

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Office of Economics and Analytics Seeks)	GN Docket No. 20-60
Comment on the State of Competition in the)	
Communications Marketplace)	
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COMMENTS OF GOOGLE FIBER INC.

Google Fiber Inc. (“Google Fiber”) hereby submits comments on the state of competition in communications markets, as requested by the Office of Economics and Analytics. Google Fiber is a fiber-to-the-premises internet service provider; Google Fiber offers high-speed broadband internet access service in 11 markets and interconnected VoIP service in 10 markets; in 10 markets, it also offers linear TV to customers that subscribed before February 2, 2020. In 8 markets, Google Fiber’s affiliate, Webpass, provides fixed wireless broadband service in multi-unit dwellings. Google Fiber is not a certificated telecommunications provider in any state, nor does it offer telecommunications services, and Google Fiber is not a cable operator—where it offers video programming, it does so subject to state or local video programming franchises.

The COVID-19 pandemic has underlined how critical it is that all Americans have access to robust and reliable high-speed, high-bandwidth broadband internet access. Now more than ever, it is clear that long-standing historical policies favoring incumbents and legacy technologies that foreclose entry by new and innovative providers have caused real economic harm. When employees cannot effectively work from home, when students are unable to engage in remote learning, and when health care providers are unable to meet with and treat patients via telehealth applications, the U.S. experiences real harm, economic and otherwise. But lack of access is not the only worrisome factor—service that is inadequate for the needs of a household,

because of limited or asymmetric bandwidth, data caps, and opaque pricing that makes broadband unaffordable is also of great concern. Google Fiber offers only high-speed, symmetric broadband, with no data caps—but has struggled to overcome entrenched practices and policies that make new deployment not only expensive but also extremely time-consuming. Policies that relieve these burdens would encourage more new entrants, which would in turn drive the market to offer service to more customers (including those who are historically un- or underserved), at higher speeds and lower prices—the very characteristics of service that the country most needs right now.

I. POLICIES THAT EXPRESSLY FAVOR TRADITIONALLY REGULATED INCUMBENTS PREVENT INNOVATIVE COMPETITORS FROM ENTERING THE MARKET.

The communications market is subject to historical policies that favor incumbents and legacy technologies. These policies increase barriers to entry for competitors and reduce access to multiple competitive options for service. As a result, customers pay more for less. Many of these policies have directly impacted Google Fiber’s deployment, which has made it expensive and time-consuming to expand its service areas and enter new markets.

For instance, Section 224 of the Communications Act—otherwise known as the Pole Attachment Act—was originally adopted to provide competitive relief to cable operators;¹ later amendments to the Pole Attachment Act expanded its protections to competitive telecommunications carriers.² Section 224 expressly grants nondiscriminatory access to investor-owned utility poles only to telecommunications carriers and cable operators. Communications providers that are not telecommunications carriers or cable operators—like Google Fiber—therefore cannot access investor-owned utility poles on the same rates, terms, and

¹ S. REP. 95-580 at 13, 15 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 121 (1978).

² *See* 47 U.S.C. § 224(f)(1).

conditions as their traditionally regulated competitors. The result is that non-telecom/non-cable broadband providers—which includes most new entrants and small providers—are not protected from the prospect of paying higher prices for access to privately-owned utility poles; equally important is that these innovative new providers are deprived of the right to use efficient and cost-saving deployment procedures like One-Touch Make-Ready.³

Other regulatory structures have a similar effect—for instance, where state laws prohibit or limit the right of municipalities to offer broadband service, new entrants may be deprived of the ability to negotiate public-private partnerships or even to use municipal open access networks. New entrants—particularly those that are not certificated telecommunications carriers or video programming providers with a state or local franchise—struggle to gain access to public rights-of-way. Partnerships between providers and municipalities (or municipal utilities) are one way that local governments can encourage new providers to offer the service their customers most need—broadband—while facilitating access to streets and sidewalks by those providers. But state laws that deny or limit the ability of municipalities to offer broadband service may foreclose this potential avenue for new deployments to un- and underserved customers.

