

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

In the Matter of:

Improving Competitive Broadband Access to
Multiple Tenant Environments

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GN Docket No. 17-142

COMMENTS OF COMMUNITY ASSOCIATIONS INSTITUTE

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on behalf of

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Summary

Access to Broadband Internet Services

Community Associations Institute (CAI) members routinely negotiate with communications service providers to ensure community association residents and homeowners have access to broadband internet service, multi-channel video programming service, and telephonic communications. CAI members support federal policy promoting competition for communications services provided such policy respects the lawful management of community association common elements for the benefit of all association owners and residents.

Exclusive Marketing Arrangements

CAI members support the Commission's decision not to revisit its 2010 determination concerning exclusive marketing arrangements. CAI agrees such arrangements do not harm consumers and can have important consumer benefits.

Exclusive Wiring Arrangements

CAI members believe exclusive wiring arrangements can benefit community association owners and residents if structured so the association's ownership interest in common elements is clearly understood or uncompromised. Contracts combining company wiring with association-owned internal wiring into an exclusive use "System" deserve scrutiny to the extent no alternate common element internal wiring system exists. Disposition or removal of abandoned wiring, particularly in instances where a provider has replaced an association owned home run and/or home wiring system, remains a concern of CAI members.

Bulk Billing Arrangements

CAI members support bulk billing arrangements with communications providers. Such arrangements expand access to communications services, including broadband internet services, for all community association residents and owners, often at a discount.

Revenue Sharing Agreements

While revenue sharing agreements may be a factor in non/residential or industrial multiple tenant environments, CAI members report such agreements are not typically present, in the manner described by the Commission, in the community association housing model.

Exclusive Rooftop Access Contracts

CAI members report exclusive access contract requests for rooftop broadband internet facilities are uncommon. In similar manner, CAI members report exclusive rooftop access demands by communications providers are increasingly rare and, in general, condominium associations and housing cooperatives reject such contract proposals when proffered.

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Community Associations Institute¹ submits these comments in response to a Commission notice in the *Federal Register* (84 FR 37219). These comments are in reply to the above referenced docket.²

I. Background on Community Associations

Community associations are commonly known as condominium associations, homeowner associations, and housing cooperatives. Associations are people—residents and neighbors who work together to build community. In high-rise condominiums, townhome communities, and neighborhoods with single-family homes, residents and owners are elected by their neighbors to strive toward a common goal—through cooperation a community can become greater than the sum

¹ Based in Falls Church, VA, CAI is the only national organization dedicated to fostering competent, well-governed community associations (homeowner associations, condominium associations, and housing cooperatives) that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's more than 40,000 members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

² *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN- Docket No. 17-142 (rel. July 12, 2019).

of its parts. What makes this possible is the association—neighbors working for and with neighbors.

This neighborhood cooperation requires a legal framework. In general, community associations are private non-profit organizations and operate pursuant to various state statutes and certain conventional real estate practices. In purchasing a lot or unit in a community association, owners are automatically members of the association and agree to the association's covenants, conditions, and restrictions (CC&Rs).

National research validates the community association housing model. Almost 85 percent of association residents say neighbors elected to their association board serve the best interest of the community. A similar amount express overall satisfaction with their experience as a community association member and resident.³

The strongest data validating the community association housing model are association member and resident views on how well associations achieve their intended purpose. Data show that 90 percent of community association residents say their association protects and improves the value of their homes, often a household's largest asset.⁴

In 2018 there were an estimated 26.9 million homes in community associations and the value of community association housing was estimated at \$6.28 trillion. In 2018, association residents paid \$95 billion in association assessments to fund maintenance and operation of community infrastructure. To meet future needs, homeowners have set aside \$27.3 billion in

³ *2018 Homeowner Satisfaction Survey*, Foundation for Community Association Research (June 2018). Available at:

https://foundation.caionline.org/wp-content/uploads/2018/06/HOMEsweetHOA_2018.pdf.

⁴ Ibid.

reserves for replacement of association assets such as roofs, streets, and elevators. Importantly, association boards work to ensure their communities comply with state and Federal law.⁵

II. Community Associations Expand Access to Broadband Internet Services

Community association residents are consumers and consumer demand for residential access to broadband internet service is strong.⁶ With community association boards populated by community residents it is unsurprising that associations ensure wide accessibility to broadband internet service.

Managing communications infrastructure in community associations requires a high degree of coordination. Community associations involve a combination of common elements, which are owned by all association members, with homes or housing units that are individually owned but subject to CC&Rs. The association board is tasked with managing this ownership structure and working to secure outcomes that are in the best interests of the overall community.

This association management process is essential when communications infrastructure is installed or upgraded in a community association. The association management process promotes community education, input, and acceptance of communications infrastructure and should always be undertaken prior to any installations.

III. Comments on Commission Questions

CAI is pleased to provide a summary of comments received from members with considerable experience negotiating contracts with providers of broadband internet and other

⁵ Foundation for Community Association Research: Statistical Review for 2018. Available at <https://foundation.caionline.org/publications/factbook/>.

