

Telecommunication Contract Issues

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Other than possibly insurance, largest single expense for many associations is the cost of bulk telecommunication service. Further, bulk telecommunication service agreements often have multi-year terms, some even going as long as ten years. Therefore, whether your association has a bulk telecommunications agreement or is looking at entering into a bulk telecommunications agreement, there are a number of legal and practical issues that the association should consider in moving forward with such a decision.

With regard to bulk agreements for telecommunication services, both the Florida Condominium Act and Homeowners' Association Act, provide that the costs associated with providing bulk telecommunication services are proper common expenses of the association. Further, both contemplate the authority of an association to provide a range of communication services on a bulk basis. The most common services provided on a bulk basis are television service, bulk internet service and telephone service. Additionally, associations often provide multiple services on a bulk basis from the same provider (such as receiving both cable television and internet service from the same service provider on a bulk basis.

Further, both statutes also contemplate that the cost for services pursuant to the bulk agreement be allocated on a per unit basis rather than on a percentage basis if there is other than equal sharing of common expenses contemplated in the documents. If your association allocates expenses on something other than an equal per unit basis, you would want to review the allocation of the expenses of the bulk services agreement carefully.

While associations generally have the legal authority to enter into agreements to provide bulk telecommunication services to the owners, such agreements should be carefully negotiated by the association. Issues the association should address in the agreement include but are not limited to:

- How the distribution system is defined and who will own the wiring once the agreement is concluded
- What type of work will the provider have to do within the community to

provide the service, whether excavation or other construction will be necessary and what protections are in place for the association and its members

- If the provider is using subcontractors to install portions of the distribution system that the association and the owners are protected from any liens recorded by suppliers or subcontractors
- What type of insurance does the provider carry and whether that insurance protects the association
- What is the term of the agreement, how is term determined and is the termination date of the agreement apparent on the face of the agreement
- What are the service standards that the provider must meet and how is the association protected if the provider fails to meet those standards
- What type of easement must the association give the provider and does that easement interfere with any third parties' existing rights
- Are the association's damages against the provider limited in the event a provider breaches the agreement or fails to provide the services that are contemplated

These are just a few of the issues that the association must address in negotiating a bulk services agreement. Any time an association is considering entering into a new bulk agreement, it should review that agreement carefully and seek appropriate guidance from its attorneys, accountants and insurance agents.