PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS TO REFRESH RECORD ON IMPROVING COMPETITIVE BROADBAND ACCESS TO MULTIPLE TENANT ENVIRONMENTS

GN Docket No. 17-142

Comment Date: 30 days from publication in the Federal Register
Reply Comment Date: 45 days from publication in the Federal Register

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

Americans living and working in multiple tenant environments (MTEs) face various obstacles to obtaining the benefits of competitive choice of fixed broadband, voice, and video services. Telecommunications carriers and multichannel video programming distributors (together, "service providers") need to access building conduits, install wiring to individual units or premises, and make repairs once wiring has been installed.[2] Complicating these tasks is the fact that providing service to MTEs involves not just the service provider and the end-user tenant, but a third party: the premises owner or controlling party (MTE owner).[3] As a result, deploying facilities-based fixed services to the millions of Americans living and working in MTEs can be uniquely challenging. The Commission has endeavored to increase competition among service providers and reduce potential barriers to broadband deployment in MTEs.[4] Beginning in 2000, the Commission, through a series of orders, prohibited service providers from entering into contracts with MTE owners that give a service provider exclusive access to the building to offer its services.[5] In the *Notice*, the Commission sought comment on a range of common

[1] *Improving Competitive Broadband Access to Multiple Tenant Environments et al.*, GN Docket No. 17-142 et al., Notice of Proposed Rulemaking, 34 FCC 5702 (2019) (*2019 MTEs NPRM*).

[2] *2019 MTEs NPRM*, 34 FCC Rcd at 5703, para. 1.

[3] *Id.*

[4] *Id.*, 34 FCC Rcd at 5703, para. 2.

[5] *See Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, 22985, para. 1 (2000); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20236, para. 1 (2007), *aff'd, National Cable & Telecommun. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009); *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217,

(continued….)

practices in MTEs that could have the effect of dampening competition or deployment.[6] We seek to refresh the record to better understand how the Commission can best "facilitate enhanced deployment and greater consumer choice for Americans living and working in" MTEs.[7]

Revenue Sharing Agreements. We seek to refresh the record on the impact revenue sharing agreements have on competition and deployment of facilities in MTEs. In the *Notice*, the Commission explained that revenue sharing agreements are contracts between MTE owners and service providers where the owner "receives consideration from the communications provider in return for giving the provider access to the building and its tenants."[8] The Commission recognized that revenue sharing agreements can take various forms. For example, they can be simple one-time payments calculated on a per-unit basis (sometimes referred to as door fees); or they can be pro rata, calculated as a portion of revenue generated from tenants' subscription service fees.[9] These pro rata agreements may also be graduated, where the building owner receives more revenue as the proportion of tenants in a building choose that service provider.[10] And some revenue sharing agreements may be considered "above cost"—that is, they may give MTE owners compensation beyond actual costs associated with the installation and maintenance of wiring.[11] The Commission sought comment on the impact revenue sharing agreements have on competition and deployment, as well as whether they reduce incentives for building owners to grant access to competitive providers given that a lower number of subscribers for the incumbent provider means reduced income to the building owner.[12] It also asked whether revenue sharing agreements were being used to circumvent Commission rules prohibiting exclusive access agreements, whether alone or in combination with other contractual provisions.[13]

We seek to refresh the record on whether the Commission should restrict some or all of these types of revenue sharing agreements. Have there been changes over the last two years as to how frequently these agreements are used in MTEs? How do these agreements affect the ability of tenants to choose their service provider?[14] How do they affect the prices that tenants ultimately pay for service?[15]

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Second Report and Order, 23 FCC Rcd 5385, 5386, para. 5 (2008); *see also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Second Report and Order, 25 FCC Rcd 2460 (2010).

[6] *2019 MTEs NPRM*, 34 FCC Rcd at 5710-11, paras. 14-15.

[7] *Id.*, 34 FCC Rcd at 5710-11, para. 14. The Commission has defined MTEs as "commercial or residential premises such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities." *Id.*, 34 FCC Rcd at 5703, para. 1 n. 2; *Improving Competitive Broadband Access to Multiple Tenant Environments*, Notice of Inquiry, 32 FCC Rcd 5383, 5383-5384, para. 2 (2017).

[8] *2019 MTEs NPRM*, 34 FCC Rcd at 5711, para. 16.

[9] *Id.*

[10] *See* INCOMPAS Comments at 10.

[11] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5713, para. 19.

