Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Exclusive Service Contracts for the Provision of Video Services in Multi Dwelling Units and other Real Estate Developments	)	**MB Docket No. 07-51**

DECLARATION OF DOUGLAS A. DAWSON

Douglas A. Dawson, being duly sworn, declares as follows:

I. INTRODUCTION

1 My name is Douglas A. Dawson, and I am the founder and president of CCG Consulting LLC ("CCG"), located at 7712 Stanmore Drive, Beltsville, Maryland, 20705. I am submitting this Declaration in support of the Comments that the City of Lafayette, Louisiana, is filing in this proceeding, through its municipal utility, the Lafayette Utilities System ("LUS"). I am over 21 years old and am competent to make this declaration.

2. CCG is a general telecommunications consulting firm. CCG's clients include more than 350 communications companies and other organizations, which include local exchange carriers ("LECs"), competitive local exchange carriers ("CLECs"), interexchange carriers ("IXCs"), cable television providers, electric utilities, wireless providers, paging companies, municipalities and other government entities.

3. I have specific, first-hand experience and expertise with the matters at issue in this proceeding, including exclusive contracts and other arrangements between cable providers and multiple dwelling units ("MDUs"). As part of my ongoing responsibilities at CCG, I am responsible for and involved in all of the consulting services that we provide to our clients. My

Curriculum Vitae, including a list of testimony I have given in numerous other matters, is attached as Exhibit 1.

4. I have assisted numerous clients to provision cable TV service over hybrid-fiber coaxial systems, fiber systems, and DSL systems. Such assistance has included financial analysis and business planning, raising funds, obtaining programming contracts, designing headends and networks, coordinating and integrating the services of various vendors, supplying project management to ensure timely implementation of project plans, planning product offerings, designing rates, selecting and implementing billing solutions, and establishing competitive strategies. I have helped dozens of clients go through every stage of a project from conception to operation and have seen at close hand the reactions of the incumbents in the affected markets.

II. PURPOSE OF THIS TESTIMONY

4. Three years ago, the City of Lafayette announced its intention to develop a state-of-the-art fiber-to-the-home system over which it would offer voice, video, data, and other advanced communications services. Since then, the incumbent providers of communications services in Lafayette (BellSouth-AT&T and Cox) and their allies have erected a wide range of legislative, judicial, financial, and other barriers to thwart the City from going forward with its initiative. Having overcome all of these barriers, the City will soon begin to construct its system. Anticipating that it will now encounter yet another form of anticompetitive behavior – exclusive arrangements at MDUs and other real estate developments – LUS is filing comments in this proceeding to urge the Commission to ban such arrangements. To provide the Commission concrete evidence to support its comments, LUS has asked me to prepare this Declaration (1) to discuss the various ways that cable service providers use exclusive arrangements and the negative effects of such arrangements on competition, (2) to respond to several of the

Commission's specific questions set forth in the Notice of Proposed Rulemaking ("NPRM"); and (3) to recommend approaches to eliminate or mitigate the problem of exclusive arrangements.

III. TYPES OF EXCLUSIVE CONTRACTS

5. In this section, I will discuss several kinds of exclusive arrangements at MDUs and other developments and explain how each presents a barrier to competition.

Exclusive Bulk Take-or-Pay Contracts

7. Exclusive bulk take-or-pay contracts give a cable service provider the sole right to serve an MDU or other real estate development and require the owner to pay the cable provider a fee for cable service based on the total number of units in the MDU or development, regardless of whether each unit takes or even wants service from the cable provider. The owner then generally includes the cable service fees in the rent or other charges allocated to all units.

8. Sometimes these bulk agreements cover only basic cable service, but they often also include other tiers of service, totaling anywhere from 50 to 70 channels. Typically the cable provider gives a substantial discount off the prices charged for similar services on an individual basis. The cable provider benefits from this arrangement because it obtains exclusivity and a guaranteed revenue stream for all units; it avoids the need to market to individual units; and it gets a "foot in the door" that allows it to sell premium channels, Video on Demand, high speed Internet access, and other lucrative services to individual units.

9. Exclusive take-or-pay bulk contracts stifle competition in several ways. First, these contracts often explicitly prohibit entry by another competitive provider and are thus anticompetitive *per se*. Second, even when such a contract is not expressly exclusive, it creates an effective barrier to competition because customers that are required to pay for cable service as part of their rent or unit charges will rarely be willing to pay a second fee to another provider for comparable services. Third, these bulk contracts typically contain, or are accompanied by,

restrictions on the use of the inside wiring in the MDU. Thus, even if another provider had a theoretical right to provide cable service to individual units, it would have to run new wiring inside or outside the building. That is often prohibitively costly and unattractive, and MDU owners frequently will simply not allow it. For these reasons, individually and collectively, exclusive bulk service agreements create explicit or effective barriers to competition.

