



Nancy Pelosi  
Speaker of the House

441

July 10, 2019

The Honorable Ajit Pai  
Chairman of the United States Federal Communications Commission  
445 12<sup>th</sup> Street, Southwest  
Washington, D.C. 20554

Dear Chairman Pai:

I strongly urge you to delay and reconsider a vote on the Federal Communications Commission's proposed preemption of a San Francisco ordinance, Article 52, that promotes broadband deployment and competition in our city. This proposal is deeply misguided, and would undermine freedom of choice, increase costs and reduce service quality for residents, as it puts a chilling effect on much-needed competition in the telecommunications sector.

Disturbingly, the FCC's justification bears little resemblance to the law it purports to pre-empt. The FCC's draft Declaratory Ruling claims to pre-empt Article 52 "to the extent it requires the sharing of in-use wiring" in multiple-tenant environments. However, as San Francisco Mayor London Breed wrote in a July 2 letter (attached), Article 52 does not require sharing of "in-use" wiring, only "existing wiring owned by property owners...if feasible". This is necessary "because it is uneconomic and, in the case of many older buildings, impossible, for multiple carriers to install their own wiring to reach each occupant." Consequently, this ordinance is needed to promote broadband choice, improve broadband penetration and lower service costs for residents.

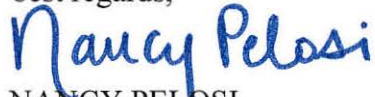
This ordinance has had no discernable negative impacts on broadband deployment, competition or service quality. At a time when the FCC receives hundreds of thousands of consumer complaints a year, it is telling that my office and San Francisco-based broadband user and tenant advocate organizations have received zero complaints about "in use" wiring. In fact, one competitor notes there are "zero confirmed examples of interference or use of 'in-use' wiring, whether by us or to us from other providers." I request the Commission review the attached letters and reply to this letter with a copy of each consumer complaint filed at the FCC about the ordinance or any disruptions, signal-loss or other problems with sharing wires already "in use" – if any indeed exist.

While I appreciate that the Commission proposes to seek input from the public about improvements to broadband competition in multiple-tenant environments nationwide in the same item, this half-measure means little when the Commission proposes to overturn a pro-consumer local law on behalf of big special interests without seeking public input to understand the ordinance it aims to pre-empt.

This month, the House of Representatives voted to block this preemption when it adopted the Porter Amendment to the Financial Services and General Government Appropriations bill, recognizing that Article 52 has enabled San Francisco to become a model for broadband deployment and competition. I urge the Commission to acknowledge this national recognition of the value of this ordinance in its own decision-making.

Thank you for your consideration of my views on this matter. I look forward to your prompt reply.

best regards,



NANCY PELOSI

Speaker of the House

cc: The Honorable Michael O'Rielly  
The Honorable Brendan Carr  
The Honorable Jessica Rosenworcel  
The Honorable Geoffrey Starks



July 2, 2019

Honorable Nancy Pelosi  
The Speaker of the House of Representatives  
United States Capitol  
Washington, DC 20515

Dear Madam Speaker,

I am writing to express my appreciation for your leadership in taking action against the attempt by the Federal Communications Commission (FCC) to overturn San Francisco's local ordinance that promotes broadband competition. As you are aware, FCC Chair Pai has scheduled a vote at the July 10, 2019 meeting that would reduce consumer choice and stifle competition for communications services for San Franciscans. I refer to the FCC's draft Notice of Proposed Rulemaking and Declaratory Ruling - GN Docket No. 17-142, MB Docket No. 17-91 (Proposed Order). If adopted as drafted, the Proposed Order would pre-empt critical parts of a San Francisco ordinance designed to give San Franciscans occupying multi-tenant environments (MTEs) a choice of communications providers.

In December of 2016, the City adopted the "Choice of Communications Services Providers in Multiple Occupancy Buildings" Ordinance. (Ordinance 250-16 adopting San Francisco Police Code 52) (Article 52). I served as President of the Board of the Supervisors at that time and voted in favor of the ordinance. Article 52 prohibits property owners from interfering with the choice of communications providers by occupants of MTEs. The law establishes a process for communications providers to gain access to MTEs in response to requests from occupants, incentivizing providers to offer residents the best services at the lowest prices benefiting all San Franciscans.

A key element of Article 52 is a requirement that existing wiring owned by property owners be made available for use by other communications providers, *if feasible*. This sharing allows more than one communications provider to use wires on existing cables. The type of sharing contemplated by Article 52 is common practice in many MTEs and has led to healthy competition among communications providers. The Board of Supervisors adopted Article 52 to expand this practice to additional buildings where the property owner had not allowed multiple providers.

On June 19, 2019, the FCC issued the Proposed Order for consideration at its July 10 meeting. Among other things, if adopted the Proposed Order would "preempt an outlier San Francisco ordinance to the extent that it requires the sharing of in-use wiring." As discussed above, this characterization of Article 52 is wrong. Article 52 does not require sharing of "in-use" wiring. The Proposed Order also suggests that this "forced sharing of in-use facilities . . . encourages providers to free ride on existing infrastructure rather than building their own." In making this statement, the Proposed Order ignores clear language in Article 52 that a "property owner is entitled to just and reasonable compensation from a communications services provider." While

Article 52, therefore, lowers the cost for a competitive provider to obtain access to an MTE, it does not provide a so-called “free ride.” Article 52 was developed with the active participation of AT&T, Comcast, the Chamber of Commerce, the Building Owners and Management Association, the Electronic Frontier Foundation, regional internet service providers, and others to achieve a balanced approach.

San Francisco adopted Article 52 because it is uneconomic and, in the case of many older buildings, impossible, for multiple carriers to install their own wiring to reach each occupant. Consequently, rather than fostering competition, the Proposed Order would strip occupants of many MTEs in San Francisco of a meaningful choice of communications providers.

