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

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

MM Docket No. 92-260

REPLY COMMENTS OF THE  
NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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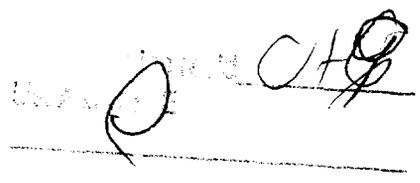
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SUMMARY

In promulgating home wiring regulations, the Commission should focus on the plain language of section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992. Section 16(d) instructs the Commission to prescribe rules for the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the subscriber's home. Thus, the only matter before the Commission in this proceeding, as recognized by many commenters, is the adoption of rules concerning the disposition of cable home wiring after a subscriber voluntarily discontinues service.

The Commission should allow cable operators some flexibility in determining the disposition of the wiring. The Commission might require, for example, that cable operators disclose the range of options, including acquisition by the subscriber, at the time that service is initiated. The important point is that the Commission should not automatically compel transfer of the wiring to subscribers prior to or after termination of service. And any rights to acquire the wiring should be tempered by important theft of service and signal leakage concerns.

In addition, as urged by NCTA and other initial commenters, the home wiring rules should be applied prospectively; should be limited solely to "internal" wiring; and should not be applied to the "common wiring" in multiple dwelling units, even if such wiring is located inside an individual residential unit.

Finally, the Commission should require the multichannel provider that is providing the service, whether the initial installer of the wiring or a successor company, to comply with signal leakage requirements.

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The National Cable Television Association, Inc. ("NCTA") hereby submits its reply comments on the Notice of Proposed Rulemaking concerning the implementation of section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act").

As recognized by many commenters, the only matter before the Commission in this proceeding is the adoption of rules concerning the disposition of cable home wiring after a subscriber to the system terminates service. The Act does not provide for, nor is it intended to address, ownership and control of the wiring prior to termination of service. While some commenters seek to broaden the legislative mandate on this issue, the Commission should not go beyond the precise language of section 16(d).

In its initial comments, NCTA urged the Commission to adopt home wiring regulations, on a prospective basis, that allow cable

subscribers the option to acquire the wiring when service is discontinued. NCTA maintained that the Commission need not determine who owns the wiring under state property and tax law for purposes of promulgating these rules. All that the Commission must ensure is that appropriate mechanisms are in place for disposing of the wiring where the operator retains ownership -- and that these mechanisms include the offering of such wiring to the subscriber at a reasonable price.

NCTA also argued that the home wiring rules should be limited solely to the internal wiring in the subscriber's home. And, finally, NCTA maintained that the rules should not apply in the context of multiple dwelling units, except with respect to the truly interior wiring in an individual unit, i.e., the wiring which runs from the wall plate to the television receiver. A looser application of the rules would only exacerbate signal leakage problems and the already epidemic theft of cable service in these types of facilities.

The cable operators commenting in this proceeding largely agree on the foregoing points. In addition, some have urged the Commission to include other provisions in the rules that will promote the objectives of the Act. The telephone companies and the wireless cable industry, on the other hand, depart from the language and intent of section 16(d) and seek to fashion rules that would benefit their business interests. They would blindly apply to cable home wiring the same rules that are now applicable to telephone customer premises wiring. The cities, in the meantime, suggest a far too simplistic approach to the rules.

They would establish a presumption that the operator has relinquished ownership of the inside wiring upon installation, regardless of any contractual, property or other intervening rights. NCTA now addresses these arguments.

