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

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260
	)	
Cable Home Wiring	)	

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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December 1, 1992

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The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States, representing the owners and operators of cable systems serving over 90 percent of the nation's 56 million cable households. NCTA's members also include cable programmers, cable equipment manufacturers and other entities affiliated with the cable television industry.

INTRODUCTION AND SUMMARY

In Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), Congress directed the Commission to promulgate rules concerning "the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such

subscriber."[1/] On its face, this appears to be a rather simple, straightforward directive. But, as the Commission recognized in the NPRM, establishing rules for the disposition of cable home wiring once service is terminated requires the balancing of a variety of important interests affecting both cable operators and homeowners.

The main policy underlying this provision, as expressed in the legislative history, is to give homeowners the opportunity to acquire such wiring in order to avoid any damage or disruption associated with its removal. It also aims to foster competition by enabling consumers to obtain service from an alternative multi-channel provider without having to install new wiring.[2/] At the same time, however, the Commission recognizes that the provision should not be construed in a manner that would discourage cable operators from continuing to extend service to unwired homes by failing to take into account the property, contractual, and access rights of cable operators.[3/]

In balancing these interests, the Commission should adopt rules that prospectively prohibit cable operators, in those circumstances where they have retained a property interest in

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1/ Pub. L. No. 102-385, Section 16(d), 47 U.S.C. Section 544(i).

2/ H.R. Rep. No. 628, 102d Cong., 2d Sess. at 118 (1992) ("House Report"); S. Rep. No. 92, 102d Cong., 1st Sess. at 23 (1991) ("Senate Report").

3/ NPRM at para. 2.

internal home wiring, from removing such wiring without first offering subscribers the opportunity to acquire it at a reasonable price. The rules should apply only to internal wiring in single family homes and should not apply to multiple dwelling units.

DISCUSSION

I. THE COMMISSION NEED NOT DETERMINE WHO OWNS THE HOME WIRING IN ORDER TO ADOPT RULES REGARDING ITS DISPOSITION UPON TERMINATION OF SERVICE.

According to the legislative history, the objective of section 16(d) is to ensure that cable subscribers who terminate service have the option to acquire the wiring installed by the operator. The Commission is concerned, however, that state property and tax laws affecting who "owns" the wiring may have implications for any rules established to accomplish this objective.

As the Commission recognizes, ownership of home wiring (and its consequent tax treatment) varies from state to state, depending on whether the wiring is regarded as a fixture or as the personal property of the cable operator. This does not mean, however, that the Commission must preempt state property law or otherwise determine the legal status of the wiring for purposes of adopting rules concerning its disposition after a subscriber terminates service. All that the Commission must ensure is that the cable operator not be permitted to remove the wiring without first offering the subscriber the opportunity to acquire it.

In those circumstances where the wiring already belongs to the subscriber -- either because it is deemed a fixture under state law or because it has otherwise been conveyed to the subscriber -- no rule is necessary. If the subscriber owns the wiring, the cable operator presumably has no right to remove it. And where under local law the wiring belongs to the operator, who could normally remove it, all that is necessary is a rule requiring that the operator afford a terminating subscriber the option of acquiring the wiring at a reasonable price.

Where a subscriber exercises the option to acquire inside wiring, the cable operator is, of course, entitled to just compensation for the value of the wiring; otherwise the rule would constitute a taking under the Fifth Amendment. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). Some operators might choose to leave the wiring to the consumer at no charge -- and certainly there is no reason to compel cable operators, in such circumstances, to remove the wiring. But to the extent that the operator is compelled to offer wiring that it owns to the subscriber, it is entitled to compensation that fairly reflects the value of that property.

II. HOME WIRING RULES SHOULD APPLY ONLY TO THE WIRING THAT IS INSIDE THE SUBSCRIBER'S HOME.

In adopting home wiring regulations, the Commission should make clear that the disposition of wiring "within the premises" is limited solely to internal wiring. Indeed, the House Report clearly states that "this provision applies only to internal wiring contained within the home and does not apply to any of the

cable operator's other property located inside the home (e.g. converter boxes, remote control units, etc.) or any wiring, equipment or property located outside of the home or dwelling unit."[4/] The Senate Report on the same language emphatically states that the provision "shall not apply to any wiring outside the home."[5/]

Thus, Congress clearly intended that rules concerning the disposition of wiring "within [a subscriber's] premises" are restricted to wiring within the four corners of the home. They should not apply to any other equipment provided by the cable operator, whether inside or outside the home. This would include not only converter boxes and remote control units, but also any additional amplifiers, splitters, equalizers or other special equipment provided by the operator.

