

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

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

I. INTRODUCTION

Hotwire Communications, LLC (“Hotwire”) submits these Comments in response to the Notice of Inquiry (“NOI”) issued by the Commission in the above captioned proceeding.¹ Hotwire welcomes this opportunity to respond to the Commission’s request for data and information on the state of broadband deployment and competition in multi-tenant environments (“MTEs”).² Hotwire is the nation’s leading competitive fiber optic telecommunications provider specializing in serving multi-tenant communities. Hotwire is often the third or fourth provider of multichannel video, Voice over Internet Protocol (“VoIP”) and broadband Internet access services in a market, facing competition from incumbent providers entrenched their markets for decades.

Hotwire provides advanced fiber optic services to communities in Florida, Georgia, North Carolina, South Carolina, Pennsylvania, West Virginia, New Jersey, New York, and six other states.³ In fact, Hotwire specializes in multi-tenant environments, including gated and active adult communities, single family home developments, condominiums, and student dormitories.

¹ *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Inquiry, GN Docket No. 17-142 (rel. June 23, 2017) (“MTE NOI”).

² MTE NOI, ¶ 3.

³ Hotwire has approximately 200,000 broadband Internet access subscribers.

Additionally, Hotwire's commercial solutions division provides world-class fiber-optic communications services to small and medium-sized businesses, small-cell backhaul to mobile providers, and fiber services to local and state governments. PC Magazine recently welcomed Hotwire to the "winners circle" of high throughput Internet service providers ("ISPs") as the Fastest Major ISP in the Nation, with a PCMag Speed Index nearly double that of the next best major ISP competitor.⁴ Hotwire's ability to continue to deploy broadband infrastructure and services to MTEs is dependent upon a stable regulatory environment.

For this reason, Hotwire opposes action by the Commission that would disrupt existing arrangements for use of MTE wiring in ways that would ultimately impair rather than promote the availability and quality of broadband-based services to MTE residents, and would raise the cost of their service. In Hotwire's view, the marketplace today is working well, allowing companies like Hotwire to bring the benefits of ultrafast broadband to residents of MTEs and no additional regulatory intervention is warranted.

In these comments, Hotwire Communications will address the necessity and advantages of bulk billing arrangements for competitive providers and the importance of maintaining current regulatory standards for inside wiring.

II. BULK SERVICE ARRANGEMENTS SERVE THE PUBLIC INTEREST AND SHOULD BE LEFT UNDISTURBED BY THE COMMISSION

In the NOI, the Commission seeks comment on whether it should revisit its decision in the 2010 Exclusive Contracts Order refraining to take action regarding exclusive marketing and bulk billing arrangements entered into by multichannel video programming distributors ("MVPDs") and building owners or their associations.⁵ The answer to this question is, no.

⁴ Eric Griffith, *The Fastest ISPs of 2017 United States*, PC MAGAZINE (Jun. 2, 2017, 12:32 p.m.), available at <http://www.pcmag.com/article/353936/the-fastest-isps-of-2017>.

⁵ MTE NOI, ¶ 13; *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Second Report and Order, 25 FCC Rcd 2460, 2474-75, ¶¶ 40-41 (2010) ("2010 Exclusive Service Contracts Order"). See also *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, 22 FCC Rcd 20235 (2007) ("2007 Exclusive Service Contracts Hotwire Comments GN Docket No. 17-142 July 24, 2017

Circumstances in the marketplace have not changed since the Commission concluded, in 2010, that “bulk billing arrangements predominantly benefit consumers through reduced rates and operational efficiencies, and by enhancing deployment of broadband.”⁶ The Commission can achieve its stated goals of promoting competition and easing deployment of broadband services in MTEs by leaving its earlier well-considered decision unchanged.

The vast majority of Hotwire’s bulk service arrangements are with homeowners or their associations, rather than owners of rental properties, where MTE owner/residents as a group are making the competitive choice at the community level. Bulk service agreements are mostly negotiated with a homeowners’ or condominium owners’ association for Hotwire to provide multichannel video and/or broadband Internet access services to every resident of the community for a period of time.⁷ The residents receive a heavily discounted rate, typically sixty-percent or more off the competitive local retail rates, through their association for the services. These residents are accustomed to paying for a variety of services through their association and appreciate the convenience, buying power, and service level guarantees provided within a bulk services agreement.

In Hotwire’s experience, bulk services agreements are one of, if not the most, sustainable model for residential fiber deployment in MTE developments. Bulk services agreements offer MTE residents the opportunity to receive significantly discounted access to faster broadband Internet speeds and other communications services and allow residents to receive the benefit of a negotiated contract for services rather than the standardized service contracts so common in the existing retail MVPD environment.

Order”) (prohibiting exclusive contracts between cable operators and owners of multiple dwelling units under Section 628(b) of the Act), *aff’d*, Nat’l Cable & Telecommun. Ass’n v. FCC, 567 F.3d 659 (D.C. Cir. 2009) (“NCTA”).

