

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to)	GN Docket No. 17-142
Multiple Tenant Environments)	
Petition for Preemption of Article 52 of the San)	MB Docket No. 17-91
Francisco Police Code Filed by the Multifamily)	
Broadband Council)	

COMMENTS OF EXTENET SYSTEMS, INC.

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SUMMARY

The Federal Communication Commission (“Commission”) is seeking comments on numerous issues related access to facilities-based broadband services in Multiple Tenant Environments (“MTEs”) including the role and impact of neutral host providers of distributed antenna systems (“DAS”) in this market. ExteNet Systems, Inc. (“ExteNet”) operates as a neutral host provider in MTE facilities, such as stadiums, commercial office buildings, arenas, hotels, and medical facilities. Using fiber-fed DAS, small cells, Wi-Fi and other technologies, ExteNet deploys distributed networks to enhance coverage and capacity in MTE buildings as the neutral host agent for the MTE building owner/manager. At times, these arrangements can include management of the building wiring, conduit and other telecommunications infrastructure. Typically, a neutral host provider, such as ExteNet, enters into an exclusive agreement with the MTE to provide DAS facilities to enhance coverage and capacity and enable superior wireless service within the building.

As a neutral host provider, ExteNet operates under revenue sharing agreements, pursuant to which ExteNet pays a one-time fee to MTE owners/managers for exclusive rights to construct a neutral host system in the facility. Another common arrangement is for ExteNet to receive fees from MTE owners/managers to manage in-building communications facilities like a meet-me-room. Such agreements, which are currently permitted, promote telecommunications and broadband competition in MTE buildings, and the Commission should not adopt any rules that would disturb these arrangements.

Over the past ten to fifteen years, competitive access to MTEs has successfully disciplined the market for such services creating an environment of effective self-regulation that has also resulted in a robust and efficient delivery of high-quality services to MTE occupants. ExteNet encourages the Commission to refrain from altering the status quo that ExteNet maintains has the

potential to interfere with the significant investments by building owners and their neutral host providers which threatens to impair existing and future deployment of advanced broadband technology for the use and enjoyment of MTE tenants/consumers.

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I. INTRODUCTION

Pursuant to the Federal Communication Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking (“*MTE NPRM*”)¹ in the above-referenced docket on facilities-based broadband deployment and competition in Multiple Tenant Environments (“MTEs”), ExteNet Systems, Inc., on behalf of itself and its subsidiaries (“ExteNet”) hereby respectfully submits the following comments.

ExteNet operates multiple lines of business impacted by the FCC’s *MTE NPRM*. ExteNet’s core business is as a neutral host provider. In that capacity, ExteNet designs, builds, owns and operates distributed networks for use by national and regional wireless service providers in major markets throughout North America. Using fiber-fed distributed antenna systems (“DAS”), small cells, Wi-Fi and other technologies, ExteNet deploys distributed networks to enhance coverage and capacity as well as to enable wireless service in both outdoor and indoor environments. With respect to indoor markets, ExteNet enters into exclusive agreements with owners of MTEs ranging from sports and entertainment venues to hotels and conference centers, commercial buildings, shopping malls, and healthcare facilities.² Pursuant to these exclusive agreements, ExteNet then constructs a “neutral-host” and multi-technology distributed network system in the MTE to provide interior signal penetration typically unavailable from traditional macro tower facilities. These indoor DAS networks are designed to allow wireless carriers to “join” the network in order

¹ *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, FCC 19-65 (July 12, 2019).

² The Commission defines MTEs as “commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities.” *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Inquiry, 32 FCC Rcd 5383, 5383-5384, para. 2 (2017) (“*MTE NOI*”).

to provide enhanced wireless coverage to building owners, tenants, customers, and the general public located within the MTE.

Separately, in traditional multi-tenant MTEs such as commercial office buildings, ExteNet enters into exclusive agreements with the MTE owner by which ExteNet acquires the right to manage the communications infrastructure and risers in the MTE. ExteNet serves as the coordinator and single point of contact for communications service providers seeking to serve the MTE, requiring that the providers deploy (and when required, remove) their wiring and other equipment in an organized fashion, thereby ensuring that numerous providers can efficiently serve the MTE simultaneously. Additionally, ExteNet provides dark and lit fiber solutions to other carriers and enterprise customers in MTEs.

