

Reply to comments of Marco Island Cable (MIC):

In their comments the MIC makes some good beginning steps towards solving some of the problems caused by exclusive and/or bulk billing contracts between MVPDs and MDUs.

In summary, "MIC submits that the Commission should (1) bar all forms of exclusivity by major cable operators, including but not limited to exclusive marketing and 100 percent take-or-pay bulk service agreements; and (2) exempt PCOs and SCOs from restriction on exclusive arrangements for a period not exceeding five years from a new development or a major upgrade." In their arguments, MIC did not convince me that ONLY the major cable operators should be banned from exclusivity contracts. To the contrary, my experience with a small PCO, set up by the developer with a 15 year exclusive deal, has convinced me that all MVPDs should come under a ban for exclusive contracts. The chances of very substandard products and services, I think, are greater with a small company than a larger, established provider. However, MIC is definitely thinking in the right direction when they call for a limit of 5 years to these deals. That certainly is far better than making residents suffer for 15, 65 and even 75 years as described by some letters to 07-51. And, according to MIC, the five year period "should be ample time to recover the investments that PCOs and SCOs must make to become viable competitors."

The bulk billing practice of the MIC is commendable. "Under MIC practice, all residents of an MDU that wish to take service from MIC are entitled to a monthly discount at a level negotiated by the MDU on behalf of its residents. Any resident that prefers to receive service from another cable provider is free to do so, and he or she is not required to pay anything to MIC." MIC adds "some bulk billing arrangements do cross the line and pose significant barriers to new entrants. This occurs when an incumbent adds a take-or-pay obligation that would effectively require residents of MDUs to pay twice if they choose to move to another provider." The MIC failed to observe that these take-or-pay clauses also require the HOA to pay for any empty houses and for any residents in default of their HOA dues.

A ban on take-or-pay bulk service and a time restriction of five years to contracts are good proposals by MIC. A better proposal the Commission should consider is a ban on all contracts between MVPDs and the HOAs of MDUs.