⁶ MTE NOI, ¶ 13; 2010 Exclusive Service Contracts Order, ¶ 2.

⁷ Voice services are typically purchased by MTE residents on an individual, retail basis.

A. Sustainable Model for Fiber Deployment

As we have seen recently, even some of the world's largest corporations have failed to find a sustainable model for deploying fiber-to-the-home in underserved communities.⁸ In contrast, Hotwire has thrived in bringing fiber-to-the-unit broadband services to MTEs and adds thousands of new MTE subscribers to its fiber-to-the-unit system every month. This growth has occurred while other MTE fiber providers have faced insolvency, compromised or even abandoned fiber for less expensive and less effective delivery methods, induced by the deadly combination of intensive capital expenditures and uncertain revenue streams.

Hotwire's bulk model eschews the "*Field of Dreams*" approach where limited capital funds are used to build to a customer base that is not established, hoping that they will become customers once the fiber arrives.⁹ Instead, Hotwire contracts with MTE communities that range in size from several hundred to thousands of households to provide fiber based broadband Internet, video, voice and other services to every unit in the community.

In addition to bringing fiber to an entire MTE community, the extension of Hotwire's lines to the MTE inevitably passes businesses, schools, and residential areas in nearby communities that also can now enjoy the benefit of the fiber passing. These include many small and medium sized businesses that could never justify the cost of fiber deployment on their own, or even collectively; however, due to the bulk services agreement at a nearby MTE community, these businesses will have access to fiber based services.

While bulk service agreements are not the only model for sustainable fiber deployment, they are a critical one to Hotwire and to many other similar small and mid-sized providers.

⁸ Conner Forrest, *Why Google Fiber failed: 5 reasons*, TECHREPUBLIC (Dec. 20, 2016, 8:22 a.m.), available at <http://www.techrepublic.com/article/why-google-fiber-failed-5-reasons/>.

⁹ *Field of Dreams*, WIKIPEDIA, https://en.wikipedia.org/wiki/Field_of_Dreams (last visited Jul. 21, 2017) (build it and they will come).

B. Significantly Discounted Access to Broadband

Bulk services agreements increase consumer access to broadband by reducing the cost for broadband and video services. Paying full retail rates, or even bundled rates, for broadband and video service is cost prohibitive for many consumers, especially those in fixed or low-income situations.

Reducing capital costs, concentrating service areas, and streamlining technician services through bulk arrangements allows Hotwire, and other bulk providers, to sell bulk services at a significantly reduced rate. On average, the cost of Hotwire's bulk services to the consumer is sixty-percent less than competitive retail rates in the market. With such a significant discount, broadband and video services are affordable to many of those who could not otherwise afford these critical services.

Additionally, for condominiums, homeowners' associations, and apartments, additional amenities such as a community WiFi and business office telecommunications services are often included in the bulk agreement. Community WiFi is a significant, highly desirable amenity for a community; it enables residents to utilize the Internet while on the playground with their kids, while working out, or while participating in community events. Building, servicing and managing a free community WiFi network is difficult and virtually unheard of except when tied to a bulk agreement.

The basic value proposition to a community entering a bulk agreement is securing better fiber infrastructure, better services, and reducing the cost of services – all of which are inherently designed to be better than the existing, local competitive services.

C. Competitive Service and Pricing Through Bulk Contract Negotiations

The contract negotiation process for a bulk services agreement typically involves a community represented by its association's board of directors or a committee formed by its board of directors, an experienced telecommunications attorney, and often a communications consultant brought on to advise the MTE community on industry standards and best practices.

The stark juxtaposition of the bulk services agreement negotiation to the adhesion contract a typical retail customer is forced to sign for services speaks loudly to the fundamentally competitive and fair nature of bulk services agreements.

As a general rule, every bulk deal entered starts with bids from three to five service providers – both competitive and incumbent. Numerous competing bidders not only drive down pricing, but provide the community with negotiating power for pricing, technology and customer service guarantees. The standard incumbent retail contract is likely to include minimal, if any, price protections, technology guarantees, and customer service assurances. In contrast, a bulk services agreement is highly likely to address all of these concerns in a negotiated manner to the satisfaction and advantage of the community.

Rate increase maximums are standard in a bulk services agreement. When entering a bulk agreement, a community will negotiate, in advance, the maximum amount its costs will increase each year. Such protections are non-existent in a “competitive” retail environment where incumbents are able and regularly increase service costs by amounts they unilaterally deem appropriate.

Service Level Agreements (“SLAs”) provide for quality of services and are included in every bulk services agreement executed by Hotwire. These SLAs guarantee community level service quality for services and network uptime, customer service responsiveness, technician responsiveness, and many other standards of service quality that communities expect, including service credits for failure to meet standards. SLA guarantees go beyond what is required by federal or local law for cable service quality and provide a foundation for quality and reliability of services over the shared broadband wire. Even with the most robust standard agreement for residential, retail services, a customer is not going to be able to receive or negotiate similar protections. Importantly, the SLA’s are entered into at the MTE community level, not at a city or franchise level, thus assuring that service guarantees address the particular needs and desires of the MTE residents taking the service.

