

**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.

I. Introduction

Starry, Inc. (“Starry”) supports the Federal Communications Commission’s (“FCC” or the “Commission”) inquiry into barriers to broadband deployment in Multi-Tenant Environments (“MTEs”), and urges the Commission to act quickly to eliminate these barriers. Facilitating consumer access to communications networks has long been core to the mission of the FCC and over the last several decades, enabling broader consumer access to high-speed internet has been a priority as the internet increasingly becomes a gateway for enabling economic growth, health care access and expanded educational and job opportunities. The Commission correctly recognizes that closing the existing digital divide is a critical priority and accelerating the deployment of next generation networks, both wired and wireless, will enable more innovation and increase competition to the benefit of consumers.

Since 2000, the Commission has taken steps on four separate occasions to remove barriers to competition for broadband internet providers seeking to provide service to customers and residents in MTEs and multiple dwelling units (“MDUs”).¹ Today, the Commission is

¹See *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983 (2000) (*2000 Competitive Networks Order*); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07- 51, Report

taking a fresh look at the broadband market to understand how the marketplace has evolved and how competition can be expanded and enhanced to the benefit of consumers.² With the advent of ‘5G’ technologies and new access networks that blend fixed and mobile technologies, the Commission has a unique role to play in ensuring that these innovations continue to grow unimpeded. New 5G access networks offer low-latency and high bandwidth capacity suitable for a wide variety of uses including entertainment, business, health, education and public safety, and critically, will provide another choice in connectivity for millions of people and small businesses, in both urban and rural areas. However, if marketplace practices make it impossible for providers to deploy and consumers to access these new technologies, the benefits from these innovations will be lost.

Starry is a Boston- and New York-based technology company that is utilizing millimeter waves to re-imagine wireless last-mile broadband access as an alternative to fixed wireline broadband to the home. Starry is currently deploying its proprietary fixed 5G wireless technology in the Boston-area, with plans to rapidly expand our presence to additional U.S. cities by the end of 2017.

Emerging 5G technologies, such as Starry’s, offer an opportunity to use previously untapped millimeter wave spectrum to deploy next generation wireless technologies that have the potential to not just narrow the digital access divide, but close it all together. Starry’s ability to provide wireless last-mile connectivity to MDUs and single-family homes can significantly reduce the time and cost of deployment and provide an affordable, competitive alternative for consumers in markets across the country. Additionally, by pursuing a wireless deployment

and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007) (*2007 Exclusive Service Contracts Order*); *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Report and Order, 23 FCC Rcd 5385, 5386, para. 5 (2008) (*2008 Competitive Networks Order*); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Second Report and Order, 25 FCC Rcd 2460, 2474-5, paras. 40-41 (2010) (*2010 Exclusive Service Contracts Order*).

² *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, FCC 17-78, *Notice of Inquiry* (June 23, 2017).

model, Starry also decreases community friction and the disruption caused by tearing up sidewalks and streets to connect traditional cable or fiber to homes and apartment buildings.

Today, nearly 30 percent of Americans live in MDUs of two or more units and those MDUs are primarily concentrated in metropolitan areas.³ More than half of all U.S. households have only one choice for broadband access.⁴ And for people who live in MDUs, most times the choice of your internet provider is being made by someone else.⁵

As Starry expands its deployment in Boston and other cities, we are learning firsthand of the challenges and opportunities presented by a marketplace that has long been dominated by one incumbent provider. Our comments to this Notice of Inquiry (“NOI”) are based on recent experiences and challenges in the field as we deploy our system and sign up customers. Starry’s comments focus on two key areas where action by the Commission will yield immediate benefits in enhancing competition and broadband deployment in multiple tenant environments:

- 1) Exclusive building marketing agreements, which in practice act like exclusive building access agreements, significantly hinder new broadband providers from providing service to MDUs and should be prohibited.
- 2) Door fees and revenue sharing agreements can create incentives for building owners and managers to shut out competitive service providers to the detriment of their residents and should be more closely examined.

The Commission’s prior efforts have helped expand broadband deployment and access, but as the market dynamics have shifted and more competitive services enter the market,

³ See U.S. Census Bureau, *2009-2015 American Community Survey 5-Year Estimates*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_B25024&prodType=table.34811234

⁴ *Internet Access Services: Status as of June 30, 2016*, p. 6, fig. 4 (Apr. 2017); https://apps.fcc.gov/edocs_public/attachmatch/DOC-344499A1.pdf.

⁵ See Fiber to the Home Council, *Residents’ Choice: Ensuring Consumers in Multiple-Dwelling Units Can Choose Their Communications Provider*, White Paper (November 2016).

incumbents have become more sophisticated and aggressive at protecting their monopoly positions within MDUs to ward off competition, to the detriment of consumers.

