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FCC Mail Room

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Emporia Capital Funding LLC
515 S. Figueroa Street, 11th Floor
Los Angeles, CA 90071

February 27, 2008

Federal Communications Commission
C/O Marlene Dortch
445 12th Street SW
Washington, DC 20554

Re: MB Docket No. 07-51

Dear Ms. Dortch,

Please include this letter in the record for the above referenced matter.

Background:

For the past 23 years I have been directly involved in extending commercial credit to borrowers in a wide variety of industries. In 1985 I started working as a commercial lender for Bank of America and subsequently worked for several nationally chartered banks (First Interstate Bank, Wells Fargo Bank, Union Bank of California) increasing my responsibilities for underwriting commercial loans. Prior to departing Union Bank of California in 2006 I was SVP & Manager of the Commercial Banking Products Division, responsible for asset based lending, cash flow lending to select sponsored clients, leasing, and global trade related products. In late 2006, I joined Emporia Capital Management, which provides commercial loans outside of a Bank environment, as a Managing Director responsible for originating commercial loans in the U.S. We presently serve approximately 200 borrowers and manage roughly $1.5 billion in capital.

In the ordinary course of business while employed at Union Bank of California, N.A in the late 1990's and early in the current decade I conducted research and study into the Private Cable Operator ("PCO"), Franchise Cable Operator ("FCO"), and satellite television (DirecTV, Dish, etc.) industries for the purpose of considering requests for loans by small, entrepreneurial individuals interested in starting a PCO to better serve consumers residing in apartment buildings and other multi-family residences ("MDU"s).

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Since my departure to Emporia Capital Management in late 2006 I have not been professionally involved in any way with PCO's. I considered extending credit to a PCO operator in July/August of 2007. During the course of that diligence effort I uncovered references to the March 27, 2007 Notice of Proposed Rulemaking in the standard internet research we conduct prior to issuing commitments. This notice inferred to me that a significant change in the value of collateral offered for the loan could occur in the near future. I viewed this as anti-competitive and a significant new threat that had not existed in my prior dealings. Other lenders provided the financing for that particular PCO on terms and conditions I was not willing to provide. Whether or not these lenders were cognizant of this potential issue or understood its ramifications is unknown to me. In essence, I have already acted on the opinions I state in this letter as a provider of capital.

Today I do not extend credit to any PCO's nor am I directly personally involved with any PCO – I do not have a horse in this game. I have not actively followed the debate since August of 2007. An executive for a PCO contacted me this week and asked if I would independently provide comments on the proposed rules. No person or company is advising me on what to say, or what not to say and I have not previewed this letter with any person.

Opinion:

As an independent observer I am strongly opposed to new rules that would both:

- Void existing exclusive agreements PCO's have with MDU Owners
- Prevent PCO's from entering into new exclusive agreements with PCO's

While rules like this appear to foster competition on the surface, they will have the exact opposite effect. They will be anti-competitive in general, disrupt the healthy influence for innovation and service PCO's have fostered, and I believe moderate to lower income MDU tenants will, in particular, suffer decreased quality of customer service and choice.

While I believe that PCO's should continue to be able to enter into exclusive agreements, if the FCC rules differently I strongly believe standard grandfather protections should exist with respect to previously signed agreements.

Government should be extremely cautious regarding retroactive policy changes. The business community regularly weighs, underwrites, and prices the risk that future policy changes may impact decisions made in the present. The business community rarely has to deal with retroactive policy changes that would have impacted prior capital allocation and risk decisions. This type of retroactive policy decision

essentially re-writes history, dramatically increasing financial uncertainty, and negatively impacting risk-taking which is a vital part of our economic system.

To be certain, if the FCC made this one decision, the consequences would not be "earth-shattering" beyond the PCO community (which would suffer significantly), but the precedent is one to be avoided. Government should not fear retroactive policy changes related to civil rights (the Supreme Court, and subsequently the Congress and Executive Branches rendered such fear and compromise unconstitutional with respect to voting laws that coined the phrase "grandfather clause"). No such civil right issue exists in this case, and government should tread with extreme caution and balance in issues like those before the FCC. The concept of the grandfather clause was tailor made for this type of situation.

