

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

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

**REPLY COMMENTS OF THE
WIRELESS INFRASTRUCTURE ASSOCIATION**

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INTRODUCTION AND SUMMARY

The Wireless Infrastructure Association (“WIA”)¹ submits the following reply comments in response to the above-captioned *NPRM* seeking comment on actions to accelerate deployment of broadband within multiple tenant environments (“MTEs”).² As WIA explained in its initial comments and as the record now shows, the free market is working to provide robust broadband service to MTE environments, confirming that no further Commission action is needed to promote competition in MTEs. Additionally, commenters express concern that the proposals in the *NPRM* lack foundation and development, and many disagree on the Commission’s ability to act using its existing statutory authority. Accordingly, WIA asks that the Commission refrain from unnecessary regulatory intervention at this time that may disrupt the functioning market and could stifle deployment. WIA also asks that the Commission distinguish between single carrier and neutral-host deployments when assessing the competitive impacts of MTE deployments and also recognize building rooftops as distinct from the MTE environment. Ultimately, the Commission should exercise restraint to avoid regulatory overreach and avoid any action that could create undesirable, regulatory asymmetry, which could lead to regulatory arbitrage.

¹ The Wireless Infrastructure Association (“WIA”) is the principal organization representing companies that build, design, own, and manage wireless telecommunications facilities throughout the world. WIA’s members include carriers, infrastructure providers, and professional services firms.

² *In re Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking and Declaratory Ruling, GN Docket No. 17-142 (rel. July 12, 2019) (“*NPRM*”).

I. THE FREE MARKET IS WORKING AS DAS NETWORK OPERATORS, CARRIERS, AND MTE OWNERS FIND SOLUTIONS TO PROMOTE BROADBAND CONNECTIVITY.

The record shows that, over the last decade, wireless carriers, DAS operators, and MTE owners have developed effective, market-based solutions that have enabled the deployment of competitive networks to the benefit of MTE tenants.³ Strong market forces incentivize communications service operators and providers to deploy service to MTE tenants under favorable terms and conditions.⁴ To facilitate deployment and mitigate risk, DAS operators have partnered with MTE owners and carriers in unique arrangements. These arrangements, especially those involving neutral-host operators, have permitted broadband competition within MTEs to flourish while still allowing entities to effectively share the high up-front capital costs to design and to install a DAS, as well as ongoing maintenance costs.⁵ Neutral-host DAS installations in MTEs help efficiently distribute these costs among the neutral host, carriers, and the MTE owner.⁶ In particular, DAS operators bring to the table specialized technological and deployment expertise that propels broadband deployment.⁷ MTE owners that choose to have DAS facilities installed by a neutral-host DAS provider can realize space efficiencies, aesthetic benefits, and the provider's technical expertise to ultimately get the most benefit from a DAS for their building and tenants.⁸ The agreements governing these relationships have brought benefits to the MTE owners, who can defray costs, keep rents reasonable, and remain viable in a

³ Comments of Boingo Wireless, Inc. ("Boingo Comments") at 2; Comments of ExteNet Systems, Inc. ("ExteNet Comments") at 7; Comments of the Wireless Infrastructure Association ("WIA Comments") at 5.

⁴ *Accord* Comments of NCTA – The Internet & Television Association ("NCTA Comments") at 3.

⁵ This capital outlay can be significant. *See* Joint 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 ("Joint Real Estate Comments") at 16 (estimating the typical cost of an in-building DAS from \$250,000 to \$1,000,000).

⁶ Joint Real Estate Comments at 87; Boingo Comments at 3.

⁷ WIA Comments at 4.

⁸ Boingo Comments at 3; WIA Comments at 8-9.

competitive real estate market by offering competitive communications services to tenants, all of which ultimately benefit the tenants themselves.

