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July 18th, 2008

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: EX PARTE PRESENTATION
Exclusive Service Contracts for the Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, MB Docket No. 07-51
Further Notice of Proposal Rulemaking

Dear Ms. Dortch:

On July 18th, 2008 I met with Rudy Brioche' and Ramesh Nagarajan of the Office of Commissioner Jonathan Adelstein. The purpose of this meeting was to provide consumer feedback on the business activities of our telecommunications providers and how it pertains to MB Docket No. 07-51.

Specifically, I provided to the commissioners information regarding the unfair business practices of our telecommunications provider (OpenBand), their market manipulation and monopolization tactics, and the clear conflict of interests that exists through the management of contracts that obtain their services. Additionally, we discussed how bulk billing arrangements have enabled these providers to continue these practices unabated.

Based on our discussions, I am respectfully asking the commission to prohibit any type of bulk services, bulk billing, exclusive bulk billing and exclusive marketing agreements. It is our belief that these types of agreements are attempts to bypass current telecommunications and

antitrust laws[1]. Further, these corporations (MVPD, PCO, DBS or Special Purpose Entities) provide telecommunication services to a large number of customers using monopolies with prevailing or new service providers, under unregulated conditions, and with disregard to consumers' rights[2].

It is my further opinion that bulk services or bulk billing agreements are more burdensome on consumers than exclusivity clauses alone because bulk billing agreements cover bulk services that typically includes cable, internet and telephone. These services are also provided at a premium price under the false pretense of getting a special price or a discount. Additionally, the creator of the special purpose entity profits from the discount and the customers end up paying standard market rates or worse[3]. Bulk Services arrangements are also contrary to Congressional efforts to advance broadband technology in the United States.

Through the administration of these bulk billing agreements, our telecommunications provider is able to eliminate competition and limit telecommunication advances for our community. Our provider simply does not have the infrastructure to keep up with technological advances or deliver comparable market offerings.

The only effective means to improve our arrangements is through open competition markets with consumer and community protections. Any company, regardless of industry sector, that provides telecommunications or cable services, should be regulated. No citizen of the United States of America should have to review hundreds of pages of contracts or spend thousands of dollars to hire a lawyer to obtain or change telephone, cable or internet services.

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[1] U.S.C § 2, Monopolizing trade a felony; penalty
http://www.law.cornell.edu/uscode/15/usc_sec_15_00000002----000-.html
[2] 47 U.S.C. 151, Communication Act of 1934
http://www.law.cornell.edu/uscode/47/usc_sec_47_00000151----000-.html
[3] Reply Comments City of Reedsburg Exhibit A Charter Communication Agreement
http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519862759

My discussion points were consistent with comments previously filed in this proceeding. A summary of topics of discussion was provided to both **Mr. Brioche'** and **Mr. Nagarajan**. A summary has also been provided here as an attachment and should be included in the record of this proceeding. Full documentation was previously provided in two parts via an e-filing submitted by me on June 19th, 2008.

Sincerely,

Dwayne F. Cotti

Attachment

Cc: Dwayne F. Cotti

Broadlands, VA

By Dwayne Cotti

Van Metre Homes negotiated a 65 Year exclusive telecommunications contract with a company, known as OpenBand of Virginia, LLC, to provide basic TV, telephone and Internet Services. Van Metre co-founded OpenBand of Virginia, LLC with M. C. Dean on behalf of the future residents of Southern Walk. Van Metre created the Southern Walk Homeowners Association as a mechanism to collect the mandatory monthly assessment from Southern Walk homeowners. In addition, Van Metre controls the only governing entity, which is the Southern Walk Home Owners Association. The sole purpose of this association is to enforce the "HOA" contract and the mandatory monthly assessment from Southern Walk homeowners as well as approving price increases at their sole discretion. In doing so, Van Metre created an unfair business practice and a telecommunications monopoly for Southern Walk homeowners. In addition, Van Metre refuses to address contractual flaws as identified by Southern Walk homeowners.

At the onset of the development of the Southern Walk Community and before a single house was built, Van Metre negotiated with M.C. Dean to create a joint venture call OpenBand. Van Metre then subsequently created and incorporated the Southern Walk @ Broadlands Homeowners Association, Inc. In addition M.C. Dean created OpenBand @ Broadlands LLC, which then spun of two entities: One called Broadlands Communications and the other called OpenBand SPE, II, LLC. Once these entities were established, the Southern Walk @ Broadlands Homeowners Association, Inc. established a contract with one of these OpenBand entities to provide exclusive telecommunications services (TV, Telephone, Internet) to the Southern Walk community through the collection of HOA monthly payments. The contract established and agreed upon on behalf of Southern Walk residents was done so prior to the onset of construction. In addition, the SWHOA contracted to Armstrong Management to manage the collection of dues from HOA residents.

These actions created the means by which Van Metre and M. C. Dean could prevent competition within Southern Walk and establish a mechanism by which they can control pricing as well as profit from revenues obtained through resident HOA payments.

