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

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

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association ("NCTA") submits these reply comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned docket.[1]

I. INTRODUCTION AND SUMMARY

NCTA's members are deeply committed to the Commission's goal of ensuring that all Americans who live and work in MTEs have access to broadband, and the record in this proceeding makes clear that achieving this goal requires no new regulation. The marketplace for service to MTEs is already flourishing under the Commission's current rules—rules that give broadband providers and building owners the ability to negotiate contractual arrangements that are specific to the circumstances of each building and provide the greatest value to the building's residents and tenants. Most residential MTEs have more than one broadband provider, and the comments in this proceeding confirm that deployment, competition, and consumer choice in MTEs are strong.[2] The Commission should therefore reject the baseless calls by some commenters for further regulation of the MTE marketplace.

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[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*, Notice of Proposed Rulemaking and Declaratory Ruling, 34 FCC Rcd. 5702 (2019) ("*NPRM*").

[2] *See infra* Section II.

Moreover, the regulations these commenters propose—*e.g.*, prohibiting or restricting the use of exclusive wiring, exclusive marketing, and revenue sharing agreements—are not "carefully tailored to promote broadband deployment to MTEs."[3] Prohibiting or restricting these agreements will do nothing to increase competition in the already highly competitive MTE marketplace. Rather, the prohibitions and restrictions may inhibit investment and deployment in buildings, a result contrary to the Commission's goals. To promote continued growth and competition in the MTE marketplace, the Commission should decline to adopt additional regulations. To the extent the Commission does regulate this marketplace, it should apply its regulations to all parts of MTEs and to all broadband providers on a competitively and technologically neutral basis.

II. THE RECORD SHOWS THAT COMPETITION FOR SERVICE TO MULTIPLE TENANT ENVIRONMENTS IS ROBUST

As NCTA and others in this proceeding have explained, the marketplace for service to MTEs is characterized by vibrant competition and considerable deployment.[4] This is no happy accident. Rather, it is the result of market forces that have, among other things, ensured that "the goals of the Commission and of property owners are closely aligned."[5] As the Real Estate Associations point out, consumers and businesses place a high value on the ability to choose among broadband providers.[6] Therefore, in order to attract and retain residents and tenants, "[MTE] owners have a very strong incentive to ensure that each of their properties is served by

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[3] *NPRM* ¶ 15 (expressing the Commission's intent to "facilitate the development of . . . clear policy that is carefully tailored to promote broadband deployment to MTEs").

[4] *See* Joint Comments of the National Multifamily Housing Council *et al*., GN Dkt. No. 17-142, at 9-17 (filed Aug. 30, 2019) ("Real Estate Associations Comments"); Comments of NCTA – The Internet & Television Association, GN Dkt. No. 17-142, at 2-4 (filed Aug. 30, 2019) ("NCTA Comments").

[5] Real Estate Associations Comments at 9.

[6] *See id.*at 10-11, 13-14.

multiple providers that provide reliable, high quality, and high speed broadband service."[7] Providers, in turn, have significant incentives to help building owners meet resident and tenant demands because, as NCTA and others detailed, MTEs are particularly attractive to providers.[8] Given these market dynamics, it is unsurprising that a National Multifamily Housing Council ("NMHC") and National Apartment Association ("NAA") survey of thirteen large, national apartment owners found that approximately 76% of the properties they own had at least two wireline broadband providers.[9]

Significantly, there is no quantitative data in this proceeding that would support further Commission regulation specific to the MTE marketplace. For instance, the record contains no data comparing the proportion of MTE residents that have access to multiple providers to the proportion of residents of single-family housing that have such access, nor is there evidence that the number of broadband providers and speeds available to MTE residents are different than for residents of single-family housing.[10] In fact, the *only* quantitative data in this proceeding on service to MTEs nationwide—the NMHC and NAA survey—shows that the state of facilities-based broadband deployment and competition in MTEs is strong. The marketplace is meeting the Commission's goals without regulation of exclusive wiring, exclusive marketing, and revenue sharing agreements, and the Commission should be careful not to disrupt it.

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[7] *Id.* at 11 (discussing residential buildings); *see also id.* at 13 (discussing commercial and retail properties and stating that "property owners will routinely grant multiple providers the right to serve their buildings in order to meet tenant requests").

[8] *See* NCTA Comments at 3; Real Estate Associations Comments at 9 (noting that "[t]heir economies of scale have made apartment properties in particular very attractive to" providers).

[9] *See* Real Estate Associations Comments at 66.

[10] *See also id.* at 22-23. We agree with commenters that MTEs do not include stadiums, arenas, transit systems, and other similar public spaces. *See, e.g.*, Comments of Crown Castle International Corp., GN Dkt. No. 17-142, at 5-6 (filed Aug. 30, 2019); Comments of Boingo Wireless, Inc., GN Dkt. No. 17-142, at 8-9 (filed Aug. 30, 2019). *Contra* Comments of Sprint Corporation, GN Dkt. No. 17-142 (filed Aug. 30, 2019).

