Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	)	GN Docket No. 17-142
	)	
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Comments of Common Networks, Inc.

Common Networks, Inc. (Common) submits these comments in response to the Notice of Proposed Rulemaking adopted by the Federal Communications Commission (FCC or Commission) seeking comment on additional actions to improve competitive broadband access to multiple tenant environments (MTEs).[1]

I. Common is Leveraging mmW Spectrum to Deliver 5G Residential Service at Affordable Prices

Common is a venture-backed technology company and wireless internet service provider. Founded in 2016, the company is based in San Francisco and serves over 350 residential MTEs throughout the Bay Area, including the communities of Alameda, San Leandro, Santa Clara, San Jose, and Sunnyvale. Common's approach to broadband service is simple: we provide amazing speeds and honest values. Today, Common's customers can access home broadband at symmetric speeds of up to 300 Mbps for only $49 per month.

Common delivers high-quality, affordable service by leveraging the Commission's efforts to make millimeter wave (mmW) spectrum available for 5G technology. Specifically, Common deploys innovative graph-based wireless networks in urban and suburban communities to solve the last mile problem. These networks utilize proprietary software built on open 5G technology to deliver fixed broadband residential

[1] *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking, FCC 19-65 (rel. July 12, 2018) (*NPRM*).

service over mmW spectrum. Utilizing this approach, Common can connect more people with access to a high-speed connection at a much lower capital cost than more traditional wired networks. In less than three years, Common has deployed networks that cover a population of over 100,000 people.

Antenna deployments on MTE rooftops are particularly critical to Common's mmW-based networks for three reasons. *First*, the height of most MTE rooftops provides an unobstructed line-of-sight required by mmW technologies. *Second*, the adjacency of many MTEs to densely-populated urban and suburban communities enables wireless antennas located on MTE rooftops to overcome the short transmission path associated with mmW technologies. *And third*, the proximity of MTEs to existing fiber makes these rooftops uniquely situated to serve as interconnection points to backhaul. Combined, these factors enable wireless antennas located on rooftops of MTEs to provide better service both to tenants of the MTE and to consumers in nearby communities. Common thus strongly supports a prohibition on rooftop exclusivity agreements.

Rooftop exclusivity agreements are not the only agreements and practices hindering Common's ability to provide affordable 5G mmW services to consumers, however. Door fees, revenue sharing agreements, exclusive wiring and sale-and-leaseback agreements, and exclusive marketing agreements also prevent Common from accessing MTEs. And because Common's services involve the deployment of facilities capable of improving and expanding service in nearby communities, the barriers these agreements and practices pose have downstream effects, impacting connectivity and economic development not only within the MTE, but also to the surrounding neighborhoods and communities.

Common thus applauds the Commission's decision to seek comment on many of the issues raised in the *NPRM*. Action by the Commission will not only help improve competitive broadband access to MTEs, but it will also advance a number of related Commission priorities. For example, actions allowing Common to deploy more facilities on MTE rooftops will accelerate the deployment of 5G, mmW-based infrastructure. Thus, actions in this proceeding can help America win the race to 5G. In addition, accelerating deployment of infrastructure will enable greater availability of high-quality, affordable

broadband services within MTEs and in surrounding communities. Thus, actions in this proceeding can help to close the digital divide

With these public interest benefits in mind, Common urges the Commission to take the steps described herein.

II. Prohibiting Rooftop Exclusivity Agreements Will Help Accelerate the Availability of Affordable 5G Service to Tenants of MTEs and to Consumers in Nearby Communities

In Common's graph-based networks, antennas located on MTE rooftops not only facilitate service to tenants of an MTE, but also service to consumers in surrounding communities. As a result, exclusive rooftop agreements prevent Common from providing service both to tenants within the MTE and to hundreds of nearby homes. The Commission thus should prohibit rooftop exclusivity agreements.

Common's graph-based network faces a number of technical constraints that rooftop antennas can cure. For example, while mmW bands are useful in developing high-capacity networks, these frequencies require a clear line-of-sight between antennas and feature relatively short transmission paths. In addition, while Common's graph-based wireless networks require relatively few sites with fiber-connectivity, there remains a need to connect some sites to backhaul.

