal description set forth on *Exhibit A*.
- Owner and Operator wish to make the Services available to residents of the Property (**"Residents"**) in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the Recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Operator's Basic Obligations.

1.1 Multi-Channel Video Services. Upon completion of construction or upgrading of the System (as defined below), if necessary, or within 30 days after the execution of this Agreement if no construction or upgrading is necessary, Operator will offer multi-channel video cable television service to the Property over the System (**"Services"**). Upon giving notice to Residents, Operator may change (or discontinue) any Services and rates to the extent not prohibited by Laws and Regulations (as defined in Section 10.3). Operator will individually bill Residents for the Services, taxes, franchise fees, and other fees assessed in conjunction with the Services. All Services are subject to availability at the Property.

(A) Internet Access Service. Subject to availability at the Property, Operator will offer Internet access service over the System ("Internet Access Service") to Owner and Residents. The Multi-Channel Video Services

does not include Internet Access Service that shall be offered on a non-exclusive basis. Internet Access Service is collectively referred to as the "Additional Services".

(B) **Additional Services.** Operator may offer Additional Services to Owner and Residents on a non-exclusive basis. **"Additional Services"** includes Internet Access Service and means any services other than the Multi-Channel Video Services that can be provided to the Property over the System.

1.2 **Installation of System (as Applicable)** To the extent necessary (*e.g.*, there is no, or there is insufficient, existing wiring and facilities, or the existing wiring and facilities are owned, or otherwise controlled, by a third party) and at no charge to Owner, Operator will design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and a construction plan and schedule agreed upon by Owner and Operator. **"System"** means all equipment, facilities, internal and external wiring, conduit, and molding that Operator installs or upgrades on the Property or that exist and Operator is allowed to use on the date of this Agreement and that Operator uses to deliver the Services. Upon completion of construction, Operator will repair and restore all portions of the Property damaged by Operator to its condition immediately prior to such construction.

1.3 **Maintenance of System.** Operator agrees to provide to the Premises Multi-Channel Video Services, and Additional Services, that are reasonably competitive and generally comparable with the services being offered by Operator or by another franchised Cable Television provider to the majority of other apartment communities within Hillsborough County and which Operator or another franchised Cable Television provider serves, with the objective that the Owner is not at a competitive disadvantage with similar properties. In the event that, through no act or omission of the Owner, Owner believes that the Multi-Channel Video Services, and Additional Services provided by Operator are not reasonably competitive or generally comparable to similar services being provided by another franchised Cable Television provider to the majority of other apartment communities in Hillsborough County, Florida, and as a result Owner is at a competitive disadvantage with similar properties, then Owner shall give Operator written notice describing how the Multi-Channel Video Services, and Additional Services, provided by Operator is not reasonably competitive or generally comparable. Operator shall have thirty (30) days to respond to Owner disputing Owner's claim or with a proposal to make the Multi-Channel Video Services, and Additional Services reasonably competitive and to implement same within ninety (90) days, unless more time is reasonably required due to circumstances beyond the reasonable control of Operator, and so long as Operator diligently proceeds to implement such proposal.

2. **Ownership and Use of System during Term of Agreement.**

During the term of this Agreement, Operator will own and have the exclusive right to access, control and operate the System, unless Owner paid for such equipment, facilities, conduit or wiring to be installed, or such equipment, facilities, conduit or wiring is owned by a third party, in which case (as between Owner and Operator), Owner shall own such items and Owner hereby grants to operator the exclusive right to access and use such items during the term of this Agreement. Owner shall not permit any part of the System to be interfered with or used by any third party. The System will not be deemed to be affixed to or a fixture of the Property. Owner shall not access, operate, or move the System during the term of this Agreement. Owner will provide the power necessary to operate any of Operator's equipment that is located on the Property.

Owner's Basic Obligations; Grant of Easement and Other Rights.

2.1 **Easement.** In consideration of the covenants and agreements in this Agreement, for $10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to Operator, its successors and assigns, a non-exclusive easement on the Property and all its improvements for the purposes of permitting Operator, its affiliates and contractors to design, construct, install, operate, maintain, market, upgrade, repair, replace, and remove the System and to provide Services. Operator will have and hold the easement, together with every right and appurtenance connected to it, for the term of this Agreement and for so long thereafter as Operator is providing services to the Property under this Agreement. When that period expires, this easement will terminate after an additional 90-day continuation period solely for the purpose of allowing Operator to remove its System. Owner, its successors and assigns hereby agree to warrant and forever defend the easement to Operator--as well as its successors and assigns--against every person who claims any part of it. This easement and other rights granted to Operator run with the title to the Property and are binding on Owner and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property. Operator may record this Agreement at any time.

