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Dear Speaker Pelosi:

I am writing to oppose the Federal Communications Commission's move to pre-empt San Francisco's Article 52, an ordinance which has improved competition for small and independent ISPs and reduced internet costs for tenants in San Francisco.

Monkeybrains is a local Internet Service Provider (ISP) based in San Francisco. Monkeybrains was founded in 1998 and has 45 employees. We have over 10,000 customers mostly in San Francisco, and have never taken on outside or venture funding. We charge residents $35 a month for fast internet with no hidden fees and no contracts, and we have never raised our prices on residential customers. Monkeybrains is a dynamic and scrappy Local Business Enterprise in an industry dominated by monopolistic giants and our customers love us for this reason.

In San Francisco, a nexus of the global housing affordability crisis, over 60% of the population are renters[1]. After the 2008 financial crisis, hedge fund investors and real estate investment trusts – REITs – went on a California housing buying spree[2]. Often when a tenant requests internet service in a large building (a "multi-dwelling unit" or MDU), they are deterred by their landlord and told they only have one or two choices of ISP. When Monkeybrains tries to survey the site and provide options for service, property management will either stonewall us or refuse us entry on spurious grounds of aesthetics or interference when neither concern is applicable.

The reason for this barrier to service is that large landlords often enter into exclusive arrangements with ISPs. Although the FCC attempted to ban this practice[3], it is a policy for maximum rent extraction with corporate landlords and REITs. Professor Susan Crawford at Harvard calls this the "new payola" because a property management company brokers exclusive arrangements with a large ISP capable of paying the landlord over the top in a revenue sharing arrangement[4]. ISPs fund this by raising the rates for internet service on tenants in that MDU.

1 https://housing.datasf.org/overview/

2 https://calmatters.org/articles/data-dig-big-investment-firms-have-stopped-gobbling-up-california-homes/

3 See 2000 Competitive Networks Order, 15 FCC Rcd at 22985, para. 1;
2007 Exclusive Service Contracts Order, 22 FCC Rcd at 20236, para. 1;
2008 Competitive Networks Order, 23 FCC Rcd at 5386, para. 5.
See also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments,
MB Docket No. 07-51, Second Report and Order, 25 FCC Rcd 2460 (2010) (2010 Exclusive Service Contracts Order).

4 https://www.wired.com/2016/06/the-new-payola-deals-landlords-cut-with-internet-providers/

San Francisco’s Article 52 ordinance revolutionized the situation in favor of tenants and small ISPs like Monkeybrains. Before Article 52 passed in 2016, we had a 0% rate of servicing 40+ unit MDUs with active revenue share agreements with Comcast and ATT. Since Article 52, we have a 60% rate of servicing 40+ unit MDUs with active revenue share agreements without invoking Article 52, and a 75% rate after invoking Article 52.

In MDUs built 10+ years ago with 40+ units and long-standing revenue share agreements, we see very old technology deployed (coax DOCSIS 2.0/3.0 and Cat3 ADSL, with speeds of 20Mbps down – 3Mbps up) due to lack of competition. Building management blocks the entry of alternative ISPs due to existing revenue arrangement and tenants suffer. One building where we invoked Article 52 and now have dozens of customers paying $35/month and receiving over 100Mbps symmetrical speeds is also a 100% below-market-rate building in the Mission Bay neighborhood. Contrary to the protestations of corporate landlords and their lawyers, Article 52 is not exclusively aimed at the luxury housing market. It is already keeping money in the pockets of working-class San Francisco families and will continue to do so as long as it is utilized.

The FCC's proposed move, contrary to their stated position, would stifle competition and increase internet prices to San Francisco residents. In many MDUs tenants want our service but their landlords have exclusive partnerships with large ISPs. Without Article 52, we could not work with a tenant advocate to provide service in the building and these residents would go back to having only the options their landlords provide them.

The FCC’s proposed order makes liberal use of the term “in-use wiring,” which is misleading and is simply not an actual problem. Article 52 refers to “existing wiring” but the FCC seems to want to scare ISPs and landlords into believing there is an epidemic of interference with service. We have zero confirmed examples of interference or use of “in-use” wiring, whether by us or to us from other providers. In fact, when we install a new client at a large MDU with existing wiring, we only plug them in to our switch at the nearest IDF when the tenant confirms they are discontinuing previous service – a practice engaged in by all ISPs working in these buildings as a matter of course. As with all ISPs, we build our own infrastructure into the building so as to have full control over service delivery to the IDFs and never interfere with other ISP infrastructure. For context, if we had to run our own new infrastructure directly to each unit, it is $200 per wire drop for buildings that have pathway/conduit to units from IDFs. It would be five times that if we had to create path and build an aesthetically pleasant finish.

San Francisco’s Article 52 is an example for other cities seeking to improve broadband penetration and lower costs of internet service for their residents. Please oppose the FCC’s move to pre-empt Article 52 and stand for a better internet in the United States.

Sincerely,

Preston Rhea
Director of Field Operations