

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 letter of Dan Terheggen of Consolidated Smart Systems

Mr. Terheggen states:

- 1) "In my markets I am the only viable alternative to the franchise cable operator..." This statement is factually inaccurate. For example, in Camarillo, California, tenants whose landlords do not agree to exclusive contracts may, at the option of the tenant:
 - a) Obtain cable service from the franchise cable operator (to the best of my knowledge, this is available at all properties, except those the Ponderosa Apartments, where it was available until Consolidated Smart Systems paid the landlord to exclude it, leaving Consolidated Smart Systems as the only available provider)
 - b) Obtain FiOS service from Verizon (this service is being gradually introduced and is already available at many, but not all properties; it is expected to be available at more in the near future, unless exclusive contracts prevent the deployment from continuing)
 - c) Obtain satellite service from DirecTV using their own antenna (this is available to all apartments with balconies or patios, except those that lack a clear sight line to the satellite, those where Consolidated Smart Systems has paid to be the exclusive provider of access to DirecTV, and those whose landlords are in violation of 47CFR1.4000, which requires landlords to allow individual antennas on rental property if the desired service is not available by any other means)
 - d) Obtain satellite service from DISH Network using their own antenna (this is available to all apartments with balconies or patios, except those that lack a clear sight line to the satellite and those whose landlords are in violation of 47CFR1.4000, which requires landlords to allow individual antennas on rental property if the desired service is not available by any other means)

At the property where I currently reside, both cable service from the franchise cable operator and FiOS service from Verizon are available. I also know of one or more properties where tenants have the option of either obtaining cable service from the franchise cable operator or using an individual satellite antenna to receive, at their option, either DISH Network or DirecTV. The only property that I have been able to locate where satellite service is the only option is the Ponderosa Apartments, whose landlord has stated that his contract with Consolidated required him to exclude both the franchise cable operator and (in violation of 47CFR1.4000) individual DISH Network antennas.

- 2) "They [excluded providers] cut off service to customers..." This apparently refers to cases where Consolidated Smart Systems has signed exclusive contracts with landlords requiring landlords to have service from the excluded provider eliminated and, for whatever technical or logistical reason, the excluded provider was unable to have the termination of its service coincide with the exact moment that Consolidated Smart Systems and the landlord desired. I do know, both from personal experience and from what I have read on the Internet, that Consolidated Smart Systems sometimes or always fails to begin providing service until weeks after the date it promises. I believe that the excluded providers try to minimize the interruption in service, but that their technicians' schedules do not allow them to repeatedly reschedule the interruption dates every time that Consolidated Smart Systems fails to keep its installation date commitments.
- 3) "They offer deals substantially below cost..." All of the offers that I know were below cost were made by Consolidated Smart Systems. Additionally, it failed to honor any of these offers. It used the offer of below cost services to entice customers and exclude or eliminate

competitors, charged those customers more than the amounts offered, and failed to provide the services it had offered them. In my opinion, making a below cost offer and not honoring it is as bad as, or worse than, making such an offer and honoring it. In summary, Consolidated Smart Systems is guilty of what it alleges its competitors have done (making the below cost offers), but its competitors at least honor their offers.

- 4) "Nothing in their behavior has signaled that they want to exist competitively in the market." While misleading, this statement is technically correct because:
 - a) They have no opportunity to signal whether they wish to exist competitively because, as Mr. Terheggen later admits, Consolidated Smart Systems only does business where it can obtain exclusive contracts and refuses to allow them to exist competitively.
 - b) No honest company wishes to exist competitively with a dishonest competitor. All reputable businesses wish to compete only with other legitimate businesses, and not with criminals who can undercut their prices because they have no intention of delivering the purchased goods or services.
- 5) "On the contrary everything that they do is about eliminating me from the market altogether." I do not know if this is true. If it is true, it is because the abusive use of exclusive contracts by Consolidated Smart Systems keeps them from even offering their services to anyone in the market that Consolidated Smart Systems serves, which consists only of properties whose owners consent to exclusive contracts. If Consolidated Smart Systems served properties without exclusive contracts, then its competitors could coexist, at least until the customers learned that Consolidated Smart Systems customers are actually charged more, even though they are told they will be charged less, and do not receive the promised services.
- 6) "It is only because I have been in business for so long..." While not inaccurate, this statement is misleading. Consolidated Smart Systems has not retained customers for the stated amount of time. Rather, it has remained in business for so long only because its exclusive contracts ensure that no other provider can ever serve the properties in question. Even when, as inevitably happens, tenants decide that they do not want the services of Consolidated Smart Systems, either:
 - a) The tenant cancels the service and Consolidated Smart Systems agrees to remove its equipment from the tenant's apartment, but it fails to do so, and continues to charge the tenant for the service.
 - b) The tenant is forced to move to a building where service from another company is available, thereby allowing the landlord to rent the apartment to another unsuspecting tenant, who is also forced to become a Consolidated Smart Systems customer, who can also be overcharged.

