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VIA ELECTRONIC FILING

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Comments From Mr. Henry Handler, Consumer Support For Bulk Discount Arrangements FCC Docket 07-51

Honorable Kevin J. Martin:

The comments of Henry B. Handler¹ from **Weiss, Handler, Angelos & Cornwell, P.A.** reflect the point of view of a developer engaged in a bulk service agreements. Mr. Handler is founder of Core Communities² and Core Communities is involved in the development of TRADITION³. TRADITION has a bulk service agreement with Hometown Cable⁴. Both companies are from Boca Raton, FL. These two companies have tried to single out bulk billing opponents. Henry B. Handler wrote on behalf of Century Villages⁵ and implied he is defending the rights of consumers to choose bulk agreement.

A quick review of what is wrong with bulk billing agreements is in order.⁶

First, the “deal” always starts with a breach of fiduciary duty⁷ by the developer engaging on a “Self Deal” contract. That is, while the developer is in control of the condominium or home association (HOA), typically during the construction phase. The developer makes a contract with his own company or a developer affiliated cable company and grants him-self

¹ <http://center.spoke.com/info/pFd1oHB/HenryHandler>

² <http://www.traditioncommercial.com/main.php?section=Home&pageID=Home>

³ <http://www.traditionfl.com/main.php?section=Community&pageID=Hometown%20Cable%20Plus>

⁴ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520025502

⁵ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520051663

⁶ <http://condolawyers.com/articles/cabletv.htm>

⁷ http://www.pattonboggs.com/files/News/5818b63c-9bda-40e2-b1cf-04e9e7ee69e7/Presentation/NewsAttachment/3ee316df-5526-4a0c-b001-0548d1b3cf24/October_alert_2007_Condo_RYAN.pdf

or the affiliated exclusive rights for the provision of phone, cable TV and internet in exchange for percentage of the billing. These exclusive rights are based on two key documents that basically grant the developer “virtual” exclusivity for his bulk service contract, one is the Bulk Service Contract and the other is the Exclusive Easement For Provision Of Telecommunications Services on the affected community. Based on 100% market penetration, which the bulk agreement/easement assures, and negotiations, the percentage of income for the developer is upwards from 14% of the total billing.⁸

Second, the developer “writes in” the bulk agreement into the by-laws of the association, and moves the responsibility of collecting cable dues from the service provider to the HOA. This is a huge liability on the HOA and has resulted in degraded common areas, discontinued common services and failure of some HOAs.⁹ This problem also applies to contract effected by HOA after the period of developer control, for reasons further developed below.¹⁰

Third, the developer ensures the term of the contract is excessively long (10, 12, 15, 20, or 25 years) and locks these communities in the technology and price offered at the time the agreement was effected. As we all know, technology progresses and prices drop, communities with bulk service contract are not able to take advantage of either for a long time, so the initial savings **if any** are quickly dissipate during the term of the contract. The reasons for this effect are purely economics. Cable companies do not have to upgrade infrastructure or improve prices in areas that don’t have any other options or competition.

The excessive length of these contracts also closes competition but this is not the only anti-competitive effects. Study after study of the cable industry have proved that only competition lowers prices to consumers and that in areas were there is no competition prices are higher than in areas were there is healthy competition.¹¹

In my opinion, another anti-competitive (Antitrust¹²) effect is that these bulk/exclusive contracts for communications always have homeowners contract clauses with the HOA that are hidden in the larger real state transaction. This is also known in Antitrust as Tying since in this case the purchase of a home (good) is tied to the purchase of cable, telephone and Internet (services). These contracts are typically misrepresented by sales agents if they are mentioned at all.

Not to mention that tying a service contract during a real state transaction also makes the contract unconscionable. The developer is taking advantage of his “upper hand” to lock the homeowner into a service contract. Even if represented by a closing agent or lawyer, the

⁸ www.sfasu.edu/purchasing/docs/Cox_Suddenlink.pdf

⁹ <http://www2.tbo.com/content/2008/mar/08/080012/na-on-the-hook-for-your-neighbors-cable-bill/>

¹⁰ <http://www.ccfj.net/JKBulkcableTV.html>

¹¹ <http://www.washingtontimes.com/news/2008/aug/20/fcc-chief-slams-cable-rates/>

¹² <http://law.richmond.edu/jolt/v4si/speech3.html>

main focus is the real state transaction is the good acquired, and not the ride-on service contracts as some attorney may consider those severable. On this setting, the odds are against the buyer regardless of legal/professional representation during the closing transaction.

For some unlucky folks, there is also the issue of mail fraud, since some of these consumers received invoices, via mail, from companies they are not customers of. A typical practice is for the cable company to bill the customers, but for structures in which there is a developer owned company providing the service and billing the HOA, the homeowners are customers of the developer owned company and not the cable company.

There is also the aggravating issue of Vertical Structure used to extract payments from the Homeowner. We have a cable company in contract with an affiliated interest which is in contract with the HOA, which is in contract with the homeowner. Typically the HOA becomes the Vertical Structure and extract payment under the threat of a lien against the property for those that don't pay. In times of economic uncertainty you can lose you home over a non-essential service.

If this was not enough, some contracts have clauses that can cancel service to all homeowners if the HOA default on payments and are therefore one sided. That is, if you HOA can't come up with the payment, the service that you paid for can be cut because your neighbors did not pay. Also, these arrangements discourage cable providers from cutting off overdue accounts. Why do they have incur the operational cost of cutting service to non-paying customer when the HOA has the responsibility to pay the bill in full regardless of who pays and who does not.

It only gets worst; there are also a number of state and federal codes that are always broken by these types of agreement. FL and VA codes prohibit condominium developers to engage HOA in long term contracts during the period of developer control. Developers do it anyway, counting on the fact that homeowners would have to sue them in court. As Mr. Handler clearly explained, homeowners individually typically don't have the resources to sue the developer. Once the period of developer control ends, the HOA resources could be used to sue the developer. What Mr. Handler failed to explain is that during the transition period from developer to owner's control, all contracts get ratified by the developer. By the time the owners get control of the HOA the contract is ratified and "made" legal making litigation even more difficult and expensive.

So bulk service agreements gets the homeowner an illegal, unconscionable, anti-competitive, overpriced and antiquated technology contract capable of bankrupting the HOA. The process was perfected by attorneys from both the Communication and Real State industries and is almost flawless, yet relies too heavily on the indifference of the state and federal governments and sheer complexity which makes the contract beyond the homeowners understanding. The process also leaves you no recourse but expensive court litigation. When it comes to cable, homeowners in bulk billing communities choose between paying the developer or paying the lawyer, and that is the only option they get.

I am again asking the FCC to protect consumers from these practices. I would also like to ask the FCC to engage the antitrust lawyers on the Federal Trade Commission to investigate just a few of these cases and provide an unbiased assessment on these practices. States governments just won't do it.

It is my opinion that early and aggressive FCC/FTC intervention will assist the industry and the consumers by preventing these abuses from being resolved in court were damages will most likely be awarded. These cases and the follow-on class actions could affect the health of the Communications Industry, one of the few standing industries spared by this recession. It is in the best interest of all consumers and industry alike to put an end to these practices right now.