

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 comments regarding

- a) small providers that depend on exclusive contracts
- b) "competition"
- c) return on investment, risk assumption, etc.
- d) free market forces

I.

Whether we like it or not, smaller companies are often less efficient, because they cannot benefit from the "economies of scale" that larger entities enjoy. The larger companies that have lower costs, due to economies of scale, can pass the cost savings along to consumers. In a free market, consumers may voluntarily choose either to pay the higher prices charged by a smaller company, *if* they feel that its service or products are sufficiently superior, or to save money by purchasing from the larger company. As the United States Department of Justice has noted, "when one firm's vigorous competition and lower prices take sales from its less efficient competitors—that is competition working properly" (http://www.usdoj.gov/atr/public/div_stats/211491.pdf). This is essential to a free market. If firms with lower prices are not able to take sales from their competitors, because the competitors hold exclusive contracts, then none of the firms have an incentive to reduce prices. Guaranteed market share does not preserve, or even permit, properly functioning competition.

Preserving the smaller companies through contractual arrangements that allow them to pay landlords to exclude the larger, more efficient companies from serving tenants creates an artificial economy. It allows the companies to charge higher prices and yet remain in business. The higher overhead costs that are inherent in smaller operations are passed onto the consumer, who is denied the option of patronizing the larger firm that charges less. The larger firm also has no incentive to reduce prices, because it knows both that the residents subject to exclusive contracts have no choice and that its competitors do not seek to serve customers not subject to exclusive contracts.

Further, because the exclusive contracts are primarily found in rental properties, the cost is borne almost entirely by persons who do not own their homes, including those who are least able to afford that cost. Meanwhile, those who are wealthy enough to purchase homes are able to patronize whichever provider offers the lowest price. Not only do exclusive contracts subsidize providers with higher costs by excluding lower cost providers, they shift the burden of this subsidy from homeowners to tenants. Even if it were sound economic policy to preserve providers with higher costs, it would still be incumbent upon the government to ensure that this subsidy was either borne equally by all consumers, or borne primarily by those who could most afford it, and certainly not to let it be borne primarily by those who can least afford it.

II.

The risk of losing money is also a critical feature of a capitalist economy. This is essential to ensure that parties that invest in any enterprise, especially a small or new business, evaluate the demand for the goods and services that the firm will provide, the firm's costs, and the quality of its products. When this process occurs, the best firms are most likely to receive the investment capital. When revenues are protected by exclusive contracts, investment capital goes to the

firms holding the contracts, even if their products or services are inferior to those of the excluded firms.

Because of the risk that customers may favor the firm's competitors, successful investors are rewarded with potentially higher returns. Many commenting parties have suggested allowing exclusivity for a sufficient period of time to allow investors to achieve an adequate return on investment before customers have an unrestricted choice of provider, so that investors will not risk their capital. Many commenting parties complain that they have difficulty securing capital because investors correctly recognize the risk inherent in investing in their companies. However, investment in telecommunications companies, especially small or new ones, is not appropriate for parties that seek an absolute guarantee of a positive return on investment. Parties with such a low risk tolerance are free to invest in FDIC-insured bank certificates of deposit, or similar investments, and to earn a considerably lower rate of return. Instead, they unreasonably seek higher returns without the corresponding higher risks, which exist only if there is customer choice.

III.

Ironically, some proponents of exclusive contracts have taken to using capitalist-sounding phrases such as "free market" and "competition". Yet, the cornerstone of the modern notion of capitalism is that the greatest good is achieved if every consumer is free to decide from whom to purchase goods or services on mutually agreeable terms, without interference from any third party, and that the "invisible hand" of unrestricted customer choice will produce a better result than would occur through the actions of any intervening third party (paraphrased and summarized from the work of Adam Smith, including *The Wealth of Nations*). Even if it were true that landlords seek to enter into contracts with the provider whom they believe to be best for the tenants (which I seriously doubt), the proper term for an economic system in which a benevolent party, other than the consumer, decides what is best for the consumer and prohibits the consumer from making any other decision, is "communism". In the Soviet Union, China, and other countries, parties given the power to decide what was best for the consumer instead made decisions out of self-interest, often in response to bribes, and without regard to the customers' interests. Landlords who select inferior providers in return for "ancillary profit" (the euphemism by which Consolidated Smart Systems describes its payments to landlords) differ from communist regimes only in that communist states at least openly acknowledged their opposition to true capitalism.

Numerous beneficiaries of exclusive contracts have submitted comments in which they use the pretense of favoring of a market economy to urge the continuation of a system that gives absolute power to a (hopefully) benevolent dictator who decides what is best for the customer living on the land that he rules. Reading these comments, I am reminded of Abraham Lincoln's utter contempt for those who pretend to favor ideals of liberty and freedom while actually supporting Russian-style policies that give all power and choice to a select few and deny it to everyone else. Not knowing that Russia would free its serfs before the United States finished freeing its slaves, he wrote

As a nation, we began by declaring that "*all men are created equal*." We now practically read it "*all men are created equal, except negroes*" When the Know-Nothings get control, it will read "*all men are created equal, except negroes, and foreigners, and Catholics.*" When it comes to this I should prefer emigrating to some country where they make no pretence of loving liberty -- to Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy [sic].

Of course, Russia has already abandoned communism and embraced capitalism. The question now before the Federal Communications Commission is nothing less than whether the United States will again follow Moscow's lead in adopting the freedoms of which we only speak.