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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Joint Petition for Rulemaking	)	
to Establish Rules for Subscriber	)	RM-8380
Access to Cable Home Wiring for the	)	
Delivery of Competing and Complimentary	)	
Video Services	)	

MOTION TO ACCEPT LATE-FILED COMMENTS

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby requests the Commission to accept the attached comments for filing one day after their due date in the above-captioned proceeding. NCTA was unable to meet the filing deadline yesterday because of a computer malfunction which interrupted the final printing and production of the document. Therefore, we request the Commission to grant NCTA's request for leave to file the comments today.

We regret any inconvenience that this matter may cause the Commission.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

By Loretta Polk  
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December 22, 1993

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RM-8380

COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its comments in opposition to the joint petition for rulemaking filed by the United States Telephone Association, Media Access Project and Citizens for a Sound Economy ("petitioners") in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry, representing the owners and operators of 90 percent of the nation's 57 million cable households.

INTRODUCTION AND SUMMARY

In their joint petition for rulemaking, petitioners request the Commission to initiate a new proceeding to allow telephone companies and other video providers to freely access wiring installed by cable operators in subscribers' homes. In seeking the right to deliver their services over cable wiring, telephone companies stand to reap a major economic benefit in the form of prewired subscribers -- all at the expense of cable operators who

incurred the cost and risk of installing the wiring in the first place.<sup>1/</sup> This was not Congress' intent in passing the home wiring provision of the 1992 Cable Act.

As we now demonstrate, the Commission lacks the authority under the Communications Act to mandate access to cable home wiring by alternative users prior to subscriber termination of cable service. However, even if the Commission finds that it has the requisite jurisdiction to regulate such access, it should not do so. This is because simultaneous use of the wiring by competing video providers will create horrendous technical problems that, at a minimum, will create widespread consumer dissatisfaction and inconvenience, promote signal theft, and increase the cost to provide cable service. At its worst, a policy of open access to cable home wiring combined with the lack of interconnection standards and incompatibility between cable and telephone technology will foster a variety of technical ills and public safety hazards, including leakage of cable RF signals and the failure to maintain FCC-required technical performance standards. Additionally, it will put cable operators at a competitive disadvantage vis a vis other video service providers.

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1/ See Reply Comments of CATA, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Home Wiring, MM Docket No. 92-260, December 15, 1992.

DISCUSSION

I. THE COMMISSION LACKS THE AUTHORITY TO ADOPT REGULATIONS CONCERNING THE DISPOSITION OF CABLE HOME WIRING PRIOR TO TERMINATION OF CABLE SERVICE

In enacting section 16(d) of the 1992 Cable Act, 47 U.S.C. section 544(i), Congress gave the Commission a clear directive with regard to the regulation of cable home wiring: to prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any wiring installed by the cable operator within the subscriber's home. The Act does not provide for, indeed the legislative history expressly rejects, regulation of home wiring prior to termination of service.<sup>2/</sup>

Despite this statutory mandate, petitioners seek access to the wiring before cable service has been discontinued. Relying on United States v. Southwestern Cable Company, they contend that the Commission's basic authority over "all interstate and foreign communication by wire or radio" under section 2 of the Communications Act, 47 U.S.C. section 152, provides the jurisdictional hook for regulating the use of cable home wiring prior to termination.<sup>3/</sup> However, section 3 of the 1984 Cable

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2/ H. R. Rep. No. 628, 102d Cong., 2d Sess. at 118-119 ("House Report"). As the FCC recognized in the Report and Order in MM Docket No. 92-260 at para. 6, "the language of the statute refers only to disposition of cable home wiring after termination of service."

3/ In United States v. Southwestern Cable Company, 392 U.S. 157, 178 (1968), the Supreme Court upheld Commission jurisdiction over cable television under the theory that it is "ancillary to broadcasting" based on section 2 of the Act.

Act explicitly amended section 2(a) of the 1934 Act to grant the FCC exclusive jurisdiction over cable service and facilities as provided in Title VI.<sup>4/</sup> Thus, Title VI, entitled Cable Communications, superceded the "ancillary to broadcasting" standard over cable that was grounded in section 2 of the 1934 Act. And, as noted above, the 1992 Cable Act amended Title VI by adding section 16(d), which instructs the FCC to promulgate post-termination home wiring rules.

