

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

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

Robust and fair competition across the communications landscape, particularly in the video marketplace, remains a central policy objective of mine. So I am pleased to support this Order which should lower barriers for the entry of new competitors and expand the options for video services available to the millions of Americans who live in apartment buildings, condominiums, mobile home parks, and other centrally-managed real estate developments. A person living in a multiple dwelling unit (MDU) property should not be shackled to one video provider. Too often, the landlord gets paid off while the tenants are stuck with no choice or bad service. People want competitive offerings, and today we are delivering them.

This Order addresses the use of exclusive agreements between multichannel video programming distributors (MVPDs) and private real estate developers and owners of MDU properties for video services. Significantly, the Order finds that exclusive access arrangements amount to anticompetitive practices that prevent or greatly hinder providers from providing MDU residents video programming services. Although the Commission has examined this issue before, recent industry trends warranted another look at the effect of exclusive contracts. According to the Commission's most recent Cable Price Survey Report, the average monthly price for basic-plus-expanded basic service has increased by ninety-three percent over a ten-year period.<sup>1</sup> Further, cable rates were seventeen percent lower where wireline cable competition was present.<sup>2</sup>

The entry of some of the largest incumbent local exchange companies into the video marketplace also signifies a major and positive new development. Verizon, for example, is upgrading its facilities to fiber-based platforms in many areas across the country so that it can offer a suite of video, voice, and data services. This and other investments by phone companies could bring substantial new competition into the video marketplace that is likely to prove historic.

Equally significant is the potential for this new revenue stream to drive broadband deployment, which can benefit consumers and foster the free flow of information beyond the video marketplace. This action alone will not solve our broadband challenges of availability, affordability, and value – too few Americans enjoy the full benefits of competition for broadband services – but it takes an important step by opening the door for millions of Americans to exercise their right to choose their own provider.

In the instant item we find that exclusive contracts do in fact unreasonably impede the Commission's goals of enhancing multichannel video competition and accelerating the deployment of broadband, so it is critical that we act. By prohibiting cable operators from enforcing these exclusive contracts, consumers will benefit not only from more choices, better service, and lower prices, but they also stand to gain from a more robust exchange in the marketplace of ideas.

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<sup>1</sup> Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Prices for Basic Service, Cable Programming Services, and Equipment, 21 FCC Red 1, 15087, ¶ 2 (2006).

<sup>2</sup> *Id.* at 15090, ¶ 10.

I have long expressed grave concerns about the negative effects of media consolidation in this country, and have focused on the problems raised by growing vertical integration of programming and distribution. Vast new distribution networks promise to limit the ability of any vertically integrated conglomerates from imposing an economic, cultural, or political agenda on a public with few alternative choices. I truly believe the benefits of this new competition extend beyond even the many typical ones that accrue to consumers, and can actually improve the health of our overall democracy.

I am pleased that my colleagues agreed to seek comment on whether the Commission should prohibit exclusive marketing and bulk billing arrangements. I am especially satisfied that the Chairman agreed to finalize rules in this proceeding within six months. While I would have preferred to ban exclusive marketing agreements immediately in this Order, this is an important step.

These and other forms of exclusive arrangements seem to serve the primary purpose of raising the barriers of entry for competitive video providers, whether incumbent cable or telephone video providers, or overbuilders. Similar to exclusive *access* arrangements, exclusive *marketing* arrangements between MVPDs and MDU owners may have the potential to have an anticompetitive effect in the video market because an MVPD essentially purchases the right to prevent or hinder the ability of a competitive MVPD from reaching the MDU resident in a cost-efficient manner. Increasing a competing MVPD's cost is the name of the game, and the unsuspecting consumer is the pawn. They should be banned under the same reasoning we use here to ban exclusive access arrangements.

Bulk billing arrangements are a more sophisticated and, perhaps, insidious form of exclusive agreements. While MDU owners generally enter into a bulk billing arrangement with only one MVPD, if a resident is fortunate to receive video service from a competitive video provider, the resident is sometimes forced to pay two separate subscription fees for video service. While we need to ensure that bulk discounts are not undermined, I look forward to the comments and record generated from an inquiry into these practices.

Finally, I am pleased that this item includes a commitment to address the related issue of exclusive contracts for telecommunications services in residential MDUs. It should be our policy objective to promote fair competition throughout the communications landscape, so I'm pleased that we will take up this issue quickly.

For all these reasons, I support this *Order* and *Further Notice*.