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July 24, 2008

**BY ELECTRONIC FILING**

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

Re: Notice of *ex parte* meeting in MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments.

Dear Ms. Dortch:

On July 23, 2008, Betsy Feigin Befus, Vice President and Special Counsel of the National Multi Housing Council, and Matthew C. Ames of Miller & Van Eaton, PLLC, met with Cameron Arch of Commissioner Tate's office in connection with the matter identified above.

During the meeting, the participants discussed the reasons that the apartment industry believes that exclusive marketing agreements and bulk service agreements between property owners and video service providers should not be regulated by the Commission, and why the apartment industry does not believe that the ban on exclusive access agreements should be extended to private cable operators.

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A copy of the materials distributed at the meeting is attached.

Very truly yours,

**MILLER & VAN EATON, P.L.L.C.**

A handwritten signature in black ink, appearing to read "Matthew C. Ames". The signature is fluid and cursive, with a long horizontal stroke at the end.

By

Matthew C. Ames

Attachment

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**THE RESIDENTIAL REAL ESTATE INDUSTRY OPPOSES REGULATION OF CONTRACTS FOR THE PROVISION OF CABLE SERVICE IN APARTMENT BUILDINGS AS BOTH UNNECESSARY AND UNLAWFUL.**

**1. Exclusive Marketing Agreements Are a Central Part of a Functioning Market Mechanism, a Mechanism that Encourages Deployment of Advanced Infrastructure.**

- Property owners agree to provide exclusive marketing services in exchange for concessions from providers that benefit subscribers, such as upgraded facilities and enhanced customer service standards.
- Agreements between providers and property owners provide a means of allocating the cost of internal wiring. Interfering with this mechanism will discourage deployment of new infrastructure because the cost to an owner of competitive entry is significant – as much as \$1500 per unit if the owner pays for the wiring – and owners will have less incentive to allow competitive entry if they are unable to recover their costs.
- There is no evidence in the record of a market failure that would justify regulation of exclusive marketing agreements, and little support in the record for such regulation. The record shows that exclusive marketing agreements do not deter competitive entry.
- The Commission has no authority over such agreements under Section 628 or any other provision of the Communications Act. Even if Section 628 applied, marketing agreements do not “prevent” or “hinder significantly” the distribution of programming, nor are they unfair or deceptive.

**2. The Commission Should Not Seek To Regulate Bulk Service Agreements.**

- Bulk service agreements offer apartment residents very large rate reductions – as much as 40-60% – as well as the convenience of immediately-available service.
- Certain market segments – such as the student housing market – depend heavily on bulk service agreements. Provision of service in those markets would be severely disrupted if bulk agreements were banned.
- The Commission has no power to regulate bulk service agreements: the Commission has no authority over rates at all where there is effective competition, and Congress has expressly endorsed the use of bulk agreements in Section 623(d).

**3. The Commission Should Not Extend Its Existing Rules to Include Private Cable Operators or Other Small Competitors.**

- As the Commission has previously found, smaller competitors benefit from exclusivity. The record makes it very clear that the ability of such providers to finance new systems or upgrades of existing ones would be severely harmed by extending the ban on exclusive access provisions.
- Property owners depend on viable competition from PCOs both to meet particular needs in specific markets, and to encourage larger providers to provide better customer service and up-to-date facilities. This benefits subscribers.

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