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Summary of Memorandum Opinion and Order dated February 13, 2012

**Southern Walk at Broadlands Homeowner's Association, Inc.
v. OpenBand at Broadlands, LLC, E.D. Va. Case No. 1:11cv 517**

On February 13, 2012, Judge Gerald Lee of the U.S. District Court for the Eastern District of Virginia issued an Order dismissing the complaint filed by Southern Walk at Broadlands Homeowner's Association, Inc. ("HOA") against OpenBand at Broadlands, LLC ("OBB") and denying the HOA's request to file a Second Amended Complaint. The court dismissed the HOA's claim that the OBB Telecommunications Services Agreement ("TSA") and other ancillary agreements, *e.g.*, easements, violate the Federal Communications Commission's ("FCC") prohibition on exclusive video service contracts for several reasons.

First, the HOA failed to allege any injury to itself as an organization or to the homeowners that it represents because (1) the TSA allows residents of Southern Walk at Broadlands to obtain video programming services from OBB's wireless competitors and (2) no competitors have represented that they would put wire in the Southern Walk at Broadlands Development if OBB's exclusive rights were set aside.

Second, the court held that the FCC's 2007 Order does not apply to the OBB TSA or to the ancillary agreements. The FCC's 2007 Order only applies to video service providers; it does not apply to property owners or other parties with whom video service providers contract. In addition,

the court stated that the FCC's 2007 Order only invalidates exclusivity clauses contained in contracts for video services; it does not invalidate entire contracts nor easements.

Finally, the court denied the HOA's request to file yet another amended complaint on the grounds the proposed amended complaint still did not allege facts showing that it or its members had been injured. Despite the pleading of alleged additional facts concerning the status of OpenBand Multimedia, LLC's ("OBM") franchise agreement with Loudoun County, the court found the HOA still failed to assert a valid federal claim and, thus, the proposed Amended Complaint was futile. In particular, the court found that that the claim concerning the FCC's 2007 Order remained deficient and did not reach the easements. As part of its analysis, the court found that contrary to the HOA's allegation, the purpose for the easements has not ceased and would not cease even if OBM lost the right to operate a video system in the Southern Walk Development because the easements were granted for multiple purposes, including telephone and Internet services.

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