

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

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

COMMENTS OF UNITI FIBER

Jeffrey R. Strenkowski
Vice President, Deputy General Counsel of
Governmental Affairs

Uniti Fiber

Ronald W. Del Sesto, Jr.
Catherine Kuersten

MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington, DC 20004
(202) 739-3000
ronald.delsesto@morganlewis.com
catherine.kuersten@morganlewis.com

Counsel to Uniti Fiber

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EXECUTIVE SUMMARY

Uniti Fiber (“Uniti”) is a leading provider of telecommunications services in the U.S., including in underserved mid-size and rural markets. Uniti takes this opportunity to provide targeted comments to the Federal Communications Commission’s (“Commission”) multi-tenant environments (“MTEs”) proceeding in support of rules that enhance competition, reduce barriers to investment, and facilitate broadband deployment. This proceeding presents the Commission with opportunity to continue its important work in ensuring that all Americans have access to affordable, quality broadband connectivity.

Specifically, Uniti recommends that the Commission promulgate rules that promote building access. Doing so will not only improve competitive options available to MTE tenants but also benefit competition within the broadband market as a whole. These rules should be guided by the Broadband Deployment Advisory Committee’s (“BDAC’s”) substantial work in investigating increased broadband access, which relied on the expertise of both public and private stakeholders. In particular, the Commission should look to the BDAC’s State Model Code, which adopts specific provisions to mandate “non-exclusive” and “non-discriminatory” access to network infrastructure within MTEs.

Uniti also urges the Commission to discourage anti-competitive behavior by carriers and building owners alike. For example, the Commission should prohibit exclusivity agreements regardless of whether an MTE is privately or publicly owned. Moreover, the Commission should impose reasonable limits on revenue sharing agreements to allow for multiple providers to operate economically within an MTE. And while the Commission should adopt rules for DAS facilities that promote competition, it should also ensure that competition and innovation within MTEs are not hindered by overly prescriptive technical standards.

Finally, the Commission should streamline the dispute resolution process for competitive providers to challenge violations of the MTE rules. Currently, providers can only challenge anti-

competitive MTE practices through the judicial system, which is often too costly and too lengthy to serve as a practical means of relief. Thus, the Commission should make available a timely method to cure violations. The Commission's work in the small cell deployment proceeding, which provided affected parties with access to preliminary or permanent injunctive relief under the Telecommunications Act, is instructive. A similar streamlined process here would make for more effective rules and ultimately facilitate broadband deployment.

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Uniti Fiber (“Uniti”), by its undersigned counsel, submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) and Declaratory Ruling released in the above-captioned dockets on July 12, 2019,¹ by the Federal Communications Commission (“FCC” or “Commission”). Uniti² is a leading provider of telecommunications services for wireless operators, telecom carriers, enterprises, and other customers. Uniti provides network connectivity options in many mid-size and rural markets where reliable and affordable solutions are frequently scarce. Like the Commission, Uniti recognizes both the difficulty and importance of ensuring American consumers have adequate access to broadband services,³ and that broadband deployment is facilitated by enhanced competition and reduced barriers to investment.⁴ Uniti has actively

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 (July 12, 2019) (“NPRM”).

² Uniti Fiber refers to a group of companies commonly owned by Uniti Group Inc. that provide telecommunications and other services in various parts of the U.S. comprised of Southern Light, LLC, Uniti Fiber LLC, Hunt Telecommunications, Inc., Information Transport Solutions, Inc., and other affiliates.

³ *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 27 FCC Rcd. 10342, 10394 ¶ 120 (2012).

⁴ *See, e.g., Implementation of Section 224 of the Act*, 26 FCC Rcd. 5240 (2011).

advocated before the Commission for policies that promote competition and economies of scale in broadband deployment.⁵

Uniti supports the Commission's goals of bridging the digital divide and spurring broadband deployment. But achieving these goals depends on the adequacy of America's last mile network—and multi-tenant environments (“MTEs”), as the so-called “last hundred feet,”⁶ have an appreciable and direct impact on consumers. As such, this proceeding presents the Commission with an opportunity to expand on its previous initiatives aimed at reducing barriers to broadband deployment such as its rulemakings facilitating small cell deployment.

