

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Exclusive Service Contracts for)
Provision of Video Services in) MB Docket No. 07-51
Multiple Dwelling Units and)
Other Real Estate Developments)
)

COMMENTS OF CORNING INCORPORATED

Timothy J. Regan
Senior Vice President, Global Government Affairs
Corning Incorporated
325 7th Street, NW, Suite 600
Washington, DC 20004
(202) 661-4155 (voice)
(202) 661-4165 (fax)

June 29, 2007

EXECUTIVE SUMMARY

Corning, the world's leading producer of optical fiber and cable, believes that the Commission's decision in the exclusive service contract proceeding should be guided by the Commission's prior actions that have dramatically stimulated the deployment of fiber to the premises ("FTTP"). For example, since the Triennial Review Order relieved ILECs of the unbundling obligation on FTTP facilities, FTTP deployment has increased by over 4,000 percent.

Although Verizon has accounted for much of this deployment because of its revolutionary FiOS service, the volume of Verizon's deployment has dramatically improved the economics for deployment of FTTP by other carriers. The result is a broad-based deployment of FTTP throughout the country.

Exclusive service contracts are very likely inhibiting the deployment of FTTP to the MDU market. Verizon has already provided strong evidence to the Commission that exclusive contracts have negatively affected its ability to deploy FTTP to MDUs. It has also submitted survey data for the region surrounding Tampa, Florida which show that the practice of such discrimination is wide-based. Deployment data strongly suggests that FTTP deployment to MDUs is being inhibited by exclusive contracts, with the percentage of MDU residents served by FTTP far lower than those in single family units. Corning believes that exclusive contracts contribute significantly to this discrepancy.

Exclusive contracts that prevent competitive delivery of video and other services negatively affect the economics for FTTP deployment. Although FTTP is the most capable local

access delivery technology, it is also the most costly. Therefore, revenue from the full panoply of voice, data, and video services must be generated to justify the investment. To the extent that exclusive contracts prevent carriers from providing so-called “triple play,” especially video services, these contracts inhibit the deployment of FTTP.

Moreover, exclusive contracts that deny competitive carriers access to MDUs will discourage the innovation necessary to drive FTTP deployment. Deploying fiber optic cable and associated hardware inside of MDUs is more difficult technically than in single family units, and substantial innovation must be undertaken by equipment suppliers to address these technical problems. To the extent that the Commission does not remove barriers to deployment revealed in this proceeding because of exclusive access arrangements, equipment suppliers will be discouraged from making the necessary investment to finance this innovation.

Finally, in addition to its authority under Section 1 and 4(i), the Commission has the authority under the terms of Section 628 of the Communications Act to prohibit exclusive contracts that impede FTTP deployment to MDUs. Further, Section 706 of the Telecommunications Act of 1996 states clearly that the Commission must act to “encourage deployment of... advanced telecommunications capability to all Americans... by utilizing... regulating methods that remove barriers to infrastructure investment.” To the extent that the Commission finds in this proceeding that exclusive contracts and other exclusive arrangements constitute a “barrier to investment” by impeding deployment of FTTP to MDUs, it is compelled to use its authority to remove this impediment.

TABLE OF CONTENTS

	Page
I. THE FCC BROADBAND DECISIONS HAVE SIGNIFICANTLY ACCELERATED DEPLOYMENT OF FTTP.....	2
II. EXCLUSIVE CONTRACTS ARE LIKELY INHIBITING FTTP DEPLOYMENT.....	5
A. Verizon Has Provided Strong Evidence that Exclusive Contracts Have Negatively Affected FTTP Deployment.....	5
B. Exclusive Contracts Inhibit Deployment of FTTP to MDUs.....	6
III. EXCLUSIVE CONTRACTS THAT DENY COMPETITIVE CARRIERS ACCESS TO MDUs WILL DISCOURAGE INNOVATION NEEDED TO DRIVE FTTP.....	7
IV. THE FCC HAS THE AUTHORITY TO LIMIT EXCLUSIVE CONTRACTS TO THE EXTENT THAT THEY ARE IMPEDING FTTP DEPLOYMENT TO MDUs.....	9
V. CONCLUSION.....	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Exclusive Service Contracts for)	
Provision of Video Services in)	MB Docket No. 07-51
Multiple Dwelling Units and)	
Other Real Estate Developments)	
)	

