

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to)	GN Docket No. 17-142
Multiple Tenant Environments)	

COMMENTS OF STARRY, INC.

*Virginia Lam Abrams
Senior Vice President, Communications,
Government Affairs & Strategic
Advancement*

*Brian Regan
Senior Vice President, Strategy &
Chief of Staff*

*Courtney Neville
Regulatory and Policy Counsel*

**Starry, Inc.
38 Chauncy Street, Second Floor
Boston, Massachusetts 02111**

October 20, 2021

TABLE OF CONTENTS

I.	EXCLUSIVE AGREEMENTS CONTINUE TO STUNT AFFORDABILITY AND COMPETITION, PARTICULARLY IN THE WAKE OF THE PANDEMIC.....	2
II.	THE FCC SHOULD PROHIBIT EXCLUSIVE AGREEMENTS TO FACILITATE CONSUMER CHOICE AND COMPETITION	4
III.	PROHIBITING EXCLUSIVE PROVISIONS WILL STIMULATE THE BROADBAND MARKET AND ENCOURAGE INNOVATION FOR MORE AFFORDABLE NEXT-GENERATION SERVICES	9
IV.	CONCLUSION	10

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Improving Competitive Broadband Access to) GN Docket No. 17-142
Multiple Tenant Environments)

COMMENTS OF STARRY, INC.

Starry, Inc. (Starry) submits these comments in response to the Federal Communications Commission’s (FCC or Commission) Public Notice (Notice)¹ refreshing the record on issues raised in the 2019 *Improving Competitive Broadband Access to Multiple Tenant Environments* Notice of Proposed Rulemaking.² Starry supports the FCC’s efforts to address persistent barriers to competition and encourages the Commission to prohibit exclusive agreements, including those related to exclusive marketing, exclusive revenue sharing, and exclusive inside wiring and rooftop access provisions. Doing so will stimulate broadband competition, encourage the deployment of more affordable and innovative services, and enhance consumer choice.

The FCC has a comprehensive record on which to act in this proceeding, and the majority of commenters support prohibiting exclusive provisions that serve no legitimate purpose other than to block competition.³ FCC action to clarify the rules in this proceeding also will support the Administration’s goals for broadband deployment. Specifically, President Biden recently issued an Executive Order on Competition in the American Economy, which recommended that the FCC consider ways to “promote competition, lower prices, and a vibrant and innovative

¹ *Wireline Competition Bureau Seeks to Refresh Record on Improving Competitive Broadband Access to Multiple Tenant Environments*, Public Notice, GN Docket No. 17-142 (rel. Sept. 7, 2021) (Notice).

² *Improving Competitive Broadband Access to Multiple Tenant Environments et al.*, GN Docket No. 17-142 et al., Notice of Proposed Rulemaking, 34 FCC 5702 (2019) (2019 NPRM).

³ See, e.g., Letter from Virginia Lam Abrams, SVP - Communications, Government Affairs & Strategic Advancement, Starry, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-142 (filed Oct. 29, 2020); Reply Comments of Starry, Inc., GN Docket No. 17-142 (filed Sept. 30, 2019) (Starry Reply Comments); Comments of Starry, Inc., GN Docket No. 17-142 (filed Aug. 30, 2019) (Starry Comments); Comments of the Wireless Internet Service Providers Association, GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of Competitive Carriers Association, GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of CenturyLink, GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of Common Networks, Inc., GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of INCOMPAS, GN Docket No. 17-142 (filed Aug. 30, 2019).

telecommunications ecosystem,”⁴ including by initiating a rulemaking to “prevent landlords and cable and internet service providers from inhibiting tenants’ choice among providers.”⁵ The FCC already has a robust record in this proceeding on which to act to improve broadband competition. The commentary received in response to this Public Notice will likely cement the importance of taking imminent action to resolve the issues raised thus far, and provide the Commission with an even firmer basis on which to adopt rules to conclude the proceeding.