My opinions are based on the following key points:

A. **PCO's, in general, have inferior access to capital relative to their larger competitors.** Higher capital costs force PCO's to compete based on innovation, creative and high quality product offerings, and superior customer service quality – all of which benefit consumers and force larger providers to respond in turn.

   - *Economic theory dating back to the late 1800's recognizes the importance of "marginalization". Service quality, diversity of product offering, and price are all set on the margin. While PCO's are relatively small market participants, they represent an important balancing market force, moving the margins of service quality, innovation and pricing options into consumer friendly territory. Simply compare the pricing and packaging choices MDU tenants have today vs. 5 or 10 years ago and this fact is clear.*

B. **Exclusive agreements are the only asset enabling PCO's to attract reasonably priced debt and equity capital.** Without these agreements, existing debt facilities may be revoked and new ones will be difficult to obtain or prohibitively expensive.

   - *Capital providers to PCO's will seriously weigh the risk that large, well capitalized companies with access to public markets and the cash flow of their entrenched position and significant customer base will use this advantage to selectively crush PCO's with pricing incentives, compromising debt or equity capital provided to the PCO. These pricing incentives, which it is important to note may not accrue to the benefit of consumers, merely the property owners, will most certainly vanish or diminish as soon as the PCO's are eliminated or rendered powerless.*

C. **Niche PCO players are agile, able, and willing to overcome barriers to profitably serve "B" rated buildings.** Tenant churn in MDU's (and attendant costs/service burden) relative to the single family dwelling markets, and the difficulty and cost involved in properly updating older buildings results in large scale, relatively new or

brand new construction ("A" rated or of prime worth) attracting the most competitive attention for service offering and quality of service.

- *If PCO influences diminish, or their access to capital is impaired, it is my opinion that "B" rated buildings and facilities will disproportionately suffer from PCO absence. These "B" rated buildings often serve a higher proportion of low to moderate-income tenants.*

- *PCO's cannot force MDU owners to renew exclusive contracts. These exclusive contracts represent a fair risk return for the capital deployed by the PCO to upgrade MDU infrastructure, product offerings, and services. This exclusivity has been determined via a free market transaction. The same market forces that spur innovation and product breadth and quality occur again when the contract expires. It is important to note that Government has historically sanctioned this type of activity (fair risk return for infrastructure spending) in utility, communications, cable and other industries.*

D. A competitive process exists in the awarding of an exclusive contract. The contract is not evidence of a lack of competition, but encourages fierce competition and capital investment by market participants – both of which benefit consumers. The MDU owner can obtain a contract with anyone they choose.

E. The only person(s) permanently bound by an exclusive contract is the MDU owner. MDU tenants have the free choice of whether or not to rent an apartment. MDU tenants are aware of choices when selecting a place to live, and can within reasonable periods of time move if they believe their choice is unfairly restricted. MDU owners have no economic incentive to execute a new exclusive contract that places existing tenants in a worse position than before the contract was executed. MDU owner incentives are to improve offerings for existing tenants or risk increased vacancies. PCO products and services have been a benefit often used by MDU owners to market apartments.

When I first researched this industry and began lending to a start up PCO I did so based on this foundation:

- Customer service vacuum. I have extended credit to a wide variety of manufacturing, distribution, and service based enterprises operating in diverse industries. I have never seen such widespread customer dissatisfaction (bordering on a desire to "get even") with the service, product offerings, and approach large FCO's and other oligopolistic organizations/cultures had to a market. From casual conversations, to well-heeled research reports, to members of Congress making a show of their cable experiences the quality levels were pathetic. This

dissatisfaction was the impetus for MDU owners and tenants to cooperate in providing unknown entities an opportunity to compete. I believed that more nimble, entrepreneurs with MDU related experience could succeed and influence the industry for good. All of this equated to reasonable demand. Without this I did not think the small PCO could effectively compete for contracts.

