

M I L L E R & V A N E A T O N
P. L. L. C.

MATTHEW C. AMES
KENNETH A. BRUNETTI*
FREDERICK E. ELLROD III
MARCI L. FRISCHKORN
GAIL A. KARISH*
WILLIAM L. LOWERY
NICHOLAS P. MILLER
MATTHEW K. SCHETTENHELM
JOSEPH VAN EATON

*Admitted to Practice in
California Only

1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4320
TELEPHONE (202) 785-0600
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.
580 CALIFORNIA STREET
SUITE 1600
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE (415) 477-3650
FAX (415) 477-3652

WWW.MILLERVANEATON.COM

OF COUNSEL:
JAMES R. HOBSON
GERARD L. LEDERER
WILLIAM R. MALONE
NANNETTE M. WINTER†

†Admitted to Practice in
New Mexico Only

September 28, 2007

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of *ex parte* communications in MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments.

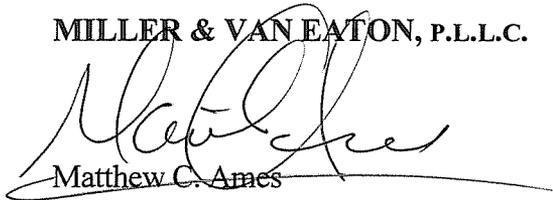
Dear Ms. Dortch:

On September 28, 2007, the attached letters were sent on behalf of the Real Access Alliance to Rick Chessen of Commissioner Copps's office and to Rudy Brioche of Commissioner Adelstein's office in connection with the matter identified above.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By


Matthew C. Ames

Attachment
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September 28, 2007

BY E-MAIL AND FIRST CLASS MAIL

Mr. Rick Chessen
Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video
Services in Multiple Dwelling Units and Other Real Estate Developments.

Dear Mr. Chessen:

Last week, in a meeting with Commissioner Copps, representatives of the Real Access Alliance were asked how common so-called "perpetual" agreements are between property owners and video services providers. We stated that they are uncommon, based on a survey conducted by the National Multi Housing Council in early 2002, upon which the Commission relied in its previous order on this issue. *Telecommunications Services Inside Wiring, Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342 (2003), at ¶ 76, n. 195. Attached for your reference is a copy of that survey, as submitted to the Commission at that time. In summary, it shows that in early 2002 perpetual agreements represented fewer than 5% of agreements.

As the Real Access Alliance stated in its comments in this proceeding, property owners are well aware of the drawbacks of perpetual agreements. Property owners today report that they have very few, if any, such agreements, and it is their policy not to sign such agreements. There is no reason to believe that the proportion of "perpetual" agreements is any larger now than in 2002, and indeed it is probably smaller for the reason just stated. Because significant numbers of

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- 2 -

property owners are not “locked in” to unfavorable contracts, the issues before the Commission in this docket are best left to the market. Accordingly, we once again urge the Commission not to proceed any further with this matter.

Very truly yours,

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By


Matthew C. Aimes

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MATTHEW C. AMES
KINSETH A. BRUNETTI†
FREDERICK E. ELLROD III
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WASHINGTON, D.C. 20036-4320
TELEPHONE (202) 785-0600
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HOLLY L. SAURER
JOSEPH VAN EATON

†Admitted to Practice in
California Only

Incorporating the Practice of
Miller & Holbrooke

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400 MONTGOMERY STREET
SUITE 501
SAN FRANCISCO, CALIFORNIA 94104-1215
TELEPHONE (415) 477-3650
FAX (415) 477-3652
WWW.MILLERVANEATON.COM

OF COUNSEL:

JAMES R. HOBSON
GERARD L. LEDERER**
JOHN F. NOBLE

**Admitted to Practice in
New Jersey Only

February 6, 2002

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Suite 110
236 Massachusetts Avenue N.E.
Washington DC 20002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket No. 95-184

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List A B C D E

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, the Real Access Alliance (the "RAA") submits this original and one copy of a letter disclosing an oral and written ex parte presentation in the above-captioned proceedings. On February 5, 2002, the following individuals met with representatives of the Cable Bureau:

Jim Arbury
Rob Cohen
Matt Ames

National Multi Housing Council
National Association of Real Estate Investment Trusts
Miller & Van Eaton

The Commission staff members present were: Holly Berland, Eloise Gore, Bill Johnson, Cheryl Komegay, John Norton, Royce Sherlock, and Sarah Whitesell.