I. SECTION 16(D) IS LIMITED TO THE DISPOSITION OF HOME WIRING UPON TERMINATION OF SERVICE

The language of section 16(d) of the Act plainly requires the Commission to prescribe rules for the "disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator" within the subscriber's home.<sup>1/</sup> Indeed, the legislative history emphasizes that "this section does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service."<sup>2/</sup> Thus, the Commission has no authority to mandate conveyance of the wiring to subscribers, or other disposition, during the period that service is provided. As noted by Time Warner, section 16(d) is "triggered only upon voluntary termination of service by the subscriber."<sup>3/</sup>

Yet certain parties, particularly the telephone companies, seek to expand the Congressional directive in section 16(d) to cover the ownership and disposition of wiring from the point of

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

2/ H.R. Rep. No. 628, 102d Cong., 2d Sess. at 118 (1992) ("House Report") (emphasis added).

3/ Comments of Time Warner, p. 2.

initial installation.<sup>4/</sup> The telephone companies maintain, notwithstanding the precise language of the Act, that the telephone inside wiring rules should be applied to cable home wiring. Those rules permit consumers to "remove, replace, rearrange, or maintain" telephone wiring inside the home once it is installed, even though it might be owned by the telephone company.<sup>5/</sup> For a variety of reasons, wholesale application of the telephone inside wiring rules to cable would be inappropriate.

As an initial matter, the House Committee, in noting that section 16(d) does not address the disposition of wiring prior to termination of service, indicated that it "does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers' homes."<sup>6/</sup> Presumably, this is because the objectives behind allowing telephone and cable customers to control their internal wiring are not analogous. The Commission's major goal in detariffing

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4/ See e.g., Comments of Nynex, Bell Atlantic, Bell South, Pacific Bell and Nevada Bell, United States Telephone Association, Wireless Cable Association, National Association of Telecommunications Officers and Advisors, et al., American Public Power Association.

5/ See Detariffing the Installation and Maintenance of Inside Wiring", Memorandum Opinion and Order, CC Docket No. 79-105, released November 21, 1986.

6/ House Report at 118-119. The Conference Committee adopted the House provisions of the cable bill. H.R. Rep. No. 102-862, 102d Cong., 2d Sess. at 86 (1992) ("Conference Report"). See also Comments of New York City Department of Telecommunications.

telephone customer premises wiring was to promote competition in the market for wiring installation and maintenance.<sup>7/</sup> In the cable context, however, "the competitive objective is to ensure that ownership of home wiring does not create a barrier to entry should the customer decide to switch to another multichannel service provider."<sup>8/</sup>

Another significant difference is that cable wiring, unlike telephone wiring, is susceptible to harmful signal leakage if it is not properly monitored and maintained. Indeed, as commenter after commenter pointed out in this proceeding, cable operators (unlike other multichannel video providers) are responsible for maintaining the cable plant up to the subscriber terminal device in order to prevent signal leakage. Allowing consumers unfettered control over the wiring inside the home while the operator is still providing service threatens interference with critical aeronautical frequencies. Telephone wiring simply does not present the same risks to public safety.

In advocating immediate customer control of cable wiring, telcos argue that cable's exclusive broadband access to cable homes will deprive consumers of the benefit of such services as

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7/ See Detariffing the Installation and Maintenance of Inside Wiring", Second Report and Order, CC Docket No. 79-105, released February 24, 1986.

8/ Comments of Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multimedia Cablevision, Inc., Multivision Cable TV Corp., ParCable, Inc., Providence Journal Company and Sammons Communications, Inc. ("Joint Parties"), p. 7.

telco video dialtone unless consumers have unqualified control over the wiring. There is no reason why this should be the case.

If a customer terminates cable service and switches to a telco video service, Commission rules can provide a procedure for the use of cable inside wiring. Until that happens, the customer (and the telephone company) have no need for the cable wiring. Moreover, there is nothing in section 16(d) that would preclude telecommunications providers from wiring the home to provide new services. And, in any event, there is nothing in section 16(d) that authorizes the imposition of telco-like inside wiring rules.<sup>9/</sup>

II. COMMISSION RULES ON THE DISPOSITION OF CABLE HOME WIRING  
UPON TERMINATION OF SERVICE SHOULD ALLOW FOR SOME  
FLEXIBILITY

