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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

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

MM Docket No. 92-260

REPLY COMMENTS
OF TELE-COMMUNICATIONS INC.

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Its Attorneys

December 15, 1992

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Tele-Communications, Inc. ("TCI"), by its attorneys, files its Reply Comments in the above-captioned proceeding. TCI reiterates its full support for the policy initiatives that drive both Section 16(d) of the new Cable Act and this proceeding.

The record reflects a broad consensus that residential subscribers who decide voluntarily to terminate cable service should be able to have full ownership and control over the cable wiring contained internally on their premises. There is, nonetheless, considerable disagreement as to how best to implement this clear legislative policy, and TCI confines these

reply comments to a limited number of these implementation issues.

Prospective Application. The comments raise the issue of whether the rules regarding subscriber ownership should be applied prospectively, that is, only to new installations. TCI believes that such application would be overly limited and inconsistent with the legislative intent. TCI fully supports the new rules' application to both embedded and newly-installed wiring.

There is nonetheless a legitimate concern that some inside wiring is already expressly governed by contracts containing unambiguous terms which determine ownership of the home wiring. See Comments of Secretary of Defense at 2. For these cases, the Commission could reasonably adopt a limited grandfather provision.

Points of Demarcation. The record reflects some degree of confusion regarding the appropriate demarcation by which "inside wiring" can be properly identified. For single family homes, there appears to be a sound basis for setting the demarcation point at the grounding block. See, e.g., Comments of NYNEX at 4-5. This provides a ready point of demarcation while remaining consistent with Congress' unambiguous intent to address only the wiring internal to the subscriber's premises. For homes which do not have a grounding block, TCI supports a rule that will permit the cable operator to specify a point of

demarcation on or near a wall of the residence, provided that the specification does not interfere with the intended subscriber dominion over inside wiring. See, e.g., Comments of Bell Atlantic at 5 (rules should apply to a "minimum point of entry into the home"); Comments of NYNEX at 5.

The issue is more complex as applied to Multiple Dwelling Units. Here, again, the legislative desire to convey subscriber rights to the inside wiring is clear, subject to an equally clear intent to exclude any wiring inside the building which is located in common areas. See Section 16(d) (addressing "cable ... within the premises of [the] subscriber.")¹

The factual record developed in this proceeding establishes that MDUs may be wired in numerous ways. The comments describe such methods as "loop-throughs," partial loop-throughs, "home-runs,"² and wholly dedicated wiring for each unit.³ Certain proposals offered by the comments to date erroneously assume a universal wiring scheme, and thus by their own stated assumptions are inappropriate for any generalized

¹ Also, see H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 118 (provision "applies only to internal wiring contained within the home ..."); S. Rep. No. 92, 102d Cong., 1st Sess. at 23 (section "shall not apply to any wiring outside the home").

² See, e.g., Comments of NCTA at 7-8; Comments of The New York City Department of Telecommunications and Energy at 4.

³ Comments of American Public Power Association at 17-18.

application. TCI proposes that the appropriate solution here is for the Commission to define MDU inside wiring as that wiring inside the unit, including any wiring in internal walls, but excluding any wiring in common walls or other common areas.⁴ This rule should be qualified to exempt those situations in which the actions of one individual dwelling unit subscriber could adversely affect the transmission of video signals to other units in the building, that is, loop-through arrangements.

Ownership. Most commenters assert that the Commission need not and should not determine the current ownership of embedded wiring prior to subscriber termination. Numerous comments also suggest that cable operators are entitled to just compensation under a rule that sanctions subscriber ownership post-termination. As noted in its opening comments, TCI is willing to have the Commission determine ownership in the hands of residential subscribers without further compensation for embedded wiring, and does not address the Fifth Amendment implications which might otherwise arise.

However it may choose ultimately to adjudicate the Fifth Amendment claims made by others, the Commission must be careful to avoid certain potential pitfalls which have far

⁴ Commenters suggesting that "dedicated" wiring located throughout common areas be brought within the rule plainly contravene the legislative directive, and further, pose unnecessary conflicts with state access statutes.

broader and graver consequences for cable regulation as a whole and for the future development of the cable industry. Specifically, TCI strongly objects to suggestions made in this proceeding that a public utility format be instituted to determine the appropriate recovery levels for home wiring. See, e.g., Comments of BellSouth at 8-9. Whatever may have occurred in the context of telephone company inside wiring investment recovery truly is irrelevant here. There is nothing in the legislative history to allow the Commission to commence treatment of cable operators as public utilities subject to traditional rate regulation concepts. Indeed, as will be explored in greater detail in TCI's Rate Regulation comments in the FCC's upcoming proceeding, Congress expressly disavowed any authority for such an approach. Congress so acted not only as a general matter, it expressed such intent even in the narrow case of home wiring. See H.R. Rep. No. 628, supra at 118-19 ("the Committee does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers' homes"). Moreover, TCI reiterates its views that greater clarity may be brought to the issue of home wiring by the Commission's promulgation of additional rules to provide explicitly for subscriber ownership of inside wiring upon installation, with commensurate adjustment to installation rates.

Signal Leakage Liability. The record underscores the need to link signal leakage liability with the lawful service

provider. Thus, a cable operator's liability for signal leakage comes to an end when its provision of service to the customer terminates. If the wiring is thereafter utilized by another video programming distributor, that service provider is alone responsible for subsequent signal leakage. Both cable companies and alternative providers concur in this policy, and the Commission has been given ample demonstration why it should be incorporated into its regulatory policies.

CONCLUSION

TCI fully supports the legislative policies underlying Section 16(d) of the new Act as well as the FCC's initiative to implement them. TCI respectfully submits that the FCC should move expeditiously to promulgate rules as suggested in TCI's Comments in order to best carry out Congress' intent.

Respectfully submitted,

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