I. EXCLUSIVE AGREEMENTS CONTINUE TO STUNT AFFORDABILITY AND COMPETITION, PARTICULARLY IN THE WAKE OF THE PANDEMIC

As the country continues to recover from the COVID-19 pandemic, the lessons learned are apparent. Among them is a pervasive thread of digital inequity with respect to broadband access, affordability, and choice, which persists throughout urban and rural communities alike. Residents in multiple tenant environments (MTEs) are particularly affected by a lack of broadband competition and affordability that exacerbates these digital inequities. It is estimated that 37% of Americans live in MTEs,⁶ and prices for these units are steadily increasing in the wake of the pandemic. According to Apartment List’s “National Rent Report” released on September 27, 2021, the national median rent has increased 11.4% since the beginning of 2021 and is “9.4% above the pre-pandemic national median rent in March 2020.”⁷ Assurant Inc. recently released its “Multifamily Housing Renter Perspective” study, which revealed that renters continued to prioritize affordability during COVID-19, “with 40% of the renters surveyed noting they relocated to more affordable properties, while 34% moved into other units as a roommate to find a more affordable living situation.”⁸ As consumers are forced to shift more of

⁴ The White House, *Executive Order on Promoting Competition in the American Economy* at 36994 (rel. July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

⁵ *Id.* at 36995.

⁶ NMHC, Quick Facts: Resident Demographics, <https://www.nmhc.org/research-insight/quick-facts-figures/quick-facts-resident-demographics/>.

⁷ The Washington Post, “Report: Apartment Rents in U.S. Rebound After Covid Slump,” (Sept. 8, 2021), <https://www.washingtonpost.com/business/2021/09/08/report-apartment-rents-us-rebound-after-covid-slump/> (citing, <https://www.apartmentlist.com/research/national-rent-data>).

⁸ Assurant, “Property Managers Work to Balance Renters’ Changing Priorities Throughout COVID-19 Pandemic,” (Apr. 14, 2021), <https://www.assurant.com/newsroom->

their income toward rising property costs, the affordability of fundamental services like reliable broadband is all the more important.

The pandemic made painfully clear for too many families that access to affordable, reliable broadband is no longer a luxury amenity but rather a critical lifeline to maintain professional and personal connections.⁹ There is greater demand for robust connectivity and Internet-enabled properties as prospective consumers prioritize buildings and communities where the amenities offered include access to affordable, fast, and consistent Internet service.¹⁰ This is particularly apparent as more and more Americans transition to a hybrid work-from-home scenario since last year. Living rooms have transformed into at-home offices, classrooms, and medical offices, and the ability to connect for professional, educational, health, and personal endeavors is paramount. This trend is likely to persist even as the COVID-19 pandemic winds down. Yet residents in MTEs frequently have limited options.

The FCC has taken significant steps to help address barriers to broadband deployment, most significantly by responding to the pandemic with its “Keep Americans Connected” pledge; implementing innovative programs such as the Emergency Broadband Benefit; and by adopting tailored policies that helped to streamline infrastructure siting processes in recent years.¹¹ But the fixed broadband market continues to face challenges, particularly—as Starry and others have

detail/NewsReleases/2021/April/property-managers-work-to-balance-renters-changing-priorities-throughout-covid-19-pandemic-according-to-new-assurant-study/.

⁹ Statement of FCC Acting Chairwoman Jessica Rosenworcel, “More Than 6 Million Households Enroll in Emergency Broadband Benefit Program” (rel. Sept. 28, 2021) (“The response to the Emergency Broadband Benefit Program confirms what many of us knew to be true: too many families remain offline because it’s too expensive for their monthly budget.”); Statement of Jessica Rosenworcel, Commissioner, FCC, Before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, (Sept. 17, 2020) (“In this pandemic so much of modern life has migrated online. As a result, it has become painfully clear there are too many people in the United States who lack access to broadband. It has become obvious that our nation’s digital divide is very real and very big.”).

¹⁰ WealthManagement.com, “Apartment Renters’ Shifted Amenities Preferences Are Likely to Last After COVID-19 Pandemic,” (Apr. 27, 2021), <https://www.wealthmanagement.com/multifamily/apartment-renters-shifted-amenities-preferences-are-likely-last-after-covid-19/>.

¹¹ See, e.g., *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd. 3102, 3128-3129 (2018) (Second Report and Order), *granting pets. in part and denying pets. in part, City of Portland v. Fed. Comm’n’s Comm’n*, No. 18-72689 (9th Cir. 2020).

noted on record—in the last 100 feet of deployment.¹² Specifically, many incumbent fixed providers continue to use anti-competitive tactics to prohibit competitive entry in MTEs, in direct contradiction to the FCC’s rules and pro-competition policies. These exclusive agreements result in a lack of competitive alternatives for property managers and increased prices for their tenants.

