USTELECOM
UNITED STATES TELECOM ASSOCIATION

October 24, 2007 ***WRITTEN EX PARTE*** **NOTICE**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

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

Dear Ms. Dortch:

As the United States Telecom Association (USTelecom) has demonstrated in previous filings in this docket, this proceeding is fundamentally about consumers' choice for broadband and video programming services. There is simply no good policy reason to deny consumers the benefits of video competition simply because they live in a multiple dwelling unit (MDU) rather than in a single family home. Nor should cable companies be rewarded for their recent accelerated efforts to "lock-up" such consumers by allowing them to enforce existing agreements. Rather, all consumers should have the right to choose – not just those that happen to live in the right building or have the economic leverage to move or relocate.

In this respect, it is apparent that the consumers hurt most by these exclusive access agreements are minorities, the elderly and low-income consumers, who disproportionately populate MDUs. As Chairman Kevin J. Martin emphasized in his recent speech to the Rainbow Push Coalition and the Citizen Education Fund,[1] 40% of all households headed by people of color live in MDUs, despite representing only 27% of all households nationwide. This concern has been echoed in recent ex partes from the Minority Media & Telecommunications Council and Consumers Union.[2]

USTelecom agrees with the Chairman's analysis, and submits this notice to further illustrate the negative impact that such agreements have not only on the large percentage of the minority populace residing in MDUs, but also on senior citizens and low-income Americans. Rather than focus on the national averages referenced by Chairman Martin, this statistical analysis highlights the disparity these contracts have within distinct markets throughout the country.

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[1] Remarks of FCC Chairman Kevin Martin, Rainbow Push Coalition and Citizen Education Fund Media & Telecommunications Symposium, October 12, 2007 (available at: http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-277312A1.pdf) (visited October 23, 2007).

[2] *See* Minority Media & Telecommunications Council Ex Parte, October 11, 2007; Consumers Union Ex Parte, October 23, 2007.

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USTelecom's Statistical Analysis

In an effort to obtain more granular data highlighting the adverse impact that exclusive contracts have on the minority populace and senior citizens in certain regions, USTelecom obtained and analyzed data for the following metropolitan areas: New York, Los Angeles, Chicago, Atlanta, Seattle and Denver.[3] These cities reflect approximately 20% of television households in the United States.[4] The most recent available data for each of these markets was obtained from the American Housing Survey, published by the U.S. Census and Department of Housing and Urban Development (HUD).

For each of the metropolitan areas, we analyzed data for occupied year-round housing units (*i.e.*, households), broken out by number of units in the structure in which the household is located, and certain demographic characteristics.[5] Specifically, the American Housing Survey metropolitan area reports categorize occupied units according to the following number of "units in structure:" 1 attached, 1 detached, 2 to 4, 5 to 9, 10 to 19, 20 to 49, 50 or more, and manufactured/mobile home or trailer.

For each of the "units in structure" categories, additional data are provided for the number of households in the following demographic categories: African American exclusively, Hispanic, senior citizens, and low-income households. We calculated the percentage of households within the 20-49 units and 50 or more units groups, individually and combined, that fall into the demographic categories listed above.

Summary of USTelecom's Statistical Findings

In general, the summary of these findings reveal that for each of the referenced cities: 1) the representation of minority populations in many MDUs almost always exceeds national, state and local averages for the same populace; 2) the presence of low-income consumers in larger MDUs *exceeds* levels within the respective city; and 3) a far greater percentage of senior citizens reside in MDUs than their overall numbers in the region.

Taken as a whole, these findings illustrate that minorities, low-income consumers and senior citizens would particularly benefit from appropriate Commission action. The data suggest that minorities, senior citizens and low-income consumers residing in MDUs are disproportionately deprived of the benefits of video competition. Absent competitive entry, these agreements excessively burden these consumers with higher rates, inferior customer service and decreased access to broadband alternatives.

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[3] These cities reflect the first, second, third, eighth, fourteenth and eighteenth largest designated market areas (DMAs) in the country, and reflect approximately 20% of the television households throughout the country.

[4] Information regarding the Designated Market Areas (DMAs) associated with each of these metropolitan areas is available from Nielsen Media Research (available at: http://www.nielsenmedia.com/nc/nmr_static/docs/2007-2008_DMA_Ranks.xls) (visited October 24, 2007).

