



Multifamily Broadband Council Asks FCC to Overturn San Francisco Ordinance

The Multifamily Broadband Council (MBC), which represents small, independent communications companies that provide broadband-related services to multifamily communities and their vendors, has filed two petitions with the Federal Communications Commission (FCC) challenging Article 52 of the San Francisco Police Code. In the first petition, MBC seeks a declaratory ruling that Article 52 is fully preempted by federal law and policy and thus is invalid. In the second petition, MBC seeks a ruling that the ordinance is barred by the FCC's Over-The-Air-Reception Devices (OTARD) rules and an immediate suspension of Article 52.

Article 52 threatens competition and consumer value, while advancing the interests of only well-heeled behemoths like Google, which has shown a willingness to lose hundreds of millions of dollars on its Google Fiber deployments in order to destroy its smaller competitors. Subject to only limited exceptions, Article 52 imposes an extreme form of mandatory access to multiple occupancy buildings, trampling on basic property rights and contract law. The ordinance requires property owners to permit all communications service providers onto their property at an occupant's request, and to permit these providers to use the property owner's existing wiring even if another provider is already using it. This mandate applies regardless of whether the property owner has an existing contract with other communications service providers already serving the property. Under the guise of increased consumer choice, Article 52 tips the scales against small businesses, will line the pockets of multinational corporations, and will in fact negatively impact broadband competition.

The following statement can be attributed to MBC's President, Dan Terheggen:

“The FCC should not be fooled by Article 52's pro-competitive wrapping paper. At its core, Article 52 is nothing more than a gift to well-financed players like Google. The rule tilts the playing field against small, entrepreneurial start-ups such as MBC's members by overriding the voluntary contractual arrangements necessary for these companies to obtain the financing required to invest in innovative and competitive services for consumers. Ultimately, Article 52 will lead to less investment in broadband deployment and less consumer choice as bulk discounts are eliminated and affordable competition from innovative start-ups evaporates. Indeed, the negative consequences of this ordinance will include higher prices for lower- and fixed-income tenants, poor customer service, endless litigation, and a reduction of meaningful broadband competition in San Francisco.

But Article 52 isn't just deeply flawed policy – it also violates the letter and spirit of the FCC's rules regarding inside wiring and other matters, and is in direct conflict with the FCC's rule governing consumer choice in antenna placement (known as the “OTARD” rule). Accordingly, we are asking the FCC to intercede and reject the ordinance as inconsistent with the OTARD rule and preempted by federal law and policy. We are hopeful that the FCC will act quickly to restore a level playing field in San Francisco and prevent the spread of such ordinances to other cities.”

For further information, please contact MBC's Executive Director, Valerie Sargent, at (949) 274-3434 or vsargent@mbroadband.org.