Furthermore, section 621(c) of the 1984 Cable Act provides that a cable system "shall not be subject to regulation as a common carrier or utility by reason of providing any cable service." And mindful of cable's non-common carrier status, Congress rejected the common carrier approach in enacting the home wiring provision:

This section does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service. In this regard, the Committee does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers' home.<sup>5/</sup>

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4/ Section 3(a)(1), Public Law 98-549, 98 Stat. 2780, October 30, 1984. Section 3(b) of the 1984 Act further states that "the provisions of this Act and amendments made by this Act shall not be construed to affect any jurisdiction the Federal Communications Commission may have under the Communications Act of 1934 with respect to any communication by wire or radio (other than cable service, as defined in section 602(5) of such Act) which is provided through a cable system . . ." (emphasis added).

5/ House Report at 118-119.

Thus, the Communications Act, as amended, speaks loud and clear as to the extent of Commission regulation of cable home wiring. The Commission has no legal basis to go beyond Title VI and exercise its primary jurisdiction over all wire communications under Title I.<sup>6/</sup>

Nevertheless, in the face of undisputed Congressional intent, petitioners urge the Commission to essentially ignore the statutory mandate and adopt broad home wiring rules. As we demonstrate below, even if the Commission has the authority to regulate home wiring prior to termination of service, it should not do so for a variety of policy reasons.

11. THE TELEPHONE INSIDE WIRING RULES ARE BASED ON A DIFFERENT COMPETITIVE RATIONALE AND SHOULD NOT BE USED AS A MODEL FOR CABLE HOME WIRING RULES

In their quest to expand the scope of the home wiring rules, petitioners again seek to analogize the deregulation of telephone inside wiring to cable home wiring. Under the telephone rules, consumers are permitted to remove, replace, rearrange or maintain

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<sup>6/</sup> In a misleading reference to the rate regulation provision of the 1992 Cable Act, petitioners further assert that the Commission has "held that it has an affirmative obligation to regulate cable home wiring and other CPE prior to termination of service." Joint Petition at 9. But the Commission has found no such broad obligation. In the Rate Order, it merely cited its authority under section 623 of the Act to set standards to establish the rate for installation and lease of equipment used to receive the basic service tier, including home wiring. It did not find any affirmative duty to regulate access to or control of wiring prior to termination of service, only the price that may be charged for installation of such equipment. See Rate Regulation, MM Docket No. 92-266, Report and Order at 170 (May 3, 1993).

telephone wiring inside the home. Petitioners argue that the cable home wiring rules should follow this model in order to increase competition and promote market entry into telecommunications.<sup>7/</sup>

But the Commission's decision to deregulate telephone inside wiring was based on an entirely different rationale than the one put forth by petitioners. In the telephone inside wiring proceeding, the objective was fostering competition for the installation and maintenance of the wiring itself. It was never contemplated that competing telephone service providers would access the home simultaneously and use the same wiring. In their petition, however, petitioners seek access to the wiring, not to increase the competitive market for its installation and maintenance, but rather to deliver competitive services over the same wire.

As we have shown, this is inconsistent with Congress' limited objective in enacting section 16(d), which is to facilitate multichannel competition by ensuring that ownership of home wiring does not create a barrier to entry should a subscriber wish to switch to another service provider upon termination of cable service. Granting unrestricted access to cable facilities prior to termination is also inconsistent with cable's status as a non-common carrier. Congress recognized this

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<sup>7/</sup> Joint Petition at 7.

when it refused to apply the telephone inside wiring scheme to cable home wiring during deliberations on the 1992 Cable Act.

Indeed, unlike telephone service, cable television is not an essential service. While telephone companies might find it convenient to use the facilities of cable systems with whom they intend to compete, this is surely not a case where the government should put a thumb on the competitive scale by mandating telephone access to cable inside wiring.

Furthermore, as demonstrated below, the telephone inside wiring model is not suitable for cable home wiring because joint usage of cable wiring by multiple providers presents serious technical problems and complications that will be detrimental to consumers.

III. APPLYING THE TELEPHONE INSIDE WIRING MODEL TO CABLE WIRING WILL CREATE SIGNIFICANT TECHNICAL PROBLEMS AND PUBLIC SAFETY HAZARDS

A. Signal Leakage

As the Commission has recognized, there are very real physical differences between twisted copper pair and coaxial cable.<sup>8/</sup> Unlike telephone wiring, coaxial cable is subject to signal leakage that may interfere with aeronautical and other critical over-the-air frequencies. As long as the cable operator is providing service, it is responsible for leakage throughout the entire cable plant, regardless of who owns the wiring in the home. Giving consumers the freedom to remove, rearrange, or

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8/ Report and Order in MM Docket No. 92-260 at para. 6.

extend cable wiring -- while cable service is being provided -- will only heighten this problem. And authorizing other video providers to interconnect with cable service, i.e. utilize the same wiring simultaneously, will severely hamper the operator's ability to protect against signal leakage occurrences.