[12] *2019 MTEs NPRM*, 34 FCC Rcd at 5711-12, paras. 17-18.

[13] *2019 MTEs NPRM*, 34 FCC Rcd at 5712, para. 18.

[14] *Id.*; *see* INCOMPAS Comments at 5, 11 (arguing that certain types of revenue sharing agreements "reduce choice for communications services" and "the net effect for tenants is limited broadband choices"); National Multifamily Housing Council et al. Comments at 80 (arguing that revenues owners receive from revenue sharing agreements are "not enough to overcome the strong pressure from residents for competitive choices").

[15] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5711, para. 17 (observing that some commenters argue that revenue sharing agreements "do not raise costs for tenants"); *see* INCOMPAS Comments at 11 (arguing that revenue sharing agreements "limit[] opportunities to subscribe to faster broadband at cheaper prices").

What are the effects of these agreements on competition among service providers?[16] Do these agreements promote or inhibit entry by competitive providers?[17] In what ways do revenue sharing agreements affect how service providers compete for customers?[18] Do they encourage or discourage service providers to compete on the basis of price or service quality?[19] Do service providers attempt to negotiate agreements that work to exclude competitors?[20] If revenue sharing agreements function to prevent competing providers from deploying,[21] does the MTE in effect become a locational monopoly?[22] What legitimate reasons might a competitive provider and building owner have to enter into such agreements?[23] For example, do these agreements affect competitive providers' ability to offer services in MTEs, such as by enabling providers to secure financing to deploy facilities?[24] Do the drawbacks of such agreements outweigh any benefits?[25] Should the Commission restrict the use of revenue sharing agreements?[26] Alternatively, should the Commission require the disclosure of such agreements?[27]

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[16] *2019 MTEs NPRM*, 34 FCC Rcd at 5712, para. 18.

[17] *Id.*; *see* NCTA Reply at 6 (arguing that "[e]liminating or restricting the use of revenue sharing would in no way increase a building owner's incentives to allow additional providers entry"); Uniti Fiber Comments at 8 (contending that the Commission should encourage revenue sharing agreements to the extent that they "enable providers to serve a market [they] otherwise cannot compete in," but caution that "the Commission should ensure that carriers only enter into 'reasonable' revenue sharing agreements" that do not "explicitly or implicitly prevent additional providers from offering services to MTE tenants"); Wireless Internet Service Providers Association Comments at 6 (WISPA) (arguing that revenue sharing agreements "ensure *de facto* exclusivity by denying entry into the MTE").

[18] *2019 MTEs NPRM*, 34 FCC Rcd at 5711, para. 17.

[19] *See id.*, 34 FCC Rcd at 5711, para. 17 (seeking comment on the "impact revenue sharing agreements have on competition . . . within MTEs").

[20] Uniti Fiber Comments at 8 (cautioning that "carriers should be prevented from entering into such arrangements that either explicitly or implicitly prevent additional providers from offering services to MTE tenants").

[21] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5712, para. 18 (noting that some commenters claim that "protracted negotiations over these types of agreements can inhibit competition by preventing providers from deploying broadband services on a timely basis").

[22] City of San Francisco Comments at 4 (arguing that revenue sharing agreements "benefit[] a handful of providers who rely on their monopoly statuses to earn a profit—and allowing property owners to benefit from revenue sharing agreements").

[23] *See id.*, 34 FCC Rcd at 5712, para. 17; *see, e.g.*, Crown Castle Comments at 7-8 (claiming that revenue sharing agreements "encourage[] MTEs to permit the placement of telecom-related equipment . . . within the MTE").

[24] *See, e.g.*, GigaMonster Reply 2 (arguing that revenue sharing agreements "allow owners to recoup costs in providing necessary infrastructure"); RealtyCom Comments at 4 (arguing that revenue sharing agreements help avoid situations that would require "MTE owners and residents more heavily subsidize any broadband provider that comes into a property").

[25] *See, e.g.*, Common Comments at 7 (arguing that revenue sharing agreements make entrance into MTEs more difficult for competitive providers); FBA Comments at 5 (claiming that above-cost revenue sharing agreements depress deployment and competition).

