

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FCC Mailroom

In the Matter of

Petition of the Multifamily Broadband Council
Seeking Preemption of Article 52 of the
San Francisco Police Code

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MB Docket No. 17-91

COMMENTS OF Consolidated Smart Systems, LLC

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I. INTRODUCTION.

Consolidated Smart Systems, LLC hereby submits its initial comments to the Federal Communications Commission ("FCC" or "Commission") in response to the April 4, 2017 Public Notice in the above-referenced proceeding. The Commission's Public Notice seeks input on a petition submitted by the Multifamily Broadband Council ("MBC"). MBC's petition seeks a declaratory ruling that Article 52 of the San Francisco Police Code is preempted because Article 52 conflicts with the Commission's regulatory frameworks governing competitive access to inside wiring in multi-family buildings, bulk billing arrangements, and forced network sharing obligations, and because federal law and policy have "occupied the field."

For the reasons described below, the Commission should grant MBC's petition.

II. BACKGROUND.

My name is Daniel Terheggen and I am the CEO of Consolidated Smart Systems. I am also the president of the MBC. In my role as president I get to interface with small operators all over the country. The comments that I am making about the petition are not only personally applicable to my business but also echo the comments of my provider members. Consolidated Smart Systems (Consolidated), was formed in 1992 and is based in Gardena California. The

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company is an independent and privately held private cable operator that provides video, voice and Internet services to residential multi-family properties, in direct competition with larger, well-funded entities. Consolidated provides these services to over 73,000 multi-family units in California and Arizona. In 95% of the communities that Consolidated services we are competing directly with one of the major Telco's or cable companies. We are very competitive in these communities for the following reasons:

- Consolidated offers 500Mbps for \$50 a month. This is the fastest speed and lowest price in all of the markets that we service.
- Consolidated offers residents "Instant On" for Internet. This is a service where the modem is preinstalled and "hot" before a resident moves in. All the resident needs to do is launch their browser 24/7 and get online.
- Consolidated offers "Smart Service" which is a custom service that will install and connect all of a resident's wired and wireless devices.
- Consolidated installs DIRECTV through a central system within the building which means no dishes on the balconies or attached to the walls of the building.

Although Consolidated does not currently provide service in San Francisco, Consolidated is compelled to submit these comments on MBC's petitions due to Article 52's clear anticompetitive effect and the negative consequences that would follow if similar laws are adopted in other cities.

III. ARTICLE 52 IMPOSES SEVERE CONSTRAINTS ON THE ABILITY OF COMPETITIVE PROVIDERS TO SERVE MULTI-TENANT BUILDINGS.

As MBC correctly observes, Article 52 distorts the competitive landscape by overriding voluntary, contractual arrangements that are preconditions to the financing required for buildouts in multi-family buildings. Unlike large, deep-pocketed corporations like Google, Consolidated

depends on third-party financing and private investors to provide the capital necessary to build out our facilities and infrastructure on multi-family communities. For smaller providers like Consolidated, who cannot self-fund their operations, such financing and private investment is critical given the substantial capital outlay required to construct and launch a system on a multi-family property. Simply put, if we are not able to demonstrate a likelihood of success with regard to a particular project, our bank or investors will not fund it.

In Consolidated's experience, the most important asset in a build out of a property is a valid, enforceable right of entry ("ROE") agreement with a property owner that grants our company protected and undisturbed use of wiring inside the building(s). In fact, Consolidated does not build out any property without an enforceable and valid ROE. Historically our lenders have taken a secured interest in Consolidated's ROEs as a requirement to provide any kind of financing. They value the ROE as one of the most important assets of the company. It is fair to say that if our ROEs were subject to an ordinance like Article 52 the banks would cease to see any value in the agreement and not fund our projects.

Another type of ROE that Consolidated has used to secure financing is a bulk billing arrangement, under which the property owner purchases service and provides it as an amenity for all residents at a steep discount off regular retail pricing. As the Commission has recognized, bulk billing arrangements allow companies like ours to offer reduced prices to customers by spreading fixed costs among many subscribers using common facilities. However, we are only able to offer such discounts if we have the ability to serve all (or almost all) of the residents on a given property. Over 15% of our current portfolio of business has bulk agreements. In fact, this is the fastest growing segment of our business. Multi-family property owners like the benefits of bulk agreements because they provide lower pricing for their residents.

As MBC has noted, bulk billing arrangements are typically used by property owners and service providers to provide affordable video and broadband services to shared-living environments like retirement and nursing homes, student housing, and lower- or fixed-income residents. This is especially true in our service territory. Consolidated has several senior living homes and retirement communities that would not be serviced at all without the benefit of a bulk arrangement. These types of communities could not get a provider to build out a system with the only source of revenue coming from a typical retail offering because the residents could not afford it.

As noted above, bulk billing arrangements will cease to exist under Article 52. Thus, consumers who depend on such arrangements will likely receive services at higher prices and poor customer service if they receive service at all.

V. ARTICLE 52 IMPAIRS THE ABILITY OF COMPETITIVE PROVIDERS TO MAINTAIN A HIGH LEVEL OF CUSTOMER SERVICE.

In Consolidated's experience, a significant portion of service interruptions and related problems in multi-resident properties are caused by issues relating to inside wiring. Because Article 52 does not address how multiple providers on the same property must behave towards each other, the ordinance will only make these problems worse.

Specifically, the use of common wiring for two signals usually results in interference, which leads to service cutoffs and, eventually, loss of customers. Consolidated has tried in the past to share the inside wiring to the same unit with other providers. It was a nightmare. The continual service repair because of something the other provider did cost more than the revenue generated by the customer. As mentioned earlier Consolidated competes with other providers in 95% of the communities we serve. We have made it a policy to not share the home run wire with

another provider to the same customer because of the service costs and the terrible experience for the customer.

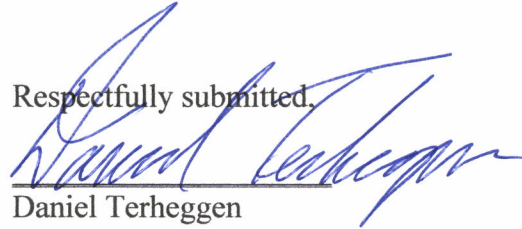
In other instances, service providers have simply disconnected the inside wiring that connects our service to a resident and reattached that wiring to their own equipment. These situations have aggravated and confused our customers. This practice still happens today with only one or at most two other providers. The management of the telephone closet has become a major problem for onsite property management. These type of problems will multiply exponentially when the number of providers increases.

Moreover, Consolidated includes service level agreements (“SLAs”) in all of our agreements with property owners. A typical SLA includes mandatory deadlines for repairing service interruptions and outages, completing installations, and enforceable standards to maintain minimum bandwidth to a property. SLAs are an effective way for our company to distinguish itself from large providers that do not offer service level guarantees. In fact, multi-family property owners use our SLAs to post up the large providers and get them to provide the same SLAs. This is a perfect example of where a small independent provider such as Consolidated is having a positive effect on the market by increasing the level of customer service for the property and the resident. If the small service providers such as ourselves can no longer financially do business because of this ordinance and ones like it, quality customer service will cease. In addition to this under Article 52 we will not be able to commit to an SLA because we do not have protected and undisturbed control over the wiring being used to deliver our services to customers.

VI. CONCLUSION.

For the reasons discussed above, the Commission should find that Article 52 is preempted by federal law and policy.

Respectfully submitted,



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CEO

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Dated: May 11, 2017