DATES: The regulations in 33 CFR 100.701, Table 1 to § 100.701, section (c), Item 8, will be enforced from 12:00 p.m. until 3:00 p.m., on April 10, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Shawn Keeman, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7661, email *Shawn.R.Keeman@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701, Table 1 to § 100.701, section (c), Item 8, for the Blessing of the Fleet—St. Augustine regulated from 12:00 a.m. until 3:00 p.m., on April 10, 2022. This action is being taken to provide for the safety of life on navigable waterways during the event. Our regulation for recurring marine events within the Seventh Coast Guard District, § 100.701, Table 1 to § 100.701, section (c), Item 8, specifies the location of the regulated area for the Blessing of the Fleet—St. Augustine which encompasses portions of the Matanzas River at the St. Augustine Municipal Marina. During the enforcement periods, as reflected in in § 100.701, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: March 22, 2022.

M.R. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2022–06431 Filed 3–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0162]

Special Local Regulations; Seventh Coast Guard District, Mug Race

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the Mug Race on May 7, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event on the St Johns River from Palatka, FL, to Jacksonville, FL. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.701, Table 1 to § 100.701, section (c), Item 14, will be enforced from 7:00 a.m. until 9:00 p.m. on May 7, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Shawn Keeman, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7661, email *Shawn.R.Keeman@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701, Table 1 to § 100.701, section (c), Item 14, for the 68th Mug Race regulated from 7:00 a.m. until 9:00 p.m., on May 7, 2022. This action is being taken to provide for the safety of life on navigable waterways during the event. Our regulation for recurring marine events within the Seventh Coast Guard District, § 100.701, Table 1 to § 100.701, section (c), Item 14, specifies the location of the regulated area for the Mug Race which encompasses portions of the St Johns River from Palatka, FL, at the U.S. 17 Bridge, to Jacksonville, FL, near the I–295 Bridge. During the enforcement periods, as reflected in in § 100.701, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and/or marine information broadcasts.

Dated: March 11, 2022.

M.R. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2022–06430 Filed 3–25–22; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 76

[GN Docket No. 17–142; FCC 22–12; FR ID 76238]

Improving Competitive Broadband Access to Multiple Tenant Environments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts final rules to improve competition for communications services in multi-tenant environments. The rules prohibit telecommunications carriers and covered multichannel video programming distributors (MVPDs) from entering into certain revenue sharing agreements with a building owner that keep competitive providers out of buildings. The rules also require providers to inform tenants about the existence of exclusive marketing arrangements in simple, easy-to-understand language that is readily accessible. The Commission adopted the Report and Order in conjunction with a Declaratory Ruling in GN Docket No. 17–142 in which the Commission clarifies that existing Commission rules regarding cable inside wiring prohibit so-called sale-and-leaseback arrangements that block competitive access to alternative providers.

DATES:

Effective date: This rule is effective April 27, 2022.

Compliance dates: See paragraph 77 of the **SUPPLEMENTARY INFORMATION** for information on the compliance dates for 47 CFR 64.2500(c), (d), and (e) and 76.2000(b), (c), and (d).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Benjamin (Jesse) Goodwin, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0958 or *Benjamin.Goodwin@fcc.gov.* For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in GN Docket No 17–142, FCC 22–12, adopted on February 11, 2022, and released on February 15, 2022. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-22-12A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will invite to comment on the new or modified information collection requirements contained in this proceeding. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Introduction

1. Millions of people work and live in multiple tenant environments (MTEs), with a third of Americans residing in apartments, condominiums, or other multiunit buildings. And MTEs disproportionately serve residents in lower-income and marginalized communities. Access to high-quality, affordable communications service—including broadband internet access service—has become essential to all Americans, including those living and working in MTEs. The COVID–19 pandemic has brought into sharp focus the critical importance of these communications services as never before. Increasingly we rely on telework, remote learning, telehealth and other online applications to meet our personal and professional needs—all of which require access to broadband internet access service or other high-quality, affordable communications services. Despite the importance of these services, the millions of people across the nation living and working in MTEs face obstacles to obtaining the benefits of competitive choice of fixed broadband, voice, and video services. By MTEs, we specifically mean ''commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities.'' The term MTE, as we use it here, encompasses everything within the scope of two other terms the Commission has used in the past—multiple dwelling unit and multiunit premises. When referring to residential MTEs, past Commission rules and actions have sometimes used the term multiple dwelling unit, or MDU. In this document, we use the term ''residential MTE'' coterminously with ''MDU.''

2. To ensure competitive choice of communications services for those living and working in MTEs, and to address practices that undermine longstanding rules promoting competition in MTEs, we take three specific actions. First, we adopt new rules prohibiting providers from entering into certain types of revenue sharing agreements that are used to evade our existing rules. Second, we adopt new rules requiring providers to disclose the existence of exclusive marketing arrangements in simple, easy-to-understand language. Third, we clarify that existing Commission rules regarding cable inside wiring prohibit so-called ''sale-and-leaseback'' arrangements which effectively deny access to alternative providers. In taking these actions in this document, we promote tenant choice and competition in the provision of communications services to the benefit of those who live and work in MTEs.

II. Background

3. Over the last 30 years, recognizing the need to promote competition in emerging technologies, Congress and the Commission have demonstrated a strong commitment to promoting access to telecommunications, cable, and broadband services in MTEs. In 1992, Congress passed the Cable Television Consumer Protection and Competition Act (1992 Cable Act) to, among other things, promote competition in cable communications. And in the Telecommunications Act of 1996 (the Act), Congress directed the Commission to promote competition between telecommunications carriers, as well as prohibit certain unfair practices by covered multichannel video programming distributors (MVPDs). Following this congressional direction, and acknowledging the millions of Americans that live and work in MTEs, the Commission adopted rules prohibiting telecommunications carriers and covered MVPDs from entering into certain exclusionary agreements in MTEs and governing the disposition of cable inside wiring in residential MTEs.

4. *Prohibitions on Exclusive Access Agreements.* The Commission has long prohibited agreements between providers of certain communications services and MTE owners that grant the provider exclusive access and rights to provide service to the MTE. In two orders adopted in 2000 and 2008, respectively, the Commission prohibited telecommunications carriers from entering into or enforcing exclusivity contracts with MTE owners in both commercial and residential MTEs. And in 2007, the Commission prohibited certain MVPDs from entering into or enforcing exclusivity contracts with residential MTE owners. The Commission concluded that exclusive access contracts harm competition and ''discourage the deployment of broadband facilities to American consumers'' by impeding entry of competitive providers. And it highlighted that ''[b]y far the greatest harm that exclusivity clauses cause residents of [residential MTEs] is that they deny those residents another choice of MVPD service and thus deny them the benefits of increased competition.'' Noting the ''inextricabl[e] link'' between ''broadband deployment and entry into the MVPD business,'' the Commission determined that deployment of the former would be hampered by impediments to the latter. While the Commission has prohibited exclusivity contracts that explicitly prohibit entrance by competitors, in 2010 it declined to prohibit MVPDs from entering into exclusive marketing arrangements because it could not ''conclude, based on the record, that they hinder significantly or prevent other MVPDs from providing service to [residential MTE] residents.''

