

WEISS, HANDLER,  
ANGELOS & CORNWELL, P.A.

ATTORNEYS AT LAW

ONE BOCA PLACE

SUITE 218A

2255 GLADES ROAD

BOCA RATON, FLORIDA 33431-7392

BOCA RATON (561) 997-9995

BROWARD (954) 421-5101

PALM BEACH (561) 734-8008

PORT ST. LUCIE (772) 345-LAWS

TELECOPIER (561) 997-5280

www.weissandhandler.com

E-MAIL: hbh@weissandhandlerpa.com

PORT ST. LUCIE OFFICE

10521 SW VILLAGE CENTER DRIVE

SUITE 101

PORT ST. LUCIE, FLORIDA 34987

(772) 345-LAWS

OF COUNSEL:

RAOUL LIONEL FELDER<sup>†</sup>

PETER P. LINDLEY

HARRY WINDERMAN

CYNTHIA G. ANGELOS\*  
JOHN W. CHAPMAN  
WILLIAM J. CORNWELL\*\*  
DAVID K. FRIEDMAN  
HENRY B. HANDLER  
CAROL A. KARTAGENER<sup>◇</sup>  
SETH A. KOLTON  
ADAM J. KOPMAN  
HENRY N. PORTNER  
HOWARD I. WEISS\*\*\*

\* FL, VA BARS

\*\* FL, GA BARS

\*\*\* FL, NY BARS

<sup>◇</sup> BOARD CERTIFIED  
MARITAL & FAMILY LAW

<sup>†</sup> NY BAR, NOT ADMITTED IN FL

August 27, 2008

Hon. Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: Consumer Support for Bulk Discount Agreements, MB Docket No. 07-51

Dear Chairman Martin:

On July 18, 2008, we sent to you a petition signed by homeowner representatives of four senior communities in southeast Florida representing approximately 30,000 homes voicing strong support for bulk discount agreements, consistent with the prior more extensive comments filed previously by the Century Village Community.<sup>1</sup> We now wish to respond to a subsequent letter from Mr. Casey Taylor, a Virginia resident who argued that the Commission should cast aside scores of individual bulk agreements such as ours to which there is not a single objection in the record, simply to help him with a particular legal dispute he appears to be having with the developer from which he recently bought his home. While we sympathize with the consumers who are dissatisfied with their own situations, it is neither necessary nor appropriate for the FCC to try to address those isolated cases by raising the cable rates of those of us who are not.

Mr. Taylor suggests that our desire to keep the bulk billing agreements that we negotiated are causing him harm 1000 miles away in his community, and that our interests should not override his interests. But it is obviously the opposite that is true. Our agreement has no impact on Mr. Taylor; it is only his own local circumstances that affect him. It is he and a handful of others that are the ones asking the FCC to override our interests in favor of theirs, by urging a nationwide ban on all bulk agreements as a vastly overbroad, expedited means of getting themselves out of contracts that they entered.

<sup>1</sup> Comments of Century of Boca Raton Umbrella Association, Feb. 6, 2008.

As we have explained, bulk agreements enable us to secure better services at better prices on behalf of our residents collectively than they could ever obtain individually, including deep discounts, carriage of specific desired channels and our own local programming, contractually guaranteed higher standards of customer care, and amenities such as free service to recreation rooms. Without bulk agreements, our residents would instead have only three “choices” of vanilla (one each from the local cable operator and the two satellite operators), on a take-it-or-leave-it basis with no discounts or other benefits.

There are apparently a few communities where a bulk service provider is either not living up to the terms of its agreement, or where it somehow induced a community to enter an unfavorable agreement. But rather than recklessly throw all of the good agreements out with the bad, the government should provide a forum for case-by-case consideration of individual contracts. Fortunately for the FCC, those forums already exist at the state level.

