

CITY AND COUNTY OF SAN FRANCISCO



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July 2, 2019

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex parte* notice in *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142; *Petition of the Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code*, MB Docket No. 17-91.

Dear Ms. Dortch:

On July 2, 2019, Mayor London N. Breed of the City and County of San Francisco wrote a letter to Speaker Nancy Pelosi addressing the Mayor's concerns about the Federal Communications Commission's proposal to preempt critical parts of San Francisco Police Code Article 52, which is designed to give San Franciscans occupying multi-tenant environments a choice of communications providers. Mayor Breed sent a copy of the July 2 letter to Chairman Ajit Pai and Commissioners Michael O'Rielly, Brendan Carr, Jessica Rosenworcel, and Geoffrey Starks. A copy of the July 2 letter is enclosed herewith.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "W. Sanders".

William K. Sanders
Deputy City Attorney

Enc.



July 2, 2019

Honorable Nancy Pelosi
The Speaker of the House of Representatives
United States Capitol
Washington, DC 20515

Dear Madam Speaker,

I am writing to express my appreciation for your leadership in taking action against the attempt by the Federal Communications Commission (FCC) to overturn San Francisco's local ordinance that promotes broadband competition. As you are aware, FCC Chair Pai has scheduled a vote at the July 10, 2019 meeting that would reduce consumer choice and stifle competition for communications services for San Franciscans. I refer to the FCC's draft Notice of Proposed Rulemaking and Declaratory Ruling - GN Docket No. 17-142, MB Docket No. 17-91 (Proposed Order). If adopted as drafted, the Proposed Order would pre-empt critical parts of a San Francisco ordinance designed to give San Franciscans occupying multi-tenant environments (MTEs) a choice of communications providers.

In December of 2016, the City adopted the "Choice of Communications Services Providers in Multiple Occupancy Buildings" Ordinance. (Ordinance 250-16 adopting San Francisco Police Code 52) (Article 52). I served as President of the Board of the Supervisors at that time and voted in favor of the ordinance. Article 52 prohibits property owners from interfering with the choice of communications providers by occupants of MTEs. The law establishes a process for communications providers to gain access to MTEs in response to requests from occupants, incentivizing providers to offer residents the best services at the lowest prices benefiting all San Franciscans.

A key element of Article 52 is a requirement that existing wiring owned by property owners be made available for use by other communications providers, *if feasible*. This sharing allows more than one communications provider to use wires on existing cables. The type of sharing contemplated by Article 52 is common practice in many MTEs and has led to healthy competition among communications providers. The Board of Supervisors adopted Article 52 to expand this practice to additional buildings where the property owner had not allowed multiple providers.

On June 19, 2019, the FCC issued the Proposed Order for consideration at its July 10 meeting. Among other things, if adopted the Proposed Order would "preempt an outlier San Francisco ordinance to the extent that it requires the sharing of in-use wiring." As discussed above, this characterization of Article 52 is wrong. Article 52 does not require sharing of "in-use" wiring. The Proposed Order also suggests that this "forced sharing of in-use facilities . . . encourages providers to free ride on existing infrastructure rather than building their own." In making this statement, the Proposed Order ignores clear language in Article 52 that a "property owner is entitled to just and reasonable compensation from a communications services provider." While

Article 52, therefore, lowers the cost for a competitive provider to obtain access to an MTE, it does not provide a so-called “free ride.” Article 52 was developed with the active participation of AT&T, Comcast, the Chamber of Commerce, the Building Owners and Management Association, the Electronic Frontier Foundation, regional internet service providers, and others to achieve a balanced approach.

San Francisco adopted Article 52 because it is uneconomic and, in the case of many older buildings, impossible, for multiple carriers to install their own wiring to reach each occupant. Consequently, rather than fostering competition, the Proposed Order would strip occupants of many MTEs in San Francisco of a meaningful choice of communications providers.

The FCC’s Proposed Order harms San Francisco consumers by reducing competition for communications services. It would establish a chilling precedent for other jurisdictions seeking to advance the interests of their citizens residing in MTEs.

Thank you again for your continued leadership on this matter.

Sincerely,



London N. Breed
Mayor

cc: Ajit Pai, Chairman
 Michael O’Rielly, Commissioner
 Brendan Carr, Commissioner
 Jessica Rosenworcel, Commissioner
 Geoffrey Starks, Commissioner