

July 31, 2024

Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Improving Competitive Broadband Access to Multiple Tenant
Environments, GN Docket No. 17-142

Dear Chairwoman Rosenworcel:

According to a recent press release by the Federal Communications Commission, a *Notice of Proposed Rulemaking* was circulated, which would seek comment on how to best “lower costs and address the lack of choice for broadband services available to households in apartments, condos, public housing, and other multi-tenant buildings.”¹ The undersigned **31** organizations write to express our support for opt-out of bulk billing arrangements. As they exist now, bulk billing arrangements sacrifice consumer choice to preserve in-building monopolies at the expense of tenants.² For the many tenants trapped with high-cost or less-capable internet that does not meet their needs, an opt out option provides a vital escape. This is especially true for those eligible for low-income plans or Lifeline subsidy, which by definition are not available in a bulk billing arrangement. It also introduces competitive pressure to ensure that landlords and ISPs do not enter sweetheart deals at the expense of tenants -- particularly low-income tenants.

Tenants make their decision on where to rent due to a wide variety of factors, and because landlords have no obligation to inform tenants of the potential additional cost of “utilities” until the point of sale, landlords do not necessarily have the incentive to pass on any savings negotiated with an ISP to the tenants. As with true exclusives, landlords have a competing incentive to keep the surplus for themselves rather than pass them on to the tenants. Indeed, the Commission heard similar arguments in defense of the exclusive agreements as part of the 2008 Order, and in the 2022 Order.³ Nevertheless, the Commission found that the interest in promoting competition and the benefits of competition for Multiple Tenant Environment (“MTE”) tenants

¹ FCC Chairwoman Announces Push to Lower Broadband Costs and Increase Choice for Families Living in Apartment Buildings (March 5, 2024). <https://docs.fcc.gov/public/attachments/DOC-400915A1.pdf>.

² There is a considerable record of individual consumers complaining about bulk billing practices in the Improving Competitive Broadband Access to Multiple Tenant Environments (GN Docket No. 17 - 142) proceeding. One consumer, Dr. J David Smith, explained he was forced onto a monthly plan with Charter’s Spectrum plan service for \$85 per month. Among other features, the bundled plan included basic internet and cable TV. Yet, Dr. Smith does not even own a TV. Jonathan David Smith, *Brief Comment on Improving Competitive Broadband Access to Multiple Tenant Environments* (July 06, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1070685802590>.

³ Competitive Networks in Local Telcoms. Mkts., Report and Order, WT Dkt. No. 99-217, 23 FCC Rcd 5385 (rel. March 21, 2008); Improving Competitive Broadband Access to Multiple Tenant Environments, Report and Order and Declaratory Ruling, GN Dkt. No. 17-142, 37 FCC Rcd 2448 (rel. February 15, 2022).

and consumers as a whole outweighed the claimed benefits of permitting exclusive agreements (or other agreements designed to thwart consumer choice). There is no reason to reach a different conclusion here.

Low-Income Renters Would Benefit Most From An Opt-Out Option

Opt-out rates can be expected to be higher when the provided service is not adequate for many residents' needs, and bulk billing frequently fails to meet the needs of low-income renters. By its nature, the unrestricted practice prevents low-income renters from participating in a low-income plan the ISP may offer elsewhere. Or if the provider does not participate in Lifeline (or the Affordable Connectivity Program should it be revived), this would prevent low-income renters from receiving the subsidy they need to participate in our technological ecosystem. This issue is exacerbated when Public Housing Agencies (PHAs) – local agencies that develop public affordable housing – are locked into exclusive agreements. As ISP representatives have noted, programs that only offer individualized subsidies cannot be used at PHAs where a single bill covers the whole property.⁴ In any case, the ability for low-income consumers to opt-out of these unrestricted agreements is essential to ensuring they can take advantage of the benefits available to them.

HOAs Are Not Adequate Substitutes For Consumer Choice

As proponents of *status quo* bulk billing will point out, the FCC's definition of MTEs includes not just apartment buildings and condominiums, but other arrangements, such as communities managed by homeowners associations, co-ops or other arrangements where residents select a board (collectively HOA). Because HOAs do not have the same profit motive as landlords, and the HOA has some accountability to the residents, some argue the HOAs should be permitted to offer bulk billing without an opt-out option. But this accountability is deeply flawed. First, if the residents are not satisfied and vote out the HOA board, they may be stuck with a long-term contract and severely undercuts the accountability mechanism. Additionally, many HOA boards are volunteers who do not necessarily have the expertise or resources to select and negotiate for the best service. Even if the majority of residents are satisfied, individual residents may still have particular needs that prompt them to want to opt out. Finally, the governance issues of HOA boards are well known, and it simply cannot be assumed they will automatically represent the best interests of their residents.⁵

⁴ Kathryn de Wit, *Broadband Challenges and Opportunities in Affordable Rental Housing*, (Apr. 3, 2023), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/04/broadband-challenges-and-opportunities-in-affordable-rental-housing>.

