

April 1, 2024

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142

Dear Ms. Dortch,

This letter is submitted pursuant to Section 1.1206(b)(1)¹ of the rules of the Federal Communications Commission (“FCC” or “Commission”) on behalf of the Coalition of Independent Internet Service Providers (“Coalition”) to provide notice of *ex parte* presentations by the Coalition to representatives of the Commission on March 28 and 29, 2024. The presentations concerned the Notice of Proposed Rulemaking (“*NPRM*”) currently on circulation titled “Improving Competitive Broadband Access to Multiple Tenant Environments.” The Coalition consists of the independent internet service providers (“ISPs”) and investors in these ISPs that are signatories to this letter. The ISPs, which are founder-owned and investor-owned, provide advanced broadband services, often at symmetrical gigabit speeds or faster, at affordable rates in new and existing multiple tenant environments (“MTEs”). The attendees representing the Coalition and the Commission at each of these meetings are set forth in Attachment A hereto.

During the meetings, the Coalition representatives presented the slide deck attached as Attachment B hereto. They discussed how bulk billing arrangements benefit residents of MTEs by enabling the deployment by Coalition members of advanced broadband networks and their provision of affordable high-speed broadband. The Coalition further discussed the Commission’s past support for bulk billing arrangements in its *2010 Exclusive Service Contracts Order*.² The Coalition requested the Commission to facilitate a fair and even-handed discussion of bulk billing arrangements in the *NPRM* proceeding by soliciting input that reflects and acknowledges the public interest benefits of bulk billing arrangements and the public interest harms that will occur if those arrangements are prohibited or undermined.

¹ 47 C.F.R. § 1.1206(b)(1).

² *Exclusive Service Contracts For Provision Of Video Services In Multiple Dwelling Units And Other Real Estate Developments*, Second Report and Order, 25 FCC Rcd 2460 (2010).

Marlene Dortch, Secretary
Federal Communications Commission
April 1, 2024
Page 2

Please address any questions about this matter to Phillip Marchesiello, counsel to the Coalition, at pmarchesiello@wbkllaw.com or 202.383.3343.

Sincerely,

/s/ Alan Rosenberg
Alan Rosenberg, CEO
AccessParks
<https://accessparks.com/about-insights/>

/s/ Fred Lutz
Fred Lutz, CEO
BAI Connect
<https://www.baiconnect.com/about/>

/s/ Joe Berg
Joe Berg, CEO
Data Stream Internet
<https://4datastream.com/about/>

/s/ Taylor Jones
Taylor Jones, CTO
Eluawit Connection
<https://elauwit.com/about>

/s/ Andrew Kusminsky
Andrew Kusminsky, CEO
GIGstream
<https://gigstream.com/about-us/>

/s/ Matt Bueltel
Matt Bueltel, CEO
ICS Advanced Technologies
<https://www.ics-llc.net/about-us>

/s/ Ryan Carr
Ryan Carr, Partner
M/C Partners
<https://mcpartners.com/about/>

/s/ Matt Ostrega
Matt Ostrega, CEO
Mereo Networks
<https://www.mereonetworks.com/about-us>

/s/ Bryan Rader
Bryan Rader, President
Pavlov Media
<https://pavlovmedia.com/about-pavlov-media/>

/s/ Darren Rish
Darren Rish, CEO
Smartaira
<https://smartaira.com/about/>

/s/ David Dobbin
David Dobbin, CEO
Zentro Internet
<https://zentrointernet.com/about/>

/s/ Trip Williams
Trip Williams, CEO
XtreamInternet
<https://xtreaminternet.com/>

/s/ Jeff Kok
Jeff Kok, CEO
Aerwave
<https://aerwave.io/about-us/>

Marlene Dortch, Secretary
Federal Communications Commission
April 1, 2024
Page 3

Attachment

Cc: Elizabeth Cuttner
Justin Faulb
Lauren Garry
Marco Peraza
Hayley Steffen

ATTACHMENT A

MEETING ATTENDEES

Thursday, March 28

Marco Peraza, Wireline Advisor to Commissioner Nathan Simington
Patrick Bailey, Co-Founder and SVP, ICS Advanced Technologies
Matt Bueltel, CEO, ICS Advanced Technologies, Coalition Member
Ryan Carr, Partner, M/C Partners, Coalition Member
David Dobbin, CEO, BAI Connect, Coalition Member
Phillip Marchesiello, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition
Robert Quinn, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

Thursday, March 28

Lauren Garry, Legal Advisor to Commissioner Brendan Carr
Matt Bueltel, CEO, ICS Advanced Technologies, Coalition Member
Ryan Carr, Partner, M/C Partners, Coalition Member
Brian Clark, Managing Partner, M/C Partners, Coalition Member
David Dobbin, CEO, BAI Connect, Coalition Member
Phillip Marchesiello, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition
Robert Quinn, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

Thursday, March 28

Justin Faulb, Chief of Staff and Legal Advisor for Wireline and National Security to
Commissioner Geoffrey Starks