Exclusive agreements also have an outsized impact on affordable communities and low-income residents when these consumers are limited to one provider. As noted above, the issue of affordability is paramount, especially through COVID-19. According to a May 2020 survey conducted by the Urban Institute’s Housing Finance Policy Center, renters in small multifamily environments “tend to have lower incomes, pay less in rent, be more heavily people of color, and be more in industries exposed to COVID-19.”¹³ Reports also show that residents in MTEs often have a lower median income than the average U.S. household, yet continue to pay a higher proportion of their income on rent as prices steadily increase in the wake of the COVID-19 pandemic.¹⁴ A lack of competition among service providers translates into higher costs for broadband connections, and inevitably exacerbates digital inequity in low-income communities.¹⁵ Commission action in this proceeding is imperative to foster a robust and competitive market for all consumers.

II. THE FCC SHOULD PROHIBIT EXCLUSIVE AGREEMENTS TO FACILITATE CONSUMER CHOICE AND COMPETITION

Starry is proud to collaborate with building managers and owners across the country to deploy our service to their residents, and respects owners’ rights to manage their properties for residents’ benefits. For this reason, and as Starry has previously underscored on record, we do not suggest that the FCC require mandatory access to MTEs, nor to force building owners to act in ways that would be detrimental to their properties or residents.¹⁶ Instead, we suggest that the FCC adopt reasonable and targeted rules focused on addressing incumbent providers’ systematic

¹² *See supra*, note 3.

¹³ Urban Institute, “Small Multifamily Units” (May 2020), https://www.urban.org/sites/default/files/2020/05/15/small_multifamily_units_0.pdf/.

¹⁴ *See supra*, notes 6-8.

¹⁵ New America, “The Cost of Connectivity 2020 - US Policy Recommendations,” <https://www.newamerica.org/oti/reports/cost-connectivity-2020/us-policy-recommendations/>.

¹⁶ Starry Reply Comments at 2.

efforts to block competition in an area in which the FCC has already regulated. And we practice what we preach. As a provider, we do not ask for exclusivity from our real estate partners or property managers. But when exclusive agreements prevent property managers and owners from exploring connectivity options that meet residents' expectations, claims that these arrangements are beneficial to residential communities are suspect at best.

The Commission's Public Notice seeks comment on additional actions that the agency can take to accelerate the deployment of next-generation services to consumers in MTEs.¹⁷ Specifically, the Public Notice asks about the impact of exclusive revenue sharing agreements, exclusive marketing arrangements, exclusive wiring provisions, and other anti-competitive practices.¹⁸ Starry offers a unique perspective on these issues as an innovator in the broadband market whose current subscribers primarily reside in MTEs of various sizes.¹⁹ As noted, Starry works collaboratively with building managers and owners across the country to deploy our service to their residents, and we are proud to have many success stories to increase broadband choice in their buildings. This is particularly true in affordable housing communities, where many residents have only one choice for broadband connectivity.²⁰

That said, unfortunately in many instances, competitive providers' ability to effectively compete is impeded by historic exclusive agreements of various types that distort the market to incumbents' benefit, as outlined below. While the Commission has clearly prohibited exclusive access agreements, incumbents use a variety of other contractual tools—sometimes in combination—to erect barriers to competitive entry in MTEs, to consumers' detriment.

¹⁷ Notice at 2.

¹⁸ *Id.* at 2-6.

¹⁹ Starry also is delivering service to small MTEs and single-family homes with the launch of Comet, our second-generation technology. *See* Starry, "Starry Unveils Powerful Second Generation Technology to Expand Network Coverage and Improve Network Performance," (Sept. 17, 2020), <https://starry.com/blog/tech/starrys-second-generation-technology-announcement/>.

²⁰ Starry prioritizes the delivery of affordable, reliable broadband connections to all consumers within our footprint, and continues to work alongside our real estate partners to deliver service to consumers in affordable communities through our Connect program. Connect is a specialized ultra-low-cost broadband access program that partners directly with affordable housing owners to provide high-quality, true broadband access with no data caps, long-term contracts or complex individual eligibility requirements for only \$15 per month. *See* "Starry Connect Shares Better Internet With More People," <https://starry.com/starryconnect/>.

Exclusive Marketing Agreements. As Starry and others have previously explained, exclusive marketing agreements distort the market by prohibiting a new entrant from advertising the service within the building itself.²¹ Generally, these agreements prevent the new entrant from holding sales events in the building or from advertising anywhere in the building, and similarly prevent the building owner from advertising a competitive service to residents.

In-person and in-building marketing are primary customer acquisition tools for any provider serving customers in MTEs. Naturally, a provider has a unique opportunity to interact with a customer if they are physically present in the building, whether through an event for the residents, through marketing collateral, or through sales kiosks in the building. The existence and prevalence of these agreements are testaments to the reality of the effectiveness of this kind of marketing.

In Starry's experience, many exclusive marketing arrangements endure for 10-year terms with automatic renewals. The duration of these contractual arrangements between building owners or managers and incumbent providers serves no purpose other than to persistently block new entry in a building. It is often the case that many building owners or managers are unaware of the impact of these agreements, and in some circumstances, have been manipulated by the incumbent to believe that they are in fact exclusive *access* agreements. This confusion compounds the friction of entering a new building. First, the service provider's sales team needs to convince the building that it is not subject to an exclusive access agreement, then they need to convince the building that allowing another provider in the building does not violate the exclusive marketing agreement with the incumbent. If they are successful, they then must compete in the building with a hand tied behind their back.

This is not in the public interest, it does not benefit building owners or residents, and it unreasonably restricts competition in MTEs. Ultimately, the greatest effect of these arrangements is the detriment to consumers. The global pandemic continues to necessitate the deployment of next-generation technologies, and it is more difficult to reach consumers demanding more affordable, competitive options for broadband service in their homes when marketing in the building is not an option.

²¹ Starry Comments at 9.

Exclusive Revenue Share Agreements. Exclusive revenue share agreements are insidious economic tools used by incumbents to disincentivize property owners and managers from allowing a new competitive provider into the building. Even if a competitive provider can make the building owner whole through a competing revenue share structure, the building owner is contractually prohibited from entering into such an agreement.²²

In Starry's experience, exclusive revenue sharing agreements often take several forms, including access payments, so-called "door fees" of various kinds, as well as success-based revenue share provisions. Access payments are one-time fees that an incumbent will pay a building for access to the building. These are typically calculated as a set dollar amount per unit. Similarly, door fees are a set rate per subscriber acquired that is paid to the building. Both can create economic barriers to entry, and especially so if they are exclusive.

But success-based exclusive revenue sharing provisions are far more competitively harmful. They tend to be tiered structures in which a percentage of the revenue paid to the building increases proportionally with the provider's penetration in that building. So as an incumbent's penetration increases, so does the revenue that the building receives. The inverse is also true - if the residents subscribe to a competitive service, the incumbent's penetration decreases along with the payment to building. Because these agreements are tiered to be higher at higher penetration, the building can experience a net loss in ancillary revenue. Together, Starry has noted on record that these tactics are specifically designed to (1) incentivize the building to help the incumbent provider maximize the number of subscribers in the building; and (2) act as an economic penalty if the building allows in a new entrant.²³

Moreover, the existence of exclusive provisions like revenue sharing within agreements complicates and protracts the negotiation and due diligence processes, which ultimately delays the delivery of competitive broadband services to MTE residents. Starry is proud of the relationships that we have and will continue to foster with property managers and owners to help improve the availability of broadband services for tenants in their buildings. For this reason, Starry encourages the Commission to prohibit all exclusive provisions, and specifically exclusive

²² *Id.* at 7.

²³ *Id.* at 8.

tiered and revenue sharing arrangements. Doing so will facilitate more competition by allowing property owners to contract for compensation arrangements with more than one provider.

Exclusive Wiring and Exclusive Rooftop Access Provisions. Prior comments on the record consistently highlight that exclusivity arrangements extend beyond economic and marketing limitations to cover physical wiring and access agreements.²⁴ Like other exclusive and anti-competitive provisions, these serve limited practical purposes other than to inhibit competition in MTEs. Incumbents typically pursue exclusive wiring rights as another barrier to competitors' ability to access a building. Exclusive wiring arrangements take various forms, including sale-and-leaseback, exclusive access to existing wiring, or exclusive access to aspects or components of wiring or conduit. Similar to exclusive marketing arrangements, Starry continues to encounter exclusive wiring contracts, many of which have 10-year terms with subsequent automatic renewals. Such arrangements evidence incumbents' persistent attempts to ensure that neither the property owner nor any third party can tap into, use, or otherwise interfere with any portion of the existing wiring of an MTE.²⁵

Similarly, arrangements providing for exclusive access to rooftops (or common areas, pathways, or conduit) often deter competition by inhibiting access to the building structure itself. These arrangements inhibit technological advancement by preventing buildings from allowing additional service providers to deploy newer, more innovative technologies over the often-lengthy life of the exclusive agreement. As a fixed wireless operator, Starry needs to install transceivers on the roof of an MTE to receive a signal from one or more base stations. If we are unable to install a transceiver on the roof, with the sole purpose of providing broadband to the building itself, then we cannot serve the building. As with the other anti-competitive tactics discussed herein, these exclusive provisions systematically inhibit property managers' ability to negotiate with alternative providers, thereby limiting consumers' access to these services.

