

Telecommunications Alert: FCC Clarifies Policy on MDU Bulk Billing and Exclusive Marketing Arrangements with Cable and Other Video Providers

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In 2007, the Federal Communications Commission (FCC) prohibited “building exclusivity” clauses in contracts between apartment buildings, real estate developments, and other multiple dwelling units (MDUs) and cable, direct broadcast satellite (DBS) and other multi-channel video program distributors (MVPDs). At that time the FCC also sought comments on whether some or all MVPDs should be prohibited from using “bulk billing” or “exclusive marketing” arrangements.

The FCC released an order yesterday ruling that its 2007 *MDU Exclusivity Order* does not prohibit either type of arrangement and that such agreements remain permissible.

Benefits of Bulk Billing Outweigh Its Harms

The FCC found that bulk billing arrangements do not hinder significantly, much less prevent, a second video service provider from serving residents in an MDU. The FCC concludes that the record demonstrates that bulk billing arrangements predominantly benefit consumers, by lowering prices, increasing the volume and variety of programming, encouraging high quality and innovation, and bringing video, voice, and data services to MDU residents.

Exclusive Marketing Arrangements Found Pro-Consumer

The FCC also found that although marketing exclusivity to MDU residents confers an advantage on the MVPD in whose favor the arrangement runs, it appears to be only a slight one. There is no indication that marketing exclusivity within the MDU prevents or significantly hinders other MVPDs from reaching MDU residents via television, radio, and other media.

Nor does marketing exclusivity deter MDU residents from subscribing to other MVPDs’ services; slow the evolution of competing wireless technologies; raise prices to consumers; or, by unfair methods, acts, or practices, have the purpose or effect of hindering significantly or preventing other MVPDs from providing programming to consumers. In fact, such arrangements appear to confer some benefits on MDU residents by making information about video services and any related services easily available to them.

This order removes the cloud over these industry practices created by the Further Notice and puts a period, three years later, on prior FCC Chairman Kevin Martin’s efforts to undo marketplace negotiated agreements between MVPDs and landlords.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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