

Reply to comments of the National Association of Home Builders
(NAHB) of 5/5/08

In their letter, the NAHB summarizes a notice of exparte meeting where they presented their views in opposition to proposed bans on exclusive marketing agreements and bulk billing arrangements. (When is the meeting with concerned residents going to be held?)

The NAHB states "Overall: neither marketing not bulk billing arrangements are anticompetitive since both arrangements allow residents freedom of choice in MVPD service at no higher price or service level than the agreement that would be negotiated with a single household in the absense of such agreements."

I can not speak of marketing agreements but in my first (and hopefully last) experience with bulk billing, in my opinion it is certainly anticompetitive. Yes, some residents, those with plenty of money, have the freedom to subscribe to other MVPD services but still must pay for the exclusive and bulk billed contracted service with the "chosen" (by the developer) provider. For the average resident, without a lot of money, the exclusive bulk billed contract is definitely anticompetitive and they are stuck with whatever level of service the provider wishes to deliver and often for many, many years. For other providers, particularly those who choose to overbuild a development, I'm sure a customer base limited to only wealthy residents, would be classified as anticompetitive by these providers.

The NAHB goes on to say "Bulk billing does not foreclose access to any MVPD who is ready, able and willing to service any residents. Customer choice is maintained." Again, when I MUST pay for service from an exclusive provider through HOA fees, I DO NOT have a choice since I can not afford to pay for duplicate services. While access is allowed to DBSs and other MVPDs, that access comes with the knowledge that the customer base will be limited until the term of the exclusive contract expires.

For apartment residents, the NAHB offers this bit of advice, "If the MVPD is too objectionable in the context of all the other features

of the unit, the tenant can rent elsewhere." That is fine for those individuals, but what about owners of single homes? When they find out after moving-in that the MVPD service is very sub-standard and that they are under a 10,15,60, even 75 year exclusive bulk billed contract set up by the developer during pre-construction, would the NAHB advise them to just move elsewhere? And how would the NAHB suggest said homeowner sell his house in today's market?

Another bit of wisdom from the NAHB states "Bulk billing does not raise costs for anyone." A homeowner moves into his new house where he plans to work from home via the internet. Shortly, he discovers his bulk billing provider has speed and reliability problems that make his work impossible. So he **MUST** take internet service from a second provider. According to the NAHB, the bulk billing **DID NOT** raise his costs.

And finally the NAHB adds "Residents may prefer an alternative MVPD and contract with it, but their cost for that service is the same that it would be if there were no bulk billing for an incumbent service." I suppose the NAHB is saying that the alternative provider charges a certain rate no matter where the individual lives. The NAHB can not possibly be saying that a resident can sign up with an alternative provider, pay the mandatory bulk billing fee, and the overall cost to the resident would still be the same. **OH!** Silly me! According to the NAHB, bulk billing does not raise costs so **THAT MUST BE** what they mean.

The NAHB fails to address the latest, dastardly consequence of bulk billing. When a house goes into foreclosure or a homeowner simply defaults on his HOA fees, the bulk billing provider simply tells the HOA to pay for **ALL** of the houses whether they are empty or not. So who ends up paying this extra HOA expense? The other homeowners who are not defaulting on their HOA fees. But again, according to the NAHB, **"BULK BILLING DOES NOT RAISE COSTS FOR ANYONE."**