

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Improving Competitive Broadband Access to |) | GN Docket No.17-142 |
| Multiple Tenant Environments |) | |

REPLY COMMENTS OF CALTEL

Pursuant to the Commission’s Public Notice establishing dates for comments on the Notice of Inquiry (NOI) issued in this proceeding,¹ the California Association of Competitive Telecommunications Companies² (“CALTEL”) files the following reply comments on behalf of its members.³

I. Introduction and Summary

CALTEL is a non-profit trade association that represents the interests of its members before the California Public Utilities Commission (CPUC), the California State Legislature, and the California Governor’s Office. CALTEL participates in Commission proceedings, especially where there is an opportunity and/or need to provide input specific to the communications services market in California.

¹ *Wireline Competition Bureau Opens GN Docket No. 17-142*, Public Notice DA 17-532, June 1, 2017.

² CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice and broadband services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

³ See www.caltel.org for a list of CALTEL member companies.

CALTEL was an early supporter of the San Francisco ordinance that is the subject of a preemption petition in a separate proceeding⁴ as well as additional discussion in this proceeding. In May of this year, CALTEL filed comments explaining how the ordinance had already been instrumental in providing access for one of its member companies, Sonic Telecom, to several multi-tenant buildings for which it had previously been denied access. CALTEL is now able to update this information and again describe how the ordinance has successfully promoted broadband competition in San Francisco.

Based on Sonic's experiences, CALTEL urges the Commission to reject sweeping claims by large and small cable providers that the interests of building owners are unambiguously and ubiquitously aligned with those of their tenants. As a result, CALTEL supports the positions taken by INCOMPAS and other commenters that the Commission should investigate use of revenue sharing agreements, revisit its exclusivity rules and defer to state and local jurisdictions by refusing to preempt pro-competitive mandatory access laws like San Francisco's Article 52 local ordinance.

II. Discussion

A. San Francisco's Article 52 Ordinance Has Been Instrumental in Helping Competitors Gain Access to Multi-Tenant Buildings

On May 18, 2017, CALTEL filed comments opposing a petition by the Multifamily Broadband Council (MBC) requesting the Commission to preempt an ordinance enacted by the City and County of San Francisco at the end of last year.⁵

⁴ Petition of the Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code, MB Docket No. 17-91, filed February 24, 2017.

⁵ Comments of CALTEL, MB Docket No. 17-91, filed May 18, 2017.

CALTEL's comments included a declaration by the Co-Chair of CALTEL's Board of Directors, Sonic Telecom CEO Dane Jasper, describing how the ordinance had already been instrumental in assisting Sonic to gain access to approximately 30 multi-tenant buildings.⁶

Although the subject of a separate proceeding, the San Francisco ordinance was referenced several times in the NOI,⁷ and was specifically discussed by a number of parties in opening comments.⁸ CALTEL comprehensively addressed MBC's incorrect and misleading claims, including its false allegations that the ordinance created a barrier to competition and competitive choice, in its comments opposing the petition and will not repeat that discussion here.⁹ But only several months after filing its initial comments, the on-the-ground facts overwhelmingly confirm CALTEL's conclusions: Sonic now reports that the ordinance has been instrumental in assisting it to gain access to approximately 300 multi-tenant buildings in San Francisco. These facts also confirm San Francisco's determination that the Commission's "efforts...to enhance competition among providers of communications services in MTE's have not been successful," and that it needed to "complement the Commission's actions by prohibiting property owners from denying

⁶ *Id.*, Declaration of Dane Jasper.

⁷ NOI at ¶2, fn 5 and ¶9, fns 29 and 30.

⁸ *See, e.g.*, Comments of INCOMPAS at pp. 21-23; Comments of the National Multifamily Housing Council at pp. 3-4; Comments of the Fiber Broadband Association at p.7, fn 22; Comments of NCTA at pp. 2, 4 and 11-12; Comments of the City and County of San Francisco at pp. 1-8, 10-12; and Letter from the Multifamily Broadband Council (throughout).

⁹ However, CALTEL has included its comments in MB 17-91 as an attachment to these comments.

persons living or working in MTEs in San Francisco their right to choose a communications provider.”¹⁰

B. The Interests of Property Owners and Tenants Are Not Unambiguously or Ubiquitously Aligned

As INCOMPAS recognizes, although the Commission previously found that “landlords of MDUs can be presumed to act in the best interest of their residents,”¹¹ there are a great many reasons to question and reverse that determination. While those reasons certainly include financial incentives (such as revenue sharing and exclusivity agreements), there is equal cause to look to the dynamics of the housing market, which vary significantly across the country. NCTA’s claims that “owners of MTEs have a strong interest in ensuring that robust broadband service is available to their tenants on the most attractive terms and conditions” because it is a “necessity in attracting and retaining tenants”¹² is not ubiquitously true in every city, town and county across the country.

