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FCC Order on Exclusive Marketing and Bulk Billing Agreements

The apartment industry won a major telecommunications victory this week when the Federal Communications Commission (FCC) affirmed the right of apartment owners to enter into exclusive marketing contracts and bulk billing agreements with video service providers.

The "[Second Report and Order](#)" (MB Docket No. 07-51) follows a 2007 retroactive ban on exclusive access agreements between apartment properties and most video service providers.

Exclusive Marketing Agreements

Under an exclusive marketing agreement, an apartment community promotes one video service provider to residents, but may allow additional providers to serve the property. (This is a key distinction from exclusive access agreements with Multichannel Video Program Distributors (i.e., franchise providers), which were banned in 2007 and which prevented more than one provider from serving a building.)

Based on the record, to which NMHC/NAA made substantial [contributions](#), the FCC concluded that exclusive marketing is allowable under Section 628 of the Federal Communications Act (47 U.S.C. § 548) because it doesn't significantly hinder or, more importantly, block competition.

Bulk Billing Agreements

In a bulk billing agreement, the property owner contracts with, and directly compensates, one video provider to service the entire community at a significant discount; however, residents are free to contract with an additional provider. Some firms use bulk billing as an amenity for residents by providing discounted video service that is available immediately upon move-in.

The FCC found that a bulk agreement between the community and a particular provider may deter—but does not prevent—other providers from serving residents.

Importantly, the FCC recognized that bulk agreements "predominantly benefit consumers," through significantly discounted prices, enhanced programming and the convenience of having video service that is made available to them. The FCC went so far as to say that bulk billing agreements have "significant pro-consumer effects." It also noted that their cost efficiency is a benefit to video providers.

The FCC left open the possibility of future regulation for exclusive marketing and bulk agreements but only if market conditions are "markedly different" from now.

NMHC/NAA have led the fight against federal regulations that improperly restrict an apartment owner's ability to freely contract with telecommunications providers. Our legal challenge to the FCC's retroactive ban on exclusive access agreements preemptively challenged further regulation in this area.

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