

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Improving Competitive Broadband Access to
Multiple Tenant Environments

Petition for Preemption of Article 52 of the San
Francisco Police Code Filed by the Multifamily
Broadband Council.

GN Docket No. 17-142

MB Docket No. 17-91

**COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION
ON NOTICE OF PROPOSED RULEMAKING**

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I. INTRODUCTION

The California Public Utilities Commission (CPUC or California) submits these comments in response to the *Notice of Proposed Rulemaking (NPRM)* issued by the Federal Communications Commission (FCC or Commission) in the above-captioned proceeding.¹ The *NPRM* seeks comment on additional actions the FCC could take to accelerate the deployment of next-generation networks and services within multiple tenant environments (MTEs).

Specifically, the FCC seeks comments “on whether we should act to increase competitive access to rooftop facilities, which are often subject to exclusivity agreements.”² The CPUC has extensive experience with the Broadband Public Housing Account (BPHA), a component of the California Advanced Services Fund (CASF), established by the California Legislature in Public Utilities Code section 281. In light of that experience, the CPUC sees the benefit of, and supports, rules promoting non-discriminatory access to rooftop facilities in dense urban areas as a way to foster competition in the provision of broadband service. While the CPUC has not encountered any exclusive agreements for provision of service in California Public Housing entities, agreements limiting access to building rooftops may prevent the provision of high-speed broadband internet to low-income tenants in residential MTEs.

¹ See *Improving Competitive Broadband Access to Multiple Tenant Environments; Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, GN Docket No. 17-142, *Notice of Proposed Rulemaking (NPRM)*, FCC 19-65, (rel. July 10, 2019).

² See *NPRM*, ¶ 12-13.

II. DISCUSSION

A. The FCC Should Clarify Whether its Definition of “MTEs” Includes Publicly Subsidized Multifamily Housing Developments

The *NPRM* requests comment on whether the FCC should act to increase competitive access to rooftop facilities, which are often subject to exclusivity agreements between telecommunication service providers and MTE owners. In the *NPRM*, the FCC defines MTEs as follows:

“commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities... The term MTE, as we use it here, encompasses everything within the scope of two other terms the Commission has used in the past—multiple dwelling unit and multiunit premises...”³

The CPUC recommends that the FCC clarify whether its definition of MTE is intended to cover multifamily housing developments as residential premises occupied by multiple entities. We note that the definition of MTEs includes “apartment buildings,” but whether public housing entities would be deemed “apartment buildings” is uncertain. Further complicating this question is whether the FCC could impose on public housing entities a bar on exclusive service agreements. In California, for example, some public housing entities are owned and operated by local jurisdictions, whereas others are under the control of non-profit organizations.

In the CPUC’s experience administering its BHPA, the CPUC has heard from grant applicants seeking CASF funding to deploy broadband facilities that what prevents

³ See also, *Improving Competitive Broadband Access to Multiple Tenant Environments, Notice of Inquiry*, 32 FCC Rcd 5383, 5383-5384, (2017) (*MTE Notice of Inquiry*), ¶ 2.

residents of public housing from subscribing to broadband service is the prohibitive cost of the service provided in the public housing. The FCC’s proposal to spur deployment of next-generation networks and services in MTEs may provide the impetus for more affordable broadband facilities to reach residents of public housing.

California includes publicly-supported communities (PSCs) among those entities eligible to apply for the BPHA. As noted above, a “PSC” is defined as a publicly-subsidized multifamily housing development that is wholly owned by either a chartered public housing agency ruled eligible by the United States Department of Housing and Urban Development (HUD), or an incorporated nonprofit organization as described in Section 501 (c)(3) of the Internal Revenue Code. Non-profit PSCs must be exempt from taxation under Section 501 (a) and have received public funding to subsidize the maintenance or construction of low-income housing.⁴ The CPUC recommends that the FCC clarify whether either of these types of facilities are included in its definition of MTE.

B. Rooftop Access is Important

The *NPRM* requests input on the benefits and drawbacks of rooftop exclusivity agreements and whether the FCC should prohibit telecommunication carriers from entering into such agreements. The CPUC considers rooftop access to be important and recognizes that exclusivity agreements which limit access to building rooftops can impede the provision of high-speed broadband internet to low-income tenants in residential MTEs.

⁴ Public Utilities Code, § 281(i)(2), 281(i)(1)(B)(i) and 281(i)(1)(B)(ii).

Through the BPHA, the Commission funds projects to install broadband networks such as Wi-Fi systems and Switched Ethernet circuits in publicly subsidized multifamily housing developments.⁵ Twenty-four of these funded projects, all located in San Francisco, utilize Point-to-Point fixed wireless radios installed on building rooftops for high-capacity backhaul. For example, the Tenderloin Neighborhood Development Corporation (TNDC) received CASF grants to deploy Wi-Fi systems in eighteen of its properties. Most of these properties are in a densely-populated part of San Francisco and are located within a one-mile radius of each other, making it an ideal situation for using rooftop microwave radios to establish backhaul capacity to other TNDC locations.⁶ Non-discriminatory rooftop access by multi-tenant public housing property owners allows for easy and relatively inexpensive installations of a licensed or unlicensed radio links. These links provide access to high-capacity backhaul and, therefore, enable the provision of high speed broadband internet services to the low-income residents. The provision of fiber to a location in a dense urban area would be cost-prohibitive and time consuming compared to the rooftop option. For example, the ability to build in a dense urban area invokes questions about access to public rights-of-way, as well as potentially across contiguous private properties, and permitting.

⁵ A multifamily housing development is an MTE, as defined in footnote 3.

⁶ Most of the TNDC locations are using municipal fiber.

III. CONCLUSION

The CPUC urges the FCC recognize the unique circumstances of dense urban areas and the utility of rooftop access (especially in publicly funded locations) in formulating policy with respect to rooftop exclusivity agreements.

Respectfully submitted,

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