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July 3, 2019

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

RE: *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142; *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No. 17-91, Draft Notice of Proposed Rulemaking and Declaratory Ruling, FCCCIRC 1907-04 (June 19, 2019)

Dear Ms. Dortch:

Another Corporate ISP, LLC, dba Monkeybrains ("Monkeybrains") is a local fixed wireless internet service provider based in San Francisco, California. Monkeybrains was founded in 1998 and has 48 employees plus the two founders. It currently serves more than 10,000 subscribers in the Bay Area, charging residents \$35 per month for fast internet service with no hidden fees and no contracts. As such, we are well acquainted with the impact that San Francisco's Article 52 is having on our community and our efforts to provide low-cost, high-speed service to residents in the City.

Over 60% of the population in San Francisco are renters.<sup>1</sup> Often when a tenant requests internet service in a large multiple-dwelling unit or multiple tenant environment building ("MTE"), the resident is deterred by its landlord and told they only have one or two choices of ISPs. When Monkeybrains tries to survey the site and provide options for service, property management will either stonewall us or refuse us entry on spurious grounds of aesthetics or interference when neither concern is relevant.

Overall, Article 52 revolutionized the situation in favor of tenants and small ISPs like Monkeybrains. Before Article 52 passed in 2016, we had a 0% rate of servicing 40+ unit MTEs with active revenue share agreements

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<sup>1</sup> <https://housing.datasf.org/overview/>.

with larger, established companies. Since Article 52 passed, we have a 60% rate of servicing 40+ unit MTEs with active revenue share agreements without invoking Article 52, and a 75 percent rate after invoking Article 52. As one example, a building where we invoked Article 52 and now have dozens of customers paying \$35/month and receiving over 100 Mbps symmetrical speeds is also a 100% below-market-rate building in the Mission Bay neighborhood. Article 52 is already keeping money in the pockets of working-class San Francisco families and will continue to do so as long as it is utilized.

The FCC's *Draft Declaratory Ruling* proposes to "preempt Article 52 to the extent that it would require that building owners share their existing *in-use* wiring with communications services providers upon request."<sup>2</sup> In-use wiring is currently defined by the FCC as "home run or cable home wiring currently being used by a communications services provider to deliver service to a unit."<sup>3</sup> Monkeybrains does not object generally to the narrow preemption the *Draft Declaratory Ruling* proposes. However, we write separately given our concern that certain large cable companies have requested that the FCC expand the definition of "in-use" wiring to include "not just wiring to serve a particular unit, but appl[y] to wiring currently being used to provide service in the MTE more generally (e.g., in-building WiFi, smart building technology)."<sup>4</sup> These two large incumbent providers and their trade association claim that this expanded definition is needed to better implement the policy underlying the *Draft Declaratory Ruling*.<sup>5</sup> Monkeybrains objects to this expansion and disagrees with this rationale.

Any expansion of the definition of "in-use wiring" beyond an occupant's unit would unnecessarily and unlawfully create market entry barriers for Monkeybrains and other small or new entrant ISPs bringing competitive services to MTEs. It is also wholly inconsistent with the FCC's stated policy of "promoting facilities-based competition as a means of

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<sup>2</sup> Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142; Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council, MB Docket No. 17-91, Draft Notice of Proposed Rulemaking and Declaratory Ruling, FCCCIRC 1907-04 ("Draft Declaratory Ruling") at para. 42 (emphasis in original).

<sup>3</sup> *Id.* n.167. The Commission also uses the term "existing in-use" wiring. *Id.* para. 42. We encourage the Commission to clarify that the preemption of any in-use wiring is such wiring installed now or in the future. The word "existing" could be interpreted that only in-use wiring installed at the time the Declaratory Ruling is adopted is subject to preemption.

<sup>4</sup> *Ex Parte* Letter from NCTA – The Internet & Television Association, Comcast Corporation and Cox Communications, GN Docket No. 17-142 and MB Docket No. 17-91 (filed June 28, 2019).

<sup>5</sup> *Id.*

encouraging deployment, investment, and innovation in broadband and other communications infrastructure and services.”<sup>6</sup> Incumbent cable and telecommunications providers are not necessarily the entities that have provided the wiring for MTEs. In a majority of MTEs, the owner or developer provides the wiring when the building is constructed or renovated. Even if the incumbent provided the wiring, it should not have exclusive rights to such wiring as that could, in many cases, create *de facto* exclusivity within the MTE and foreclose affordable competition.

In addition, we ask the FCC to clarify that “in-use wiring” refers to wiring that is actually being used by an end-user occupying an MTE unit. As a matter of course, Monkeybrains and other ISPs always build their own infrastructure including wiring and switching to each Intermediate Distribution Frame (“IDF”) in a building, and then may make use of an existing wire from the nearest IDF to the unit. In every circumstance, we only use this existing wire when it is no longer “in-use,” or actively subscribed, by an end-user. Following the end-user’s confirmation of their intent to terminate service with their previous provider, we will plug that existing wire into our own switch in the nearest IDF.

We appreciate the FCC’s consideration of these important matters and support the FCC’s narrow preemption of Article 52. We look forward to lending our voice to the upcoming dialogue regarding the issues raised in the *Draft NPRM* the FCC proposes to adopt.

Respectfully submitted,

/s/ Preston Rhea

Preston Rhea

Director of Field Operations

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<sup>6</sup> *Draft Declaratory Ruling*, para. 57.