Because the record indicates that the market is working, at this time, there is no need for additional Commission regulation of deployments in the MTE environment.⁹ In fact, commenters express concern that further regulation in this space could actually be counterproductive to the Commission's laudable aims of increasing competitive deployment and "may very well reduce overall infrastructure investment."¹⁰ For example, imposing regulations prohibiting or limiting MTE owners from entering into exclusive arrangements with neutral-host DAS providers would depress investment in DAS infrastructure in MTEs.¹¹ Commenters note that without these agreements, MTE owners may be forced to shoulder the significant costs and responsibilities of installing, upgrading, managing, and maintaining communications infrastructure or negotiate with multiple potential carriers, neither of which MTE owners are well equipped to do.¹² The business imperative of neutral-host providers coincides with the competitive goals of the proceeding – to attract as many providers as possible onto the network to serve the building's tenants. Given the potential to decrease the current market-driven incentives for MTE communications and stymie deployment through further regulation, the Commission should not alter the regulatory status quo.

Similarly, the market is working to ensure that DAS network technology appropriately meets the present and future demands of carriers, consumers, and MTE owners. Arguments calling for additional regulation to mandate upgrades to DAS networks are ill-advised and ill-defined, would "interfere[] in a functioning free market," and would have a chilling effect on the

⁹ WIA Comments at 13.

¹⁰ Joint Real Estate Comments at 21.

¹¹ Boingo Comments at 7.

¹² ExteNet Comments at 4.

deployment of future networks.¹³ As WIA explained, neutral-host DAS operators already design networks to be flexible and expandable to accommodate future providers whether by installing enough fiber to meet future demands or by leveraging equipment capable of utilizing various types of communication technology.¹⁴ Any regulation that would punish providers for failing to predict future technology is misguided. Consequently, WIA opposes proposals that would impose mandatory, “future-proofing” requirements on DAS networks.¹⁵

II. THE RECORD INDICATES THAT MISCONCEPTIONS REMAIN REGARDING CRITICAL CONCEPTS AND TERMS IN THIS PROCEEDING.

A. Neutral-Host Rooftop Agreements are Distinct from and Must be Treated Differently from In-building DAS Agreements.

Rooftop wireless facilities are not part of the MTE environment, so the Commission should avoid imposing additional regulation on agreements to manage rooftops. Wireless facilities deployed on an MTE rooftop have little in common with wireless or wireline deployments within the MTE, most notably because they do not provide service to the MTE tenants.¹⁶ As Crown Castle correctly recognized, “[r]ooftop access thus has less to do with the MTE tenants and more to do with wireless deployment generally, making it more like towers and small cells than inside wiring.”¹⁷ For one, the vast majority of antennas mounted on an MTE rooftop provide coverage to the area surrounding that MTE, not the MTE tenants themselves.¹⁸ Second, rooftop antennas are mounted outside, and while they may have some wiring that runs through the building, depending on the nature of the deployment, they do not raise the same

¹³ ExteNet Comments at 9; *see* Boingo Comments at 8; Comments of Crown Castle International Corp. (“Crown Castle Comments”) at 12-13; WIA Comments at 15-16.

¹⁴ WIA Comments at 15-16.

¹⁵ Boingo Comments at 8; Crown Castle Comments at 12-13.

¹⁶ *See* Real Estate Associations Comments at 70 (“To the extent that the purpose of the NPRM is to expedite broadband deployment inside MTEs, a discussion of rooftops seems out of place”); *see also* WIA Comments at 5 (distinguishing in-building DAS and rooftop deployments).

¹⁷ Crown Castle Comments at 3.

¹⁸ *Id.* at 10; Joint Real Estate Comments at 70; WIA Comments at 6.

issues presented by indoor DAS and other interior deployments. Finally, rooftop installations often transmit at the same power and frequencies as macro sites. Because the vast majority of rooftop deployments involve external antennas installed and directed to provide coverage to the general public using the same power and frequencies as macro towers, rooftops are directly analogous to other outdoor antenna structures such as macro towers. The similarities between rooftops and macro towers have led to analogous treatment and free-market solutions based on the Commission's collocation model for wireless deployments on these structures, particularly where a neutral-host is involved.