⁶ Monica Anderson, *Mobile Technology and Home Broadband 2019*, Pew Research Center (June 13, 2019) p. 4; available at https://www.pewinternet.org/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf.

telecommunications services. These comments address (1) Exclusive Marketing Arrangements (2) Exclusive Wiring Arrangements (3) Bulk Billing Arrangements (4) Revenue Sharing Agreements and (5) Exclusive Rooftop Access Contracts.

Exclusive Marketing Arrangements

In general, CAI members strongly support the authority of community associations to enter into exclusive marketing arrangements with communications service providers. This is a common market practice and has not been shown to be detrimental to consumer access to broadband internet and other communications services. CAI members support the Commission's decision not to revisit its prior determination that such arrangements "have no significant effects harmful to residents and have some beneficial effects."⁷

General Elements of Exclusive Marketing Arrangements

Exclusive marketing arrangement agreements typically provide associations a per door fee or other agreed payment in exchange for the exclusive right to market communications services to residents on association property. In general, exclusive marketing arrangements provide exclusive rights to a provider to leave marketing material in a community clubhouse or building foyer. Providers may also distribute marketing materials directly to residents. These arrangements are routine and unremarkable.

CAI members report that in some limited cases, communications providers have sought to include unusual or highly specific contract terms that are inconsistent with community association values and best practices. For example, CAI documented a case in which a communications provider demanded an association submit updated resident information every 60 days and agree to

⁷ *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 (2010) para. 29.

contact local law enforcement if representatives from competitor providers entered the association. In this instance the association rejected the provider's unusual requests but did permit the provider to leave brochures advertising its services in the association clubhouse.

Combining Exclusive Marketing Arrangements with Exclusive Wiring Arrangements

CAI members expressed concern over experiences with communications providers seeking exclusive marketing arrangements that also include exclusive wiring arrangements. Contracts for exclusive wiring arrangements are complicated and technical legal instruments. Communications providers must bear the burden of clearly disclosing the legal outcome of such agreements on association ownership or control of home run and home wiring. Discussing ownership or control of internal wiring in the context of an exclusive marketing arrangement may obscure important details.

The Commission should consider the impact on competition when providers condition exclusive marketing arrangements on acceptance of an exclusive wiring arrangement. This is not to say that combined agreements are per se anti-competitive or harmful to associations. Notwithstanding this, outcomes of provider contract terms and contracting tactics and their impact on competition for communications services in community associations deserve scrutiny.

Exclusive Wiring Arrangements

CAI members continue to support an association's authority to exercise ownership rights over home run wiring and home wiring that are common elements of the association. This includes the right to lease or otherwise make available association owned internal wiring under terms that comply with Commission requirements and reserve the right of residents and homeowners to secure communications services from the provider of their choice.

CAI members expressed concern over exclusive wiring arrangements in two areas—disposition of abandoned wiring installed by a provider no longer serving the community and agreements that combine so-called “company” wiring and association owned internal wiring into one system accessible exclusively by the provider.

Abandoned Wiring Installations

CAI members—condominium association and housing cooperative representatives in particular—expressed frustration over wiring abandoned by communications service providers that no longer serve the association. Commission rules pertaining to internal wiring require a provider that has ceased offering service to a building to (1) offer to sell the wiring to the building owner or association (2) abandon the wire or (3) remove the wire and restore the building to its prior condition. CAI members report a common outcome is a provider’s abandonment of the wire.

As affirmed by the Commission in this proceeding, ownership of wire infrastructure means control of that infrastructure. In general, CAI members expressed support for the Commission’s views in this matter. Nonetheless, these Commission policies—the right of a provider to abandon home run and home wiring and the right to deny use of such wire by third parties—often results in abandoned wire of no use to any party.

Unless otherwise provided in the installation agreement, providers maintain ownership of abandoned wiring and prohibit other providers from using the idle wiring to reach consumers. The wire also occupies space that could be put to productive use.

Many CAI members report negotiating contract terms requiring a provider no longer servicing an association to remove its wiring within a reasonable, defined timeframe. If the provider failed to dispose of its wire infrastructure under the terms of the agreement, ownership transfers to the association as a common element. This practice, originated by associations, ensures

wire is removed and competitor providers have access to conduit for wiring infrastructure or that the association may lease or otherwise make the wiring available to other providers.

Combining “Company” Wiring and other Internal Wiring into a System Controlled by Provider

CAI members expressed significant concern over exclusive wiring arrangements that have the effect of combining “company” wire and home run wire (potentially home wire as well) into a single “system” reserved for the exclusive use of a provider. An example of such a contract clause is—

x) The System. The System shall consist of the Company Wiring and the cable home run wiring.

xi) Use and Maintenance of Wiring. The Association has the authority to grant and does hereby grant to the Company, at its expense, during the term hereof the right to operate, maintain, repair and replace, as necessary, the System on the Premises. Neither the Association nor any third party shall tap into, use or otherwise interfere with the System for any purpose.