[5] This data utilizes two key U.S. Census statistics: 1) housing units; and 2) households. A "housing unit" is defined as a house, apartment, mobile home, group of rooms, or single room, that is occupied (or, if vacant, is intended for occupancy) as separate living quarters. A "household" is a currently occupied "housing unit."

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Moreover, since many of these consumers – particularly low-income households and senior citizens – are operating on fixed incomes, they are the least able to 'vote with their feet' by relocating to an MDU with effective competition in video and bundled services.

The Impact on the Minority Populace Residing in MDUs.

USTelecom's analysis for each of these cities indicates that a higher percentage of minorities reside in MDUs than are reflected in the national and relevant state percentages. As a result of this imbalance, a disproportionate number of minorities residing in larger MDUs are impacted by the presence of exclusive access contracts.

In the New York metro area, for example, 24.7% of MDU households residing in structures with 20 or more units are African American, despite making up 15.5% of the state's overall population. Similarly, 37% of MDU households residing in structures with 20 or more units in Atlanta are African American, despite a 29.8% presence in the overall population. Los Angeles, however, illustrates the most glaring discrepancy in these statistics. Despite comprising just 6.2% of the state average, African American's reside in MDUs with 20 or more units at nearly twice the state average (*i.e.*, 12.1%)[6]

For the Hispanic community, it is a similar story. Specifically, Census Bureau data indicate that Hispanics comprise approximately 14.8% of the national average. With the exception of Atlanta, the percentage of households occupied by Hispanics in MDUs with 20 or more units exceeds the national average. In the New York metro area, the percentage of the Hispanic community residing in such MDUs exceeds the state average by almost 12%.[7]

The Impact on Low-Income Americans.

Available Census Bureau data also show that in each of the three cities examined, low-income consumers reside in MDUs at a rate *exceeding* levels within the same geographic area. For example, the Census Bureau data indicate that the percentage of low-income families in Los Angeles is approximately 15.6%. But in MDUs with 20 or more units, the rate is 19.2%. Similarly, in Atlanta low-income families make up approximately 19.2% of the population, but such families comprise 22.3% of households in MDUs with 50 or more units.

Compelling statistics illustrating this dynamic can be seen in the New York metro area. The Census Bureau data indicates that low-income families comprise 16.3% of the New York metro area populace.[8] In contrast, in the New York metro area, low income households comprise 23% of units located in MDUs with 20 or more units, where more than one-third of the population resides. This difference reflects a 41% increase over the New York metro area average. In New York City, where over half the population resides in MDUs with 20 or more

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[6] Data for each of the referenced cities was obtained from the U.S. Census Bureau American FactFinder database (available at: http://factfinder.census.gov/servlet/ACSSAFFPeople?_submenuId=people_0&_sse=on) (visited October 23, 2007) (*American FactFinder database*).

[7] *Id*.

[8] *American FactFinder database*.

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units, the difference between the large MDU and the general population would likely be even greater.

This statistical analysis demonstrates that in each of the aforementioned markets, the presence of exclusive contracts for access to MDUs has a disproportionate impact on low-income consumers. Due to the significant constraints on their income, such consumers are unable to relocate to other MDUs that may have effective competition in video and bundled services.[9]

The Impact on Senior Citizens Residing in MDUs.

The most powerful statistics can be seen in the senior citizen community. In each of the cities USTelecom analyzed, a far greater percentage of senior citizens resided in MDUs than their overall numbers in the region would seem to suggest. In fact, for each of the six cities that USTelecom examined, the percentage of senior citizens residing in larger MDUs exceeded the local averages by a ratio of at least 2 to 1, and in one instance (Atlanta) by a ratio of almost 6 to 1. These residents, who are often on fixed incomes, are almost certainly disproportionately impacted by the presence of MDU exclusive access agreements.

For example, in Atlanta, senior citizens comprise just 8.8% of the city's population.[10] But in MDUs with 20 or more units, senior citizens make up 18% of the population. Senior citizens comprise an astonishing 51.5% of the population, when just MDUs with 50 or more units are examined in the Atlanta market (a ratio of almost 6 to 1). The story is equally compelling in Chicago, where senior citizens generally populate MDUs with 20 or more units at more than three times their representative rate in the community. These statistics illustrate that senior citizens residing in MDUs in each of these markets are disproportionately impacted by the negative consequences from exclusive access agreements.

