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
	)	
Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council	)	MB Docket No. 17-91
	)	

REPLY COMMENTS OF EXTENET SYSTEMS, INC.

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EXECUTIVE SUMMARY

ExteNet urges the Federal Communication Commission ("Commission") to continue with its current light-touch regulatory approach to the deployment of in-building distributed antenna systems ("DAS") networks and the collocation of antennas on Multiple Tenant Environments ("MTEs") rooftops, which promotes competition and delivery of quality wireless service to consumers through neutral host providers like ExteNet. The record illustrates that because the neutral host business model is dependent upon maximizing the utilization of a single network through the addition of as many tenant carriers as possible, neutral host providers do not raise any anticompetitive concerns related to revenue sharing or exclusive marketing arrangements such that neither practice constitutes *de facto* exclusive access arrangements. Indeed, parties expressing anticompetitive concerns in the comment round failed to account for neutral host providers, or improperly lumped such providers together with carrier providers when alleging potential market or consumer harms despite important differences in business models between neutral host and carrier providers of MTE networks. Because neutral host providers are incentivized to add more carrier customers while also competing in a larger market for broadband services, neutral host providers are motivated to offer fair prices to their carrier customers, to use state-of-the-art technology that is compatible with all carriers, and to enter into arrangements that allow MTE tenants to obtain broadband and other communications-related services at market prices. The record also demonstrates that neutral host providers bring the needed telecommunications expertise and experience to manage and maintain the MTEs' DAS infrastructure, which includes managing wireless interference concerns, streamlining connections, maximizing efficiency, and updating equipment. Neutral host providers also attract substantial capital investment from private and public markets that is unavailable to MTE owners and manages.

Commission action to prohibit revenue sharing, access to DAS, and exclusive marketing arrangements would discourage MTE owners from investing in neutral host provider broadband facilities. Further, the disclosure of such agreements would not be in the public interest. Specifically, commenters expressed concerns that the disclosure of revenue sharing agreements and exclusive marketing agreements would not give MTE tenants the relevant information about the space they are occupying or the broadband services available to them, nor would it allay purported exclusive access concerns. Instead, it would only overly burden operators and drive up prices. The Commission should refrain from needlessly imposing any additional regulation on broadband access to MTEs.

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ExteNet Systems, Inc. (“ESI”) hereby submits these reply comments in response to the Federal Communication Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking (“NPRM”)[1] in the above-referenced docket seeking comment on facilities-based broadband deployment and competition in Multiple Tenant Environments (“MTEs”). The record demonstrates that neutral host providers like ExteNet support healthy competition for customers in MTEs. Commission action to prohibit exclusive wiring, revenue sharing, and exclusive marketing arrangements would discourage MTE owners from investing in neutral host provider broadband facilities, especially when considering the added burden of maintenance responsibilities that come with communications facilities.

ExteNet agrees with commenters that suggest the Commission’s current light-touch regulatory approach to the deployment of in-building DAS networks and the collocation of antennas on MTE rooftops promotes competition and delivery of quality wireless service to

[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) (“*MTE Notice*”).

consumers.[2] ExteNet also agrees that imposing potentially burdensome regulations on the deployment of DAS networks would act as a disincentive to investment in infrastructure because it would jeopardize operators' abilities to recoup costs.[3] Commenters such as the NCTA – The Internet & Television Association ("NCTA") note that because service providers have powerful incentives to offer broadband and other services to MTEs and their residents and tenants, and do so under the most attractive terms and conditions, the marketplace of diverse providers and service offerings gives building owners the opportunity to negotiate contractual arrangements with providers that will provide the greatest value for their residents and tenants.[4]

A number of commenters recognize that some or all of the proposed regulations banning exclusivity or requiring disclosure of certain terms should not apply to neutral host providers.[5] In contrast, several commenters who encourage the FCC to prohibit all exclusivity agreements do not take into account the neutral host provider business model, and instead focus instead on the anticompetitive concerns that arise from a single carrier obtaining exclusive rights to MTE infrastructure.[6] ExteNet encourages the Commission to consider and give weight to the pro-competition and broadband deployment benefits that neutral host providers bring to MTEs, as noted in the comments filed by ExteNet and Crown Castle.[7]

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[2] *See, e.g.* Comments of the Wireless Infrastructure Association ("WIA"), at 13; Comments of The National Multifamily Housing Council, The National Apartment Association, The International Council Of Shopping Centers, The Institute Of Real Estate Management, Nareit, The National Real Estate Investors Association And The Real Estate Roundtable, at 53 ("Real Estate Associations Comments").