The Commission should accordingly reject arguments that suggest conflating agreements to manage and lease a building's rooftop to multiple carriers with other types of agreements regarding facilities located within the MTE.¹⁹ As discussed above, these environments are inapposite—in terms of both the customers they serve and the challenges inherent to each—and it is accordingly unreasonable to attempt to treat them the same. Conflating these two types of environments ignores the unique and important benefits of rooftop management agreements, like increased competition and enhanced wireless broadband availability in the area surrounding the MTE.²⁰ Rooftop management agreements “do[] not impact competition in MTEs” and should thus not be considered in this proceeding.²¹ Moreover, a neutral-host rooftop management agreement provides important benefits to MTE owners by (1) facilitating compliance with safety and technical requirements, such as inspections; (2) marketing to multiple carriers, promoting competition; and (3) coordinating installations among multiple carrier-tenant antennas.²² Furthermore, because rooftop management agreements more closely resemble wireless tower

¹⁹ See NCTA Comments at 12 (suggesting that “[a]ny requirements related to building access, revenue sharing, marketing, or sharing of facilities should apply to MTE rooftop access and facilities and DAS as well . . .”).

²⁰ Crown Castle Comments at 5; WIA Comments at 11.

²¹ Crown Castle Comments at 10.

²² *Id.* at 4-5; WIA Comments at 11.

tenant lease agreements than other MTE wiring agreements, they are not likely within the Commission's jurisdiction. The record supports maintaining the current distinction between rooftop deployments and deployments interior to an MTE; therefore, the Commission should refrain from addressing rooftops in this proceeding.

B. The Commission Should Exercise Caution When Defining Terminology.

1. The Commission Should Recognize the Critical Distinction Between Carriers and Neutral-Hosts in an MTE Environment.

Those commenters addressing the concept of the neutral-host model lauded it as beneficial to competition.²³ It is critical to this proceeding that the Commission recognize this key distinction.²⁴ As WIA and others explained, neutral-host DAS operators and neutral-host rooftop agreements reduce barriers to entry and drive competition among carriers²⁵ because the neutral-host model depends on attracting multiple carriers to the neutral-host facility.²⁶ For instance, some commenters correctly point out that while leasing an entire building rooftop to one *carrier* lessens an MTE owner's earning potential, partnering with a *neutral-host* would likely encourage and facilitate several additional carriers to collocate on the same rooftop, bringing additional revenue to the MTE owner.²⁷ Commenters point out that the Commission has historically "limited the scope of its regulatory authority to entities clearly within its

²³ ExteNet Comments at 6; Boingo Comments at 3-6; Crown Castle Comments at 11-13; WIA Comments at 7-8; Comments of INCOMPAS ("INCOMPAS Comments") at 19.

²⁴ Similarly, the *NPRM* does not adequately recognize the distinctions between wireless and wireline deployment *within* MTEs. This underscores why the Commission should approach any additional regulation with caution as it considers wireless and wireline providers that may have varying strengths and challenges.

²⁵ WIA Comments at 7-8; *see* ExteNet Comments at 4 ("Through revenue sharing arrangements, neutral host providers promote the deployment of advanced technologies, help stimulate demand for broadband services, and enhance competition benefiting tenants/consumers."); Real Estate Associations Comments at 3 ("The Real Estate Associations believe strongly that the marketplace is working, and so we urge the Commission to avoid measures that could prove counterproductive, and thereby harm investment, constrain competition, and limit consumer access to broadband service.").

²⁶ ExteNet Comments at 6; INCOMPAS Comments at 19.

²⁷ Joint Real Estate Comments at 69. Other commenters failed to acknowledge this key distinction between carrier rooftop agreements and neutral host rooftop agreements. For example, the Community Associations Institute calls rooftop management agreements "uneconomic." *See* Comments of Community Associations Institute at 10. In fact, as discussed above, neutral-host agreements to manage and market a rooftop to multiple carriers can bring significant benefits to an MTE owner, including increased revenue from multiple carrier tenants.

jurisdiction, including common carriers and multichannel video programing distributors ('MVPDs').²⁸ The weight of the record indicates that the Commission should continue this approach.²⁹ Because neutral-host systems encourage competition by their nature, the Commission should distinguish between single-carrier and neutral-host deployments when discussing issues and rules within MTEs.

