

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF VERIZON*

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INTRODUCTION AND SUMMARY

Verizon made three points in its initial comments. *First*, bulk billing and exclusive marketing arrangements are fundamentally different from exclusive access arrangements because providers retain the ability to physically access properties and thus compete in the affected MDUs and consumers retain the ability to choose a competitive video services provider. *Second*, bulk billing and exclusive marketing arrangements may provide significant pro-competitive benefits to consumers without foreclosing competition. *Third*, these arrangements currently facilitate market entry by providing competitive tools through which new entrants can overcome the incumbency advantage of cable providers. The broad consensus reflected by the comments confirms that the Commission should not act to prohibit or regulate these arrangements, particularly in the context of new entrants.

DISCUSSION

I. Bulk Billing and Exclusive Marketing Arrangements Differ from Exclusive Access Arrangements

Bulk billing and exclusive marketing arrangements stand in stark contrast to exclusive access arrangements, the incumbents' use of which the Commission found, under current market circumstances, to harm competition by foreclosing competing providers' physical access to properties. The record here confirms that residents in properties with bulk billing and exclusive marketing arrangements can choose their video service providers, and that video service providers can choose to compete with the providers having such arrangements.¹

¹ See, e.g., Comments of Community Associations Institute at 6; Comments of National Association of Home Builders at 2-3; Comments of National Multi Housing Council at 6, 25; Comments of RealtyCom Partners, LLC at 6-7; Letter from Stephen W. Studer, Counsel for Thames Valley Communications, Inc. to Kevin J. Martin, Chairman, Federal Communications Commission (filed Feb. 6, 2008) ("TVC Letter").

The record in the earlier proceeding regarding exclusive *access* provisions showed that incumbent providers used such agreements to inhibit competitive entry and to deny consumers a competitive choice.² The record does not contain such evidence with respect to bulk billing and exclusive marketing arrangements. Absent such evidence, there is no justification for Commission regulation of exclusive marketing or bulk billing arrangements. In contrast, the record does include evidence showing that new entrants use these arrangements to more effectively compete against incumbents, thus enabling new entry into new properties and by extension new markets.³

Notwithstanding the evidentiary record, a small handful of commenters argue that bulk billing and exclusive access arrangements should be prohibited.⁴ But these arguments provide no evidentiary support that providers currently use such arrangements – rather than more restrictive exclusive access arrangements – to harm competition. Moreover, these commenters ignore the fact that the arrangements do not “restrict citizens’ *ability to exercise their freedom to choose* a cable provider based on quality of service and price” to the same degree as an exclusive

² Report and Order and Further Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments*, MB Docket No. 07-51, 22 FCC Rcd 20235, ¶ 28 (Nov. 13, 2007); *see also* Reply Comments of Verizon at 4 (filed Aug. 1, 2007) (citing evidence that incumbent providers use exclusive access arrangements to “lock up MDUs”).

³ Comments of Verizon at 7-8; Comments of WorldNet Telecommunications, Inc. at 7-8; Comments of Home Town Cable TV, LLC at 6-7; TVC Letter at 3.

⁴ *See, e.g.*, Comments of Lafayette Utilities System at 8-9 (“LUS Comments”) (arguing that *incumbent* providers use bulk billing arrangements to foreclose competition, but not pointing to any examples); Comments of Marco Island Cable at 13-14 (“Marco Island Comments”) (same); Comments of SureWest Communications at 4 (arguing that bulk billing arrangements might “discourage[] consumers from taking service from a competitor,” but again pointing to no specific examples).

access provision that denies competitors physical access to a property.⁵ In fact, the evidence shows that residents in MDUs with exclusive marketing or bulk billing arrangements in place can and do choose other video service providers. For example, while some residents of the Live Oak Preserve Community filed comments complaining about the community's fifteen-year bulk billing arrangement with Century Communications,⁶ comments from the community also indicated that customers have purchased from alternative providers.⁷ As long as video *competition* is preserved, providers like Century that fail to provide adequate service will be disciplined by the market.

The few commenters who favor a prohibition of exclusive marketing arrangements argue that exclusive marketing arrangements “mak[e] it difficult for residents of MDUs to learn about their options or [make] it unduly difficult or costly for a competitor to communicate with them.”⁸ But the commenters provide no evidence that such arrangements impede residents from learning about all of their potential choices or make competitors' marketing efforts unduly difficult or costly. In fact, exclusive marketing arrangements provide a special means of marketing to the video service provider having such an arrangement (e.g., distribution of advertising materials with the leasing packet; placement of advertisements in the lobby) without foreclosing the ability of other video service providers to communicate with MDU residents through their regular means, including direct mailings and other forms of advertising. Indeed, where such agreements

⁵ Comments of the City of Weston, Florida and the Town Foundation, Inc. at 5 (emphasis added).