The Real Access Alliance representatives presented the results of the survey regarding "perpetual contracts" addressed in the enclosed written ex parte materials. In addition, during the discussion, Commission staff asked whether the RAA had obtained data dealing with the existence of competitive providers. Although the survey included a question on this point, the results were not included in the report because they were ambiguous. The following information is supplied in response to that question, subject to the preceding caveat:

- Of the MDU owners contacted who reported owning buildings subject to perpetual contracts, owners of 44,528 units expressed a desire to renegotiate an existing perpetual contract. Respondents who stated that they owned buildings subject to perpetual contracts were asked if a competitive provider was available in the area.
- Owners of 7,771 units stated that there was no competitor available.
- Owners of 3,000 units, however, checked all three options and responded "yes," "no," and "do not know." Presumably this means that some buildings were in areas with competition, and other were not, but it is impossible to tell how many.
- Owner of 3,334 units responded "yes," and "do not know," again creating some confusion.
- Owners of 1,437 units responded "do not know."
- Owners of 28,896 units responded simply "yes," suggesting that their units were located in areas where competitors clearly exist. But given the uncertainty raised by some of the answers, as discussed above, there may have been a flaw in the survey design with respect to this question: they may have meant that a competitor was available for some units but not for all. This also raises the possibility that those respondents who said only "no" were also responding incompletely.

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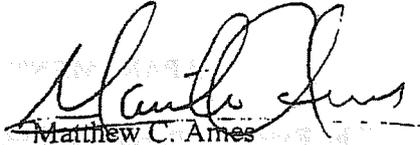
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Please contact me with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

- cc: Holly Berland
- Eloise Gore
- William Johnson
- Cheryl Kornegay
- John Norton
- Royce Sherlock
- Sarah Whitesell

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OFFICE OF THE SECRETARY

APARTMENT (MDU) VIDEO SURVEY

The Extent of Perpetual Video Contracts in the Apartment Market

February 1, 2002

Prepared by:

The National Multi Housing Council/National Apartment Association
Joint Legislative Program
1850 M St., NW
Suite 540
Washington, DC 20036

Phone: 202-974-2300

The American apartment industry . . . working together for quality, accessible, affordable housing.

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INTRODUCTION

Television video service is extremely important to owners and residents of multiple dwelling unit (MDU) communities. The ability of MDUs to obtain the best possible service at a reasonable price is determined by many marketplace realities. In the early days of cable television service to MDUs there usually was no competition among providers in a given geographic market. This led to the existence of so-called "perpetual" contracts whereby the video provider had a lock on the market and could dictate contract terms that gave the provider the right to provide video service to a given MDU property for as long as the provider had the local franchise for cable delivery. While these types of contracts are no longer being negotiated, there has been continuing speculation about the extent of such contracts in existence in the MDU market.

In December 2001 and January 2002, the National Multi Housing Council and National Apartment Association conducted two surveys of the MDU market seeking information on the extent of perpetual video contracts in existence. The results of these surveys are contained in this report.

PERPETUAL VIDEO CONTRACTS

A perpetual video contract is generally a contract for video delivery to a given property for as long as the provider is the franchised operator in that jurisdiction. For purposes of this survey, a "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the provider's franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) has a term of 25 years or more (including automatic renewals) with a provider. In other words, a perpetual contract is one that keeps an MDU community owner from ending the service or taking control of the cable wiring either forever or for so long that the MDU owner has no practical alternative but to deal with the existing video service provider.

THE SURVEY

As can be seen in Exhibit A, the MDU (defined here as properties with 5 or more dwelling units) market is comprised of 518,820 properties with 15,029,100 dwelling units. Properties with 100 or more units make up just 32,882 properties with 7,433,660 units. For this reason, two surveys were conducted in order to seek information on the larger properties and the smaller properties.

Approximately 110 members of the National Multi Housing Council were asked to answer the questions shown in Exhibit B attached. These questions included: (1) the number of properties and units owned by the respondent as of December 1, 2001; (2) the number of properties and units with perpetual video contracts in existence; and (3)

whether the respondent would like to negotiate a new contract or obtain a new video provider if it were not hindered by the perpetual contract. Reasons for wanting to renegotiate were also asked. Finally, the respondents were asked if there were other competitors in the market and if they had signed a perpetual agreement within the past five years.

