



Brian Hurley
Chief Regulatory Counsel
ACA Connects–America’s Communications Association
565 Pennsylvania Ave NW
Suite 906
Washington, DC 20001

bhurley@acaconnects.org
(202) 573-6247

June 12, 2024

VIA ECFS

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

Re: *Ex Parte* Submission of ACA Connects – America’s Communications Association (“ACA Connects”); *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142

Dear Ms. Dortch:

Representatives of ACA Connects met with Commissioner Brendan Carr and his legal advisor, Lauren Garry, on June 10; and with Hayley Steffen, legal advisor to Commissioner Anna Gomez, on June 11. The participants in both meetings included ACA Connects’ President and CEO, Grant Spellmeyer; several ACA Connects Member company representatives; Tom Cohen of Kelley Drye and Warren LLP, outside counsel to ACA Connects; and the undersigned.¹ Both meetings were by videoconference and were in reference to the draft Further Notice of Proposed Rulemaking placed on circulation in the above-captioned proceeding, which reportedly proposes restrictions on the use of bulk billing arrangements to provide communications services in multiple tenant environments (“MTEs”).²

We began both meetings by underscoring ACA Connects’ support for measures to promote broadband competition. Over the past decade, our Members – smaller broadband providers – have invested many billions of dollars to enter new markets, thereby giving consumers, including those residing in MTEs, greater choice. These investments were due in no small part to the Federal Communications Commission’s (“Commission’s”) adoption of a

¹ A full list of ACA Connects representatives that participated in the meetings is provided in the Appendix to this letter.

² See FCC, News Release, “FCC Chairwoman Announces Push to Lower Broadband Costs & Increase Choice for Families Living in Apartment Buildings,” Mar. 5, 2024, <https://docs.fcc.gov/public/attachments/DOC-400915A1.pdf>.

balanced regulatory regime. This included the Commission’s 2010 decision finding that bulk billing arrangements are on balance pro-consumer.³ We urge the Commission to continue policies that enable competitive entry and expand consumer choice.

Our Member company representatives went on to explain that competition to serve residents in MTEs has increased greatly and that it has been propelled by the use of bulk billing arrangements. They explained that bulk contracts both enable residents of MTEs to aggregate their buying power to obtain far better rates, terms, and conditions than individual households and provide the certainty that fosters bidding by multiple providers, including smaller providers. Our Members indicated that when they win bulk contracts, they generally agree to invest in the deployment of fiber and other advanced infrastructure (*e.g.*, gigabit Wi-Fi delivered via a wired ethernet connection in each unit) and to deliver service at steeply discounted rates and provide enhanced customer service, quality of service assurances, and other amenities that are not available to retail customers. These bulk billing arrangements also typically permit residents to deal directly with providers to upgrade their broadband and video services.

Our Members went on to explain that MTE owners often use expert consultants to support their bulk deals to get maximum value for their residents. At the same time, MTE owners recognize that bulk contracts only work if they give providers long-term stability to make and recoup substantial investments in infrastructure and operations. To that end, our Members stated that giving individual tenants “opt-out” rights would jeopardize their ability to provide service through bulk arrangements by making the associated investments much riskier. From their perspective, an “opt out” requirement for bulk deals would be tantamount to an outright ban.

Finally, our Members noted that should the Commission directly or indirectly ban bulk billing agreements, rates for MTE residents would increase and investments in infrastructure and operations would decrease. Moreover, a ban on bulk agreements would not ensure that MTE tenants only pay for services they choose. Because MTE owners are beyond the Commission’s jurisdiction, they could evade the Commission’s rules by constructing and operating their own internal private networks and charging each tenant an infrastructure or technology fee without any right to opt out. These networks – unlike those of ACA Connects’ members providing bulk services – would tend to lock in current technology and capacity limits because an MTE owner serving its own tenants would not be subject to the same competitive forces as a broadband provider competing for a bulk deal.

In light of these concerns and those expressed by other parties, ACA Connects concluded the meeting by urging the Commission to table this proposed rulemaking or, at minimum, proceed cautiously. The appropriate next step, should the Commission decide to proceed, would

³ See *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Development*, MB Docket No. 07-51, Second Report and Order, 25 FCC Rcd 2460, at para. 26 (2010) (“We conclude that the benefits of bulk billing outweigh its harms.”).

Marlene H. Dortch
June 12, 2024
Page 3

be a Notice of Inquiry, which would enable the Commission to gather data and evidence about the prevalence and characteristics of bulk billing arrangements and their impact on consumers to help it determine whether any regulatory proposals in this area are warranted.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁴

Sincerely,



Brian Hurley

Cc: Commissioner Brendan Carr
Lauren Garry
Hayley Steffen

⁴ 47 C.F.R. § 1.1206.

APPENDIX
Full List of ACA Connects Representatives

Grant Spellmeyer, ACA Connects
Brian Hurley, ACA Connects
Patrice Carroll, ImOn*
Drew Petersen, TDS
Aaron Bradshaw, Co-Mo**
Josh Merrill, Co-Mo
Doug Guthrie, Astound
Tom McKay, Astound
Mike Carrosquilla, Astound**
Joe Kahl, Astound*
Tom Cohen, Kelley Drye and Warren LLP

* Participated only in the meeting with the Carr office

** Participated only in the meeting with the Gomez office