2.2 **Grant of Other Rights.** Owner acknowledges that Operator will spend substantial time, resources, and money in meeting its obligations under this Agreement and that Operator is relying on Owner's covenants in this Agreement in order to recoup its investment by providing the Services to the Property and by collecting revenues from Residents. Owner hereby grants to Operator **(A)** the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services (**'Marketed Services"**), **(B)** the exclusive right to install, occupy, maintain, and remove the molding and other conduit housing the wiring of the System without alteration by Owner or third parties, **(C)** the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to offer and provide **Multi-Channel Video Services** the Marketed Services to Residents, **(D)** the exclusive right for the Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to market the Marketed Services to Residents, and **(E)** the non-exclusive right to market, offer and provide all other Services to Residents at the Property. During any applicable exclusivity period, Owner shall not, and Owner shall not permit other parties (including other service providers) to (i) promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services at the Property (including, but not limited to, the provision of such services on a bulk basis), (ii) take any action (or make any omission), directly or indirectly, that is designed to or has the effect of encouraging or facilitating Residents to choose another provider's services that compete with Operator's multi-channel video cable television services, or (iii) install additional equipment or facilities or upgrade existing equipment or facilities to enable such other provider to provide services that compete with Operator's multi-channel video cable television services. Where Laws and Regulations prohibit Owner from granting or Operator from obtaining exclusive rights under this Section 2.2, then such rights automatically shall become non-exclusive to the extent and only for so long as required by Laws and Regulations.

3. **Term.** Owner hereby grants Bright House Networks a Fifteen (15) year exclusive right to enter the Premises and provide any or all Services to residents of the Premises ("Right of Entry Term"). The Right of Entry Term shall commence on the date this agreement is fully executed by both parties. The Right of Entry Term shall be automatically renewed for successive (1) year terms thereafter, unless Owner or Bright House Networks gives written notice to the other party of its intention not to renew at least 90 days prior to expiration of the initial or any renewal term. Charges for Services during the Right of Entry Term shall be set by Bright House Networks and shall be billed to individual residents of the Premises. In the event a resident of the Premises has contracted with Bright House Networks for Services and is delinquent in payment to Bright House Networks, Owner shall cooperate in recovering any of Bright House Networks' equipment from the unit of such resident

4. **Owner's Representations and Warranties.** Owner represents and warrants that (A) Owner is the owner in fee simple of the Property, no purchase contracts exist with respect to the Property, and the legal description attached to this Agreement is the complete, accurate and current legal description for the Property; (B) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (C) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement and that the signatory below has been authorized to execute and deliver this Agreement; (D) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding or components, if any); and (E) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.

5. **Breach of Agreement.** If a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, then the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages; or seek any other available legal or equitable remedy.

6. **No Warranties; Limitation of Liability. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.** Neither party shall be liable to the other or to any third party for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, rent, profits or business opportunities. Notwithstanding the

foregoing, Operator shall be entitled to seek and obtain, as direct damages, lost revenues for Service to the Property for Owner's breach of or default under this Agreement. Notwithstanding anything above, Operator agrees to comply with Section 1.3 of this Agreement and to maintain the System at it's sole expense

7. Indemnity.

7.1 From Operator. Operator will indemnify, defend and hold harmless Owner and, as applicable, Owner's shareholders, members, partners, directors, managers, officers, employees, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its Related Parties that result from Operator's design, construction, installation, operation, or maintenance of the System or provision of Services.

7.2 From Owner. Owner will indemnify and hold harmless Operator and Operator's Related Parties from and against all Losses incurred by Operator or its Related Parties that result from **(A)** damage to any part of the System caused by the gross negligence of the Owner, its employees or agents, or any third party that has entered the Property with Owner's permission, **(B)** any claim arising out of Owner's operation of the Property, and **(D)** Owner's breach of its representations and warranties in Article 5 or its covenants in Section 3.

8. Ownership and Removal of System after Termination or Expiration; Mandatory Access Laws and Regulations.

8.1 Ownership and Removal of System after Termination or Expiration. Subject to Laws and Regulations, after this Agreement has expired or been terminated, Operator shall remove any of the above ground equipment, but leave any of the underground components, of the Services Delivery System, and remove any of the other properties placed on the Premises by Operator within a period of 90-days following the termination of this agreement. If Operator damages the Premises when it removes the Services Delivery System or any of its other properties from the Premises, Operator will repair and restore such damage. If any of the Services Delivery System or other property of Operator is not removed from the premises, then Operator will continue to own such property so long as it holds a franchise to provide cable service in the jurisdiction where the Premises are located, and thus has a reasonable expectation that it may again become authorized to deliver its services to residents of the Premises. If Operator so elects, it may lease any portion of the Services Delivery System to Owner or any other party following expiration of this Agreement pursuant to such terms and conditions as may be agreed to by such parties. Operator and Owner agree that any use by Owner or any third party of the Services Delivery System or any other property of Operator located on the Premises, whether with or without the consent of Operator, shall not disturb Operator's continued right to ownership of any such property. Owner shall provide Operator access to the Premise's electrical system.

8.2 Mandatory Access Laws and Regulations. Notwithstanding anything to the contrary in this Article 9 or the Agreement, if Laws and Regulations require Owner to provide Operator with access to the Property for the provision of any service, then Operator shall **(A)** continue to own and be permitted to access and use all wiring and other components of the System, for so long as permitted by Laws and Regulations, to provide service to the Property and **(B)** have the right to remove, abandon, disable, or sell such wiring and other components of the System within 90 days after Operator no longer is permitted by Laws and Regulations to provide such services.