Because many of the members of the National Multi Housing Council are owners of MDU communities that have 100 or more units, a second survey was conducted using the yellow pages. Seventy-four properties were selected at random in 32 of the smaller markets across the country. A short version of the survey (see Exhibit C) was used for this purpose. Exhibit D shows the cities that were included in the survey.

SURVEY RESULTS

Approximately 40 percent of those asked to respond to the National Multi Housing Council survey submitted information.

A. Survey of Larger Properties

Following is a summary of the information obtained:

LARGER PROPERTIES	
Number of Properties.....	4,795
Number of Units.....	1,207,184
Number of Properties with Perpetual Contracts.....	241
Number of Units Covered by Perpetual Contracts.....	58,208
Percentage of Units Covered by Perpetual Contracts.....	4.8%
Percentage of Units Covered by Perpetual Contracts where the Owner would like to Renegotiate.....	3.7%

The following are the reasons for wanting to renegotiate or bring in a new provider, ranging from "1" for a low reason to "5" for a high reason. The responses were weighted and averaged depending upon the number of units in the properties.

Provider has record of poor response to resident complaints.....	2.9
Record of frequent outages, poor reception, bad service.....	2.6
Poor programming options.....	3.2
Lack of new services or technology.....	3.8
Rates to residents are too high.....	2.6
Residents say they want competition.....	2.7
Level of compensation to owner is too low.....	4.6

B. Random Survey of Smaller Properties

Following is a summary of the information obtained:

SMALLER PROPERTIES	
Number of Properties in the Survey.....	74
Number of Respondents.....	53
Number of Properties with Perpetual Video Contracts.....	2
Percentage of Properties with Perpetual Video Contracts.....	3.8%

COMMENTS ON THE SURVEY RESULTS

Surprisingly, both surveys indicate that the number of perpetual video contracts is less than 5 percent of the entire MDU marketplace. It had been widely thought that the percentage was much higher. The fact that both the survey of large National Multi Housing Council communities and the random survey of smaller properties came out nearly identical might suggest that there is no real disparity between large and small properties or large and small metropolitan areas.

The actual data gathered from the NMHC sample included a broad array of high-end, middle-income, and lower income properties. In most cases, respondents with perpetual contract properties reported competitive alternatives to the existing provider and in all cases, no perpetual agreements had been entered into during the past five years.

The surveys were conducted over the holidays and the year-end. This may account for the difficulty in obtaining more raw information. The smaller properties' survey was especially difficult because the number of non-respondents was due to either no central phone source (just an answering service to handle any building service problems) or a refusal to answer the survey despite repeated call-backs.

CONCLUSION

Perpetual video contracts are still part of the MDU landscape although at a much lower percentage than previously thought. Where they do exist, they can be very troublesome for that particular apartment community.

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EXHIBIT A

DISTRIBUTION OF APARTMENTS BY SIZE OF PROPERTY

Number of Rental Units on Property	# of Properties	% of Total Properties	# of Apartments	% of Total Apartments
5 to 9	281,500	54.3%	1,897,700	12.6%
10 to 14	70,390	13.6%	862,280	5.7%
15 to 19	36,780	7.1%	602,260	4.0%
20 to 29	38,000	7.3%	916,750	6.1%
30 to 39	18,166	3.5%	604,240	4.0%
40 to 49	14,431	2.8%	702,790	4.7%
50 to 99	26,694	5.1%	2,009,400	13.4%
100 to 199	19,804	3.8%	2,952,300	19.6%
200 to 299	7,775	1.5%	1,948,400	13.0%
300 to 399	2,966	0.6%	1,058,800	7.0%
400 to 499	1,307	0.3%	605,130	4.0%
500 to 749	723	0.1%	431,360	2.9%
750+	307	0.1%	437,670	2.9%
TOTAL	518,820	100.0%	15,029,100	100.00%

Source: NMHC tabulation of unpublished data from the U.S. Census Bureau's 1995-1996 Property Owners and Managers Survey.

Note: Statistics refer to privately owned housing and do not include the 13,493

Public housing projects or their 1,326,000 apartments (HUD estimates for 1995-1996).

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EXHIBIT B

APARTMENT (MDU) VIDEO SURVEY

The following questions will provide vital information on market conditions for cable/satellite video service to apartment communities. Please fill in the information for your company and respond by fax to Jim Arbury of NMHC/NAA at 202-775-0112. If you have any questions regarding the survey, call Jim at 202-974-2321 or email him at jarbury@nmhc.org. All individual replies will be held in strict confidence.