5. *Cable Inside Wiring.* Separately, pursuant to specific congressional direction, in 1993 the Commission promulgated inside wiring rules to facilitate competitive access to unused cable wiring, including in residential MTEs. In a series of Orders in the decade to follow, the Commission

refined and expanded on those rules. These cable inside wiring rules govern the disposition of cable wiring owned by an MVPD after a subscriber (including one living in a residential MTE), or a residential MTE owner, terminates service. They apply to both cable home wiring, which is the wiring inside an MTE resident's unit, and home run wiring, which is the dedicated wiring that runs from a common space (such as a telecommunications closet) to an MTE resident's unit. Generally speaking, the rules require MVPDs, after termination of service, to either remove the wiring; abandon and not disable the wiring; or sell it to another party such as the subscriber, residential MTE owner, or an alternative provider. The Commission's stated objective with these rules is to ''foster opportunities for [MVPDs] to provide service in'' residential MTEs by governing the disposition of wiring after the MTE owner or tenant terminates service. The rules are designed to promote competitive choice by ''enabl[ing] subscribers to subscribe to services offered by an alternative MVPD without incurring additional installation costs or experiencing disruption in programming.''

6. *Recent Developments.* In 2017, the Commission released a Notice of Inquiry (NOI) with the goal of ''promoting competition and easing deployment of broadband services within MTEs.'' The *2017 MTE NOI* sought comment on the state of broadband competition within MTEs, ways to facilitate greater consumer choice and enhance broadband deployment in MTEs, and a variety of specific practices that may impede competition in MTEs. Among those specific practices, it sought comment on (1) revenue sharing agreements, whereby a provider compensates an MTE owner with a portion of the provider's revenue generated from the building's subscribers; (2) exclusive wiring arrangements, in which an MTE owner agrees to make wiring within its control available to a provider on an exclusive basis, and related sale-and-leaseback arrangements, in which a provider sells wiring it owns to an MTE owner and then leases that wiring back on an exclusive basis; and (3) exclusive marketing arrangements, including whether to revisit the 2010 decision not to take action regarding MVPD exclusive marketing arrangements (75 FR 12458, March 16, 2010).

7. In 2019, the Commission released a notice of proposed rulemaking that again sought comment about these practices and others that could have the effect of dampening competition or deployment *(2019 Improving Competitive Broadband Access to Multiple Tenant Environments Notice of Proposed Rulemaking (2019 MTE NPRM)* (84 FR 37219, July 31, 2019)). The Commission raised various proposals, including whether providers should be required to disclose the existence of contractual provisions like revenue sharing agreements or exclusive marketing arrangements. It additionally sought comment on the Commission's authority to target different kinds of entities, including telecommunications providers, MVPDs, and broadband-only providers.

8. On July 9, 2021, President Biden released an Executive order encouraging the Commission to examine issues previously raised in this proceeding. In September 2021, the Wireline Competition Bureau issued a Public Notice seeking to refresh the record on the issues raised in the *2019 MTE NPRM* and on developments that may have occurred in the intervening two years. The *2021 MTE NPRM* (86 FR 52120, September 20, 2021) specifically sought comment on revenue sharing agreements; exclusive wiring arrangements, including sale-and-leaseback arrangements; and exclusive marketing arrangements.

III. Report and Order

9. In light of the evidence in the record, we take steps to promote competitive choice in MTEs and target three specific practices that frustrate competition, impede deployment by competitive providers, and reduce choice for Americans living and working in MTEs. In this document, we adopt new rules prohibiting practices which undermine the Commission's longstanding prohibition on exclusive access contracts. We prohibit telecommunications carriers and MVPDs from entering into exclusive and graduated revenue sharing agreements. And we require that telecommunications carriers and MVPDs include disclaimers on marketing materials distributed to MTE tenants that inform tenants of the existence of an exclusive marketing arrangement. Through these actions, we halt practices that serve as an end run around our rules intended to foster competition, and we promote all the benefits that competition entails by addressing practices which limit consumer choice. While we take these specific steps in this document, we do not address other issues raised in this record, including but not limited to exclusive wiring arrangements, bulk billing, and rooftop antenna and Distributed Antenna Systems (DAS) facilities access.

A. Need for Action

10. We act in this document to promote consumer choice and address practices that undermine our pro-competitive rules against exclusive access contracts. Twenty years ago, the Commission first prohibited exclusive access contracts between telecommunications carriers and commercial MTE owners. In the eight years to follow, it expanded that prohibition to cover different types of providers and MTE owners. It took these steps to promote competition and broadband deployment, consistent with Congress's policies and goals. The Commission last explored MTE exclusivity in 2010 when it declined to prohibit two practices by MVPDs in residential MTEs—bulk billing and exclusive marketing arrangements—on the basis that the record before it did not demonstrate that these practices ''hinder significantly or prevent other MVPDs from providing service to [residential MTE] residents.'' The Commission stated at the time that it ''may review marketplace conditions again, however, if future events show that any of these practices is having new and significant anti-competitive effects.''

11. The record before us demonstrates that new practices have emerged that negatively impact competition, contrary to the goals of our rules against exclusive access contracts. The practices we address in this document—exclusive and graduated revenue sharing and exclusive marketing arrangements—reduce the opportunities for competitive providers to offer service to MTE tenants. Many commenters, including small competitive providers, advocacy groups, and MTE residents, document challenges in providing and obtaining services due to the obstacles these practices, alone or in combination with others, pose for access. Despite our prohibition on exclusive access agreements, the use of some of these practices has had the same practical effect of barring competitive entry to MTEs. Further, as many commenters state, the COVID–19 pandemic has underscored the critical role that broadband plays in MTE tenants' lives. As other commenters highlight, the practices identified in the *2021 MTE NPRM* may limit an MTE resident's ability to enroll in the Emergency Broadband Benefit Program with the participating provider of their choice. And the United States Small Business Administration Office of Advocacy identified the importance of

competition in MTEs to small businesses in America.

12. We disagree with those commenters who claim that the market for broadband service in MTEs make actions like those we take in this document unnecessary. The Real Estate Associations highlight internal survey data that they say demonstrates that competition is strong; claim these numbers compare favorably to the Commission's own data regarding Americans' access to broadband generally, including in single-family homes; and argue that action to promote competition in MTEs is consequently unnecessary. We disagree that these statistics, which other commenters rely on, are reason to delay action. First, the experiences of numerous commenters strongly indicate otherwise. Second, the survey information provided by the Real Estate Associations is largely conclusory and provided without the underlying data that would enable the Commission to assess its reliability or general applicability—for example, whether all or just some units in a building have access to the alternative providers present. Third, even taken at face value, the figures provided by the Real Estate Associations comparing broadband deployment in MTEs to that in other forms of housing do not compare favorably given that one would expect broadband deployment to be significantly higher in MTEs due to their density. The record reflects that exclusivity practices in an MTE can have ripple effects in the community around it, including for non-MTEs, as providers demonstrate hesitancy to make capital investments in markets where they may be denied entry to MTEs. Our actions in this document will promote competition and deployment in urban areas generally, as they reduce barriers to new entrants. Finally, we reject the Real Estate Associations' assertion that unless competition in MTEs is *worse* than it is elsewhere in the U.S., the Commission cannot act. We take these steps in this document to target anti-competitive practices in MTEs pursuant to the Commission's longstanding goal of promoting competition in these buildings.