9. Miscellaneous Provisions.

9.1 Notices. All notices, requests, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this Agreement. Such notice shall be effective, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

9.2 Force Majeure. Despite anything to the contrary in this Agreement, neither party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the nonperforming party (a **"Force Majeure Event"**), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather,

earthquakes, or floods; fires or explosions; governmental action or regulation; strikes, lockouts, or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. The time for performance of a party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

9.3 **Compliance with Laws and Regulations; Choice of Law**. This Agreement shall be subject to, and in the performance of their respective obligations under this Agreement the parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasi-governmental and regulatory authorities with jurisdiction over the parties), and, with respect to Operator only, the requirements of Operator's franchise agreement for the Area (collectively, **"Laws and Regulations"**). Nothing in this Agreement shall prohibit Operator from fully complying with all Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the Federal Communications Commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this Agreement. This Agreement is governed by and shall be interpreted under the laws of the state in which the Property is located, without regard to its choice-of-law provisions.

9.4 **Severability and Replacement of Unenforceable Provisions.** If any portion of this Agreement is rendered invalid or otherwise unenforceable under Laws and Regulations or by a governmental, legal or regulatory authority with jurisdiction over the parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement. In such event, the party that has been deprived of such material benefit (**"Affected Party"**) may notify the other, and the parties promptly thereafter shall use their reasonable best efforts to replace or modify the invalid or unenforceable provision with a provision that, to the extent not prohibited by Laws and Regulations, achieves the purposes intended under the invalid or unenforceable provision. If the parties are unable to reach agreement on replacement or modification of the invalid or unenforceable provision within 60 days after notification from the Affected Party, then the Affected Party may terminate this Agreement upon 60 days notice.

9.5 **Modification; Waiver; Scope of Agreement; Assignment.** This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supersedes all other agreements relating to, the subject matter contained herein. This Agreement can be modified or changed only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this Agreement will be effective only if in writing. This Agreement shall be freely assignable by either party.

9.6 **Enforcement Costs.** If either party sues or brings any other type of enforcement action in connection with this Agreement, then the prevailing party shall be entitled to seek to recover its reasonable attorneys' fees and other costs in connection with such action.

9.7 **Survival.** The terms of Articles 3, 7, 8, 9, and 10 will survive the expiration or termination of this Agreement for any reason.

9.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.

9.9 **No Conflicts.** Owner represents to Operator that there are no agreements or other instruments that conflict with, or otherwise prohibit or inhibit Operator from installing the System on the Property and providing the Services, and that Operator's action of installing the System on the Property is not in conflict in anyway with any agreements that Owner may have with any other party. Owner shall defend Operator from any claims or actions arising out of Operator's installation of the System or from Operator's provision of the Services or Additional Services.

9.10 **Consideration.** As consideration for the rights and privileges granted to Operator by Owner under this Agreement, including the exclusive rights granted by Owner to Operator, Operator shall pay to Owner an access fee in the amount of two hundred ($200) dollars per unit for a total of 66 units, This Consideration shall be paid within 90 days of the date that this Agreement is fully and properly executed by both parties and only if Owner provides Operator with a properly completed and valid W-9 form, and provides same within 45 days of the date that this agreement executed by both parties. Operator shall not be required to provide the Consideration, or shall otherwise be entitled to a complete and full refund of the Consideration paid by Owner, if the Owner is in breach of this Agreement.

9.11 **Courtesy Accounts.** Operator shall provide to Owner a total of two (2) Courtesy Accounts consisting of Owner's Standard Cable service (about 68 channels) to locations that are reasonably accessible to Owner, and that are locations on the Property such as a club house, office, or on-site resident manager's residence or other employee of Owner.

10. **Confidential Information; Announcements.** Except as specifically provided in this Agreement, and except for disclosures required by Laws and Regulations and prospective buyers of the Owner, Owner and Operator will (A) keep this Agreement and its terms confidential, (B) keep confidential any information that is provided by one party to the other and that is marked as confidential, (C) not use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval.

Rosewood LLC, a Florida Limited Liability Corp

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of _____)

This instrument was acknowledged before me by _____ as the _____ _____ of _____.on the _____day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires: _____

Bright House Networks, LLC

Date: _____

By: _____
David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of _____)

This instrument was acknowledged before me by **David C. Ross** as the **Vice President of Commercial Markets of Bright House Networks, LLC**, on the ____ day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires: _____

Exhibit A
Legal Description of the Property

Attached.

Easement and Memorandum of Agreement

Grant of Easement

In consideration of $10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, **Rosewood LLC, a Florida Limited Liability Corp** ("Grantor") grants to Bright House Networks, LLC ("Grantee"), its successors and assigns, a non-exclusive easement on Grantor's property and all its improvements (as described in the attached *Exhibit A*) (the "Property"). This easement is for the purposes of permitting Grantee and its affiliates and contractors to design, construct, install, operate, market, maintain, upgrade, repair, replace, and remove a system (including internal and external wiring, poles, conduits, molding, pipes, antennas, servers, switch equipment, software, central processing units and other facilities and equipment ("System") for the delivery of cable television, entertainment, video, internet access, and other services that may be delivered over the System to the Property, as more fully provided in the Easement, Installation and Service Agreement between Grantor and Grantee with respect to the Property (the "Agreement"). During the term of the Agreement and this Easement, Grantee shall own, and Grantee shall have the exclusive right to access, control and operate, the System, and the System shall not be deemed to be affixed to or a fixture of the Property. Ownership and removal of the System after the expiration of the Agreement and this Easement shall be pursuant to the Agreement. Grantor will also provide reasonable space for Grantee's equipment.