COMMENTS OF CORNING INCORPORATED

Corning Incorporated (“Corning”) hereby respectfully submits the following comments in the above-referenced proceeding.¹ Corning supplies leading edge technologies for a number of sectors of the economy, including the telecommunications, information display, life sciences, environmental, and semi-conductor industries, and has a history of innovation in each of these areas. In the telecommunications sector, Corning is the inventor of low-loss optical fiber, the environmentally hardened and sealed optical connector for optical drop cable, and the flexible terminal distribution system for fiber to the premises (“FTTP”) networks. It is the largest U.S. producer of optical fiber, optical cable, passive optical components, and hardware and equipment for outside plant. As a result, Corning has substantial experience in the provisioning, implementation, and economics of fiber optic telecommunications networks.

¹ *Exclusive Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Notice of Proposed Rulemaking, MB Docket No. 07-51, FCC 07-32, (Mar. 27, 2007) (“NPRM”).

For the reasons set forth below, Corning believes that exclusive contracts are likely impeding deployment of fiber to the premises (“FTTP”) to multiple dwelling units (“MDUs”) and urges the Commission to take action to remove such impediments where they exist.

I. THE FCC’S BROADBAND DECISIONS HAVE SIGNIFICANTLY ACCELERATED DEPLOYMENT OF FTTP.

The Commission’s decision in this proceeding should be guided by the profound effects that its prior actions have had on encouraging the deployment of FTTP. This is best demonstrated by the market response to the Commission’s decision in the Triennial Review proceeding (the “TRO proceeding”).² During the TRO proceeding, Corning proposed that the Commission lift the unbundling obligations on ILEC deployment of FTTP and provided empirical analysis demonstrating that lifting such obligations would spark significant FTTP deployment in the United States.³ Corning commends the Commission for lifting the unbundling obligations on deployment of FTTP by the ILECs.⁴

This decision has had a significant impact on the deployment of FTTP. Prior to the effective date of the TRO (October 3, 2003), deployment of FTTP languished. As of September, 2003, only 180,300 homes were passed by FTTP in the United States and only 64,700 homes

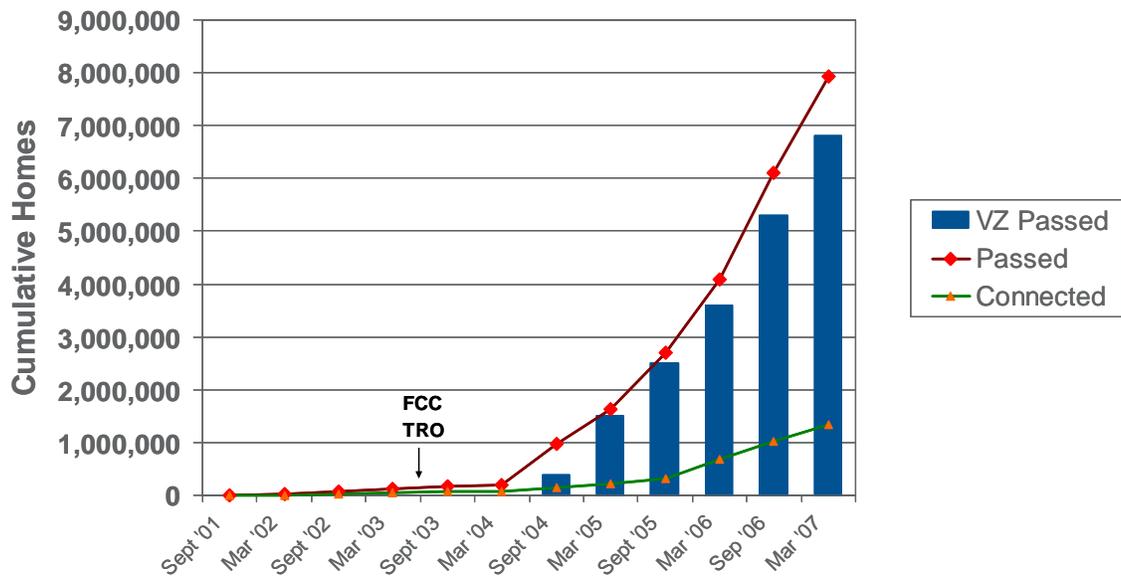
² *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003) (the “TRO”).