The societal and economic benefits of deploying more broadband to connect consumers and communities are vast. We know that when communities have access to reliable broadband, they are more productive and economically robust.⁶ We also know that consumers benefit from decreased prices and increased quality of service when internet service providers compete in a market.⁷

We applaud the Commission's efforts to continually re-examine marketplace conditions to ensure that broadband access and expansion continues to grow and that competition continues to thrive for the benefit of consumers.

II. Exclusive building marketing agreements, which in practice act like exclusive building access agreements, significantly hinder new broadband providers from providing service to MDUs and should be prohibited.

In 2007, the Commission concluded in its *2007 Exclusive Service Contracts Order* that exclusive access agreements to provide multichannel video programming distributor (MVPD) services to customers in MDUs harmed competition and broadband deployment and thus, prohibited cable operators and others subject to these statutory provisions from entering into or enforcing such agreements. In 2008, the Commission expanded its *Competitive Networks Order* to include residential MTEs, recognizing that these types of agreements created more harm than benefit to consumers. In 2010, the Commission released an update to its *Exclusive Service*

⁶ See Council of Economic Advisors, *March 2016 Issue Brief: Digital Divide and Economic Benefits of Broadband Access*, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf.

⁷ See Connecting America: The National Broadband Plan at 36-43 (Staff Report) (2010), <http://www.broadband.gov/plan/4-broadband-competition-and-innovation-policy/>; William Lehr, MIT, *Benefits of Competition in Mobile Broadband Services* <https://ecfsapi.fcc.gov/file/7521094967.pdf>; Robert D. Atkinson, *The Role of Competition in National Broadband Policy*, 7 J. on Telecomm. & High Tech L. 1 (2009); <http://www.itif.org/files/BroadbandCompetition.pdf>.

Contracts Order to address the issue of exclusive marketing and bulk billing agreements between MVPDs and MDUs, finding that at the time, these agreements did not significantly hinder or prevent other MVPDs from providing services to residential MDUs.⁸ The Commission reserved its rights to re-examine these two practices as marketplace conditions evolved.

While the conclusion that the Commission reached in 2010 may have been valid at the time, today that is no longer the case. Exclusive marketing agreements between MVPDs and MDU building owners and managers in practice act like exclusive access agreements and they significantly hinder the ability for new entrants to provide broadband service to residents of MDUs. We believe exclusive marketing agreements should be prohibited.

From our experiences in the field, building owners and managers enter into exclusive marketing agreements often in tandem with revenue sharing schemes or a “door fee” arrangement. While marketing exclusivity agreements do not explicitly bar other broadband providers from providing service within a building, the overly restrictive language and threatening tone leaves building owners and managers with the impression that they will face litigation for simply allowing their residents a choice in internet providers. MDUs that we have worked with to provide Starry Internet service have received cease and desist letters from incumbent providers that overstate the legal restrictions in the marketing agreements, attempting to enforce them like exclusive access agreements. Unfortunately, these scare tactics are typical for the market.

In our experience, we have found that 100 percent of MDUs with 75 or more rental units have exclusive marketing agreements and/or revenue sharing or door fee agreements in place with the incumbent internet access provider. Often, when our sales team approaches a new

⁸ 2010 *Exclusive Service Contracts Order*, 25 FCC Rcd at 2473 ¶¶ 36-37.

building owner or manager, they are first told that we cannot provide our service in the building because of their existing exclusive agreement, even though it's just a marketing agreement. And to individual residents who have sought out Starry Internet service and approached their management about bringing our service to their building, nearly 3 out of 4 are told that by their management companies they have exclusive access agreements with an incumbent provider and are not allowed to bring in new services.

Overwhelmingly, it is our experience that exclusive marketing agreements serve the same function as exclusive access agreements in MDUs. It is the same practice, used for the same purpose – to discourage competition – but under a different name. It is our experience that most building owners, managers, and residents are unaware of the prohibition of exclusive access agreements and incumbent providers' sales teams and building representatives are more than happy to mislead residents (knowingly or not) into believing that they have exclusive access to serve a particular building. Our own sales teams have encountered this scenario in nearly every large MDU sales interaction. Additionally, the lack of understanding of these regulations means that building owners and managers easily fall prey to the incumbent's aggressive, but hollow, legal threats. This environment creates significant barriers for any new entrant or startup to gain access to serve residents in MDUs.

Starry is fortunate to be a well-capitalized startup with an experienced sales and operations team in place. While exclusive marketing agreements have posed significant challenges to expanding our deployment, our teams have found creative ways to work with MDU owners and managers to allay their fears of retribution from incumbents and provide their residents with a competitive broadband alternative. And while Starry is fortunate to be able to address these challenges head on, they cost the company deployment time and financial resources and in some cases, our creative solutions cannot overcome the challenges posed by these agreements. Other startups and new entrants may not have the luxury of time or financial

resources, and these barriers may not just pose a challenge, they may all together foreclose them from competing in a market.

