the 100% guarantee

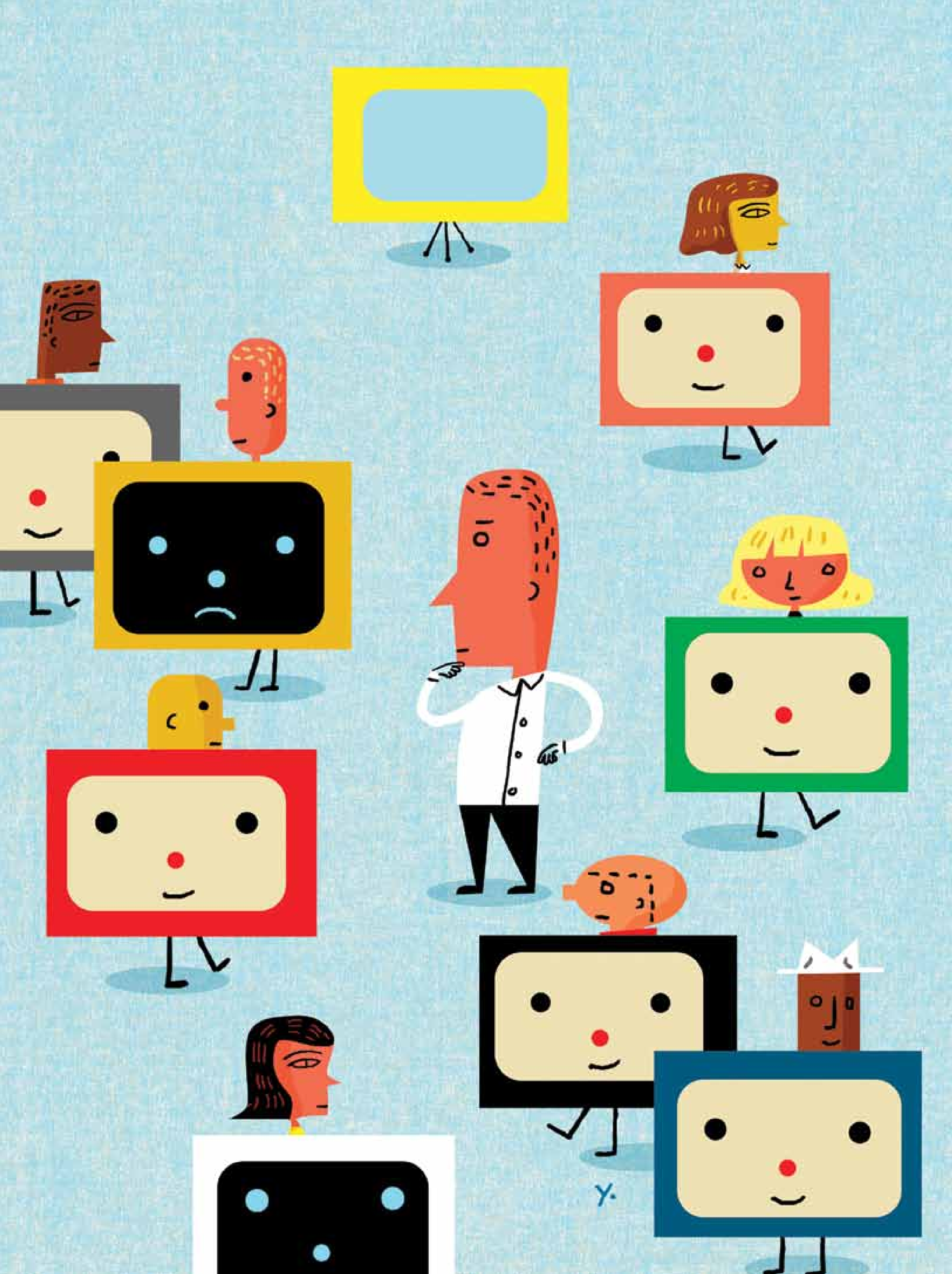
TV PROVIDERS TIE BARGAINS TO FULL BUY-INS

BY FRANK LOVECE

ILLUSTRATION BY JAMES YANG

The board of a 121-unit co-op wanted to get a bulk discount on a contract with a cable TV provider. As part of the deal, the co-op had to guarantee payment of roughly $7,800 a month – which worked out to $64.90 for each of the 121 apartments. If only 100 shareholders signed up for that provider and paid $64.90 apiece, however, then the co-op would come up short, and it would have to make up the difference.

"They want us to pay a master bill," says Vito Mangini, director of management at Tudor Realty, whose company manages that co-op.



