

on how we should fashion rules implementing this approach or any alternative approach consistent with congressional intent.⁴ On the one hand, Congress indicated its desire both to protect terminating subscribers from unnecessary disruption and expense caused by removal of internal wiring⁵ and to foster multichannel service competition.⁶ On the other hand, our rules should not discourage cable investment in continuing to extend service to unwired homes by failing to account adequately for the property, contractual, and access rights of cable operators. We thus invite comment on how, under this statute, we can best balance these interests in establishing the disposition of cable home wiring upon a subscriber's termination of service.

3. In addition, we request comment on whether the rules would need to be tailored to different settings such as subscribers in single family dwellings, multiple unit dwellings and multiple building settings (e.g. educational campuses, military facilities, and hospitals). The House Report indicated that, "[I]n the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers."⁷ We seek comment on whether and how we should implement such a distinction. We also invite comment on how a terminating subscriber's right to acquire even just the wiring within its individual multiple dwelling unit residence could be reconciled with a cable operator's right of access to the building. Similarly, we ask whether the home wiring rules would need to differentiate between existing and future cable home wiring installations. We also seek comment on the likelihood of subscribers or cable operators wanting the cable home wiring removed upon termination of service.⁸

4. The House Report addressed the theft of service problem facing the cable industry and indicated that rules adopted by the Commission should "not pertain to situations where service has been terminated for nonpayment or for theft of service."⁹ We

⁴ By cable home wiring we mean only the cable itself and not any active elements such as amplifiers, decoder boxes or similar apparatuses.

⁵ Senate Report at 23; House Report at 118.

⁶ House Report at 118 ("This right [to acquire wire] would enable consumers to utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause."). We seek comment on what considerations should be given to home wiring as it relates to future competition in the cable area.

⁷ House Report at 119.

⁸ We note that the Communications Act, as amended by the Cable Communications Policy Act of 1984, currently provides, in pertinent part, that the owner of the property be justly compensated by the cable operator for any damage caused by the removal of such facilities by the cable operator. 47 U.S.C. Section 541(a)(2).

⁹ House Report at 118.

seek comment on how rules should be tailored to address termination based on nonpayment or for theft of service.

5. State property and taxation law may have implications for ownership and valuation of cable home wiring. For example, there are varied state court decisions regarding the ownership of cable home wiring. Some have ruled that the homeowner owns the cable, see State Dept. of Assessments and Taxation v. Metrovision of Prince George's County, Inc., 607 A.2d 110 (Md. Ct. 1992)(drop cables are fixtures and permanent accessions to the subscriber's home); others have ruled that the cable company owns the cable. Continental Cablevision of Michigan, Inc. v. City of Roseville 425 N.W.2d 53 (Mich. 1988)(house drops belong to the cable company for ad valorem tax purposes). We seek comment on how those issues should affect our rules regarding the disposition of cable home wiring upon termination of service. We also invite comment on whether and how we should set limits on the amount that can be charged to subscribers for their cable home wiring and the extent to which they have in fact paid for such wiring at the time of installation.

6. In addition, unlike telephone wiring, there is a potential for signal leakage from cable wires for which we hold system operators responsible. Such leakage is a matter of significant concern because small leaks in the aggregate (or even a single strong leak) may interfere with licensed over-the-air services, including aeronautical and safety-of-life services. The House Report indicated that cable operators should "continue to have legal responsibility to prevent signal leakage, since improper installation or maintenance could threaten safety services that operate on critical frequencies."¹⁰ Parties are thus invited to address in their comments any implications these additional issues may have for the policies we are directed to adopt in compliance with new Section 544(i).

III. ADMINISTRATIVE MATTERS

Ex Parte Rules - Non-Restricted Proceeding

7. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

Comment Information

8. Pursuant to procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 1, 1992, and reply comments on or before December 15, 1992. Extensions of these time periods are not contemplated. To file formally, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want

¹⁰ House Report at 119.

each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

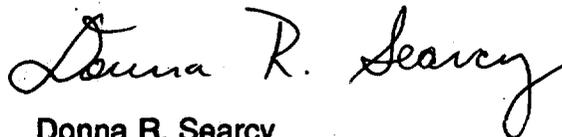
Regulatory Flexibility Act

9. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. Sections 601 et seq. (1980)).

Additional Information

10. For further information concerning this proceeding, contact Mary Beth Richards, Enforcement Division, Field Operations Bureau, (202) 632-7090.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary