

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Improving Competitive Broadband Access to Multiple Tenant Environments, Petition for Preemption of Article 52 of the San Francisco Policy Code Filed by the Multifamily Broadband Council*, GN Docket 17-142, MB Docket No. 17-91, Notice of Proposed Rulemaking and Declaratory Ruling (July 10, 2019)

Too many Americans have no choice when it comes to broadband service. I'm familiar with this problem, because I'm one of them. For the roughly one-third of Americans who live in apartment buildings, choice is especially hard to find. Securing high-speed service in multi-tenant environments is challenging. It involves a tangle of different wire facilities, property rights, and marketing arrangements. So many apartment dwellers—who just want a competitive choice for broadband—find that the deck is stacked against them and they are unable to sign up for service from other than the existing provider in their building.

Across the country consumers want more choices when it comes to broadband. Because Washington is doing too little to increase competition, cities and states have stepped into the breach. They are developing their own efforts to increase consumer choice. They are not waiting for national policies to fix this predicament. They are passing their own laws to break through the complicated web of relationships between property owners, providers, and consumers and make it possible for apartment dwellers to see broadband competition. This is good. We should support these efforts.

But today the Federal Communications Commission says not so fast. We stop efforts in California designed to encourage competition in multi-tenant environments. Specifically, we say to the city of San Francisco—where more than half of the population rents their housing, often in multi-tenant units—that they cannot encourage broadband competition. This is crazy.

There is so much that is wrong with this decision.

For starters, Americans don't take kindly to Washington telling them what they can or cannot build in their own backyard. It is part of our long legal tradition that we let our cities and towns develop their own policies about service in their own communities. Plus, our preemption of this municipal ordinance is stunningly weak. We somehow claim we have unfettered authority when it comes to broadband in buildings but disown our general authority over the same in our net neutrality proceeding, where we pronounced broadband beyond the reach of this agency. So this ruling borrows from old cable signal leakage policies to suggest some new theory of preemption is appropriate. This doesn't add up.

Second, it is not clear this agency even understands the San Francisco law it seeks to preempt. The law prohibits building owners from interfering with the right of tenants to exercise choice when it comes to communications. It is designed to make sure those in apartment buildings have more broadband options. So the ordinance includes a requirement that existing wiring controlled by property owners should be made available, if feasible. However, the FCC

contorts this into a non-existent bogeyman, suggesting that the ordinance compels sharing of wiring that is already in use. This is simply not true. In fact, San Francisco has told us on the record that this is not what the law does. But even if it were true, the agency fails to determine here if such sharing would even be technically possible. All of which begs the question, why is the FCC doing this? Why are we preempting an imaginary possibility in a city ordinance in San Francisco?

Third, instead of worrying ourselves with the hypothetical, we should be taking action. We should be finding ways to increase broadband competition. Our own data demonstrates too few Americans have choice when it comes to high-speed service. Yet the best this agency can do is throw itself in front of a municipal effort to try and increase competition for consumers?

I appreciate that this declaratory ruling is accompanied by a rulemaking about breaking down the messy collection of revenue sharing, ownership rights, facilities access, and marketing that can serve as barriers to competition in multi-tenant environments. But the agency doesn't propose any real action. Moreover, it is hard to square this rulemaking with the broad preemption in our declaratory ruling. I fear the latter lays bare our priorities, and it makes clear for all to see that the FCC doesn't support local efforts to increase broadband competition.

This is not right. I dissent.