The FCC's existing MTE regulations reflect caution in imposing rules and regulations that may potentially discourage neutral host providers, as well as building owners, their managers, and agents, from installing leading edge facilities to support various communications and video services. The FCC's approach in this area has been deliberately cautious, as any action that would discourage such construction and installation would be to the detriment of consumers and to the overall communications marketplace.³ Historically, the Commission has limited the scope of its regulatory authority to entities clearly within its jurisdiction, including common carriers and multichannel video programming distributors ("MVPDs"). As addressed in these comments,

³ Compare, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007) ("2007 Exclusive Service Contracts Order") (classifying contractual clauses that provide MVPDs with exclusive access for the provision of video services as an unfair practice that violates the Communications Act of 1934, as amended), with, *Telecommunications Services Inside Wiring, et al.*, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342 (2003) (rejecting a proposal that would allow owners of Multiple Dwelling Units ("MDUs") to require sharing of installed in-building wireline systems).

ExteNet encourages the Commission to continue its current approach to MTEs. ExteNet maintains that the Commission has adopted the correct balance between regulation and refraining from such allowing competition to effectively regulate the conduct of the multiple parties that comprise the MTE marketplace. As a result, MTE owners/managers determine when and how to engage neutral host providers, such as ExteNet, that bring expertise to manage, install, and maintain leading edge connectivity and accessibility for MTE tenants, customers, and other consumers as well as attract critical capital investment to the installation and maintenance of broadband infrastructure in MTEs.

II. REVENUE SHARING AGREEMENTS

In the MTE NPRM, the Commission seeks comment on whether or not the Commission should require the disclosure or restrict the use of revenue sharing agreements that MTE owners/managers enter into with certain third parties. Typically, when ExteNet enters into revenue sharing agreements, ExteNet pays a one-time fee to the MTE owner/manager for exclusive right to construct a neutral host system in the facility. Revenue sharing is permissible under existing Commission regulations. ExteNet encourages the Commission to maintain the current regulatory environment which permits revenue sharing agreements and does not require disclosure of such agreements. Any action that forces MTE owners to abandon their long standing practice of entering into revenue sharing agreements with neutral host providers should be avoided.

ExteNet's representative business model for revenue sharing with a commercial MTE has two separate elements that may be implicated by any revenue sharing rules that the Commission may adopt:

- ExteNet pays a one-time fee to MTE owners/managers for exclusive right to construct a neutral host system in the facility;
- ExteNet receives payment from MTE owners/managers to manage,
 - (i) access to communications room in MTE (MMR); or
 - (ii) use of building risers; or

(iii) access to various floors by communications providers (including ExteNet, when applicable).

Such revenue sharing agreements offset the costs associated with installing, maintaining, and upgrading MTE infrastructure that supports the provision of broadband, communications, and video services to MTE occupants. If the FCC prohibited or significantly regulated revenue sharing models, MTE owners may be forced into a position where they would have to solely bear these costs, possibly resulting in substantial increases to tenant rents. Through revenue sharing arrangements, neutral host providers promote the deployment of advanced technologies, help stimulate demand for broadband services, and enhance competition benefiting tenants/consumers. The Commission should not disrupt the status quo, which is a functioning and competitive free market model, and risk undermining the efficient deployment of advanced communications services to the benefit of tenants/consumers, MTE owners/managers, and communications service providers.

The Commission specifically asked commenters to opine on “what impact revenue sharing agreements have on competition and deployment within MTEs?”⁴ The Commission rightly noted that “some commenters contend that such agreements are a key tool in building owners’ ability to build out, maintain, and upgrade their networks, and they also contend that revenue sharing agreements do not raise costs for tenants.”⁵

As the Commission is well aware, deploying broadband facilities is a time-consuming process. Because high performing technology and telecommunications are a necessity in every business sector, a MTE owner/manager forced to negotiate directly with multiple telecommunications carriers may be coerced to enter into a disadvantageous contract with a

⁴ *MTE NPRM*, ¶17.