III. THE COMMISSION SHOULD REJECT CALLS TO REGULATE EXCLUSIVE WIRING, EXCLUSIVE MARKETING, AND REVENUE SHARING AGREEMENTS

A few parties propose that the Commission bar exclusive wiring, exclusive marketing, and revenue sharing agreements, while others propose additional regulations that stop short of outright prohibitions. The Commission should reject these proposals. Not only are such actions unnecessary, they would undermine the Commission's goals.

Exclusive Wiring and Exclusive Marketing Agreements Promote Competition and Innovation. Contrary to some commenters' claims,[11] market-based arrangements like exclusive wiring and exclusive marketing agreements help secure the benefits of broadband competition and cutting-edge services for building owners and residents alike. The Commission should therefore reject suggestions to limit or prohibit these agreements.

As was explained by competitive providers employing a wide variety of broadband technologies, exclusive wiring and exclusive marketing agreements with MTE owners help promote competition by smaller service providers.[12] Such agreements "are the essential foundation upon which the smaller competitor's business model is built."[13] Without them, competitive providers would likely be unable to secure the financing they need to operate.[14]

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[11] *See, e.g.,* Comments of the City and County of San Francisco, GN Dkt. No. 17-142, at 5-7 (filed Aug. 30, 2019) ("San Francisco Comments"); Comments of Common Networks, Inc., GN Dkt. No. 17-142, at 8-9 (filed Aug. 30, 2019) ("Common Networks Comments"); Comments of ADTRAN, Inc., GN Dkt. No. 17-142 & MB Dkt. No. 17-91, at 7-8 (filed Aug. 30, 2019).

[12] *See* Comments of Multi-Family Broadband Council, GN Dkt. No. 17-142 & MB Dkt. No. 17-91, at 8 (filed Aug. 28, 2019) ("MBC Comments"); *see also* Comments of Blue Top Communications, GN Dkt. No. 17-142, at 1 (filed Aug. 22, 2017) ("Blue Top NOI Comments").

[13] MBC Comments at 9.

[14] *See* MBC Comments at 11 (stating that "competitive service providers usually require third-party financing in order to fund construction of a property-specific network at an MTE" and explaining that lenders require proof, such as an exclusive wiring agreement, that the provider will be able to serve a sufficient number of customers to generate reliable revenue); Blue Top NOI Comments at 1 ("Without the use of [exclusive marketing, bulk service agreements, revenue sharing, and exclusive wiring agreements], Blue Top likely will not be able to compete[.]").

Prohibiting these agreements would therefore dramatically curtail these companies' ability to provide service to MTEs, undermining the Commission's goals.

Moreover, exclusive wiring agreements—including sale-and-leaseback arrangements—directly benefit consumers by ensuring that state-of-the-art wiring will be deployed and upgraded in MTEs.[15] These arrangements also help avoid technical problems that degrade service.[16] Installing and upgrading wiring is a complex and costly task, and exclusive wiring agreements help ensure that building owners, some of whom may lack the requisite expertise and funds, are not saddled with this responsibility. The Commission should not interfere with these arrangements and should instead continue to allow building owners and providers to determine amongst themselves how best to handle deployment and maintenance of wiring.

The Commission should also reject the Fiber Broadband Association's ("FBA") proposal to presumptively prohibit sale-and-leaseback agreements "unless the provider and MTE owner can demonstrate they are not anticompetitive."[17] As discussed above, sale-and-leaseback and other exclusive wiring agreements are beneficial and pro-competitive, negating any need for a presumptive prohibition. Moreover, FBA provides no detail on how this presumption would work in practice. Would MTE owners and providers be required to petition the Commission for approval of each individual sale-and-leaseback agreement? Such a requirement would drain

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[15] NCTA Comments at 4-5.

[16] *See* Petition of the Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code, MB Dkt. No. 17-91, at 31 (filed Feb. 24, 2017) (discussing how wire sharing can cause degradation of services). In addition, without exclusive wiring arrangements, many beneficial property-specific services that providers are able to offer in bulk would be threatened—including, for instance, managed Wi-Fi services, certain network security features, and building-wide Internet of Things services or Intelligent Building solutions.

[17] Comments of the Fiber Broadband Association, GN Dkt. No. 17-142 & MB Dkt. No. 17-91, at 7 (filed Aug. 30, 2019).

Commission resources as well as resources providers and MTE owners could otherwise use to deploy broadband infrastructure.

