

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE
RECEIVED
DEC - 1 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

MM Docket No. 92-260

To: The Commission

COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rule Making adopted by the Federal Communications Commission in the above-captioned proceeding.^{1/}

I. INTRODUCTION

Cablevision Systems Corporation ("Cablevision"), both directly and through a number of subsidiaries and affiliated companies, is a leading provider of cable television service, with almost 2 million subscribers in the eastern and midwestern United States. Cablevision's cable systems utilize the latest in technologies to deliver service to their subscribers.

^{1/} In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring, Notice of Proposed Rule Making, FCC 92-500 (rel. Nov. 6, 1992) ("Notice").

No. of Copies rec'd 048
List A B C D E
10

Through its Rainbow Program Holdings subsidiary, Cablevision has also been an innovator in news, sports, and entertainment programming for entire cable industry.

The formulation of rules for the disposition of cable home wiring upon termination of service need not be complex. Subscribers who terminate service should have the option to purchase home wiring, provided that the operator is fairly compensated. If the subscriber chooses not to exercise that option, the operator should be able to recover the fair market value of the wiring from a second operator or multichannel video programming distributor that provides service to that subscriber. Upon sale of the home wiring, the operator should be released from any further liability for compliance with signal leakage rules. To minimize the dangers of signal leakage, a subscriber should not be permitted to "remove, replace, rearrange, or maintain" home wiring any more than a homeowner is permitted to remove or replace electrical wiring on his or her premises. In the case of cable home wiring, signal leakage is likely to result from modifications that are not undertaken by trained personnel. Rearrangement of home wiring by the subscriber would also increase the probability of signal theft. Rules embodying these principles will fulfill the requirements of the statute, balancing the interests of subscribers, cable operators, competitors, and the general public.

II. CABLE SUBSCRIBERS SHOULD HAVE THE OPTION TO PURCHASE CABLE HOME WIRING, PROVIDED THE OPERATOR IS JUSTLY COMPENSATED

Section 16(d) of the Cable Consumer Protection and Competition Act^{2/} requires the Commission to adopt rules "concerning the disposition, after a subscriber to a cable system

^{2/} Pub. L. No. 102-385, Sec. 16(d), codified at 47 U.S.C. § 544(i).

terminates service, of any cable installed by the cable operator within the premises of such a subscriber." It appears that the intent of this provision is to ensure that residential subscribers have the option to acquire the cable home wiring upon termination of service.^{3/} Significantly, Section 16(d) does not give the Commission the authority to establish rules governing the ownership and control of home wiring prior to termination.^{4/}

Cablevision does not oppose providing subscribers with the option to purchase home wiring upon termination of service, provided that the operator is justly compensated.^{5/} At the outset, however, we note that the rates for inside wiring will apparently be regulated as "equipment" by franchising authorities certified to regulate basic cable service.^{6/} There is no assurance that, with respect to any given subscriber, an operator would recover the full

^{3/} See H. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report"); S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991) ("Senate Report"). Such an option would not be available to a subscriber who was terminated by a cable operator because of nonpayment or theft of service. House Report at 118.

^{4/} See House Report at 118. Thus, the Commission need not consider whether to give subscribers the right to "remove, replace, rearrange, or maintain" home wiring during the term of a cable subscription. Cf. Senate Report at 23 (suggesting that these policies, which govern inside telephone wiring, should be applied to cable). See also pp. 6-8, *infra*.

^{5/} Even in those states where a subscriber is deemed to own home wiring, see Notice at ¶ 5, the subscriber should be required to compensate the cable operator upon termination in accordance with the principles set forth herein.

^{6/} 47 U.S.C. § 623(b)(3). See House Report at 83 (regulation of equipment includes, *inter alia*, "internal wiring of private homes and for multiple dwelling units").

costs of home wiring and associated installation prior to termination of service by that subscriber.^{7/}

Nor is there any assurance under state law that an operator would be justly compensated for home wiring upon termination of service. In Paragould, Arkansas, Cablevision faced competition from a second cable operator that asserted the right to use subscriber wiring originally installed by Cablevision. A state court permitted the second operator to use the wiring without paying *any* compensation to Cablevision, holding that Cablevision would have to sue all homeowners in the city if it wished to adjudicate its rights with respect to the wiring.

