

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

In the Matter of

Termination of Certain Proceedings as Dormant

)
)
)
) GN Docket No. 25-165
)
)

**COMMENTS OF
THE NATIONAL MULTIFAMILY HOUSING COUNCIL,
THE NATIONAL APARTMENT ASSOCIATION,
AND THE REAL ESTATE TECHNOLOGY & TRANSFORMATION CENTER**

Matthew C. Ames
HUBACHER AMES & TAYLOR, P.L.L.C.
4084 University Drive
Suite 101
Fairfax, Virginia 22030
(703) 345-1179
Counsel for:
the National Multifamily Housing Council,
the National Apartment Association, and the
Real Estate Technology & Transformation Center

July 9, 2025

SUMMARY

The National Multifamily Housing Council (“NMHC”), the National Apartment Association (“NAA”), and the Real Estate Technology & Transformation Center (RETTTC) submit these Comments in response to the Commission’s Public Notice dated May 2, 2025 (the “*Notice*”). The apartment industry provides rental homes for 40.3 million Americans from every walk of life, including seniors, teachers, firefighters, healthcare workers, families with children, and many others who enrich our communities. Rental housing owners understand how critical high-quality communications services are for their residents.

Every rental community is different, and meeting resident needs requires property owners and managers to be attuned to both resident desires and the options available in the market. Although well-intentioned, government regulation often limits the range of options available to owners, and therefore to residents. NMHC, NAA, and RETTTC appreciate this opportunity to inform the Commission of pending proceedings that should be terminated.

The Commission Should Promptly Terminate the Multiple Tenant Environment Proceeding, GN Docket No. 17-142. This docket was opened eight years ago. During that time, NMHC and NAA, now joined by RETTTC, have provided the Commission with thirty sworn declarations, two industry surveys, and numerous other reports and reviews of industry data and practices. Today, however, there is no further notice of proposed rulemaking pending and no further action in this docket is required.

The Commission has considered the relevant issues and arguments at length; it is clear that broadband subscribers and other consumers of communications services would not benefit from further regulatory action. In fact, leaving the docket open could have the opposite effect, because as long as property owners believe that the Commission could once again ask for

comment at any moment and begin examining the same practices yet again, they will be forced to be cautious in considering new alternatives for getting services to their residents. Leaving the docket open also encourages providers to urge the Commission to reconsider the same proposals even though neither the marketplace nor the issues have changed.

NMHC, NAA, and RETTC therefore respectfully request that the Commission formally close GN Docket No. 17-142 without delay.

The Commission Should Also Terminate the OTARD Update Proceeding, WT

Docket No. 19-71. Further action is also neither required nor appropriate in WT Docket 19-71.

There has been no significant activity in this docket in over four years, there are no pending issues to resolve, and the repeal of the *Chevron* doctrine has brought into question the Commission's authority to further expand the scope of the Over-the-Air Reception Devices rule.

NMHC, NAA, and RETTC support the Commission's Proposal to Terminate MB

Docket 17-91 and WT Docket 99-217. We agree that these proceedings are dormant, one for over five years and the other for nearly two decades.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	1
INTRODUCTION	1
I. THE COMMISSION SHOULD PROMPTLY TERMINATE THE MULTIPLE TENANT ENVIRONMENT PROCEEDING, GN DOCKET NO. 17-142.....	3
A. Over the Course of the Past Eight Years, NMHC and NAA Have Submitted a Large Volume of Information Showing that Owners of Multitenant Rental Properties Respond to the Broadband Needs of their Residents.	4
B. Delivery of Adequate Broadband Service in Low-Income Properties Poses Particular Challenges to Broadband Providers and Housing Providers.....	10
II. THE COMMISSION SHOULD ALSO TERMINATE WT DOCKET 19-71.	16
III. NMHC, NAA, AND RETTC SUPPORT THE TERMINATION OF MB DOCKET 17-91 AND WT DOCKET 99-217.....	18
CONCLUSION	19

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

In the Matter of)	
)	
Termination of Certain Proceedings as Dormant)	GN Docket No. 25-165
)	
)	

