



Wednesday, July 22, 2020

America's Broadband Moment: Facilitating Competition in Apartment Buildings

Thirty percent of all Americans live in multi-tenant environments ("MTEs") like apartment buildings. Their annual income tends to be only about 54% of median homeowner income, so they are at greater risk of not being able to afford broadband. When apartment owners can profit by restricting tenants' broadband options and reducing competition, it adds to our [nation's broadband affordability challenges](#). Encouraging competition in MTEs will reduce broadband prices and help to connect countless families who are struggling to afford this essential service.

MTE tenants should be able to choose from providers that want to serve them. But too many apartment and condominiums residents are forced to pay their landlords or property managers a premium to access a prechosen broadband provider as part of bulk billing packages. Paid priority agreements and restrictive access requirements can functionally prohibit other broadband providers from reaching potential customers. The resulting broadband monopolies can lead to higher prices, lower service quality, and fewer service options for apartment-dwelling households.

Here are three significant ways that governments can ensure competitive choices for renters:

1. Congress should clarify the Federal Communications Commission's authority and responsibilities to act on MTE broadband access concerns.

- **Congress should mandate the FCC to protect consumers and foster MTE competition.** Currently, the FCC's ability to act on MTE issues relies on a combination of authorities from different legislative acts, which can raise complex questions of technology and law that invite extended litigation. Congress should resolve confusion and grant clear authority to the FCC to act on behalf of MTE residents to foster competition.
- **The FCC should adopt clear rules that prohibit anticompetitive practices and bar artificial access limits to MTE competition.** Last year, the FCC recognized its responsibility to monitor anti-competitive MTE practices but largely deferred to the states, most of which have not acted on these specific issues. Congress should require the FCC to develop clearer access and fair competition rules. Such rules may be most important where technical issues of physical access arise. The FCC is well-positioned to evaluate technology-related factors and their impact on competition.

2. Congress and the FCC should prohibit restrictive contracting arrangements that discourage access, including:

- **Exclusive broadband service access arrangements.** While the FCC has long-forbidden video service providers and telecommunications carriers from gaining exclusive access to MTEs, it has not done so for broadband services.
- **Bulk billing agreements.** Some building owners grant exclusive contracts to broadband providers and incorporate a standardized package into tenants' monthly rent. This practice forces consumers to pay for a service they may not want or pay twice if they chose a different service.
- **Exclusive wiring arrangements.** The FCC requires that when not in use, wiring once used for a combination of video and broadband services within MTEs be made available to competitors to connect residents. However, this requirement does not apply to broadband-only wiring. As a

result, competitors face needlessly higher costs of serving households that have dropped cable-TV service.

- **The “sale-and-leaseback” loophole.** Even when the FCC’s open-access rules for mixed video and broadband wiring apply, broadband providers can prevent their competitors from using the network by selling their unused networks to MTE owners and creating exclusive use agreements with them. This loophole undermines the intent of restrictions against exclusive wiring arrangements and hinders competition.
- **Exclusive marketing arrangements.** A building owner can exclusively permit one provider to market its services within the MTE, often in exchange for payment. This practice fosters consumer confusion and creates an incentive for MTE managers to favor their marketing partners by making competitors’ access more difficult.
- **Rooftop exclusivity agreements.** Building owners can restrict wireless transmission devices from being placed on rooftops, effectively preventing tenants from choosing these services and needlessly restricting consumer options.

3. Policymakers at all levels should facilitate competitive entry, providing MTE tenants choice of providers and services.

- **State and local authorities should adopt broad broadband access rules and carrier-neutral broadband wiring requirements in their MTE codes.** FCC research finds that mandatory access laws that allow broadband entry and installation, even over objection from MTE owners, leads to an “increase in the supply of broadband to MTEs.” The FCC has encouraged states to adopt these laws, but most states have not done so specifically for broadband service. They should. And state and local governments should require that new MTE construction incorporate convenient network access points and high-speed network-ready conduits to all units.
- **Congress and the FCC should use federal preemption power to block state and local laws that permit broadband providers to restrict competition.** Some state and local housing codes have effectively enabled building owners to restrict competing broadband providers from installing their networks and serving tenants. When these laws hinder competition, they should be preempted.
- **Federal support of MTE development projects should adopt consistent broadband wiring requirements in all federally supported housing projects and incorporate pro-competitive access requirements.** The United States Department of Housing and Urban Development (HUD) recently required that all multifamily rental housing it directly funds include broadband wiring. These requirements should be extended to multiple dwelling units only receiving financing insured or guaranteed by HUD or the Federal Housing Administration.

These MTE policy improvements will prioritize the needs of tenants while helping to combat the digital divide. Better competition in MTEs will also facilitate better broadband options in nearby neighborhoods as well, as networks realize economies of scale. Everyone deserves better competition and affordable broadband service, especially the 30% of people in the U.S. living in MTEs.



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The Benton Institute for Broadband & Society is a non-profit organization dedicated to ensuring that all people in the U.S. have access to competitive, High-Performance Broadband regardless of where they live or who they are. We believe communication policy - rooted in the values of access, equity, and diversity - has the power to deliver new opportunities and strengthen communities.