[3] *See, e.g.,* WIA Comments, at 15.

[4] *See* Comments of NCTA – The Internet & Television Association, at 3 ("NCTA Comments").

[5] *See, e.g.,* Comments of Crown Castle International Corp. ("Crown Castle Comments"); Comments of Boingo; Comments of INCOMPAS, at 19 ("INCOMPAS Comments"); WIA Comments, at 6-13; Comments of the Government Wireless Technology & Telecommunications Association, at 3 ("GWTTA Comments").

[6] *See, e.g.,* Comments of Public Knowledge, at 2 ("PK Comments"); Comments of the Competitive Carriers Association, at 3 ("CCA Comments").

[7] *See generally* Comments of ExteNet Systems, Inc. ("ExteNet Comments"); *see* Crown Castle Comments.

I. REVENUE SHARING PROMOTES COMPETITION

Neutral host providers such as ExteNet serve as the coordinator and single point of contact for communications service providers seeking to serve MTEs. Because their business model turns on adding and accommodating multiple providers to serve each MTE, neutral host providers do not raise the anticompetitive concern that revenue sharing agreements are *de facto* exclusive access arrangements. If the FCC prohibited or significantly regulated revenue sharing agreements, MTEs may be forced to solely bear these costs, potentially resulting in harm to MTE tenants. As NTCA emphasized, revenue sharing agreements are designed to offset costs that building owners incur installing, maintaining, and upgrading infrastructure for broadband service.[8] Without revenue sharing, building owners would find other ways to recoup these costs, which might include higher rent for tenants or higher door fees from providers.

Neutral host provider revenue sharing agreements are already consistent with the public interest because such arrangements promote the deployment of advanced technologies, help stimulate demand for broadband services, and enhance competition. The Commission should not restrict revenue sharing agreements to only those based on reasonable or actual costs incurred by a MTE owner in connection with a provider's access to, and use of, the building.[9] Service providers already operate in a highly competitive market such that rates for broadband services are subject to competitive pressure. The competition that MTEs face when attracting occupants, coupled with pricing pressure that service providers face for broadband services, already deters MTEs and service providers from entering into revenue sharing agreements that disadvantage MTE

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[8] *See* NTCA Comments, at 7-8.

[9] *See* Comments of Fiber Broadband Association, at 4 ("Fiber Broadband Association Comments"); *see also* Comments of CenturyLink, at 14-16 ("CenturyLink Comments").

occupants. Further regulation of the functioning and competitive free market model would be counter to the public interest.

The record also shows that compelling disclosure of revenue sharing agreements is unnecessary and not in the public interest. NCTA suggests that a disclosure requirement would not give tenants information about factors relevant in determining whether to rent space in a building, nor would it provide relevant information about broadband service available. Instead of benefiting consumers, it could instead increase consumer costs.[10] ExteNet agrees with NCTA that if building owners know in advance the terms of revenue sharing agreements negotiated in the broader marketplace, they may have the incentive and increased leverage to demand more generous terms from potential providers than they otherwise would, potentially increasing access costs to the point of discouraging investment. There is further agreement on this point; even commenters who disagree with the use of revenue sharing arrangements concede that public disclosure of such agreements would provide no consumer benefit.[11]

II. NEUTRAL HOST PROVIDERS PROMOTE COMPETITION

The record shows that the neutral host business model maximizes incentives to secure multiple service providers on a given network, and thus, promotes competition.[12] The neutral host model is dependent upon maximizing the utilization of a single network through the addition of as many tenant carriers as possible. Due to this strong incentive to add more carrier customers, neutral host providers are motivated to offer fair prices to their carrier customers and to use state-of-the-art technology that is compatible with, and meets the needs of, all carriers.

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10 *See* NCTA Comments, at 8-9.

11 *See, e.g.,* Comments of The Wireless Internet Service Providers Association, at 14-15 ("WISPA Comments"); *see also* Comments of Common Networks, at 7 ("Common Networks Comments").

12 *See, e.g.,* Crown Castle Comments, at 8-9, 11-13; Boingo Comments, at 5-7; WIA Comments, at 5-8.

a. Neutral Host Providers Offer Important Services to Building Owners

Several commenters emphasized that neutral host DAS networks promote competition in MTEs.[13] As discussed in the record, building owners frequently prefer to contract with neutral host providers because they often do not have the requisite expertise nor resources to deploy nor maintain networks themselves.[14] Neutral host providers bring the needed telecommunications expertise, experience, and contacts to leverage economies of scale, allowing them to invest substantial capital and retain the requisite technically proficient personnel to efficiently deploy high-quality, in-building, wireless telecommunications facilities.