B. Scope of Rules

13. The rules we adopt in this document address practices that have emerged that undermine the goals of our rules prohibiting exclusive access contracts. We thus apply these obligations only to those entities and in those contexts where our exclusive access contract prohibitions already apply. To that end, our rules addressing certain types of revenue sharing agreements and exclusive marketing arrangements apply to communications services provided by (1) telecommunications carriers in both commercial and residential MTEs, and (2) MVPDs subject to section 628(b) in residential MTEs. (MVPDs covered by section 628(b) include a ''cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor.'')

14. We decline to alter the scope of these rules at this time. Commenters argue we should subject broadband-only providers to our rules governing MTE access, citing the potential benefits of doing so and the potential harms that could result from regulatory asymmetry if we did not. Relatedly, some commenters argue we should consider differences between residential and commercial MTEs in assessing the types of practices we address in this document. However, our actions in this document reflect an incremental approach to the problems identified. In tackling these issues in our *2007 Exclusive Service Contracts* and *2008 Competitive Networks Orders* (73 FR 1080, January 7, 2008; 73 FR 28049, May 15, 2008), we did not extend our decisions to broadband-only providers, and we applied rules differently to commercial and residential MTEs. This action builds on those previous determinations and so we adopt the approach taken in those prior orders. We proceed incrementally, and will continue to monitor competition in MTEs to determine whether we should alter the scope of our rules to cover other providers or differently distinguish between commercial and residential MTEs in response to any new information that comes to light. Even though we decline to alter the scope of our rules at this time to the full extent some commenters advocate, we believe that our actions in this document will reap substantial benefits for consumers by promoting choice in MTEs.

15. To that end, we limit our rules regarding certain revenue sharing agreements and exclusive marketing arrangements to telecommunications carriers and covered MVPDs, and the specific MTE contexts described. References to ''providers,'' ''MTEs,'' and ''MTE owners'' in this document should be read to apply only to these entities and in these contexts. We further underscore that, when we refer to revenue sharing agreements and exclusive marketing arrangements, we do not refer only to standalone contracts but also clauses in contracts that include other terms. Where a revenue sharing agreement or exclusive marketing arrangement is part of a larger contract, the remainder of that contract is unaffected by these rules.

C. Prohibition of Certain Revenue Sharing Agreements

16. To promote broadband competition and deployment in MTEs, we adopt rules prohibiting providers from entering into or enforcing two types of revenue sharing agreements with MTE owners that are particularly harmful and which amount to de facto exclusive access agreements. First, we prohibit providers from entering into exclusive revenue sharing agreements with an MTE owner. Second, we prohibit providers from entering into graduated revenue sharing agreements with an MTE owner. In the *2019 MTE NPRM,* the Commission sought comment on whether it should restrict provider use of revenue sharing agreements. Upon review of the record, we now take this incremental step and adopt targeted rules addressing two specific types of agreements that we find by their structure and effect to be anti-competitive.

17. In the *2019 MTE NPRM,* the Commission defined a revenue sharing agreement as an agreement whereby ''the building owner receives consideration from the communications provider in return for giving the provider access to the building and its tenants.'' The Commission further explained that this ''consideration can take many forms, ranging from a *pro rata* share of the revenue generated from tenants' subscription service fees, to a one-time payment calculated on a per-unit basis (sometimes called a door fee), to provider contributions to building infrastructure, such as WiFi service for common areas.'' The Commission acknowledged explanations from MTE owners that they enter into these agreements because they ''enable MTE owners to use the consideration they receive from communications providers to offset infrastructure costs associated with providing broadband service to tenants.'' And it similarly acknowledged concerns from competitive providers and others that they ''reduce incentives for [MTE] owners to grant access to competitive providers when any subscriber gained by such a provider means reduced income to the building owner.''

18. In light of the record developed since the Commission first sought comment on revenue sharing agreements in 2017, we prohibit providers from entering into or enforcing two particularly problematic

types of revenue sharing agreements—exclusive and graduated—that undermine tenant choice and competition in MTEs and are at odds with our long-existing bans on exclusive access. We will continue to monitor the impact of revenue sharing agreements on competition in MTEs, including those not specifically covered by the prohibitions we adopt in this document. We disagree with commenters that argue we should not act because the payments at issue are not significant enough to drive MTE owner behavior, and because revenue sharing is passed through from MTE owners to their tenants. The record contains substantial evidence of the anti-competitive effects of these agreements on prospective competitors and tenant choice. Regardless of the motivation of MTE owners, the practices we address concern provider agreements with third parties that limit their competitors' ability to provide service. Further, no commenter effectively supports the argument that prohibitions of these two types of revenue sharing agreements undermine an MTE owner's incentive for deploying communications infrastructure, especially in light of the importance of communications service to attracting tenants. And as we explain below, no commenter effectively rebuts the argument that these two types of revenue sharing agreements impede the ability of competitive providers to provide service in the MTEs where present, and thus impede those tenants' choice of providers.

19. We adopt this approach over alternatives suggested in the record. We find this targeted prohibition is preferable to a disclosure requirement, in light of commenters who argue that simply informing tenants or competitors about anti-competitive revenue sharing agreements may not address their anti-competitive effects. And we decline to style this rule as a rebuttable presumption and allow a provider to show an agreement is related to MTE owner costs and therefore permitted; our decision in this document turns on the anti-competitive nature of the types of agreements identified.

1. Exclusive Revenue Sharing Agreements

20. We prohibit a provider from entering into or enforcing an exclusive revenue sharing agreement with an MTE owner. In an exclusive revenue sharing agreement, the communications provider offers the MTE owner consideration in return for the provider obtaining access to the building and its tenants, and prohibits the MTE owner from accepting similar consideration from any other provider. Thus, an exclusive revenue sharing agreement allows a communications provider to prevent other providers from sharing payments with the MTE owner.

21. We find that exclusive revenue sharing agreements are anti-competitive and amount to de facto exclusive access agreements. We agree with Starry that ''exclusive revenue shar[ing] serves no legitimate purpose other than to inhibit new entry in an MTE . . . .'' Similar to the graduated revenue sharing agreements discussed below, the structure of an exclusive revenue sharing agreement financially disincentivizes the MTE owner from allowing competing providers access to the building and its tenants. When an exclusive revenue sharing agreement is in place, a new provider is unable to provide compensation to the MTE owner akin to that offered by the incumbent. Because each subscriber that switches from the incumbent to a competitive provider decreases the compensation the MTE owner receives, the owner has an incentive to block alternative providers' access to the building. As INCOMPAS explains, these agreements effectively ''eliminate consumer choice while simultaneously benefiting the property owner and their preferred provider.'' No commenter expresses support for these agreements. Accordingly, we prohibit providers from entering into or enforcing exclusive revenue sharing agreements.