³ *See* Comments of Corning Incorporated, CC Dkt. Nos. 01-338, 96-98, 98-147, at 10-14 (April 5, 2002) (“Corning TRO Comments”).

⁴ *See, e.g.* TRO at ¶ 278 (citing Corning TRO Comments).

were actually served. In other words, 0.16 percent of the households in the United States were passed by FTTP.⁵

Immediately following the effective date of the TRO, FTTP deployment skyrocketed. As indicated in Figure 1 below, within one (1) year, the number of homes passed increased by more than a factor of five (5). Within three and one-half (3.5) years, the FTTP market response was phenomenal, with a nearly 4,300 percent increase to 7.9 million homes passed.



Source: RVA, LLC, FTTH/FTTP Update, Corning analysis

Corning knows of no other FCC decision that has generated such an enormous positive market response in terms of technology deployment.

⁵ RVA, LLC Market Research and Consulting, FTTH/FTTP Update, (April 1, 2007) (“FTTH/FTTP Update”) (attached hereto).

Verizon has been a leader in FTTP deployment in terms of volume. With 6.8 million homes passed, Verizon accounts for 86 percent of total United States deployment today.⁶ It has announced plans to pass over 18 million homes with FTTP by 2010 and to invest over \$23 billion.⁷ Verizon's branded "FiOS" service, provided over its FTTP network, is one of the most advanced in the world. The top tier of Internet access service over FiOS is 50 Mbps downstream and 5 Mbps upstream, speeds that tax the processing capability of most home computers. And, Verizon has a 100 Mbps service on trial today.⁸

Moreover, Verizon's commitment to FTTP technology and its significant FTTP deployment has driven innovation and cost reduction which has improved the economics for FTTP deployment by all carriers. Since Verizon began its FTTP deployment effort, Corning estimates that the first installed average cost of deployment per home has dropped by 46 percent, from \$3000 to \$1600. This lower cost structure has encouraged deployment by other carriers throughout the country. Non-RBOC carriers serve approximately 1.3 million customers, more than 32 percent of all subscribers to FTTP services.⁹ And, deployment is spread throughout the country. Currently, FTTP is deployed in 48 states, far more than the 21 states served by Verizon.

⁶ *Id.*

⁷ See Press Release, "Verizon Provides New Financial and Operational Details on its Fiber Network as Deployment Gains Momentum," rel. Sept. 27, 2006, *available at* <http://www.sec.gov/Archives/edgar/data/732712/000119312506198669/dex991.htm>.

⁸ See Press Release, "Innovation and Telecom Companies' Advanced Networks Power Telecom Future, Seidenberg Tells NXCcomm; Broadband, IP and Mobility are Key for Customers," rel. June 20, 2007, *available at* <http://newscenter.verizon.com/press-releases/verizon/2007/innovation-and-telecom.html>.

⁹ FTTH/FTTP Update (attached hereto).

Market evidence clearly demonstrates that the FCC's broadband decisions have had a substantial impact on the deployment of FTTP throughout the United States. There are enormous public interest benefits associated with deployment of this next generation broadband technology. Competition is enhanced as carriers deploy a platform to deliver voice, data, and video in competition with incumbent carriers. In addition, a next generation Internet access capability over FTTP is being implemented in the United States at a pace which exceeds most of our global rivals. The Commission must consider the significant positive impact its decisions have had in accelerating the deployment of FTTP and advanced services in determining whether exclusive contracts are in the public interest.

II. EXCLUSIVE CONTRACTS ARE LIKELY INHIBITING FTTP DEPLOYMENT.

As a telecommunications equipment supplier, Corning has observed the effects exclusive access contracts have on allowing competitive entry to MDUs. Both Corning's customers' real-world experience and market data demonstrate that exclusive access contracts discourage FTTP deployment, impede competition, and discourage innovation.

