After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC, on September 16, 2021.

Lorelei Dinges Peter,

Assistant Chief Counsel for Regulations.

Virginia T. Boyle,

Vice President, System Operations Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 8, 64, 76

[GN Docket No. 17–142; DA 21–1114; FR ID 48290]

Improving Competitive Broadband Access to Multiple Tenant Environments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau (WCB) refreshes the record in Improving Competitive Broadband Access to Multiple Tenant Environments Proceeding.

DATES: Comments are due on or before October 20, 2021, and reply comments are due on or before November 4, 2021.

ADDRESSES: You may submit comments, identified by GN Docket No. 17–142, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S-. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530.

Ex Parte Rules. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml., .ppt, searchable .pdf). *See* 47 CFR 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Jesse Goodwin, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0958, or email: *Benjamin.Goodwin@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, in GN Docket No. 17–142, DA 21–1114; released on September 7, 2021. The complete text of this document is available for download at *https://docs.fcc.gov/public/attachments/DA-21-1114A1.pdf.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

By this document, the Wireline Competition Bureau (Bureau) invites parties to update the record on issues raised in the 2019 Improving Competitive Broadband Access to Multiple Tenant Environments Notice of Proposed Rulemaking (*NPRM*), including but not limited to (1) revenue sharing agreements; (2) exclusive wiring arrangements, including sale-and-leaseback arrangements; and (3) exclusive marketing arrangements.

Americans living and working in multiple tenant environments (MTEs) face various obstacles to obtaining the benefits of competitive choice of fixed broadband, voice, and video services. Telecommunications carriers and multichannel video programming distributors (together, ''service providers'') need to access building conduits, install wiring to individual units or premises, and make repairs once wiring has been installed. Complicating these tasks is the fact that providing service to MTEs involves not just the service provider and the end-user tenant, but a third party: The premises owner or controlling party (MTE owner). As a result, deploying facilities-based fixed services to the millions of Americans living and working in MTEs can be uniquely challenging. The Commission has endeavored to increase competition among service providers and reduce potential barriers to broadband deployment in MTEs. Beginning in 2000, the Commission, through a series of orders, prohibited service providers from entering into contracts with MTE owners that give a service provider exclusive access to the building to offer its services. In the *NPRM,* the

Commission sought comment on a range of common practices in MTEs that could have the effect of dampening competition or deployment. We seek to refresh the record to better understand how the Commission can best ''facilitate enhanced deployment and greater consumer choice for Americans living and working in'' MTEs. (The Commission has defined MTEs as ''commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities.'')

Revenue Sharing Agreements. We seek to refresh the record on the impact revenue sharing agreements have on competition and deployment of facilities in MTEs. In the *NPRM,* the Commission explained that revenue sharing agreements are contracts between MTE owners and service providers where the owner ''receives consideration from the communications provider in return for giving the provider access to the building and its tenants.'' The Commission recognized that revenue sharing agreements can take various forms. For example, they can be simple one-time payments calculated on a per-unit basis (sometimes referred to as door fees); or they can be pro rata, calculated as a portion of revenue generated from tenants' subscription service fees. These pro rata agreements may also be graduated, where the building owner receives more revenue as the proportion of tenants in a building choose that service provider. And some revenue sharing agreements may be considered ''above cost''—that is, they may give MTE owners compensation beyond actual costs associated with the installation and maintenance of wiring. The Commission sought comment on the impact revenue sharing agreements have on competition and deployment, as well as whether they reduce incentives for building owners to grant access to competitive providers given that a lower number of subscribers for the incumbent provider means reduced income to the building owner. It also asked whether revenue sharing agreements were being used to circumvent Commission rules prohibiting exclusive access agreements, whether alone or in combination with other contractual provisions.

We seek to refresh the record on whether the Commission should restrict some or all of these types of revenue sharing agreements. Have there been changes over the last two years as to how frequently these agreements are used in MTEs? How do these agreements affect the ability of tenants to choose their service provider? How do they affect the prices that tenants ultimately pay for service? What are the effects of these agreements on competition among service providers? Do these agreements promote or inhibit entry by competitive providers? In what ways do revenue sharing agreements affect how service providers compete for customers? Do they encourage or discourage service providers to compete on the basis of price or service quality? Do service providers attempt to negotiate agreements that work to exclude competitors? If revenue sharing agreements function to prevent competing providers from deploying, does the MTE in effect become a locational monopoly? What legitimate reasons might a competitive provider and building owner have to enter into such agreements? For example, do these agreements affect competitive providers' ability to offer services in MTEs, such as by enabling providers to secure financing to deploy facilities? Do the drawbacks of such agreements outweigh any benefits? Should the Commission restrict the use of revenue sharing agreements? Alternatively, should the Commission require the disclosure of such agreements?