22. We find that the competitive benefits of our prohibition on exclusive revenue sharing agreements, in the form of increased subscriber choice and more competitive pricing and service, substantially outweigh the minimal compliance costs associated with this rule.

2. Graduated Revenue Sharing Agreements

23. We also prohibit providers from entering into or enforcing graduated revenue sharing agreements with MTE owners. In a graduated revenue sharing agreement, sometimes known as ''tiered'' or ''success-based'' agreements, a provider pays an MTE owner a greater percentage of revenue as its penetration in the building increases. Under such an agreement, as a provider serves more tenants in an MTE, the MTE owner receives a greater level of compensation for each tenant. (In one example, a provider offered a five percent revenue share when it served 51–55 percent of the building with video service; a seven percent revenue share when it served 56–60 percent; an eight percent revenue share when it served 61–65 percent; a nine percent revenue share when it served 66–71 percent of the building, and a ten precent revenue share when it served greater than 72 percent of the building.) Therefore, the more tenants in an MTE that a provider furnishes service to, the more compensation the MTE owner receives on a *pro rata* basis.

24. We find that graduated revenue sharing agreements are anti-competitive and amount to de facto exclusive access agreements. We agree with INCOMPAS that, because graduated revenue sharing agreements ''discourage competitive entry to MTEs and . . . circumvent the prohibition on exclusive access agreements,'' we should ''ban graduated revenue sharing agreements.'' As the Small Business Administration Office of Advocacy explains, these types of agreements ''provide an MTE owner with an incentive to exclude competitors so that they can achieve maximum returns under the agreement.'' (Although Commission rules prohibit providers from entering into exclusive access agreements, even where a building owner and provider do not have an exclusive access agreement, a competitor will be unable to serve the building if the MTE owner unilaterally elects to exclude other providers in order to profit from a graduated revenue sharing arrangement.) We agree with Starry that this type of structure is ''specifically designed to (1) incentivize the building to help the incumbent provider maximize the number of subscribers in the building; and (2) act as an economic penalty if the building allows in a new entrant.'' The record convinces us they do ''not serve any other legitimate purpose—the revenue share increase is not associated with any increased cost for the provider or the building.'' Accordingly, we prohibit providers from entering into or enforcing graduated revenue sharing agreements.

25. We disagree with the few commenters who express support for graduated revenue sharing agreements. Honest Networks claims that they are a ''powerful inducement for MTE owners to work with [competitive providers],'' because the agreements enable providers to ''demonstrate value for MTE owners.'' But Honest Networks does not address the argument that these agreements discourage competitive entry once at least one provider is in the building. Like those who argue that revenue sharing agreements generally can ensure return on investment, we understand Honest Networks' claim to be that it relies on the exclusivity provided by a graduated revenue sharing agreement to compete and that this exclusivity can benefit competitive providers. We agree with

the City of San Francisco, which argues that the fact ''[t]hat some market participants might benefit from barriers to entry imposed on potential competitors is not a compelling reason to allow for them.'' And contrary to Honest Networks' claim that graduated revenue sharing agreements are good for competitive providers, INCOMPAS provides examples of competitive providers that were prevented from offering service to one or more MTEs due to graduated revenue sharing agreements. As we have explained, in the *2019 MTE NPRM,* the Commission defined a revenue sharing agreement as an agreement in which a provider compensates an MTE owner *in exchange for access to a building and its tenants.* This definition hinges on the MTE owner's provision of building access in exchange for payment, but graduated payments discourage MTE owners from allowing competitive entry in the manner we have described regardless of what they are in exchange for. We therefore extend this prohibition to include graduated compensation that is in exchange for anything between an MTE owner and covered provider that relates to providing communications service to tenants. We do so to eliminate the ability of providers to easily circumvent this prohibition: A provider could simply provide graduated payment in exchange for a practice such as exclusive marketing and achieve the same anti-competitive effects. To this end, we disagree with those that argue we should condition our ban on graduated revenue sharing agreements to ones used as a condition of access, because this limitation would allow providers to easily evade our prohibition.

26. The record indicates that the benefits of our new rule substantially outweigh its costs. By our action in this document, we remove MTE owners' disincentive to permit service by competing providers, and subscribers will benefit from increased choice as a result of entrance by competing providers, as well as more competitive pricing and service. By contrast, no commenter in the record indicates that this prohibition will be costly.

3. Prohibition of Enforcing Existing Graduated or Exclusive Revenue Sharing Agreements

27. Our prohibition on graduated and exclusive revenue sharing agreements applies both to agreements entered into after the effective date of these rules and those already in existence when these rules become effective. The rules we adopt thus prohibit providers from (1) executing new graduated or exclusive revenue sharing agreements, and (2) enforcing existing graduated or exclusive revenue sharing agreements on a going forward basis. Applying this prohibition to future enforcement of existing agreements will promote competitive entry to MTEs where these agreements are already in effect—to the benefit of MTE tenants—and is consistent with the Commission's approach when it prohibited exclusive access agreements in residential MTEs.

28. When the Commission prohibited exclusive access agreements in residential MTEs—for both telecommunications carriers and covered MVPDs—it applied that prohibition to agreements already in effect. In the *2008 Competitive Networks Order,* it found that ''leav[ing] existing exclusivity contracts in effect would allow the competitive harms we have identified to continue for some time, even years,'' and that it was ''in the public interest to prohibit such contracts from being enforced.'' The Commission further concluded that ''immediately prohibiting the enforcement of such provisions is more appropriate than phasing them out or waiting until contracts expire and are replaced by contracts without exclusivity provisions . . . [because] such approaches would only serve to further delay the entry of competition to customers in the buildings at issue.'' In the *2007 Exclusive Service Contracts Order,* the Commission similarly reasoned that both existing and new exclusivity clauses had the ''same competition- and broadband-deterring effect that harms consumers.'' Because a prohibition that did not cover the exclusivity agreements currently in effect would ''allow the vast majority of the harms caused by such clauses to continue for years . . . [or] indefinitely in the cases of exclusivity clauses that last perpetually or contemplate automatic renewal,'' it found that it was ''strongly in the public interest to prohibit such clauses from being enforced.'' In both orders, the Commission found that affected parties were on notice that the Commission could adopt such a prohibition because ''the validity of exclusivity provisions . . . ha[d] been subject to question for some time.''

29. On review, the United States Court of Appeals for the D.C. Circuit upheld the Commission's prohibition enforcing existing exclusive access contracts adopted in the *2007 Exclusive Service Contracts Order.* The Court found that the Commission's rule was not retroactive, because it had ''impaired the future value of past bargains but ha[d] not rendered past actions illegal or otherwise sanctionable.'' It further concluded the Commission satisfied its obligation to balance the effect of ''upsetting prior expectations or existing investments against the benefits of applying their rules to those preexisting interests.''

30. We undertake that same balancing and find that the benefits of the prohibition we adopt in this document on enforcing existing graduated and exclusive revenue sharing agreements substantially outweigh the costs. The record reflects that these types of revenue sharing agreements already exist and already cause the anti-competitive harms we have identified. To leave existing contracts unaddressed would allow these harms to continue for a period of years or even indefinitely. Indeed, the record reflects that these agreements may last perpetually. Prohibiting existing contracts from being enforced will serve the public interest by preventing such anti-competitive conduct from being grandfathered in indefinitely, and by allowing tenants of impacted MTEs to realize the benefits of competition and consumer choice.