With the focus of this proceeding on the disposition of cable wiring after service is terminated, the Commission can proceed to balance the various Congressional objectives. On the one hand, Congress aimed to protect subscribers from the inconvenience and potential damage that may result from removal of the cable wiring and to facilitate multi-channel competition. On the other hand, it was cognizant of the cable operator's need to recover its investment in the wiring and the need to guard against theft of service and signal leakage. The Commission can

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9/ Nevertheless, as noted by several commenters, the telephone inside wiring rules are instructive on the logical point of demarcation between interior and exterior wiring in single family homes. See e.g., Comments of Joint Parties, p. 11.

best accomplish these goals by adopting rules that allow operators some flexibility in the disposition of the home wiring.

The language of section 16(d) suggests that a range of options, including purchase by the subscriber, may be considered under the rubric of "disposition" of embedded wiring. Times Mirror, for example, suggests that the Commission require cable operators, on a system-by-system basis, to create written policies and procedures for disposition of inside wiring that do not unnecessarily disrupt customer premises. Similarly, Time Warner envisions a rule requiring cable operators to inform subscribers in writing of the various options for disposing of the wiring when service is initiated. The parties would then establish the ownership and disposition arrangements up front. In its comments, NCTA took the position, based on the legislative history of section 16(d), that where the operator has retained a property interest in the wiring under applicable state law, the operator would henceforth be expected to offer the terminating subscriber the option to acquire the wiring.

The point is that, under any of these approaches, the Commission would not automatically compel transfer of the wiring to subscribers prior to or after termination of service.<sup>10/</sup> The most that the Commission would require is that operators disclose all options at the very outset of the service relationship, including the opportunity to acquire the wiring. Any rights to

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10/ See, e.g., Comments of U.S. Secretary of Defense.

acquire the wiring would be tempered by important theft of service and signal leakage concerns.<sup>11/</sup> Most commenters agree, as recognized in the legislative history, that no subscriber should have the right to acquire home wiring where service has been terminated for theft or non-payment.

In a joint filing, the National Association of Telecommunications Officers and Advisors, the National League of Cities and other local government groups advocate a rigid approach to home wiring regulation. They propose an automatic presumption that the subscriber owns the wiring at termination if the subscriber paid an installation fee (or the fee was waived), or if service was maintained for a minimum period of time, or if the franchise agreement specifies a reduced installation fee. The cities believe that this presumption is necessary in order to ensure that subscribers are not faced with new, unexpected costs either at termination or through increased monthly rates.<sup>12/</sup>

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11/ Citing widespread theft of cable service, Continental Cablevision, for example, urges the adoption of a provision that would allow a cable operator to deny a subscriber's acquisition of home wiring if the operator has reason to believe that there is a potential for theft of service. Times Mirror points out that cable operators should be able to remove wiring upon disconnection if there is a risk that it may leak due to inadequate maintenance. See also Comments of Joint Parties, Arizona Cable Association, Allen's TV Cable, Cable Television Association of Maryland, Delaware and the District of Columbia, Century Communications, et al. ("Joint Cable Operators and Associations").

12/ Comments of National Association of Telecommunications Officers and Advisors, p. 2.

As noted previously, the Commission has no discretion to require cable operators to transfer ownership of the wiring before termination of service. Moreover, as Time Warner and other commenters note, most cable operators charge significantly below cost for installation of cable service. Thus, there is no basis for the assumption that the subscriber has paid for the wiring upon initial installation. Finally, the cities' concern about unexpected costs can be addressed by the requirement that cable operators disclose all options for obtaining the wiring upon initial installation.

**III. SECTION 16(D) SHOULD NOT APPLY TO COMMON WIRING IN MULTIPLE DWELLING UNITS, EVEN IF SUCH WIRING IS LOCATED INSIDE AN INDIVIDUAL UNIT**

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The initial comments demonstrate that the more complicated nature of cable service in multiple dwelling units ("MDUs"), as opposed to single family homes, presents a whole host of interlocking problems. Such facilities should be subject, at most, to very limited application of home wiring regulation.