Antenna deployments located on MTE rooftops are critical for addressing these constraints. *First*, the height of most MTE rooftops provides an unobstructed line-of-sight required by mmW technologies. As Common deploys radios on customer rooftops, utilizing taller assets relative to the residential community allows for multiple line-of-sight connections. These connections facilitate service both within the MTE and in nearby neighborhoods.

Second, the adjacency of many MTEs to densely-populated urban and suburban communities enables wireless antennas located on MTE rooftops to overcome the short transmission path associated with mmW technologies. While many municipalities and homeowner associations impose height restrictions on single-family residences, taller apartment buildings, condominiums, and commercial MTEs often are located in nearby adjacent neighborhoods. This adjacency allows for the transmission of service over mmW spectrum from the taller assets to the residential neighborhoods. Again, these connections facilitate service both within the MTE and in nearby communities.

And third, the proximity of MTEs to existing fiber makes these rooftops uniquely situated to serve as interconnection points to backhaul. While single-family residences are not always located near existing fiber runs, many MTEs either are already wired with fiber connections or are located on streets with fiber deployments. These fiber connections help improve service for all users of the network, including tenants of the MTE, nearby consumers, and even distant consumers who benefit from a more efficient network. Thus, the availability of rooftop access can facilitate better service even in relatively far away locations.

Common's experience suggests exclusive rooftop agreements remain prevalent. For example, there is a large national real estate group in the Bay Area that has a decade-long exclusive rooftop agreement in place with a large incumbent ISP. This agreement not only prohibits Common from providing service to tenants of the MTEs subject to this agreement, but, due to the strategic positioning of certain of these MTEs, the agreement precludes Common from offering service to several thousand customers in the nearby area.

As a result, the Commission should prohibit telecommunications carriers and covered multichannel video programming distributors (MVPDs) from entering into rooftop exclusivity agreements.[2] Ensuring rooftop rights are non-exclusive will promote competition in the provision of services to tenants of MTEs and to consumers in surrounding communities. Moreover, as new entrants such as Common seek to deploy next-generation infrastructure on the rooftops of MTEs, a prohibition on these agreements will help facilitate the availability of 5G service, helping ensure America wins the race to 5G and increasing the availability of affordable broadband service that can address the digital divide.

III. The Commission Should Prohibit Door Fees and Revenue Share Agreements

Door fees and revenue share agreements regularly reduce incentives for building owners to grant access to competitive providers such as Common and often have the effect – whether intended or not – of circumventing the Commission's ban on exclusive access agreements. This is particularly the case with respect to the use of exclusive revenue share agreements and revenue escalation tiers. Because

[2] The term "covered MVPDs" mean those MVPDs subject to section 628(b) of the Act: cable operators; common carriers or their affiliates that provide video programming directly to subscribers; and operators of open video systems. 47 U.S.C. §§ 548(b), 548(g), 573(c)(1)(A).

mandatory disclosure of revenue share agreements would be ineffective and unenforceable, the Commission should prohibit ***all*** revenue sharing agreements that exceed the building's costs of allowing service.

A. Revenue Sharing Agreements Reduce Incentives for Building Owners to Grant Access to Competitive Providers and May Be Used to Circumvent the Ban on Exclusive Access Agreements

Sharing customer broadband fees with property owners/managers and/or paying door fees for access to a unit is a *de facto* requirement for gaining entry to a tenant of an MTE in today's broadband market. While Common fundamentally opposes paying these fees, new entrants often are left with no other option for gaining access to tenants within MTEs.

Common's graph-based network extends coverage to residences within its service footprint at 1/50th of the cost it would take to extend fiber to these residences.[3] Yet, even with this cost advantage, door fees and revenue sharing demands often make it cost prohibitive for Common to access customers in many MTEs. To maintain margins or reduce payback periods, the costs of these door fees or revenue share agreements must be amortized into the contract of the customer.

