

**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  
)  
)  
)

---

**REPLY COMMENTS OF THE NATIONAL MULTIFAMILY HOUSING COUNCIL**

The National Multifamily Housing Council (“NMHC”)<sup>1</sup> hereby submits these reply comments in response to the comments filed regarding the Federal Communication Commission’s (“Commission”) Notice of Inquiry (“NOI”) in the above referenced docket.<sup>2</sup> The comments in this proceeding confirm there is no need for the Commission to propose rules that would disrupt existing contractual relationships between residential building owners and communications service providers. As the comments demonstrate, residents have benefitted from these agreements with choice in service providers and service offerings, and lower rates. Residents also benefit from such agreements by way of limiting development and maintenance costs for MTE owners. In addition, any rules adopted may exceed the Commission’s statutory authority, particularly if it reclassifies broadband Internet access service (“BIAS”) as an information service.

---

<sup>1</sup> Based in Washington, DC, NMHC is a national association that represents the leadership of the \$1.3 trillion apartment industry. NMHC members engage in all aspects of the apartment industry, including ownership, development, management and finance, providing apartment homes for the 38.8 million Americans who live in apartments today. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living. More than one-third of American households rent, and 18.7 million U.S. households live in an apartment home (buildings with five or more units).

<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”).

## **I. Residents have a choice of service providers, receive quality service, and save money**

The comments in this proceeding confirm that exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements benefit consumers.<sup>3</sup> For example, RealtyCom Partners offers data to demonstrate that exclusive marketing agreements do not hinder competition, stating that “of the 1,800 apartment communities owned or managed by RealtyCom clients, 94% of these apartment communities have two or more carriers providing service and 72% have agreements in which exclusive on-site marketing rights have been granted to one of those Carriers.”<sup>4</sup> In addition, Camden Property Trust provides evidence that bulk billing agreements reduce the price of state-of-the-art TV and Internet services for residents by an average of 46% off retail rates.<sup>5</sup> Moreover, as discussed in the attached Declaration of Elaine Walsh, Vice President – Operations & Investment Services for AvalonBay Communities, Inc., 94% of its 287 apartment communities offer residents a choice of two or more broadband providers. AvalonBay also requires providers to offer pricing and promotions to residents that are equal to or better than offerings elsewhere in the local market or risk defaulting on their agreements with AvalonBay.

Providers as well as building owners recognize the importance of such agreements to delivering broadband service. For example, NCTA discusses the high upfront costs to building owners of installing wiring, and that exclusive wiring agreements assist building owners with overcoming this financial barrier to provide broadband where it might not otherwise be

---

<sup>3</sup> See e.g. Comments of NCTA-The Internet and Television Association, GN Docket No. 17-142 (filed July 24, 2017) (“NCTA Comments”); Comments of Camden Property Trust, GN Docket No. 17-142 (filed July 24, 2017) (“Camden Comments”); Comments of the National Multifamily Housing Council, GN Docket No. 17-142 (filed July 24, 2017) (“NMHC Comments”); Comments of Hotwire Communications, LLC, GN Docket No. 17-142 (filed July 24, 2017) (“Hotwire Comments”); Comments of RealtyCom Partners, GN Docket No. 17-142 (filed July 24, 2017) (“RealtyCom Comments”).

<sup>4</sup> RealtyCom Comments at 3.

<sup>5</sup> Camden Comments at 3.

available.<sup>6</sup> Hotwire states that “bulk services agreements are one of, if not the most, sustainable model for residential fiber deployment in MTE developments.”<sup>7</sup> Bulk agreements offer residents the opportunity to receive discounted access to faster broadband speeds and a negotiated contract for services, rather than the standard contract common in the retail environment.<sup>8</sup> The extension of Hotwire’s network – the result of bulk services agreements with MTE’s -- also benefits schools, business and residential communities near the MTE community that could never justify the cost of fiber deployment on their own.<sup>9</sup>

Commenters that support regulating or banning exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements argue that these agreements are anti-competitive and that they limit choice among MTE residents for broadband service.<sup>10</sup> However, these supporters fail to offer any meaningful evidence for this claim, and instead rely on unconvincing articles that lack data. For example, INCOMPAS cites an article from [bbcmag.com](http://bbcmag.com) that does not contain any data or studies as evidence for its claim that MTE “residents have fewer options for broadband service than those living in single-family homes in the same community.”<sup>11</sup> It then goes on to cite additional data-free articles from [wired.com](http://wired.com) and [broadbandnow.com](http://broadbandnow.com) for its claim that “service in MDUs tends to be slower and more expensive than services offered to consumers living in single-family homes.”<sup>12</sup> Public Knowledge cites the same [wired.com](http://wired.com) article as evidence for its claim that exclusive marketing, bulk billing, revenue

---

<sup>6</sup> NCTA Comments at 3.