Grantor reserves the right to grant other easements on the Property, but will not allow such other easements to cause unreasonable interference with the easement granted to Grantee herein.

Grantee will have and hold the easement, together with every right and appurtenance connected to it, for an initial term of 15 years and 90 days, or for so long as Operator is allowed to have its System on the Property pursuant to the Agreement. Grantor, its successors and assigns hereby agree to warrant and forever defend the easement to Grantee--as well as its successors and assigns--against every person who claims any part of it.

This easement shall not amend, modify, terminate, release or discharge any party from its rights or obligations under any other written easement with respect to the Property. If Grantee currently has the right to serve the Property under any other written easement, then such other easement shall survive this easement and shall continue to bind the parties in accordance with its terms; provided, however, that in the event of any conflict between the terms of any such other easement and this easement during the term hereof, this easement shall control.

This easement and other rights granted to Grantee run with the title to the Property and are binding on Grantor and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property.

11. Memorandum of Agreement

In addition to the rights granted above, the Agreement grants to Grantee certain exclusive rights to market and provide Multi-Channel Video Services, and certain non-exclusive rights to provide Internet Access Service and Additional Services to Grantor and to residents of the Property.

[DATE, SIGNATURE, AND NOTARIZATION ON FOLLOWING PAGE]

Rosewood LLC, a Florida Limited Liability Corp

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by _____ as the _____ _____ of_____.on the ._____day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

Bright House Networks, LLC

Date: _____

By: _____
David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by **David C. Ross** as the **Vice President of Commercial Markets of Bright House Networks, LLC**, on the ____ day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

EASEMENT AND RIGHT OF ENTRY AGREEMENT

DATE: May 17, 2006

PARTIES

Operator:

Bright House Networks, LLC
2728 S Falkenburg Rd Riverview, FL 33569
Contact Person: Mark Demasi
Telephone: 813- 436 2197
Facsimile: 813- 628 4091_

Owner:

Pinecrest Village, LLC a Florida Limited Liability Corp
«O_Ad1»
«O_City», «O_State» «O_Zip»
Contact Person: «OContact»
Telephone: «OC_Phone»
Facsimile:

PROPERTY:

Windsor Manor
8610 Pinetree Ct
Tampa FL, 33604
Units 194
Contact Person:
Telephone:
Facsimile:

RECITALS

- Owner owns the Multi-Family residential community and underlying land referred to above (the **"Property"**) and as further described in the legal description set forth on *Exhibit A*.
- Owner and Operator wish to make the Services available to residents of the Property (**"Residents"**) in accordance with the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the Recitals and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Operator's Basic Obligations.

1.1 Multi-Channel Video Services. Upon completion of construction or upgrading of the System (as defined below), if necessary, or within 30 days after the execution of this Agreement if no construction or upgrading is necessary, Operator will offer multi-channel video cable television service to the Property over the System (**"Services"**). Upon giving notice to Residents, Operator may change (or discontinue) any Services and rates to the extent not prohibited by Laws and Regulations (as defined in Section 10.3). Operator will individually bill Residents for the Services, taxes, franchise fees, and other fees assessed in conjunction with the Services. All Services are subject to availability at the Property.

(A) Internet Access Service. Subject to availability at the Property, Operator will offer Internet access service over the System ("Internet Access Service") to Owner and Residents. The Multi-Channel Video Services

does not include Internet Access Service that shall be offered on a non-exclusive basis. Internet Access Service is collectively referred to as the "Additional Services".

(B) **Additional Services.** Operator may offer Additional Services to Owner and Residents on a non-exclusive basis. **"Additional Services"** includes Internet Access Service and means any services other than the Multi-Channel Video Services that can be provided to the Property over the System.

1.2 **Installation of System (as Applicable)** To the extent necessary (*e.g.*, there is no, or there is insufficient, existing wiring and facilities, or the existing wiring and facilities are owned, or otherwise controlled, by a third party) and at no charge to Owner, Operator will design, construct, install and/or upgrade the System in accordance with industry standards, Laws and Regulations, and a construction plan and schedule agreed upon by Owner and Operator. **"System"** means all equipment, facilities, internal and external wiring, conduit, and molding that Operator installs or upgrades on the Property or that exist and Operator is allowed to use on the date of this Agreement and that Operator uses to deliver the Services. Upon completion of construction, Operator will repair and restore all portions of the Property damaged by Operator to its condition immediately prior to such construction.

1.3 **Maintenance of System.** Operator agrees to provide to the Premises Multi-Channel Video Services, and Additional Services, that are reasonably competitive and generally comparable with the services being offered by Operator or by another franchised Cable Television provider to the majority of other apartment communities within Hillsborough County and which Operator or another franchised Cable Television provider serves, with the objective that the Owner is not at a competitive disadvantage with similar properties. In the event that, through no act or omission of the Owner, Owner believes that the Multi-Channel Video Services, and Additional Services provided by Operator are not reasonably competitive or generally comparable to similar services being provided by another franchised Cable Television provider to the majority of other apartment communities in Hillsborough County, Florida, and as a result Owner is at a competitive disadvantage with similar properties, then Owner shall give Operator written notice describing how the Multi-Channel Video Services, and Additional Services, provided by Operator is not reasonably competitive or generally comparable. Operator shall have thirty (30) days to respond to Owner disputing Owner's claim or with a proposal to make the Multi-Channel Video Services, and Additional Services reasonably competitive and to implement same within ninety (90) days, unless more time is reasonably required due to circumstances beyond the reasonable control of Operator, and so long as Operator diligently proceeds to implement such proposal.