The FCC’s Proposed Order harms San Francisco consumers by reducing competition for communications services. It would establish a chilling precedent for other jurisdictions seeking to advance the interests of their citizens residing in MTEs.

Thank you again for your continued leadership on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "London N. Breed". The signature is fluid and cursive, with the first name "London" and last name "Breed" clearly distinguishable.

London N. Breed  
Mayor

cc: Ajit Pai, Chairman  
Michael O’Rielly, Commissioner  
Brendan Carr, Commissioner  
Jessica Rosenworcel, Commissioner  
Geoffrey Starks, Commissioner

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2019-06-24

Dear Speaker Pelosi:

I am writing to oppose the Federal Communications Commission's move to pre-empt San Francisco's Article 52, an ordinance which has improved competition for small and independent ISPs and reduced internet costs for tenants in San Francisco.

Monkeybrains is a local Internet Service Provider (ISP) based in San Francisco. Monkeybrains was founded in 1998 and has 45 employees. We have over 10,000 customers mostly in San Francisco, and have never taken on outside or venture funding. We charge residents \$35 a month for fast internet with no hidden fees and no contracts, and we have never raised our prices on residential customers. Monkeybrains is a dynamic and scrappy Local Business Enterprise in an industry dominated by monopolistic giants and our customers love us for this reason.

In San Francisco, a nexus of the global housing affordability crisis, over 60% of the population are renters<sup>1</sup>. After the 2008 financial crisis, hedge fund investors and real estate investment trusts – REITs – went on a California housing buying spree<sup>2</sup>. Often when a tenant requests internet service in a large building (a "multi-dwelling unit" or MDU), they are deterred by their landlord and told they only have one or two choices of ISP. When Monkeybrains tries to survey the site and provide options for service, property management will either stonewall us or refuse us entry on spurious grounds of aesthetics or interference when neither concern is applicable.

The reason for this barrier to service is that large landlords often enter into exclusive arrangements with ISPs. Although the FCC attempted to ban this practice<sup>3</sup>, it is a policy for maximum rent extraction with corporate landlords and REITs. Professor Susan Crawford at Harvard calls this the "new payola" because a property management company brokers exclusive arrangements with a large ISP capable of paying the landlord over the top in a revenue sharing arrangement<sup>4</sup>. ISPs fund this by raising the rates for internet service on tenants in that MDU.

1 <https://housing.datasf.org/overview/>

2 <https://calmatters.org/articles/data-dig-big-investment-firms-have-stopped-gobbling-up-california-homes/>

3 See 2000 Competitive Networks Order, 15 FCC Rcd at 22985, para. 1;  
2007 Exclusive Service Contracts Order, 22 FCC Rcd at 20236, para. 1;  
2008 Competitive Networks Order, 23 FCC Rcd at 5386, para. 5.

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) (2010 Exclusive Service Contracts Order).

4 <https://www.wired.com/2016/06/the-new-payola-deals-landlords-cut-with-internet-providers/>  
<https://www.monkeybrains.net/>

San Francisco's Article 52 ordinance revolutionized the situation in favor of tenants and small ISPs like Monkeybrains. Before Article 52 passed in 2016, we had a 0% rate of servicing 40+ unit MDUs with active revenue share agreements with Comcast and ATT. Since Article 52, we have a 60% rate of servicing 40+ unit MDUs with active revenue share agreements without invoking Article 52, and a 75% rate after invoking Article 52.

In MDUs built 10+ years ago with 40+ units and long-standing revenue share agreements, we see very old technology deployed (coax DOCSIS 2.0/3.0 and Cat3 ADSL, with speeds of 20Mbps down – 3Mbps up) due to lack of competition. Building management blocks the entry of alternative ISPs due to existing revenue arrangement and tenants suffer. One building where we invoked Article 52 and now have dozens of customers paying \$35/month and receiving over 100Mbps symmetrical speeds is also a 100% below-market-rate building in the Mission Bay neighborhood. Contrary to the protestations of corporate landlords and their lawyers, Article 52 is not exclusively aimed at the luxury housing market. It is already keeping money in the pockets of working-class San Francisco families and will continue to do so as long as it is utilized.

The FCC's proposed move, contrary to their stated position, would stifle competition and increase internet prices to San Francisco residents. In many MDUs tenants want our service but their landlords have exclusive partnerships with large ISPs. Without Article 52, we could not work with a tenant advocate to provide service in the building and these residents would go back to having only the options their landlords provide them.

The FCC's proposed order makes liberal use of the term "in-use wiring," which is misleading and is simply not an actual problem. Article 52 refers to "existing wiring" but the FCC seems to want to scare ISPs and landlords into believing there is an epidemic of interference with service. We have zero confirmed examples of interference or use of "in-use" wiring, whether by us or to us from other providers. In fact, when we install a new client at a large MDU with existing wiring, we only plug them in to our switch at the nearest IDF when the tenant confirms they are discontinuing previous service – a practice engaged in by all ISPs working in these buildings as a matter of course. As with all ISPs, we build our own infrastructure into the building so as to have full control over service delivery to the IDFs and never interfere with other ISP infrastructure. For context, if we had to run our own new infrastructure directly to each unit, it is \$200 per wire drop for buildings that have pathway/conduit to units from IDFs. It would be five times that if we had to create path and build an aesthetically pleasant finish.

San Francisco's Article 52 is an example for other cities seeking to improve broadband penetration and lower costs of internet service for their residents. Please oppose the FCC's move to pre-empt Article 52 and stand for a better internet in the United States.

Sincerely,

Preston Rhea  
Director of Field Operations

<https://www.monkeybrains.net/>