[26] *2019 MTEs NPRM*, 34 FCC Rcd at 5711, para. 16 ("We seek comment on whether we should require the disclosure or restrict the use of revenue sharing agreements for broadband service."); *id.*, 34 FCC Rcd at 5713, para. 20 ("If the Commission determines that revenue sharing agreements harm competition and deployment and that transparency is an insufficient remedy, should the Commission adopt a rule to restrict or prohibit such agreements?"); *see, e.g.*, CenturyLink Comments at ii (recommending that the Commission "[p]rohibit providers from entering into revenue sharing . . . agreements that compensate the MTE owner beyond its actual cost of enabling service and performing any other contractual obligations on the provider's behalf"); Common Networks, Inc. Comments at 7 (Common) (advocating for a prohibition of revenue sharing agreements but claiming disclosure alone would not necessarily reduce incentives for such agreements and may further disadvantage small competitors);

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We seek comment on whether the Commission should address specific types of revenue sharing agreements. For example, should it restrict above-cost revenue sharing agreements?[28] If so, how should the Commission define costs? How would any such restrictions impact tenants?[29] How could the Commission best and most effectively monitor compliance? Additionally, we seek comment on whether the Commission should take action to address graduated revenue sharing agreements.[30] To what extent do such agreements lead building owners to favor one provider over others and to exclude competitors?[31] Similarly, we seek comment on revenue sharing agreements containing exclusivity provisions that may prevent building owners from offering equal terms to other providers.[32] Do such provisions negatively affect competition and deployment in MTEs? Should the Commission restrict or prohibit such agreements, or require their disclosure?[33] Are there any other provisions in such agreements that may serve to hinder competitive access?

Exclusive Wiring Arrangements. Second, we seek to refresh the record on the effect of exclusive wiring arrangements on competition and deployment of facilities in MTEs. In the *Notice*, the Commission explained that under an exclusive wiring arrangement, service providers "enter into agreements with MTE owners under which they obtain the exclusive right to use the wiring in the building."[34] The Commission sought comment on whether it remained true that, as it had previously concluded in 2007, "exclusive wiring arrangements do not preclude competitive providers' access to buildings."[35] It also asked whether such arrangements differ in states and localities where mandatory access laws have been introduced.[36]

We seek to refresh the record in light of possible developments since the *Notice*.[37] Should the Commission revisit its conclusion that exclusive wiring arrangements generally do not preclude access to

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Fiber Broadband Association Comments at 4 (FBA) (supporting disclosure requirements); INCOMPAS Comments at 13 (arguing that lack of disclosure leads to confusion and frustration for tenants); ExteNet Comments at 6 ("compelling disclosure . . . is unnecessary and not in the public interest").

[27] *2019 MTEs NPRM*, 34 FCC Rcd at 5712, para. 19.

[28] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5712-13, paras. 19-20 (asking whether the Commission "should we require the disclosure only of agreements that exceed the building's actual costs of allowing service, or all revenue sharing agreements" or "restrict covered MVPDs and telecommunications carriers from entering into revenue sharing agreements that provide the building owner with a share of revenue beyond the building's actual costs of allowing service").

[29] *See, e.g.*, INCOMPAS Comments at 11 (arguing that while such agreements "may generate a minor boost to the economic return profile for real estate projects, the net effect for tenants is limited broadband choices, limited access to new technologies, and limited opportunities to subscribe to faster broadband at cheaper prices, with revenue share fees ultimately passed onto consumers").

[30] *2019 MTEs NPRM*, 34 FCC Rcd at 5711, para. 16.

[31] FBA Comments at 5 (arguing that "revenue sharing agreements in the form of *pro rata* fees based solely on a service provider's revenue generated from MTE resident subscription fees should be presumed impermissible" because of their effect on deployment and competition).

[32] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5713, para. 20.

[33] *Id.*, 34 FCC Rcd at 5712, para. 17.

[34] *Id.*, 34 FCC Rcd at 5717, para. 26.

[35] *Id.*

[36] *Id.*

[37] *2019 MTE NPRM*, 34 FCC Rcd at 5724, para. 41.

new entrants, and thus do not violate its rules?[38] What are the practical effects of exclusive wiring agreements in today's communications marketplace? Can exclusive wiring arrangements otherwise circumvent Commission rules?[39] What anti-competitive effects or adverse impacts on deployment, if any, do exclusive wiring arrangements have?[40] What benefits, if any, do exclusive wiring arrangements have, and do the benefits outweigh any drawbacks, particularly to tenants?[41] Do exclusive wiring arrangements affect tenants' choice in providers?[42] Do they inhibit entry by competing service providers?[43] Do they encourage or discourage service providers to compete on the basis of price or service quality?[44] Are there specific varieties of exclusive wiring arrangements, such as those containing provisions for exclusive use of MTE-owned wiring, that the Commission should study?[45] What are the benefits and drawbacks of shared access to wiring and other facilities, in contrast to exclusive wiring arrangements?[46] Does shared access promote competitive entry and tenant choice?[47]

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[38] *Id.*, 34 FCC Rcd at 5717, para. 26 (seeking "comment on whether we should revisit the Commission's decision as to exclusive wiring arrangements") (citing *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20237, para. 1 & n.2 (2007)).