Jasmine Held-Hernandez, Intern for Commissioner Geoffrey Starks
Matt Bueltel, CEO, ICS Advanced Technologies, Coalition Member
Ryan Carr, Partner, M/C Partners, Coalition Member
Brian Clark, Managing Partner, M/C Partners, Coalition Member
David Dobbin, CEO, BAI Connect, Coalition Member
Fred Lutz, CEO, Zentro Internet, Coalition Member
Bryan Rader, President, Pavlov Media, Coalition Member
Phillip Marchesiello, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition
Travis Litman, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

Thursday, March 28

Elizabeth Cuttner, Legal Advisor for Wireline and Enforcement to Chairwoman Jessica
Rosenworcel

Joe Berg, CEO, Data Stream Internet, , Coalition Member
Matt Bueltel, CEO, ICS Advanced Technologies, Coalition Member
Ryan Carr, Partner, M/C Partners, Coalition Member
Brian Clark, Managing Partner, M/C Partners, Coalition Member
Fred Lutz, CEO, Zentro Internet, Coalition Member
Matt Ostrega, CEO, Mereo Networks, Coalition Member
Bryan Rader, President, Pavlov Media, Coalition Member

Phillip Marchesiello, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition
Travis Litman, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

Friday, March 29

Hayley Steffen, Legal Advisor for Wireline and Space to Commissioner Anna M. Gomez

Patrick Bailey, Co-Founder and SVP, ICS Advanced Technologies

Matt Bueltel, CEO, ICS Advanced Technologies, Coalition Member

Ryan Carr, Partner, M/C Partners, Coalition Member

Brian Clark, Managing Partner, M/C Partners, Coalition Member

David Dobbin, CEO, BAI Connect, Coalition Member

Phillip Marchesiello, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

Travis Litman, Wilkinson Barker Knauer, LLP, outside counsel to the Coalition

ATTACHMENT B

PRESENTATION

1

Bulk Billing Notice of Proposed Rulemaking

Coalition of Independent
Internet Service Providers

2

Coalition Objectives

To assist the Commission to understand the crucial importance of bulk billing arrangements to the funding of high-speed MTE broadband deployments nationwide and the provision of affordable gigabit+ broadband to MTE residents

To promote an even-handed discussion of bulk billing arrangements and MTE exclusivity in the NPRM, including questions about their potential to generate public interest benefits such as increased gigabit+ broadband deployment and affordable access

To ensure that the record in this proceeding fully reflects the public interest harms that will occur if bulk billing arrangements are prohibited or undermined, including the massive disruption to the MTE broadband ecosystem

Bulk Billing Provides Real Public Interest Benefits

The bulk billing arrangements that are pervasive between ISPs and MTEs:

- Fund the deployment of advanced broadband networks in MTEs that otherwise would be served only by outdated and inadequate broadband
 - Enable ISPs to provide MTE residents with faster broadband (gigabit+ speeds) at lower prices—often 50% less than local pricing
-

The FCC’s Record Supports Bulk Billing

In the *2010 Exclusive Service Contracts Order*, the FCC permitted bulk billing and concluded that bulk billing has “significant pro-consumer effects,” including:

- Lower prices resulting from more efficient provisioning
- Increased quality and innovation
- Ensuring broadband availability to all MTE residents

The record has not been significantly refreshed since the FCC reached these conclusions in 2010



The FCC's Record Supports Bulk Billing

“The record shows that bulk billing, although it can harm some MDU residents, benefits far more of them. In the large majority of cases, bulk billing appears to lower prices, increase the volume and variety of programming, encourage high quality and innovation, and bring video, voice, and data services to MDU residents.”

- “[W]e will allow bulk billing by all MVPDs to continue because, under current marketplace conditions, it is clear that it has significant pro-consumer effects.”
- “[I]t would be a disservice to the public interest if, in order to benefit a few residents, we prohibited bulk billing, because so doing would result in higher MVPD service charges for the vast majority of MDU residents who are content with such arrangements.”
- “The MVPD provider is spared the significant expenses of selling to each resident, making credit checks and collecting deposits, managing bad debt and theft of service, and frequently sending personnel and vehicles to the building to place and remove boxes and turn service on and off in different units.”
- “[A]lthough bulk billing may make entry by other MVPDs marginally less attractive, it does not significantly hinder, much less prevent, the latter from entry.”
- “Based on a review of the record, [incidents of consumers being subjected either to prices that they believed were not discounted or to inferior service] appear to be few, isolated, and atypical of bulk billing as a whole.”

Access to broadband is more important than ever

The Commission and NTIA are spending billions of dollars to ensure Americans have access to high-speed, reliable Internet, but it will cost yet more. Bulk billing empowers MTE ISPs to help close the funding gap.

