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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 1, 1994

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex parte Notice - MM Docket 92-260 and RM-8380

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Thursday, December 1, 1994, Robert S. Jacobs, Vice President and General Counsel, Time Warner New York City Cable Group ("Time Warner"); Larry Pestana, Vice President of Engineering, Paragon Cable Manhattan; and Arthur H. Harding of Fleischman and Walsh, L.L.P. met with Gregory J. Vogt, Deputy Chief, Cable Services Bureau to discuss issues affecting the above-referenced proceedings. The discussion involved presenting Time Warner's position on cable home wiring issues as summarized in the attached materials to be associated with the appropriate dockets and set forth more fully in formal comments filed by Time Warner Entertainment Company, L.P. in such proceedings.

Very truly yours,

Arthur H. Harding

Arthur H. Harding
Counsel for Time Warner
Entertainment Company, L.P.

AHH/sbc/20544
cc: Gregory J. Vogt, Esq.

No. of Copies rec'd 0+4
List A B C D E

HOME WIRING

- There is no need to alter the home wiring point of demarcation for MDU buildings.

  -- The demarcation point established by the Commission, "at or about twelve inches" from the point where the cable wiring enters the individual dwelling unit, is a fair and workable approach.

  -- Forcing the cable operator to cede ownership of hundreds of feet of its distribution plant beyond the point of demarcation and outside individual dwelling units would be unwarranted.

  -- The legislative history of the 1992 Cable Act makes clear that the scope of the home wiring provision is limited to "the cable installed within the interior premises of a subscriber's dwelling unit," and that it "does not apply to any wiring, equipment or property located outside the home or dwelling unit."

  -- In the vast majority of MDU buildings, the existing point of demarcation is readily accessible either at the initial wallplate within the dwelling unit or where distribution cables running through common areas (i.e., wiremold in hallways) enters individual dwelling units.

  -- Even in MDUs where the cable operator has run its distribution cable through conduits which are generally inaccessible within the walls or floors of the building, competing MVPDs can nevertheless access truly internal wiring at the wallplate or other point where wiring actually enters the dwelling unit.

  -- Under the Commission's present rules, competing MVPDs are appropriately required to construct and maintain their own separate distribution facilities running to each unit within an MDU building. MDU residents retain total freedom to use internal wiring within their units to receive service from the MVPD of their choice.

  -- The rule changes advocated by telephone companies and unfranchised MVPDs would allow them to seize valuable portions of a cable operator's distribution plant, cutting off access by the cable operator to end users, thereby thwarting competition.

  -- Even where a MDU resident discontinues service from a cable operator to receive service from a competing MVPD, the cable operator needs to retain its distribution facility all the way to the resident's dwelling unit so the cable operators can continue to

market alternative or supplementary services to that resident (i.e., pay-per-view, interactive games, alternate access, etc.)

-- The Commission's recent Video Dialtone decision recognizes the importance of a policy which seeks to promote the construction of multiple sets of end-to-end distribution facilities in order to achieve maximum competition.

-- 170 East 87th Street provides a prime example of the unfairness of forcing cable operators to cede ownership of critical portions of their distribution facilities to competitors.

-- The changes proposed to the home wiring rules in various petitions for reconsideration would render the rules unconstitutional because they would result in a taking of cable operators' property without an adjudicatory proceeding to determine just compensation.

-- The Commission should retain its exclusion for loop-through or other similar series cable configurations.

-- The home wiring rules should not apply to splitters or other devices used to transmit signals to other MDU residents.

- The Commission should reaffirm that the "home wiring" rules are intended exclusively for the benefit of the recipients of video programming services, i.e., the actual residents of MDUs, not the landlord or building owner.

  -- If landlords are allowed to invoke the home wiring rules, rather than MDU residents, landlords will be allowed to continue to "shake down" cable operators.

  -- More importantly, landlords should not be allowed to employ the home wiring rules so as to thwart the ability of the subsequent MDU resident to obtain video programming service from the provider of their choice.

  -- The Commission should reject arguments by the National Private Cable Association and others that would enable landlords to interfere with a tenant's choice to receive video programming from the franchised cable operator or any alternate provider.

  -- Where a cable operator declines to exercise its right to remove internal wiring upon the vacancy of MDU premises, such wiring should be deemed to be available for the benefit of the subsequent occupant. Neither

the landlord nor the cable operator should be allowed to interfere with this right.

- The home wiring rules are applicable only upon termination of service by a subscriber.

  -- The plain statutory language of the 1992 Cable Act clearly states that the home wiring provisions apply only "after a subscribers to a cable system <u>terminates</u> service."

  -- Unlike telephone wiring, it is physically and technically impracticable for two competitors to simultaneously deliver traditional cable services over the same wiring.

  -- If the Commission truly wants to foster competition, it must encourage each competitor to construct its own distribution infrastructure all the way to the subscriber. This is the only way the subscriber can enjoy a seamless transition between competing services, as well as the ability to receive selected services from each competitor simultaneously.

  -- If the cable operator loses control over home wiring <u>before</u> termination of service, the ability of the Commission to detect parties responsible for signal leakage will be seriously impaired.

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November 21, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Ex Parte Notice -- MM Docket 92-260 and RM-8380

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, Time Warner New York City Cable Group ("TWNYC")[1] hereby submits these comments regarding cable home wiring issues that have been raised before the Commission in the above-referenced proceedings.

I. To The Extent That The Commission's Home Wiring Rules Apply To Multiple Dwelling Units, They Are For The Benefit Of The Residents, Not The Owners, Thereof.