[39] *2019 MTEs NPRM*, 34 FCC Rcd at 5717, para. 26; *see, e.g.*, Common Comments at 8 (arguing that such agreements "are, in effect, exclusive access agreements"); INCOMPAS Comments at 5 (identifying exclusive wiring arrangements a practice that "amount[s] to an end run around the Commission's prohibition on exclusive service agreements").

[40] *See, e.g.*, WISPA Comments at 16 (arguing that exclusive wiring arrangements "act as a market barrier for competitive providers" because MTE owners "may not know which wiring is exclusive to a specific provider and therefore will prohibit access to all wiring . . . in fear of violating any exclusive agreement(s) with the incumbent").

[41] *See, e.g.*, MultiFamily Broadband Council Comments at 11 (arguing that "unlike large incumbents, independent competitive service providers usually require third-party financing in order to fund construction of a property-specific network at an MTE building," and "[i]n order to secure such third-party funding, the service provider must demonstrate the ability to successfully serve a sufficient number of resident-customers to generate a reliable revenue stream," which "usually entails proof that the provider has unhampered right to use the wiring needed to deliver services to MTE customers"); NCTA Comments at 4-5 (arguing that "[e]xclusive wiring arrangements, including sale-and-leaseback arrangements, help ensure . . . deployment" because they "grant companies of all sizes the incentive to invest in installing new wiring or upgrading existing wiring in MTEs").

[42] *2019 MTEs NPRM*, 34 FCC Rcd at 5717, para. 26; INCOMPAS Comments at 5 (arguing that exclusive wiring arrangements "increase the costs of competitive entry" and "reduce choice for communications services").

[43] *2019 MTEs NPRM*, 34 FCC Rcd at 5716, para. 26; Starry Comments at 6 (arguing that "[o]nce the Commission prohibited exclusive access agreements, incumbents came to rely on combinations of revenue share, exclusive marketing, exclusive wiring, and flat out scare tactics to try to prevent successful competition in MTEs").; WISPA Comments at 16 (arguing that exclusive wiring arrangements "act as a market barrier for competitive providers because MTE owners/managers may not know which wiring is exclusive to a specific provider and therefore will prohibit access to all wiring . . . in fear of violating any exclusive agreement(s) with the incumbent").

[44] INCOMPAS Comments at 5 (arguing that exclusive wiring arrangements result in higher costs for consumers).

[45] *See* NCTA Comments at 3 (identifying exclusive wiring arrangements containing "provisions for the exclusive use of MTE-owned wiring" specifically as a method by which "providers and building owners have overcome" challenges involving cost and risk with broadband deployment in MTEs).

[46] ADTRAN Comments at 7-8 (arguing that allowing competing service providers to use "otherwise idle facilities makes competition more efficient"); Declaration of AvalonBay Communities, Exh. A to National Multifamily Housing Council et al. Reply, ¶¶ 13-18 (arguing that shared use of wiring results in various "undesirable results").

[47] NCTA Comments at 9-11 (arguing that mandating a sharing requirement for facilities would be "counterproductive" and "decreas[e] deployment, threaten[] the quality of service to MTE tenants, and limit[] service options").

We seek to refresh the record on sale-and-leaseback arrangements, a subset of exclusive wiring arrangements. In the *Notice*, the Commission explained that sale-and-leaseback arrangements "occur when a service provider sells its wiring to the MTE owner and then leases back the wiring on an exclusive basis."[48] The Commission has in place rules that facilitate competitive choice by making the previous provider's inside wiring available to MTE owners and tenants for other service providers to use after it has terminated service.[49] Do sale-and-leaseback arrangements act as an end run around these rules by putting wiring ownership in the hands of the building owner, which is not subject to the Commission's rules?[50] Regardless of whether they in effect act as a loophole, should the Commission prohibit such arrangements generally or in limited circumstances?[51] The Commission also sought comment on whether "the policy considerations around sale-and-leaseback and other exclusive wiring arrangements differ."[52] Are there reasons to distinguish sale-and-leaseback arrangements from other kinds of exclusive wiring arrangements?

