

**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 ADTRAN, INC.**

ADTRAN, Inc. (“ADTRAN”) takes this opportunity to address one of the issues raised in the Commission’s Notice of Proposed Rulemaking regarding competitive broadband access to multiple tenant environments (“MTEs”).<sup>1</sup> The *Notice* seeks comment on ways to ensure that residential or commercial tenants in MTEs can choose amongst broadband service providers that extend their network to those tenants’ building. As explained below, ADTRAN believes that the public interest is best served if competitive broadband service providers are not denied access to the inside wiring in the MTE buildings so as to allow service to individual tenants.

ADTRAN, founded in 1986 and headquartered in Huntsville, Alabama, is a leading global provider of networking and communications equipment. ADTRAN’s products enable voice, data, video and Internet communications across a variety of network infrastructures, including in MTEs to utilize the embedded wiring to extend service from the basement or distribution point to the tenants’ premises. ADTRAN’s solutions are currently in use by service

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<sup>1</sup> *Improving Competitive Broadband Access to Multiple Tenant Environments*, FCC 19-65, 84 Fed Reg 37219 (July 31, 2019) (hereafter cited as “*Notice*”).

providers, schools and libraries, private enterprises, government organizations and millions of individual users worldwide. ADTRAN thus brings an expansive perspective to this proceeding, as well as an understanding of the importance to individuals, communities and our country of robust, ubiquitous and competitive broadband.

***Facilitating Broadband Competition in MTEs as a Goal***

ADTRAN, along with the Commission, recognizes the importance of access to broadband. As the Commission made clear in the National Broadband Plan,<sup>2</sup> broadband has become essential for business, education, health care, civic involvement and entertainment. And broadband's importance has continued to grow in the almost decade since the adoption of the National Broadband Plan. Thus, the Commission should consider robust and ubiquitous broadband as a lodestar. In addition, consumers benefit greatly from competition in the provision of broadband, because market forces can help ensure that broadband services are robust and ubiquitous.

Indeed, broadband competition as a means of spurring broadband deployment is embedded in the Communications Act. In Section 706 of the Telecommunications Act of 1996, Congress directed the Commission to undertake an annual assessment of “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission’s determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment ***and by promoting competition in the telecommunications market.***”<sup>3</sup>

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<sup>2</sup> *Connecting America: The National Broadband Plan*, available at <https://www.fcc.gov/general/national-broadband-plan>.

<sup>3</sup> 47 U.S.C. § 1302(b) (emphasis added).

And more recently, last year Congress adopted the RAY BAUM'S Act.<sup>4</sup> That statute requires the Commission to conduct a biennial report on the state of the communications marketplace, and specifically directs the Commission to assess the state of competition.<sup>5</sup> And in the inaugural *Consolidated Communications Marketplace Report* issued at the end of last year, the Commission extensively discussed fixed broadband competition.<sup>6</sup> The Commission clearly

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<sup>4</sup> Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 1087 (codified at 47 U.S.C. § 163) ("RAY BAUM'S Act").

<sup>5</sup> 47 U.S.C. § 163(b):

(b) Contents

Each report required by subsection (a) shall-

(1) assess the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service (as defined in [section 332 of this title](#)), multichannel video programming distributors (as defined in [section 522 of this title](#)), broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services;

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(3) assess whether laws, regulations, regulatory practices (whether those of the Federal Government, States, political subdivisions of States, Indian tribes or tribal organizations (as such terms are defined in [section 5304 of title 25](#)), or foreign governments), or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services;

<sup>6</sup> *Consolidated Communications Marketplace Report*, 33 FCC Rcd 12558 (December 28, 2018) at ¶¶ 169-202. Among other things, the record in that proceeding identified barriers to competition in the MTE environment:

The record also reflects some commenters' views that exclusive agreements and revenue sharing agreements between landlords of multiple tenant environments (MTEs) and fixed broadband providers that prevent other Internet service providers from offering service to tenants pose a barrier to a competitive fixed marketplace, even in areas where there are multiple providers.