All information should be given for properties owned as of December 1, 2001.

SURVEY QUESTIONS

1. How many different properties do you own (do not include properties you manage, but do not own)?

Number of properties owned _____

2. How many total units are there on properties owned?

Total number of units _____

3. How many of the properties that you own are covered by perpetual contracts for video service?

A "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the providers franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) a video contract with a provider that has a term of 25 years or more (including automatic renewals).

In other words, a perpetual contract is one that keeps you from ending the service or taking control of the cable wiring either forever or for so long that you have no practical alternative but to deal with the existing video service provider.

Number of properties with perpetual contracts _____

4. How many units are on those properties covered by perpetual video contracts?

Number of units with perpetual contracts _____

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IF THE ANSWER TO 3 & 4 ABOVE IS ZERO, DISREGARD
QUESTIONS 5 - 9.

5. For properties covered by perpetual video contracts, please show a percentage of units covered according to the following three categories:

- a. High-end properties _____ %
- b. Middle income properties _____ %
- c. Lower income properties _____ %
- total 100 %

6. If you could, would you like to be able to renegotiate or terminate any of the perpetual video contracts that currently cover your properties?

Yes _____ No _____

If you would like to renegotiate or terminate, how many units would be involved (do not include units covered by perpetual contracts where you really have no complaints about service, programming, etc.)?

Units you would like to renegotiate/terminate _____

7. Rank on a scale of 1 -5 (1 being low and 5 being high) your reasons for wanting to renegotiate/terminate the perpetual video contracts listed in answer 6 above:

- a. Record of poor response to resident complaints? rank (1-5) _____
- b. Record of frequent outages, poor picture quality or otherwise bad service? _____
- c. Poor programming offerings, such as low number of channels or inability to meet resident programming requests? _____
- d. Lack of new or advanced services such as internet access or high-speed internet? _____
- e. Rates to residents are too high? _____
- f. Residents say they want competition? _____
- g. Level of revenue share or compensation to the property owner is too low? _____
- h. Other? _____

8. Are there other competitive video programming providers that would be interested in serving those units covered by perpetual contracts if the existing provider agreement was terminated?

Yes _____ No _____ Don't Know _____

3/1/2010

9. Has your company entered into any new perpetual video contracts (as defined in question 3 above) in the last five years?

Yes _____ No _____ Don't Know _____

Name of your company _____

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EXHIBIT C

APARTMENT (MDU) VIDEO SURVEY

Short Version

Hello, I am _____ from the National Multi Housing Council and National Apartment Association. I need to ask you a couple of questions about your TV video service at _____. It will only take one or two minutes maximum. This information is part of a study we are doing on video service to apartments.

SURVEY QUESTIONS

1. How many apartment units are at this property? _____ units
2. Please describe your property. Would it qualify as a property that appeals to upper incomes _____, middle incomes _____, or lower incomes _____
3. Does the company that provides video service to your property have a right to be there forever or can you get out of the contract at some point?

Perpetual _____ Not Perpetual _____

(if they need an explanation)

A "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the providers franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) a video contract with a provider that has a term of 25 years or more (including automatic renewals).

In other words, a perpetual contract is one that keeps you from ending the service or taking control of the cable wiring either forever or for so long that you have no practical alternative but to deal with the existing video service provider.

1. IF THE ANSWER TO 3 ABOVE IS ZERO, DISREGARD QUESTIONS 4 - 6.

4. If you could, would you like to be able to renegotiate or terminate any of the perpetual video contracts that currently cover your properties?

Yes _____ No _____

5. Rank on a scale of 1 -5 (1 being low and 5 being high) your reasons for wanting to renegotiate/terminate the perpetual video contract

- | | <u>rank (1-5)</u> |
|---|-------------------|
| a. Record of poor response to resident complaints? | _____ |
| b. Record of frequent outages, poor picture quality or otherwise bad service? | _____ |
| c. Poor programming offerings, such as low number of channels or inability to meet resident programming requests? | _____ |
| d. Lack of new or advanced services such as internet access or high-speed internet? | _____ |
| e. Rates to residents are too high? | _____ |
| f. Residents say they want competition? | _____ |
| g. Level of revenue share or compensation to the property owner is too low? | _____ |
| h. Other? | _____ |

6. Are there other competitive video programming providers that would be interested in serving your property if you terminated the contract with the existing provider?