I. THE COMMISSION SHOULD PROMULGATE RULES THAT PROMOTE BUILDING ACCESS

Undergirded by the statutory mandate to promote local competition in telecommunications markets, the Commission has consistently acknowledged the importance of promoting access to advanced communications services by consumers located in MTEs.⁷ The Commission itself notes in the NPRM that “promoting access to infrastructure encourages competition.”⁸ Indeed, opening buildings to multiple service providers engenders a virtuous cycle—increased deployment of broadband facilities leads to increased demand for broadband services, improving the economies of scale for service providers, allowing for market entry by multiple providers, resulting in enhanced competition, which, in turn, stimulates demand for such services allowing the cycle to

⁵ Comments of Conterra Broadband Services and Uniti Fiber, *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting et al.*, WT Docket No. 16-421 (Mar. 8, 2017).

⁶ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 13 FCC Rcd 15280, 15299 ¶ 53 (1998).

⁷ *Id.*; see also *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Notice of Inquiry, Statement of Chairman Ajit Pai (rel. June 23, 2017).

⁸ NPRM at ¶ 3.

repeat.⁹ The Commission should discourage any arrangement that favors one carrier, or one class of service, over another with respect to serving MTE occupants.

Policies that promote access to multiple service providers by MTE occupants are also critical to ensuring that such consumers receive necessary and adequate services at reasonable costs. While in many cases, building owners/managers will share the same incentives as their occupants, *i.e.*, access to high-quality and affordable broadband services—some MTE owners/managers view the provision of broadband services to their tenants as a revenue opportunity with little or no regard to the quality or price of services their tenants may receive. At worst, enterprise customers, included among the tenants of many MTEs, may be particularly disadvantaged because they have a diversity of needs that are often best addressed by different providers. Accordingly, the Commission should promulgate rules that support a diverse MTE-broadband-services marketplace.

II. THE COMMISSION’S POLICIES AND RULES SHOULD BE INFORMED BY THE BDAC’S STATE MODEL CODE

The Commission’s Broadband Deployment Advisory Committee (“BDAC”) devoted substantial work towards forming policies aimed at spurring broadband deployment, including in MTE environments. The BDAC was created to “enhance the Commission’s ability to carry out its statutory responsibility to encourage broadband deployment to all Americans,”¹⁰ and relies on important “telecom policy expertise” from both government and industry participants¹¹ to develop

⁹ See, e.g., “Connecting America: the National Broadband Plan,” FEDERAL COMMUNICATIONS COMMISSION (rel. Mar. 17, 2010), p. 15.

¹⁰ “BDAC Overview,” BROADBAND DEPLOYMENT ADVISORY COMMITTEE, (Apr. 21, 2017) p. 3, available at <https://www.fcc.gov/sites/default/files/bdac-4-21-2017-presentation-overview.pdf>.

¹¹ Chairman Pai has noted that “BDAC reflects a core tenet of [Pai’s] policymaking approach: that the decisions we make inside this building must reflect input and fresh ideas from outside these walls. The telecom policy expertise that resides at the Commission is truly world-class. But the FCC doesn’t have a monopoly on good ideas.”). Remarks of FCC Chairman Ajit Pai at the Fourth Meeting of the Federal

recommendations to the Commission for the acceleration of broadband deployment, including by reducing and/or removing regulatory barriers to infrastructure investment.¹² Many of the questions that the Commission poses in this proceeding have been considered and deliberated by a diverse body of educated stakeholders who were convened for the very purpose of facilitating the Commission's policy goals. Uniti urges the Commission to take advantage of this significant expertise and its work product in this regard.

The Commission has previously incorporated the themes and ideas promulgated by the BDAC State Model Code Committee (the “Committee”) in the *2018 Small Cell Deployment* proceeding by drawing upon Article 9 of the State Model Code.¹³ Likewise, the Commission should continue to employ ideas from the Committee with regard to ensuring reasonable access to MTEs.¹⁴ Members of the Committee included executives from both small and large service providers as well as trade associations; representatives from state government offices, agencies, legislatures and municipalities; and public policy representatives from think tanks and universities.¹⁵ The Committee recognized, as the Commission should here, that the harmonization of requirements between jurisdictions is critical to facilitating broadband deployment, and in

Communications Commission’s Broadband Deployment Advisory Meeting, Washington, D.C. (Jan. 23, 2018).

¹² *Supra* n. 10, “BDAC Overview.”

¹³ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84 (rel. Sep. 27, 2018) (“2018 Small Cell Deployment Order”).

¹⁴ State Model Code for Accelerating Broadband Infrastructure Deployment and Investment, BROADBAND DEPLOYMENT ADVISORY COMMITTEE (rel. Dec. 6, 2018), *available at* <https://www.fcc.gov/sites/default/files/bdac-12-06-2018-model-code-for-states-approved-rec.pdf> (“BDAC State Model Code”) (last visited Aug. 26, 2019).

