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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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	)	

REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its reply comments to the joint petition for rulemaking filed by the United States Telephone Association, the Media Access Project and Citizens for a Sound Economy ("petitioners") in the above-captioned proceeding.

In its initial comments, NCTA opposed the petitioners request for a new rulemaking proceeding aimed at granting telephone companies and other video providers the right to freely access cable home wiring upon initial installation. NCTA demonstrated that the 1992 Cable Act expressly limited the Commission's regulatory authority over cable home wiring to after the subscriber terminates cable service. And NCTA maintained that even if the Commission has authority over cable wiring before termination, it should not permit multiple service providers to use the wiring simultaneously because of the adverse technical consequences. Finally, NCTA argued that mandating

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free access to cable home wiring by cable's competitors prior to termination of service would put cable operators at a competitive disadvantage in the telecommunications marketplace.

The comments filed by the telephone companies and other parties in support of the petition reflect a blatant disregard for the Cable Act's mandate and a fundamantal lack of understanding about how cable technology works.[1/] Having failed to convince the Commission to exceed its authority during implementation of the cable home wiring proceeding, the telephone companies now seek to circumvent Congressional intent under the theme of telco/cable convergence. As we demonstrate below, however, the commenters supporting the petition have provided no legal or policy justification for the Commission to abandon its sound earlier decision regarding cable home wiring pursuant to section 16(d) of the 1992 Cable Act.

DISCUSSION

As NCTA and other cable parties asserted, the Commission lacks the authority to mandate the transfer of ownership or the unrestricted use of cable home wiring by alternative providers before a subscriber terminates service.[2/] No matter how much the telephone companies may want to rewrite the 1992 Cable Act,

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1/ See e.g. Comments of Nynex, Bell Atlantic, Ameritech, GTE, Pacific Bell and Nevada Bell, Southern New England Telephone, Wireless Cable Association, Liberty Cable, Utilities Telecommunications Council.

2/ See Comments of NCTA, Time Warner Entertainment Company, Joint Cable Parties, Continental Cablevision.

section 16(d) says what it says: the Commission may prescribe rules regarding the disposition of cable home wiring only after termination of service. The agency has no authority to exceed the scope of section 16(d) under its broad jurisdictional authority over all interstate communications under the Communications Act.[3/]

Moreover, as pointed out again and again by various commenters, Congress did not intend that the telephone inside wiring rules-- which allow for customer control over the wiring -- to serve as a model for the cable home wiring provision. The legislative history to section 16(d) is unequivocal that cable operators are not to be treated as common carriers with respect to inside wiring.[4/] And, as the Commission found in its Report and Order in Docket 92-260, "many of the telephone inside wiring provisions go well beyond the statutory language addressing cable

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3/ 47 U.S.C. section 152(a); see Comments of NCTA at 3-5; Comments of Joint Cable Parties at 3-4; Comments of Continental Cablevision at 4; Comments of Time Warner at 5-6 (a more specific provision governs over a broad, general provision and a more recent specific statute controls over an older statute that does not specifically address the issue).

4/ H. R. Rep. No. 628, 102d Cong., 2d Sess. at 118-119. Congress was particularly concerned that "nothing in [the home wiring provision] 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." Id. at 119. Allowing subscribers or other service providers to tamper with cable home wiring while cable service is still being transmitted would undermine signal leakage protection.

home wiring because they pertain to what the consumer can do with the wire while receiving service."[5/] Consequently, the Commission refused to adopt cable home wiring rules that mirror the telephone inside wiring rules.

Nevertheless, the petition's proponents urge the Commission to contravene the Act by mandating open access to cable home wiring whether or not service has been terminated. They too call for unrestricted access to cable-installed wiring on the grounds that the cable and telephone industries are converging and that uniform wiring rules are necessary to achieve a level playing field.[6/] Even assuming that the Commission can find the authority to override section 16(d), the nature of telco/cable convergence is far too speculative at this time to support a rulemaking proceeding aimed at open access to the same wire. And forcing cable operators to give their competitors free access to their facilities will not foster a level playing field, but rather put cable operators at a competitive disadvantage.