Against the background of the foregoing problems, the need for fair, uniform rules governing the disposition of home wiring is clear. Where a terminating subscriber requests the operator to remove the home wiring, the operator should be entitled to collect the unrecovered costs of installing and maintaining the wiring.^{8/} Where the subscriber exercises the option to purchase the wiring, however, the operator is entitled an amount equal to the

^{7/} Like all regulated equipment, the price for home wiring is to be established on the basis of "actual cost." 47 U.S.C. § 623(b)(3). Operators have generally priced out installation of inside wiring on a below cost basis, as an inducement to potential customers to become subscribers. Because pricing the installation and maintenance of home wiring on an "actual cost" basis may deter new subscribers, operators may continue the current practice of pricing below cost.

^{8/} Cable operators could request such compensation upon termination, but should also be free to require a security deposit that would be refunded on a *pro rata* basis to reflect unrecovered costs of inside wiring upon termination of service. Allowing operators this flexibility would permit them to adapt subscriber contracts to market conditions.

If the subscriber requests that the wiring be removed, the subscriber should also bear the costs incurred by the operator in removing it.

fair market value of the wiring.^{9/} Such a policy is not inconsistent with the apparent legislative intent to "foster multichannel service competition."^{10/} Forcing the operator to accept compensation at any lesser rate (such as the depreciated book value or salvage value) would represent a windfall to the second operator, who would gain an unfair advantage over the first operator by avoiding the costs of purchasing and installing the wiring. The operator should be permitted to collect the fair market value of the wiring from the subscriber or, to the extent that the subscriber is unwilling or unable to pay but the wiring remains installed on the subscriber's premises, from a second cable operator or multichannel video programming distributor that utilizes the wiring.^{11/}

The foregoing rules would apply to wiring in single-family homes as well as wiring in individual dwellings within a multiple dwelling unit.^{12/} With respect to a commercial cable subscriber that terminates service, disposition of home wiring should be governed by the contractual arrangements negotiated by the operator and the subscriber at the time service is initiated. In enacting Section 16(d), Congress was concerned about the disposition of cable

^{9/} Cf. 47 U.S.C. § 547(a)(1) (cable operator entitled to fair market value for sale of system upon the denial of franchise renewal). See also H. Rep. No. 934, 98th Cong., 2d Sess. 76 (1984).

^{10/} Notice at ¶ 2, citing House Report at 118.

^{11/} A subscriber that wishes to purchase home wiring presumably intends to make it available to a second cable operator or multichannel video programming distributor at some point in the future. Permitting the operator to charge the subscriber the fair market value for the wiring reflects this anticipated use.

^{12/} See House Report at 119.

wiring within homes rather than commercial establishments.^{13/} Unlike individual residential subscribers, commercial establishments and cable operators often enter into arm's-length discussions over the price for installation and service.^{14/} The resulting contracts may provide that the cable operator retains ownership of the inside wiring upon termination of service. As sophisticated businesspersons, commercial subscribers should be held to their agreements. There is no evidence that Congress intended to preempt such agreements, and no justification for the Commission to do so in this proceeding.

III. THE COMMISSION SHOULD ADOPT RULES TO PREVENT SIGNAL LEAKAGE FROM SUBSCRIBER-OWNED HOME WIRING

Unlike telephone wiring, cable television wiring often carries frequencies also used by aeronautical and emergency services. Normally these signals are contained within the wires and do not pose any interference problems. If they leak out, however, they can cause potentially disastrous interference. For this reason, cable operators are held strictly accountable for signal leakage.^{15/} Permitting subscribers to modify home wiring while they

^{13/} See Senate Report at 23 (denominating the provision as "Home Wiring" and stating that its purpose is to "address[] the issue of what happens to the cable wiring inside a home when a subscriber terminates service") (emphasis supplied); House Report at 118 ("subscribers . . . should have the right to acquire wiring that has been installed . . . in their dwelling unit") (emphasis supplied).

^{14/} Commercial establishments, such as restaurants and hospitals, exercise considerable leverage in such negotiations given the ready availability of SMATV systems.