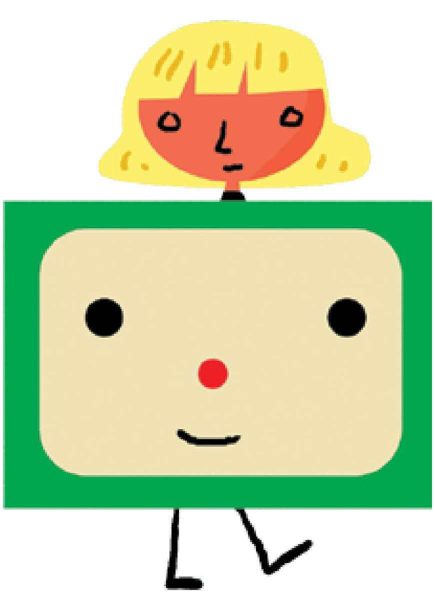
"The building subsidizes the cost," explains Despina Leandrou, a building manager with Orsid Realty who has dealt with this issue. "There is not a board that I've worked with, which has a fiduciary responsibility to keep costs low, that would accept such a deal."

Welcome to the brave new world of cable TV services, where suppliers are making unprecedented demands for providing services, and co-ops and condos are scrambling to keep up with changing technology and changing customer preferences.

The New Deal

In the good old days – just a few years ago – a cable/internet provider such as Time Warner Cable would pay a co-op/condo association an upfront cash bonus and "revenue-share fees" for getting a majority of residents to sign up and for letting the provider do occasional marketing. But with many cable providers now offering bulk discounts only if a property guarantees the equivalent of a 100-percent signup, boards must negotiate more aggressively.

Tara Snow, a partner at the law firm Novitt, Sahr & Snow, represents a building that negotiated just such a bulk deal. "They offered a really cut-rate price," she says of the provider, which she declines to name. Yet, although the provider wants a guarantee of



100-percent participation, she notes that there will always be units that don't want to subscribe to a given provider or to cable/internet at all. "So how do you apportion this cost?" she asks. "We're working through that."

Veteran real estate attorney Arthur Weinstein says of the all-or-nothing bulk deals: "They are very controversial. For example, in one building, we had people objecting strongly to the concept that you're locked in for a period of time on those contracts. Technology is moving so quickly."

Those are just some of the factors to consider. How do you even budget for this, especially in larger buildings or complexes where there may be frequent turnover? The biggest part of preparing a budget is knowing in advance what the dollar amounts are, notes Dawn Lombardo, controller for the Ferrara Management Group. What happens if some subscribers want extras like an NFL package or pay-per-view events? If you're spending operating-fund dollars on something that benefits only a certain number of people, will you get push-back from residents?

Tuning In

The two most familiar providers in the New York City area are probably Charter Communications, which in May 2016 purchased Time Warner Cable and another operator and rebranded them as Spectrum; and the telephone giant Verizon, with its Fios service. Others include Altice USA, which absorbed Cablevision; and RCN. Charter and Altice are traditional coaxial-cable companies with exclusive franchise territories: Altice has the Bronx and parts of Brooklyn, and Charter has the rest of the city. Verizon and RCN are fiber-optic cable companies; the former is available citywide, the latter in Manhattan, Brooklyn, and Queens. There are also satellite-based services such as DirecTV and Dish TV.

A typical bulk-rate deal that Spectrum offered a 600-unit condo complex in Manhattan includes 200-plus TV channels, the premium cable channels HBO and Showtime, high-speed internet, and a digital cable box and a cable modem – all for about $50 a month per apartment, as opposed to non-bulk rate of about $175.

In the past, the bulk deals did not require the equivalent of 100 percent signup, recalls Mangini, the manager. They typically required about 70 percent and buildings didn't have to make up the difference as they do now. Billing arrangements were flexible: apartments could be billed individually or as part of a single master bill. Today, however, providers send a master bill for the basic contracted services, and then individual bills to the residents for extras.

According to Mike Weston, executive director of Verizon's Enhanced Communities Group, Fios sets up an individual account for each resident. Even though the master bill is being paid by the co-op or condo association, residents get an individual bill for zero dollars each month. If the apartment-owner wants to upgrade to a higher internet speed or sign up for additional premium channels, he or she would pay an upgrade differential charge that would appear on his or her monthly bill.

With Charter, the bill goes to one master account for the co-op or condo governing body, says Adam Ray, a Charter group vice president. Only those residents desiring additional channels or faster internet and the like get billed separately and individually for those additional choices. Once the building gets the master bill, it can pass on that cost as a "technology fee" or an "entertainment fee," notes Ray. "But that is up to them – that has no bearing on us at Charter. It's their responsibility to handle that the way they see fit."

Attorney Snow offers a different scenario: "Let's say the building is getting a cheap rate and divides that up among the people who have cable. If 100 percent of the apartments signed up, then each apartment is paying an equal share. But if only 90 apartments signed up, they each are paying a little more. Let's say the bulk rate would be $50 a unit. But each apartment is paying $55 in order to cover the 10 units that aren't signed up."

Yet another method, she says, is to have your building consider cable and high-speed internet as amenities, like a laundry room. It's part of the overhead cost of the building, and even if a particular resident doesn't use it, he or she still has access to it and indirectly pays for it through the monthly maintenance or common charges.

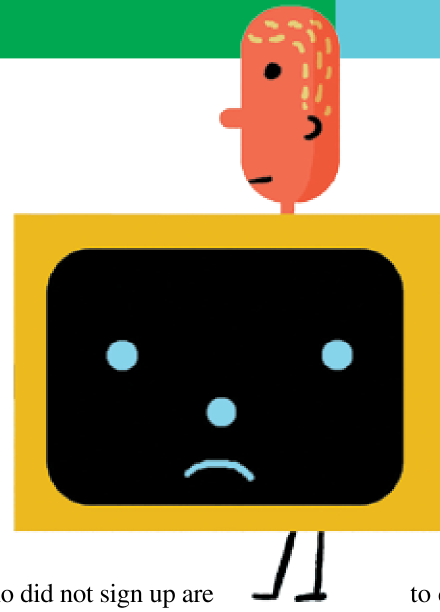
But in the individual payment method, what if some residents decide not to pay? How do you shut them off? The provider can't cut off service because the bill it sends to management for the entire package is getting paid, says Carl Borenstein, president of Veritas Property Management.

In that case, the co-op/condo would have to absorb the loss – most budgets have room for such contingencies. If it can't be absorbed, the board would have to assess it, says Carl Cesarano, a principal in the accounting firm Cesarano & Khan.

When boards negotiate these new deals, they should be aware of some recent trends. A number of surveys have found that a significant majority of people are abandoning cable TV for à la carte streaming services such as Amazon Video, Hulu, Netflix, HBO NOW, Showtime Anytime, and others. One recent survey found that from 2011 to 2017, the percentage of U.S. households with broadband internet that have never subscribed to cable rose from 9 to 22 percent. And another survey found the percentage of those with at least one streaming service has jumped from 10 to 49 percent.

As the population of buildings changes, millennial "cord-cutters" become a factor that boards need to consider as they map out the future of their property, says Weinstein, the attorney, who adds: "As the internet becomes faster, there may be less demand for cable. Yet your building may be stuck with a contract for three to five years."

One complication is that, in a building with two or more cable TV providers, residents who accept the bulk-rate provider would get a discount, and the association would pay the provider each month for all residents who didn't want that provider. That means that the monthly maintenance or common charges being paid by those who did not sign up are in essence subsidizing the discount of those who did. That could ruffle some residents' feathers.



Moreover, suggests attorney Weinstein, co-ops may face proprietary-lease issues. "The traditional proprietary lease says all charges must be made on a per-share basis, so it is questionable as to what the law is about spreading out those costs," he says. "If I have a studio apartment that, for argument's sake, has 100 shares, and you have a three-bedroom apartment that, again for argument's sake, has 300 shares, and we each have one TV, you may be charged three times what I'm being charged on the basis of number of shares."

But you can get around that, he says, by setting up payments in a manner similar to arrangements for garage spaces, where there's usually a separate contract for the garage. If you have a contract – a separate lease arrangement – for the cable/internet charges, you don't deal with shares at all.

What You Can Negotiate

There is room for negotiation. One area is the contract's "cure language" for things like service outages and how quickly the provider must send out a technician and get things up and running again. A breach of such guarantees can void the contract.

"There are speed requirements and provider requirements in the contract, so they're promising a certain level of service," says Snow, the attorney. "And, honestly, they want to retain you once the term is up. If they give bad service, people are going to sign with someone else."

Sometimes you can even negotiate a free month or free HBO for a year, says Daniel Neiditch, head of River2River Realty and board president at a 650-unit condo. He reports that one provider "offered to do the gym and common areas for free; we have TVs in our gym, laundry room, and sky lounge."

Even cash bonuses and revenue-sharing fees – a staple in the old days – are not off the table. "For instance, we may cut a check for $500 for each [unit] to do a bulk contract," says Charter's Ray. Adds Verizon's Weston, "It's something we consider in the right situation, but it's not a standard practice to offer one. We also invest to upgrade the data /TV/ phone network at our cost, which is another incentive in a bulk deal."

Is such a deal right for your co-op or condo? "You've got to analyze it on a building by building basis," says Cesarano, the accountant. "I have some smaller buildings where everybody seems of a similar mindset, so there's a good chance a high or even full percentage would sign up. But in massive places, like a 32-building complex, 100 percent is like hitting the lottery. If you get 75 percent you'd be lucky."

It also may depend on how like-minded your residents are. In every case, if fewer than 100 percent of your apartments sign on, then either the association has to pay the difference each month or the apartments that signed on will split that difference among them – requiring someone to figure out the new amount each time another apartment signs on or drops off.

"It's a great concept because you can tell your people, 'We're buying in bulk, and you get a discounted rate,'" says Cesarano. "But it can create an administrative nightmare." ■