Bulk agreements are entered into between sophisticated parties with parity in bargaining power. The ability of a community of residents to collectively negotiate services agreements with a provider is the height of fairness and competitiveness

III. NO CHANGE IS WARRANTED TO THE COMMISSION'S INSIDE WIRE RULES WITH RESPECT TO EXCLUSIVE WIRING RIGHTS

While the NOI seems to seek limited comments on exclusive wiring as it relates to “leasebacks” – the circumstances where some building owners purchase inside wiring from the incumbent provider and then lease back that wiring exclusively to the incumbent cable operator¹⁰ – Hotwire takes this opportunity to address the issue of inside wiring ownership and use, more broadly in advocating for maintaining the current inside wiring rules. Hotwire believes that making any changes to the Commission’s inside wiring rules could have inadvertent negative consequences for deployment and investment by service providers and that maintaining regulatory stability with regard to wiring is critical.¹¹ Although Hotwire does not engage in “leaseback” style exclusivity arrangements, it believes that these are not tactics used by incumbents, but by smaller operators attempting to make a sustainable deployment and investment in new technology to MTEs.

A. Necessary to Maintain Incentive to Invest

The incentive to invest in new wiring, in Hotwire’s case fiber-to-the-unit, is rooted in a service provider’s continued ownership of the wiring that it installs in an MTE. If service providers are forced to share their wiring, service providers would not be incentivized to invest in new infrastructure, but simply use existing infrastructure and provide no more than the quality of

¹⁰ MTE NOI, ¶ 15.

¹¹ The MTE NOI notes that the Commission has previously adopted inside wire rules for telecommunications service providers pursuant to its authority over common carriers in Section 201(b) and over incumbent local exchange carriers pursuant to Section 224. MTE NOI, ¶¶ 4-5, 7, 17. Although broadband Internet access service was classified as a telecommunications service by the Commission in 2015, that decision is being re-examined in the Restoring Internet Freedom rulemaking. Should the Commission proceed with its lead proposal of restoring the pre-2015 information service classification, it would lack authority to reach the inside wiring practices of broadband Internet access service providers pursuant to Section 201(b). *Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108 (rel. May 23, 2017) (“Internet Freedom NPRM”).

product that the existing infrastructure is able to support, which is unlikely to be high-performance fiber. The inability to receive the value of the capital investment will ensure that capital investments shrink and that in the future, next-generation infrastructure installed with private capital will no longer be viable.

B. Control of Plant and Services Quality

Hotwire guarantees the quality of its services to a higher standard than required by current regulations and considers this a hallmark of the company. Exclusively owning and controlling the wiring Hotwire installs is a dispositive factor in whether it can offer and maintain network service quality and reliability.

If the Commission's inside wiring rules change, it will create additional confusion and instability in an area where existing regulations have served MTEs well with a healthy balance between service providers, building owners and consumers. If any rule change had the effect of allowing Hotwire-owned inside wiring to be used by competing providers, it would not only dampen or stop Hotwire's future investment in advanced wiring, but it would likely affect the quality of services Hotwire's current customers receive, in addition to Hotwire's ability to make the type of SLA guarantees at the level desired by residents. Rather than provide service level guarantees, Hotwire would be forced to change its service level standards to "best efforts" due to the added risk of other providers affecting Hotwire's on-premises network and equipment. It would also hinder Hotwire's ability to remotely diagnose and repair service issues at MTEs, inevitably increasing cost and frustration to the consumer.

A myriad of other issues would likely arise out of a change to the existing inside wiring rules, including accountability for damage to wiring, responsibility for maintenance of wiring, interference with complex network operations and designs, and confusion over accountability for damage service quality. Changes to the wiring rules would be a solution in search of a problem that would have the effect of creating problems that do not exist in today's MTE environment.

C. Ability to Secure Investment and Financing for Build-out

Hotwire continues to spend hundreds of millions of dollars per year in fiber deployment because its investors and financiers are comfortable with the stability of the current regulatory landscape, particularly as it affects Hotwire's infrastructure and network control. Disruptions and changes to inside wiring ownership and exclusivity rules will cause uncertainty in the security of investments made and are likely to dampen further investment in fiber and broadband deployment to underserved MTEs.

IV. CONCLUSION

For the foregoing reasons, Hotwire respectfully submits that the Commission should continue to allow broadband providers to enter into bulk-billing agreements with MTEs and refrain from making any changes to its inside wire rules.

Respectfully submitted,

Hotwire Communications, LLC

By: 

Jonathan Bullock
Vice President Corporate Development and
Government
Hotwire Communications, LLC
2100 West Cypress Creek Road
Fort Lauderdale, FL 33309

Barbara S. Esbin
Bruce E. Beard
Cinnamon Mueller
1875 Eye Street, NW
Suite 700
Washington, DC 20006

Attorneys for Hotwire Communications, LLC

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