⁵ *Id.*

telecommunications provider to placate an existing or potential tenant, or else forgo the lease with a particular tenant. Moreover, rents are subject to a marketplace that is larger than a single building. MTE owners/managers are primarily concerned with occupancy rates. Entering into a disadvantageous revenue sharing agreement that would increase rents for tenants would be allowing the proverbial tail to wag the dog when MTE owners/managers are competing for tenants in broad marketplace for commercial and residential tenants. Also, service providers operate in a highly competitive market such that rates for broadband services are subject to competitive pressure. Accordingly, competition that MTEs face when attracting occupants, coupled with pricing pressure that service providers face for broadband services adequately deters MTEs and service providers from entering into revenue sharing agreements that disadvantage MTE occupants.

ExteNet also does not believe that negotiating revenue sharing agreements materially slows the deployment or otherwise impairs the availability of communications services to MTE occupants. Securing capital to deploy networks, obtaining the requisite authority from state regulatory agencies, applying for permits to access the rights-of-way, and installing the requisite facilities to offer services requires a great deal of planning and substantial investments. ExteNet's experience is that negotiating revenue sharing agreements with MTE owners/managers may be the least time-consuming part of the process. Additionally, where MTE owners/managers have a portfolio of several buildings, a single agreement may be negotiated to cover the entire portfolio. Under a revenue-sharing agreement, the neutral host provider has an incentive to negotiate the best contract for *both* the MTE owner and the telecommunications provider.

Under a typical arrangement, the neutral host provider builds, manages, and maintains the telecommunications infrastructure within a building. The neutral host provider assumes the cost

of these investments and depends on contracts with the telecommunications providers to recoup that investment. The neutral host provider model is dependent on attracting multiple telecommunications providers to the facility. A diverse portfolio of telecommunications providers in a MTE facility has numerous advantages, such as:

- Consumer choice of telecommunications providers within the building;
- Reduces the cost of investment per tenant and per carrier as the carriers share facilities;
- Encourages neutral hosts to maintain and upgrade facilities to meet the standards of the providers, often well in advance of expressed need;
- Shared revenue that is used to help the building owner keep rents reasonable;
- Attract quality tenants with choice of telecommunications providers; and,
- Requires a systematic approach and organization of telecommunications infrastructure within the MTE facility.

Under existing revenue sharing agreement models, neutral-hosts, utilizing their experience and expertise, negotiate with the telecommunications providers on a comparatively level playing field resulting in equity for both the telecommunications providers and MTE owners. Competition is not only preserved under the current model it is encouraged as success of the neutral host model requires securing multiple telecommunication providers for a building. This competition maximizes benefits for tenants, which should be the Commission's ultimate goal when considering potential regulatory actions.

The Commission also seeks comment on whether it should require disclosure of MTE revenue sharing agreements. ExteNet believes that compelling disclosure of revenue sharing agreements is unnecessary and not in the public interest. ExteNet specifically questions what, if

any, benefits to the public would be realized by forcing the disclosure of revenue sharing agreements between private parties?

III. DAS FACILITY ACCESS

The Commission has asked for comment on “whether [the Commission] should take action on access to distributed antenna systems (“DAS”) facilities?”⁶ ExteNet respectfully encourages the Commission to refrain from taking action that would fundamentally alter the existing competitive DAS marketplace and business model in potentially detrimental ways. DAS networks are common in MTEs such as stadiums, commercial office buildings, arenas, the hotels, and medical facilities. Typically, a neutral host provider, such as ExteNet, enters into an exclusive agreement with MTEs to provide DAS facilities to enhance coverage, capacity and enable superior wireless service within the building. In some, but not all cases, this coverage is primarily used by consumers and not the tenants themselves. For example, in a large sports arena, the demand for improved service is driven by fans clamoring for increased access to wireless communications during a sports event, but not necessarily by the sports team organization itself.