Similarly, a terminating subscriber would have no right to acquire the outside drop cables installed by the operator to connect the house to the main trunk cable in the street--whether they run aerially to the utility pole or via underground conduit. Nor would they be able to retain external equipment such as ground blocks, inter-diction equipment, traps, or filters.

Aside from cable operators' property interests in their plant and equipment, there are safety and theft of service

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4/ House Report at 118.

5/ Senate Report at 23.

concerns that make it all the more important for cable operators to maintain control over the system beyond the internal home wiring. Physical control over the external cable plant and equipment is an important means by which cable operators control unauthorized receipt of cable service -- and also ensure that such equipment is properly maintained and does not present a public hazard.[6/]

III. HOME WIRING RULES SHOULD NOT APPLY TO MULTIPLE DWELLING UNITS.

Although clear lines can be drawn between internal and external wiring in single family homes, it is not so with residential units in apartment buildings and other multiple dwelling units ("MDUs"). The design and technical characteristics of many cable systems installed in these facilities is such that it would be virtually impossible to separate individual units from service to the entire building.

6/ In some cases, of course, even transferring control of internal wiring could create hazardous conditions. For example, the legislative history acknowledges cable operators' ongoing responsibility to prevent signal leakage throughout the cable plant (including subscriber terminal devices), since improper maintenance could threaten safety services that operate on critical frequencies. The House Report makes clear that any right the subscriber has to inside wiring should not be permitted to frustrate the cable operator's ability to protect against signal leakage during the period that cable service is being provided. House Report at 119. But once service is terminated and the operator is forced to convey the wiring to the subscriber, the cable operator cannot reasonably be held responsible for any subsequent signal leakage or alleged defects in the wiring. The Commission's rules should make clear that, in such circumstances, the operator cannot be held liable.

If MDU subscribers acquire the inside wiring, the result would be impaired delivery of cable programming to some residents and an increase in theft of service and signal leakage problems. Furthermore, applying home wiring regulation to MDUs would impede, rather than promote, multichannel video competition.

A. Permitting MDU Subscribers to Acquire Internal Wiring Would Impair Cable Service to Other Subscribers In the Building and Would Exacerbate Theft of Service.

From an operational standpoint, there is a compelling reason for not applying home wiring regulation to MDUs-- the internal plant design. Many cable operators utilize a "loop" system, in which a single cable traverses the entire building floor by floor, unit by unit. This continuous line in turn has a tap or splitter attached to it in each apartment by which the signal is split off to service the television set. The other design, the "home run" system, utilizes a master control panel containing a splitter with multiple lines running out of it to service each individual dwelling unit.

In the home run system, a subscriber who terminates service may freely cut the wiring inside his unit, and have no impact on cable service to other subscribers in the building. In a loop system, however, a terminating subscriber who cuts or otherwise tampers with the wire in the walls inside his apartment would cut off or adversely effect service to all the other downstream

subscribers in the building.[7/] In order to prevent such occurrences when a subscriber terminates service, the cable operator must have the right to access the wall outlet in each residential unit in order to remove the splitter and to reconnect the cable to allow the signal to pass through unimpeded.

Thus, the wires in the walls or common areas of the building are analogous to the trunk and feeder cables that run through the streets in the community and the drop cables that lead up to the single family home. The MDU subscriber should have no right to these wires any more than an individual home owner has rights to the drops and feeders outside the home.