**COMMENTS OF
THE NATIONAL MULTIFAMILY HOUSING COUNCIL,
THE NATIONAL APARTMENT ASSOCIATION,
AND THE REAL ESTATE TECHNOLOGY & TRANSFORMATION CENTER**

Introduction

The National Multifamily Housing Council (“NMHC”)¹, the National Apartment Association (“NAA”),² and the Real Estate Technology & Transformation Center (RETTC)³

¹ Based in Washington, D.C., the National Multifamily Housing Council is where rental housing providers and suppliers come together to help meet America’s housing needs by creating inclusive and resilient communities where people build their lives. NMHC advocates for solutions to America’s housing challenges, conducts rental-related research and promotes the desirability of rental living. Over one-third of American households rent, and over 21 million U.S. households live in an apartment home (buildings with five or more units).

² The National Apartment Association serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 141 state, local and global affiliates, NAA encompasses over 92,000 members representing more than 11 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation.

³ The Real Estate Technology & Transformation Center (RETTC), strategically aligned with the National Multifamily Housing Council (NMHC), brings together real estate companies and technology providers to blaze a path forward for digital transformation in America. The Center serves as the preeminent advocacy, resource and networking platform for real estate and tech leaders as they navigate a long-term and complex technology-enabled transformation. This evolution will impact the renters and communities we serve, help address our nation’s long-term housing challenges, improve business operations and enhance our ability to drive innovation across the economy.

respectfully submit these Comments in response to the Commission’s Public Notice (the “*Notice*”).⁴

The rental housing industry provides apartment homes for 40.1 million Americans from every walk of life, including seniors, teachers, firefighters, healthcare workers, families with children, and many others who enrich our communities. The members of NMHC, NAA, and RETTC serve residents of every “income level, race, ethnicity, color, religion [and] national origin,”⁵ and owners of rental housing communities are dedicated to meeting the housing-related needs of all of their residents. One of those critical needs, for every class of multifamily resident, is adequate broadband internet access service.

The rental housing industry has repeatedly demonstrated its desire to work with the Commission as a stakeholder in advancing national policy for the deployment of high-quality communications services and facilities that will serve all Americans. NMHC, NAA, and RETTC wish to maintain a productive relationship with the Commission, so that the three associations may continue to give the Commission accurate and useful information as the agency performs its functions.

At the same time, in responding to the *Notice*, NMHC, NAA, and RETTC must emphasize, as they have consistently argued, that the Commission’s various interventions in the rental real estate arena have been unnecessary, because the rental housing industry is highly competitive and rental housing owners are fully aware of their need to meet the expectations of

⁴ *In the Matter of Termination of Certain Proceedings as Dormant*, GN Docket No. 25-165, Public Notice (rel. May 2, 2025).

⁵ 47 U.S.C. § 1754(b)(1).

their residents. NMHC, NAA, and RETTC therefore appreciate the opportunity to comment on the Commission's notice of dormant proceedings that should be terminated.

I. THE COMMISSION SHOULD PROMPTLY TERMINATE THE MULTIPLE TENANT ENVIRONMENT PROCEEDING, GN DOCKET NO. 17-142

No further action is required in GN Docket No. 17-142, and no purpose would be served by keeping the docket open.⁶ In 2024, Chairwoman Rosenworcel announced that she was considering further action in that docket, for the purpose of regulating bulk service agreements. An item was placed on the Commission's agenda for approval on circulation, but the Chairwoman's announcement was met with widespread opposition, primarily because bulk agreements are often the only effective method for delivering high-quality broadband service in a range of environments, in particular low-income properties and senior housing. Chairman Carr has since removed the item from the circulation agenda. NMHC, NAA, and RETTC appreciate Chairman Carr's action, which preserves an effective model for serving many rental housing residents.

As we discuss in Part I(A), the Commission has thoroughly examined issues related to broadband access in multiple tenant environments over the past eight years. Unfortunately, some misguided state legislators have begun similar efforts, without recognizing that residents have access to good quality, affordable broadband service because rental housing owners are able to

⁶ The Commission has requested comment in this docket (the "*MTE Proceeding*") three times: (i) *In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Notice of Inquiry, 32 FCC Rcd 5383 (2017) (the "*2017 NOP*"); (ii) *In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Notice of Proposed Rulemaking, 34 FCC Rcd 5702 (2019) (the "*2019 NPRM*"); and (iii) *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Public Notice, 36 FCC Rcd 13,441 (2021) (the "*2021 Public Notice*").

negotiate with communications providers to secure the best possible connectivity. We address this in some detail in Part I(B), but also urge any person interested in pursuing such issues to review the record in GN Docket No. 17-142. The docket should be closed because further regulation is not required.