Yes _____ No _____ Don't Know _____

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EXHIBIT D

CITIES INCLUDED IN THE SHORT VERSION SURVEY

Akron, OH	Jackson, TN
Albuquerque, NM	LaCrosse, WI
Amarillo, TX	Lansing, MI
Beaumont, TX	Little Rock, AR
Beckley, WV	Louisville, KY
Birmingham, AL	Pittsburgh, PA
Boise, ID	Portland, OR
Charlotte, NC	Pueblo, CO
Chattanooga, TN	Reno, NV
Columbus, OH	Rock Hill, SC
Des Moines, IA	Shreveport, LA
El Paso, TX	Spokane, WA
Ft. Collins, CO	Tampa, FL
Fresno, CA	Toledo, OH
Huntington, WV	Utica, NY
Jamaica, NY	Wilmington, NC

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WASHINGTON, D.C. 20036-4320
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September 28, 2007

BY E-MAIL AND FIRST CLASS MAIL

Mr. Rudy Brioche
Legal Advisor
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video
Services in Multiple Dwelling Units and Other Real Estate Developments.

Dear Mr. Brioche:

Last week, in a meeting with Commissioner Adelstein, representatives of the Real Access Alliance were asked how common so-called “perpetual” agreements are between property owners and video services providers. We stated that they are uncommon, based on a survey conducted by the National Multi Housing Council in early 2002, upon which the Commission relied in its previous order on this issue. *Telecommunications Services Inside Wiring, Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342 (2003), at ¶ 76, n. 195. Attached for your reference is a copy of that survey, as submitted to the Commission at that time. In summary, it shows that in early 2002 perpetual agreements represented fewer than 5% of agreements.

As the Real Access Alliance stated in its comments in this proceeding, property owners are well aware of the drawbacks of perpetual agreements. Property owners today report that they have very few, if any, such agreements, and it is their policy not to sign such agreements. There is no reason to believe that the proportion of “perpetual” agreements is any larger now than in 2002, and indeed it is probably smaller for the reason just stated. Because significant numbers of

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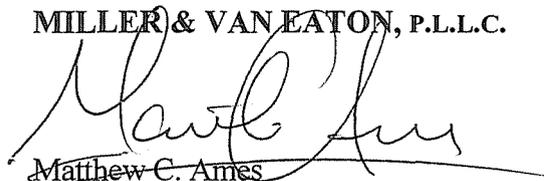
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property owners are not “locked in” to unfavorable contracts, the issues before the Commission in this docket are best left to the market. Accordingly, we once again urge the Commission not to proceed any further with this matter.

Very truly yours,

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February 6, 2002

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FEDERAL COMMUNICATIONS COMMISSION
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Via Hand Delivery

Deliver to:

Suite 110
236 Massachusetts Avenue N.E.
Washington DC 20002

Mr. William Caton
Acting Secretary
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445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket No. 95-184

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National Association of Real Estate Investment Trusts
Miller & Van Eaton

The Commission staff members present were: Holly Berland, Eloise Gore, Bill Johnson, Cheryl Komegay, John Norton, Royce Sherlock, and Sarah Whitesell.

The Real Access Alliance representatives presented the results of the survey regarding "perpetual contracts" addressed in the enclosed written ex parte materials. In addition, during the discussion, Commission staff asked whether the RAA had obtained data dealing with the existence of competitive providers. Although the survey included a question on this point, the results were not included in the report because they were ambiguous. The following information is supplied in response to that question, subject to the preceding caveat:

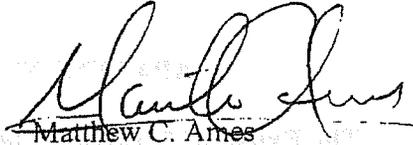
- Of the MDU owners contacted who reported owning buildings subject to perpetual contracts, owners of 44,528 units expressed a desire to renegotiate an existing perpetual contract. Respondents who stated that they owned buildings subject to perpetual contracts were asked if a competitive provider was available in the area.
- Owners of 7,771 units stated that there was no competitor available.
- Owners of 3,000 units, however, checked all three options and responded "yes," "no," and "do not know." Presumably this means that some buildings were in areas with competition, and other were not, but it is impossible to tell how many.
- Owner of 3,334 units responded "yes," and "do not know," again creating some confusion.
- Owners of 1,437 units responded "do not know."
- Owners of 28,896 units responded simply "yes," suggesting that their units were located in areas where competitors clearly exist. But given the uncertainty raised by some of the answers, as discussed above, there may have been a flaw in the survey design with respect to this question: they may have meant that a competitor was available for some units but not for all. This also raises the possibility that those respondents who said only "no" were also responding incompletely.