2. Ownership and Use of System during Term of Agreement.

During the term of this Agreement, Operator will own and have the exclusive right to access, control and operate the System, unless Owner paid for such equipment, facilities, conduit or wiring to be installed, or such equipment, facilities, conduit or wiring is owned by a third party, in which case (as between Owner and Operator), Owner shall own such items and Owner hereby grants to operator the exclusive right to access and use such items during the term of this Agreement. Owner shall not permit any part of the System to be interfered with or used by any third party. The System will not be deemed to be affixed to or a fixture of the Property. Owner shall not access, operate, or move the System during the term of this Agreement. Owner will provide the power necessary to operate any of Operator's equipment that is located on the Property.

Owner's Basic Obligations; Grant of Easement and Other Rights.

2.1 **Easement.** In consideration of the covenants and agreements in this Agreement, for $10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to Operator, its successors and assigns, a non-exclusive easement on the Property and all its improvements for the purposes of permitting Operator, its affiliates and contractors to design, construct, install, operate, maintain, market, upgrade, repair, replace, and remove the System and to provide Services. Operator will have and hold the easement, together with every right and appurtenance connected to it, for the term of this Agreement and for so long thereafter as Operator is providing services to the Property under this Agreement. When that period expires, this easement will terminate after an additional 90-day continuation period solely for the purpose of allowing Operator to remove its System. Owner, its successors and assigns hereby agree to warrant and forever defend the easement to Operator--as well as its successors and assigns--against every person who claims any part of it. This easement and other rights granted to Operator run with the title to the Property and are binding on Owner and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property. Operator may record this Agreement at any time.

2.2 **Grant of Other Rights.** Owner acknowledges that Operator will spend substantial time, resources, and money in meeting its obligations under this Agreement and that Operator is relying on Owner's covenants in this Agreement in order to recoup its investment by providing the Services to the Property and by collecting revenues from Residents. Owner hereby grants to Operator **(A)** the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to design, construct, install, operate, maintain, upgrade, and remove a system on the Property for the provision of multi-channel video services (**'Marketed Services"**), **(B)** the exclusive right to install, occupy, maintain, and remove the molding and other conduit housing the wiring of the System without alteration by Owner or third parties, **(C)** the exclusive right for the first Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to offer and provide **Multi-Channel Video Services** the Marketed Services to Residents, **(D)** the exclusive right for the Fifteen (15) years of this Agreement, and the non-exclusive right thereafter, to market the Marketed Services to Residents, and **(E)** the non-exclusive right to market, offer and provide all other Services to Residents at the Property. During any applicable exclusivity period, Owner shall not, and Owner shall not permit other parties (including other service providers) to (i) promote, market, solicit for or sell services that compete with Operator's multi-channel video cable television services at the Property (including, but not limited to, the provision of such services on a bulk basis), (ii) take any action (or make any omission), directly or indirectly, that is designed to or has the effect of encouraging or facilitating Residents to choose another provider's services that compete with Operator's multi-channel video cable television services, or (iii) install additional equipment or facilities or upgrade existing equipment or facilities to enable such other provider to provide services that compete with Operator's multi-channel video cable television services. Where Laws and Regulations prohibit Owner from granting or Operator from obtaining exclusive rights under this Section 2.2, then such rights automatically shall become non-exclusive to the extent and only for so long as required by Laws and Regulations.

3. **Term.** Owner hereby grants Bright House Networks a Fifteen (15) year exclusive right to enter the Premises and provide any or all Services to residents of the Premises ("Right of Entry Term"). The Right of Entry Term shall commence on the date this agreement is fully executed by both parties. The Right of Entry Term shall be automatically renewed for successive (1) year terms thereafter, unless Owner or Bright House Networks gives written notice to the other party of its intention not to renew at least 90 days prior to expiration of the initial or any renewal term. Charges for Services during the Right of Entry Term shall be set by Bright House Networks and shall be billed to individual residents of the Premises. In the event a resident of the Premises has contracted with Bright House Networks for Services and is delinquent in payment to Bright House Networks, Owner shall cooperate in recovering any of Bright House Networks' equipment from the unit of such resident

4. **Owner's Representations and Warranties.** Owner represents and warrants that (A) Owner is the owner in fee simple of the Property, no purchase contracts exist with respect to the Property, and the legal description attached to this Agreement is the complete, accurate and current legal description for the Property; (B) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (C) Owner has the full power and authority to negotiate, execute, deliver and perform this Agreement and that the signatory below has been authorized to execute and deliver this Agreement; (D) Owner owns and/or has the right to grant to Operator hereunder the exclusive right to use all parts of the System not owned by Operator (including any third party wiring, molding or components, if any); and (E) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this Agreement.