- Collateral. My original loans were small and based on the credit standing of the owner pledging his personal worth. The capital required quickly outstripped that worth. In order to justify the larger loans needed to continue expansion, the bank had to set a collateral value on the exclusive contracts. The contract is the only way that I, the lender, had confidence that the investment in infrastructure to improve service and product could reasonably be repaid. A key credit concern was a backlash response from these larger FCO's or other new telco entrants with significant capital. The smaller PCO's were starting to influence the market in a way that forced these larger players to increase service and product quality. The contract provided some protection that I as a lender could rely on to offset this risk.

  There is no other worthwhile collateral outside of these contracts. It is impractical for lenders to go into apartment buildings and rip out cabling and infrastructure. Uninstalled, this equipment has little value and the cost to extract it would far exceed whatever value might exist. Furthermore, the disruption to tenants may engender bad press for the lender.

  Without collateral, in an industry environment where competitors are far larger than your borrower, loans are simply not made – or made at a price that makes the borrower uncompetitive. Without the economic benefits of leverage, equity returns are difficult to obtain. Without collateral both debt and equity capital are severely impaired. The only meaningful collateral that also mitigates the risk of larger competitors concentrating efforts to eliminate the smaller PCO is the exclusive contract.

  We specifically covenanted our loans based on the value of contracts and maintenance of certain loan to contract value related measures.

- Nimble operations. The PCO had a flat management structure. Owners developed fast track methods to evaluate all types of MDU buildings (A & B & C types) and accurately estimate costs. Instead of a "one size fits all" approach often adopted by larger companies, they were able to demonstrate to me, the lender, flexible systems and quick appropriate oversight to approving capital outlays. This was important as I believed larger competitors would focus on the A quality properties and the PCO needed to serve the marginal properties in order to build scale.

- Exclusive contracts did not appear to result in taking advantage of consumers. One way or another, if customers are not happy my debt repayment would be threatened – either through higher costs to serve those customers or litigation. The PCO does not have a large franchise with legal staff and strong resources to withstand litigation. The only way PCO's can avoid this risk is to provide competitive products and great service in the first place. Furthermore, if the PCO did not continue to gain regional scale, small though it may be, it could not meet desired equity returns and would fail – a powerful self-interested incentive to serve consumers well.

  Without maintaining high service quality, the relatively untested, unknown PCO would not maintain a reputation or differentiating factor necessary to win new business with MDU owners. MDU owners are generally savvy and require some flexibility to negotiate, exit or potentially terminate the contracts for service quality failures that go un-remedied. MDU owners are highly motivated to ensure service quality remains high (otherwise they incur costs related to tenant complaints and reduced tenant desirability related to other properties).

  My ongoing diligence revealed very high levels of customer satisfaction and strong demand after the contracts were signed. Unlike the predecessor larger organizations, which treated MDU tenants and property owners equally with poor service (w/n a long term exclusive arrangement was in place), the PCO came up with higher quality products, creative and affordable programming packages, and better approaches to consumer education and customer service. They delivered on these promises resulting in strong word of mouth marketing and momentum that eventually aroused the attention and concern of larger organizations.

In summary, both in my initial research and underwriting as well as in the ongoing study of the industry and evaluation of increasing loan commitments, the exclusive contract was a bedrock foundation for extending credit and a feature that did not result in adverse customer service.

I suspect that the PCO's have gained quite a bit of attention from their larger rivals by this point in time. Those rivals have the money, power, regulatory expertise and desire to shut down or diminish the positive influence PCO's have brought to bear on the market. They will be able to couch those arguments in the guise of open competition and the elimination of exclusivity, but that is not the final objective. While I believe PCO market share remains small, PCO's are an important economic "margin" influencing good service, product choice and innovation for MDU tenants.

I do not know how many PCO owners would share this potential ruling with their debt and equity capital providers and request they provide input to the FCC. Loan

agreements for smaller companies like PCO's often contain default language associated with "material adverse changes", which this ruling may represent. Loans based on the value of contracts may be defaulted. Without question, negative attention would be cast toward PCO's by their capital providers even though the FCC has not reached a final ruling. Alternatively, PCO debt and equity capital providers may also serve the larger FCO's and others and be conflicted or fear reprisal (from these larger customers).

In any event, I appreciate the opportunity to comment on these important issues. Please contact me if I may be of further assistance.

Respectfully,

David Ligon
Managing Director
213-999-4724
213-596-3984