Crown Castle and the Wireless Infrastructure Association ("WIA") also note that neutral host DAS networks manage interference concerns from multiple service providers providing in-building wireless service, which often operate in multiple frequency bands.[15] With a neutral host provider managing and maintaining the infrastructure and network, the limited MTE space that can be used for broadband infrastructure is used efficiently and managed so that the greatest number of carriers can provide service while fulfilling the MTE's aesthetic and access concerns. As affirmed by WIA, a neutral DAS allows streamlined connections, resulting in "cabling and equipment associated with neutral-host DAS networks… occupy[ing] less physical space within dense, space-constrained MTEs. Common infrastructure is also typically preferable for MTE owners and managers from an aesthetic perspective. As a result, neutral-host DAS networks

[13] *Id.*

[14] *See, e.g.,* WIA comments, at 8; Crown Castle Comments, at 4, 10-11; Real Estate Associations Comments, at 87 (A third party contract "may be able to build and manage a neutral host system more cost-effectively than the property owner acting alone, which will be more efficient over the long term than addressing problems as they arise.").

[15] *See* Crown Castle Comments, at 4; WIA Comments, at 9.

shorten a carrier service provider's time to market, streamline deployment requirements, and promote competition."[16]

From a neutral host perspective, ExteNet disagrees with commenters who focus on anticompetitive concerns related to exclusivity agreements between providers and building owners that might restrict the ability of other providers to attach to an existing DAS or deploy their own coverage solutions.[17] Such commenters do not take into account neutral host providers that ensure that numerous carriers can efficiently serve the MTE simultaneously. As Crown Castle notes, "[n]eutral host DAS operators promote competition because their business model incentivizes them to add carrier customers to their DAS."[18] Similarly, Boingo Wireless, Inc. ("Boingo") highlights that its "goal is to ensure that all tenants and guests are provided with an equal opportunity to have enhanced coverage and connectivity, regardless of their wireless service provider."[19] WIA emphasizes that neutral-host DAS networks are "beneficial to wireless deployment because this shared-infrastructure model lowers barriers to entry for new market participants and encourages broadband deployment by providing cost-savings and enhancing a carrier's speed to market."[20]

Concerns that DAS providers do not have the physical or technological capacity to accommodate more than one or two providers are largely unfounded when it comes to neutral host DAS. ExteNet typically designs its indoor networks to accommodate all of the major carriers, at a minimum. Any restrictions on the ability of other providers to attach to ExteNet's existing DAS results in the loss of significant revenue and customer goodwill to the detriment of ExteNet.

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16 WIA Comments, at 8.
17 *See, e.g.*, T-Mobile Comments, at 5-7, 14; Sprint Comments, at 2-7.
18 Crown Castle Comments, at 11.
19 Boingo Comments, at 2.
20 WIA Comments, at 7.

b. Neutral Host Providers Offer Access at Fair Prices

Due to the incentive to accommodate the maximum number of carrier customers possible, neutral host providers are motivated to offer fair prices to their network tenants. Commenters who complain about "unreasonable, non-cost-based fees"[21] fail to take into consideration the substantial investment that neutral host providers and MTE owners have put into the installation and maintenance of in-building DAS facilities, or cite to unusual scenarios outside the ordinary MTE where high costs are to be expected.[22] ExteNet's charges for its DAS carrier customers do not bring in "excessive profits for both the venue owner and the DAS operator."[23] The example Sprint cites to where it could not justify the high cost of joining a DAS is a NBA venue that clearly is on the extreme end of the range when it comes to DAS fees.[24] Sprint also cites to "excessive fees" at NFL or MLB venues[25] that, unsurprisingly, charge carriers a great deal more than a typical office building. Moreover, Sprint lumps together carrier DAS providers and neutral host providers[26] despite critical differences in their business models. One important difference is that neutral host providers are motivated to offer fair prices because such providers have the incentive to add more carrier customers, while DAS providers, at least theoretically, may take the perspective that hindering competition allows such providers to increase prices to consumers.

