

FHH Telecom Law
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FCC Looking Into Exclusivity Deals
For Video Delivery to Multiple Dwelling Units

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At its March meeting, the FCC adopted a Notice of Proposed Rulemaking (NPRM) to elicit comment on issues relating to the impact of exclusive contracts for the provision of video services to multiple dwelling units (MDUs) and other real estate developments. The FCC seeks to foster greater competition in the delivery of multichannel video programming and also accelerate broadband deployment.

The NPRM seeks to ascertain the current environment for video service providers seeking access to MDUs and other real estate developments. It queries whether exclusive contracts unreasonably restrict consumer choice and video competition and raise barriers to competitive entry.

The FCC tentatively concludes that it has authority (under Section 628 of the Communications Act) to regulate exclusive contracts for the provision of video services to MDUs and other real estate developments where it finds that such contracts impede competition and impair deployment of those services. Approximately twelve states already regulate exclusive video contracts. The FCC concluded a similar rulemaking in 1997 without regulating exclusive contracts because it found insufficient evidence of a significant problem at that time. The real estate industry is likely to question the FCC's authority to regulate in this area.

The NPRM also seeks comment on what specific steps the FCC should take to ensure that exclusive contracts do not unreasonably impede competitive video entry. For example, the FCC asks whether it should only limit exclusive contracts where the video provider possesses market power. The FCC also seeks comment regarding the existence of "perpetual" contracts and the competitive issues they may raise.

Comments are due June 18, 2007, with Reply Comments due July 18, 2007. If you are interested in commenting, please contact this office.