First of all, as NCTA noted in its initial comments, the industries lack a common technological approach, i. e. they employ incompatible signal transport parameters and transmission methods, and different channelization schemes. They also lack

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5/ In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Report and Order, MM Docket No. 92-260, released February 2, 1993, para. 6.

6/ See e.g. Comments of Bell Atlantic, Ameritech, Pacific Bell and Nevada Bell.

standards for interconnection, inter-operability and digital transmission.[7/] And "no one can presently predict with certainty the technology or combination of technologies that will become dominant, or what the characteristics of these technologies will be."[8/] Thus, while Bell Atlantic maintains that "it is possible for both telephone and cable companies to provide a full range of voice, data and video services", the industries are not there yet.

In their comments, the Electronic Industries Association, Inc. ("EIA"), the Telecommunications Industry Association ("TIA"), and the Building Industry Consulting Service International suggest that TIA's engineering committee, TR-41, and its subcommittee, TR-41.8, are engaged in standards-setting work that will address shared use of cable home wiring by multiple service providers. But TR-41's work deals with physical wiring techniques, such as where to route wiring, where to drill holes and make connections, and where to place staples. It has nothing to do with the simultaneous delivery of multiple

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7/ Comments of NCTA at 9; Comments of Continental Cablevision at 10. Even Bell South acknowledges that unrestricted access rules would require interface standards for connecting multiple service providers and procedures for dealing with signal leakage. Comments of Bell South at 2.

8/ See Comments of New York Department of Telecommunications and Energy at 5. The Department also recognized that careful study and analysis of cost recovery, convergence, and developing technologies is necessary before the Commission even considers authorizing simultaneous use of the wiring.

multichannel services utilizing FM radio signals over the same wire. Moreover, subcommittee TR-41.8 is addressing standards for coaxial data/cable wiring which uses entirely different modulation techniques and has entirely different protocols and impedence than existing cable wiring.[9/]

Despite the critical differences in telephone and cable technology, the telephone companies and other proponents of the petition gloss over these distinctions in an effort to gain free access to cable's infrastructure.[10/] Pacific Bell and Nevada Bell go so far as to say that "the rules on access and control over wiring must be the same, no matter what type of signal happens to be passing over that wire".[11/] This view reflects a fundamental misunderstanding about cable's physical and technical characteristics. As Time Warner made clear, one wire is simply physically incapable of sustaining the transmission of more than one broadband multichannel video programming service occupying the same frequency range.[12/] Moreover, simultaneous,

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9/ Contrary to EIA's claim, simultaneous use is not consistent with the consumer electronics compatibility provision of the Cable Act. See NCTA Comments at 10, note 12. Moreover, the CEBus standard is a dual cable standard in that data is one coaxial wire and cable television is on a second coaxial wire.

10/ See e.g. Comments of Ameritech, GTE, Southern New England Telephone; Wireless Cable Association.

11/ Comments of Pacific Bell and Nevada Bell at 5.

12/ Comments of Time Warner Entertainment Company at 9-15.

unrestricted use also would foster serious technical problems, notably harmful signal leakage and degradation in signal quality. Signal theft also is more likely to proliferate under an uncontrolled shared use scenario.

Even if two broadband service providers could co-exist on the same wire by utilizing spare capacity in the upper frequency range, this is a highly improbable and thoroughly impractical approach. Moreover, as NCTA pointed out in its initial comments, forcing cable operators to cede any spare capacity to a competitor would unfairly limit the operator's ability to increase its channel offerings.

In sum, it is clear that access to cable-installed wiring will facilitate telephone company entry into the video marketplace. [13/] But the Commission should not under the guise of promoting competition sanction the telephone companies transparent attempt to gain a free ride over cable wiring without incurring the capital costs or risks of installing their own facilities.

13/ Nynex, Liberty Cable Company and the Wireless Cable Association again have urged the Commission to redefine the demarcation point between the subscriber's internal wiring and the external cable plant to some ill-defined point on the exterior of the customer's premises. As NCTA asserted in its Opposition to Petitions for Reconsideration in Docket 92-260, Congress made clear that the cable home wiring rule was to apply only to the internal wiring contained within the home or individual unit and not the wiring outside the home or the common wiring in apartment buildings. See NCTA's Opposition to Petitions for Reconsideration, MM Docket 92-260, May 18, 1993, at 4-8.

Respectfully submitted,

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