The business model of providing neutral host DAS systems in MTEs has successfully functioned for over fifteen years. As highlighted above, a single point of contact for coordination and provision of infrastructure in a building benefits the building owner/manager, the end user, and the telecommunications provider. The DAS neutral host provider typically invests in the installation of radios, antenna, and backhaul fiber/wiring throughout the building. Through revenue sharing, the DAS neutral host provider is more likely to obtain financing for, and invest in, building out expensive, state-of-the-art facilities. The neutral host business model creates numerous incentives to do so, to secure as many carrier tenants as possible on a given network and

⁶ *MTE NPRM*, ¶ 22.

increase return on investment. Typically, cellular telecommunications services are purchased by end users as opposed to commercial tenants. Thus, wireless providers that have no certainty as to a potential return on investment in a specific building are less likely to make such investments.⁷ However when such investment can be distributed among multiple providers, it becomes more attractive to all.

In neutral host DAS installations, the costs of installation are borne in one of three ways: 1) the telecommunications carrier for or by whom network is installed pays; 2) the owner/manager of the MTE building pays for installation; or 3) the neutral host provider pays for installation. The installation of a DAS is a significant investment requiring continuous antenna coverage throughout the building. Sometimes, depending on obstructions and construction materials used in an existing building, even the mere design of a DAS can be a significant undertaking. There are limited places in a building where DAS facilities can be placed for maximum exposure and operational efficacy, and the building owner and its representative, the neutral host provider, should have priority and control over these locations.

In the carrier-pay model, the installation and any recurring fees paid by carriers should be presumptively considered reasonable as they are contracts negotiated between sophisticated private parties where often the carrier has more bargaining power than the neutral host provider. In this model, the first carrier entering a facility usually pays a significant percentage of the cost of construction and then receives a rebate from the neutral host provider as additional carriers join the network and begin to pay their share of the costs of the DAS network buildout. The neutral host provider is responsible for managing and maintaining the infrastructure and network. DAS

⁷ A lack of incentive for a telecommunications provider to invest in facilities is even more apparent in certain sports arenas that are used only a handful of times a year. For example, a typical college football stadium may only be used less than six times a year.

facilities require a substantial upfront investment from and continual upkeep by neutral host infrastructure providers.

Many MTE owners/managers, or their authorized neutral host partners, have invested considerably in installation of in-building DAS Facilities. Were the Commission to force MTE owners/managers to provide equal access to the building to all providers, it would discourage the construction of efficient shared DAS facilities by building owners and their chosen infrastructure partners.

Neutral host providers are already incentivized to make use of their DAS facilities the best and preferred option for the maximum number of telecommunications carriers. To accommodate multiple carriers, neutral host providers find themselves required to use technology that is compatible with all carriers and to constantly upgrade such technology to the greatest extent possible to remain relevant in a rapidly evolving and highly competitive space. The current market effectively and efficiently regulates the design and deployment of DAS facilities. Through years of experience, the market has shown that the cost of DAS facilities are best distributed when a neutral host DAS management company controls the facilities and leases use of them to telecommunications carriers. Any potential Commission regulations with requirements for specific technology or equipment would needlessly complicate network design and installation, and potentially have the unintended effect of interfering in a functioning free market and inhibiting the efficient deployment of advanced neutral host DAS facilities.⁸

⁸ The Commission also seeks comment on whether or not state and local governments that own large MTEs should be able to enter into exclusive access contracts with providers. ExteNet believes that there should be no limit on state and local government-owned MTE property held under a proprietary interest entering into exclusive agreements for neutral host DAS systems.

IV. EXCLUSIVE MARKETING

In the MTE NPRM, the Commission stated:

An exclusive marketing arrangement is an arrangement, either written or in practice, between an MTE owner and a service provider that gives the service provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE. In 2010, the Commission concluded that exclusive marketing arrangements “have no significant effects harmful to [MTE] residents and have some beneficial effects.”¹¹³ In declining to regulate such arrangements, the Commission found that exclusive marketing could lead to lower costs to subscribers or partially defray deployment costs borne by buildings, without prohibiting or significantly hindering other providers from entering the building.⁹

The Commission “seek[s] comment on whether and to what extent there is confusion among tenants and/or building owners regarding the distinction between exclusive access agreements, which are not permitted by the Commission’s rules, and exclusive marketing agreements, which are permitted.”¹⁰ ExteNet does not believe there is any confusion among tenants and/or building owners regarding the distinction between exclusive access agreements and exclusive marketing agreements.