State courts and enforcement agencies across the country regularly adjudicate contract disputes and enforce compliance with extensive state laws protecting consumers and regulating the relationships between landlords and tenants, and between developers, homeowners’ associations, and residents. Virtually every consumer that has complained about bulk agreements has also alleged a breach of contract and/or violation of state law that they could bring to state court and/or state authorities. In a July 14, 2008 letter, Mr. Taylor alleged that the developer of his community has violated the Virginia Condominium Act. Weston, Florida, which filed comments in this proceeding, previously sued its bulk cable provider for breach of contract. It later reached a settlement hailed by the City as a success that resulted in an amended agreement that capped price increases and set an earlier termination date.<sup>2</sup> One of the most recent and notable success stories is in the case of the community of Live Oak in Tampa, Florida, which had generated the greatest number of negative comments to the FCC about bulk billing. The bulk service provider apparently delivered a very low quality product and poor customer service, and the community ultimately sued for breach of contract. As a result, Live Oak effectively forced the provider to sell to Bright House, which by its reputation we expect will provide much better service. Bright House recently reported to the FCC that it is delivering 16 additional channels to Live Oak and significantly increased Internet speeds, at a price that is 37% less than Bright House’s retail rates in the same area, thanks to the bulk discount.

Some Live Oak residents have argued that they should not have had to hire an attorney to change their service provider.<sup>3</sup> Century Village is sympathetic – after all, because of this proceeding, it has had to hire an attorney just to try to keep its service provider. But what these complaints miss is that it is only because of bulk agreements that MDU residents have the leverage to make effective use of lawyers and the legal process at all. In communities without bulk agreements, there is little chance that a resident could sue its cable operator and a few months later walk out of court with 16 more channels, faster Internet and a 37% discount. And while the legal process is unfortunately expensive for a single consumer acting alone, the aggregation of resources of all of the MDU residents makes effective representation possible.

---

<sup>2</sup> See <http://www.westonfl.org/Content.aspx?f=/ListNews3.aspx>

<sup>3</sup> It should be noted that what they are seeking to do is get out of a contract, not just change their cable service.

The Board of the Century of Boca Raton Umbrella Association aka Century Village expressly authorized the comments it filed previously with the FCC. The Umbrella Association represents sixteen homeowners' associations in Century Village, each of which are elected and controlled by the residents living there and not by a developer or other outside interest. These associations have the support of their residents. In any case, while we suspect that there are more consumers who are happy with their bulk agreements than those who are not, the actual percentages should not matter – the FCC need not and should not impose the same blanket result on all agreements simply based upon who can generate the most pages in the Commission's record.

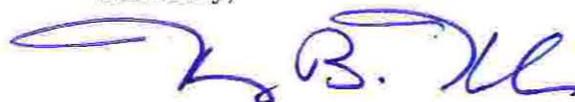
Finally, it is very important that the FCC recognize the flaw in Mr. Taylor's last argument, which was:

get rid of the bulk billing agreement if you are so confident in the service the homeowners are being offered. If the service is that incredible, it shouldn't matter if your home owners are under contract or not, they would still use it. If they still used it, why would the cable company need to modify their pricing matrices if the provider representation would still remain 100% in their favor?

The answer is that if operators lose their bulk agreement, they would lose the special programming discounts and operational efficiencies that make bulk discounts possible. There is no question that at least a few homes would not purchase the service, and without 100% penetration, the programming discounts (with ESPN, CNN, Disney, Viacom, Fox, etc.) would be terminated immediately. This is because the programmers require 100% penetration to qualify for the bulk discount – the programmers have no incentive to offer discounts if the content will only be delivered to the customers who affirmatively choose to subscribe anyway. Also, even if the FCC allowed us to grandfather our existing agreements, once those agreements expire we are not optimistic that we would continue to be able to secure the significant benefits if the government prohibits us from collectively bargaining with cable operators.

We devoted considerable effort and attention to negotiating our contracts, and do not wish to have them taken away from us in the name of our protection. For those consumers who did not do the same and are now asking the FCC for help, we wish them well in trying to use the legal process to try to get what we have – great cable service at great prices. But the FCC should not, in the name of trying to provide more choices to this handful of dissatisfied consumers, override the choices that satisfied consumers such as us have made or take away our freedom to choose to enter bulk discount agreements in the future.

Sincerely,



Henry B. Handler  
Counsel for Century of Boca Raton Umbrella  
Association, Inc., aka Century Village