



IMCC Update

By Bill Burhop ■ IMCC



The Independent MultiFamily Council (IMCC) is an association of private cable operators (PCOs), MDU owners/managers, ISPs and the supporting industry. Our goals are to influence public policy to foster telecommunications competition and to help MDUs and PCOs provide better products in multiple dwelling unit communities. We believe that if service providers and MDU owners work together we can provide better products and services to MDU residents. Only if MDU owners have alternatives to the franchised companies and the other major telecommunications companies will they and their residents be benefited.

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Commission (FCC) to accomplish numerous objectives over the past several years. We have fought to win on adoption by the FCC of the MDU Inside Wiring Rules and subsequent improvements to those rules, to maintain the right of PCOs and MDUs to enter into exclusive service contracts, to do away with perpetual provisions in contracts, to preempt mandatory access statutes, to maintain use of microwave transmission and other issues. The IMCC members are the advocates and do the work necessary at the FCC. We win some and we lose some, but we must keep pushing

if MDU owners are to have any alternative providers to choose from and if PCOs are going to survive. The ideal situation is when all the real estate organizations and IMCC work together to advance these efforts.

Current Activities

The IMCC submitted three letters to the FCC in December of 2002 and January of 2003. (See our web site for text of each, www.IMCC-online.org.) Those letters sought Declaratory Rulings on specific issues, each of which would help our members. It is worth noting that NAREIT, NMHC and CAI supported our efforts. In a recent response, the FCC finally made their rulings regarding our inquires. They are as follows:

1. We had argued for several years that the FCC should expand the definition of “physically inaccessible” in the MDU Inside Wiring Rules to include “sheetrock/wallboard,” thereby moving the demarcation point from 12 inches outside each unit back to the lock box or comparable point. They finally did that in the rulemaking issued early in 2003, the same ruling in which they said that exclusive contracts could continue to be used. Therefore, regarding our letter, all they said was that they were pleased that we advocated this position and they decided in our favor.

Unfortunately, the NCTA, which represents the large MSOs, challenged the new definition in court arguing that the FCC did not fully enough justify the expanded definition. The court stated that the FCC does have authority to make the change but that the FCC has to further explain why the change is needed to enhance competition. Therefore, the change in definition is not effective as of now. The FCC is preparing a Further Notice of Proposed Rulemaking to justify the change that must be adopted by the Commissioners before it will become effective. NMHC has been active in supporting the FCC in its argument before the court.

2. In our second letter, we reported that several MDUs had been told by franchised operators that the FCC Inside Wiring Rules did not apply. The operators asserted that even though they no longer had a contract with the MDU for video service in that building, the franchised operator “intended to use the wiring for other services in the future” and, therefore, the Wiring Rules did not apply. We said the FCC Wiring Rules should still apply and that the MDU owner could follow the Rules and turn the wiring over to a PCO because the franchised operator no longer had a legal right to provide service on that property. The FCC agreed with our argument and said, “...there is nothing in the Rules making them inapplicable because of an alleged intention on the part of the incumbent service provider to utilize the wiring for alternative purposes in the future.” Therefore, if any franchised operator tries to in-

timidate a MDU owner who seeks to change providers and use a PCO, the franchised operator cannot use that "intention" argument. The MDU owner can tell the franchised operator they are totally wrong and allow the PCO to use the home run wiring.

3. In the third letter, we asked if MDUs can use the unit-by-unit procedures of the Inside Wiring Rules even if they are in states that have mandatory access statutes. We cited examples from two states that have been most troubling and in which there has been litigation. In New York, a PCO, led by a courageous man named Eli Cohen, had fought the battle and lost in a court decision. That decision was totally screwed-up and the judge obviously had never read and certainly did not understand the FCC Wiring Rules. She ruled that Eli was wrong and that he could not use the Wiring Rules to convert individual residents

to his alternative service. One month later in Kansas, with virtually the same situation and facts, a court ordered that the Wiring Rules do apply and the MDU owner can allow a PCO to use the home run wiring to provide service to individual residents. The two court decisions are diametrically opposed. Our letter asked the FCC to determine which reading of the FCC Wiring Rules is correct.

The FCC wrote back saying that the FCC should not get in the middle of two conflicting court rulings, but that the Wiring Rules do apply (that is, that the MDU owner can utilize the Rules to allow a PCO to provide service to individual residents on a unit-by-unit basis) unless the franchised operator gets a court in that state to order that the rules do not apply. Therefore, the FCC is saying that it is setting out Federal guidelines but that a franchised operator can go to court

and get those Rules set aside. If that occurs, then the Rules do not apply in that state. To my knowledge, such a court ruling has been set down only in New York. Therefore, the Inside Wiring Rule unit-by-unit procedures do apply in all other states.

Other Issues

Congress is not very active on our issues now or for the rest of the year. Regardless, IMCC members continue to push on new projects at the FCC. That includes trying to get the regulators to change the definition of "housing" to include MDUs in one regulation, but not to include multiple dwelling unit communities in another. We are also still trying to turn the FCC around on PCO use of the 18 GHz spectrum for microwave transmission. Also, the FCC is in the midst of studying what regulations there should be regarding HDTV and

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VoIP (Voice over Internet Protocol).

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An IMCC task force tries to keep up with the myriad of actives in the broadband area. This includes taxation of high-speed Internet connections, the reduction of SPAM, penalization of peer-to-peer file sharing and how to address the latest computer viruses.

Your Involvement

Whether you are an MDU owner or manager, a PCO, an ISP or a manufacturer/vendor, there is a need for your involvement. Perhaps most important is knowing what is going on regarding the provision of quality telecommunications products and services. If MDU residents are to be happy with what owners provide in their communities, we must know what that means in technical

and business terms and how to do it. You need to be educated and you need to be networked with others in our industry. Only if you know about the issues and know your peers in the industry can you become better at what you do.

Many of us have always attended the conference hosted by Larry Kessler in the Spring in Charleston. I'm disappointed that it will not be held this year because it was so useful. Instead, IMCC is hosting an educational conference at the end of April in Atlanta to help us all learn and network. We will address how you can get ready for the HDTV onslaught, whether VoIP is something you can provide, if DBS opportunities will be improved by the changes at DirecTV and at EchoStar and will HITS and VOOM play a role, and how the ISPs are addressing new challenges. You can read more about this

conference in the column by Bryan Rader also in this issue of Broadband Properties.

We are always open to new ideas and suggestions of how we can improve our industry. Therefore, do not hesitate to write or call us with your views. ■

About the Author

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