¹⁵ “FCC Announces the Membership of Two Broadband Deployment Advisory committee Working Groups: Model Code for Municipalities and Model Code for State,” GN Docket No. 17-83, DA-17433 (May 8, 2017).

particular deployment in rural and undeserved communities.¹⁶ Among the goals of the Committee was the implementation of state-level standards that promote lower-cost and faster deployment through reduced policy variability between cities, for example with respect to access to rights of way, poles, ducts and conduits.¹⁷

In doing so, the Committee—and its ensuing State Model Code—recognized the importance of ensuring reasonable access to MTEs. For example, Article 3 of the State Model Code, which governs rights of access to existing network support infrastructure, provides that building spaces and other assets may be leased to “any private sector Communications Provider” on a “non-exclusive” and “non-discriminatory” basis, and on terms pursuant to “reasonable negotiations.”¹⁸ These requirements are key to ensuring that competition in MTEs is fully realized, which is the first step to ensuring robust broadband deployment in these environments.

Similarly, Article 7, which governs buildings and network access points, mandates that any entity controlling access to a network access point “meet all reasonable requests for access from Communications Providers on fair and non-discriminatory terms and conditions.”¹⁹ Article 7 also imposes requirements allowing for Communications Providers to create network access points as needed, and to receive access “on fair and non-discriminatory terms and conditions including price.”²⁰ Like Article 3, these policies are necessary to ensure that broadband deployment is not hindered due to discriminatory access arrangements.

¹⁶ “State Model Code Subcommittee BDAC Presentation,” BROADBAND DEPLOYMENT ADVISORY COMMITTEE (rel. July 20, 2017) pp. 7-8, *available at* <https://www.fcc.gov/sites/default/files/bdac-07-20-2017-presentation-model-code-for-states.pdf>.

¹⁷ *Id.*

¹⁸ BDAC State Model Code, Article 3, Section 1.3-1.4 (pp. 12-13).

¹⁹ BDAC State Model Code, Article 7, Section 1.2 (pp. 27).

²⁰ BDAC State Model Code, Article 7, Section 2.1-2.2 (pp. 27).

The State Model Code was developed over almost two years, with the input of a wide range of industry experts from various fields, as well as community leaders from around the country. The Commission should model its policies around the key findings of that group (*i.e.*, open access, non-discrimination, and uniformity), if not the specific recommendations provided in the relevant Articles of the State Model Code. Notably, even though the Committee was comprised of representatives of the carriers, utilities, infrastructure providers, municipal and state leaders, and other stakeholders, both Chapter 3 and Chapter 7 of the State Model Code received broad support and passed out of the Committee overwhelmingly.

III. THE COMMISSION SHOULD PROMULGATE RULES THAT ENHANCE SERVICE OFFERINGS AND FOSTER COMPETITION

A. The Commission Should Discourage Anti-Competitive Behavior from Publicly-Owned MTEs

Service providers should be prohibited from entering into arrangements that have the effect of prohibiting other service providers from offering services to MTE tenants.²¹ This is true regardless of whether the MTE is owned or managed by a private or public party. In fact, government entities can and frequently enter into exclusive arrangements with one service provider, even when other providers may be able to provide comparable or better services at reduced costs. Tenants of publicly-owned or –managed MTEs should have the same access to broadband service offerings as those located in privately-owned or -managed MTEs. The BDAC’s State Model Code incorporates provisions that enshrine the right to equal access, for example, by requiring that any lease entered into with a state governmental authority be non-exclusive and non-discriminatory.²² The Commission should take measures consistent with the BDAC and ensure that these principles are reflected in requirements for federal governmental entities.

²¹ See NPRM, ¶ 31.

²² BDAC State Model Code, Article 3, Section 1.3-1.4 (pp. 12-13).

Uniti has direct experience in attempting to gain access to federally owned/managed MTEs. Uniti attempted to provide service to a customer, which was also a federal government entity, requesting Uniti's services. Located in a MTE owned and managed by a federal government agency, the federal agency denied Uniti and the customer's request alleging that facility could only be served by a different provider and that no other provider would be permitted to do so. After considerable efforts on Uniti's part and over a two year period of time, Uniti became the service provider for the requesting customer. Uniti's high-quality service offering exceeded that of the existing provider's and at a lower price saving taxpayer money. Additionally, once other tenants were made aware of the availability of Uniti's service offerings in the government owned and managed MTE, other tenants in the same facility have elected to also use Uniti's service.

