



Federal Communications Commission
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SMALL ENTITY COMPLIANCE GUIDE

Improving Competitive Broadband Access to Multiple Tenant Environments

FCC 22-12

GN Docket No. 17-142

Released February 15, 2022

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations or calls for further assistance to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In this *Report and Order* in GN Docket No. 17-142, the Commission adopted rules to promote competitive choice of communications services for those living and working in multiple tenant environments, and to address practices that undermine longstanding rules promoting competition in multiple tenant environments. (The term, multiple tenant environment or MTE, refers to commercial or residential premises, such as apartment buildings, condominium buildings, shopping malls, or cooperatives that are occupied by multiple entities.)

Specifically, in the *Report and Order*, the Commission adopted rules to (1) prohibit providers from entering into certain types of revenue sharing agreements with MTE owners, and (2) require providers to disclose the existence of exclusive marketing arrangements they have with MTE owners in simple, easy-to-understand language.

The practices addressed in the *Report and Order*—exclusive and graduated revenue sharing and exclusive marketing arrangements—reduce the opportunities for competitive providers to offer service to MTE tenants. Further, the use of these practices impedes the ability of other communications providers to access MTEs. The actions taken in this *Report and Order* will promote tenant choice and competition in the provision of communications services to the benefit of those who live and work in MTEs.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* makes rule changes to: (1) the prohibited agreements rules applicable to common carriers in section 64.2500 and (2) the exclusive access rules for certain multichannel video programming distributors (MVPDs) in section 76.2000.

Prohibited agreements and required disclosures (47 CFR § 64.2500)

- Under the amended rules, common carriers are prohibited from entering into or enforcing contracts that provide a commercial or residential MTE owner compensation on a graduated basis (i.e., where a provider pays an MTE owner a greater percentage of revenue as its penetration in the building increases). Further, common carriers are prohibited from entering into or enforcing contracts whereby they receive the exclusive right to provide a commercial or residential MTE owner compensation in return for access to the MTE and its tenants.
 - For new contracts, compliance is required 30 days after publication in the Federal Register.
 - For existing contracts, compliance is required 180 days after publication in the Federal Register.
- Additionally, common carriers must disclose the existence of any contract that provides them the exclusive right to market communications service to tenants or prospective tenants of a commercial or residential MTE.
 - For new contracts, compliance is required after the Office of Management and Budget completes its review pursuant to the Paperwork Reduction Act.
 - For existing contracts, compliance is required is required 180 days after publication in the Federal Register or the date that the Office of Management and Budget completes its review pursuant to the Paperwork Reduction Act, whichever is later.

Exclusive access to multiple dwelling units generally (47 CFR § 76.2000)

- Similarly, certain MVPDs may not enter or enforce those contracts identified above in residential MTEs. These MVPDs must follow the same disclosure requirements in residential MTEs outlined above for common carriers. MVPDs include cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, or satellite broadcast programming vendors. The dates for compliance follow those above as well.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Report and Order* contains rules requiring common 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.

- Required Disclosure (47 CFR §§ 64.2500, 76.2000)
 - Common carriers and covered MVPDs shall disclose the existence of any contract regarding the provision of communications service in an MTE, written or oral, in which it receives the exclusive right to market its service to tenants of an MTE.
 - Such disclosure must be included on all written marketing material, whether electronic or in print, that is directed at tenants or prospective tenants of the affected MTE.
 - The disclosure must identify the existence of the contract and include a plain language description of the arrangement, including that 1) the provider has the right to exclusively market its communications services to tenants in the MTE; 2) such a right does not mean the provider is the only entity that can provide such services to tenants in the MTE, and 3) service from an alternative provider may be available.
 - Be made in a manner that is clear, conspicuous, and legible.

IV. IMPLEMENTATION DATE

The following rules in the *Report and Order* shall become effective 30 days after publication of the text or summary thereof in the Federal Register: 47 CFR § 64.2500(c)-(f), 47 CFR § 64.2500(b)-(e).

However, compliance with the following rules in the *Report and Order* shall not be required until 180 days after publication of the text or summary thereof in the Federal Register: 47 CFR § 64.2500(c)(2)(ii), 47 CFR § 64.2500(d)(2), 47 CFR § 76.2000(b)(2)(ii), 47 CFR § 76.2000(c)(2).

Compliance with the following rules in the *Report and Order* shall not be required until the Office of Management and Budget (OMB) completes its review under the Paperwork Reduction Act: 47 CFR § 64.2500(e), 47 CFR § 76.2000(d). Compliance will be required after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant compliance date.

Compliance with the following rules in the *Report and Order* shall not be required until 180 days after publication of the text or summary thereof in the Federal Register or after approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, whichever is later: 47 CFR § 64.2500(e)(2)(ii), 47 CFR § 76.2000(d)(2)(ii). Compliance will be required after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant compliance date.

V. INTERNET LINKS

A copy of the *Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-22-12A1.pdf>.

A copy of the Federal Register Summary of the *Report and Order* is available at: <https://www.federalregister.gov/documents/2022/03/28/2022-05862/improving-competitive-broadband-access-to-multiple-tenant-environments>.