2. The Commission Should Clearly and Narrowly Define the Term "MTE".

Adopting an over-expansive definition of the term MTE could have strong, adverse implications for the Commission's ability to regulate. The *NPRM* defines "MTE" as "commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities," which would encompass everything within the scope of two terms the Commission previously used—multiple dwelling unit and multiunit premises.³⁰ For instance, defining MTEs to include venues that primarily host transient guests in public or semi-public spaces, such as stadiums, hotels, hospitals, or prisons, would likely magnify the definition beyond the Commission's current jurisdiction and the scope of this *NPRM*.³¹

Moreover, an expansive and vague definition of MTEs could cause confusion in how to implement the Commission's rules in mixed-use environments. For example, in a sports arena the portion of the building housing multiple vendors could be considered an MTE, but the seating area for spectators should clearly not qualify. This issue becomes even more complex when considering the technical demands of covering a building because the equipment deployed in an MTE, such as a multi-unit apartment building, is often different from what is used in a

²⁸ ExteNet Comments at 2.

²⁹ *Id.* at 2-3.

³⁰ *NPRM* at n.2.

³¹ Crown Castle Comments at 5-6; Boingo Comments at 8-10.

more transient environment, like a hospital. Accordingly, if the Commission decides to take further action to define MTEs, WIA asks that the Commission exercise restraint and adopt a clear and narrow definition of MTEs, limiting the definition only to residential and office buildings where people live and work. To the extent that the Commission wants to expand the definition of MTEs beyond those traditional structures, the Commission must recognize that bifurcated treatment of the building is absolutely necessary.

III. THERE IS A NOTABLE LACK OF AGREEMENT IN THE RECORD REGARDING THE NEED FOR FURTHER ACTION AND THE COMMISSION'S AUTHORITY.

There is tremendous disagreement among commenters about how the Commission could carry out the proposals in the *NPRM*. Many commenters, including WIA, question the need for any additional regulations at this time, arguing that the Commission should stay its current course given the current success of the free-market solutions in encouraging broadband deployment within MTEs.³²

The Commission also faces jurisdictional limits in this proceeding. Commenters point out that many of the Commission's disparate proposals to regulate in this area are unsupported by existing law.³³ For instance, commenters point out that Section 201(b) is, at best, a shaky foundation for further Commission regulation in this space.³⁴ As WIA and others indicated, regulatory status as a common carrier is a prerequisite to being regulated under Section 201(b), yet most infrastructure companies that are parties to agreements with MTE owners to manage rooftop antennas are not common carriers, and companies that build or managing in-building

³² See, e.g., Joint Real Estate Comments at 2 (opposing the *NPRM*'s proposals and advising the FCC to "allow the existing competitive market to continue to operate"); ExteNet Comments at 2-3 (noting that the correct regulatory balance has been struck and encouraging the commission to "continue its current approach to MTEs."); WIA Comments at 15-16.

³³ See, e.g., Joint Real Estate Comments at ii ("[F]urther regulation will only stretch the Commission's authority to the breaking point.").

³⁴ See *id.* at 44.

DAS similarly may not be common carriers.³⁵ Due to the significant disagreement in the record, the Commission should not take any further action at this time.

CONCLUSION

As described in WIA's initial comments and bolstered by the record in this proceeding, the market for broadband services within MTEs is flourishing, propelled by a neutral-host model that brings tangible benefits to MTE owners and tenants. Intervention by the Commission at this time could upset this delicate regulatory balance and hamper or inhibit further deployment. Moreover, commenters express concerns about the regulatory imbalance certain proposals in the *NPRM*, and definitional issues must be resolved prior to taking further action. Because the free market is currently working to support competition within MTE environments, the record thus supports the Commission preserving the status quo.

Respectfully submitted,

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³⁵ WIA Comments at 14; Crown Castle Comments at 15-18.