5. **Breach of Agreement.** If a party breaches any term of this Agreement and fails to cure such breach within 30 days after receiving notice from the non-breaching party reasonably detailing the breach, then the non-breaching party may terminate this Agreement, bring an action against the breaching party for damages; or seek any other available legal or equitable remedy.

6. **No Warranties; Limitation of Liability. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.** Neither party shall be liable to the other or to any third party for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, rent, profits or business opportunities. Notwithstanding the

foregoing, Operator shall be entitled to seek and obtain, as direct damages, lost revenues for Service to the Property for Owner's breach of or default under this Agreement. Notwithstanding anything above, Operator agrees to comply with Section 1.3 of this Agreement and to maintain the System at it's sole expense

7. Indemnity.

7.1 From Operator. Operator will indemnify, defend and hold harmless Owner and, as applicable, Owner's shareholders, members, partners, directors, managers, officers, employees, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its Related Parties that result from Operator's design, construction, installation, operation, or maintenance of the System or provision of Services.

7.2 From Owner. Owner will indemnify and hold harmless Operator and Operator's Related Parties from and against all Losses incurred by Operator or its Related Parties that result from **(A)** damage to any part of the System caused by the gross negligence of the Owner, its employees or agents, or any third party that has entered the Property with Owner's permission, **(B)** any claim arising out of Owner's operation of the Property, and **(D)** Owner's breach of its representations and warranties in Article 5 or its covenants in Section 3.

8. Ownership and Removal of System after Termination or Expiration; Mandatory Access Laws and Regulations.

8.1 Ownership and Removal of System after Termination or Expiration. Subject to Laws and Regulations, after this Agreement has expired or been terminated, Operator shall remove any of the above ground equipment, but leave any of the underground components, of the Services Delivery System, and remove any of the other properties placed on the Premises by Operator within a period of 90-days following the termination of this agreement. If Operator damages the Premises when it removes the Services Delivery System or any of its other properties from the Premises, Operator will repair and restore such damage. If any of the Services Delivery System or other property of Operator is not removed from the premises, then Operator will continue to own such property so long as it holds a franchise to provide cable service in the jurisdiction where the Premises are located, and thus has a reasonable expectation that it may again become authorized to deliver its services to residents of the Premises. If Operator so elects, it may lease any portion of the Services Delivery System to Owner or any other party following expiration of this Agreement pursuant to such terms and conditions as may be agreed to by such parties. Operator and Owner agree that any use by Owner or any third party of the Services Delivery System or any other property of Operator located on the Premises, whether with or without the consent of Operator, shall not disturb Operator's continued right to ownership of any such property. Owner shall provide Operator access to the Premise's electrical system.

8.2 Mandatory Access Laws and Regulations. Notwithstanding anything to the contrary in this Article 9 or the Agreement, if Laws and Regulations require Owner to provide Operator with access to the Property for the provision of any service, then Operator shall **(A)** continue to own and be permitted to access and use all wiring and other components of the System, for so long as permitted by Laws and Regulations, to provide service to the Property and **(B)** have the right to remove, abandon, disable, or sell such wiring and other components of the System within 90 days after Operator no longer is permitted by Laws and Regulations to provide such services.

9. Miscellaneous Provisions.

9.1 Notices. All notices, requests, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this Agreement. Such notice shall be effective, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

9.2 Force Majeure. Despite anything to the contrary in this Agreement, neither party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the nonperforming party (a **"Force Majeure Event"**), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather,

earthquakes, or floods; fires or explosions; governmental action or regulation; strikes, lockouts, or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. The time for performance of a party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

9.3 **Compliance with Laws and Regulations; Choice of Law.** This Agreement shall be subject to, and in the performance of their respective obligations under this Agreement the parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasi-governmental and regulatory authorities with jurisdiction over the parties), and, with respect to Operator only, the requirements of Operator's franchise agreement for the Area (collectively, **"Laws and Regulations"**). Nothing in this Agreement shall prohibit Operator from fully complying with all Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the Federal Communications Commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this Agreement. This Agreement is governed by and shall be interpreted under the laws of the state in which the Property is located, without regard to its choice-of-law provisions.

9.4 **Severability and Replacement of Unenforceable Provisions.** If any portion of this Agreement is rendered invalid or otherwise unenforceable under Laws and Regulations or by a governmental, legal or regulatory authority with jurisdiction over the parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement. In such event, the party that has been deprived of such material benefit (**"Affected Party"**) may notify the other, and the parties promptly thereafter shall use their reasonable best efforts to replace or modify the invalid or unenforceable provision with a provision that, to the extent not prohibited by Laws and Regulations, achieves the purposes intended under the invalid or unenforceable provision. If the parties are unable to reach agreement on replacement or modification of the invalid or unenforceable provision within 60 days after notification from the Affected Party, then the Affected Party may terminate this Agreement upon 60 days notice.

9.5 **Modification; Waiver; Scope of Agreement; Assignment.** This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supersedes all other agreements relating to, the subject matter contained herein. This Agreement can be modified or changed only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this Agreement will be effective only if in writing. This Agreement shall be freely assignable by either party.

9.6 **Enforcement Costs.** If either party sues or brings any other type of enforcement action in connection with this Agreement, then the prevailing party shall be entitled to seek to recover its reasonable attorneys' fees and other costs in connection with such action.