⁵ See Justin Gray, "'You Broke Us.' GA Lawmakers to Rein in Aggressive HOAs After Hearing Homeowner Horror Stories," WSB-TV (May 6, 2024), <https://www.wsbtv.com/news/local/atlanta/you-broke-us-ga-lawmakers-reign-aggressive-hoas-after-hearing-homeowner-horror-stories/TO2EAHOV6VBOHCHKYYX26TO7UU/>; Megan Liscomb, "21 Times Homeowners Associations Were Invasive, Creepy, Annoying, and Downright Out-Of-Control," BuzzFeed (Aug. 5, 2022), <https://www.buzzfeed.com/meganliscomb/hoa-horror-stories>.

Not All Building Broadband Has the Same Quality

When landlords choose broadband service for tenants, they do not necessarily choose a reliable wireline connection to each individual apartment. Instead, they often prioritize breadth of connectivity over quality of connection for each apartment. An entire building or complex using the same shared spectrum on the same network for its primary connectivity can lead to performance and reliability problems less likely with wired connections for individual units. Signal strength varies for each residence depending on the location of base stations; therefore, the ability to opt out of bulk billing arrangements gives residents the opportunity to get the service that meets their connectivity needs.

Consumer Choice To Opt-Out Is An Appropriate Middle Ground.

The undersigned organizations support the appropriate middle ground of permitting residents to opt out of the bulk billing arrangement. As a practical matter, the traditional “inertia” of default opt out requirements mean that tenants are unlikely to opt out unless the in-building service is significantly inferior to service otherwise available, or the same service is available at a significantly lower cost.⁶ In the analogous case of community choice aggregation, states have reported opt out rates of three percent or less.⁷ Nevertheless, there are valid reasons for residents to opt out of paying for unwanted service of any kind and by offering the ability to opt out the Commission protects these interests.

Lastly, we want to reiterate that according to the press release, the Chair circulated a *Notice of Proposed Rulemaking*, not a new *Report and Order*. The best way to determine whether bulk billing does more harm or more good, whether providers genuinely need 100% sign up to make service viable, or other questions as to whether allowing opt out better serves the public by offering more competition, is to move forward with the item. The Commission can add questions that have emerged as a result of the recent barrage of presentations, and receive broad public input to address these questions.

⁶ See generally Cass Sunstein & Richard Thaler, *Libertarian Paternalism*, 93 Am. Econ. Rev. 175 (2003).

⁷ Consumer choice aggregation (CCA) programs are created by various states to allow localities to aggregate resident demand to negotiate energy rates among rival energy providers to secure the lowest rates for residents. Most states require localities to allow residents to opt out of the locally negotiated rate so that they can keep their existing provider or look for competitive providers on their own. CCAs work in essentially the same way as broadband negotiation with MTEs, *i.e.*, allowing one entity to aggregate demand to receive a better rate. As with MTEs, localities using CCAs must risk that a sufficient number of residents will opt out to undermine the viability of the negotiated rate. The low opt out rate in this analogous infrastructure area provides a “natural experiment” by which to judge the likely impact of permitting opt out (absent strong motivation to the contrary). See generally EPA, *Community Choice Aggregation*, <https://www.epa.gov/green-power-markets/community-choice-aggregation#>; Victor Y. Wu and Richard Howarth, “Shifting Partisan Public Opinion Towards Community Choice Aggregation,” (October 3, 2023), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0292136>; Garance Burke, Chris Finn, Andrea Murphy, “Community Choice Aggregation: The Viability of AB 117 and Its role in California Energy Markets,” Goldman School of Public Policy (2005) at 10 (noting Massachusetts reports an opt out rate of 1%, and Ohio reports an opt out rate of 3%).

Respectfully submitted,

American Economic Liberties Project
Public Knowledge
American Civil Liberties Union (ACLU)
Americans for Financial Reform Education Fund
Center for Economic Justice
Consumer Action
Consumer Federation of America
Consumer Reports
Demand Progress Education Fund
Democrats Abroad (Africa Committee)
Economic Empowerment Center DBA Lending Link
Fight Corporate Monopolies
Freedom BLOC
Freedom Writers Collaborative
Georgia Advancing Communities Together, Inc.
Illinois Social Justice Alliance
Indivisible Marin
Indivisible Metro East
Institute for Local Self-Reliance
Maine People's Alliance
National Consumer Law Center, on behalf of its low-income clients
New America's Open Technology Institute
Oregon Consumer Justice
Oregon Consumer League
Our Revolution - Illinois Chicago
Progressive Democrats of America
Public Justice Center
Revolving Door Project
South Carolina Appleseed Legal Justice Center
Venice Resistance
Woodstock Institute

cc:

Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Commissioner Anna M. Gomez