

# For condo viewers, more options, but end to discounts?

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Thousands of condo and apartment dwellers locked into deals with a single cable provider could get viewing options under a Federal Communications Commission order banning exclusive contracts.

But some of the same residents may not be so happy if the agency also decides at an upcoming hearing to ban bulk contracts, which typically provide discounted prices to residents of large condos.

In a policy change that has community association and communications industry attorneys pondering the impact, the FCC order issued Oct. 31 discards exclusive contracts for video services and access in “multiple dwelling units and other real estate developments.”

The order will become official when it’s published in the Federal Register in about two months.

With more than a quarter of Americans living in multifamily buildings, the ruling will increase choices for residents and competition for service, according to the FCC.

The action strikes down existing and future contracts with franchise cable providers from industry leaders like Comcast to small fry such as Advanced Cable Communications, serving Coral Springs and Weston. Franchisers, which use public right of way to lay their cable networks, provide most of the cable service in South Florida.

The FCC ruling does not affect private cable operators and satellite service

providers that don’t use right-of-way easements and typically provide service in associations with private streets or in individual condo and apartment buildings, said communications attorney Gary Resnick of Gray Robinson in Fort Lauderdale. He is a member of the FCC’s Intergovernmental Advisory Committee, which was not involved in the decision.

The decision targeting exclusive service and access deals with franchise operators “isn’t a bad order,” he said. “Those communities are really not receiving additional benefits because they don’t get reduced rates and competition.”

But the agency also wants to extend the ban to private operators and bulk contracts, “and that is what’s causing angina,” Resnick said.

Exclusive contracts give cable companies sole access in a community or group of buildings, typically for three to 10 years to cover the expense of setting up service, said Leo Delgado, principal and marketing director at telecommunications consultant CSI Associates in Fort Lauderdale.

But exclusivity doesn’t necessarily come with a lower price tag.

Some companies have tried to tie up their video service packages so tightly that a community faced substantial costs trying to disentangle itself from the deal, said attorney Donna Berger of Katzman & Korr and executive director of the Community Advocacy Network in Fort Lauderdale, a consortium of association directors, property managers and owners.

A 2003 FCC ruling allowing exclusive contracts “may have backfired and may have actually been the motivation for the FCC’s recent policy reversal,” she said in an email. “In the end, if you provide a great service at a reasonable price, your customers will want to stay with you

because they want to, not because they are contractually bound to keep you.”

Bulk contracts are intended to provide cheaper cable service by getting larger groups of owners to use the same provider. Delgado estimates about three-quarters of condo and homeowner associations have bulk agreements.

While the prevailing monthly rate for basic cable from a franchise operator is \$62, bulk agreements can lower that to \$20 to \$30, he said. CSI intends to submit comments to the FCC about the proposed ban on bulk contracts, he said.

Resnick, who believes a bulk ban would raise rates, said the ruling’s impact on existing contracts is likely to bring lawsuits.

“The 17,000 condos in Century Village paying \$15 a month for separate cable lines that Comcast created for them will have those contracts terminated, and they’ll pay \$55 a month,” he said. “How does that benefit consumers? It is legally suspect.”

For starters, it would benefit residents who don’t want cable. AT&T and Verizon, the nation’s leading telephone companies, also would benefit as they expand into television.

But FCC Commissioner Robert McDowell issued a strongly worded warning about the legal impact of the new order, which was adopted unanimously.

By reversing its 2003 decision, the FCC may be “abrogating those exact same agreements immediately rather than waiting for them to expire and without providing a grace period,” he wrote in a statement accompanying the FCC’s announcement on exclusive contracts.

Cable companies relied on the 2003 order when wiring new buildings and upgrading older buildings in exchange for time to recoup their costs as exclusive providers.

“To flash cut to a new regulatory regime without a sensible transition period only begs for an appeal that could result in a court throwing out all of our order, the good with the bad,” McDowell said.

McDowell voted for the ban on exclusive contracts to encourage consumer choice, but he said the action may be a “regulatory taking.” About a third of the states already ban exclusive contracts, but none invalidated existing contracts.

“I wish the commission’s appellate lawyers the best of luck in defending against such claims,” he said.

Apartment building owners don’t like the government telling them what to do, said lobbyist Robert Levy, who represents the Southeast Florida Apartment Owners Association.

The association is just beginning to assess the impact, but Levy said it’s doubtful the ruling will be as friendly to consumers as the FCC contends.

“If I’m negotiating for 500 tenants rather than them negotiating individually, I’ll get a better deal,” he said. “It’s being held as a consumer victory, but it might cost consumers more.”

The impact on associations of single-family homeowners is uncertain. Resnick believes HOAs are covered by the order.

But Weston City Manager John Flint said attorneys are evaluating that.

The city has three contracts. Comcast serves Bonaventure and the Emerald Estates subdivision; Direct Path handles the Isles at Weston; and most of the city, as the Indian Trace Development District created by developer Arvida, is served by Advanced Cable.

The contract already has faced one legal challenge.

In 2005, the Town Foundation, the Indian Trace master association, sued

Advanced over the perpetual contract, said Resnick, who represented the foundation.

“It was going to go on forever and the residents didn’t want it,” he said. A settlement reached last year imposed a December 2013 termination date.

Comcast and AT&T took opposing views on the FCC decision for competitive reasons.

Comcast spokeswoman Sena Fitzmaurice said the ruling was a blow to the nation’s consumers.

“The result of this decision is likely to be higher prices for services and years of litigation and uncertainty for consumers,” she said in a statement. “The significant concessions building owners have been able to bargain for on behalf of their residents will be lost.”

AT&T, which announced a \$750 million plan in September to roll out its “U-verse TV” service in Florida, welcomed the ruling.

Bob Quinn, senior vice president for federal regulatory issues, issued a statement saying the company is offering customers more choices while table companies are “walling off” customers through exclusive contracts.

‘Without commission action, the anti-competitive effects would be felt for many years as these exclusive access agreements may last for several years or even perpetually,’ he said.

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