Moreover, interactions with MTEs leave Common wondering whether competitors are using these agreements to circumvent the Commission's ban on exclusive access agreements. For example, another national property development company with multiple MTE properties in Common's service area recently stated it "ha[s] a revenue share with [the incumbent provider] and what [Common] is offering was incomparable." The company refused further discussion. Despite Common's cost advantage, incumbents with deeper pockets can offer revenues shares that far exceed the MTE's cost of providing service and far exceed what smaller competitive providers can offer.

In particular, exclusive revenue share agreements and provisions implementing revenue escalation tiers (based on customer penetration rates) provide financial disincentivizes for building owners and managers to enable broadband competition at MTEs. In the case of exclusive revenue share

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[3] Common Networks, "Common Networks Introduces First-of-its-Kind High-Speed Wireless Home Internet," Aug. 14, 2019, https://common.net/press/san-leandro-fast-081419.

agreements, property owner/managers commonly ignore or refuse to engage with potential competitive providers. Thus, even though a potential competitor such as Common may have a more affordable and higher quality service to offer MTE tenants, these exclusive agreements often serve to prevent negotiations from even beginning.

Provisions implementing escalation tiers within revenue share agreements yield similar outcomes. The following chart, published by *Wired*,[4] outlines a common incentive-based revenue share structure:

Marketing Support Compensation Schedules

Proposed Video Scale	
Penetration %	Rev Share %
<=50%	0%
51%-55%	5%
56%-60%	7%
61%-65%	8%
66%-71%	9%
>=72%	10%

Proposed Data Scale	
Penetration %	Rev Share %
<=24%	0%
25%-35%	1%
36%-45%	4%
46%-55%	5%
56%-75%	6%
>=76%	10%

Proposed Voice Scale	
Penetration %	Rev Share %
<=24%	0%
25%-35%	3%
36%-45%	4%
46%-55%	5%
56%-59%	6%
>=60%	10%

Plus: Up To $130 Per Unit → One Time Compensation Payment

Under this arrangement, the MTE owner is incentivized to limit all tenants to one service provider. Introducing a competitive alternative would cannibalize the MTE owner's revenue opportunity, resulting in less total revenue. The MTE owner thus likely will delay responses to competitive providers, ignore

[4] Susan Crawford, "The New Payola: Deals Landlords Cut with Internet Providers," WIRED, Jun. 6, 2016, https://www.wired.com/2016/06/the-new-payola-deals-landlords-cut-with-internet-providers.

requests for access to the building, and otherwise prevent new providers from serving tenants in the MTE.[5]

In sum, publicly-available evidence and Common's own experiences help demonstrate that revenue sharing agreements are harming competition. At best, these agreements needlessly delay new competitors such as Common from deploying broadband infrastructure in a timely manner and stymie the availability of competitive services for tenants of MTEs. At worst, these agreements are used to circumvent the Commission's ban on exclusive access agreements. Common thus supports the adoption of a rule prohibiting telecommunications providers and covered MVPDs from entering into revenue sharing agreements that exceed the building's costs of allowing service. While it may be impractical for the Commission to determine and/or audit the actual cost of providing broadband service for each specific MTE, the Commission should explore an approach that establishes a standard rate structure for the cost of access for various types and tiers of MTEs.

B. Mandatory Disclosure of Revenue Share Agreements Would Be Ineffective, Inefficient, and Unenforceable

A requirement mandating the disclosure of revenue share agreements will not materially-address the competitive harm caused by these agreements. For example, it is not readily apparent how the mere disclosure of revenue sharing agreements would disincentivize such agreements. Moreover, a disclosure requirement would create more bureaucratic processes and costs that ultimately may disproportionately harm smaller competitors, who may be less well equipped to offset the administrative burdens of such a requirement. Further, the administration of such a requirement would be an incredible undertaking, creating inefficiencies for the administrator and calling into question whether such a requirement could effectively be enforced. The Commission therefore need not pursue such a mandatory disclosure requirement at this time.

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[5] Moreover, combining revenue share agreements with any other types of exclusive agreements (*e.g.*, marketing, wiring, billing, etc.) typically exacerbates the competitive harms of these agreements.