In my case, both of these things happened: I was called to cancel in February, was told the equipment removal would occur in February, was billed for March, was forced to move in April, am still storing the equipment (in July), and have not even been paid to store the equipment that I am not using.

- 7) **"If you choose to eliminate the one foothold which I have, namely exclusive contracts, you would effectively eliminate me from the market." I fully agree! No tenant would ever even consider doing business with Consolidated Smart Systems if they could obtain service from another provider. It is only by contractually excluding all companies that are acceptable to tenants that any company as unacceptable to customers as Consolidated Smart Systems can stay in the market. Even if the Federal Communications Commission should reject every other reason for prohibiting exclusive contracts, the fact that Consolidated Smart Systems, by its own admission, will be eliminated from the market, is a sufficient reason to prohibit exclusive contracts. The dire need to secure some other option for persons living in buildings where Consolidated Smart Systems holds exclusive contracts outweighs all other considerations. Exclusive contracts must be prohibited at once to stop Consolidated Smart Systems from harming any more tenants!**
- 8) "By eliminating myself and other PCO's, the market would revert back to the way it was not so long ago, a monopoly controlled by the franchise players and the Telco's." This sentence is amazing in that it appears to be one statement, but actually has three false statements nested within it.

- a) Eliminating exclusive contracts will not eliminate all PCO's. It will eliminate only those PCO's, such as Consolidated Smart Systems, who are unable or unwilling to provide tenants with acceptable service or accurate bills. Those PCO's that, unlike Consolidated Smart Systems, try to attract tenants with superior service or products, will survive and flourish.
 - b) If, as Mr. Terheggen admits will happen, the franchise cable operators and the telephone companies are both in the market, they will compete against each other to offer video services and neither will have a monopoly. Additionally, if exclusive contracts are prohibited, tenants will also have the option of using an individual satellite antenna to receive DISH Network or DirecTV without the services of Consolidated Smart Systems.
 - c) Where exclusive contracts exist, the holder of the exclusive contract has a monopoly. If the current trend continues, Consolidated Smart Systems may achieve a statewide monopoly before it achieves its first satisfied customer.
- 9) "Exclusive contracts are at the very core of our business model." This is unfortunate. The core of most business models is the attraction of customers through superior service, low prices, wide selection, or other characteristics desired by the persons who pay to receive the service. Mr. Terheggen has elected a different model, based on using exclusive contracts to ensure that tenants have no choice of service provider, no matter how unsatisfactory they find Consolidated Smart Systems. In making this decision, he assumed the financial risk that the government might rightly seek to protect consumers. The tenants subject to these contracts, to which they never consented, such not have to pay for his poor choice of business model.
 - 10) "If the purpose for your review is indeed to increase competition then exclusive contracts should be awarded to PCO's and not to the franchise cable operators.... Allowing smaller companies to continue to offer exclusive agreements would even out the playing field a bit." If PCO's are allowed to obtain exclusive contracts and franchise cable operators are not, then PCO's will use exclusive contracts to exclude franchise operators from the market, PCO's will have a monopoly, and there will be no playing field. The only "field" on which Consolidated Smart Systems plays is the field where it competes for exclusive contracts; prohibiting its competitors from playing on that field will eliminate its only competition. Incidentally, Consolidated Smart Systems is the "largest satellite video provider to the multi-housing industry in the Western United States" ("Multiband Completes Sale of Certain California-based Video Subscribers To Consolidated Smart Systems", Business Wire, March 6, 2007), not a "smaller company".
 - 11) "Their [franchise cable operators'] access to capital and market share dominance can continue to allow them to be a viable alternative." They are not currently a viable alternative for tenants whose landlords have entered into exclusive contracts with Consolidated Smart Systems. These tenants have no alternative other than to attempt to obtain some service from Consolidated Smart Systems, live with no service, or move. The last of these is not an option for tenants who cannot afford to move or have leases that they cannot cancel.
 - 12) "I cannot express strongly enough how critical an issue this is for my company and the PCO industry at large." I think that he has expressed quite well exactly how critical exclusive contracts are to companies that are unsatisfying to the tenants who pay for the companies' services, which they may or may not receive. As Mr. Terheggen admits, exclusive contracts are the only way for a company like Consolidated Smart Systems to survive. If exclusive contracts are prohibited, then the market will be reduced to companies whose business models are based on serving customers. The only aspect of the critical nature of this issue to the PCO industry that he has not yet adequately expressed is that the abolishment of exclusive contracts is critical to reputable PCO's, who wish to provide service at reasonable prices, but cannot either because Consolidated Smart Systems holds contracts that exclude them or because landlords demand PCO's obtain exclusive contracts by agreeing to pay outrageous commissions that Consolidated Smart Systems can afford only by overcharging the tenants.
 - 13) "I am more than [sic] happy to travel to Washington DC to testify or communicate in whatever fashion you would deem necessary..." Sadly, Mr. Terheggen has never made such an offer to me, even though I live much closer. Perhaps, if he were willing to speak with his

