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FCC Precludes Exclusive Agreements Between Cable Operators And MDU Owners

Report & Order Released –
November 13, 2007

On October 31, 2007, the FCC announced that it was taking action to address exclusive service contracts between cable operators providing video services and owners of multi-dwelling unit properties (MDUs). Details were not available until November 13, 2007 – the date the FCC released its “Report & Order” on the subject. In summary, the Report & Order does the following:

- ◆ Prohibits the enforcement by cable operators and local exchange carriers providing video services of existing exclusivity clauses and the execution of new exclusivity clauses in agreements with MDU owners.
- ◆ Defines MDUs, for purposes of this prohibition, to include apartments, cooperatives, condominiums, gated communities, mobile home parks, garden apartments, and other centrally managed residential real estate developments.
- ◆ Clarifies that the prohibition does not extend to providers of direct broadcast satellite services or satellite master antenna providers (i.e., generally any satellite-based provider which does not use public rights-of-way for deployment of network infrastructure).
- ◆ Invites additional comment for further FCC consideration of whether exclusive marketing and bulk billing arrangements should be prohibited.

The FCC’s action is based primarily on findings that exclusivity clauses deny residents of MDU properties the benefits of competition. Increases in multi-channel competition “usually results in lower prices, more channels, and greater diversity of information and entertainment from more sources,” and exclusivity clauses deter new entry into the video market because they put a significant number of new customers

“off limits” to the new entrants. (Report & Order, pp.8, 10). The Order notes that the FCC is not requiring MDU owners to provide access to new entrants nor does its action preclude existing providers from using their existing wiring and infrastructure to continue to provide service to MDU residents under existing contracts. It extends only to the enforcement by cable operators of exclusivity clauses and the execution of new agreements with such clauses.

The foregoing is only a general summary of the FCC’s recent actions. For further information contact C. Brian Cassidy at 512.305.4855 or bcassidy@lockelord.com.

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