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IV. Exclusive Wiring Arrangements – Including Sale-and-Leaseback Agreements – Have the Same Effect as Exclusive Access Agreements and Should Be Prohibited

Insufficient access to existing wiring can serve as an insurmountable barrier to smaller competitive providers hoping to serve tenants of an MTE. When existing unused wiring is not available, a new provider's next best option is typically an external wiring solution. However, external wiring is typically opposed by building owners on account of the need to penetrate exterior walls. In the absence of an external wiring solution, a new provider generally attempts to identify conduit at a facility to run its own wiring. Unfortunately, existing conduit often are completely full of nests of wires, and a typical property manager has no idea of wiring ownership, integrity, and whether wires are abandoned or in-use. In these scenarios, smaller providers are typically forced to abandon the site due to the prohibitive costs of retrofitting a building with new conduit and new wiring.

Unfortunately, many new entrants are not even provided with a sufficient justification as to why they cannot be provided with access to existing inside wiring. A recent interaction between Common and a national property manager proves illustrative of this point. Upon approaching the property manager about providing service to the MTE, Common was informed:

> "*After review of our current wiring agreement with [the incumbent ISP], I found that we do in fact have an exclusive wiring agreement in place so unfortunately we would not be able to deploy your services at [our MTE].*"

Despite repeated attempts for clarification, the MTE manager fell unresponsive. It was thus impossible for Common to understand the true nature of the wiring agreement. Did the wiring agreement violate the Commission's cable inside wiring rules? Was the wiring agreement an exclusive wiring agreement? Was the wiring agreement a sale-and-leaseback arrangement? The answers to these questions remain mysteries to Common.

Indeed, the industry confusion regarding exclusive wiring is almost impossible to overcome in each instance. Even if property managers respond to follow-up questions, contracts addressing inside wiring rights are almost always confidential, and thus the MTE owner is contractually prohibited from sharing the relevant language.

Common thus urges the Commission to prohibit all exclusive wiring arrangements, including sale-and-leaseback arrangements, by telecommunications providers and covered MVPDs. Given the difficulties of challenges faced by new entrants precluded from accessing existing wiring, these agreements constitute in most instances attempts to evade the Commission's exclusive access rules by erecting insurmountable economic barriers to new entrants. Moreover, because these agreements often are poorly understood and protected by confidentiality agreements, the nature of these agreements often remain clouded in mystery to new entrants and contribute to industry confusion. Prohibiting the use of these types of agreements will lower barriers for new entrants to provide service to tenants of an MTE and will provide greater transparency to all providers seeking to access existing and unused inside wiring.

V. Exclusive Marketing Arrangements Dampen Competition and Should Be Prohibited

Exclusive marketing agreements further dampen competition in the provision of services to tenants of MTEs. These types of arrangements make it extremely difficult to access a building, if at all, by assessing yet another tax on new entrants and erect yet another barrier for providing service to tenants of the MTE.

Based on Common's experience, these exclusive marketing agreements restrict all other providers from a wide range of marketing activities: in-building or on-property marketing events, posting or distributing posters, flyers or doorhangers, and any mention in property newsletters or building communications. Violations of these arrangements, whether real or perceived, are strictly enforced by litigious incumbents. As an example, when Common used an image of an MTE in a direct mail campaign, the incumbent provider immediately sent a legal notice to the property manager alleging a violation of its exclusive marketing agreement. Abusive practices such as these cause fear and confusion in both MTE owners and new entrants.

Consequently, Common supports the Commission prohibiting exclusive marketing agreements. By ensuring that consumers can be made aware of their existing broadband options, the Commission will better serve MTE tenants and help level the playing field for competitors seeking to deploy infrastructure and services to these facilities.

VI. Conclusion

Common is delivering high-quality, affordable service by leveraging the Commission's efforts to make mmW spectrum available for 5G technology. To accelerate the delivery of these services to consumers residing within MTEs and in nearby communities, Common urges the Commission to prohibit rooftop exclusivity agreements, door fees and exclusivity agreements, exclusive wiring arrangements, and exclusive marketing arrangements. Common applauds the Commission's interest in these issues, and we look forward to working with the Commission to modernize its rules for improving access to MTEs to better reflect recent advancements in next-generation wireless technologies.

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