*Consolidated Communications Marketplace Report* at ¶ 194.

should strive towards the goal of encouraging competition for broadband access services for tenants in MTEs.

At the same time, the Commission must avoid trying to create the kind of "synthetic competition" that the Court of Appeals decried in overturning the Commission's earlier unbundling decision.<sup>7</sup> In previous decisions affecting MTEs, the Commission struck that balance by adopting principles providing access – but not mandating sharing.<sup>8</sup> The Commission should continue that policy in this proceeding as well.

***Providing Broadband Service Providers with Access to In-Building Wiring in MTEs Will Well Serve the Public Interest***

One way in which the Commission can facilitate broadband competition in MTEs would be to reaffirm and clarify that competitive broadband service providers can have access to the home-run wiring in MTEs. If a broadband service provider deploys fiber to the basement (“FTTB”) or fiber to the distribution point (“FTTdp”) in MTEs, improvements in technology over the last few years allow the service provider to offer Gigabit service to tenants within the building using the embedded copper home-run wiring. G.fast and vectoring technologies currently support robust broadband service to the tenants using embedded copper wiring. Vectored VDSL2 solutions, with System Level Vectoring (SLV) and Super-Vectoring (VDSL2 35b) support ultra-broadband speeds (100 – 600 Mbps) delivered over the embedded copper wiring from a node or cabinet in the MTE. Next-generation technologies, including G.fast (106

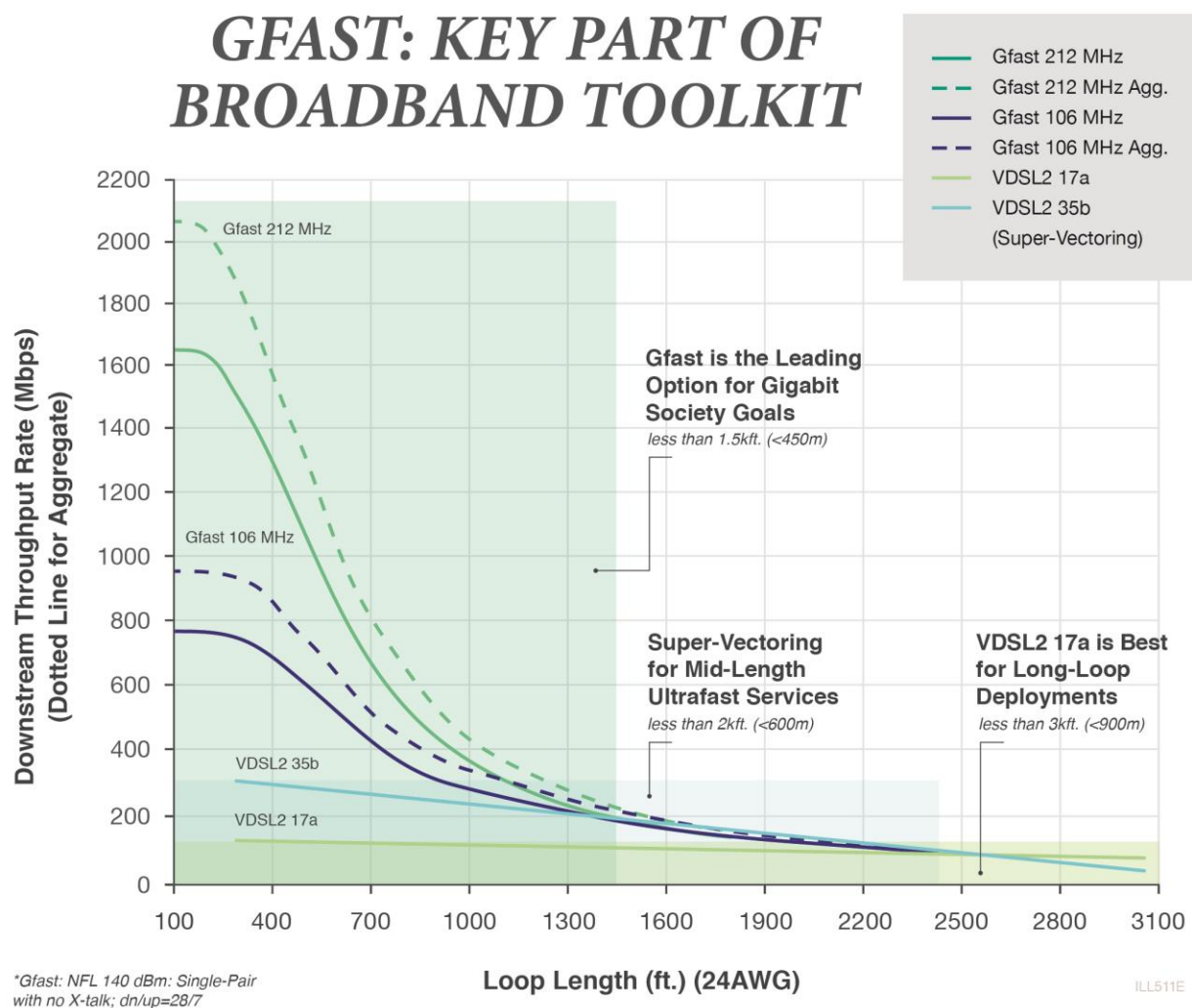
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<sup>7</sup> *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 573 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004).