A. Verizon Has Provided Strong Evidence That Exclusive Contracts Have Negatively Affected FTTP Deployment.

Verizon has provided the Commission with numerous examples of exclusive contracts that have impeded the deployment of FTTP technology in conjunction with the FiOS service plan.¹⁰ For instance, a CATV operator demanded that Verizon stop marketing its video services to residences of the River Chase Apartment complex in Tampa, Florida. The basis for such

¹⁰ See e.g. *Ex Parte* of Verizon, MB Docket No. 05-311, at 3-5 (Jul. 6, 2006) ("July 2006 *Ex Parte*"); *Ex Parte* of Verizon, MB Docket No. 05-311, at 2-4 (Aug. 9, 2006) ("August 2006 *Ex Parte*").

demands was the agreement giving that CATV operator the exclusive right to provide multi-channel video services.¹¹ As a result, Verizon agreed to “suspend any marketing and provisioning activities for FiOS TV service in the River Chase Apartments.”¹²

Verizon subsequently surveyed owners and managers of 133 MDU properties in and around the Tampa, Florida area to determine the extent to which such properties were subject to exclusive access agreements negotiated with a CATV operator. This analysis showed that a full 42 percent of the 42,040 living units in the 133 properties surveyed are subject to exclusive access agreements.¹³ These figures demonstrate the pervasiveness of exclusive agreements which deny MDU residents competitive alternatives.

B. Exclusive Contracts Inhibit Deployment of FTTP to MDUs.

Although approximately 30-35 percent of the U.S. population resides in MDUs,¹⁴ Corning estimates that less than 15 percent of the living units passed by FTTP are in the MDUs. Corning believes that this discrepancy is due, in large part, to the exclusive access arrangements that have been cited by Verizon as barriers to deployment of FTTP.

While FTTP is by far the most capable local access delivery technology, it is also the most costly. This is due to the fact that all the existing copper cable must be overbuilt by fiber optic cable. Although the cost of the fiber optic cable is relatively small, the cost of installation

¹¹ See July 2006 *Ex Parte* at Exhibit A.

¹² See August 2006 *Ex Parte* at Exhibit A.

¹³ See August 2006 *Ex Parte* at 2-3,

¹⁴ See Robert J. 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. Hgr. 107-248, at 31 (Apr. 4, 2001).

is extremely high, exceeding 50 percent of the total cost in most cases. To defray these expenses, carriers must be able to deliver the full panoply of services, including voice, data, and video, in order to generate the revenue necessary to justify the investment. The provision of video is particularly important because it generates the largest amount of revenue of the services provided, and uniquely requires the high bandwidth capability of an FTTP network. To the extent that exclusive contracts prevent competitive carriers from providing the so called “triple play” of voice, data, and, in particular, video, they will inhibit the deployment of FTTP to MDUs.

III. EXCLUSIVE CONTRACTS THAT DENY COMPETITIVE CARRIERS ACCESS TO MDUs WILL DISCOURAGE INNOVATION NEEDED TO DRIVE FTTP.

Equipment suppliers must engage in significant innovation to bring FTTP to the MDU market. Because there has not been significant deployment to the MDU market, suppliers have been cautious about undertaking the necessary investment to finance the necessary research and technology. To the extent that exclusive contracts further discourage the deployment of FTTP to MDUs, equipment suppliers will maintain their reluctance. However, if the Commission takes action to remove the barriers exclusive contracts create, equipment suppliers will have strong incentives to invest in development and engineering for the MDU market.

The processes for FTTP deployment to single family units are well established and are far less complex than the deployments in an MDU. In most cases, the demarcation point for single family units is located outside on the side of the home, a power supply is readily available, and connection to the home is easily accomplished by a drop cable from the carrier’s network on the public right of way.

However, FTTP deployments to MDUs present technical challenges because installation in almost every building is unique. Variations in building size, age, construction codes, materials, hardware locations, power location, building owner preferences, as well as limited cable pathways within the building all contribute to the complexity of deploying new networks in MDUs.

In addition, carriers must decide whether to place fiber all the way to each living unit within the MDU or to compromise by placing fiber at a common point in the building and using existing copper and/or coaxial cabling infrastructure to deliver services to each living unit. The use of an existing plant can reduce cost, but comes at the expense of substantially reduced service capability.