Commenters who argue that they can install their own facilities at a much lower cost than the access fees imposed by exclusive DAS systems[27] do not consider that there are limited places in a building where DAS facilities can be placed for maximum exposure and operational efficacy. Because of this limited space, the building owner and its representative, the neutral host provider,

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[21] T-Mobile Comments, at 5.
[22] *See, e.g.*, Sprint Comments at 3, 5-6; T-Mobile Comments, at 5.
[23] Sprint Comments, at 3.
[24] *See id.* at 5-6.
[25] *Id.* at 6.
[26] *Id.* at 1, 4.
[27] *See, e.g.*, Sprint Comments, at 2, 6; T-Mobile Comments, at 5.

should have priority and control over these locations. If the Commission were to compel MTEs to provide equal access to all providers, it would discourage the construction of optimized, shared DAS facilities by building owners and their chosen infrastructure partners.

Further, Sprint's concept of "utilization"[28] is flawed. Sprint's complaint that costs are "spread evenly across all carriers" despite the fact that not all carriers have the same utilization of DAS[29] mistakenly interprets utilization to be a measure of how many Sprint customers will use Sprint's signal on the network, rather than Sprint's use of, and tenancy on, the network infrastructure itself. Fees are typically assessed for tenancy on the network (use of the networks antenna, fiber, etc. to transmit the carrier's signal) rather than how many of a particular carrier's customers use the carrier's signal. If a network has room for four tenant carriers and Sprint occupies one of the tenant slots, it is charged the same rate for access and use of the infrastructure as the other carrier tenants due to the fact that its "utilization" of the tenancy on the network is the same as other carrier tenants. It is up to Sprint to decide whether or not it makes sense to locate on the MTE network to meet the needs of its customers. Pricing use of the network infrastructure by the number of carrier customers served does not make sense when each carrier's use of the MTE network infrastructure is effectively the same to the DAS provider – *i.e.,* each carrier customer occupies a single tenant slot. Neutral host DAS providers should not be forced to charge Sprint lower fees for access to a network serving a stadium simply because statistically fewer people inside the stadium are likely to have Sprint service even though Sprint's signal is carried over the same number of antennas, fiber strands, and radios as the signals of the larger carriers.

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[28] Sprint Comments, at 3.
[29] *Id.*

ExteNet does not limit the frequency bands that may be used by carriers. It is true, as Sprint notes, that neutral host provider such as ExteNet may ask a carrier to share the cost of adding equipment to the network if the network does not currently support the desired frequency.[30] However, this is a rare occurrence. Further, Sprint's assertion that DAS access fees are "opportunistic" because DAS are typically not designed for Sprint's 2.5 GHz spectrum[31] is flawed. Sprint is essentially arguing for the right to deploy redundant equipment to meet its specific needs even where there may be limited space or where the property owner may want to limit the equipment deployed. Neutral host networks are designed to serve the most carriers in the most efficient manner such that these networks may not be 100% ideal for any single carrier as a result.

DAS facilities require a substantial upfront investment from and continual upkeep by neutral host infrastructure providers. ExteNet agrees with Crown Castle that "[b]ecause neutral host DAS operators spend a great deal of effort and money to negotiate the ability to build out DAS in each MTE, allowing other carriers to deploy their own coverage solutions despite existing DAS agreements would undermine the incentive for neutral host DAS operators to deploy DAS technology."[32] Accordingly, neutral host networks promote competition by optimizing space and facilities to allow for multiple carriers to offer services to consumers located in MTEs as well as offer such services at fair prices.

c. Neutral Host Providers Constantly Upgrade Their Technology

Because neutral host providers are incentivized to make use of their DAS facilities to accommodate the maximum number of carriers, their DAS facilities use technology that is compatible with all carriers. Neutral host providers constantly upgrade their technology to the

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30 *See* Sprint Comments, at 3-4.

31 *Id.*, at 2-3.

32 Crown Castle Comments, at 11-12.

greatest extent possible to remain relevant in a rapidly evolving and highly competitive space. Commenters reporting that existing networks prevent carriers from offering MTE customers the latest technologies do not take neutral host providers into consideration.[33] Like other neutral host providers, ExteNet designs its DAS networks to "facilitate changes in technology which allows for flexibility for future upgrades and additional technologies,"[34] and upgrades equipment "as market conditions demand in order to keep up with technological advances."[35] If ExteNet does not keep up with the technological demands of the marketplace, it would not be able to keep its tenant or venue customers. ExteNet is incentivized to constantly upgrade its network equipment and to make its equipment usable by all providers in order to preserve its neutral host business model. In actuality, neutral host DAS providers focused on the MTE marketplace significantly invest in maintaining and upgrading such facilities because their business depends on making high-quality, cost-efficient services available to consumers and service providers alike.

d. Small Cell Deployments Do Not Justify Installing Redundant Equipment

Although the NPRM does not seek comment on small cell deployment in MTEs, some parties proposed extending any measures adopted in this proceeding to the deployment of small cells.[36] ExteNet does not support any measures designed to ease deployment of small cells within MTEs. As T-Mobile points out in its comments, small cells are carrier-specific.[37] Because they are carrier-specific, the concerns about infrastructure redundancy and proliferation noted about DAS networks and exclusive agreements apply.

