

Telecommunications and Broadband Access

Telecommunications agreements are currently made between apartment owners and communication providers, operating in a free market that encourages competition and benefits consumers. Potential government-mandated regulation has the ability to interfere with private property rights and effectively end contract negotiating power of owners and operators. Similar to an overly restrictive San Francisco law, Model State Code, passed through the FCC and can be adopted locally, grants all communication service providers the right to access and install facilities in new and renovated buildings at the apartment owner's expense. This has the potential to cause a large financial burden to property owners, due to costs of compliance and without just compensation.



Policymakers at all levels of government remain concerned about the availability of broadband to consumers and continue to look for ways to bridge the digital divide across the United States. Congress and the Federal Communication Commission (FCC) have made bolstering broadband deployment a key priority across the nation and the multifamily industry is committed to that goal. In fact, recent lifestyle changes and resident preferences dictate that the industry deliver high-quality communications services to its residents. Recent research shows that the desirability of an apartment community is linked to its on-site internet: Ninety-four percent of residents surveyed ranked high-speed internet as the top apartment feature.

Ensuring residents have a choice in internet service providers and products is a key part of addressing resident needs. Notably, data shows that most apartment building residents already have access to two or more Internet service providers as compared to only 38% of Americans overall having access to two or more Internet service providers.

Yet, some service providers who wish to gain access to apartment communities in higher income areas argue that apartment owners are an impediment to residents' choice, which is simply not the case. Apartment owners and operators actively seek partnerships with communications providers to deliver a choice of high-quality communication services in all markets, which can be a challenge. Today, apartment owners and communications providers can enter into marketing agreements that are negotiated under free market conditions, which encourage competition that results in better prices, a choice in providers and a range of services for residents. The current regulatory framework surrounding these agreements and the relationships between providers and property owners ensures that residents are well-served and that the limited space for wiring and infrastructure is utilized in the most efficient manner.

Telecommunications and Broadband Access (Cont'd)



The FCC and state and local governments have been working to remove regulatory barriers to broadband deployment. The rental housing industry has been working to educate government officials on the industry's business practices and the successes of the existing regulatory framework. In addition, we have been actively engaged in numerous proceedings before the FCC that could threaten existing communications contracts between service providers and property owners without evidence of a market failure or actually addressing barriers to broadband deployment. NAA/NMHC have argued that the current federal regulatory framework for agreements between property owners and service providers allows the market to effectively allocate scarce capital for network construction, maintenance and service upgrades in apartment communities.

In December 2018, despite the strong opposition of NAA/NMHC and other real estate stakeholders, the FCC's Broadband Deployment Advisory Committee (BDAC) approved a Model State Code (MSC), which is intended to serve as a roadmap for state legislatures to follow when seeking to foster broadband deployment. Article 8 of the MSC grants broadband providers the unilateral right to install facilities in all multifamily residential and other commercial buildings and mandates construction of broadband facilities at the property owner's expense without regard to the rights and concerns of the owner.

NAA/NMHC and its industry partners argued that MSC's Article 8 is riddled with many technical and legal challenges. The most serious issues with the MSC being that it interferes with private property rights, jeopardizes existing negotiated contracts between property owners and communications service providers and could lead to costly regulation and litigation at the state level without any evidence that it will lead to increased broadband deployment. Despite the BDACs approval, it is important to note that the MSC is simply advisory in nature and is in no way binding. Individual states would still need to legislate its approval for it to be enacted.

The apartment industry is under increasing pressure to meet demand across the country and address significant housing affordability challenges. Similar to other cost drivers and regulatory barriers to multifamily development at the state and local level, adoption of proposals like the MSC or ordinances like those in San Francisco would drive up development costs, hurt residents and ultimately slow the deployment of high-speed broadband service to our communities.

Ever Hear of a Drive-By Lawsuit?

By: Dennis Beaver, The Sentinel

If you are a landlord—or plan to buy rental property—our story should scare you more than just a little, as the last thing you want is to be sued for a violation of the Americans With Disability Act which no doubt you've heard of.

Ever Hear of a Drive-By Lawsuit? (Cont'd)

And here's a fact situation that is guaranteed to raise your blood pressure.

You've heard the term "Drive By Shooting," where a car, building or person, is shot at by someone in a moving vehicle, making it often difficult to capture the perpetrator.

But have you ever heard of a "Drive By Lawsuit?"

"A 'Drive-By' lawsuit claims violations of the ADA by a person who does nothing more than drive by business without ever attempting to become a customer and there is no evidence of the individual ever being in their business. "Business owners must hire an attorney to defend themselves where small and easily curable violations of ADA access requirements on the outside of their business that can be seen when driving by the property.

"Three law firms with less than twenty plaintiffs file the majority of the ADA cases in federal court. Twenty or more cases a month are filed using a single individual. California has a financial reward for the person who brings an ADA lawsuit, even for minor or purely technical violations, like a parking space being an inch too narrow." Vaughan stated.

At least one individual law firm in California files more than one hundred ADA lawsuits a month using virtually identical language, changing little more than the name and address of the business in a boiler plate complaint. "In many cases, the lawsuit targets a small immigrant or minority owned business."