The record includes discussion of exclusive marketing arrangements and their corresponding benefits. One example is in the comments the National Multifamily Housing Council filed in response to the *MTE NOI*. The National Multifamily Housing Council highlighted the marketplace realities confronting MTE owners and managers.

In many cases, communications service providers will share the cost of installation, maintain the network and provide packages of broadband (wireless and wired), television, telecommunications and security services in return for access to building infrastructure and the opportunity to market and sell services to the residents. Property owners also rely on the certainty that they will not be tasked with

⁹ *MTE NPRM*, ¶ 27.

¹⁰ *Id.*

the significant maintenance responsibilities that come with communications facilities, including diagnosing and fixing wiring problems.

Prohibiting or regulating exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements would slow broadband deployment. Indeed, service providers and building owners that have certainty as to heavily-negotiated terms included in these agreements, such as marketing exclusivity, number of customers, access to wiring, and revenue sharing, are more likely to obtain financing for, and invest in, building out expensive, state-of-the-art facilities, including fiber. In contrast, providers that have no certainty as to a potential return on investment are less likely to make such investments.¹¹

The National Multifamily Housing Council's comments reflect reality for many MTE owners and managers. The complexities associated with installing and maintaining in-building broadband, communications, and video facilities make revenue sharing and exclusive marketing arrangements beneficial not only for MTE owners, and their managers and agents, but also for consumers. Neutral host providers have the telecommunications expertise, experience, and contacts to leverage economies of scale allowing them to invest substantial capital and retain the requisite technically proficient personnel to efficiently deploy high-quality in-building wireless telecommunication facilities. Neutral host providers invest considerably in maintaining and upgrading such facilities, as the neutral host business model requires that their telecommunications infrastructure remain viable, high-quality, and cost-efficient for both tenants/consumers and service providers.

Many MTE buildings with exclusive marking arrangements are also served by telecommunications providers who are not parties to the exclusive marking arrangements. This is

¹¹ Comments of the National Multifamily Housing Council, *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, p. 4 (July 24, 2017) (citations omitted).

because it is the tenant who chooses their own provider, not the building owner. While exclusive marketing arrangements are ubiquitous, they are not truly “exclusive.” Even when the building owner steers tenants toward a specific telecommunications provider, competing providers have ample alternative means to market to MTE tenants. Telecommunications providers often market through such methods as direct telephone solicitation, social media, direct mail, the internet, television, radio, billboards, and countless other means. However, what exclusive marketing arrangements do accomplish effectively is to incentivize the deployment of fiber and communications networks. Exclusive marketing rights offset the substantial expenditures made upfront to build such infrastructure. If a tenant knows that a telecommunications provider already has access to the building, they may be more likely to utilize that carrier than wait for another carrier to deploy its services within the building. This is true regardless of the existence of a neutral host provider.

Additionally, exclusive marketing agreements relieve the MTE owners/managers of the burden of advertising building infrastructure and service providers’ offerings; instead, entities that are knowledgeable about the communications industry and have the experience and qualified personnel needed to adequately represent the building owners’/managers’ interests vis-à-vis potential service providers assume responsibility for the relevant advertising campaigns. The marketing efforts undertaken by such entities are often based on ensuring access to the MTE by as many providers as possible. By their very nature, exclusive marketing agreements operate contrary to exclusive access agreements, and any confusion between the two is minimal at best. ExteNet respectfully urges the Commission to refrain from any action that would prohibit exclusive marketing arrangements.

V. CONCLUSION

ExteNet appreciates the opportunity to respond to the Commission's MTE NPRM. For the above-stated reasons, ExteNet respectfully urges the Commission to refrain from needlessly imposing any additional regulation on broadband access to MTEs. The competitive marketplace for access to MTEs has successfully self-regulated this market and efficiently delivered advanced communications services to MTE occupants over the past ten to fifteen years. Any change to existing regulations has the potential to interfere with the significant investments by building owners and their neutral host agents in existing and future deployments of advanced broadband technology for the use and enjoyment of MTE tenants and to which all communications providers have equal access.

Respectfully submitted

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