NMHC, NAA, and RETTC are gratified that, although the Commission did enact some rules affecting the rental housing industry in recent years, for the most part the Commission seems to have considered our arguments and responded in a manner that preserved the successful communications provider-rental housing owner relationship. We also appreciate the desire of the Commission's new leadership to reduce the burden of regulation on the communications industry, and we hope that this desire extends to other stakeholders, including property owners.

A. Over the Course of the Past Eight Years, NMHC and NAA Have Submitted a Large Volume of Information Showing that Owners of Multitenant Rental Properties Respond to the Broadband Needs of their Residents.

On April 4, 2017, the Media Bureau issued a public notice seeking comment on a petition for declaratory ruling filed by the Multifamily Broadband Council.⁷ The *MTE Proceeding* was formally opened on June 1, 2017. In the eight years since, NMHC and NAA have participated in seven rounds of comment initiated by the Commission that pertained in some fashion to the use of real property by communications providers.⁸ NMHC and NAA were joined by RETTC in

⁷ *Petition for Preemption of Article 52 of the San Francisco Police Code*, MB Docket No. 17-91, Public Notice, 32 FCC Rcd 2893 (2017) (the “2017 Public Notice”).

⁸ In addition to the 2017 *Public Notice*, the 2017 *NOI*, the 2019 *NPRM* and the 2021 *Public Notice*, these include (i) *In the Matter of Updating the Commission's Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Notice of Proposed Rulemaking, 34 FCC Rcd 2695 (2019) (the “OTARD NPRM”); (ii) *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry, 37 FCC Rcd 4198 (2022); and (iii) *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention*

responding to the now-withdrawn proposal for regulating bulk service agreements. As we had done in a previous series of regulatory efforts a decade earlier, throughout this period the rental housing industry has consistently made every effort to give the Commission thorough, accurate, and timely information about the state of competition for broadband services in the residential multitenant rental market and the typical terms of contracts negotiated between property owners and broadband providers. Since 2017, this effort has produced a very large quantity of factual information.

The associations undertook this extensive effort for three reasons. First, because we were confident that the record would show that the kinds of regulations being proposed would prove to be unnecessary. Second, because we were committed to working in partnership with the Commission to reach results that were truly in the public interest. And third, because we believe that government regulation must be data-driven and evidence-based. No agency should exercise government power in response to mere anecdotes, ungrounded theories, or one-sided allegations of harm.

In response to the *2019 NPRM*, NMHC and NAA conducted a survey of rental housing owners, which asked numerous questions directly relevant to the issues raised in that docket. When the *2021 Public Notice* was released, NMHC and NAA conducted a second survey. This survey resulted in updated information regarding competition in the residential market, as well as information regarding wiring sharing, and the types of costs borne by rental housing owners.

and Elimination of Digital Discrimination, GN Docket No. 22-69, Notice of Proposed Rulemaking, 2022 FCC Lexis 4169 2022) (the “*Digital Discrimination NPRM*”).

Furthermore, our filings in each round were supported by detailed declarations proposed by rental housing owners and respected industry consultants, submitted under penalty of perjury. We have submitted a total of thirty declarations. One critical key finding of this work was that rental housing residents have a choice of at least two providers in 79% of properties owned by the average respondent to our 2021 survey.⁹

There is little doubt that the cable MSOs are currently serving nearly all rental housing communities in the country in some fashion, or that the ILECs are also a strong presence in a large majority of buildings. There is also a large group of smaller competitive broadband providers that serve rental housing residents under agreements with property owners. The record reflects that rental housing owners are expanding competition to include three, four, and sometimes more providers. In fact, the data suggests that the number of properties with more than two providers nearly doubled between 2019 and 2021,¹⁰ and there is every reason to believe that growth will accelerate, as it has for other kinds of communications applications and services. Regulation of contract terms has not been necessary because the free market is working, as competitive broadband providers demonstrate the value of their services and build their reputations.