Moreover, just as control over the facilities outside the single family home is important for theft of service concerns, the operator must maintain control over the MDU plant to prevent piracy. As Congress recognized, the cable industry faces increasing theft of service problems, <u>especially</u> in apartment buildings.[8/] Securing cable programming from theft becomes far more difficult if the operator loses control over the wiring inside the MDU building. Moreover, operators need to maintain control over the internal wiring in an MDU because of greater

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7/ Some cable operators use a hybrid of the home run and loop design in which a home run system is installed on each floor and then a loop design is run among apartments on that floor. In this type of system, a subscriber who has terminated service could interfere with service to the other subscribers on his floor.

8/ House Report at 118.

likelihood of signal leakage due to tampering and other unauthorized use.[9/]

For those reasons, as stated in the House Report, Congress intended to limit the right to acquire home wiring in MDUs to the cable installed within the interior premises of a subscriber's dwelling unit.[10/] The Commission should make clear that this right is limited to the exposed cable that runs from the wall plate to the television set. The rules should not apply to the wiring in the walls, floors, or common areas. Any other interpretation would severely hamper cable operators' ability to adequately guard against theft of cable service.

B. Applying Home Wiring Rules to MDUs Would Not Promote Multi-Channel Competition.

Applying home wiring regulation to MDUs is not only practically infeasible, it would also disserve the Congressional goal of promoting competition for video service.

In mandating new rules on the disposition of the wiring, Congress intended that consumers be able to utilize the same wiring with an alternative multi-channel video provider. Applying the home wiring rules in the MDU context, however, would have anti-competitive rather than pro-competitive effects.

9/ As noted in the legislative history, any consumer rights to acquire home wiring should have no application to termination based on theft of service or nonpayment of subscription fees. Such rights should only be granted to legitimate, authorized cable subscribers. Id.

10/ Id. at 119.

Consider the following scenario: A franchised cable operator incurs the expense of installing wiring throughout a multi-unit building, whereupon the landlord unilaterally terminates the relationship, replaces the cable operator with a new video delivery system, and forces the cable operator to convey ownership of the wiring to the landlord for use by the new provider.

This is grossly unfair to the cable operator.[11/] But, more importantly, it undermines the rationale for allowing consumers to acquire the wiring -- to enable them to choose among video distribution media. In the above case, the landlord, not the subscriber, acquires the wiring and chooses the preferred video provider.

Furthermore, applying home wiring regulation to MDUs will undermine access rights obtained by cable operators through city ordinances and state laws. Indeed, cable operators across the country have obtained the right to wire multiple dwelling units that previously had been the exclusive domain of MATV or SMATV operators. By losing control of the wiring installed in these buildings and ceding them to another provider, cable operators' access rights are rendered effectively meaningless.

11/ In some MDU properties, the cable operator finds that the building has already had inferior wiring installed that is suitable for MATV or SMATV service but is unsuitable for wide-band delivery of cable signals. The operator must then rewire the building in order to upgrade the service. Requiring the operator to transfer ownership of the newly-installed wiring in this situation is equally unfair.

In sum, there are sound public policy reasons not to compel cable operators to transfer internal wiring in multiple dwelling units -- and, as the legislative history makes clear, Congress did not intend to cover the wiring within the walls of such buildings.

IV. HOME WIRING RULES SHOULD BE APPLIED ON A PROSPECTIVE-ONLY BASIS.

In enacting the home wiring provision, Congress did not grant subscribers an unqualified, automatic right to retain the wiring when service is terminated. All that the legislative history suggests is that, henceforth, consumers should be given the opportunity to acquire the wiring. Some cable operators, however, have already expressly reserved the right to recover inside wiring upon cessation of service. While the Commission's rules should generally prohibit cable operators from removing inside wiring without first offering it for sale to homeowners, it should not disturb existing agreements that explicitly acknowledge that the wiring may be removed.

Indeed, those cable operators who contractually retained property rights over the inside wiring in their communities presumably negotiated the terms of ownership and transfer of the wiring based on certain business and legal assumptions. They should continue to be entitled to operate under those assumptions for the duration of the contract. Therefore, the Commission should grandfather existing agreements concerning home wiring and apply the new home wiring rules prospectively.

CONCLUSION

For the foregoing reasons, the Commission should adopt prospective rules that will enable cable subscribers in single family homes to acquire internal wiring. The Commission should also find that inside wiring in multiple dwelling units is beyond the scope of the rules.

Respectfully submitted,

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