31. We find that our prohibition does not disturb legitimate expectations of MTE and provider investors affected by this rule. First, the anti-competitive structure of the two types of revenue sharing agreements we prohibit in this document conflict with the Commission's long-existing rules designed to promote broadband deployment and competition in MTEs. Second, this rule does not prevent providers from offering service to those MTE tenants who wish to continue to subscribe to their service. Third, the lawfulness of revenue sharing agreements has been under the Commission's scrutiny for nearly five years. In the *2017 MTE NOI,* the Commission sought ''comment on how to best address revenue sharing agreements''; in the *2019 MTE NPRM* it asked whether it should ''restrict the use of revenue sharing agreements''; and in 2021 the Wireline Competition Bureau refreshed the record and asked if the Commission should ''restrict the use of revenue sharing agreements'' and ''address specific types of revenue sharing agreements.'' Finally, the record gives us no reason to uniquely differentiate between commercial and residential MTEs for purposes of this rule, and accordingly we apply the prohibition on enforcing existing, covered revenue-sharing contracts to all MTE contexts covered by this document. Our analysis is not changed by record claims that existing revenue sharing agreements—particularly

graduated revenue sharing agreements—are numerous. We find that this only underscores the importance of reaching these existing agreements to protect MTE tenants from their harmful effects.

32. *Compliance Dates.* For existing contracts with exclusive and graduated revenue sharing agreements, compliance with the prohibition on enforcing such agreements will be required 180 days after publication of the Report and Order in the **Federal Register**. We direct the Wireline Competition Bureau to release a Public Notice announcing the compliance date of the rules for existing contracts. We agree with Altice that adopting a delayed compliance date for existing contracts ''would allow time for providers to conduct the extensive contract renegotiations that would be required if existing graduated revenue sharing provisions are rendered void by the Commission's decision.'' While Altice suggests the need for a one-year transition period for providers to comply with the new prohibition on enforcing existing graduated and exclusive revenue sharing arrangements, we find that 180 days strikes the right balance between giving providers sufficient time to bring their existing arrangements into compliance and ensuring that MTE tenants promptly benefit from the rules we adopt in this document. For new contracts, the prohibition on entering into exclusive and graduated revenue sharing arrangements will take effect 30 days after publication of the Report and Order in the **Federal Register** and will bar such arrangements in new contracts from that point forward.

D. Required Disclosure of Exclusive Marketing Arrangements

33. We require providers to disclose the existence of exclusive marketing arrangements that they have with MTE owners. Such disclosure must be included on all written marketing material directed at tenants or prospective tenants of an MTE subject to the arrangement and must explain in clear, conspicuous, legible, and visible language that the provider has the right to exclusively market its communications services to tenants in the MTE, that such a right does not suggest that the provider is the only entity that can provide communications services to tenants in the MTE, and that service from an alternative provider may be available. We sought comment on whether to require this type of disclosure in the *2019 MTE NPRM* because of the potential for exclusive marketing arrangements to be used to impede MTE entrance by competitive providers, frustrating the goals and intent of our exclusive access prohibition. The record reflects that the nature of exclusive marketing arrangements has changed since the Commission last addressed them in 2010, and we find that this limited disclosure requirement will alleviate tenant confusion identified in the record, prevent the evasion of our exclusive access rules, and, in turn, promote competition in MTEs.

34. As the Commission explained in the *2019 MTE NPRM,* an exclusive marketing arrangement is ''an arrangement, either written or in practice, between an MTE owner and a 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.'' As Consolidated Communications and Ziply Fiber explain, exclusive marketing arrangements ''give only one broadband provider the right to send sales representatives into an MTE or distribute marketing materials, such as door hangers, in the property.'' They further state that ''[u]nder exclusive marketing arrangements, MTE owners will often identify that single company as the 'preferred' provider and steer tenants toward that provider's service.''

35. The record reflects that tenants in MTEs with exclusive marketing arrangements are confused about the availability of competitive service in the MTE and that this confusion dampens competition. Honest Networks states that ''exclusive marketing arrangements create confusion and lower choice for tenants,'' and Consolidated Communications and Ziply Fiber explain that they do so by ''creating confusion as to whether it is even possible to obtain service from another company.'' Crown Castle asserts that ''exclusive marketing arrangements between a MTE and a common carrier providing service directly to tenants often confuses MTE tenants . . . [who] may believe the carriers' exclusive marketing [arrangement] with the MTE means that a carrier has an exclusive right to provide services within the building.'' This confusion has the cascading effect of artificially limiting competition for communications services for MTE tenants because when tenants lack awareness of competitive options, their choice is narrowed to the entity with the exclusive arrangement. Some commenters contend that even MTE owners and their agents are confused about the specific nature of an exclusive marketing arrangement, believing it to be an exclusive access agreement fully barring competition in the MTE. Competitive providers explain that in MTEs with exclusive marketing arrangements they achieve lower penetration and less revenue, and that, consequently, competition in these MTEs is dampened and tenants cannot realize the benefits of competitive choice.

36. We are persuaded by this record to adopt a disclosure requirement to alleviate confusion and, in turn, promote competition. In 2010, the Commission determined that the record at the time did not ''support prohibiting or regulating exclusive marketing arrangements in order to protect competition or consumers.'' The Commission found that, at the time, ''[t]he balance of consumer harms and benefits for marketing exclusivity is thus significantly pro-consumer.'' However, over a decade later, the evidence in the record paints a different picture. Based on the record now before us, we agree with commenters such as INCOMPAS and ACA Connects that a disclosure requirement for exclusive marketing arrangements will help level the playing field by increasing transparency for consumers about provider options and reducing confusion among MTE tenants about the availability of competitive communications services in an MTE, thus promoting competition for such services in the MTE. Indeed, we find that when an exclusive marketing arrangement causes tenant confusion it can lead to de facto exclusive access—frustrating the goals of our exclusive access prohibition—by impeding entrance by third parties. The disclosure requirement we adopt addresses this issue at its source by alleviating this confusion. And we agree with Lumen that tenants ''deserve to know when this is occurring.''

37. We disagree with commenters who assert that a disclosure requirement would not be beneficial because it would not provide tenants with useful information or because tenants see advertisements for competitors elsewhere. We find that, based on the compelling evidence in the current record, when only one company has the ability to market its communications services to MTE tenants, tenants often are not aware that other providers can serve the MTE or are given incorrect information that effectively limits their choice of providers—thus negatively impacting competition. We further disagree with commenters who assert that exclusive marketing arrangements do not preclude competition and so action is unnecessary; we find more persuasive the detailed record evidence of de facto exclusivity faced by competitive providers confronting an

exclusive marketing arrangement in an MTE. While some commenters argue we should prohibit exclusive marketing arrangements entirely, in this document we take this incremental step in light of record developments since the Commission last considered exclusive marketing arrangements in 2010, and we will continue to monitor the impact of exclusive marketing arrangements on competition in MTEs.