<sup>7</sup> Hotwire Comments at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *See e.g.* Comments of INCOMPAS, GN Docket No. 17-142 at 7-9 (filed July 24, 2017) (“INCOMPAS Comments”); Comments of Public Knowledge, GN Docket No. 17-142 at 3 (filed July 24, 2017) (“Public Knowledge Comments”); Comments of the Fiber Broadband Association, GN Docket No. 17-142 at 11-13 (filed July 24, 2017) (“Fiber Broadband Association Comments”).

<sup>11</sup> INCOMPAS Comments at 3.

<sup>12</sup> *Id.*

sharing, and exclusive wiring agreements are anti-competitive and “remain problematic.”<sup>13</sup> The Fiber Broadband Association concludes that exclusive wiring arrangements should be presumed anti-competitive unless proven otherwise without evidence that they are generally anti-competitive.<sup>14</sup>

In addition to data-deficient articles, INCOMPAS offers mere anecdotes as evidence for its argument that exclusive marketing arrangements are anti-competitive. Indeed, it does not provide specific information or a signed declaration to support its example of alleged anti-competitive behavior in Detroit.<sup>15</sup> It instead provides a general description of how one of its members, Rocket Fiber, was delayed from deploying service to an apartment building, allegedly because the apartment owner had an exclusive marketing arrangement with the incumbent provider and demanded a revenue share equal to or greater than the incumbent provider..<sup>16</sup> Worse, it points to “some other cases” to suggest that building owners are somehow confused by the terms of marketing agreements, and that competitors “are often required to educate owners on their rights and obligations.”<sup>17</sup> The Commission should not introduce new regulations based on unsupported assertions, anecdotes and articles – without facts or supporting data.

## **II. Reclassification of BIAS would confirm the Commission’s lack of legal authority**

Commenters for and against regulation of exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements, appear to agree that if BIAS is reclassified as an information service, the Commission would not have authority to prescribe regulations. Public

---

<sup>13</sup> Public Knowledge Comments at 3.

<sup>14</sup> Fiber Broadband Association Comments at 12.

<sup>15</sup> INCOMPAS Comments at 17.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* In contrast, NMHC references a signed declaration that names a particular apartment building to describe the benefits of exclusive wiring agreements. NMHC Comments at 6-7.

Knowledge, which supports regulation, admits that “the Commission’s ability to use Title II provisions and Section 706 would be severely limited if it moves forward with the plans outlined in its recent *Notice of Proposed Rulemaking* to overturn the FCC’s classification of BIAS as a Title II telecommunications service.”<sup>18</sup> The lack of discussion by other supporters on the effects of reclassification is telling. As a result, regardless of the Commission’s determination of its authority to regulate exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements in MTEs under the current rules, it should not pursue new regulations that it will clearly not have authority to adopt if it reclassifies BIAS.

### **III. Conclusion**

For the foregoing reasons, NMHC urges the Commission to refrain from pursuing rules that would prohibit or limit exclusive marketing, bulk billing, revenue sharing, and exclusive wiring agreements.

Respectfully submitted,

/s/ Betsy Feigin Befus  
Betsy Feigin Befus  
General Counsel  
National Multifamily Housing Council  
1775 Eye Street, N.W., Suite 1100  
Washington, D.C. 20006

Glenn S. Richards  
Joseph A. Cohen  
Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036

August 22, 2017

---

<sup>18</sup> Public Knowledge Comments at 7.

## DECLARATION

1. I, Alaine Walsh, am Vice President - Operations & Investment Services for AvalonBay Communities, Inc. ("AvalonBay"). AvalonBay is a real estate investment trust headquartered in Arlington, Virginia, that is focused on developing, redeveloping, acquiring, and managing high-quality apartment communities in select markets of the United States. As of June 30, 2017, the Company owned or held a direct or indirect ownership interest in 287 apartment communities, containing 83,123 apartment homes, in ten states and the District of Columbia, of which 23 communities were under construction and nine communities were under reconstruction.

2. AvalonBay always endeavors to offer residents a choice of multiple high quality telecommunications service providers at our communities, in addition to their rights to receive services through over-the-air reception devices (e.g., DBS dishes). Of AvalonBay's communities currently in operation, 94% offer residents a choice of two or more wireline providers of Internet access services.<sup>19</sup>

3. In our contracts with service providers, AvalonBay requires an enforceable commitment that the service providers' pricing and promotions for residents of our communities will be equal to or better than their offerings elsewhere in the local market. If a provider tried to gouge our residents, we would be entitled to send a default notice and, if the abuse continued, exercise our contractual remedies (including the right to terminate the agreement). In our experience, price discrimination within market areas by major service providers is virtually unheard of.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Alaine Walsh  
Vice President - Operations & Investment Services

Executed on August 21, 2017.

---

<sup>19</sup> Of the small percentage of properties without multiple telecommunications service providers, all but four have at least 1 gigabit connectivity.