

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
CONCURRING IN PART AND DISSENTING IN PART**

Re: *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142; *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No. 17-91.

Ensuring that all Americans have access to broadband is one of my highest priorities – and, where Americans have competitive choices among broadband providers they should be able to choose the provider that best meets their needs. But, in many apartment and office buildings, building owners become involved in the choice by entering into preferential or exclusive agreements with broadband service providers to serve or market to the building.

The Notice of Proposed Rulemaking portion of this item asks questions about what rules should govern the relationship between building owners and broadband providers. These are questions that the Commission needs to ask in order to learn from stakeholders and to prepare to make policy in this area and I'm glad we are asking them. But, my concurrence with this NPRM will not translate into support for an order adopting rules if those rules do not promote robust broadband deployment and competition for residents and tenants in multi-tenant buildings.

Taking action like adopting this Notice of Proposed Rulemaking is the right way for the Commission to determine the best policies for broadband access in multiple-tenant buildings. But, let me be very clear on this point, preempting municipal laws, as the declaratory ruling portion of this item does, is not sound law and not good policy. The City of San Francisco adopted a law to ensure that tenants in apartment buildings in San Francisco would have access to service from any competitor that wants to serve. Today the majority uses the Commission's preemption authority to insert the Commission into San Francisco's decision-making process. Preemption is a blunt tool to be used only in limited circumstances – and the Commission should not be using it here.

First of all, it is a fundamental canon of construction that a law should not be interpreted unfavorably where there are other interpretations that do not present a problem. The Commission seemed all too eager here to lean into a potential interpretation of San Francisco's law that would require preemption. But a more reasonable and unproblematic interpretation exists, one which the Commission has not fully considered. San Francisco's law prohibits property owners from refusing to allow new providers to use "any existing wiring" in a building. As the majority's analysis admits, this language is at worst merely ambiguous and can be reasonably read to not include in-use wiring. Further, the law then proceeds to expressly permit property owners to refuse access to wiring wherever doing so would have an "adverse" effect on service. This is precisely the issue the majority argues would be caused by an in-use wire sharing requirement. Therefore, to the extent that in-use wire sharing poses any technical problems, San Francisco's law can and should be read not to require it.

As a matter of policy, it is equally clear that the Commission rushed to its preemption conclusion. The Commission had other options besides preemption – it could have used the ongoing rulemaking proceeding to clarify its policies. And it could have waited to see what would happen with San Francisco's law, in practice, in the market place, and possibly in the courts. But that's not what we are doing today. I don't think it is necessary or appropriate for the Commission to take this action to overrule a decision that San Francisco rightfully made for itself. Accordingly, I dissent from the Declaratory Ruling portion of this item.

That said, I recognize the work that goes into an this and every item and I thank the staff of the Wireline Competition Bureau for preparing it.