<sup>8</sup> *Cf.*, Notice at ¶¶ 40-81, discussing the Commission’s history and policies regarding access and sharing. Sharing raises a host of technical and economic issues. If the Commission mandates sharing and dictates the prices or pricing formulas (such as TELRIC), any such regulator-set prices will be arbitrary, and would likely encourage the companies to lobby the Commission rather than bargain in good faith to reach agreement on prices.

MHz and 212 MHz) with dynamic time assignment (“DTA”), utilize the embedded wiring in MTEs to extend FTTB or FTTdp capabilities to the tenant, and offer symmetric Gigabit rates (up to 2 Gbps aggregate).

Below is a graph depicting the capabilities of these broadband technologies that use the embedded copper wiring – the distance between the pedestal or node in the MTE and the commercial or residential tenant premises will determine the throughput rate:



These are proven technologies, not just future possibilities. Since ADTRAN demonstrated the industry's first fully sealed FTTdp solution in early 2014, it has led the industry in G.fast trial and live rollouts. The company is fulfilling demand for G.fast broadband solutions from more than 90 service providers across six continents. By allowing broadband service providers to use these technologies to take advantage of the embedded base of inside wiring, ADTRAN's products reduce the cost of deploying gigabit services to tenants in MTEs, thus fostering additional broadband competition.

The *Notice* itself recognizes the benefits of providing broadband service providers with access. In the declaratory ruling portion of that decision, the Commission indicated:

The Commission has previously declined to preempt mandatory access laws that simply create a right to access—i.e., “a legal right to install and maintain cable wiring in MDU buildings, even over MDU owners’ objections.” [2003 *Inside Wiring Order*, 18 FCC Rcd at 1356-58, paras. 35-41; *see also* 1997 *Inside Wiring Order*, 13 FCC Rcd at 3748, paras. 188-90.] In fact, the Commission’s Office of Economics and Analytics found in a recent working paper that these kinds of mandatory access laws are associated with higher rates of broadband adoption among MTE residents. [Steven Kauffman and Octavian Carare, FCC, Office of Economics and Analytics Staff Working Paper 49, “An Empirical Analysis of Broadband Access in Residential Multi-Tenant Environments” (July 2019), <https://docs.fcc.gov/public/attachments/DOC-358298A1.pdf>. The paper also found that mandatory access laws are associated with higher rates of broadband adoption among non-MTE residents. *Id.* at 9-10.] Today, we reaffirm our decision not to preempt mandatory access laws that simply create a right of access.<sup>9</sup>

And the Commission previously recognized the benefits of competition and access to wiring in MTEs when it promulgated rules that prohibited common carriers from entering or enforcing agreements that restrict a building owner from providing competitive service providers with access to commercial or residential tenants.<sup>10</sup> Similarly, the Commission promulgated

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<sup>9</sup> *Notice* at ¶ 41.