The last formal action in this docket was taken three years ago, when the Commission issued an order and declaratory ruling.¹¹ The Commission did not issue a further notice of

⁹ Further Joint Comments of NMHC *et al.*, GN Docket No. 17-142, (filed October 20, 2021) (“*MTE 2021 Further Comments*”), at p. 5, n.10; p. 11.

¹⁰ Further Joint Reply Comments of NMHC *et al.*, GN Docket No. 17-142, (filed November 19, 2021) (“*MTE 2021 Further Reply*”) at p. 10.

¹¹ *In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Report and Order and Declaratory Ruling, 37 FCC Rcd 2448 (2022).

proposed rulemaking at that time. In its consideration of the digital discrimination rules required by Section 60506 of the Infrastructure Investment and Jobs Act,¹² however, the Commission asked questions regarding some issues previously raised in the *MTE Proceeding*. The *Digital Discrimination NPRM* asked specifically about four issues;¹³ as we explained at the time and restate here, none of those issues requires further examination in the *MTE Proceeding*.

- Conflicts over access to inside wiring. The Commission has already considered this issue several times. It was addressed in the San Francisco Declaratory Ruling,¹⁴ the responses to the 2017 NOI, the responses to the 2019 NPRM, and in the responses to the 2021 Public Notice. The Commission's purpose in considering further regulation of inside wiring was to promote competition, but the record shows that for many practical and technical reasons forced sharing of wiring is generally undesirable.¹⁵ Nor is there any connection between the use of one set of wiring by one provider and lack of access to broadband. If that were the case, then perhaps the Commission should be looking at requiring providers to share their external fiber infrastructure in the name of promoting competition.
- Insufficient infrastructure for high-speed broadband. The lack of adequate infrastructure in certain communities, or certain areas within a community, is a significant factor in lack of access to broadband. That problem can only be solved through additional investment, using either the respective provider's own capital, or through subsidies large enough to overcome the capital or operating deficits that discourage upgrading of the facilities. This is almost entirely a problem only in lower income communities and it is the product of provider economics, not any alleged property owner reluctance to grant access. Although we pointed out this problem in the *MTE Proceeding*, because that docket does not address the issue of subsidies, *the MTE Proceeding* is not the appropriate place to identify ways of overcoming insufficiencies in existing infrastructure. That issue should be addressed in a targeted fashion, aimed at developing a suitable subsidy mechanism.

¹² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (the "IIJA"). Section 60506 of the IIJA has been codified at 47 U.S.C. § 1754.

¹³ *Digital Discrimination NPRM* at ¶ 84.

¹⁴ *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, Declaratory Ruling, 34 FCC Rcd 5702, 5724-5759 (2019).

¹⁵ See, e.g., *MTE 2021 Further Reply* at 225-31.

- Lack of economic incentives for providers in low-income communities. The *Digital Discrimination NPRM* correctly noted that NMHC and NAA have argued that providers reasonably evaluate the potential return on investment and the cost of upgrading infrastructure when deciding whether to serve a community.¹⁶ This business decision can lead providers to decide not to upgrade their facilities or even to enter those communities to offer service in the first place. In practical terms, this is the same issue as the immediately preceding one. The lack of infrastructure can lead to unequal access to communications services because providers do not offer residents of the affected communities the same opportunities that are available to residents of other areas. Again, this is not an issue for the *MTE Proceeding*, because it is a provider incentive issue, not a building access issue.
- Exclusive rooftop access agreements. This issue, too, has been thoroughly examined. NMHC, NAA, and RETTC oppose any regulation of rooftop agreements for the reasons stated in the *Digital Discrimination NOI Reply* and the *MTE Proceeding*.¹⁷ Limited rooftop access is an unavoidable consequence of a particular business model. Short of violating the Fifth Amendment rights of the owners of rooftop space and their existing tenants, there is nothing the Commission can do.

Further action in the *MTE Proceeding* would not address the true reasons underlying broadband service disparities, nor would it promote broadband deployment. As we have pointed out on numerous occasions, the fundamental reasons that lower-income Americans lack access to adequate broadband service have to do with the practical plans and financial needs of broadband providers, rather than the decisions of rental housing owners. Thus, there is no need for further action by the Commission in any proceeding aimed at access to rental property or the terms of agreements between property owners and providers of communications services.