Please contact me with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

- cc: Holly Berland
- Eloise Gore
- William Johnson
- Cheryl Kornegay
- John Norton
- Royce Sherlock
- Sarah Whitesell

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OFFICE OF THE SECRETARY

APARTMENT (MDU) VIDEO SURVEY

The Extent of Perpetual Video Contracts in the Apartment Market

February 1, 2002

Prepared by:

The National Multi Housing Council/National Apartment Association
Joint Legislative Program
1850 M St., NW
Suite 540
Washington, DC 20036

Phone: 202-974-2300

The American apartment industry . . . working together for quality, accessible, affordable housing.

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INTRODUCTION

Television video service is extremely important to owners and residents of multiple dwelling unit (MDU) communities. The ability of MDUs to obtain the best possible service at a reasonable price is determined by many marketplace realities. In the early days of cable television service to MDUs there usually was no competition among providers in a given geographic market. This led to the existence of so-called "perpetual" contracts whereby the video provider had a lock on the market and could dictate contract terms that gave the provider the right to provide video service to a given MDU property for as long as the provider had the local franchise for cable delivery. While these types of contracts are no longer being negotiated, there has been continuing speculation about the extent of such contracts in existence in the MDU market.

In December 2001 and January 2002, the National Multi Housing Council and National Apartment Association conducted two surveys of the MDU market seeking information on the extent of perpetual video contracts in existence. The results of these surveys are contained in this report.

PERPETUAL VIDEO CONTRACTS

A perpetual video contract is generally a contract for video delivery to a given property for as long as the provider is the franchised operator in that jurisdiction. For purposes of this survey, a "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the provider's franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) has a term of 25 years or more (including automatic renewals) with a provider. In other words, a perpetual contract is one that keeps an MDU community owner from ending the service or taking control of the cable wiring either forever or for so long that the MDU owner has no practical alternative but to deal with the existing video service provider.

THE SURVEY

As can be seen in Exhibit A, the MDU (defined here as properties with 5 or more dwelling units) market is comprised of 518,820 properties with 15,029,100 dwelling units. Properties with 100 or more units make up just 32,882 properties with 7,433,660 units. For this reason, two surveys were conducted in order to seek information on the larger properties and the smaller properties.

Approximately 110 members of the National Multi Housing Council were asked to answer the questions shown in Exhibit B attached. These questions included: (1) the number of properties and units owned by the respondent as of December 1, 2001; (2) the number of properties and units with perpetual video contracts in existence; and (3)

whether the respondent would like to negotiate a new contract or obtain a new video provider if it were not hindered by the perpetual contract. Reasons for wanting to renegotiate were also asked. Finally, the respondents were asked if there were other competitors in the market and if they had signed a perpetual agreement within the past five years.

Because many of the members of the National Multi Housing Council are owners of MDU communities that have 100 or more units, a second survey was conducted using the yellow pages. Seventy-four properties were selected at random in 32 of the smaller markets across the country. A short version of the survey (see Exhibit C) was used for this purpose. Exhibit D shows the cities that were included in the survey.

SURVEY RESULTS

Approximately 40 percent of those asked to respond to the National Multi Housing Council survey submitted information.

A. Survey of Larger Properties

Following is a summary of the information obtained:

LARGER PROPERTIES	
Number of Properties.....	4,795
Number of Units.....	1,207,184
Number of Properties with Perpetual Contracts.....	241
Number of Units Covered by Perpetual Contracts.....	58,208
Percentage of Units Covered by Perpetual Contracts.....	4.8%
Percentage of Units Covered by Perpetual Contracts where the Owner would like to Renegotiate.....	3.7%

The following are the reasons for wanting to renegotiate or bring in a new provider, ranging from "1" for a low reason to "5" for a high reason. The responses were weighted and averaged depending upon the number of units in the properties.