The Commission Should Reject Calls to Regulate Revenue Sharing Agreements. The record makes clear that revenue sharing agreements are not a barrier to competition.[18] Rather, they are the result of negotiations between MTE owners and service providers in a marketplace that is competitive and do not provide an incentive to deny access to competitive providers.[19] RealtyCom states, for example, that it has "assisted owners in developing properties with three or more competitive providers offering state-of-the-art services, each with a revenue share arrangement."[20] Eliminating or restricting the use of revenue sharing would in no way increase a building owner's incentives to allow additional providers entry and would likely lead building owners to recoup these costs in other ways, such as via door fees.[21]

Proposals to limit revenue sharing to recovery of a building owner's costs are also problematic. The development costs for which revenue sharing agreements provide compensation are the MTE owner's, and they are therefore outside a provider's knowledge and control. Requiring providers to somehow keep track of these costs and adjust any revenue shared accordingly would impose an expensive administrative burden on providers, the costs of which would ultimately be borne by consumers.

Commenters Agree That Disclosure Requirements Will Not Be Useful. The Commission should decline to adopt disclosure requirements for revenue sharing and exclusive

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[18] *See, e.g.,* San Francisco Comments at 2; Comments of Starry, Inc., GN Dkt. No. 17-142 & MB Dkt. No. 17-91, at 7-9 (filed Aug. 30, 2019); Comments of INCOMPAS, GN Dkt. No. 17-142 & MB Dkt. No. 17-91, at 13 (filed Aug. 30, 2019).

[19] *See* Comments of RealtyCom Partners, LLC, GN Dkt. No. 17-142, at 4-5 (filed Aug. 30, 2019) ("RealtyCom Comments"); Real Estate Associations Comments at 78-79.

[20] RealtyCom Comments at 5.

[21] Comments of NCTA at 8.

marketing agreements. Commenters of all types—from MTE owners to incumbent and competitive providers—agree that such disclosures would not provide consumers with any meaningful information.[22] In addition, as WISPA rightly states, disclosure requirements would "require undue public disclosure of a provider's confidential business operations" and would "place[] extraordinary burdens on providers[,]" who would be saddled with the administrative costs of drafting, publishing, and distributing them.[23] These costs could also "disproportionately harm smaller competitors, who may be less well equipped to offset the administrative burdens of [a disclosure] requirement."[24] Disclosure requirements would also have the unintended consequence of providing building owners with the incentive and ability to demand the most generous terms offered in the marketplace, further driving up costs to providers.[25] These costs would ultimately be borne by building tenants.

IV. THE COMMISSION SHOULD ENSURE THAT ITS RULES ARE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL

The Commission should reject arguments that its regulations should distinguish between different types of service providers to MTEs—allowing some the flexibility to enter into any agreement they choose while denying others this ability.[26] As NCTA detailed, restrictions placed

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[22] *See, e.g.,* RealtyCom Comments at 4 ("[D]isclosing the existence or details of a revenue sharing agreement would provide a partial, and often misleading, picture of the overall transaction."); Real Estate Associations Comments at 92 (stating that disclosure requirements "would offer little information of actual value to subscribers"); Comments of Wireless Internet Service Providers Association, GN Dkt. No. 17-142, at 14, 21 (filed Aug. 30, 2019) ("WISPA Comments") (stating that "[t]enants are not likely to understand how revenue sharing agreements work, so the disclosure of the existence of any such agreement would be meaningless" without a highly burdensome level of detail and that disclosure of exclusive marketing agreements would similarly be unhelpful because tenants would not understand); NCTA Comments at 6-9.

[23] WISPA Comments at 14.

[24] Common Networks Comments at 7; *see also* WISPA Comments at 15 ("There are business and legal costs in drafting even simple disclosures, publishing and distributing the disclosures, and responding to questions and comments from tenants. These costs would be borne disproportionately by small providers who would prefer to invest in growing the business.").

[25] *See* NCTA Comments at 10.

[26] *See, e.g.,* Comments of Government Wireless Technology & Telecommunications Association, GN Dkt. No. 17-

on some providers but not on others skew the marketplace, to the ultimate detriment of consumers.[27] The Commission should ensure that it does not hinder full and fair competition through selective application of its rules. Accordingly, any Commission requirements should apply equally to all providers of service to MTEs and in all parts of the MTE, on a competitively and technologically neutral basis.

V. CONCLUSION

The record in this proceeding makes clear that there is robust competition in the marketplace for MTEs. The Commission should not imperil the marketplace's success by adopting additional regulations governing agreements between providers and building owners. To the extent the Commission does regulate the MTE marketplace, it should ensure that its regulations apply equally across the board and do not disadvantage any provider based on the technology it uses to provide service.

Respectfully submitted,

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142 & MB Dkt. No. 17-91, at 2 (filed Aug. 30, 2019).

[27] *See* NCTA Comments at 11-12.