¹⁶ *Digital Discrimination NPRM* at ¶ 84, citing Reply Comments of NMHC and NAA, GN Docket No. 22-69, Notice of Inquiry (filed June 30, 2022) (the “*Digital Discrimination NOI Reply*”), at 8-11.

¹⁷ *Digital Discrimination NOI Reply* at 22; Comments of NMHC, *et al.*, GN Docket No. 17-142, (filed August 30, 2019) (“*MTE 2019 Comments*”), at 69-70; Reply Comments of NMHC, *et al.*, GN Docket No. 17-142, (filed Sep. 30, 2019) at 28; *MTE 2021 Further Reply* at 47-49.

Furthermore, leaving the docket open creates uncertainty. An open docket chills the market and discourages innovation because it implies that the Commission is still considering further action.

For example, earlier this year, WISPA stated in meetings with representatives of Chairman Carr and Commissioners Starks, Simington, and Gomez that the Commission “should complete its rulemaking to improve competitive access to multi-tenant environments by eliminating harmful certain [*sic*] exclusive arrangements.”¹⁸ Given that the Commission last posed questions and obtained public comment in the docket in 2021, that it has since adopted rules, that it asked whether further action was appropriate in the *Digital Discrimination NPRM*, and that there is no FNPRM pending in the *MTE Proceeding*, it is not at all clear either (i) that there are any further issues to be addressed in the docket, nor (ii) what WISPA means by “completing the rulemaking.” Leaving the docket open will merely burden NMHC, NAA, RETTC, and rental housing owners, as well as their technology partners, with uncertainty about the status of the Commission’s thinking about these issues, create confusion about the possibility of imminent action by the Commission, and encourage WISPA in the belief that further action may be near at hand. Accordingly, we respectfully urge the Commission to formally close the docket.

¹⁸ WISPA, Notice of *ex parte* presentation to Danielle Thumann, Senior Counsel to Chairman Carr, and Callie Coker, Legal Counsel to Chairman Carr, GN Docket No. 17-142 (filed March 5, 2025); WISPA, Notice of *ex parte* presentation to David Brodian, Senior Legal Advisor to Commissioner Simington, GN Docket No. 17-142 (filed March 7, 2025); WISPA, Notice of *ex parte* presentation to Edyael Casaperalta, Legal Advisor to Commissioner Gomez, GN Docket No. 17-142 (filed March 7, 2025); and WISPA, Notice of *ex parte* presentation to Flynn Rico-Johnson, Policy Advisor to Commissioner Geoffrey Starks, GN Docket No. 17-142 (filed March 7, 2025) (jointly, the “*WISPA March 2025 ex parte notices*”).

B. Delivery of Adequate Broadband Service in Low-Income Properties Poses Particular Challenges to Broadband Providers and Housing Providers.

The evidence submitted by NMHC, NAA, and RETTC since 2017 has demonstrated the significant problems posed by the policy proposals that the Commission has been considering in the *MTE Proceeding*. The broadband industry has typically advocated measures that might assist a particular segment of that industry in certain narrow respects, while failing to consider the full scope of the economic factors in work in the marketplace. Thus, if they had been adopted, many of those measures would have proven counterproductive.

Another way to put this is that the Commission's focus has been misdirected. The fundamental problem is that extending broadband networks is expensive, and sometimes providers determine that extending a network to serve an area or upgrading the wiring inside a building will not produce sufficient revenue to cover the cost.¹⁹ Rather than addressing issues related to the incentives of service providers, the Commission's efforts have been directed towards unsubstantiated allegations of misbehavior by property owners.

NMHC, NAA, and RETTC are committed to addressing the critical problem in the broadband market, which is the lack of adequate broadband access and service for renters in the lower-income sector. This is fundamentally a problem of provider economics. Providers either lack infrastructure capable of serving these properties or existing infrastructure is substandard. More needs to be done to deploy or upgrade in those areas. Commission policy should stress

¹⁹ Comments of NMHC and NAA, GN Docket No. 22-69 (filed Feb. 21, 2023) ("*Digital Discrimination NPRM Comments*"), Exhibit A, at ¶¶ 5-6; Exhibit B, at ¶¶ 7-8.

how to fund the upgrading and construction of new facilities in situations in which providers prefer not to invest their own capital.