Similarly, funding programs—state and federal—that grant money to providers to deploy last-mile broadband facilities are often unavailable to innovative providers for the same reason that OTMR is unavailable—because they are not telecommunications carriers. But even for those providers that receive funding under these programs, the services they are required to

³ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84, 33 FCC Rcd. 7705 (2018).

provide are of such a bare minimum of service quality that customers served in that area are left further behind the digital divide.⁴

II. POLICIES THAT INADVERTENTLY PREFERENCE INCUMBENTS HARM CONSUMERS BY PREVENTING NEW ENTRANTS.

In addition to policies that on their face limit or restrict the ability of innovative providers to enter the market, the communications market is also rife with policies that give incumbents a preferential position that makes it difficult or impossible for competitors to compete effectively. This is the case even where the Commission and state and local governments have acted to promote competition. As an example, the Commission has taken numerous steps over the years to improve access to multi-unit dwellings (MDUs) and multi-tenant environments (MTEs) for competitive entrants.⁵ Among the steps the Commission has taken is to prohibit exclusive service agreements in MDUs and MTEs.⁶ But incumbents have increasingly adapted, making an end-run around those protections. Today, an incumbent who is prohibited from enforcing an

⁴ The RDOF rules have attempted to remedy this issue, by scaling the amount of support available based on the service speeds the recipient pledges to offer. *Rural Digital Opportunity Fund, Connect America Fund*, Report and Order, WC Docket Nos. 19-126 & 10-90, 35 FCC Rcd. 686 (2020).

⁵ See, e.g., *Telecommunications Services Inside Wiring, Customer Premises Equipment, Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 97-376, 13 FCC Rcd. 3659 (1997) (“1997 Inside Wiring Order”); *Telecommunications Services Inside Wiring, Customer Premises Equipment, Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, First Order on Reconsideration and Second Report and Order, FCC 03-9, 18 FCC Rcd. 1342 (2003) (“2003 Inside Wiring Order”); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-189, 22 FCC Rcd. 20235 (2007) (“2007 Exclusive Service Contracts Order”); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Second Report and Order, FCC 10-35, 25 FCC Rcd. 2460 (2010) (“2010 Exclusive Service Contracts Order”).

⁶ See *id.*

exclusive service agreement in an MDU is permitted to enter into an agreement for the exclusive use of wiring in a building—which effectively accomplishes the same thing as an exclusive service contract. Where incumbents can preclude a competitor from ever offering service—and to be clear, many buildings will not permit a competitor to install redundant wiring in a building, so an exclusive wiring agreement effectively means a competitor cannot offer service in that building—consumers are the losers. Google Fiber has seen, over and over, that where a competitor enters the market and offers higher speeds and lower prices, incumbents will quickly move to match those speeds and prices.⁷ Without a competitor, however, they have no incentive to do so.

A number of policies can promote competition without giving incumbents preferential treatment. Mandatory access laws are an example. Of course, the Commission has noted over the years that mandatory access laws can impede competition—where they favor, for instance, one category of provider over another.⁸ But technologically neutral mandatory access laws (such

⁷ See, e.g., Chris Morran, *Thanks to Google Fiber and AT&T, Comcast Gigabit Service Will Only Cost \$70 in Atlanta*, THE CONSUMERIST (Mar. 15, 2016), <https://consumerist.com/2016/03/15/thanks-to-google-fiber-and-att-comcast-gigabit-service-will-only-cost-70-in-atlanta/>; Blair Levin and Larry Downes, *Why Google Fiber is High-Speed Internet's Most Successful Failure*, HARVARD BUSINESS REVIEW (Sept. 7, 2018), <https://hbr.org/2018/09/why-google-fiber-is-high-speed-internets-most-successful-failure> (“So Google [Fiber] went about announcing locations, and incumbent broadband ISPs, including AT&T, CenturyLink, Comcast, and Time Warner Cable, would quickly counter by promising improved pricing, faster speeds, network upgrades or some combination of the three. A “game of gigs” had erupted.”).

⁸ See *Telecomms. Servs. Inside Wiring, et al.*, CS Docket No. 95-184 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659, 3698-99, para. 79 (1997); *Telecomms. Servs. Inside Wiring, et al.*, CS Docket No. 95-184 *et al.*, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342, 1358, para. 39 (2003) (“2003 Wiring Order”); *but see id.* (“Although we recognize the negative impact that mandatory access statutes can have, we cannot ignore the possibility that, but for the existence of mandatory access statutes, some MDU owners would refuse to allow their buildings to be wired for cable programming... we urge states and municipalities that have mandatory access laws to carefully consider the level of effective competition among

as San Francisco’s Article 52⁹) can promote entry by innovative providers that may not be able to take advantage of policies that otherwise might give preference to traditionally regulated incumbents.