33 *See e.g.* T-Mobile Comments, at 1; CCA Comments, at 3-4.
34 Boingo Comments, at 8.
35 Crown Castle Comments, at 13.
36 *See* T-Mobile Comments, at 7-10; Sprint Comments, at 9.
37 *See* T-Mobile Comments, at 8.

III. EXCLUSIVE MARKETING ARRANGEMENTS DO NOT CAUSE CONFUSION

The record does not demonstrate there is widespread confusion among tenants and/or building owners regarding the distinction between exclusive access agreements and exclusive marketing agreements. As NCTA states, "it is hard to see how MTE owners – businesses that routinely negotiate complex agreements regarding the rights and obligations associated with buildings and property – would be confused about the Commission's rules" and that there is "no need to adopt onerous disclosure and disclaimer requirements to address likely isolated incidents of MTE owner confusion."[38] Although a few commenters express that the agreements have potential to cause confusion by the landlord,[39] the Real Estate Association calls such claims pure "speculation".[40]

Suggestions that exclusive marketing practices amount to *de facto* exclusive access[41] are unfounded. For example, INCOMPAS wrongly asserts that "the only marketing a competitor can do is to send direct-mailers and hope for word of mouth publicity among tenants."[42] In this day and age, competing providers have ample alternative means to market to MTE tenants such as direct telephone solicitation, text messaging, social media, e-mail, other forms of internet-based communication and marketing vehicles, direct mail, television, radio, billboards, etc. Because of the proliferation of ways to advertise to MTE tenants, and consumers in general, exclusive marketing practices do not amount to exclusive access.

The record shows that disclosure of exclusive marketing agreements would not provide consumers with relevant information about the unit they are renting or the broadband services

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38 NCTA Comments, at 6.
39 *See e.g.* INCOMPAS Comments, at 17-18; *see also* WISPA Comments, at 21-22.
40 Real Estate Association Comments, at 91-92.
41 *See* INCOMPAS Comments, at 16; WISPA Comments, at 19-21.
42 INCOMPAS Comments, at 17.

available to them, while adding more bulk to burdensome disclosures required of operators.[43] ExteNet agrees with NCTA that potential MTE tenants make their rental decisions based on factors like price, amenities, or location, not exclusive broadband marketing disclosures.[44] The Real Estate Association also notes that it is difficult to see how "disclosing marketing arrangements to *consumers* would eliminate any claimed confusion on the part of *on-site management*."[45]

ExteNet also opposes mandatory disclosure of preferred provider agreements. If CenturyLink or other commenters are prevented from accessing a property to which they believe they should have access,[46] then their dispute is with the property owner, not the preferred provider. Further, ExteNet opposes CenturyLink's suggestion that the FCC preclude providers from entering into a preferred provider agreement unless competing on-net services are permitted.[47] Adopting such a proposal would result in the proliferation of single-carrier equipment and the lack of coordination between users, to the detriment of competition.

Finally, it is unnecessary for the Commission to entertain CenturyLink's suggestion that if the MTE has delegated its preferred provider authority and responsibility for managing all communications services in the MTE, including requests from competing providers to deploy facilities, it should be treated as a utility subject to the requirements of Section 224 imposing, among other obligations, nondiscriminatory access to the relevant infrastructure on just and reasonable rates, terms, and conditions.[48] Neutral host providers already provide fair pricing and nondiscriminatory access due to their business model and the market pressures that such providers

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43 *See, e.g.*, NCTA Comments, at 6-7, Real Estate Association Comments, at 91-92.
44 *See* NCTA Comments, at 6.
45 Real Estate Association Comments, at 92 (emphasis in original).
46 *See* CenturyLink Comments, at 16.
47 *See id.*, at 17-18.
48 CenturyLink Comments, at 18.

face. Accordingly, there is no need to impose heavy-handed regulation on such owners or managers of MTEs, setting aside the legal question as to whether the Commission has the statutory authority to do so in the first instance.

IV. CONCLUSION

Based on the foregoing, ExteNet respectfully urges the Commission to refrain from needlessly imposing any additional regulation on broadband access to MTEs.

Respectfully submitted,

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