^{15/} See Amendment of Part 76 of the Commission's Rules to Add Frequency Channelling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems, 99 FCC 2d 512, 512, 516-18 (1984). See also TCI Cablevision of Maryland, Inc., FCC 92-423 (rel. Sept. 15, 1992) (assessing \$23,750 forfeiture for signal leakage that constituted a "threat to life and property"); Paragon Communications, 4 FCC Rcd. 8739 (1989) (notifying cable operator of apparent liability for leakage, noting that
(continued...)

are receiving cable service would substantially increase the chances of signal leakage, and would make it almost impossible for operators to comply with their obligations to monitor and limit such leakage.^{16/} Despite suggestions to the contrary,^{17/} cable wiring is more akin to electrical wiring, which can also cause extensive damage if not handled properly, than to telephone inside wiring. Significantly, electrical wiring typically cannot be rearranged or otherwise altered except by trained technicians pursuant to strict local codes.

For the reasons outlined above, subscribers should also be barred from modifying cable home wiring even if they purchase the wiring from the cable operator upon termination of service. While no signal leakage may result from modifications to home wiring (such as the addition or rearrangement of outlets, which may require splices) so long as the subscriber is not receiving service, leakage could begin immediately upon resumption of service and the transmission of a signal through the modified wiring. The operator providing service utilizing the modified wiring would have no reliable means of determining in advance whether the wiring was susceptible to leaks, however, despite the responsibility imposed upon the operator to minimize leakage. The only way to prevent such a situation is to permit

^{15/} (...continued)

"[c]able systems must meet stringent Commission radiation standards to ensure that their use of . . . frequencies via coaxial cable will not interfere with over-the-air licensed services operating on the same frequencies.")

^{16/} See House Report at 119 ("[n]othing in [Section 16(d)] should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operator's ability to prevent or protect against signal leakage during the period the cable operator is providing service to such subscriber"). Permitting subscriber modification of "live" cable home wiring, in contrast to telephone inside wiring, would also almost certainly lead to increased theft of service.

^{17/} See note 4, supra.

only cable operators (or other multichannel video programming distributors) to rearrange, replace, remove, or maintain home wiring. As noted above, this is similar to policies governing the treatment of electric wiring.

Likewise, in cases where a cable operator sells the home wiring to a subscriber or a successor cable operator upon termination of service, the Commission's rules should release the operator from all liability for compliance with signal leakage rules with respect to that wiring. Once the wiring is beyond the control of the first operator, that operator cannot and should not be held responsible for preventing signal leakage. More generally, the Commission's rules should impose liability on successor cable operators for any leakage caused *in connection with* the successor operator's use of the installed home wiring, whether or not the leakage emanates from the home wiring itself.^{18/}

IV. CONCLUSION

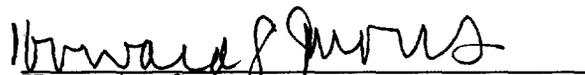
The principles outlined above will ensure that operators are justly compensated for the installation and maintenance of home wiring. They are consistent with the intent of the statute to give subscribers the option to purchase the wiring and to foster fair competition.

^{18/} In Paragould, see p. 4, supra, the successor cable operator seeking to utilize home wiring installed by Cablevision simply disconnected Cablevision's drops from subscribers' premises and attached its own drops, leaving the live Cablevision drops, uncapped and leaking, in the subscriber's yard and potentially subjecting Cablevision to significant liability. Only in response to a specific request from the Commission did the successor operator finally cap the disconnected Cablevision drops.

They will also minimize the added dangers of signal leakage that will inevitably arise out of the sale and re-use of inside wiring.

Respectfully submitted,

CABLEVISION SYSTEMS CORP.



Howard J. Symons

Keith A. Barritt

Mintz, Levin, Cohn, Ferris,

Glovsky and Popeo, P.C.

701 Pennsylvania Ave., N.W.

Suite 900

Washington, D.C. 20004

202/434-7305

Of Counsel:

Robert S. Lemle

Senior Vice President

and General Counsel

Cablevision Systems Corp.

One Media Crossways

Woodbury, NY 11797

Its Attorneys

December 1, 1992

D11703.3



DECLARATION

I, Marti Green, do hereby declare as follows:

1. I am Senior Associate Counsel for Cablevision Systems Corporation.
2. I have read the foregoing Comments of Cablevision Systems Corporation regarding Cable Home Wiring (NM Docket No. 92-260). With respect to the statements made in the Comments, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

12/1/92
Date

Marti Green
MARTI GREEN

12-92/MG58/p1