The Commission has likewise taken steps to prohibit incumbents from denying access on poles by adopting OTMR, as noted above. Where municipalities and government agencies have adopted Dig Smart rules, they have had the same effect on underground deployments. Encouraging the adoption of OTMR rules by pole owners that are not subject to the Pole Attachment Act—and of the extension of OTMR policies to non-telecom/non-cable providers—as well as of Dig Smart policies across the country, can improve the ability of innovative providers to enter the market and provide a competitive option for consumers.

III. A COMPLETE VIEW OF COMPETITION FOR COMMUNICATIONS SERVICES MAY REQUIRE REVIEW OF CURRENT DEFINITIONS AND UNDERSTANDINGS.

In addition to policies and regulations governing access by competitive entrants, the Commission should strongly consider how it defines what constitutes broadband and whether its policies differentiating between services are beneficial for competition. Broadband service can be offered over wireline and wireless facilities, and over a mix of the two. The Commission collects data about these services but the way it categorizes these services—particularly those delivered over a combination of wired and wireless facilities—may lead to a distorted view of the market. Providers like Webpass—which offers service using point-to-point microwave links as well as wired backhaul and inside wiring—do not neatly fit into the “wireline” or “wireless” categories.

MVPDs in the MDU market place, and if competition is found to be lacking, to determine whether a repeal or reform of such laws might enhance such competition and thereby benefit consumers.”).

⁹ Article 52 of the S.F. Police Code, Ordinance No. 250-16.

In addition, as consumers' need for bandwidth increases, the Commission should consider whether the current definition of broadband—providing at least 25 Mbps download speed and a meager 3 Mbps upload speed—serves its goals of promoting broadband deployment. This asymmetric definition reflects the incumbent position that upload speeds don't matter. There are technical reasons why legacy telecommunications facilities (copper and DSL) and coaxial cable (at least until the development of newer standards) have higher download speeds than upload speeds, but its perpetuation results in tacit approval of service that is increasingly inadequate to support the needs of those living, learning, and working in the United States. That is true in the best of times, but it is even more true now as millions of workers and students must perform their jobs and learn from home, performing productivity-related tasks online like uploading documents and videos, using the cloud, and participating in videoconferences.

Finally, a complete understanding of the state of competition for broadband must consider how providers package, or bundle, and price their services. When providers offer discounts that are tied to the purchase of a bundle, it may distort consumer understanding of the true price of the individual elements of that service. Consumers may believe that the broadband element of their bundle is more expensive than it is because of how pricing is structured in a bundle. For Google Fiber's part, market data indicates that consumers increasingly do not want expensive triple play bundles and would rather have affordable and predictably priced broadband, which gives them the flexibility to purchase whatever over-the-top service they desire, not only for voice service and linear television, but also for streaming services, gaming, educational applications, and business needs. Indeed, this research led Google Fiber to recently announce that it is no longer offering new linear television subscriptions.¹⁰ Google Fiber

¹⁰ Google Fiber will continue to provide existing linear television subscribers with service.

continues to offer Phone service, at the same flat rate it has always offered it, but that price does not vary based on a bundle purchase, and Google Fiber customers are free to decline Phone service and sign up for any third-party voice service they desire.

Effective competition in communications markets requires technologically neutral, forward-looking policies that allow innovative providers to enter the market on the same terms as incumbents. New communications networks of course require investment, but when competitive entrants bear a higher investment burden than their incumbent competitors, their likelihood of success is all but foreclosed. Google Fiber encourages the Commission to continue to support competitive entry by ensuring innovative providers have access to infrastructure. Google Fiber also encourages the Commission to continue exploring ways in which it can spur communications providers to improve access to critical communications by all consumers, including by raising speeds, offering symmetric service, and ensuring transparent pricing. The needs of consumers for robust, reliable, and high-speed communications service has never been greater.

Respectfully submitted,



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