

The FCC Looks At Multifamily Housing

Bulk billing is in the crosshairs of the FCC's most recent broadband notice of inquiry.

By Valerie M. Sargent / *Multifamily Broadband Council*

When I was in property management, overseeing ancillary services at apartment communities, I was always concerned with the telecommunications services my company put into apartment communities and how they would benefit the residents and the company. Yet news of government activity related to those voice, video and data services did not regularly come across my desk.

Some owners and companies are very aware of this type of activity, thanks to their legal teams and the associations that represent them at local and national levels. Others get caught up in running their businesses. If you're like me, you may see informative newsletters appear in your inbox and think, "I'll get to it later, when I have more time" – and then never get to it.

News of government inquiries may slip through the cracks, but they still impact owners' communities. In fact, they may have direct negative impacts on owners' bottom lines and the services residents have come to depend upon and love.

BACKGROUND: THE SAN FRANCISCO ORDINANCE

The Multifamily Broadband Council (MBC) petitioned the FCC earlier this year to preempt Article 52 of the San Francisco Police Code, enacted by the city of San Francisco "to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants."

Though the ordinance appeared to be pro-consumer, MBC quickly saw it would create an environment in which only very deep-pocketed companies could ultimately benefit or survive, thus reducing the competition the ordinance purported to promote.

A small provider or owner cannot justify investing in multifamily infrastructure if the investment may be undermined by the potential loss and disruption of the infrastructure – as may happen in an environment shared by a potentially unlimited number of providers. Stakeholders that supported MBC's petition and opposed Article 52 filed comments saying the ordinance would ultimately strip property rights from owners, and they feared that similar ordinances would be enacted in other cities. (The FCC has not yet ruled on this petition, and post-deadline ex parte comments are still being accepted at www.fcc.gov/ecfs. Search for Filing 17-91.)

NEXT UP: FCC INQUIRY ON BROADBAND ACCESS

Shortly after the reply deadline for the MBC petition, the FCC opened a notice of inquiry (NOI) on improving competitive broadband access to multiple-tenant environments (MTE). It seeks comment on "ways to facilitate greater consumer choice and enhance broadband deployment in multiple tenant environments." This NOI will have a direct impact on broadband deployment in the multifamily industry nationwide. It goes well beyond San Francisco.

One item the FCC is looking into is bulk billing agreements. Any multifamily owner that has bulk billing agreements in place could find that this business model is in jeopardy.

The NOI states that "some providers argue that certain state regulations intended to encourage competitive MTE access may actually hinder their ability to provide a competing service. For instance, in a separate proceeding, the Multifamily Broadband Council (MBC) argues that some measures aimed at promoting competitive MTE access may have the perverse effect of stifling broadband competition by privileging large, well-financed network providers over smaller ones which may be unable to enter into certain contractual terms (for example, undisturbed use of inside wiring or bulk billing arrangements) that may be necessary to secure the financing needed to deploy networks to multi-tenant buildings."

The FCC is seeking comment on the current state of broadband competition in MTEs. It asks for information on the following questions:

- Does building-by-building competition for exclusive marketing, bulk billing and access to wiring provide greater opportunities and incentives for companies to deploy or upgrade wiring and compete in MTEs, thus preserving the benefits of competition for consumers?
- Is there any evidence of a market failure in the provision of broadband service to MTEs and their residents?
- Are there technical or operational challenges associated with the use of a single facility by two or more providers?
- If so, what consumer harms are associated with these challenges?

- Under what circumstances, if any, should the government have a role in dictating the terms of contracts between service providers and building owners?

MBC is particularly concerned with the third and fourth points, which concern the technical or operational challenges involved in the use of a single facility by multiple providers. If contention among providers led to mass disconnects and poor quality of service, and no service agreements were in place, it would be difficult to enforce service levels. In other words, if the San Francisco ordinance conditions went nationwide, an owner would essentially have no control over what happens to the wiring in his or her building.

HOW TO PARTICIPATE

The FCC is trying to determine whether any state and local regulations inhibit competition in multitenant environments. Commissioners want to consider whether the FCC should revisit its 2010 decision to not take action regarding bulk billing and exclusive marketing arrangements. They also want to consider how revenue-sharing and exclusive wiring arrangements affect competition.

FCC Chairman Pai is looking for the big picture – potential barriers to entry for competitors, including incentives, contracts and bulk billing arrangements. He

wants to know whether banning such arrangements would help or hurt competition. Owners and providers should ask themselves how banning these arrangements would impact their bottom lines and ROI. How would it impact pricing? What about service?

The goal of competition is to lower prices and provide more innovation. Owners typically want a say about what is happening on their properties. The NOI is opening a line of questions on how best to promote broadband deployment and competition in MTEs.

The deadline for opening comments is July 24, and reply comments are due by August 22. To submit a comment, go to www.fcc.gov/ecfs/. Search for Filing 17-142, and look for “Improving Competitive Broadband Access to Multiple Tenant Environments.”

In giving your input, you are protecting your business and your valuable assets, along with residents’ quality of service. ❖

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