Provider has record of poor response to resident complaints.....	2.9
Record of frequent outages, poor reception, bad service.....	2.6
Poor programming options.....	3.2
Lack of new services or technology.....	3.8
Rates to residents are too high.....	2.6
Residents say they want competition.....	2.7
Level of compensation to owner is too low.....	4.6

B. Random Survey of Smaller Properties

Following is a summary of the information obtained:

SMALLER PROPERTIES	
Number of Properties in the Survey.....	74
Number of Respondents.....	53
Number of Properties with Perpetual Video Contracts.....	2
Percentage of Properties with Perpetual Video Contracts.....	3.8%

COMMENTS ON THE SURVEY RESULTS

Surprisingly, both surveys indicate that the number of perpetual video contracts is less than 5 percent of the entire MDU marketplace. It had been widely thought that the percentage was much higher. The fact that both the survey of large National Multi Housing Council communities and the random survey of smaller properties came out nearly identical might suggest that there is no real disparity between large and small properties or large and small metropolitan areas.

The actual data gathered from the NMHC sample included a broad array of high-end, middle-income, and lower income properties. In most cases, respondents with perpetual contract properties reported competitive alternatives to the existing provider and in all cases, no perpetual agreements had been entered into during the past five years.

The surveys were conducted over the holidays and the year-end. This may account for the difficulty in obtaining more raw information. The smaller properties' survey was especially difficult because the number of non-respondents was due to either no central phone source (just an answering service to handle any building service problems) or a refusal to answer the survey despite repeated call-backs.

CONCLUSION

Perpetual video contracts are still part of the MDU landscape although at a much lower percentage than previously thought. Where they do exist, they can be very troublesome for that particular apartment community.

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EXHIBIT A

DISTRIBUTION OF APARTMENTS BY SIZE OF PROPERTY

Number of Rental Units on Property	# of Properties	% of Total Properties	# of Apartments	% of Total Apartments
5 to 9	281,500	54.3%	1,897,700	12.6%
10 to 14	70,390	13.6%	862,280	5.7%
15 to 19	36,780	7.1%	602,260	4.0%
20 to 29	38,000	7.3%	916,750	6.1%
30 to 39	18,166	3.5%	604,240	4.0%
40 to 49	14,431	2.8%	702,790	4.7%
50 to 99	26,694	5.1%	2,009,400	13.4%
100 to 199	19,804	3.8%	2,952,300	19.6%
200 to 299	7,775	1.5%	1,948,400	13.0%
300 to 399	2,966	0.6%	1,058,800	7.0%
400 to 499	1,307	0.3%	605,130	4.0%
500 to 749	723	0.1%	431,360	2.9%
750+	307	0.1%	437,670	2.9%
TOTAL	518,820	100.0%	15,029,100	100.00%

Source: NMHC tabulation of unpublished data from the U.S. Census Bureau's 1995-1996 Property Owners and Managers Survey.

Note: Statistics refer to privately owned housing and do not include the 13,493 Public housing projects or their 1,326,000 apartments (HUD estimates for 1995-1996).

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EXHIBIT B

APARTMENT (MDU) VIDEO SURVEY

The following questions will provide vital information on market conditions for cable/satellite video service to apartment communities. Please fill in the information for your company and respond by fax to Jim Arbury of NMHC/NAA at 202-775-0112. If you have any questions regarding the survey, call Jim at 202-974-2321 or email him at jarbury@nmhc.org. All individual replies will be held in strict confidence.

All information should be given for properties owned as of December 1, 2001.

SURVEY QUESTIONS

1. How many different properties do you own (do not include properties you manage, but do not own)?

Number of properties owned _____

2. How many total units are there on properties owned?

Total number of units _____

3. How many of the properties that you own are covered by perpetual contracts for video service?

A "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the providers franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) a video contract with a provider that has a term of 25 years or more (including automatic renewals).

In other words, a perpetual contract is one that keeps you from ending the service or taking control of the cable wiring either forever or for so long that you have no practical alternative but to deal with the existing video service provider.

Number of properties with perpetual contracts _____

4. How many units are on those properties covered by perpetual video contracts?

Number of units with perpetual contracts _____

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IF THE ANSWER TO 3 & 4 ABOVE IS ZERO, DISREGARD QUESTIONS 5 - 9.

5. For properties covered by perpetual video contracts, please show a percentage of units covered according to the following three categories:

a. High-end properties _____ %

b. Middle income properties _____ %

c. Lower income properties _____ %

total 100 %

6. If you could, would you like to be able to renegotiate or terminate any of the perpetual video contracts that currently cover your properties?