Revenue Sharing Contracts

10. Another common type of exclusive contract is a revenue sharing contract. Under such an arrangement, the cable operator will pay a "door fee" or kick-back of a fixed amount or some negotiated percentage of the total billings generated by customers in the MDU or other real estate development. Typical fees run from 3% to 5% of revenues, and the MDU owner may also receive non-monetary compensation of various kinds. Examples include free cable or data services for the MDU office and common space, security cameras and a channel to monitor them, or a free channel for use within the MDU for posting news and items of interest to tenants.

11. Revenue sharing arrangements sometimes occur at the suggestion of cable providers, which insist on exclusivity as the quid-pro-quo for the door fees. In larger MDUs and developments, where MDU owners or property managers have substantial bargaining power, they may be the ones that insist on revenue sharing arrangements.

12. Regardless of whether it is the cable provider or the property owner that presses for revenue sharing arrangements linked to exclusivity, the effect is the same – the cable provider and the property owner act together to exclude competitive service providers.

Contracts to Cover Construction Costs

13. It has become a fairly common practice for cable providers and owners of MDUs or other real estate developments to enter into agreements whereby the cable provider will install ducts, conduits and inside wiring or provide the materials, at its own expense, for the property

owners' contractors to do such installation. In return, the cable provider obtains exclusivity for a period of time, often up to seven to ten years. I have even seen some agreements with perpetual terms. Such arrangements also commonly arise where MDUs or other real estate developments are undergoing upgrades

14 Again, whether the arrangements in question are driven by cable providers or by property owners, they have the same anticompetitive effect – i.e., they exclude competitors for a significantly long time period.

Exclusive Easements

15. Another anticompetitive form of exclusivity is an arrangement that gives exclusive easements to the cable provider This means that only the cable provider has the right to trench, connect to buildings, and have access to closets, ducts, risers, and other facilities on the MDU property. While it is reasonable for a cable operator to obtain easements to the property and facilities that it needs to operate its system, it is not reasonable to make such easements exclusive.

16. This kind of contract is a very effective barrier against competition. If the first cable provider has exclusive rights of easement, then a competitor has no effective way of gaining access to the customer

Exclusive Right to Use Inside Wiring

17. Yet another form of exclusivity occurs when the owner of an MDU or other real estate development gives the cable provider an exclusive right to use the inside wiring at an MDU or other real estate development. Sometimes the inside wire is owned by the cable operator, but in many, if not most, cases, the wiring is owned by the property owner.

18. Inside wiring can be a complicated issue in MDUs and other real estate developments. Especially in older buildings, there may be no feasible way for a second cable to

provide service without using existing "home run" and "home wiring," as the Commission defines these terms in its Inside Wiring rules. Recognizing this reality, the Commission's rules require cable operators whose right to provide service has ended to offer to sell their inside wiring to the property owner or new provider, in the manner prescribed by the rules. Unfortunately, the rules apply only to wiring that the incumbent cable provider owns, and not to wiring that the cable provider does not own but merely uses on an exclusive basis. Thus, an exclusive right to use inside wiring provides a convenient way for an incumbent to skirt the Commission's inside wiring rules.

Exclusive Rights to Conduits, Molding, Etc.

19 Owners of MDUs and other real estate developments sometimes give cable providers an exclusive right to use conduits, moldings, closets and other infrastructure. Each of these restrictions is designed to create a physical barrier for a competitor. Conduits are generally used to place wiring underground between units or in concrete slabs and walls within buildings. Without access to conduits, a competitor has to dig up yards, bore through concrete, or otherwise face expensive construction costs. Exclusive rights to moldings are also a very effective barrier. This allows the primary cable provider to place wiring behind floor moldings, and a second provider must thus place wire along walls inside units. Often this is not acceptable to MDU owners, meaning that this restriction is an effective block on any competitor. I have also encountered contracts that give exclusive rights to closets, basements and other physical locations that are essential in order to gain access to the customers. If a competitor cannot get into a closet to get to inside wire, then they are effectively locked out of the MDU.