Moreover, substantial data exist demonstrating that senior citizens are voracious – and growing – consumers of video and broadband offerings. For example, a recent study from the Pew Internet & American Life Project (Pew Internet) found that broadband penetration amongst

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[9] Some have suggested that even absent the presence of exclusive access agreements, telecom entrants would be hesitant to deploy in low-income, urban areas. But a recent study from the Phoenix Center rebuts this claim. In its study, the Phoenix Center demonstrated that low-income households subscribe to video service at roughly the same rate as higher-income household. As a result, the ability of entrants to offer video services substantially improves the financial case for new network investment in low-income neighborhoods. As a result, when the network firm can bundle video with telephony and broadband, the percentage of poverty and minority homes with access to the network rises significantly. Phoenix Center Policy Paper Number 23, *The Impact of Video Service Regulation on the Construction of Broadband Networks to Low-Income Households*, George S. Ford, PhD, Thomas M. Koutsky, Esq., Lawrence J. Spiwak, Esq., p. 4, September 2005 (available at: http://www.phoenix-center.org/pcpp/PCPP23Final.pdf) (visited October 23, 2007). *See also* Lawrence J. Spiwak, *Franchise reform: A no-brainer*, Washington Times, Page A-XX, December 22, 2006 (available at: http://www.phoenix-center.org/oped/WashingtonTimes22Dec2006.pdf) (visited October 23, 2007).

[10] *American FactFinder database*.

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consumers 65 and older increased at a rate of 88% between 2005 and 2007,[11] far exceeding every other age group. Another Pew Internet study concluded that while the vast majority of Americans age 65 and older do not go online, that would "likely change in a big way as the 'silver tsunami' of internet-loving Baby Boomers swamps the off-line senior population in the next 10 years."[12]

In the video context, available statistics are equally compelling. Senior citizens subscribe to cable and/or satellite video programming services at rates higher than any other age group, and at a rate exceeding the national average (*i.e.*, 86% versus 81%).[13] In addition, Pew Internet recently reported that half of senior citizens surveyed considered cable or satellite television a "necessity."[14] Among the four age groups surveyed, senior citizens far exceeded every other age in viewing such video services as a necessity.[15]

When the MDU residency statistics are analyzed in the context of the growing demand amongst seniors for video and broadband services, Commission action on MDU exclusive access agreements becomes all the more compelling.

Conclusion

The foregoing analysis demonstrates that minorities, senior citizens and low-income Americans would be major beneficiaries of Commission action on the MDU exclusive access agreements. These groups would tremendously benefit from favorable Commission action in this proceeding since their residency rates in such households are disproportionately skewed to their general population numbers. Absent the competitive entry that these exclusive agreements prevent, these vulnerable consumers will be continue to be burdened with higher rates, inferior customer service and decreased access to broadband alternatives.

In accordance with FCC Rule 1.1206(b)(1),[16] I am filing this *Ex Parte* Presentation with the Commission electronically for inclusion in the public record. Please feel free to call either me or Kevin Rupy at (202) 326-7276 with any questions.

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[11] *Home Broadband Adoption 2007*, Pew Internet & American Life Project, p. 4, July 3, 2007 (available at: http://www.pewinternet.org/PPF/r/217/report_display.asp) (visited October 24, 2007).

[12] Susannah Fox, *Are "Wired Seniors" Sitting Ducks?*, Pew Internet & American Life Project, p. 1, April 11, 2006 (available at: http://www.pewinternet.org/pdfs/PIP_Wired_Senior_2006_Memo.pdf) (visited October 24, 2007).

[13] Senior Journal.com, *More Seniors Go to the Movies as Attendance Drops Sharply for Others*, May 16, 2006 (available at: http://seniorjournal.com/NEWS/Entertainment/6-05-16-MoreSeniorsGo.htm) (visited October 24, 2007).

[14] Pew Internet & American Life Project, *Luxury or Necessity?*, *Things We Can't Live Without: The List Has Grown in the Past Decade*, p. 5 (available at: http://pewresearch.org/pubs/323/luxury-or-necessity) (visited October 24, 2007).

[15] Specifically, Pew Internet surveyed Americans ranging in age from 18–29; 30–49; 50–64 and 65 and older. The percentages describing cable or satellite television as a necessity were 24%, 28%, 37% and 50%, respectively. *Id.*

[16] 47 C.F.R. § 1.1206(b)(1).

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Sincerely,

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