



February 6, 2008

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VIA ELECTRONIC DELIVERY

Chairman Kevin J. Martin
Ms. Monica Desai, Chief, Media Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

Re: *Ex Parte* Letter
MB Docket No. 07-51 (MDU Exclusivity)

Dear Chairman Martin and Ms. Desai:

On behalf of RCN Telecom Services, Inc., I am writing to express RCN's appreciation for the Commission's November 13, 2007 decision prohibiting cable operators from enforcing or executing contracts granting exclusive access to multiple dwelling unit buildings ("MDUs") to provide video services. RCN has been competing in the cable market for more than 10 years and continues to seek entry to MDUs to offer consumers a choice of video services. We are hopeful that the Commission's decision will improve our ability to obtain access to MDUs and thereby bring additional competition to MDU residents in our service areas.

As the Commission discussed in the Order, exclusivity clauses have caused significant harm to competition and consumers. When a competitive provider cannot gain access to an MDU passed by its network it cannot use that investment to offer its competitive "triple-play" services to subscribers who it is ready, willing and able to serve. The new entrant therefore loses the opportunity to recover its investment over the maximum number of homes passed by its network and therefore to lower its overall cost of service to the benefit of all subscribers. Even more importantly, the residents of a 'locked up' MDU do not obtain the benefits of increased competition, such as lower prices, more programming channels, and a greater diversity of programming. The Commission's action will greatly assist MDU residents to have more choices for their video services.

As is often the case when regulators attempt to foreclose anti-competitive actions, however, RCN is becoming aware that incumbent cable operators may be beginning to employ other types of contracts and contractual provisions to create exclusive access rights indirectly where they can no longer contract for such rights directly. The Commission has already anticipated that certain types of existing contracts may give rise to concerns about *de facto* exclusives and has specifically asked for comment on contractual arrangements such as bulk sales, exclusive marketing and wiring ownership provisions. While these types of agreements

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may result in *de facto* exclusives for economic reasons, RCN's most recent communications with an MDU owner in its service area suggests that there may be other types of agreements being entered by incumbents which should also be examined since they appear to be solely targeted at providing incentives for MDU owners to exclude competitive providers and would therefore result in the *actual* access exclusivity that the Commission has already sought to prohibit.

We are attempting to uncover the details of such arrangements and to work with the MDU owner to address this issue, and therefore are not yet in a position to offer comments or seek Commission action, but to the extent that our concerns are not addressed we may raise them with the Commission in the future, since we are sure that the Commission did not intend to prohibit exclusivity clauses as an unfair method of competition but then allow agreements between cable operators and MDU owners that effectively creates an exclusive access right.

Very truly yours,



Richard Ramlall
Senior Vice President
Strategic and External Affairs