dissatisfied customers, he might learn how to run a provider in such a way that customers voluntarily choose it over its competitors, rather than having to resort to exclusive contracts. Instead, customers are forced to deal with an unresponsive call center that refused to allow me to speak to a manager, even after I was explicitly ordered by the police to demand to do so. (The reason that I had called the police related to one of the employees of Consolidated Smart Systems using my identity to enter into a binding contract with DirecTV without my authorization to do so, not to the exclusive contracts. However, this employee would never have been able to obtain my identity if his employer did not have an exclusive contract. His dishonesty was so obvious that, even if he were offering free service, I would have elected to do business with his competitor, if I had that option.)

I think it is noteworthy that Mr. Terheggen's letterhead says that Consolidated Smart Systems is a "proven resource to increase ancillary profit" (for landlords), but makes no mention of offering any advantage for tenants.

Within two weeks of the NPRM being posted on ECFS, I submitted, in appendices to my own comments, a copy of my own affidavit (which was originally prepared because Consolidated Smart Systems had caused by landlord to violate 47CFR1.4000 by prohibiting me from using an individual antenna to obtain service without using the Consolidated Smart Systems monopoly) and the comments of twelve other persons who variously described Consolidated Smart Systems as "unethical", "rude", "bad", "terrible", to be "avoid[ed] at any cost", "the worst experience of my adult life", "unprofessional", "sleazy", "a--holes", etc., and accused it of failing to provide service, stealing, fraud, double billing, continuing to charge multiple credit cards and to bill customers months after their service was cancelled, failing to deliver promised refunds, failing to return telephone calls, generally making an MDU be like a "Nazi [concentration] camp", and numerous other offenses. (In defense of Consolidated Smart Systems, the person who made the point about concentration camps was being excessive, in that the Nazis actually murdered their victims, but Consolidated Smart Systems, although it may make its victims wish they were dead, does not kill them directly.) Additionally, Delin Parada submitted comments on June 18, the original due date for comments, saying "I believe companies such as Consolidated Smart Systems (Consolidatedsmart.com, CSS - Gardena, CA), impeded competition and do a great disservice to the consumer", that Consolidated Smart Systems had charged twice as much for Internet as Verizon and 2.5 times as much as Time-Warner, and that the exclusivity had made it impossible to receive adequate support or service.

Mr. Terheggen's letter was dated over three months after the NPRM was adopted and was received after the extended due date and after fourteen negative opinions of Consolidated Smart Systems and its exclusive contracts were presented on time in this proceeding. Yet, he has still failed to show even one documented case of a satisfied tenant. Perhaps there are none.