

August 22, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**RE: GN Docket No. 17-142 – In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments**

Dear Ms. Dortch:

The undersigned organizations,<sup>1</sup> representing an array of real estate industry sectors, respectfully ask the Commission to refrain from imposing regulatory limits on exclusive marketing, bulk billing, revenue sharing or exclusive wiring agreements for broadband service in Multiple Tenant Environments (MTEs) in the above-referenced proceeding.<sup>2</sup> Such agreements actually enhance competition and serve as an important mechanism to incentivize infrastructure deployment, reduce costs, and establish higher service quality standards. Moreover, the record lacks evidence to demonstrate that such agreements interfere with competition. Residential and commercial tenants, as well as owner occupants of MTEs, benefit from high-quality service options at competitive prices under existing regulations.

We support the comments filed by the National Multifamily Housing Council (NMHC) in this proceeding.<sup>3</sup> Limiting currently-permissible agreements between MTE owners and service providers would unduly interfere with a property owner's ability to negotiate terms that benefit consumers. Further, restricting such agreements would retroactively impose risks on service providers which could not have been anticipated at the time they entered existing agreements with MTE owners and would discourage future investment. Potential regulatory restrictions on

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<sup>1</sup> We are nationally-recognized trade associations involved in most aspects of the real estate industry. Our members consist of residential and commercial property owners, managers, and developers, investors, brokers, Realtors, and lenders.

<sup>2</sup> *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Inquiry, GN Docket No. 17-142, FCC 17-78 (rel. June 23, 2017) (“NOI”)

<sup>3</sup> See Comments of the National Multifamily Housing Council, GN Docket No. 17-142 (filed July 24, 2017).

these agreements pose particular risks for smaller providers, thereby threatening innovation, competition and deployment to the properties and consumers they serve.

For new properties, MTE owners begin negotiations with service providers prior to building construction. Each agreement is based on the unique characteristics of an individual project. MTE owners and service providers negotiate the allocation of multi-million dollar costs of installing and maintaining the wiring and other infrastructure necessary to provide services that are now standard in our properties and expected by the residents, tenants and occupants of our buildings. Service providers work with us to serve the range of consumers who live, work and operate businesses in our properties.

Service providers, including newer market entrants, are freely competing and do not need preferential regulatory changes. The MTE market is vast and new entrants have abundant opportunity to compete. Anecdotal evidence is insufficient to warrant regulatory intervention.

Limitations on exclusive wiring agreements between a service provider and an MTE owner would regulate the MTE, not the service provider. Such regulation would exceed the Commission's authority because the MTE owner is not subject to Commission jurisdiction. Moreover, forcing an MTE owner to share use of the wiring would be an unconstitutional taking.<sup>4</sup>

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<sup>4</sup> Comments of the Real Access Alliance, MB Docket No. 07- 51, at 21 (filed Jul. 2, 2007).

We urge the Commission to continue to refrain from proposing rules that would prohibit or limit exclusive marketing, bulk billing, revenue sharing or exclusive wiring agreements between MTE owners and broadband service providers.

Respectfully Submitted,

Building Owners and Managers Association International

Institute of Real Estate Management

International Council of Shopping Centers

National Apartment Association

National Association of Real Estate Investment Trusts

National Association of Realtors

National Multifamily Housing Council

Real Estate Roundtable