Right to Leave Facilities in Place after Termination of Service Contract

20. Owners of MDUs and other real estate projects often give cable operators up to six months to remove its facilities after losing the right to serve an MDU. This is a very insidious provision, and I suspect that most MDU owners either do not understand what it means

or lack the bargaining power to delete it when they negotiate an agreement with a cable operator. In many cases, the facilities of the first cable provider must be removed before the facilities of the second cable provider can be installed. In such a case, and considering that it takes one to three months for the new provider to install service, an MDU could be without cable service for seven to nine months if they try to change providers. This is an effective barrier to competition, since most MDU owners could not tolerate that sort of outage. It effectively means they can't afford to replace the first cable operator. The Commission's inside wiring rules, by contrast, handle this situation well by requiring that all equipment be removed by the time that the first provider's right to serve comes to an end.

Exclusive Right-of-Entry Agreements

21. Another common barrier to entry is an exclusive right-of-entry provision that gives the cable operator certain property rights for a period that is substantially longer than the term of the basic service agreement. For example, an exclusive bulk service arrangement might have a term of seven years while the right-to-entry provision might have a term of twenty years. An exclusive right-of-entry agreement that extends beyond the term of the service contract is a very effective barrier to competition.

V. ANSWERS TO CERTAIN SPECIFIC QUESTIONS IN THE NPRM

22. In this section I will respond to some of the specific questions asked by the FCC in the NPRM.

23. Do incumbent providers seek exclusive contracts in an effort to frustrate competitive entry? Do incumbent providers use the time during which the new entrants are negotiating local franchises in order to obtain exclusive contracts?

24. Yes. In market after market, I have seen a flurry of contract activity by incumbent providers that starts when it becomes clear that a new entrant will be coming to town.

In my experience, the incumbents do not necessarily wait to negotiate new contracts with MDUs when the new provider begins franchise negotiations, but, rather, they start as soon as they are certain that the new provider will be entering the market.

25. Would the video providers entering into exclusive contracts be unable to serve MDUs absent the protection afforded by exclusive contracts?

26. Incumbents normally should have little, if any, problem serving MDUs or other real estate developments in the absence of exclusive arrangements.

27. New entrants may or may not have difficulty serving particular MDUs or other real estate developments without exclusive arrangements. There are so many different types of MDUs, that it is hard to generalize. For example, in some older MDUs, a new entrant may have to rewire the building and will not have a sufficient incentive to do so unless it can obtain an exclusive arrangement that is of sufficient duration to allow it to recover its costs and make a profit. In other cases, a new entrant may be able to run a second set of wiring through existing conduits, risers, ceilings and floors. In short, for new entrants, whether exclusivity is necessary will depend on the circumstances in each case.

28. Should the Commission limit exclusive contracts only where the video provider possesses market power?

29. No. Exclusive arrangements should be prohibited across the board. At a minimum, the Commission should prohibit all exclusive contracts and provide for a process whereby new entrants can obtain an exception to the prohibition on a case-by-case basis if they prove that they do not have market power in the relevant area and that an exclusive arrangement is necessary and will serve the public interest.

VI. CABLE BARRIERS NOW MEAN BARRIERS TO OTHER PRODUCTS

30. While this NPRM is intended to examine the effect of exclusive arrangements on the provision of video service, it is vital for the Commission to recognize that these same barriers directly affect the expansion of broadband, voice, and other advanced services. Many of the new competitive providers are bringing competition through the construction of fiber-to-the-premise Typically, these new fiber competitors intend to bring faster Internet speeds along with competitive video. I could write a book on the importance to our nation of expanding fiber, but I know this Commission is very aware of the importance of bringing greater bandwidth to consumers. While many exclusive contracts may have been written at a time when bandwidth was not such an important issue, I believe that goal of promoting bandwidth and voice competition is reason enough to prohibit exclusive arrangements for video.

VIII. SUMMARY AND CONCLUSIONS

31. Customer choice ought to be paramount to the FCC's decision. Customers should not be denied competitive choices based upon where they live The problem of exclusive or restrictive contracts is growing. Incumbents are seeking more such contracts as facility-based competition is expanding. The definition of MDU is also expanding. Where MDUs once meant apartment complexes, these contracts are being applied more and more often to entire new subdivisions of single family homes. Absent any action by the FCC, more and more of the country is going to be denied the benefits of competition as a result of exclusive contracts.

32. Exclusive arrangements of all types should be prohibited. There can be very few cases where such arrangements are not anti-competitive. As the FCC has done with other rulings, cable providers should be able to seek an exception from the FCC for those rare circumstances where exclusive arrangements can be deemed as necessary.

I declare under penalty of perjury that the foregoing is true and correct.

DOUGLAS A. DAWSON

Executed on this 27th day of June, 2007.