⁶ The term of this bulk-billing arrangement appears to be unusually long. Moreover, as competition continues to increase in the video marketplace, the prevalence of such long-term arrangements is likely to decrease.

⁷ See, e.g., Comments of Michelle Abreu (noting that she ordered Verizon service); Comments of Howard Mayorga (same); Comments of Harold Fields (noting that he ordered DirectTV); Comments of Dustin Miller (noting that he ordered satellite service).

⁸ Marco Island Comments at 13; LUS Comments at 8.

are in place, competitors' communication efforts are similar to the efforts that they would make in the absence of an exclusive marketing arrangement.

II. Bulk Billing and Exclusive Marketing Arrangements, Particularly by New Entrants, May Provide Significant Pro-Competitive Benefits

The filed comments confirm that bulk billing and exclusive marketing arrangements may offer significant benefits to consumers without denying competitors physical access to the premises, as was the case with the incumbents' exclusive access arrangements. Further, new entrants have used both bulk billing and exclusive marketing arrangements to overcome the advantages of cable incumbency and therefore effectively compete to serve MDU residents.⁹

Bulk billing and exclusive marketing arrangements often enable customers to secure significant discounts off their monthly charges for cable. In the case of bulk billing arrangements, these discounts could be up to 50% off the normal price for service in the relevant market.¹⁰ The arrangements often provide additional benefits for residents, such as providing a dedicated customer service liaison for the building, free cable service in the property's gym, wireless "hot spots" for the property, and channels dedicated to the community.

Although advocates of exclusive access provisions claimed similar benefits to those described above, the Commission had ample evidence that incumbents employed such arrangements to foreclose meaningful wireline competition. The record shows that bulk billing and exclusive marketing arrangements may be a less restrictive means of obtaining any benefits for consumers, but without the significant harm to competition found in the case of incumbents' use of exclusive access provisions.

⁹ See *supra* note 3 (citing Comments).

¹⁰ Comments of Home Town Cable TV, LLC at 2; Comments of Community Associations Institute at 5; Letter from Donald G. Bauman, Jr., Senior Vice President, Apartment Investment and Management Company to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (filed Feb. 4, 2008).

Indeed, these arrangements can be an important tool in encouraging video competition. Verizon and other new entrants have successfully employed bulk billing and exclusive marketing arrangements as a competitive tool to gain entry into MDUs and new markets. Exclusive marketing arrangements aid competitive providers in overcoming incumbent brand recognition, thereby facilitating competition. Similarly, bulk billing arrangements allow new entrants to offer a pricing benefit to potential subscribers, thus facilitating new market entry.

III. Arguments Concerning Inside Wiring Rules are Misplaced in this Proceeding

In its comments, Cox Communications attempts to inject arguments concerning the Commission's cable inside wiring rules into this proceeding.¹¹ These arguments are not responsive to the Commission's notice and should not be considered. The inside wiring rules apply to all MDUs, regardless of whether these MDUs are subject to agreements providing for exclusive marketing, or bulk billing arrangements. They thus have no bearing on the issue in this proceeding – whether the Commission should address bulk billing and exclusive marketing arrangements.

Further, the Commission already considered these claims in adopting its recent *Wiring Order*.¹² Any claims that this order was wrongly decided could have been raised in a petition for reconsideration of the Commission's order or a new petition for rulemaking – not as a claim in a completely unrelated proceeding.¹³ Cox wrongly suggests that its wiring claims – regarding

¹¹ See Comments of Cox Communications at 7-13.

¹² See Report and Order and Declaratory Ruling, *Telecommunications Services Inside Wiring Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring; Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Local Exchange Carriers' Inside Wire Subloop*, 22 FCC Rcd 10,640 (2007).

¹³ No parties filed a petition for reconsideration of the Commission's order. An appeal of that order is currently pending before the D.C. Circuit. See *National Cable & Telecomms. Ass'n v. FCC*, No. 08-1016 & 08-1017 (D.C. Cir.).

appropriate constraints for competitor access to wiring when multiple services are provided over a single cable, the location of the demarcation point at which a competitor may access wiring, and the level of compensation for wiring – are new and different issues that warrant the Commission’s attention.¹⁴ But these claims have all been considered and addressed in the recent *Wiring Order* and in the earlier orders setting the Commission’s cable inside wiring rules, now codified at 47 C.F.R. §§ 76.800 *et seq.* To the extent that the rules do not adequately address Cox’s concerns, the proper course of action is for Cox to petition the Commission to institute a rulemaking proceeding to address them, not to attempt to litigate those issues here.

CONCLUSION

For the reasons set forth above and in Verizon’s opening comments, the Commission should decline to adopt rules prohibiting or otherwise restricting bulk billing and exclusive marketing arrangements.

¹⁴ See Comments of Cox Communications at 2 (stating that these issues are “causing considerable confusion”).

Respectfully submitted,

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