

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

This is a reply to a communication from Mark Scifres baselessly accusing me of “inaccurate and misleading filings” and “erroneous assertions” relating to service levels provided by PCOs to MDU residents and owners.

First, my prior filings related primarily to the service levels, or lack thereof, provided by Consolidated Smart Systems in California, and were accurate. Mr. Scifres does not indicate that he has any knowledge of the service levels provided by Consolidated Smart Systems and is presumably basing his entire communication on the assumption that the entire industry follows the service level commitments that he describes. This is unfortunately not the case. I made no reference to the service levels provided by Pavlov Media. [There is some circumstantial evidence that the companies’ service levels differ. For example, Pavlov Media’s letterhead has the slogan or motto “you ring. we respond.”, referring to responsiveness and not to profit, while the letterhead of Consolidated Smart Systems has a slogan or motto that refers only to “profit” for landlords, and not to service, responsiveness, or anything for tenants. Also, the Better Business Bureau says that they have over ten times as many complaints against Consolidated Smart Systems as they do against Pavlov Media.] If Pavlov Media does provide better service than Consolidated Smart Systems, then I apologize to Mr. Scifres and the Federal Communications Commission for any implication that the entire industry was corrupt. However, even if not every holder of an exclusive contract uses it to mistreat customers, the harm done by those who do take advantage of exclusivity to act badly more than offsets any possible benefit from allowing exclusivity for all providers, good and bad alike. We do not legalize all narcotics merely because we find an isolated case of a nonviolent addict. While the Federal Communications Commission cannot, as a practical matter, enforce a prohibition against “poor customer service”, it can at least ensure that dissatisfied customers are free to change providers.

Second, Mr. Scifres refers to “the service levels PCOs often must provide to MDU residents and owners.” Present regulation does not require PCOs to meet any minimum service level unless the owner requires it before granting exclusivity. When MDU owners neglect, whether out of ignorance or out of greed, to insist on a particular service level, the PCO or other provider is free to decide what level of service will be provided, because any provider wishing to provide a higher level of service is excluded.

Third, Mr. Scifres’s statements

One unit vacated by an unhappy resident is far more important than a revenue share. Therefore, MDU owners do that which is needed to keep residents happy so that they continue as residents and pay rent.

are contradicted by the evidence. In the apartment building where I used to live, the landlord, in violation of 47CFR1.4000, stated that if I attempted to operate my own antenna to obtain service without using the exclusive provider, I would be evicted. A unit vacated through eviction is at least as harmful to a landlord’s financial position as a unit vacated voluntarily, and probably worse (due to legal expenses), but the landlord was willing to risk a brief interruption in rent rather than lose the perpetual stream of revenue from the exclusive provider. Ultimately, I was required to move because I was unwilling to pay more for service through the exclusive provider than I had been told by the exclusive provider and the landlord that I would be charged. To the best of my knowledge, every rent-paying tenant was unhappy with the exclusive provider and the only

resident who was happy with the exclusive provider was the apartment manager. When I was talking to the apartment manager, more tenants came by to complain to him about the exclusive provider than to complain about all other topics combined. One of the other tenants (not myself) even told me that he would resort to violence (assaulting an employee of the exclusive provider) if service did not improve.

Fourth, Mr. Scifres's rhetorical questions:

That then raises the question, why would a real estate owner choose an inferior telecom provider to service residents? Also, why would they agree to do business with companies that cannot offer Service Level Agreements (SLAs)?

can both be answered in one word: Money, or as Consolidated Smart Systems prefers to call it "ancillary profit".

Fifth, his statement

MDUs find it almost impossible to get the large providers, our competitors, to agree to meaningful SLAs.

is irrelevant in the case of Consolidated Smart Systems, which does not keep the agreements that it does make or do the things that it does agree to do. The existence of an agreement is of no use unless there is at least a possibility that, should the provider breach the agreement, the customer may switch to another provider. If Pavlov Media keeps its agreements, I applaud this, but there is nothing in current regulation to ensure that others do so.

Sixth, his statement

PCOs and MDUs negotiate and agree on the content of the SLA - that benefits residents and consumers.

is presented as fact without any logical basis. The negotiations between the PCO and the MDU owner ensure only that the agreement benefits the PCO and the MDU owner. If Mr. Scifres truly wants to ensure that agreements benefit residents and consumers, he should negotiate directly with them, instead of imposing on them whatever he negotiates with their landlords.

Seventh, his statement

Without exclusive contracts there will not be PCOs.

is simply false. Without exclusive contracts, there will be PCOs with sufficient service to cause tenants to choose to use the PCO. There will no longer be PCOs with such poor service that no one would use them unless all other providers were excluded. The elimination of any company so poor that no one would use it if given the option to select another company is a good thing.

Eighth, his statement

If that is the case MDUs will only be able to accept what the large providers are willing to provide and that would mean no SLAs.

is true only if one assumes that only the large providers are willing to provide service and prices that are acceptable to tenants and that no tenant would voluntarily select a small provider unless the large providers were excluded. Without exclusive contracts, any provider, regardless of size, will be able to be accepted, if it offers something sufficiently acceptable to customers so that they voluntarily choose it over its competitors. The tenants will gain the option to accept what the large providers offer, or what the small providers offer. Furthermore, nothing in the elimination of

exclusive contracts precludes a PCO and a customer from entering into an SLA negotiated between the PCO and the SLA. Moreover, the elimination of exclusive contracts would allow customers to choose a provider offering a higher level of service than provided in the SLA negotiated between the landlord and the provider.

Ninth, the correctness of his statement

That is not effective competition.

depends on how "competition" is defined. If it is defined as providers bidding for the right to receive exclusivity that will be awarded to whichever provider offers the most money to the landlord, then Mr. Scifres is correct. If it means many providers in a city, but only one available in each building, then he is still correct. But if it means that customers can choose from whom to buy and that any provider which satisfies its customers survive (even if the rest do not), then he is not.

Finally, while I do not know if the "Service Level Agreement" that he exhibits is "often used", it is not always used, or at least it is not always enforced. For example, while the agreement mentions 98% of service orders being completed on time, I am not sure if Consolidated Smart Systems has ever completed even one service order on time. I know that they announce an earlier date for when their excluded competitor will be replaced by them than the date on which they actually begin providing service; I am not sure if they are merely incompetent or they intentionally advertise an unrealistic date so that customers will order sooner, preferably before learning of the company's poor reputation. Even if Pavlov Media does provide acceptable service levels, exclusive contracts allow the landlord, rather than the recipient of the service, to select a provider that does not meet the service levels exhibited, and to exclude all providers who do meet the service level exhibited.