This emphasis on deployment and upgrading of substandard facilities should also be the focus of any state legislation in this area. Regrettably, some state lawmakers have recently engaged in the same types of intervention in the residential broadband market that the Commission recently rejected. NMHC, NAA, and RETTC urge state legislators who may be considering the regulation of bulk broadband service agreements to take the record of the *MTE Proceeding* into account. As we note below, bulk agreements are a very important tool for serving particular segments of the residential broadband market and supporting modern property operations.

In the *MTE 2021 Further Reply*, NMHC and NAA provided a back-of-the-envelope analysis of the scope of the underserved population in the United States. We offered this analysis to show that (i) most of the rental housing market has access to good quality broadband service, and (ii) that the lack of access suffered by a substantial number of Americans living in multifamily rental housing is a product of old infrastructure and low average incomes, which make the remaining rental communities unattractive to providers. One effective way of solving this problem can be the use of bulk service agreements. The following are our rough calculations, as we presented them in 2021; some of the figures used are outdated, but the basic problem remains the same.

There are (very roughly) 20 million apartment households in the United States.²⁰ Between 68% and 80% of apartment properties in the country have two or more providers.²¹ Therefore, using round numbers, taking 75% of 20 million means that around 15 million apartment households in the country have access to at least two broadband providers.²² These two providers will typically be the local franchised cable operator and the ILEC, although the combination of providers can vary and in many cases there will be three or more providers at any given property. In any event, the real estate industry's analysis suggests that there are around 5 million households in multitenant rental communities that are served by a single provider.²³

The record in the *MTE Proceeding* also showed that there are three categories of households living in apartments that probably need some form of assistance if they are to have access to good quality broadband service:²⁴ (i) 2.8 million in HUD-assisted apartments; (ii) 5.2 million with incomes under \$20,000 (which include the first group); and (iii) 8.8 million with incomes under \$35,000 (which include the first two groups). The national median income of all apartment residents at the time was less than \$30,000 a year.²⁵ If these properties have any

²⁰ *MTE 2021 Further Reply* at 24, Exhibit A.

²¹ *Digital Discrimination NPRM Comments* at 14-15.

²² Using more precise and updated figures, there are roughly 21.7 million apartment households. 2023 American Community Survey, 1-Year Estimates, U.S. Census Bureau, "Tenure by Units in Structure." So, based on our previous survey data, between 14.8 and 17.4 million apartment households in the country have access to at least two broadband providers.

²³ *MTE 2021 Further Reply* at 24-25.

²⁴ *MTE 2021 Further Reply* at 15-25. Using more recent data: (i) 9.0 million residents in HUD-assisted apartments; (ii) 7.1 million with incomes under \$20,000 (which in part includes the first group); and (iii) 12.7 million with incomes under \$35,000 (which in part includes the first two groups). Picture of Subsidized Households: U.S. Total Extract, December 31, 2024, U.S. Department of Housing and Urban Development.

²⁵ *Digital Discrimination NPRM Comments* at 15. Today, that figure is roughly \$56,000. NMHC tabulations of 2023 American Community Survey public use microdata, U.S. Census Bureau.

broadband service at all, it is typically low-speed, unreliable DSL delivered over very outdated wiring.²⁶

As we discussed in the *MTE Proceeding*, extending broadband networks capable of delivering an adequate level of service to and within low-income residential buildings is a challenge for all of the affected parties because of its complexity.²⁷ The problem has four components: (i) the cost of extending a network to reach a particular property; (ii) the cost of installing a new distribution network (wireless or wireline), or (more commonly) upgrading existing wiring in an older building; (iii) the cost of end-user equipment allowing individual residents to make effective use of the broadband capability; and (iv) the recurring cost of subscriptions for every resident.