9.7 **Survival.** The terms of Articles 3, 7, 8, 9, and 10 will survive the expiration or termination of this Agreement for any reason.

9.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.

9.9 **No Conflicts.** Owner represents to Operator that there are no agreements or other instruments that conflict with, or otherwise prohibit or inhibit Operator from installing the System on the Property and providing the Services, and that Operator's action of installing the System on the Property is not in conflict in anyway with any agreements that Owner may have with any other party. Owner shall defend Operator from any claims or actions arising out of Operator's installation of the System or from Operator's provision of the Services or Additional Services.

9.10 **Consideration.** As consideration for the rights and privileges granted to Operator by Owner under this Agreement, including the exclusive rights granted by Owner to Operator, Operator shall pay to Owner an access fee in the amount of two hundred ($200) dollars per unit for a total of 194 units, This Consideration shall be paid within 90 days of the date that this Agreement is fully and properly executed by both parties and only if Owner provides Operator with a properly completed and valid W-9 form, and provides same within 45 days of the date that this agreement executed by both parties. Operator shall not be required to provide the Consideration, or shall otherwise be entitled to a complete and full refund of the Consideration paid by Owner, if the Owner is in breach of this Agreement.

9.11 **Courtesy Accounts.** Operator shall provide to Owner a total of two (2) Courtesy Accounts consisting of Owner's Standard Cable service (about 68 channels) to locations that are reasonably accessible to Owner, and that are locations on the Property such as a club house, office, or on-site resident manager's residence or other employee of Owner.

10. **Confidential Information; Announcements.** Except as specifically provided in this Agreement, and except for disclosures required by Laws and Regulations and prospective buyers of the Owner, Owner and Operator will (A) keep this Agreement and its terms confidential, (B) keep confidential any information that is provided by one party to the other and that is marked as confidential, (C) not use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval.

Pinecrest Village, LLC a Florida Limited Liability Corp

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by _____ as the _____ _____ of_____.on the ._____day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

Bright House Networks, LLC

Date: _____

By: _____
David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by **David C. Ross** as the **Vice President of Commercial Markets of Bright House Networks, LLC**, on the ____ day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

Exhibit A
Legal Description of the Property

Attached.

Easement and Memorandum of Agreement

Grant of Easement

In consideration of $10, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Pinecrest Village, LLC a Florida Limited Liability Corp ("Grantor") grants to Bright House Networks, LLC ("Grantee"), its successors and assigns, a non-exclusive easement on Grantor's property and all its improvements (as described in the attached *Exhibit A*) (the "Property"). This easement is for the purposes of permitting Grantee and its affiliates and contractors to design, construct, install, operate, market, maintain, upgrade, repair, replace, and remove a system (including internal and external wiring, poles, conduits, molding, pipes, antennas, servers, switch equipment, software, central processing units and other facilities and equipment ("System") for the delivery of cable television, entertainment, video, internet access, and other services that may be delivered over the System to the Property, as more fully provided in the Easement, Installation and Service Agreement between Grantor and Grantee with respect to the Property (the "Agreement"). During the term of the Agreement and this Easement, Grantee shall own, and Grantee shall have the exclusive right to access, control and operate, the System, and the System shall not be deemed to be affixed to or a fixture of the Property. Ownership and removal of the System after the expiration of the Agreement and this Easement shall be pursuant to the Agreement. Grantor will also provide reasonable space for Grantee's equipment.

Grantor reserves the right to grant other easements on the Property, but will not allow such other easements to cause unreasonable interference with the easement granted to Grantee herein.

Grantee will have and hold the easement, together with every right and appurtenance connected to it, for an initial term of 15 years and 90 days, or for so long as Operator is allowed to have its System on the Property pursuant to the Agreement. Grantor, its successors and assigns hereby agree to warrant and forever defend the easement to Grantee--as well as its successors and assigns--against every person who claims any part of it.

This easement shall not amend, modify, terminate, release or discharge any party from its rights or obligations under any other written easement with respect to the Property. If Grantee currently has the right to serve the Property under any other written easement, then such other easement shall survive this easement and shall continue to bind the parties in accordance with its terms; provided, however, that in the event of any conflict between the terms of any such other easement and this easement during the term hereof, this easement shall control.

This easement and other rights granted to Grantee run with the title to the Property and are binding on Grantor and on all subsequent owners of the Property, as well as on others who may claim an interest in the Property.

11. Memorandum of Agreement

In addition to the rights granted above, the Agreement grants to Grantee certain exclusive rights to market and provide Multi-Channel Video Services, and certain non-exclusive rights to provide Internet Access Service and Additional Services to Grantor and to residents of the Property.

[DATE, SIGNATURE, AND NOTARIZATION ON FOLLOWING PAGE]

Pinecrest Village, LLC a Florida Limited Liability Corp

Date: _____

By: _____

Title: _____

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by _____ as the _____ _____ of_____.on the ._____day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

Bright House Networks, LLC

Date: _____

By: _____
David C. Ross

Title: **Vice President of Commercial Markets**

Witnesses: _____

Print Name: _____

Witnesses: _____

Print Name: _____

State of _____)
) ss:
County of_____)

This instrument was acknowledged before me by **David C. Ross** as the **Vice President of Commercial Markets of Bright House Networks, LLC**, on the ____ day of _____, 2006.