The ability to work remotely is essential to MTE tenants

- 82% of smart condo owners and 63% of apartment tenants work remotely at least some of the time
- Reliable high-speed broadband is the no. 2 most desired MTE amenity (behind washer/dryer) and tenants clearly prefer fiber

Tenants expect fast, reliable WiFi / broadband

- Renters assign greater value to fiber-equipped apartments: a 13% increase in value
- >70% MTEs offering managed WiFi do so to better compete to attract tenants away from other MTEs

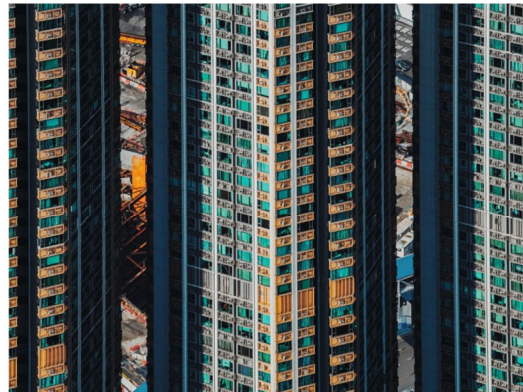
MTE broadband enables MTEs to provide smart-home services/devices

- Improved safety and security, improve indoor air quality and filtration, reduce cost of energy and water utilities, reduced complaints
- More than 80% of MTEs intend to install smart devices in the next 12 months
- 83% of tenants with LL-provided smart-home services/devices are satisfied with their rental experience

Funding MTE Fiber Deployment: MTE-Focused ISPs and Bulk Billing

ISPs are prepared to invest in the deployment of gigabit+ broadband networks in MTEs, but only if it makes economic sense to do so

- \$700-\$2500/per unit; more than many MTEs can afford
- Bulk billing arrangements enable ISP's upfront investments to be recovered over time
- MTE broadband deployments are dependent on bulk billing to de-risk capital investments



Bulk Billing Benefits Tenants

In addition to enabling broadband investments, bulk billing arrangements create sales-channel efficiencies that reduce the per-unit cost of providing service, thereby enabling higher-quality broadband at lower prices

- 70% of renters with bulk billing arrangements are satisfied with their internet
- Bulk billing can lead to prices that are 50-60% lower than average community retail rates
- Without bulk billing, broadband prices in many MTEs will dramatically increase—in some cases double



Bulk Billing Promotes Competition

ISPs are subject to competitive pressure

MTEs regularly use RFP processes to require ISPs to bid against each other for the right to deploy broadband networks and serve residents

MTEs are subject to competitive pressure

MTEs promote their affordable high-speed broadband services to differentiate themselves from other MTEs and thereby attract residents

Funding MTE Broadband Deployment: Private Equity Investment

Capital deployment in the MTE-focused ISP market will continue to increase for the foreseeable future, but only if the regulatory landscape is stable and predictable

- Tens of thousands of buildings nationwide still do not adequate broadband, much less gigabit+ speed broadband
 - The ISPs serving these buildings tend to be smaller, regional companies that need access to capital to expand and that can be more efficiently operated at scale
 - But bulk billing is necessary to de-risk capital flows into the MTE ISP market
-

Opt-Out Requirement Raises Important Practical Questions

- Landlords control the tenant relationship and ISPs are not a party, but the FCC does not have jurisdiction over landlords
 - ISPs have only limited direct interaction with tenants and no billing relationship; only the landlord controls tenant fees and ISPs have no control over landlords
 - The FCC should not *require ISPs to require landlords* to (i) bill tenants individually for broadband using a separate line item and (ii) permit each tenant to decline the fee and service
 - A bulk billing arrangement that includes an opt out is not bulk billing
 - The FCC should not prohibit ISPs from charging landlords an all -building fee and instead require ISPs to bill landlords per -unit occupied by subscribing tenants
 - If the FCC prohibit ISPs from enforcing existing bulk billing agreements to require payments from landlords, the ISP's millions of dollars of investments become stranded
 - Will the FCC preempt the state landlord-tenant laws that traditionally have governed the landlord-tenant relationship?
-

The NPRM should ask fair and even-handed questions about bulk billing

- To what extent do landlords rely on bulk billing arrangements to fund MTE broadband deployments? If bulk billing arrangements are prohibited or undermined, how will this affect future MTE broadband deployments?
 - What effect do bulk billing arrangements have on MTE broadband pricing, speed, and quality? How would prohibiting bulk billing effect MTE broadband pricing, speed, and quality?
 - Do bulk billing arrangements enable landlords to obtain better broadband at lower prices by negotiating with ISPs on behalf of their resident collectively? In this way, do bulk billing arrangements promote competition by forcing ISPs to compete to serve MTEs?
 - How should the FCC balance the public interest benefits of bulk billing to tenants against any perceived harms?
 - Are there approaches that the FCC can take to mitigate any perceived harms that do not undermine the public interest benefits of bulk billing?
 - How has the market changed since 2010 to warrant the FCC reversing its conclusion then that bulk billing has significant pro -consumer effects and should be permitted?
-