Such contract terms can have significant consequences for association residents under certain circumstances and likely increase installation costs for other providers seeking access to association residents. The issue presents important challenges in two important instances.

Providers may offer to install new or upgraded home run wiring in established communities (i.e., not new construction) that replaces or removes association-owned home run wire and home wire infrastructure. The provider then subjects this infrastructure to exclusive access limitations by contract. The established community is unlikely to, due to cost, install a second home run and home wiring system that will be under its control and eligible for use by competitor providers.

What option will such an association have when or if the service agreement is terminated and the provider refuses to allow other providers access to the home run wiring? The association is in a precarious position if additional companies do not want to incur the expense of wiring the

community for service. It is this concern that led associations to negotiate contract clauses requiring that abandoned home run wiring installed by a provider be promptly removed or transfer to association control. But even this protection has its obvious limitations.

In the context of new construction, a developer may opt to sign a contract giving a provider exclusive access to a wiring “system” but is also likely install an additional wiring system that will be under control of the association. In this context, installing a secondary wire infrastructure is likely an economically feasible option.

Exclusive wiring arrangements are complicated contracts and ownership rights of internal wiring is often not clear even to attorneys with experience negotiating these agreements. Opaque contracts that in one clause affirm an association’s ownership of home run and home wiring and in subsequent clauses subjugate this same wire to one provider’s exclusive access can have negative impacts on competition and association residents. Offers to “upgrade” association internal wiring by replacing it with provider owned wire may leave an association with few options if it seeks new providers for residents.

CAI members understand that providers incur significant expense in laying wires to access a community association and incur an expense when installing home run wire in associations. It is reasonable to take steps to recover the costs of these investments. This can be achieved in an equitable manner that does not harm the interests of community association residents who benefit from the provider’s investment, but who also may want additional choice from the market.

CAI members remain concerned that associations are presented contracts by providers that may result in the association signing away ownership or control of an important common element to a provider. An association, after being fully informed of the implications of such a decision may decide this to be the economic decision that is best for the community. To promote

competition, the Commission should examine provider proffered exclusive wiring contracts to determine if such contracts disclose in easily understood language the ownership of internal wiring during and after the term of the agreement.

Bulk Billing Arrangements

Bulk billing arrangements are a common feature of community association agreements with communication services providers. This allows the association to provide a desirable amenity to residents, often at a discounted rate. CAI members generally assert bulk billing enables access to broadband internet within residences, an important public policy goal.

Revenue Sharing Agreements

The Commission appears to include bulk billing agreements and exclusive marketing arrangements in the general classification of revenue sharing agreements. In the experience of CAI members, other arrangements described by the Commission—where an association receives a portion of a provider's revenue based on the number of subscribers in the association—is rare. In fact, many respondents indicated they had never encountered such arrangements. The consensus was disclosure of such arrangements may be appropriate.

Exclusive Rooftop Access Contracts

CAI members report that exclusive rooftop access contracts for broadband infrastructure are not generally sought by broadband internet providers. CAI members report proposals for exclusive access to rooftops are a recognizable aspect of other communications infrastructure contracts. It is a widely accepted principle and best practice among community associations to reject exclusive rooftop access contract terms.

In general, given increasing demand for access to rooftops to deploy next generation communications infrastructure, it is counterintuitive for a condominium association or housing

cooperative to limit access to its rooftop to one entity. Not only is such a restriction an unnecessary restraint on association authority to manage a common element, it is uneconomic.

New communications services will require many more antenna locations. Associations are generally willing to cooperate and negotiate with communications service providers to install necessary infrastructure on rooftops. Increasingly, CAI members are educating participants in the community association housing model on the need to accommodate rooftop facilities while maintaining association control of common elements and the community or project's aesthetics.

IV. Conclusions and Recommendations

CAI members actively support community association resident access to broadband internet and other communications services. CAI members observe that increasing numbers of consumers have access to broadband internet service at home and are proud of the contribution community associations have made to this growth.

- CAI members believe exclusive marketing arrangements, bulk billing agreements, and certain exclusive wiring arrangements have facilitated growth of in-home broadband internet service.
- CAI members have serious reservations about contract clauses requiring associations to cede control of association-owned home run and home wiring (or replacement home run and home wiring) to third parties for their exclusive use in perpetuity. This is an acute concern if there is no alternate internal wiring infrastructure remaining in the community. CAI members work to eliminate or ameliorate such clauses to ensure associations and residents have access to broadband internet and other communication services in the event a provider's service agreement terminates. The Commission

should examine common provider contracts to ensure ownership of internal wiring during and after a contract is easily understood and knowable by all parties.

- CAI members do not report revenue sharing agreements described by the Commission as common in the community association housing model. If such agreements exist, disclosure is appropriate.
- CAI members generally oppose exclusive rooftop access contract clauses and have an established record of removing such clauses from provider offers.

Respectfully submitted,

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