CV of Douglas A. Dawson

My Background

I received a Bachelor of Science in Accounting from the University of Maryland in 1977. In addition, I received a Masters degree in Mathematics from the University of California at Berkeley in 1985.

I began my career in communications in 1975 as a test technician building and testing telephone switches for Litton Industries in College Park, Maryland. In this position I performed system integration testing for early electronic telephone switches. In this job I also helped to design, build, install and test early PC boards.

My next job in the communications industry began in 1978 with John Staurulakis, Inc. ("JSI"). JSI is a telephone consulting firm that specializes in consulting for independent telephone companies (those smaller telephone companies that are not part of the Bell System). In this position, I worked on separations cost of service studies for independent telephone companies. In this role, I had my first detailed exposure to developing the costs of providing telephone service. Additionally, I performed numerous traffic studies for telephone switches. I performed hands-on traffic studies where I measured the usage on telephone switches to determine calling patterns and to find the most efficient way to configure the switch and the network. I also assisted companies with telephone accounting issues.

Next, in 1981 I became a Staff Manager of Industry Relations at Southwestern Bell Telephone Company in St. Louis, Missouri. Southwestern Bell was a huge regional telephone company that is now known as SBC. My functions there included tracking issues that impacted Bell's relationships with the rural independent telephone industry, calculating and negotiating various interconnection and settlement rates between companies for local calling and other network arrangements, and overseeing the review of an independent telephone company's traffic and toll cost studies. I also served for a period of time as a member of the rate case team for the Missouri operations.

In my next position, beginning in 1984, I gained operating telephone company experience at CP National in Concord, California. CP National was a holding company that owned 13 telephone companies, 17 electric companies, 5 cable TV companies, 5 water companies, 7 gas companies and several manufacturing entities. I had several jobs with increasing responsibility. My first job was as Manager of Separations. In that role I oversaw several analysts plus the traffic engineers at CP National. My group was responsible for calculating the cost of operating our telephone companies and negotiating intercompany settlements with the various Bell Companies. I was directly responsible for monitoring our telephone networks to make certain that we had sufficient facilities to satisfy customer demand. In this role, one of my first tasks in 1984 was to develop a way for CP National to bill access charges to carriers. I determined how to measure access minutes on our switches, developed our company's first access charge rates and helped develop the first CABs billing program. During my stay at CP National we purchased several telephone companies and I assisted in valuing and analyzing these and other potential acquisitions.

My title changed to Director of Separations and in that role I continued to oversee telephone revenues. In addition, I picked up responsibility for all of the corporate engineers at the company.

These engineers were responsible for designing and maintaining all of the telephone and cable TV operations and the networks deployed by the company.

In 1991 I again joined John Staurulakis, Inc. My first job there was as Manager of Separations. In this role I oversaw a group who performed cost studies for telephone company clients. After a short time I was promoted to Director of Separations. In this role I oversaw a larger group performing cost studies. My final position there was as Director of Special Projects. In that capacity, I oversaw all projects and clients who were not historically part of JSI's core cost study business. Some of the projects I worked on included assisting clients in launching long distance companies and Internet service providers; studying and implementing traditional and measured local calling plans; developing optional toll and local calling plans; performing embedded cost studies for products and services; assisting in local rate case preparation and defense; and conducting cross-subsidy studies determining the embedded overlap between services. In this role, I gained in-depth experience in long distance rates rate setting and the long distance regulatory process. I also became thoroughly familiar with the underlying costs and processes of running a long distance company.

In 1997, I became a founder and owner of Competitive Communications Group, LLC. The company is now known as CCG Consulting, LLC. My current title at the company is President. At CCG I am directly responsible for all consulting work done by the company.

Our clients include telephone companies, CLECs, cable TV companies, ISPs, electric companies, municipalities and long distance companies. As a firm we offer the following consulting products and services that are needed by communications firms. All consulting at the company is under my direct control and supervision:

- Engineering services, including:
  - Equipment selections and analysis for telephone, data and cable TV networks;
  - Detailed network design and development;
  - Developing RFPs and analyzing vendors;
  - Monitoring networks for efficiency;
  - Power and grounding studies;
  - Wireless network design;
- Development of financial business plans;
- Assistance in purchasing companies including valuation, due diligence and integration;
- Market segmentation studies to understand customers and markets;
- Competitive research including rates and services of other providers;
- Strategic analysis and planning;
- Regulatory Services, including:
  - Creation and filing of local tariffs;
  - Creation and filing of access tariffs;
  - Regulatory filings and compliance;

- Carrier services including:
  - Negotiating interconnection agreements;
  - Negotiating collocation of equipment with other carriers;
- Choosing vendors for customer billing, back office, operator services, VoIP and other external requirements;
- Cable TV Programming – channel lineups, acquiring channels.
- Hands-on project management;
- Assistance in developing and implementing accounting systems;
- Development of rates;
- Calculation of costs;
- Revenue assurance.