These are the resident's concerns regarding this situation:

1. The contract established between Southern Walk @ Broadlands has a minimum term of 25 years and a maximum term of 65 years with no option to opt out. OpenBand has exclusive rights within the Southern Walk community – furthermore 239 (out of 933) Southern Walk homeowners have DirecTV/Dish Network as their primary TV provider – however they are require to pay the mandatory SW HOA fee.
2. New home buyers are required to agree to these terms or they would not be allowed to purchase a home within the community. (Some original purchasers did not have contract terms disclosed. Additionally, Van Metre did not start fully disclosing any terms until 2007 after 90% of the community had been built-out)
3. Purchasers of resale homes are not asked to sign any documents to agree to these terms yet it is implied that the terms are inherited during the resale home purchase, which is a contradiction to the SWHOA articles of incorporation.
4. Van Metre holds the majority seats on the Southern Walk HOA Board of directors.
5. Current board membership is set at three Van Metre members and two resident members.
6. In June of 2006 and December of 2006, each resident member positions become vacant. **(These seats have since been filled by two residents. However, Van Metre filled the seats through a selection process, not by a community vote)**
7. By the SWHOA bylaws these positions were to be filled during the first available board meeting or a special meeting is to be called to fill these positions. These replacements would act in these positions until a full community vote can be held in May of 2007.

8. In November of 2006 a nomination for a resident member was brought to Van Metre's attention. Van Metre subsequently rejected that nomination with no explanation.
9. Van Metre cancelled and postponed meetings to prevent this action
10. Pricing for OpenBand services are derived through a comparative analysis of local competitors and set to be "10%" lower than the average prices the competitors set for similar services.
11. The SWHOA board/Van Metre is the sole entity that can approve or disapprove the inclusion of additional competitive pricing in their annual evaluations.
12. Denise Harrover, the VP of the SWHOA Boards and a Van Metre executive, resists adding competitor pricing that could potentially bring pricing down
13. SWHOA residents have identified several areas where the comparative analysis of pricing is inaccurate and flawed.
    a. TV Pricing was compared with no regard to the number of channels being provided and the existence of an SLA. (Openband provided less channels than competitors and does not provide an SLA)
    b. Internet pricing is based on a comparison of Openband's Intranet connection speed to competitor Internet throughput speeds. (again no SLA, whereas competitors provide one)
14. Armstrong Management collects information from OpenBand to include within the annual budget for the SWHOA.
15. The SWHOA/Van Metre approves or disapproves this budget which in turn means they approve or disapprove OpenBand's pricing.

16. The collection of HOA payments by Armstrong has generated an excess of $160,000 in revenue.

17. Through operating agreements, Van Metre is paid *8%* of the revenues collected by Armstrong management and paid to OpenBand through mandatory SWHOA dues. Reference Page 36, Section 5.1 of the operating agreement provided as exhibit (A)**.**

18. Through these same operating agreements, Van Metre is also paid *12%* of the revenues generated by resident payments for premium services paid directly to OpenBand. Reference Page 36, Section 5.1 of the operating agreement provided as exhibit A.

Speaking on pricing, one example submitted to the commission from a Broadlands resident is provided here:

It is stated that customers of OpenBand are protected by the Contract between OpenBand and the HOA from high rates and unreasonable price increases. In fact the contract does state that the price paid for any service shall be 10% below the cost of comparable service providers in Loudoun County and that our average price paid has only increase 1.1% per year since 2002. Said a different way, OpenBand's rates have increased 5+ percent over the last 5 years when the trend in industry has been a reduction of costs over the same period of time.

It is stated that a competitive analysis is done of the prices of other services providers for comparable services and that the documentation is provided to the HOA. What isn't stated is that the comparison is NOT up for discussion and that the governing body that would approve/reject such analysis (Southern Walk HOA) is controlled by the developer who also happens to have a business relationship with OpenBand. It also does not compare "bundled" services provided by these service providers. As everyone knows you are going to pay more for "al la carte" service selections versus bundled services - therefore their comparable price analysis is already overpriced to begin with. It also does not include satellite networks which have clearly be the driver putting downward pressure on the cable industry over the years.

Mr. Brecher also states that we, as residents, are pointing to short-term or promotional pricing in making the argument we are paying too much. First, I would argue that short-term/promotional pricing should be included since if I chose to leave another provider (e.g. DirecTV) after the promotional pricing was up, that provider would in all likelihood grant me continued promotional pricing and in some cases make the deal even better. Second, I did an analysis of my bill specifically where I used the Post-Promotional pricing costs for the competitors. As you can see below I am clearly paying more that the 10% below comparable that I was promised.

Pricing Analysis

Assumes 4 TVs (including cost for boxes), Phone with Unlimited Long Distance in US and calling features such as Voicemail, Call Waiting, Caller ID, and Internet.

OpenBand Price

Basic services paid through HOA	$149.00
Additional (boxes and Long Distance Package)	$50.00
Total Monthly	**$199.00**

Bundled Service Comparison

(All prices are POST promotional pricing)

Verizon FIOS - Triple Freedom (Regular)	$172.00		
Verizon FIOS - Triple Freedom (Bundle Savings)	$139.00	Comcast Triple Play	$177.00

All 3 Services with NO Bundling Savings

Verizon Phone	$50.00
DirecTV	$83.00
Verizon FIOS	$68.00
Total All 3	**$201.00**

When Comparing OpenBand to the Bundled packages, the cost clearly is above the competition, not the stated 10% below guarantee and even using individual pricing for the 3 services while basically even in cost - it should be 10% below the three.

In closing, it is our assertion that Van Metre has violated anti-trust laws; Van Metre rejects any accountability for the degradation of services provided by OpenBand to Southern Walk homeowners. Van Metre controls the Southern Walk homeowners association as a means to increase their profitability and earnings through a guaranteed “kickback” from OpenBand for exclusivity within Southern Walk.