First, residents in MDUs often receive service through contractual arrangements between the landlord and the cable operator rather than through a direct relationship with the cable company. As explained by Joint Cable Operators and Associations, these bulk agreements contain certain service terms and other privately-negotiated provisions, such as ownership and

disposition of the inside wiring.<sup>13/</sup> Since the intent of section 16(d) is to protect individual residential subscribers, it would appear that cable installations made pursuant to bulk MDU agreements or commercial accounts are beyond the scope of the Act. Individual residents in these buildings would not appear to be entitled to control the internal common wiring.<sup>14/</sup> In any event, the Commission should not override these arrangements by compelling the operator to relinquish the wiring at the end of the service term.

Second, in light of the design of many MDU installations, subscribers should have no control over the common wiring. Indeed, the Commission should make clear that "common wiring" includes not only the wiring in the hallways and common areas, but that which is physically located in the walls and any other areas shared by individual units. As described by NCTA and other cable commenters, buildings wired with a loop-through design deliver cable signals to individual units in a continuous chain. If an individual subscriber in the chain acquired the internal wiring in his unit, and removed or otherwise tampered with it, this could interrupt or cut off service to all subscribers down

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13/ See also Joint Comments, pp. 5-6.

14/ The definition of "subscriber" under section 16(d) should be limited to individual residential subscribers, not MDU owners or property managers. Thus, the building owner or property manager should have no rights to acquire the common wiring in the building. See Comments of Continental Cablevision, Inc., Times Mirror, Time Warner.

the chain. Thus, the Commission should exclude such wiring from the regulations, even if it is physically located inside an individual residential unit.<sup>15/</sup> The individual MDU subscriber would at most only be entitled to acquire the truly internal wiring -- that is, the exposed wiring from the wall plate to the television set.<sup>16/</sup>

Third, aside from the risk of service disruption, ceding control of MDU wiring to individual residents also greatly increases the risk of piracy and harmful signal leakage. For example, the cable operator would have no recourse over a subscriber who terminates service and splices into the common wiring in the walls of the building to steal the signals. Moreover, cable pirates who tap into the wiring that carries the electronic cable signals often do so improperly, causing the cable signal to leak and interfere with other critical over-the-air signals.<sup>17/</sup>

Furthermore, because of the vital importance of preventing signal leakage, many commenters are adamant that whatever company operates the system and utilizes the wiring to deliver service (whether an MDU or single family home) must bear the responsibility for signal leakage. This rule would apply equally

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15/ See e.g., Comments of New York City Department of Telecommunications.

16/ See Comments of Time Warner, National Private Cable Association.

17/ Comments of Time Warner, p. 13.

to the original installer of the home wiring or any successor company.<sup>18/</sup> The responsibility to monitor and maintain signal leakage and related technical standards should follow the service provider.<sup>19/</sup>

#### CONCLUSION

For the foregoing reasons, the Commission should adopt home wiring rules that appropriately balance the subscriber's desire to own and control the internal wiring and the cable operator's need to recover substantial investment in cable plant and to protect against harmful signal leakage and theft of service. The rules should, therefore, allow cable operators flexibility to provide subscribers with various options for the disposition of

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18/ See e.g., Comments of Tele-Communications, Inc., Arizona Cable Association, Joint Parties, National Association of Telecommunications Officers and Advisors, et al.

19/ Antennas used by homeowners to receive MMDS service usually convert MMDS frequencies in the 2 GHz range to the frequency band utilized for cable television. These signals in turn travel from the antenna through a wire connected to a set top device. MMDS operators using cable frequencies should be required to comply with the same signal leakage requirements that are imposed on cable systems.

internal wiring upon termination of service. The options would include the opportunity, where appropriate, for subscribers to acquire the home wiring.

Respectfully submitted,

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