Yes _____ No _____

If you would like to renegotiate or terminate, how many units would be involved (do not include units covered by perpetual contracts where you really have no complaints about service, programming, etc.)?

Units you would like to renegotiate/terminate _____

7. Rank on a scale of 1 -5 (1 being low and 5 being high) your reasons for wanting to renegotiate/terminate the perpetual video contracts listed in answer 6 above:

	<u>rank (1-5)</u>
a. Record of poor response to resident complaints?	_____
b. Record of frequent outages, poor picture quality or otherwise bad service?	_____
c. Poor programming offerings, such as low number of channels or inability to meet resident programming requests?	_____
d. Lack of new or advanced services such as internet access or high-speed internet?	_____
e. Rates to residents are too high?	_____
f. Residents say they want competition?	_____
g. Level of revenue share or compensation to the property owner is too low?	_____
h. Other?	_____

8. Are there other competitive video programming providers that would be interested in serving those units covered by perpetual contracts if the existing provider agreement was terminated?

Yes _____ No _____ Don't Know _____

9. Has your company entered into any new perpetual video contracts (as defined in question 3 above) in the last five years?

Yes _____ No _____ Don't Know _____

Name of your company _____

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EXHIBIT C

APARTMENT (MDU) VIDEO SURVEY

Short Version

Hello, I am _____ from the National Multi Housing Council and National Apartment Association. I need to ask you a couple of questions about your TV video service at _____. It will only take one or two minutes maximum. This information is part of a study we are doing on video service to apartments.

SURVEY QUESTIONS

1. How many apartment units are at this property? _____ units
2. Please describe your property. Would it qualify as a property that appeals to upper incomes _____, middle incomes _____, or lower incomes _____
3. Does the company that provides video service to your property have a right to be there forever or can you get out of the contract at some point?

Perpetual _____ Not Perpetual _____

(if they need an explanation)

A "perpetual contract" is one that: (1) does not contain a definite termination date; (2) remains in force for the duration of the provider's franchise with the local governing authority; (3) remains in force for the duration of the providers franchise, including any extensions, assignments or renewals; (4) grants the video provider an easement or right-of-way that allows it to keep its wiring on the premises indefinitely; or (5) a video contract with a provider that has a term of 25 years or more (including automatic renewals).

In other words, a perpetual contract is one that keeps you from ending the service or taking control of the cable wiring either forever or for so long that you have no practical alternative but to deal with the existing video service provider.

1. IF THE ANSWER TO 3 ABOVE IS ZERO, DISREGARD QUESTIONS 4 - 6.

4. If you could, would you like to be able to renegotiate or terminate any of the perpetual video contracts that currently cover your properties?

Yes _____ No _____

5. Rank on a scale of 1 -5 (1 being low and 5 being high) your reasons for wanting to renegotiate/terminate the perpetual video contract

- | | <u>rank (1-5)</u> |
|---|-------------------|
| a. Record of poor response to resident complaints? | _____ |
| b. Record of frequent outages, poor picture quality or otherwise bad service? | _____ |
| c. Poor programming offerings, such as low number of channels or inability to meet resident programming requests? | _____ |
| d. Lack of new or advanced services such as internet access or high-speed internet? | _____ |
| e. Rates to residents are too high? | _____ |
| f. Residents say they want competition? | _____ |
| g. Level of revenue share or compensation to the property owner is too low? | _____ |
| h. Other? | _____ |

6. Are there other competitive video programming providers that would be interested in serving your property if you terminated the contract with the existing provider?

Yes _____ No _____ Don't Know _____

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EXHIBIT D

CITIES INCLUDED IN THE SHORT VERSION SURVEY

Akron, OH	Jackson, TN
Albuquerque, NM	LaCrosse, WI
Amarillo, TX	Lansing, MI
Beaumont, TX	Little Rock, AR
Beckley, WV	Louisville, KY
Birmingham, AL	Pittsburgh, PA
Boise, ID	Portland, OR
Charlotte, NC	Pueblo, CO
Chattanooga, TN	Reno, NV
Columbus, OH	Rock Hill, SC
Des Moines, IA	Shreveport, LA
El Paso, TX	Spokane, WA
Ft. Collins, CO	Tampa, FL
Fresno, CA	Toledo, OH
Huntington, WV	Utica, NY
Jamaica, NY	Wilmington, NC