<sup>10</sup> 47 CFR § 64.2500.

obligations on multichannel video programming distributors (“MVPDs”) to provide procedural and substantive rights for competitive service providers to obtain access to a unit’s home-run wiring when that unit’s customer no longer obtains service from the MVPD.<sup>11</sup>

More recently, the Commission’s Broadband Deployment Advisory Committee developed a Model Code for the states, which includes provisions requiring nondiscriminatory access to ducts and conduits within buildings.<sup>12</sup> To some extent, ADTRAN believes it is “preaching to the choir” in advocating support for competitive access for broadband service providers in MTEs. But the record should reflect that there is a long and consistent history at the Commission of seeking to foster the deployment of competitive broadband services in MTEs. And as ADTRAN demonstrated above, new technology allows such entry by taking advantage of the embedded copper wiring for the distribution from the NAP to the tenant.

The *Notice* seeks comment on whether it should prohibit sale-and-leaseback arrangements for MTE wiring, and exclusive wiring agreements more generally.<sup>13</sup> Given the goal of fostering broadband competition, and in light of the economics of being able to use embedded wiring efficiently to connect a competitive entrant’s fiber-fed node in the building with the individual tenant’s premises, ADTRAN believes the public interest would best be

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<sup>11</sup> 47 CFR § 76.804(b). *In the Matter of Telecommunications Services, Inside Wiring, Customer Premises Equipment; In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*; CS Docket No. 95-184, MM Docket No. 92-260, *Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 3659 (1997).

<sup>12</sup> BDAC, “State Model Code for Accelerating Broadband Infrastructure Deployment and Investment,” Article 7, Section 3 (available at [Model Code for States](#)).

<sup>13</sup> *Notice* at ¶¶ 24-26.

served by prohibiting exclusive wiring agreements. In cases where the incumbent provider will no longer be providing service to that tenant, the home-run (and inside) wiring would otherwise be fallow. Thus, providing a competitive broadband service provider with access to those otherwise idle facilities makes competition more efficient.<sup>14</sup> ADTRAN therefore urges the Commission to revisit and reverse the previous decisions that allowed service providers to enter into exclusive wiring arrangements with building owners.<sup>15</sup> In addition, the Commission should not allow an incumbent service provider to evade limits on wiring exclusivity arrangements through the façade of a sale-leaseback agreement, because such a “loophole” would disserve the public interest.

ADTRAN believes that the Commission has legal authority to implement policies prohibiting telecommunications providers of MVPDs from entering into exclusive wiring contracts under its Title II and Title VI authority.<sup>16</sup> And as explained herein, such policies are

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<sup>14</sup> ADTRAN believes that such access under these circumstances avoids the complications of mandating sharing of those facilities if the incumbent service provider continues to offer service to a tenant. *Cf.*, *Notice* at ¶¶ 57-69. To the extent that the embedded wiring is owned by the incumbent service provider, the Commission’s Rules include a process to determining compensation that could be adopted for this purpose as well. *Cf.*, 47 CFR § 76.804(b).

<sup>15</sup> *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, 20237 (2007) at ¶ 1 & n.2; *Telecommunications Services Inside Wiring*, First Order on Reconsideration & Second Report & Order (“2003 Inside Wiring Order”), 18 FCC Rcd 1342 (2003).

<sup>16</sup> In addition, the Commission has the authority to condition USF funding on a requirement of forbidding exclusive wiring arrangements, which could provide a further basis for implementing these policies.



fully consistent with the Communications Act goal of fostering broadband competition.

ADTRAN thus urges the Commission to adopt rules to prohibit exclusive wiring arrangements.

Respectfully submitted,  
ADTRAN, Inc.

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