Congress was certainly fully cognizant of the need to guard against signal leakage in the disposition of home wiring.<sup>9/</sup> And in adopting the implementing regulations, the Commission made sure to hold the entity providing the service responsible for signal leakage. This will be very difficult to ascertain under a joint usage scenario.

In addition to signal leakage, simultaneous use of the wiring by multiple video providers will threaten the cable operator's ability to maintain the quality of service required under the FCC's cable technical standards. For example, tampering with the wiring could cause other radio frequency signals to enter the cable wiring and interfere with the performance of terminal devices. This diminishes video quality and reliability of cable service to all subscribers on the system.<sup>10/</sup> In order to ensure compliance with technical

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9/ House Report at 118. Congress also was concerned that home wiring rules not foster the already widespread theft of cable service. But signal theft is likely to proliferate under a simultaneous, shared used scenario.

10/ In addition to signal leakage and signal ingress, the electrical properties of cable as compared to telephone wiring and equipment make improper use of cable facilities more susceptible to fire and hazard.

performance standards and safety requirements, cable operators need to be able to isolate problems in the distribution network. Again, simultaneous use of the wiring by multiple video providers would greatly complicate this process, as well as increase in-home service calls.

#### B. Convergence

Petitioners tout the convergence of cable and telephone technologies as a policy justification for mandating open access to wiring from the point of initial installation. But the telephone and cable industries are far from converging technologically. They still utilize incompatible signal transport parameters and transmission methods, and different channelization schemes.<sup>11/</sup> And presently there are no standards for interconnection or inter-operability between these industries. Under these circumstances, opening up cable home wiring to joint usage with telcos and other potential service providers would be disastrous for subscribers. It will only magnify the public safety hazards and technical performance risks discussed above. And it will raise all sorts of consumer home

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<sup>11/</sup> For example, severe technical problems would arise if an alternative service provided introduced digitized signals into home wiring at the same time that analog cable service is still being provided.

equipment compatibility problems.<sup>12/</sup> At a minimum, the Commission should allow the industries to evolve further before adopting premature open access rules.

IV. MANDATING ACCESS TO CABLE HOME WIRING PRIOR TO TERMINATION WILL PLACE CABLE SYSTEMS AT A COMPETITIVE DISADVANTAGE

Contrary to petitioners call for a level playing field, their proposal would actually put cable operators at a competitive disadvantage in the telecommunications market. Under the 1992 Cable Act, cable operators must provide a certain percentage of their channel capacity for must carry and leased access channels and must provide basic cable service to all subscribers. If an operator is forced to cede some portion of its capacity to another multi-channel delivery medium, it may sacrifice its ability to deliver the full panoply of its service offerings.

Moreover, the cable operator is not standing in the way of other video service providers. Thus, petitioners claim that cable's "bottleneck control of broadband services" is blocking potential competition is utterly baseless. As NCTA has noted previously, cable operators simply do not possess exclusive broadband access to cable homes. There is no legal or regulatory

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<sup>12/</sup> In its recent Notice of Proposed Rulemaking on equipment compatibility, the Commission suggested that signals induced onto a cable system from the customers equipment should be isolated from the cable and be no greater than -37 dBmV. This technical standard would be impossible to achieve if another service provider is allowed to use the same home wiring simultaneously.

impediment to other service providers installing the facilities necessary for the delivery of alternative services.

In support of the telco effort to gain a free ride on cable-installed wiring, petitioners also lament the cost of installing redundant wiring. But they give no regard to the fact that cable operators bore the initial cost to install the wiring -- which is rarely recouped upon installation. Indeed, as cable companies pointed out in the home wiring proceeding, operators typically offer discounted or free installation of cable service in order to attract customers in a very competitive video marketplace. Under the new rate regulations, these costs are not recovered in the equipment basket charges, but rather they must be absorbed within the benchmark rate as part of the cable network. It would be unfair to require such operators to compete with another video provider that is able to piggyback onto the operator's own facilities.

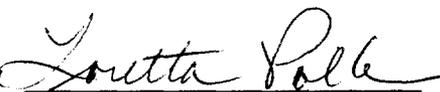
By urging the Commission to blindly authorize unrestricted access to cable wiring, the telephone companies wish to avoid the expense of wiring individual homes and thereby have cable operators subsidize their entry into the market.

CONCLUSION

For the foregoing reasons, the Commission should deny the joint petition to initiate a rulemaking to mandate free access to cable home wiring before termination of cable service.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION

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December 21, 1993

CERTIFICATE OF SERVICE

I, Tonya Bartley, hereby certify that on this 21st day of December, 1993, a copy of the foregoing Comments of the National Cable Television Association, Inc. in RM-8380 was served by mail, first class, postage prepaid upon the following parties:

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