

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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



COMMENTS

I. INTRODUCTION AND SUMMARY

ACA Connects hereby submits comments in response to the Wireline Competition Bureau’s Public Notice¹ seeking to “refresh the record” on issues pertaining to broadband competition and access in multiple tenant environments (“MTEs”) that the Federal Communications Commission (“Commission”) introduced in a prior Notice of Proposed Rulemaking (“NPRM”).² In ACA Connects members’ experience, the market for broadband and various communications services in MTEs is generally competitive. The size and density of MTEs creates incentives for service providers of various sizes and technologies to compete vigorously in these environments. Building owners and

¹ See *Wireline Competition Bureau Seeks to Refresh Record on Improving Competitive Broadband Access to Multiple Tenant Environments*, Public Notice, GN Docket No. 17-142, DA 21-1114 (2021).

² See *Improving Competitive Broadband Access to Multiple Tenant Environments et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, GN Docket No. 17-142, FCC 19-65 (2019).

property managers,³ in turn, possess incentives and significant bargaining power to negotiate terms and conditions, albeit not exclusive access agreements, that are favorable for them and their tenants. Through these marketplace dynamics, residents and businesses in MTEs generally are receiving high-speed broadband service at rates that are comparable to, or often much lower than, those available to households and businesses not in MTEs. In many cases, they also enjoy service performance guarantees, community WiFi, and other perks that the MTE owner has negotiated on their behalf.

ACA Connects recognizes that – for any number of reasons, including some that the Commission may lack jurisdiction to address – some MTEs may have limited or low-quality broadband options. There may be opportunities for Commission intervention that would improve broadband access and competition within such MTEs. Yet in pursuing such measures, the Commission must be careful not to disrupt service arrangements in other MTEs that are delivering significant value to residents and businesses. To strike this balance, we encourage the Commission to identify with precision any competitive deficiencies in this marketplace—which may be limited to certain geographic areas or types of MTEs—and to craft solutions that are narrowly tailored to addressing any such problems. Given the complex ecology of the MTE marketplace, it would be unwise for the Commission to adopt hard-and-fast rules against any broad category of practice – *e.g.*, revenue sharing or exclusive marketing – that may take different forms in different marketplace contexts. Rather, we urge the

³ The Bureau uses the term “MTE owner” to refer generally to “the premises owner or controlling party” of an MTE. See Public Notice at 1. We use this term as well throughout our comments.

Commission to proceed more cautiously and incrementally, such as by adopting disclosure requirements that make various service arrangements more transparent.

II. ACA CONNECTS MEMBERS COMPETE EFFECTIVELY IN THE MTE MARKETPLACE BY DELIVERING HIGH-QUALITY BROADBAND SERVICE OFFERINGS ON ATTRACTIVE TERMS AND CONDITIONS

ACA Connects represents small and medium-sized providers of broadband and other communications services. Our member companies employ the most advanced wireline broadband technologies, including DOCSIS and fiber-to-the-premises, and they typically deliver speeds that vastly exceed the Commission's 25/3 Mbps speed benchmark for fixed broadband deployment. ACA Connects members provide these high-quality broadband services, along with video and other communications services, to households and businesses in MTEs.

As a general matter, ACA Connects members face substantial competition in seeking to enter and provide service in MTEs. Because these environments aggregate a large number of potential customers within a confined geographic area, they present attractive business opportunities for broadband providers. Accordingly, in most instances, numerous broadband providers, including existing local providers, as well as regional providers that specialize in the provision of service to MTEs, and those offering service over different technologies, vie to serve tenants in MTEs.

ACA Connects members serve MTEs under a diverse variety of business arrangements, but it is possible to classify these arrangements into two broad categories. In the first, an ACA Connects member enters into a non-exclusive contract with an MTE owner to provide broadband and various communications services throughout an MTE. These types of arrangements are common in, but not exclusive to,

new MTE developments. Typically, the member company will have secured a non-exclusive contract with the MTE owner to provide service in the building. In selecting a provider and negotiating the contract, the MTE owner holds considerable power to extract terms and conditions that benefit the owner, including service level guarantees for tenants that the owner can use as selling points in attracting and retaining tenants, and the ACA Connects member will have prevailed only by meeting or exceeding the MTE owner's demands.

Indeed, the ACA Connects member often agrees to bear substantial upfront costs—which can run from tens of thousands to millions of dollars, depending on the size and configuration of the MTE and the broadband technology being deployed—to wire the premises. They also pay recurring fees to occupy the building. Often, they also agree to provide service to MTE tenants at highly discounted bulk rates—generally at least 50 percent and as high as 80 percent off the retail price—and to deliver other benefits, including dedicated customer support; network uptime or other service performance guarantees; and Wi-Fi in common areas.⁴ To mitigate their risk of losing money on its investment, the ACA Connects member may seek certain contractual rights and privileges.⁵ To be clear, the ACA Connects member never receives exclusive

⁴ The MTE owner sometimes demands that the ACA Connects member share a portion of the revenues it generates from providing service to the MTE.

⁵ In some cases, ACA Connects members obtain exclusive marketing rights as part of these agreements. Exclusive marketing arrangements are particularly beneficial for an ACA Connects member that is a new entrant in a given geographic market and/or competing against an established, incumbent provider with high name recognition. An exclusive marketing arrangement does not preclude competitors from marketing their services to tenants, but only from doing so in specific ways.

rights to serve the MTE, but only more limited rights that do not preclude entry from competitors.⁶

The second type of business arrangement is to provide service to an individual MTE tenant on a retail basis. These arrangements are feasible for providers where the costs to enter an MTE and connect an individual tenant are relatively low, which may be due to a number of factors, including: the location of the MTE within the provider's service area; the existence of inside wiring that is available for the provider's use and compatible with its broadband technology;⁷ and the MTE owner's willingness to permit entry, whether voluntarily or under penalty of a State-level mandatory access law.⁸ In such environments, there are often multiple providers competing at the retail level to serve individual tenants. In other words, these MTEs are subject to competitive dynamics that are comparable to those of the non-MTE segment of the marketplace.