In most rental housing properties, the four factors that underly lack of service in low-income environments are either not present, or are substantially ameliorated. On the other hand, the combination of the four creates a very difficult problem for any provider seeking to serve properties with a large proportion of lower-income residents or located at a substantial distance from the provider's distribution network. For example, the high broadband penetration rates in most rental housing communities indicate that residents have access to end user equipment and can afford their monthly subscriptions. In addition, the cost of upgrading facilities inside a building can usually be addressed through contractual mechanisms developed by the marketplace, as we explained in the *MTE Proceeding*.²⁸ The cost of extending the network to

²⁶ *MTE 2021 Further Reply* at 17-19 (existing wiring in low-income housing and other underserved apartment communities is typically too old or of a type that will not support high speed broadband service).

²⁷ *MTE 2021 Further Comments* at 75-79; *MTE 2021 Further Reply* at 15-31.

²⁸ *MTE 2021 Further Comments* at 39-64; *MTE 2019 Comments* at 14-16, 53-67.

the property may still be significant, but if the property owner is contributing to the cost of on-site facilities, and residents can be expected to subscribe in high numbers, the provider can typically justify the investment. The key factor in lower-income environments, however, is that many residents cannot afford devices or subscriptions, and they may rely on subsidies that are not available for the more expensive premium levels of service.²⁹ This makes it very difficult for providers to meet their usual return-on-investment targets. A bulk agreement, however, can help close the gap for the provider, by assuring a revenue stream that is large enough and runs for long enough to justify the investment in upgrading or installing new facilities in a rental community.

Housing providers face even greater challenges than service providers, because they have no control over any of the relevant economic factors. They do not own the existing cabling or associated facilities located on the provider's side of the demarcation point, and cannot build or directly use facilities located in the public rights-of-way. They do not provide and cannot set the price of any of the devices needed by residents or of the broadband service itself (the sole exception, and a notable benefit, are the rates they can negotiate in bulk agreements, which are lower than the provider's standard rate).

If installation or upgrading of inside wiring is needed, the property owner will frequently bear a substantial portion of the cost of the wiring and related facilities.³⁰ Even if the inside

²⁹ *Digital Discrimination NPRM Comments*, Ex. A, at ¶ 6 ("Because low income residents are not likely to subscribe to a service provider's more costly advanced services, incumbent providers frequently tell us that the CAPEX required for the needed infrastructure upgrades is simply too expensive to justify the projected ROI the provider expects to earn.").

³⁰ *MTE 2021 Further Reply* at 34-35; *MTE 2021 Further Comments* at 39-42, 48-54; *MTE 2019 Comments* at 14-16, 57-63.

wiring belongs to the property owner, the owner does not control the technical characteristics of the service and therefore must accept the provider's standards and costs, if an upgrade is required. Finally, owners cannot simply demand service from any provider: a provider must be willing to serve and will only do so if its return-on-investment requirements are met.

Rental housing owners frequently underwrite a portion of a provider's costs, and they often negotiate to include performance standards in agreements for the benefit of their renters.³¹ In those cases in which owners are compensated by providers, the modest payments help offset the infrastructure expenses incurred by the property owner.³² In many instances – especially in lower income communities – the owner receives no compensation.

The foregoing assumes that a provider is willing to invest in the facilities needed to deliver adequate broadband service at a property. Often, they are not, especially in smaller rental housing communities and in affordable and low-income housing. This is why Congress explicitly called for a portion of the funding dedicated to the Broadband Equity, Access, and Deployment (“BEAD”) Program to be used for infrastructure subsidies within unserved and underserved low-income residential buildings.³³

Historic practices have resulted in a lack of network capacity in the vicinity of many lower-income residential buildings. The solution, however, turns on meeting the financial needs of broadband providers for funding their networks.

³¹ *MTE 2021 Further Comments* at 15-18, 42.

³² *MTE 2021 Further Reply* at 31-34; *MTE 2021 Further Comments* at 54-59; *MTE 2019 Comments* at 78-84.

³³ IIJA, § 60102(f).

II. THE COMMISSION SHOULD ALSO TERMINATE WT DOCKET 19-71.

The Commission issued an order in WT Docket 19-71 over four years ago.³⁴ In that Order, the Commission expanded the Over-the-Air Reception Devices Rule³⁵ to include hub and relay antennas that are used for the distribution of broadband-only fixed wireless services to multiple customer locations, even if they are primarily used for that purpose and not to serve customer premises.