We seek comment on whether the Commission should address specific types of revenue sharing agreements. For example, should it restrict above-cost revenue sharing agreements? If so, how should the Commission define costs? How would any such restrictions impact tenants? How could the Commission best and most effectively monitor compliance? Additionally, we seek comment on whether the Commission should take action to address graduated revenue sharing agreements. To what extent do such agreements lead building owners to favor one provider over others and to exclude competitors? Similarly, we seek comment on revenue sharing agreements containing exclusivity provisions that may prevent building owners from offering equal terms to other providers. Do such provisions negatively affect competition and deployment in MTEs? Should the Commission restrict or prohibit such agreements, or require their disclosure? Are there any other provisions in such agreements that may serve to hinder competitive access?

Exclusive Wiring Arrangements. Second, we seek to refresh the record on the effect of exclusive wiring arrangements on competition and deployment of facilities in MTEs. In the *NPRM,* the Commission explained that under an exclusive wiring arrangement, service providers ''enter into agreements with MTE owners under which they obtain the exclusive right to use the wiring in the building.'' The Commission sought comment on whether it remained true that, as it had previously concluded in 2007, ''exclusive wiring arrangements do not preclude competitive providers' access to buildings.'' It also asked whether such arrangements differ in states and localities where mandatory access laws have been introduced.

We seek to refresh the record in light of possible developments since the *NPRM.* Should the Commission revisit its conclusion that exclusive wiring arrangements generally do not preclude access to new entrants, and thus do not violate its rules? What are the practical effects of exclusive wiring agreements in today's communications marketplace? Can exclusive wiring arrangements otherwise circumvent Commission rules? What anti-competitive effects or adverse impacts on deployment, if any, do exclusive wiring arrangements have? What benefits, if any, do exclusive wiring arrangements have, and do the benefits outweigh any drawbacks, particularly to tenants? Do exclusive wiring arrangements affect tenants' choice in providers? Do they inhibit entry by competing service providers? Do they encourage or discourage service providers to compete on the basis of price or service quality? Are there specific varieties of exclusive wiring arrangements, such as those containing provisions for exclusive use of MTE-owned wiring, that the Commission should study? What are the benefits and drawbacks of shared access to wiring and other facilities, in contrast to exclusive wiring arrangements? Does shared access promote competitive entry and tenant choice?

We seek to refresh the record on sale-and-leaseback arrangements, a subset of exclusive wiring arrangements. In the *NPRM,* the Commission explained that sale-and-leaseback arrangements ''occur when a service provider sells its wiring to the MTE owner and then leases back the wiring on an exclusive basis.'' The Commission has in place rules that facilitate competitive choice by making the previous provider's inside wiring available to MTE owners and tenants for other service providers to use after it has terminated service. Do sale-and-leaseback arrangements act as an end run around these rules by putting wiring ownership in the hands of the building owner, which is not subject to the Commission's rules? Regardless of whether they in effect act as a loophole, should the Commission prohibit such arrangements generally or in limited circumstances? The Commission also

sought comment on whether ''the policy considerations around sale-and-leaseback and other exclusive wiring arrangements differ.'' Are there reasons to distinguish sale-and-leaseback arrangements from other kinds of exclusive wiring arrangements?

Exclusive Marketing Arrangements. Third, we seek to refresh the record on exclusive marketing arrangements. In the *NPRM,* the Commission explained that an exclusive marketing arrangement is ''an arrangement, either written or in practice, between an MTE owner and service provider that gives the service provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE.''

The Commission asked whether specific circumstances might lead to such arrangements resulting in de facto exclusive access. For example, do these arrangements create confusion on the part of tenants or building owners as to whether only one provider can or does offer service to the building? We also seek to update the record on the Commission's question regarding ''what might be done to correct'' possible consumer confusion. Additionally, the Commission asked whether disclosure or disclaimer requirements would alleviate these problems, and when they might be warranted. Commenters have addressed the impact and costs of such requirements. We seek updated information on these issues, as well as on the benefits of exclusive marketing arrangements, particularly with respect to small competitive carriers. Do the benefits of such arrangements outweigh the costs? Do disclosure requirements affect tenant choice in providers, or the ability of competitors to deploy? And do they affect how service providers compete, such as in terms of price or service quality? What impact does this have on tenants? Have there been developments over the last few years that should impact the Commission's analysis on this issue?

Other Issues. In addition to refreshing the record on the issues outlined above, we also seek to refresh the record on other issues outlined in the *NPRM* and raised in the record. For example, in evaluating these issues, does the calculus differ based on the size of the MTE and, if so, should the Commission approach small MTEs differently than others for purposes of any rules it adopts? How should it define small MTEs for these purposes?

We also seek comment on whether there are other types of contractual provisions and non-contractual practices that affect competition, limit tenant choice, or lead to increased prices or decreased service quality. Are there benefits and drawbacks to shared access to facilities in MTEs, including telecom closets, conduit, and wiring? Can the sharing of facilities increase competition and tenant choice in MTEs? We also seek to refresh the record on mandatory access laws and other efforts to increase competitive access to MTEs and the infrastructure within them. What are the effects of these laws on competition, choice, and price in MTEs?

Finally, we seek to refresh the record on the Commission's jurisdiction and statutory authority to address the issues and practices raised above.

Federal Communications Commission.

Pamela Arluk,

Division Chief, Wireline Competition Bureau.

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