Exclusive Marketing Arrangements. Third, we seek to refresh the record on exclusive marketing arrangements. In the *Notice*, the Commission explained that an exclusive marketing arrangement is "an arrangement, either written or in practice, between an MTE owner and service provider that gives the service provider, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants of the MTE."[53]

The Commission asked whether specific circumstances might lead to such arrangements resulting in de facto exclusive access.[54] For example, do these arrangements create confusion on the part of tenants or building owners as to whether only one provider can or does offer service to the building?[55] We also

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[48] *2019 MTEs NPRM*, 34 FCC Rcd at 5716, para. 24.

[49] *Id.*, 34 FCC Rcd at 5705-06, para. 5.

[50] *Id.*, 34 FCC Rcd at 5716, para. 25 (asking whether sale-and-leaseback arrangements "violate our existing cable inside wiring rules" or are "used to evade our exclusive access, cable inside wiring, or any other Commission rules"); *see, e.g.*, ADTRAN Comments at 7-8 (arguing that "the public interest would best be served by prohibiting exclusive wiring agreements," claiming that sale-and-leaseback arrangements "evade limits on wiring exclusivity arrangements" and act as a "'loophole'"); FBA Comments at 7 (stating that sale-and-leaseback arrangements "allow for circumvention of the Commission's rules proscribing exclusive access agreements"); WISPA Comments at 18 (arguing that sale-and-leaseback arrangements "circumvent the protections afforded by the Commission's inside wiring regulations by creating a *de facto* exclusive access agreement acting under the guise of an exclusive wiring agreement").

[51] *2019 MTEs NPRM*, 34 FCC Rcd at 5716-17, para. 25 (asking whether the Commission should "adopt a new rule prohibiting such arrangements" or do so "in limited circumstances," such as "unless the provider can demonstrate that they are not anti-competitive").

[52] *Id.*, 34 FCC Rcd at 5717, para. 26.

[53] *Id.*, 34 FCC Rcd at 5718, para. 27.

[54] *Id.*

[55] *See, e.g.*, Crown Castle Comments at 5 (arguing that "exclusive marketing arrangements . . . often confuse[] MTE tenants" because they "may believe the carrier's exclusive marketing agreement . . . means that a carrier has the exclusive right to provide services within the building"); INCOMPAS Comments at 17 (arguing that exclusive marketing arrangements "generate confusion among building owners and property managers" and that "[i]n some instances, these agreements are conflated with exclusive service agreements"); Letter from Craig J. Brown, Assistant General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-142, MB Docket No. 17-91, at 3 ("It is not uncommon for CenturyLink to be told by an MTE owner that its preferred provider arrangement precludes CenturyLink from providing facilities-based service in the MTE."); Letter from Virginia Lam Abrams, SVP, Gov. Affairs & Strategic Advancement, Starry, Inc., to Marlene H. Dortch, Secretary, FCC, at 4 (filed Oct. 30, 2020) (claiming that "the line between" exclusivity agreements of any kind, including "exclusive revenue share or marketing agreement," is "frequently blurred" with "an exclusive service agreement").

seek to update the record on the Commission's question regarding "what might be done to correct" possible consumer confusion.[56] Additionally, the Commission asked whether disclosure or disclaimer requirements would alleviate these problems, and when they might be warranted.[57] Commenters have addressed the impact and costs of such requirements.[58] We seek updated information on these issues, as well as on the benefits of exclusive marketing arrangements, particularly with respect to small competitive carriers.[59] Do the benefits of such arrangements outweigh the costs?[60] Do disclosure requirements affect tenant choice in providers, or the ability of competitors to deploy?[61] And do they affect how service providers compete, such as in terms of price or service quality?[62] What impact does this have on tenants? Have there been developments over the last few years that should impact the Commission's analysis on this issue?

Other Issues. In addition to refreshing the record on the issues outlined above, we also seek to refresh the record on other issues outlined in the *Notice* and raised in the record.[63] For example, in evaluating these issues, does the calculus differ based on the size of the MTE and, if so, should the Commission approach small MTEs differently than others for purposes of any rules it adopts?[64] How should it define small MTEs for these purposes?

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[56] *2019 MTEs NPRM*, 34 FCC Rcd at 5718-19, para. 28 (asking "what might be done to correct" possible confusion, such as requiring "specific disclaimers or other disclosures" by service providers and "in what circumstances" they should be required to do so).

