

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling
Units and Other Real Estate Developments

MB Docket No. 07-51

Reply to the Comments of Time-Warner

I. Need for regulation

Section I discusses whether there is a need to regulate exclusive contracts. I disagree with Time-Warner's comments on this subject. Prohibiting exclusive contracts is essential to protect tenants who cannot obtain needed services from the providers selected by their landlords. As I have already discussed the horrific consequences of exclusive contracts at length in my original comments (posted in April), I will not repeat the details here.

II. "IF THE COMMISSION REGULATES EXCLUSIVE CONTRACTS, ITS RULES MUST NOT DISCRIMINATE AMONG COMPETING PROVIDERS"

I fully agree.

The FCC should not allow contracts that exclude any provider. In particular, it should deny Verizon's request that FCC abrogate contracts that exclude Verizon, but allow future contracts that will exclude its competitors.

III. Analysis of various sections of law

I disagree with Time-Warner's conclusions, but these particular sections are so far outside my area of expertise that I do not feel qualified to comment.

IV. Abrogation of existing contracts.

Time-Warner incorrectly states (in the first paragraph on page 13) that abrogation of any contractual right constitutes a "taking" for which compensation is required by the Fifth Amendment. The United States Supreme Court has consistently held otherwise. The government may, for example, raise the minimum wage to an amount greater than specified in an employment contract or revoke the license of a person who has the contractual right to drive, or limit the pole rental fees that an electric utility company may collect from a cable television company to less than contractually agreed [FCC v. Florida Power Corp., 480 U.S. 245 (1981)], without paying compensation.

The FCC can abrogate provisions of existing private contracts, where they impede the ability of tenants to receive television service [Building Owners and Managers Association International, et al., v. Federal Communications Commission and United States of America, United States Court of Appeals for the District of Columbia Circuit, No. 99-1009 (2001)], without violating the Fifth Amendment.

In particular, the U.S. Supreme Court has held that the government may enact a prohibition against the exclusion from rental property of a party whom a tenant seeks to admit to said rental property, without compensation to the party previously holding the right to exclude [Yee v. City of Escondido, Cal. (503 U.S. 519 (1992))].

Finally, entering into an exclusive contract that restrains trade is unlawful (15USC1). Compensation is never required for the seizure of property that is obtained unlawfully. The power of the government to confiscate the fruits of a criminal act is without compensation is central to civil forfeiture proceedings.