38. We require that the disclosure meet the following three requirements: It must (1) be included on all written marketing material from the provider directed at tenants or prospective tenants of the affected MTE; (2) identify the existence of the exclusive marketing arrangement and include a plain-language description of the arrangement and what it means; and (3) be made in a manner that it is clear, conspicuous, and legible. The term ''written marketing material'' includes electronic or print material. Written marketing material is ''directed at'' a tenant or prospective tenant of an MTE if it (1) contains specific mention of the MTE; (2) is provided directly to the tenant or prospective tenant because of its relationship (or prospective relationship) to the MTE, regardless of the means by which it is provided (including, but not limited to, being sent via email, regular mail, mailbox insert, or door hanger); or (3) given to a third party, including the MTE owner, with the understanding it will be directed at tenants or prospective tenants of the MTE. It does not, however, include general-purpose marketing material that incidentally reaches tenants or prospective tenants of the MTE (*e.g.,* general area media or online advertising, website promotions). We disagree that this disclosure needs to be made to other parties such as competitors or the Commission, as some commenters suggest, because these commenters do not explain how a broader disclosure would resolve confusion on the part of MTE tenants (and prospective tenants).

39. In terms of the language of the disclosure, we require the provider to disclose that it has the right to exclusively market its communications services to tenants in the MTE, that such a right does not mean that the provider is the only entity that can provide such services to tenants in the MTE, and that service from an alternative provider may be available. The wording we expect for this requirement differs slightly from the wording proposed by INCOMPAS that would have providers notify MTE tenants that they ''may select the broadband provider of their choice.'' We believe that the INCOMPAS wording is overly broad, and instead require only communication that service from another provider may be available. The latter disclosure is vital because this requirement is intended to alleviate the confusion caused to MTE tenants by the existence of an exclusive marketing arrangement and whether such an arrangement precludes competitive providers in the MTE. To this end, we agree with commenters who argue that the disclosure need not include the business terms and conditions of the arrangements because they are not necessary to counteract any confusion and, in turn, promote competition.

40. In terms of the disclosure being clear, conspicuous, and legible, we require that the disclosure be in plain language, easy to read, and as visible as any other business or legal terms in the marketing material being directed to the MTE tenants. We find that a disclosure is clear, conspicuous, and legible, and therefore is effectively communicated, ''when it is displayed in a manner that is readily noticeable, readable . . . and understandable to the audience to whom it is disseminated.'' While we do not specify the precise fashion or formatting in which the required disclosure must be made, indicia of effective disclosures include ''us[ing] clear and unambiguous language, avoid[ing] small type, plac[ing] any qualifying information close to the claim being qualified, and avoid[ing] making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.'' With regard to formatting, a simple typeface, legible font size, and ample white space would also be indicia of an effective disclosure.

41. This obligation applies to all exclusive marketing arrangements—both those that are already in place and those that are agreed to after the effective date of these rules. For new arrangements, we will enforce compliance with the disclosure requirement after the Office of Management and Budget completes its review of the new requirement pursuant to the Paperwork Reduction Act. To the extent a provider is operating under an exclusive marketing arrangement that is already in place, its disclosure obligation extends to marketing material produced after the compliance date applicable to existing marketing arrangements. We will not enforce compliance with the disclosure requirement for existing exclusive marketing arrangements until the later of (1) the Office of Management and Budget completing its review of the new requirements pursuant to the Paperwork Reduction Act, or (2) 180 days after publication of the Report and Order in the **Federal Register**. We adopt a delayed compliance date for the disclosure requirement for existing exclusive marketing arrangements in order to give providers adequate time to bring their marketing materials into compliance with our new rules and to meet existing expectations regarding their production. To promote compliance, we direct the Wireline Competition Bureau to announce by Public Notice the compliance dates for new and existing exclusive marketing arrangements.

42. We find that the costs to providers for implementing this disclosure requirement will be outweighed by the benefits to consumers and MTEs of having accurate knowledge of exclusive marketing arrangements and the corresponding impact of such arrangements. We believe complying with the written disclosure requirement should present minimal cost, given that the provider simply needs to include a brief, legible disclosure on marketing material it is otherwise planning to design, print (where appropriate), and send to tenants and prospective tenants of an MTE where it has an exclusive marketing arrangement. We do not believe a more onerous disclosure requirement—such as an affirmative, recurring disclosure—is necessary to achieve this end. Rather, we find these minimal requirements for disclosure will alleviate confusion by making MTE tenants aware of the existence of an exclusive marketing arrangement and helping them understand that it does not preclude competition for individual customers in an MTE. And, to the extent MTE owners and their agents are confused by exclusive marketing arrangements, these disclosures should alleviate that confusion because they are likely to see the marketing material.

E. Legal Authority

43. We conclude that sections 201(b) and 628(b) of the Act provide us with authority for the rules we adopt in this document. We find authority over telecommunications carriers under section 201(b), which provides that ''[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.'' Further, it provides that ''[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' We find that the revenue sharing agreements identified above and

a provider's failure to disclose exclusive marketing arrangements fall under our explicit statutory authority to address ''unreasonable practice[s].'' Section 201(b) served as the basis for the Commission's prohibition on exclusive access contracts between telecommunications carriers and MTE owners. The conduct we address in this document serves to undermine that prohibition by enabling telecommunications carriers to restrict access by alternative providers to MTEs; accordingly, we find authority under section 201(b) to prohibit certain revenue sharing agreements and to require limited disclosure of exclusive marketing arrangements by telecommunications carriers.

44. We find authority over covered MVPDs under section 628(b), which makes unlawful ''unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any [MVPD] from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.'' This is the same statutory provision that provided ample authority for the Commission's prohibition on exclusive access contracts between covered MVPDs and residential MTE owners—there, the Commission found that ''the use of an exclusivity clause by a cable operator to 'lock up' a [residential MTE] owner is an unfair method of competition or unfair act or practice because it can be used to impede the entry of competitors into the market and foreclose competition based on the quality and price of competing service offerings.'' We conclude that the same reasoning applies here. We find that the practices discussed above—the identified revenue sharing agreements and failure to disclose exclusive marketing arrangements—are ''unfair methods of competition'' that significantly hinder and in some cases prevent competing MVPDs from serving MTEs. As detailed above, graduated revenue sharing and exclusive revenue sharing agreements amount to de facto exclusive access agreements—effectively preventing competitors, including those providing satellite cable and broadcast programming, from serving MTE tenants—by incentivizing MTE owners to favor one provider to the exclusion of others. Exclusive marketing arrangements lacking appropriate disclaimers to tenants significantly hinder and, in some cases, prevent competing providers from gaining access to MTEs where MTE tenants, and even MTE owners and their agents, erroneously believe the agreements preclude competitive access, and from competing for business in MTEs when they gain access. This confusion leads tenants to believe they have no choice in providers and prevents competing providers who have access to the building from advertising their service, resulting in de facto exclusive access.