In our experience, exclusive marketing agreements do not provide MDU residents with any clear benefits. These agreements discourage and create massive barriers to competition. These marketing agreements provide no tangible benefits to residents. As mentioned, exclusive marketing agreements are often executed in tandem with revenue sharing schemes and door fee arrangements, which provide building owners with benefits, but not residents. Exclusive marketing agreements function in practice like exclusive access agreements, create unnecessary and burdensome barriers to competition, provide no benefit for consumers and as such, should be prohibited by the Commission.

III. Door fees and revenue sharing agreements create incentives for building owners and managers and shut out competitive service providers to the detriment of their residents.

As mentioned, exclusive marketing agreements from incumbent providers are often executed in tandem with revenue sharing schemes or a “door fee” arrangement. It is Starry’s experience that these financial agreements between incumbent providers and MDUs create incentives for building owners to shut out competitive service providers to the detriment of their residents. Additionally, the establishment of these financial agreements creates a framework for buildings to institute a “toll” for any service provider wishing to provide service in an MDU. While these financial agreements are not as insidious and detrimental to gaining entry as exclusive marketing agreements, they do create financial burdens on all service providers to pay a fee to provide service, in essence, “pay to play.” This dynamic heavily disadvantages startups and new market entrants.

Revenue sharing schemes create incentives for building owners that are counter to consumer interests. For example, Building A may execute a revenue sharing agreement under

which the building owner will receive 10 percent of all monthly revenue generated by each of its residents that chooses to buy an incumbent's services. Therefore, for every \$200 spent per month by a resident, Building A's owners receive \$20. The more the incumbent sells and the higher the incumbent's penetration in Building A, the more the building owner benefits financially. The building owner has no incentive to enable competition that would offer its residents a more affordable alternative. So, if Starry began to offer service in Building A at \$50 per month, the building owner, under the same agreement, would only yield \$5. The loss of potential revenue creates incentives for building owners to limit residents' access to competitive service providers. In these revenue sharing schemes, all the benefit flows to building owners and not the residents/consumers. The incentives created by revenue sharing schemes are misaligned for owners and residents, and incumbents are able to exploit that dynamic to their advantage and to the detriment of competition and consumers.

Door fee arrangements operate similarly. Typically, building owners receive a flat fee for each unit that signs up for an incumbent's service, in exchange for the right to exclusively serve the building for a certain period of time. Door fee arrangements are a derivative of exclusive access agreements, but because they only last for a certain length of time, they do not fit the definition of an exclusive access agreement, even though that is how it is used in practice. And today, door fees are sometimes instituted as a matter of fact, even without an "exclusive access period" built in, and used a toll for entry into a building. At a minimum, we believe that door fee arrangements that require service exclusivity, even for a certain period of time, should be prohibited.

We understand that building owners must find different ways to generate revenue. However, residents are often left out of the equation and left powerless to make basic decisions around their internet access services. We believe the Commission should examine ways to empower consumer choice in the broadband market in order to provide a counter-balance to

agreements struck between service providers and building owners that limit consumers' abilities to use the internet provider of their choice.

In 1996, when faced with a similar issue that limited consumers' access to video services, the Commission adopted rules that protect a property owner or tenant's right to install, maintain and use an "Over-the-Air-Reception-Device" (OTARD) or antenna to receive video programming, broadband radio services, broadcast television and fixed wireless signals.⁹ The OTARD rules were conceived to more easily facilitate a consumer's access to new technologies. OTARD has been a success in not only protecting owner and tenant rights, but also helping spur a competitive market for video programming over the last two decades. Creating similar protections for residents of MDUs would do much to spur competition and provide residents with a tool to demand access to competitive alternatives in their buildings. The Commission should further examine what mechanisms, similar to OTARD, could be useful in helping empower consumer choice in the MDU environment.

IV. Conclusion

With the advent 5G, consumers will have a plethora of choices when it comes to broadband access technologies. Ensuring that consumers that reside in MDUs are not shut out from these innovations is critical. The Commission has the ability to continue to protect and nurture competition in these environments by amending its *Exclusive Service Contracts Order* to include prohibition of exclusive building marketing agreements. Additionally, the Commission has within its authority the ability to further examine revenue sharing schemes and door fee arrangements to ensure that these practices do not prevent other MVPDs or service providers

⁹ 47 C.F.R. § 1.4000.

from providing broadband services to MDU residents and use its authority to further clarify tenants' rights and protections in choosing an internet provider.

Starry applauds the Commission's work on these issues and its thoughtful approach to understanding the changing dynamics of the market and the critical role the Commission plays in ensuring competition and the acceleration of broadband deployment and access nationwide.

Respectfully submitted,
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