



NATIONAL  
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COUNCIL



## **The Apartment Industry & the Importance of Broadband**

The multifamily rental housing industry supports Congress and the Federal Communications Commission (FCC) in bolstering broadband deployment across the nation. With the rise of e-commerce, a shift in how consumers access media and our ever-increasing reliance on the internet for basic functions, broadband connectivity is a top priority for the apartment industry. In fact, research shows that the desirability of an apartment community is linked to its on-site internet: Ninety-four percent of residents surveyed ranked high-speed internet as the top apartment feature.<sup>1</sup> Most apartment building residents have access to two or more Internet service providers<sup>2</sup> but only 38% of Americans overall have access to two or more Internet service providers.<sup>3</sup>

While working to accelerate broadband deployment and bridge the digital divide, Congress and the FCC must avoid counter-productive measures that could harm investment, constrain competition, limit consumer access to broadband service and even raise the cost of developing multifamily housing. Existing federal regulations that govern communications services for rental apartment communities recognize the importance of negotiating agreements between apartment owners and service providers to foster market competition, higher service standards and competitive prices.

## **Federal Review of Telecommunications Policy in Multi-Tenant Environments**

NMHC/NAA has participated in numerous proceedings before the FCC, including several recent efforts that threaten existing communications contracts between service providers and property owners without evidence of a market failure or actually addressing barriers to broadband deployment. NMHC/NAA has argued that the current federal regulatory framework for agreements between property owners and service providers allows the market to work effectively to allocate scarce capital for network construction, maintenance and service upgrades in multifamily housing communities. For example, to encourage market competition, federal law bars agreements between building owners and most communications services providers that would grant a provider exclusive access to a property. But federal law also recognizes the importance of negotiating agreements to foster market competition, higher service standards and competitive prices.

### **FCC Notice of Inquiry: Improving Competitive Broadband Access to Multiple Tenant Environments (GN Docket No. 17-142)**

In 2017, the FCC sought input on the market for broadband services in residential and commercial “multiple tenant environments” (MTEs), including rental apartment communities. Specifically, the FCC’s [Notice of Inquiry](#) (NOI) solicited comments on agreements between property owners and service providers and the impact of exclusive marketing<sup>4</sup>, bulk billing<sup>5</sup>, revenue sharing and exclusive wiring contracts on broadband deployment and competition.

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<sup>1</sup> 2017 NMHC/Kingsley Apartment Resident Preferences Survey.

<sup>2</sup> 2017 NMHC survey of apartment building owners.

<sup>3</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, et al.*, 2016 Broadband Progress Report, FCC 16-6 ¶ 86 & Table 6 (rel. Jan. 29, 2016).

<sup>4</sup> Under an exclusive marketing agreement, one service provider is marketed to residents by the apartment community, but additional providers may serve the property and may market their services. The FCC concluded that exclusive marketing is allowable under Section 628 of the Federal Communications Act (47 U.S.C. § 548) because it doesn’t significantly hinder or, more importantly, block competition.

<sup>5</sup> In a bulk billing agreement, the property owner contracts with, and directly compensates, one provider to service the entire community at a significant discount; however, residents are free to contract with an additional provider that serves the building. Importantly, the FCC recognized that bulk agreements “predominantly benefit consumers” through significantly

NMHC twice filed [comments](#) arguing against new regulatory limits on those agreements because of their many benefits. The FCC also heard from other real estate industry stakeholders as well as multifamily companies representing about 1.3 million apartment homes across the country. The FCC has not yet taken further action.

*Petition Filed by Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code (MB Docket No. 17-91)*

The NOI followed a petition to the FCC by the Multifamily Broadband Council (MBC), a trade organization that represents independent, non-franchised competitive broadband providers to the multifamily housing industry. The petition challenged the enactment of a local ordinance in San Francisco that created a right for apartment residents to request service from virtually any broadband provider regardless of how many providers already serve the property.

[NMHC](#) and NAA, along with multifamily firms and other industry partners, filed comments in support of MBC's challenge before the FCC, arguing that the market for communications services in the rental apartment industry is competitive in San Francisco and across the nation, and that ordinances like the one in San Francisco are unnecessary and ultimately harmful to consumers. NMHC/NAA also argued that the ordinance is federally preempted and conflicts with the FCC's regulations governing inside wiring, network sharing and bulk billing arrangements for broadband service to apartment communities. The FCC has not taken action on the petition.

*Model State Code (MSC) as Approved by the Broadband Deployment Advisory Committee (BDAC)*

In December 2018, despite the strong opposition of NMHC/NAA and other real estate stakeholders, the BDAC voted to approve the MSC, which is intended to serve as a roadmap for state legislatures on how to legislate policies that would foster broadband deployment. As drafted, Article 8 of the MSC grants broadband providers the unilateral right to install facilities in all multifamily residential and other commercial buildings and mandate construction of broadband facilities at the property owner's expense without regard to the rights and concerns of the owner. NMHC/NAA has weighed in several times against the MSC:

- [In July 2018 when the MSC was originally considered by the BDAC](#)
- [In November 2018 meetings between NMHC leadership and several FCC Commissioners](#)
- [In December 2018, NMHC/NAA joined several other real estate organizations in strong opposition to the MSC's adoption](#)

NMHC/NAA and its real estate industry partners have argued that Article 8 of the MSC is riddled with many practical and legal problems. Among the most serious issues with the MSC is that it interferes with private property rights, disrupts negotiations and existing contracts between property owners and communications service providers and will lead to costly regulation and litigation at the state level without any assurance of actually spurring broadband deployment.

NMHC/NAA will continue to advocate at the FCC against the BDAC's MSC and emphasize that the market for multifamily broadband is both robust and competitive and government intervention, at any level, isn't warranted. Despite the BDAC's approval of the measure, it is important to note that the MSC is simply advisory in nature and is in no way binding. Individual states would still need to legislate its approval for it to be enacted.

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discounted prices, enhanced programming and the convenience of having service that is made available to them. The FCC went so far as to say that bulk billing agreements have "significant pro-consumer effects." It also noted that their cost efficiency is a benefit to providers.