Corning has undertaken the challenge of solving the technical and cost problems associated with deployment of next generation FTTP networks in MDUs. The technical barriers of fiber construction are being addressed with new solutions that allow fiber to be more easily deployed in tortuous routes, through walls, and around tight bends. These solutions will also allow fiber optic cable to be stapled and terminated at small, tamper-proof, aesthetic terminals that are easy to access.

Corning is also working to reduce installation time and materials costs through product development and design simplification. Low profile and easy-to-use equipment eliminate the need for new pathway creation and reduce the time/cost of installation, thereby increasing deployment speed and improving reliability.

Corning is investing resources to resolve the technical challenges common to the FTTP/MDU market and to reduce the cost of deployment with the expectation that service

providers will increase FTTP deployment to MDUs. To the extent that exclusive contracts prevent providers from entering the MDU market, Corning and other suppliers will be unable to continue these investments.

IV. THE FCC HAS THE AUTHORITY TO LIMIT EXCLUSIVE CONTRACTS TO THE EXTENT THAT THEY ARE IMPEDING FTTP DEPLOYMENT TO MDUs.

Corning supports the Commission's tentative conclusion that it "has authority to regulate exclusive contracts for the provision of video services to MDUs or other real estate developments where [it] find[s] that such contracts may impede competition and impair deployment of those services."¹⁵ This authority stems from multiple sources, including Section 628(b) of the Communications Act of 1934 and Section 706 of the 1996 Telecommunications Act. Section 628 provides that:

[i]t shall be unlawful for a cable operator, a satellite, cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.¹⁶

The language of Section 628 clearly allows the Commission to prohibit exclusive contracts by cable operators. Particularly given current market conditions, with new wireline competitors entering the market on a broad scale for the first time, using exclusive deals to prevent MDU residents from taking advantage of new competitive offerings is "unfair" and will undermine the purposes of the 1992 Cable Act which was to "encourage the further development of robust

¹⁵ NPRM, ¶ 9.

¹⁶ 47 U.S.C. § 548(b).

competition in the video programming marketplace.”¹⁷ Moreover, Section 628(b) does not limit the Commission’s authority so the Commission can prohibit both existing and future exclusive arrangements.

Section 706 of the Telecommunications Act of 1996¹⁸ further supports the Commission’s authority. Section 706 requires the Commission to “encourage deployment of . . .advanced telecommunications capability to all Americans. . .by utilizing... regulating methods that remove barriers to infrastructure investment.” FTTP clearly meets the definition of an advanced telecommunications service capability in Section 706 by virtue of the fact that it enables “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications...”¹⁹ Therefore, to the extent the Commission finds that exclusive contracts are impeding deployment of FTTP, it must conclude that such an impediment constitutes an investment barrier under Section 706 and use its authority to remove this impediment.

The Commission also notes in the NPRM that it is empowered under Section 1 of the Act “to execute and enforce the provisions of this Act,”²⁰ and by Section 4(i) “to perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”²¹ These provisions also give the

¹⁷ H.R. Rep. No. 102-628 (1992).

¹⁸ 47 U.S.C. § 157 nt .

¹⁹ 47 U.S.C. § 157 nt (c).

²⁰ NPRM, ¶ 10.

²¹ *Id.*

Commission authority to eliminate exclusive contracts that are impeding competition for the large number of Americans that live in MDUs.

V. CONCLUSION.

For the reasons set forth above, exclusive contracts and other such arrangements limit access by competitive carriers to MDUs and thereby impede deployment of FTTP and discourage investment in technologies needed to better serve MDU residents. Therefore, Corning urges the Commission to use its authority to prohibit such exclusive contracts.

Respectfully submitted,

By: /s/ Timothy J. Regan
Timothy J. Regan
Senior Vice President, Global Government Affairs
Corning Incorporated
325 7th Street, NW, Suite 600
Washington, DC 20004
(202) 661-4155 (voice)
(202) 661-4165 (fax)

June 29, 2007

ATTACHMENT

FTTH/FTTP UPDATE

April 1, 2007

RVA LLC