



Federal Communications Commission  
Washington, D.C. 20554

May 9, 2008

## **Small Entity Compliance Guide**

### **Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments**

DA-08-1107

MB Docket No. 07-51

**This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rule/s adopted in the above-referenced FCC rulemaking docket/s. This Guide is not intended to replace the rule/s and, therefore, final authority rests solely with the rule/s. Although we have attempted to cover all parts of the rule/s that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:**

**1-888-CALL-FCC (1-888-225-5322)**

**TTY: 1-888-TELL-FCC (1-888-835-5322)**

**Fax: 202-418-0232**

**[fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)**

### **Background.**

On October 31, 2007, the Federal Communications Commission adopted a *Report and Order and Further Notice of Proposed Rulemaking* in Docket MB No. 07-51, FCC 07-189. The Docket concerned exclusive service contracts for provision of video services in multiple dwelling units and other real estate developments (“MDUs”). The *Report and Order* is intended to make new competition and video programming available to millions of households that are subject to so-called building exclusivity clauses.

Many MDUs, such as apartment or condominium buildings, have contracts with cable television companies or other companies in the business of providing many channels of television and other video programming service for a fee to residents of MDUs. Some of these contracts have a “building exclusivity clause,” which is a clause allowing only one provider of video programming to have access to the MDU for purposes of providing that service (alone or in combination with other services), and barring any other provider of that service from the building.

### **Compliance Requirements.**

The *Report and Order* places compliance requirements on you as a small entity if you fit within all of the following three criteria:

- 1) You are a cable operator, a common carrier (or a common carrier’s affiliate) that provides video programming by any means directly to its subscribers), or an open video system. (The *Report and Order* does not apply to, and does not place any compliance requirements on, private cable operators or providers of direct broadcast satellite service.)
  
- 2) You have an agreement for the provision of video programming service in MDUs, which are defined for purposes of this proceeding as apartment, cooperative, and condominium buildings; gated communities, mobile home parks, and garden apartments; and other centrally managed residential real estate developments. MDUs do not include time share units, academic campuses and dormitories, military bases, hotels, rooming houses, jails, prisons, halfway houses, hospitals, nursing and other assisted living places, and other group quarters characterized by institutional living, high transience and, in some cases, a high need for security.
  
- 3) That agreement grants you the exclusive right to provide any video programming service as described above (alone or in combination with other services) in the MDU.

### **Small Businesses Affected by This Rule May No Longer Enforce or Execute Exclusive Access to MDUs.**

In the *Report and Order*, the Commission determined that such exclusive contractual rights, when all three above conditions are present, are unlawful. The Commission declared them null and void. Therefore, the compliance requirement that the *Report and Order* places on you, if you meet all three criteria stated above, is that you may not assert or enforce such exclusive rights against the MDU in question or its residents. Also, you may not enter into agreements granting you any such exclusive rights in the future.

### **Internet Link.**

A copy of the *Report and Order* is available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-189A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-189A1.pdf)