[57] *Id.*, 34 FCC Rcd at 5719, para. 28.

[58] *See, e.g.*, Starry Comments at 11-12 (arguing that disclosure requirements "would have a positive effect on competition in MTEs . . . but only on the margins."); NCTA Comments at 7 (arguing that disclosure of exclusive marketing terms "could have the unintended effect of inflating the costs associated with such agreements, as landlords may have the incentive to demand the most lucrative terms negotiated by service providers and MTEs in the broader marketplace"); Verizon Reply at 8 (arguing that "[s]uch disclosures would be burdensome to administer and could confuse the public and current potential residents of MTEs, whose housing decisions are unlikely to be impacted by disclosures regarding the existence and terms of contracts between MTE owners and providers").

[59] NCTA Reply at 4 (arguing that "exclusive marketing agreements with MTE owners help promote competition by smaller service providers" and are an "essential foundation upon which the smaller competitor's business model is built").

[60] NCTA Reply at 4; Verizon Reply at 7 (arguing that exclusive marketing arrangements "can provide an effective means for marketing" and quoting potential benefits cited in the *Notice*, such as potentially lower costs for subscribers or partial defrayment of development costs borne by MTE owners).

[61] *See* INCOMPAS Comments at 18 (arguing that a rule mandating disclosure and enforcement thereof would "would incent providers to make clear to the building owners that they cannot exclude competitors from their buildings").

[62] *See* INCOMPAS Reply at 10 (arguing that disclosure would make it clear that "the tenant still has a right to select the communications service provider that best meets their needs"); National Multifamily Housing Council et al. Reply at 25 (arguing that advocates of a disclosure requirement haven't demonstrated "how transparency . . . would actually help residents"); WISPA Reply at 24 (arguing that a disclosure requirement "would do little, if anything, to benefit consumers").

[63] *2019 MTEs NPRM*, 34 FCC Rcd at 5713-16, 5719, 5720-23, paras. 21-23, 29-31, 32-39.

[64] *Id.*, 34 FCC Rcd at 5712-13, 5717, paras. 19-20, 25; *see* Letter from Matthew C. Ames, Hubacher Ames & Taylor, PLLC, National Multifamily Housing Council, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-142 et al., at 2 (filed Oct. 29, 2020) (National Multifamily Housing Council *Ex Parte*) (emphasizing that the "real estate industry is highly complex and diverse," including in size, and arguing that the Commission should not apply a "one-size-fits all regulation").

We also seek comment on whether there are other types of contractual provisions and non-contractual practices that affect competition, limit tenant choice, or lead to increased prices or decreased service quality.[65] Are there benefits and drawbacks to shared access to facilities in MTEs, including telecom closets, conduit, and wiring?[66] Can the sharing of facilities increase competition and tenant choice in MTEs?[67] We also seek to refresh the record on mandatory access laws and other efforts to increase competitive access to MTEs and the infrastructure within them.[68] What are the effects of these laws on competition, choice, and price in MTEs?

Finally, we seek to refresh the record on the Commission's jurisdiction and statutory authority to address the issues and practices raised above.[69]

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[70]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S-. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[71]

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[65] *2019 MTEs NPRM*, 34 FCC Rcd at 5719, para. 29.

[66] *See* National Multifamily Housing Council et al. Comments at 13-14 (discussing potential issues with multiple providers in a single building, including limited closet space); Public Knowledge and New America's Open Technology Institute Comments at 14-15 (arguing that it is "pointless to require that a new competitor install a parallel infrastructure").

[67] *See 2019 MTEs NPRM*, 34 FCC Rcd at 5704, para. 3.

[68] *See id.*, 34 FCC Rcd at 5717, 5719, paras. 26, 30.

[69] *Id.*, 34 FCC Rcd at 5720-23, paras. 32-39; *see, e.g.*, National Multifamily Housing Council et al. Comments at 83-84 ; Public Knowledge and New America's Open Technology Institute Comments at 3-8; National Multifamily Housing Council *Ex Parte* at 3-4 (arguing that the Commission lacks "general authority to regulate competition or to restrict anti-competitive behavior" and that its "limited authority . . . does not apply in this case").

[70] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

[71] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[72] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml., .ppt, searchable .pdf).[73] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information about this rulemaking proceeding, please contact Jesse Goodwin, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0958 or Benjamin.Goodwin@fcc.gov.

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[72] *See* 47 CFR §§ 1.1200 *et seq.*

[73] *Id.* § 1.1206(b).