Witness my hand and official seal.

_____

[SEAL]

Notary Public

My commission expires:_____

ATTACHMENT C

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San Francisco Chronicle
THE SAN FRANCISCO CHRONICLE (California)

July 19, 2006 Wednesday
FINAL Edition

SECTION: BUSINESS; LAZARUS AT LARGE; Pg. C1

LENGTH: 1049 words

HEADLINE: Comcast throws a curve in its broadband pitch

BYLINE: David Lazarus

BODY:

As AT&T prepares to enter the video market in the Bay Area, Comcast is attempting to get owners of local apartment buildings to agree to 10-year contracts that would grant the cable giant an exclusive right to provide tenants with all broadband services.

The move is an example of skirmishing under way nationwide as the phone and cable industries face off for control of a new generation of digital technology piped into people's homes.

It also shows how advances in such technology have outpaced state and federal regulation, leaving officials frequently unsure where the line falls between traditional public utilities like AT&T and private-sector service providers like Comcast.

"It's a tough challenge because the technical changes always move faster than the regulatory regime," said Helen Mickiewicz, assistant general counsel for the California Public Utilities Commission.

Earlier this month, telecom giant Verizon -- which, like AT&T, is rolling out video service to millions of customers -- formally asked the Federal Communications Commission to block cable companies from signing exclusive deals with owners of apartment buildings.

"One of the games now is for cable to work hard to lock up apartments quickly where a new competitor is seeking a local video franchise approval," said David Fish, a Verizon spokesman. "That is using the system to block consumer choice."

Gordon Diamond, an AT&T spokesman, said the company is reviewing Verizon's FCC filing and agrees that "consumers should have a choice."

But he acknowledged that AT&T also has exclusive service contracts with some California properties for its satellite TV service offered in conjunction with Dish Network.

"We did this in response to what the cable companies were doing," Diamond said.

In Comcast's case, the 10-year contracts specify that the company would be the sole provider of "high-speed data, Internet, multichannel video programming, and other lawful services and applications that the company may provide now or in the future."

This would apparently prevent individual tenants from signing up with AT&T or any other provider for high-speed Internet access or video programming, and perhaps even phone service (which Comcast has made available to about 90 percent of Bay Area customers via Internet connections).

"It looks like Comcast is trying its best to secure customers in anticipation of the new competition coming down the road," said Tom Bannon, executive director of the California Apartment Association, which represents the owners of more than 1 million rental units statewide.

Comcast spokesman Andrew Johnson said it should be up to property owners and managers to decide what services are available to tenants.

"They have a right to control what goes on in their property," he said. "If they want Comcast to be the exclusive telecommunications provider to the property, that's what they want."

Johnson noted that property owners also control the types of washing machines or vending machines in their buildings.

"If that means you can only get Pepsi," he said, "that's how it is."

But the situation is more complex than that. For years, state and federal laws have prohibited phone companies from inking exclusive deals for voice service with "multi-dwelling units," which can account for anywhere from dozens to thousands of customers in a single location.

The statutes resulted from attempts by phone companies in the 1990s to place competitors at a disadvantage by denying them new business.

In California, Section 626 of the Public Utilities Code stipulates that "a public utility may not enter into any exclusive access agreement" with a property owner or manager "that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises."

But does this law apply to AT&T and Verizon offering nonvoice services like Internet access and video programming? And does it also apply to cable companies now that they're getting into the phone business?

The answers are no and no.

"It applies to traditional phone service only," said Terrie Prosper, a spokeswoman for the state Public Utilities Commission.

As such, she said Comcast is free to seek exclusive service deals for the full range of its broadband services, including digital phone service. Similarly, AT&T and Verizon are free to seek exclusive contracts with building owners for their Internet and video services.

AT&T's Diamond declined to comment on whether the company will seek exclusive arrangements when it rolls out its video service in California -- a move expected by next year at the latest.

Comcast's exclusivity would be clear to building owners only if they take the time to read the contract, which is written in occasionally dense legalese and printed in small text.

The contract is accompanied in some cases by a friendlier and more plainly written cover letter that makes no mention of 10-year exclusivity or specific services.

It says only that a contract is required "in order to properly protect and continue to service your property."

It also states: "As a thank you for your time, for signing and returning the Broadband Service Agreement unaltered (emphasis added), you will receive a $100 American Express Gift Cheque which will be sent to you with your copy of the fully executed agreement."

John Sampson is a San Francisco property manager who recently received Comcast's letter and contract for a 14-unit building he oversees.

"The letter is totally benign compared to the document itself," he said. "God knows how many people just signed the contract and sent it in."

Comcast's 10-year contract with apartment building owners gives the cable company exclusive rights to "cabling, wiring, fiber-optic lines, power supplies" and other resources within the property.

The contract stipulates that Comcast will maintain control over all fees charged to building tenants. After the initial 10-year term ends, the contract will be automatically renewed every five years unless written notice is provided by either Comcast or the building owner.

Bannon at the California Apartment Association said building owners shouldn't sign any long-term contract without running it by an attorney.

"You also want to take the time to understand the possible ramifications to residents," he said.

LOAD-DATE: July 19, 2006