



## FCC Rulemaking on Bulk Billing-Multi-Dwelling Units (MDUs) June 2024

Nearly one in every three households in the United States lives in multi-dwelling units, or MDUs, such as apartments, condominiums and townhomes.

Arrangements between owners of MDUs and cable and internet service providers (ISPs) have long been a target of regulatory action by the Federal Communications Commission (FCC).

Federal law prohibits cable and ISPs from engaging in “unreasonable” acts or practices that, among other things, significantly deter or hinder competition from alternative service providers. As a result, the FCC is the entity responsible for prescribing regulations that specify the particular conduct that constitutes such prohibited acts or practices.

### Background on FCC Regulation

In 2007, the FCC officially declared it unlawful for a cable provider and an owner of an MDU to enter into any exclusivity arrangements. That means an MDU owner cannot offer exclusive access to residents of a MDU in exchange for more favorable rates or other terms. This was followed by a decision in early 2008 to make it unlawful for broadband internet providers to enter into such agreements with owners of MDUs. The FCC reasoned in both Orders that exclusive service arrangements cause significant harm to competition and consumers.

Shortly after the FCC’s decision to prohibit exclusive access arrangements, the FCC began its inquiry into exclusive marketing and bulk billing arrangements. Exclusive marketing agreements between cable and ISPs and owners of MDUs afford the provider the exclusive right to market its services to the MDU’s residents. Typical marketing strategies borne out of such arrangements include advertisements in the MDU’s common areas, the placement of brochures under residents’ doors, and the inclusion of a provider’s brand on the MDU’s website.

In a bulk billing arrangement, an owner of an MDU permits a cable or internet provider to provide service to all residents of the MDU in exchange for a significantly discounted charge. Bulk billing arrangements provide an opportunity for MDU owners to attract residents by offering cable or internet service at a rate significantly lower than retail.

**As the regulatory landscape currently stands, exclusive marketing and bulk billing arrangements with both cable providers and internet providers remain compliant with federal law. However, that may change.**

In February 2022, the FCC adopted new rules to crack down on the practice by banning revenue-sharing deals that could reward a building owner for signing up tenants to an ISP. But the rules didn't address bulk billing arrangements. According to the FCC, "While a service provider may not enter into an agreement that grants exclusive access to an MTE [multiple tenant environments] property, a landlord may still choose the providers it allows into the building, even if that means only one company provides service."

## **2024 Update from FCC**

A Notice of Proposed Rulemaking announced in early 2024 would propose banning bulk billing arrangements by which tenants are required to pay for broadband, cable, and satellite service provided by a specific communications provider, even if they do not wish to take the service or would prefer to use another provider. It essentially proposes allowing tenants to opt out of bulk billing arrangements.

This presents an issue for ISPs. For example, landlord-provided broadband today often goes beyond just providing internet access inside units. Many apartment owners provide WiFi throughout a rental property. It's also becoming common for landlords to use WiFi to control smart devices of many kinds, including security cameras that can be seen by tenants, smart thermostats, utility meters, and smart devices to control building functions. It's not clear how a tenant could somehow opt out of all broadband in such a building since many of the smart functions control everyday functions for tenants.

Also, it's generally quite costly to wire an MDU for broadband, and ISPs make a significant investment to get into a building. Their motivation for entering older and smaller buildings is greatly lessened if they can't count on getting a return on this investment.

Already, a fair number of ISPs won't serve MDUs because of the extra cost and work involved. There are ISPs saying that they won't consider MDUs if bulk billing is no longer allowed. This ruling could make it harder for some MDU tenants to get good broadband. A lot of ISPs have been writing to or meeting with the FCC to plead their case.

One area of particular worry concerns ISPs that serve low-income housing. As might be imagined, there is little profit in these situations, and many ISPs provide low-cost connections to provide a social good. These ISPs know they will go underwater if some tenants decide to eliminate broadband to save money.

One advantage to bulk billing is that many landlords like the ease of dealing with one ISP, and many have no desire to take on the extra effort involved in opening their buildings to multiple ISPs. These landlords might have the courts on their side since there have been many legal rulings over the years that say that property owners have the ultimate say over what happens inside their buildings.