As detailed above, competition enhances the quality of service offerings and leads to best pricing of such services. Moreover, the entire community benefits from policies that promote multiple offerings from facilities-based broadband providers. In many mid-size and rural markets, government-owned MTEs may be the biggest or one of the largest MTE owner/operators in the community. Allowing carriers to enter into exclusive arrangements that result in keeping competitors from serving customers in those MTEs would have a particularly deleterious effect on competition in such communities to the detriment of all residents, not just tenants in those buildings. Additionally, from a practical perspective, a set of universal rules that prohibits carriers from entering into monopoly arrangements eases market entry because carriers planning to deploy facilities in new areas will not have to engage in additional granular market demand analysis that takes into consideration whether specific buildings may have exclusive arrangements with competitors effectively removing a set of potential consumers from the marketplace.

B. Revenue Sharing Agreements Should Be Reasonable

The Commission seeks comment on revenue sharing agreements and their impact on the MTE marketplace.²³ Uniti understands that revenue sharing agreements can incentivize service providers to invest in broadband infrastructure. Thus, to the extent that revenue sharing agreements enable providers to serve a market it otherwise cannot compete in, the Commission should encourage such agreements. However, carriers should be prevented from entering into such arrangements that either explicitly or implicitly prevent additional providers from offering services to MTE tenants. While revenue sharing agreements can be a source of additional income for property owners, they can also act as an impermissible barrier to entry for competing service providers. In particular, MTE owners may impose such high costs that all but incumbent providers or large cable operators, who can spread those costs across a large customer base, can afford to serve a building. As such, the Commission should ensure that carriers only enter into “reasonable” revenue sharing agreements. Of course, the BDAC has noted that when a lack of principles guiding fees exist, disagreements and disputes increase.²⁴ Accordingly, the BDAC has recommended that the Commission provide guidance on “fair and reasonable” fees.²⁵ The Commission should do so for revenue sharing agreements as well.

Here, the Commission can rely on existing standards set out in prior proceedings for a determination of “reasonable.” For example, in the *2018 Small Cell Deployment* proceeding, the

²³ NPRM, ¶¶ 16-20

²⁴ Removing State and Local Regulatory Barriers Working Group Discussion Document 2, BROADBAND DEPLOYMENT ADVISORY COMMITTEE (pub. Nov. 9, 2017), available at <https://www.fcc.gov/sites/default/files/bdac-11-09-2017-removing-state-and-local-regulatory-barriers-dis-2.docx> (“BDAC-SLRB Working Group Document”).

²⁵ Removing State and Local Regulatory Barriers Working Group Discussion Document 1, BROADBAND DEPLOYMENT ADVISORY COMMITTEE (pub. Nov. 9, 2017), available at <https://www.fcc.gov/sites/default/files/bdac-11-09-2017-removing-state-and-local-regulatory-barriers-dis-1.docx>.

Commission assessed whether fees charged by local governments for communications infrastructure deployment resulted in an effective prohibition of service limiting the provision of services.²⁶ In that proceeding, the Commission ruled that fees should be a “reasonable approximation of costs,” and in addition competitively neutral and non-discriminatory.²⁷ Uniti recommends that the Commission adopt a similar requirement and definition for MTE revenue-sharing agreements such that the primary purpose of such arrangements is to allow building owners/managers to recoup costs associated with installing infrastructure supportive of facilities used to provide broadband services to MTE tenants. Excessive, unreasonable, and discriminatory revenue sharing arrangements should be prohibited.

C. Ensuring a Competitive MTE Marketplace Improves DAS Facilities

The Commission seeks comment on DAS facilities, and in particular whether it should encourage or require providers to use DAS facilities that meet certain compatibility or future proofing requirements.²⁸ Uniti recommends that the Commission avoid mandating overly burdensome regulations with respect to specific technical obligations, but instead focus on those that create a competitive marketplace such that important policy objectives are organically achieved. For example, the diversity and availability of in-building facilities increase when multiple providers have access to MTEs. Service providers that offer in-building wireless services, as well as other carriers, will have ample incentives to support future technologies and upgrade services if there is sufficient competition for MTE tenants. On the other hand, MTEs that lack competition will naturally have service providers less willing to upgrade services and technologies.

²⁶ *Supra* n.13, 2018 Small Cell Deployment Order at Section III.B.

²⁷ *Id.*

²⁸ *See* NPRM ¶ 23.

The Commission should rely on competition to spur technology and service improvements, not regulatory mandates on the types of services or technologies that providers must install.