Pay Up Now or Pay Thousands to a Lawyer Defending You

"The business either pays the settlement demand-- frequently over \$10,000--or spends thousands more fighting the lawsuit, or shutting down the business" Vaughan stated in frustration.

Unfortunately, the shakedown usually works, and it did with one of my clients, trying to sell their small motel. We were one of many victims of this incredible abuse of the well intentioned ADA, until the Federal Courts in California and some other states put a stop to this thievery.

Never Even Set Foot on the Property

An Arizona lawyer and his wheelchair-bound client have used Google Earth to study swimming pool facilities at hotels throughout California. The ADA requires hotels which have a swimming pool to be accessible to all guests. But how can a guest who is confined to a wheelchair get into a swimming pool?

The ADA requires hotels to install a pool lift to provide access to wheel-chair bound patrons. These lifts are easily visible on Google Earth. Often city and county building code officers do not inform the owners of this requirement. In my town, they specifically told hotel owners that a lift was not necessary. That was bad, really bad advice.



Ever Hear of a Drive-By Lawsuit? (Cont'd)

If a wheelchair bound person checks into or tries to check into a hotel and discovers no lift at the pool, they have suffered a harm according to the ADA. Failure to have a lift is a clear violation of ADA access requirements and hotel guests would be well within their rights to file suit.

“But in these lawsuit, the plaintiff lived in Arizona, never left her home, but claimed an ADA violation because the hotel she saw on Google Earth lacked a chairlift! Her lawyer filed dozens of these questionable lawsuits in California Federal Courts against hotels all over the state!” Vaughan points out.

A Gun to Your Head

“Clients tell me ‘It feels like there’s a gun to your head. ‘Vaughan stated, adding “Many hotels simply settled these suits, paying \$5,000 or more to the Arizona lawyer. But then a few attorneys who represented major hotels asked the Courts to dismiss these suits on the grounds of what is called Standing. “That means, the plaintiff could not show that the lack of a chairlift actually harmed her, as she was never at the hotel, or in California, for that matter. But rejection of these lawsuits by the court came after many hotels just paid up.” he points out, adding, “These types of lawsuits are still going on today,” he concluded.



Advocate
Powered by NAA

New Congress
New Connections
New Opportunities

March 5-6, 2019
Grand Hyatt | Washington, D.C.

**APPRENTICE
PERSONNEL®**

316-267-4781
Fax 316-267-4790
stephanie.marnell@apprenticepersonnel.com

Stephanie Marnell
Operations Manager

328 S. Laura
Wichita, KS 67211
www.apprenticepersonnel.com

The help you need. . . 24/7 . . . Guaranteed

**COX**

901 S George Washington Blvd
Wichita, KS 67211
(316) 260-7341 direct
(316) 285-4693 cell
David.Geier@cox.com
www.cox.com

David Geier
MDU ACCOUNT MANAGER
COX DIGITAL COMMUNITIES

THANK YOU TO OUR NEWSLETTER SPONSORS:

FLAMINGOink

360 E William, Suite 101 | Wichita, KS 67202
 T: 316-655-6544 | E: orders@flamingoink.co
 flamingoink.co

f i o t

COPY & PRINT | FLIERS | BUSINESS CARDS | PRESENTATIONS | +MORE

WELCOME TO LIFE ... WITHOUT PESTS!

AMERICAN PEST MANAGEMENT INC.

Peggy Avilez
 Wichita Regional Manager
 pavilez@americanpestonline.com
 WICHITA, KANSAS

PHONE (800)748-8287 LOCAL (316)262-7378
 WWW.AMERICANPESTONLINE.COM

ACT Putting your world back together!

Advance Catastrophe Technologies, Inc.

Fire Water Storm Mold Trauma

www.ineedACT.com

24/7 Emergency Response >>> 316-262-9992

WESTLAKE COMMERCIAL

Service Passion Respect Integrity Teamwork Excellence

David Pfaff
 Business Development Manager
 dpfaff@westlakehardware.com

Wichita
 316.259.4876

METRO
 APPLIANCES & MORE

BETTY WARES
 ARD SALES

3545 N. Hillside
 Wichita, KS 67219
 316-941-4040
 800-536-5030
 Fax: 316-941-4050
 Cell: 316-461-7472

Betty.W@metro1974.com

TULSA • OKLAHOMA CITY • EDMOND • WICHITA • JOPLIN
 SPRINGFIELD • LITTLE ROCK • SPRINGDALE • JONESBORO

FURNITURE OPTIONS
 An Employee Owned Company

Renting furniture, housewares & electronics within one business day.
 1336 E. Douglas | 316.263.5750 | FurnitureOptions.com

METRO
 APPLIANCES & MORE

BEST. DECISION. EVER.

FERGUSON
 Bath, Kitchen & Lighting Gallery

2222 W HARRY ST
 WICHITA, KS 67213
 316-361-3716

FERGUSONSHOWROOMS.COM

REP REAL ESTATE PERSONNEL
 Staffing the Finest Companies Since 1993

Ph: (316) 665-6575
 Fax: (316) 223-1038
 Esther@RealtyJobs.com
 www.RealtyJobs.com

300 W. Douglas Ave. - Suite 122
 Wichita, KS 67202

Esther Mills
 General Manager

www.RealtyJobs.com