This docket should be terminated, for two reasons. First, the Commission's *2021 OTARD Order* addressed the issues presented by the notice of proposed rulemaking in that docket, the Commission did not issue a further notice of proposed rulemaking, and there has been essentially no activity in that docket since. Second, the Commission long ago stretched the limits of its authority under Section 207 of the Telecommunications Act of 1996 well beyond what the statute permitted. In Section 207, Congress directed the Commission to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." In a series of orders, however, the Commission proceeded to expand the scope of the rule so that it now applies to fixed wireless hub and relay antennas, even if they are not used primarily to serve a customer located at the antenna site, and even if the antenna is used only for broadband service.³⁶

³⁴ *In the Matter of Updating the Commission's Rule for Over-the-Air Reception Devices*, WT Docket 19-71, Report and Order, 36 FCC Rcd 537 (2021) (the "*2021 OTARD Order*").

³⁵ 47 C.F.R. § 1.4000.

³⁶ *2021 OTARD Order*, 36 FCC Rcd 537, 540 at ¶ 9.

The Commission has argued that 47 U.S.C. § 303 gives it the authority to expand the scope of the rule in the absence of any further Congressional directive, citing various subsections of that statute pertaining to spectrum allocation and management.³⁷ There are two problems here. One is that Section 303 was amended at the same time as Section 207 was enacted, for the purpose of declaring that the Commission has exclusive jurisdiction to regulate the provision of direct-to-home satellite services.³⁸ This is the authority in section 303 to which Congress was referring. The other problem is that the Commission can no longer rely on judicial deference when expanding its authority. It is by no means clear that the courts would permit further expansion of the OTARD Rule under the new rule of interpretation announced by the Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 402 (2024). Indeed, it is not at all clear that any of the series of amendments of the original OTARD rule made in 2000,³⁹ 2004,⁴⁰ and in the *2021 OTARD Order*, would have been upheld under the law as it stands today.

NMC, NAA, and RETTC therefore respectfully urge the Commission to terminate WT Docket 19-71.

³⁷ *Id.* at p. 550, ¶ 26, *citing* 47 U.S.C. §§ 303(d), (e), (f), (g), (r), (y).

³⁸ 47 U.S.C. § 303(v).

³⁹ *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217 et al., First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983, 3027–28, paras. 97-100 (2000).

⁴⁰ *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Order on Reconsideration, 19 FCC Rcd 5637, 5643-44, paras. 16–17 & n.42 (2004) (*2004 Competitive Networks Reconsideration Order*).

III. NMHC, NAA, AND RETTC SUPPORT THE TERMINATION OF MB DOCKET 17-91 AND WT DOCKET 99-217.

The Public Notice proposes to terminate MB Docket 17-91 and WT Docket 99-217.

NMHC, NAA and RETTC support this proposal because these proceedings are truly dormant.

The Commission issued a declaratory ruling addressing the issues raised by the initial notice in MB Docket 17-91 in July 2019,⁴¹ and there has been no significant activity pertaining to those issues since that time.

With regard to WT Docket 99-217, there has been no significant activity in that docket in almost two decades. Given the changes in technology and telecommunications marketplace in the last two decades, any information submitted to the Commission is unlikely to be relevant to the assessment of any current issues and any findings based on such information would be highly unreliable.

NMHC, NAA, and RETTC believe these dockets should be terminated because no purpose would be served by leaving them open.

⁴¹ *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council; Improving Broadband Access to Multiple Tenant Environments*, Notice of Proposed Rulemaking and Declaratory Ruling, MB Docket 19-71 and GN Docket 19-142, 34 FCC Rcd 5702 (2019).

CONCLUSION

For all the foregoing reasons, the Commission should terminate GN Docket 17-142, WT Docket 19-71, MB Docket 17-91, and WT Docket 99-217.

Respectfully submitted,



Matthew C. Ames
HUBACHER AMES & TAYLOR, P.L.L.C.
4084 University Drive
Suite 101
Fairfax, Virginia 22030
(703) 345-1179

Counsel for:
the National Multifamily Housing Council,
the National Apartment Association, and the
Real Estate Technology & Transformation Center

July 9, 2025