45. We disagree with the Real Estate Associations that our actions in this document effectively regulate MTE owners rather than providers, and consequently that we lack authority to take them. We also reject the Real Estate Associations' argument that regulation of revenue sharing agreements is tantamount to ''utility-style regulation'' of payments to landlords. As we explain above, our prohibition on graduated and exclusive revenue sharing agreements stems from the exclusionary, anti-competitive effects these practices have, and we do not herein regulate the amount of payment MTE owners may receive. The rules we adopt in this document address practices by telecommunications carriers and covered MVPDs that serve as an impediment to competition for the services they offer in MTEs. The fact that these practices involve agreements with a third party does not eliminate our ability to address them. The U.S. Court of Appeals for the D.C. Circuit rejected just such an argument when it upheld the Commission's MVPD exclusive access regulations. As T-Mobile explains, ''[t]he Commission's authority is not diminished'' even where our actions ''may also affect property owners.'' We agree that ''the Commission has the power to prevent carriers from restricting other carriers from deploying equipment and serving customers through participation in restrictive transactions'' and that ''[t]he Commission routinely adopts rules based on its clear regulatory authority that may have an impact on unregulated parties.'' Indeed, the Commission has previously found we possess ''ample authority to prohibit exclusivity provisions in agreements for the provision of telecommunications service to . . . MTEs.'' This authority extends to ''contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation.'' We therefore conclude that our actions in this document are authorized pursuant to sections 201(b) and 628(b).

46. We also disagree with the Real Estate Associations' argument that a disclosure requirement of the type mandated in this document may violate the First Amendment. As an initial matter, inasmuch as the Real Estate Associations argue that the disclosure requirement would violate the First Amendment rights of MTE owners, we do not in this document place any disclosure obligations on MTE owners. To the extent they argue this requirement violates the First Amendment rights of service providers, we find that this requirement does not unconstitutionally burden commercial speech. The Supreme Court has explained that the commercial speaker's ''constitutionally protected interest in *not* providing any particular factual information . . . is minimal.'' The Court explained further that disclosure requirements are consistent with the First Amendment provided they are ''reasonably related to the [government's] interest in preventing deception of consumers.'' Here, through a purely factual statement, the disclosure requirement will address the deception created by exclusive marketing arrangements that competitive communications services are unavailable. Thus, the disclosure requirement is ''reasonably related to the [governmental] interest'' of alleviating tenant confusion about their competitive communications options and thus allowing them to enjoy the benefits of competition for services in MTEs. This finding is consistent with past Commission decisions regarding pro-consumer disclosure requirements on entities under our jurisdiction. And while we do not, in this document, rely on the authority recently provided by Congress to address digital discrimination, we will explore the use of that authority if we determine further action is needed to address discrimination and promote access to broadband internet access service in MTEs.

IV. Procedural Matters

47. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission's Final Regulatory Flexibility Analysis is set forth in Appendix B. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Report and Order and Declaratory Ruling, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

48. As required by the Regulatory Flexibility Act of 1980, as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *2019 MTE NPRM.* The Commission sought written public comments on the proposals in the *2019 MTE NPRM,* including comments on the IRFA. No

comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

49. This document takes action to promote competition in multiple tenant environments (MTEs) by addressing two practices that impede competition for communications service in MTEs. First, this document adopts rules prohibiting providers from entering into two types of revenue sharing agreements which discourage competition and have no connection to costs borne by MTE owners: Exclusive and graduated revenue sharing agreements. Second, it adopts rules requiring providers to disclose the existence of exclusive marketing arrangements in simple, easy-to-understand language. Both of these practices undercut the goals of the Commission's longstanding rules prohibiting exclusive access contracts in MTEs, and by adopting these rules we promote competition and tenant choice in MTEs.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

50. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

51. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. However, the Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

52. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the *2019 MTE NPRM* seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

53. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

54. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

55. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

1. Wireline Carriers

56. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

57. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable North American Industry Classification System (NAICS) Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

58. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms

operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

59. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

60. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

61. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but five cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. Wireless Carriers

62. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

63. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

64. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

3. Resellers

65. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and

reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications. They do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 shows that 1,341 firms provided resale services for the entire year. Of that number, all of the firms operated with fewer than 1,000 employees. Thus, under this category and the associated SBA small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

66. *Toll Resellers.* The closest NAICS Code category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 shows that 1,341 firms provided resale services for the entire year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated SBA small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

67. *Prepaid Calling Card Providers.* The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to the Commission's Form 499 Filer Database, 86 active companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these companies have 1,500 or fewer employees, however, the Commission estimates that the majority of the 86 active prepaid calling card providers that may be affected by these rules are likely small entities.

4. Other Entities

68. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or VoIP services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

69. This document adopts new rules requiring telecommunications carriers and covered MVPDs to include a disclosure on all written marketing material directed at tenants or prospective tenants of an MTE subject to an exclusive marketing arrangement that explains in plain language that the provider has the right to exclusively market its communication services to tenants in the MTE. Some telecommunications carriers and covered MVPDs required to make these disclosures may be small.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

70. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

71. This document declined to adopt potentially more onerous disclosure requirements on providers, such as an affirmative annual disclosure to MTE residents or disclosure to third parties such as competitive providers and the Commission. The Commission found that this more limited disclosure requirement adequately addressed record concerns regarding exclusive marketing arrangements while minimizing the burden on affected providers. This determination will minimize the burden of the disclosure requirement on small providers. The Commission further adopted these rules to promote competition in MTEs, including competition by small providers.

G. Report to Congress

72. The Commission will send a copy of the Report and Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order,

including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

73. *Paperwork Reduction Act.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, we previously sought comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

74. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order and Declaratory Ruling to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

75. *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 & Governmental Affairs Bureau at 202–418–0530 (voice).

V. Ordering Clauses

76. *It is ordered* that pursuant to the authority contained in sections 1 through 4, 201(b), 303(r), 601(4), 601(6), 624(i), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201(b), 303(r), 521(4), 521(6), 544(i), and 548, and §§ 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), the Report and Order *is adopted*.

77. *It is further ordered* that parts 64 and 76 of the Commission's rules *are amended* and such amendments *shall be effective* 30 days after publication in the **Federal Register**, except that compliance with §§ 64.2500(c)(2)(ii) and (d)(2) and 76.2000(b)(2)(ii) and (c)(2) of the Commission's rules, 47 CFR 64.2500(c)(2)(ii), (d)(2), 76.2000(b)(2)(ii), (c)(2), will not be required until 180 days after publication in the **Federal Register**; compliance with §§ 64.2500(e) and 76.2000(d) of the Commission's rules, 47 CFR 64.2500(e), 76.2000(d), will not be required until the Office of Management and Budget completes its review under the Paperwork Reduction Act; and compliance with §§ 64.2500(e)(2)(ii) and 76.2000(d)(2)(ii) of the Commission's rules, 47 CFR 64.2500(e)(2)(ii), 76.2000(d)(2)(ii), will not be required until the later of 180 days after publication in the **Federal Register** or the date that the Office of Management and Budget completes its review of the requirements in §§ 64.2500(e) and 76.2000(d) pursuant to the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce compliance dates for §§ 64.2500(e) and 76.2000(d) by subsequent notification in the **Federal Register** and to cause 47 CFR 64.2500(e) and 76.2000(d) to be revised accordingly.

78. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review with respect to all aspects of the Report and Order and Declaratory Ruling will commence on the date that a summary of the Report and Order and Declaratory Ruling is published in the **Federal Register**.

79. *It is further ordered* that the Commission *shall send* a copy of the Report and Order and Declaratory Ruling to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

80. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center *shall send* a copy of the Report and Order and Declaratory Ruling, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 64 and 76

Communications, Communications common carriers, Communications equipment, Internet, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 64 and 76 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.2500 by revising the section heading and adding paragraphs (c) through (e) to read as follows:

§ 64.2500 Prohibited agreements and required disclosures.

* * * * *

(c) No common carrier shall enter into or enforce any contract regarding the provision of communications service in a multiunit premise, written or oral, in which it gives the multiunit premise owner compensation on a graduated basis.

(1) *Definition.* For purposes of this paragraph (c), a ''graduated basis'' means that the compensation a common carrier pays to a multiunit premise owner for each tenant served increases as the total number of tenants served by the common carrier in the multiunit premise increases.

(2) *Compliance dates*—(i) *Compliance date for new contracts.* After April 27, 2022, no common carrier shall enter into any contract regarding the provision of communications service in a multiunit premise, written or oral, in which it gives the multiunit premise owner compensation on a graduated basis.

(ii) *Compliance date for existing contracts.* After September 26, 2022, no common carrier shall enforce any contract regarding the provision of communications service in a multiunit premise, written or oral, in existence as of April 27, 2022, in which it gives the multiunit premise owner compensation on a graduated basis.

(d) No common carrier shall enter into or enforce any contract regarding the provision of communications service in a multiunit premise, written or oral, in which it receives the exclusive right to provide the multiunit premise owner compensation in return for access to the multiunit premise and its tenants.

(1) *Compliance date for new contracts.* After April 27, 2022, no common carrier shall enter into any contract, written or oral, in which it receives the exclusive right to provide the multiunit premise owner compensation in return for access to the multiunit premise and its tenants.

(2) *Compliance date for existing contracts.* After September 26, 2022, no

common carrier shall enforce any contract regarding the provision of communications service in a multiunit premise written or oral, in existence as of April 27, 2022, in which it receives the exclusive right to provide the multiunit premise owner compensation in return for access to the multiunit premise and its tenants.

(e) A common carrier shall disclose the existence of any contract regarding the provision of communications service in a multiunit premise, written or oral, in which it receives the exclusive right to market its service to tenants of a multiunit premise.

(1) Such disclosure must:

(i) Be included on all written marketing material, whether electronic or in print, that is directed at tenants or prospective tenants of the affected multiunit premise;

(ii) Identify the existence of the contract and include a plain-language description of the arrangement, including that the provider has the right to exclusively market its communications services to tenants in the multiunit premise, that such a right does not mean that the provider is the only entity that can provide such services to tenants in the multiunit premise, and that service from an alternative provider may be available; and

(iii) Be made in a manner that it is clear, conspicuous, and legible.

(2)(i) *Compliance date for new contracts.* Paragraph (e) of this section contains an information-collection and/or recordkeeping requirement. Compliance with paragraph (e) will not be required for new contracts until this paragraph (e)(2)(i) is removed or contains a compliance date for new contracts, which will not occur until after the Office of Management and Budget completes its review of such requirements pursuant to the Paperwork Reduction Act.

(ii) *Compliance date for existing contracts.* For contracts in existence as of the compliance date for new contracts in paragraph (e)(2)(i) of this section, compliance with paragraph (e) of this section will not be required until the later of September 26, 2022 or the date that the Office of Management and Budget completes its review of the requirements in paragraph (e) pursuant to the Paperwork Reduction Act.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 4. Amend § 76.2000 by redesignating paragraph (b) as paragraph (e) and adding paragraphs (b) through (d) to read as follows:

§ 76.2000 Exclusive access to multiple dwelling units generally.

* * * * *

(b) *Prohibition of graduated revenue sharing agreements.* No cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enter into or enforce any contract regarding the provision of communications service in a MDU, written or oral, in which it gives the MDU owner compensation on a graduated basis.

(1) *Definition.* For purposes of this paragraph (b), a ''graduated basis'' means that the compensation a cable operator or other provider of MVPD service subject to 47 U.S.C. 548 pays to a MDU owner for each tenant served increases as the total number of tenants served by the cable operator or other provider of MVPD service subject to 47 U.S.C. 548 in the MDU increases.

(2) *Compliance dates*—(i) *Compliance date for new contracts.* After April 27, 2022, no cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enter into any contract regarding the provision of communications service in a MDU, written or oral, in which it gives the MDU owner compensation on a graduated basis.

(ii) *Compliance date for existing contracts.* After September 26, 2022, no cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enforce any contract regarding the provision of communications service in an MDU, written or oral, in existence as of April 27, 2022, in which it gives the MDU owner compensation on a graduated basis.

(c) *Prohibition of exclusive revenue sharing agreements.* No cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enter into or enforce any contract regarding the provision of communications service in a MDU, written or oral, in which it receives the exclusive right to provide the MDU owner compensation in return for access to the MDU and its tenants.

(1) *Compliance date for new contracts.* After April 27, 2022, no cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enter into any contract, written or oral, in which it receives the exclusive right to provide the MDU owner compensation in return for access to the MDU and its tenants.

(2) *Compliance date for existing contracts.* After September 26, 2022, no cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall enforce any contract regarding the provision of communications service in a MDU, written or oral, in existence as of April 27, 2022, in which it receives the exclusive right to provide the MDU owner compensation in return for access to the MDU and its tenants.

(d) *Required disclosure of exclusive marketing arrangements.* A cable operator or other provider of MVPD service subject to 47 U.S.C. 548 shall disclose the existence of any contract regarding the provision of communications service in a MDU, written or oral, in which it receives the exclusive right to market its service to tenants of a MDU.

(1) Such disclosure must:

(i) Be included on all written marketing material, whether electronic or in print, that is directed at tenants or prospective tenants of the affected MDU;

(ii) Identify the existence of the contract and include a plain-language description of the arrangement, including that the provider has the right to exclusively market its communications services to tenants in the MDU, that such a right does not mean that the provider is the only entity that can provide such services to tenants in the MDU, and that service from an alternative provider may be available; and

(iii) Be made in a manner that it is clear, conspicuous, and legible.

(2)(i) *Compliance date for new contracts.* Paragraph (d) of this section contains an information-collection and/or recordkeeping requirement. Compliance with paragraph (d) will not be required until this paragraph (d)(2)(i) is removed or contains a compliance date, for new contracts, which will occur after the Office of Management and Budget completes its review of such requirements pursuant to the Paperwork Reduction Act.

(ii) *Compliance date for existing contracts.* For contracts in existence as of the compliance date for new contracts in paragraph (d)(2)(i) of this section, compliance with paragraph (d) of this section will not be required until the later of September 26, 2022 or the date that the Office of Management and Budget completes its review of the requirements in paragraph (d) pursuant to the Paperwork Reduction Act.

* * * * *

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