

Response to Comments of OpenBand Multimedia, LLC - Dated February 4, 2008

Below are my comments related to the recently submitted Comments by Openband Multimedia, LLC in response to the Commissions' Report and Order and Further Notice of Proposed Rule Making, MM Docket No 07-51, FCC 07-189.

Issue #1

Openband states that "...most bulk billing arrangements are carefully negotiated bargains between emerging broadband service providers and community associations..."

Response - The "carefully negotiated contract" was negotiated between the Developer - Van Metre Homes and Openband, not the residents of the Southern Walk at Broadlands community. Further the contract provides for Van Metre to gain financial benefit from the monies collected by Openband for the services provided. To label this arrangement as a "bargain" is also another falsehood as the residents are tied into an agreement that does NOT allow competition.

Issue #2

Openband states that "Openband, the community associations and the individual residential customers all benefited from these service packages, bulk billing arrangements and rate discounts."

Response - As a customer of Openband I have yet to benefit from any service "package/discount" In fact for a bundled service I pay more today than I did when I received the services from three DIFFERENT providers.

Issue#3

Openband states - "Generally, community associations are governed by resident boards of directors. However, they are sufficiently small and local that any and all interested residents can be heard and make their needs and preferences known as board members, board candidates, committee members, meeting participants and or votes."

Response - The term "Generally" is the optimum word here. In Southern Walk at Broadlands the board is controlled by the Developer, Van Metre Homes. This is the same company that has a financial interest in Openband. The actual "residents" on the board of directors (two of them) were appointed to the board - not elected by the membership. It should be noted that there was a full slate of candidates (more than four I believe) who expressed interest in running - but were not allowed. I have attended many meetings

and while the board will for the most part listen to residents, their actions have, in my opinion, not been in the best interest of the residents.

Issues #4

Openband states - "Because the community association typically represents hundreds of thousands of residential customers, it can negotiate favorable services, prices and contract terms with potential service provider than its members would ever be able to obtain individually"

Response - I would agree with this statement - IF - the association were allowed to bid the contract out to other providers. However this association is locked into a 75 year deal that provides a constant revenue stream to Openband and Van Metre Homes. "Favorable prices" is an interesting term as I have already indicated I currently pay Openband more for their bundled services than I did when I had three individual providers. "Favorable contract terms" - The contract between Openband and Southern Walk is so slanted in favor of Openband that residents are in effect "held hostage" to this agreement.

Issues #5

Openband states - "Prohibition or Limitation of Bulk Billing Arrangements Will Destroy Existing Broadband Packages and Discounted Rates"

Response - Openband does not price their product at a package rate so there is no discounted rate in relation to the "package". Openband prices each individual component of the package against other competitors and then discounts off that rate. As anyone with a little common sense should know, anytime you price something individually versus a package deal the price is going to be higher. McDonalds "packages" a meal together to give you a break on the pricing and sell you more than you really need - but at least you get that at a cheaper price than if you were to buy the sandwich, fries and coke separately.

Issue #6

Openband states - "The level of provider accountability is unique to such service arrangements."

Response - there is no "accountability" as the contract is always in Openband's favor. The only way a company is accountable is if the contract were fairly written to protect BOTH parties (this one is not) or if competition forces the provider to be competitive. Openband does not have a need to compete as they have a virtual lock on the community for the next 75 years.

Conclusion

By Openband's own admission, the key element that allows them to make money is the ability to "bulk bill" their services. While I have no problem with them having this advantage, their unfair comparison of individual rates versus package rates is also a way they are making money which they failed to mention in their submission to the Commission.

Competition is the only thing that will benefit me, other residents of my community and any other residents tied into similar arrangements and I urge the Commission to continue to pursue assisting me as a consumer that has little recourse against the likes of Openband.

Respectfully submitted,
Brian Beahm