IV. THE COMMISSION SHOULD STREAMLINE DISPUTE RESOLUTION

The Commission has long recognized that barriers to MTE access hinders competition and broadband deployment and, as such, has promulgated rules restricting contracts that effectively prevent service providers from accessing MTEs.²⁹ However, while these rules—and any additional rules the Commission adopts in this proceeding—are a necessary step in the right direction, they are ultimately toothless if service providers have no practical and effective means to cure violations. Most new entrant providers that face building access restrictions will simply move on to another building or market rather than spend the time and money to seek a legal determination that a building owner or competitor has undertaken discriminatory or other unreasonable arrangements designed to prevent the new competitor from entering the building. The costs are simply too high, the process takes too long, and the potential returns too low to make judicial recourse a viable means of enforcing Commission policy. Resultantly, anti-competitive behaviors by MTE owners and service providers are likely to remain uncontested despite Commission rules. And MTE tenants ultimately suffer the greatest harm as do the surrounding communities that would otherwise benefit from additional providers of broadband services if the critical MTE marketplace was open to competition.

The Commission has previously taken steps in furtherance of broadband deployment to provide reasonable means for redress of violations of the Commission's rules. For example, in the

²⁹ See *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, 22985, ¶ 1 (2000); *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Report and Order, 23 FCC Rcd 5385, 5386, ¶ 5 (2008).

2018 Small Cell Deployment proceeding, the Commission acknowledged that parties installing small cell sites depend on time-limited permitting processes by state and local governments, and may “need to pursue additional and costly relief in court” in the event of government inaction.³⁰ In response, the Commission implemented a remedy whereby state or local inaction within a certain period of time would constitute a presumptive prohibition on the provision of personal wireless services in violation of the Telecommunications Act—which in turn allows for affected parties to obtain expedited relief in the form of a preliminary or permanent injunction.³¹ The Commission accurately noted that “[r]educing the likelihood of litigation and expediting litigation where it cannot be avoided should significantly reduce the costs associated with wireless infrastructure deployment.”³²

Indeed, the BDAC has acknowledged the harmful impact of litigating disputes on broadband access; in fact, many commenters involved in the BDAC’s working group on removing state and local regulatory barriers concur that litigation “drains resources, further delays deployment, and creates inconsistent precedent between jurisdictions.”³³ The BDAC has encouraged the Commission to investigate a process for timely and efficient review of disputes, which may include an intermediate step whereby parties are first obligated to undertake efforts to reach a resolution on their own; and which may include rebuttable presumptions.³⁴

Similarly, the Commission should create streamlined procedures for parties to seek relief from the Commission such that aggrieved carriers seeking enforcement of the Commission’s rules are not beholden to pursuing litigation as the first, if not only, means for recourse. The Commission

³⁰ *Supra* n. 13, 2018 Small Cell Deployment Order at ¶¶ 116, 117.

³¹ *Id.* at Section IV.B.

³² *Id.* at ¶ 126.

³³ *Supra* n. 24, BDAC-SLRB Working Group Document at p.8.

³⁴ *Id.* at p.20.

should adopt rules for an expedited process under which affected parties could file a complaint with the Commission for dispute resolution. The Commission could, as the BDAC suggests, include rebuttable presumptions in its process and require affected parties to in the first instance engage in good-faith negotiations with carriers in violation of MTE rules. Uniti maintains that the most important aspects of any dispute resolution procedures adopted by the Commission is the speed with which such procedures could be initiated and resolved as well as the ease of taking advantage of such a process. This would provide a more effective dispute resolution process where the Commission serves as a backstop to negotiations among private parties.

V. CONCLUSION

Uniti applauds the Commission's continuing work to foster competition and promote consumer access to communications services in the United States, and encourages the Commission to adopt a regulatory framework for MTEs in facilitation of these goals. As detailed herein, the principles that informed the BDAC's State Model Code should inform the policies and rules that the Commission adopts in this proceeding. Toward that end, universal applicability of the MTE rules to private and government owned/managed MTEs is essential. The Commission should permit reasonable revenue sharing arrangements. Further, the Commission should adopt additional rules that prevent carriers from excluding competitors from MTEs. Finally, Uniti recommends that the Commission adopt streamlined dispute resolution procedures such that carriers seeking to enforce the Commission's rules can do so rapidly and efficiently.

Respectfully submitted,

/s/

Jeffrey R. Strenkowski
Vice President, Deputy General Counsel of
Governmental Affairs

Uniti Fiber

Ronald W. Del Sesto, Jr.
Catherine Kuersten

MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington, DC 20004
(202) 739-3000
ronald.delsesto@morganlewis.com
catherine.kuersten@morganlewis.com

Counsel to Uniti Fiber