²⁴ *Id.* at 10; *supra*, note 3.

²⁵ Starry understands that if a provider installs building wiring at its own expense, and is using it to serve a customer, it may have an interest in recouping a portion of that cost for a short period of time. In such cases, however, Starry has advocated that the Commission make clear that exclusivity lasts only so long as (1) the incumbent is using the wire to serve a customer; and (2) no longer than necessary to allow the provider to recoup the investment. *See* Starry Comments at 10.

Starry encourages the Commission to address all types of exclusive agreements in this proceeding, including exclusive marketing arrangements, exclusive revenue sharing, and exclusive wiring and rooftop access arrangements. As noted, Starry works closely with property owners and managers across the country to provide our competitive service to their residents. We understand that building owners have a strong interest in ensuring that providers in their communities meet their residents' needs without causing harm to the property. To preserve this autonomy, the FCC should specifically focus any action in this proceeding on the exclusive nature of agreements that serve no legitimate purpose other than to block competition and benefit no party other than the incumbent provider.

Starry similarly believes that the solution lies in targeted FCC rules and proactive collaboration between building owners, providers, and other various stakeholders. In addition to explicitly prohibiting exclusive agreements, Starry continues to encourage the Commission to establish a multi-stakeholder group to create a "Gigabit Ready" checklist for MTE owners, developers, service providers, and municipal leaders to ensure that they can facilitate neutral and open access to MTEs.²⁶ A uniform, voluntary rubric that can be created through collaboration between public and private sector interests could help to improve access in buildings across the country and offer residents a tangible way to verify the availability of competitive broadband within their communities.

III. PROHIBITING EXCLUSIVE PROVISIONS WILL STIMULATE THE BROADBAND MARKET AND ENCOURAGE INNOVATION FOR MORE AFFORDABLE NEXT-GENERATION SERVICES

Exclusive arrangements of all types inhibit broadband competition in large and small communities alike. The Public Notice asks whether the size of a building affects the pervasiveness of certain exclusivity arrangements.²⁷ In Starry's experience, the level of competition in MTEs across the country varies on a building-by-building basis, but there does not appear to be a correlation between building size and the existence of exclusive arrangements.

²⁶ Starry Comments at 2, 14.

²⁷ Notice at 7.

The Public Notice also asks whether the benefits of certain exclusive arrangements outweigh the cost.²⁸ The short answer is no; by nature, exclusive marketing, exclusive revenue share, and exclusive wiring and rooftop access agreements are designed to limit competition from alternative providers and to similarly limit consumer choice. Incumbents are not incentivized to compete on price or quality of service when there is a historic monopoly in a building, and the property is disadvantaged by a lack of additional infrastructure investment from other providers. Together, these circumstances negatively affect consumers within these properties by hindering their ability to pursue innovative, competitively priced broadband alternatives.

What's more, exclusive arrangements stymie new entrants' ability to enter into and disrupt the broadband market. Starry has the size and scale to deal with exclusivity arrangements, but new entrants may not. There are many market-based barriers to starting a competitive broadband service, including upfront capital costs. If a company can finance the construction of a network, build a brand focused on providing quality service to customers, and develop relationships with building owners to bring new competitive service to their properties, then that new entrant should not be inhibited by anti-competitive contract provisions that exist solely as barriers to entry in certain buildings. The FCC should foster an environment that encourages competition. Prohibiting exclusive arrangements will ensure that new entrants can introduce more affordable, innovative offerings for consumers on a level playing field.

IV. CONCLUSION

The robust record in this proceeding presents the Commission with a prime opportunity to facilitate access to more affordable, reliable broadband services. The intensifying need for these types of broadband options highlighted by the COVID-19 pandemic present a natural opportunity for the Commission to clarify and amend its rules to improve competition and infrastructure investment in MTEs. Starry encourages the Commission to clarify that exclusive agreements by nature serve no legitimate purpose other than to impede competition on pricing and quality of service. Doing so will facilitate the Administration's overall goals for ubiquitous

²⁸ *Id.* at 2, 5, 7.

broadband deployment, promote competition, and ensure the market can continue to deliver better services at lower prices.

Respectfully submitted,

Virginia Lam Abrams
Senior Vice President, Communications,
Government Affairs & Strategic
Advancement

Brian Regan
Senior Vice President, Strategy &
Chief of Staff

Courtney Neville
Regulatory and Policy Counsel

Starry, Inc.
38 Chauncy Street, Second Floor
Boston, Massachusetts 02111

October 20, 2021