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One Minute Memo®

Federal Communications Commission Bans Exclusivity Deals With Certain Cable Television Providers

On October 31, 2007, the FCC voted to adopt a new rule prohibiting large cable television and broadband service providers from entering into exclusive contracts with the owners of apartment buildings, condominiums, and planned subdivisions (called "Multiple Dwelling Units" or "MDUs"). The rule also invalidates exclusivity clauses in existing contracts, but leaves all other provisions of existing contracts intact. Currently, the rule does not apply to satellite television companies and smaller independent cable operators; however, the FCC has indicated that the new rule likely is to be the first step towards a universal ban on exclusivity provisions among all such service providers.

By banning exclusive agreements for large cable television and broadband providers, the FCC hopes to promote competition and reduce cable rates for the nearly 30% of Americans (approximately 100 million consumers) currently living in MDUs. However, the new rule may have the opposite result because of its potential negative impact on developers and the way service contracts are negotiated in the future. Without the protection of an exclusivity clause, cable providers may no longer have an incentive to provide MDUs cash and/or free installation of cable and internet wiring in exchange for the exclusivity contracts. If cable providers no longer install the wiring at their expense or reduce cash reimbursements to developers, those costs likely would be passed on to the tenants and home owners. Additionally, because developers may no longer be able to deliver a large captive customer base, some cable providers may determine that it does not make economic sense to extend their networks into certain areas and properties.

However, the new FCC rule does not require owners to provide access to cable competitors. Instead, MDU owners may point to, among other things, architectural and engineering issues as the reason why a building cannot be equipped for multiple wiring for multiple providers. The rule simply prevents MDU owners from keeping out competition through the use of exclusivity clauses in cable company service agreements.

We will continue to monitor the progress of the FCC with respect to this and future rulings. Should you have any questions about this One Minute Memo or, in general, negotiating telecommunications agreements, please contact the Seyfarth Shaw LLP attorney with whom you work, or any Real Estate attorney on our website, www.seyfarth.com.