As INCOMPAS explains, factors such as switching costs reduce tenants’ bargaining power even in competitive housing markets.¹³ In tight housing markets, of which San Francisco is undeniably one of the tightest,¹⁴ tenants have no realistic ability to choose an MDU based on the number and type of broadband providers that serve there.

¹⁰ Comments of the City and County of San Francisco at pp. 1-2.

¹¹ Comments of INCOMPAS at p. 7 (referencing the Commission’s *2003 Inside Wiring Order*).

¹² Comments of NCTA at p. 1.

¹³ Comments of INCOMPAS at pp. 7-9.

¹⁴ *See, e.g.*, “Bay Area real estate: Region has tightest housing supply in state—and highest prices”, San Jose Mercury News, July 18, 2017, at

Sonic's experience in San Francisco bears out this conclusion. In addition to the factors described by INCOMPAS,¹⁵ San Francisco property owners in buildings protected by rent control simply explained to Sonic personnel that, all things being equal, they have no financial incentive to retain current tenants, who if they were to leave because they are unable to get competitive broadband alternatives could be replaced with new tenants that would be required to pay significantly higher rental fees.

As a result, CALTEL recommends that the Commission conclude that the dynamics of the MDU housing market are not uniform or ubiquitous across the nation, and that the interests of property owners and tenants can no longer be unambiguously assumed to be aligned.

C. The Commission Should Investigate Revenue-Sharing Agreements and Revisit Its Rules Regarding Exclusivity Agreements

CALTEL supports the recommendations by INCOMPAS and other commenters that the Commission “investigate the anti-competitive effects of graduated revenue sharing arrangements” and “revisit its exclusivity rules.”¹⁶ As CALTEL described in its comments on the MBC preemption petition, the Commission's rules did not cover all

<http://www.mercurynews.com/2017/07/18/bay-area-real-estate-region-has-tightest-housing-supply-in-state-and-highest-prices/>; “California and Bay Area housing set to get even pricier, says UCLA”, www.curbed.com, June 22, 2017 at <https://sf.curbed.com/2017/6/22/15855670/housing-san-francisco-ucla-homes-affordable-study>; “San Francisco Bay Area Apartment Market Report”, www.paragon.com, July, 2017, at <https://www.paragon-re.com/trend/bay-area-apartment-building-market> noting that “San Francisco still has the highest rents in the nation, exceeding even Manhattan”; “The Cost of a Hot Economy in California: a Severe Housing Crisis”, New York Times, July 17, 2017, at <https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html> .

¹⁵ Comments of INCOMPAS at pp. 8-9.

¹⁶ *Id.* at p. 9 and p. 13.

providers or types of exclusivity arrangements equally,¹⁷ and as a result have been the source of confusion for property owners. This confusion has helped to create an environment that is conducive to providers' ability to negotiate "end-runs" around the Commission's current rules.¹⁸ CALTEL therefore agrees with INCOMPAS that the Commission should investigate revenue-sharing agreements and eliminate the confusing exemptions in its exclusivity rules.¹⁹

D. The Commission Should Defer to State and Local Jurisdictions by Refusing to Preempt Pro-Competitive Mandatory Access Laws Like San Francisco's Article 52 Ordinance

Finally, CALTEL agrees with INCOMPAS that the Commission should defer to state and local jurisdictions "in matters of landlord and tenant relationships by refusing to preempt state and local mandatory access laws,"²⁰ beginning with denying the pending preemption petition of the Multifamily Broadband Council. As INCOMPAS notes, the Commission has simultaneously "acknowledged state and local interests in promoting competition and consumer choice" while "encouraging state and local governments to reform their mandatory access laws to avoid any anticompetitive impact."²¹ San Francisco has enacted just such a reform, and as discussed above, did so based on its unique knowledge of local conditions, including the competitive landscape and the MTE housing market. As CALTEL stated in its comments on the preemption petition, "Article

¹⁷ Comments of CALTEL, MB Docket No. 17-91, filed May 18, 2017, at pp. 14-15.

¹⁸ Comments of INCOMPAS at pp. 14-20.

¹⁹ *Id.*

²⁰ *Id.* at p. 6.

²¹ *Id.*

52 has already removed real barriers to broadband deployment and competitive choice in San Francisco, and rather than being preempted, it should be submitted to the Commission's newly-appointed Broadband Deployment Advisory Council (BDAC) as an example of a pro-competitive, barrier-removing "model code" for municipalities."²²

III. Conclusion

CALTEL welcomes this opportunity to provide reply comments on these important competition-affecting issues. CALTEL supports the positions taken by INCOMPAS and other commenters that the Commission should investigate use of revenue sharing agreements, revisit its exclusivity rules and defer to state and local jurisdictions by refusing to preempt pro-competitive mandatory access laws like San Francisco's Article 52 local ordinance.

²² Comments of CALTEL, MB Docket No. 17-91, filed May 18, 2017, at p. 2.

Respectfully submitted,

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