Testimony Given Within the Preceding Five Years.

United States District Court Central District of California. 2007. No. CV07-02820 DSF. Declaration in support of Intermetro Communications, Inc. concerning improperly billed access charges.

Federal Communications Commission. 2007. CC Docket 96-128 DA 03-4027. Petition for Rulemaking concerning competition in prison calling. Filed a Declaration in support of offering affordable long distance rates for prisoners.

United States Bankruptcy Court. 2006. Case No. 02-41729 (REG). In re Adelphia Communications Court, et al. vs. Debtors. Filed written reports on behalf of Mecklenburg County, North Carolina concerning the valuation of the sale of Adelphia properties to Time Warner.

Maine Public Service Commission. 2006 Case Number 2005-486. Investigation into Verizon's Pole Attachment Practices & Acts. I prepared written testimony and testified

Federal District Court. 2005. Case of Shareholders vs. UTEL concerning the valuation of the company stock. I filed a valuation report. The parties reached a settlement.

Maryland Public Service Commission. 2005. Case Number 9013. In the Matter of the Petition for Arbitration of Interconnection Rates, Terms, and Conditions. Core Communications, Inc. vs. Verizon. I prepared written testimony and testified.

Federal District Court. 2004. Case of Eschelon vs. Qwest concerning audit of Qwest performance in delivering DUF records to Eschelon. I was deposed. The parties reached a settlement

Virginia Public Service Commission. 2004. Case No. PUC 2002-00231. For Declaratory Judgment Interpreting Various Sections of the Code of Virginia. Sprint vs. Bristol Virginia Utility Board

(BVUB). Sprint is challenging the rates set by BVUB and is alleges cross subsidization. I prepared written testimony and testified on behalf of BVUB.

Federal Communications Commission. 2004. CC Docket 96-128. In the Matter of: Martha Wright, Dorothy Wade, et al. Petition for rulemaking concerning competition in prison calling. Filed a petition on behalf of complainants explaining the need to open a Notice of Proposed Rulemaking to examine rules applicable to prison calling.

Maryland Public Service Commission. 2004. Case Number 8983. The Implementation of the Federal Communication Commission's Triennial Review Order. On behalf of the Maryland Commission Staff I prepared testimony that calculated the breakeven point between mass market customers and enterprise customers.

Oregon Public Service Commission. 2003. AAA Case No. 78 181 00113 03 JISI. Arbitration concerning Intercarrier Compensation. North County Communications vs. Verizon. I was deposed and then testified on behalf of North County Communications.

Illinois Commerce Commission. 2003. Docket No. 02-147. Complaint against Verizon concerning Interconnection Issues and Sharing of Facilities. North County Communications vs. Verizon. I filed written testimony and also testified on behalf of North County Communications.

West Virginia Public Service Commission. 2002. Case No 02-0809-T-P. Verizon 271 Proceeding. West Virginia PSC vs. Verizon. Petition by Verizon to remove 271 restrictions. Intervened on behalf of North County Communications with written and oral comments.

West Virginia Public Service Commission. 2002. Case No 02-0254-T-C. Complaint against Verizon concerning the Use of Numbers and the Sharing of Facilities. North County Communications vs. Verizon. Filed written testimony and testified on behalf of North County Communications.

Maryland Public Service Commission. 2002. Case No 8910. Complaint against Verizon concerning the Availability of Dark Fiber. Core Communications vs. Verizon. Filed written testimony and testified on behalf of Core Communications.

Maryland Public Service Commission. 2002. Case No 8921. Verizon 271 Proceeding. Verizon vs. Maryland PSC. Petition by Verizon to remove 271 restrictions. Intervened on behalf of Core Communications with written comments and oral testimony.

Federal Communications Commission. 2002. Docket CC-01-338. Facts and Data supporting CLEC Competition. This was the Triennial Review rulemaking. I filed data gathered by CCG on behalf of a large number of CLECs.

Maryland District Court. 2002 Sealed. Intercom Systems Corporation, dba IMS Intercom vs. Verizon. Lawsuit between IMS Intercom and Verizon. I provided a written report on behalf of IMS Intercom and was deposed The lawsuit was settled and sealed.