III. THE COMMISSION SHOULD AVOID DISRUPTING MTE SERVICE ARRANGEMENTS THAT ARE BENEFICIAL FOR TENANTS

In the Public Notice, the Bureau seeks comment on “a range of common practices in MTEs that could have the effect of dampening competition or deployment.”⁹ The Public Notice focuses in particular on revenue sharing agreements; exclusive wiring agreements; and exclusive marketing agreements. Though there may be instances

⁶ As the NPRM observes, the Commission ruled in 2007 that multichannel video programming distributors (“MVPDs”) may not enter agreements that grant them exclusive access to provide video service to a residential MTE. See *NPRM*, para. 4. ACA Connects members are aware of and abide by this restriction in entering agreements to provide communications services to such MTEs.

⁷ Even where wiring is available in an MTE, an entering provider may opt to deploy its own, higher-quality wiring so that it can provide higher speeds or more reliable service.

⁸ ACA Connects members report that they have been successful in invoking State mandatory access laws to secure entry into MTEs in situations where MTE owners have sought to deny or impede entry.

⁹ See Public Notice at 1-2.

where service providers – or, even more likely, MTE owners – have acted in ways that are worthy of criticism, MTEs in general are as competitive as other segments of the broadband marketplace, if not more so. In taking steps to rein in bad actors, the Commission must be careful not to disrupt the robust competition that characterizes this market segment overall.

In particular, the Commission must appreciate that market forces are producing broadband competition in MTEs that can take different forms. In some cases, providers compete for the opportunity to serve the MTE through a contractual agreement with the MTE owner. In other cases, they compete vigorously for individual tenants, just as they compete for non-MTE households and businesses. Far from dampening competition, the first type of arrangement harnesses competition to deliver tremendous benefits to tenants. As noted above, there are often multiple providers – as many as four or five – competing to be the first to enter an MTE. By bargaining collectively on behalf of all MTE tenants, an MTE owner is often able to secure discounted pricing and other concessions from the winning provider that an individual tenant would never be able to obtain on their own. Indeed, ACA Connects members report that it is typical for MTE owners to hire expert consultants and legal counsel to conduct these negotiations on their behalf. These sophisticated players are able to extract deals on highly favorable terms.

In some instances, ACA Connects members encounter tactics from MTE owners that they find troubling and that are potentially harmful to tenants. In particular, some MTE owners have made demands for revenue sharing that strike ACA Connects

members as excessive and make the MTE less attractive to serve.¹⁰ But given the complexity and variety of MTE service arrangements, and the fact that State and local regulation of MTE access differs markedly from place to place, it can be difficult to predict the competitive impact were the Commission to change any one variable. Moreover, any attempt to regulate specific business practices could have unforeseen consequences on the broader marketplace that undermine rather than foster competition. And ultimately, the benefits of any such restrictions may be speculative or uncertain. Accordingly, we urge the Commission to proceed carefully in identifying any competitive deficiencies in this marketplace and to ensure that any rules it adopts are narrowly targeted at addressing such problems without causing harm elsewhere.

IV. THE COMMISSION SHOULD CONSIDER TRANSPARENCY REQUIREMENTS OR OTHER TARGETED MEASURES TO ADDRESS ANY LIMITED PROBLEMS THAT MAY EXIST IN THE MTE MARKETPLACE

The Public Notice seeks comment on a variety of approaches for addressing practices in the MTE marketplace that may, in some cases, impair competition or consumer choice. As discussed above, ACA Connects is concerned that overly broad prohibitions on practices such as exclusive marketing are likely to have negative unintended consequences in a marketplace this complex and diverse. We therefore urge the Commission to take a less intrusive, more incremental approach, should it feel the need to take some near-term action while studying the marketplace.

In particular, we urge the Commission to consider, at least as a first step, addressing revenue sharing and/or exclusive marketing arrangements through an

¹⁰ As a general matter, ACA Connects members do not seek out revenue-sharing agreements; rather, they agree to pay the amounts an MTE owner demands where the revenue potential is sufficient to justify making these payments on top of any costs to provide service.

appropriately tailored disclosure requirement.¹¹ Such an approach would help ensure that MTE tenants are adequately informed of contractual agreements that have an impact on the broadband service options that are available to them. Moreover, “sunlight is the best disinfectant”: disclosure requirements could help root out practices (including those of landlords and property managers) that may be harmful to tenants. In the aggregate, required disclosures could also provide the Commission with information about the marketplace that would be relevant in assessing whether further intervention is required and in what form.

¹¹ In particular, the Commission could require a service provider entering a new contract with an MTE owner that includes such an arrangement to obtain an assurance from the MTE owner that it will disclose the arrangement publicly or, at minimum, to its tenants.

V. CONCLUSION

ACA Connects appreciates the opportunity to participate in this proceeding, and encourages the Commission to take its comments into consideration.

Respectfully submitted,



Matthew M. Polka
President and Chief Executive Officer
ACA Connects – America’s
Communications Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Brian Hurley
Vice President of Regulatory Affairs
Ross J. Lieberman
Senior Vice President of Government
Affairs
ACA Connects – America’s
Communications Association
2415 39th Place, NW
Washington, DC 20007
(202) 573-6247

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