Time Warner has asserted repeatedly throughout the course of the home wiring proceedings (MM Docket 92-260, RM-8380, and ex parte notices relating thereto) that home wiring rules enacted pursuant to Section 16(d) of the Cable Television Consumer

[1]TWNYC is a division of Time Warner Entertainment Company, L.P. ("Time Warner"), an entity that has participated in all aspects of the home wiring proceedings referenced in this Ex Parte Notice. All references to or citation of documents submitted to the Commission in connection with home wiring issues were submitted by Time Warner.

Protection and Competition Act of 1992 ("1992 Cable Act")[2] should have a very limited application to internal cable wiring installed in multiple dwelling units ("MDUs").[3] Consistent with the plain language of the statute and Congress' intent, Time Warner has urged the Commission to exclude from the scope of applicability of the home wiring rules all wiring located outside the home or dwelling unit.[4] Thus far, the Commission has provided limited application of its home wiring rules to MDUs.[5]

Congress designed the home wiring provision to provide subscribers who voluntarily terminate cable service an opportunity to acquire the cable wiring installed within their homes or dwelling units.[6] The provision was not designed to provide landlords of MDUs with any particular benefits or opportunities. Indeed, the home wiring rules adopted by the Commission in 1993[7] specifically state that, upon voluntary termination of cable service, cable operators must give "the subscriber the opportunity to acquire the wiring at the replacement cost."[8] Nowhere in the home wiring rules is there any mention of conferring any benefits or privileges upon owners of MDUs whose tenants have terminated their subscriptions to cable service,[9] nor should there be.

A recent situation involving TWNYC's Paragon system serving New York City provides an excellent example of the abuse that can

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[2]Pub. L. 102-385, 106 Stat. 1460, § 16(d) (1992), codified at 47 U.S.C. § 544(i).

[3]See, e.g., Time Warner Comments in MM Docket 92-260, at 5-14; Time Warner Reply Comments in MM Docket 92-260, at 2-5.

[4]See H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report"); Time Warner Comments in MM Docket 92-260, at 5-14; Time Warner Reply Comments in MM Docket 92-260, at 2-5; Time Warner Reply Comments in RM-8380, at 8-10.

[5]See Report and Order in MM Docket 92-260, 8 FCC Rcd 1435, ¶ 12 (rel. Feb. 2, 1993) ("Report and Order"); 47 C.F.R. § 76.5(mm)(2).

[6]See House Report at 118.

[7]See Report and Order, 8 FCC Rcd 1435.

[8]47 C.F.R. § 76.802 (emphasis added).

[9]See 47 C.F.R. §§ 76.5(*ll*) and (mm), 76.801, 76.802.

and will occur if the home wiring rules are amended or interpreted to bestow benefits on MDU owners, rather than on the subscribers who live within the MDUs.[10] Tenants of four apartments in the 251 Central Park West MDU who had been subscribers to Paragon's cable service recently moved out of the building. The owner of 251 Central Park West then requested that Paragon immediately remove all cable wiring from the apartments vacated by its former subscribers. In the event that Paragon does not remove all cable wiring from such apartments, the owner of the MDU threatened to "hire its own contractor to do so and bill [Paragon] for these costs."[11] Under the present home wiring rules, the owner of the MDU cannot require Paragon to remove its wiring. Paragon is required only to offer the terminating subscriber the opportunity to purchase the home wiring at replacement cost.[12] If the subscriber declines such offer, then the cable operator may remove the home wiring within 30 days, or "make no subsequent attempt to remove it or to restrict its use."[13] Under no circumstances can the MDU owner require the cable operator to remove its home wiring, nor can the MDU owner charge the cable operator for the removal of such wiring.

If the cable operator elects to leave the home wiring in place, that wiring is for the benefit of the next tenant of the apartment, who may very well choose to subscribe to cable television service. Cable home wiring that is left in place is not left to benefit the MDU owner in any way. As evidenced by the situation in 251 Central Park West, an MDU owner can abuse any benefits granted it with regard to cable home wiring by attempting to charge the cable operator for use of its own wiring if subsequent tenants of the vacated apartments request to have cable service hooked up in their apartments.[14] Thus, cable operators could be charged to provide cable service over wiring that they paid to install and maintain. Such a situation should not be tolerated under the Commission's home wiring rules.

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[10] See Letter from S. Haberman to J. Nicolich, dated November 14, 1994, a copy of which is attached hereto as Attachment 1.

[11] Attachment 1.

[12] 47 C.F.R. § 76.802.

[13] Id.

[14] See Attachment 1.

II. The Commission Should Ensure That The Home Wiring Rules Are Not Construed To Enable MDU Owners To Make Improvements To Their Buildings At Cable Operators' Expense.

Further support for the assertion that benefits and privileges regarding cable home wiring should not vest in MDU owners lies in the fact that MDU owners, like the owner of the 251 Central Park West building, can too easily abuse such benefits. For example, if the cable operator chooses not to remove its internal wiring from individual dwelling units -- a choice it is entitled to make under the Commission's existing home wiring rules -- and the MDU owner insists upon the removal of such wiring and hires a contractor to remove the wiring at the cable operator's expense, a certain degree of damage to the MDU premises may occur. MDU owners, in an attempt to pass costs for improving their premises, whether by painting, repairing walls or replacing molding, will be motivated to damage their own property during the removal of home wiring in an effort to hold cable operators liable for the repair of such damage, along with the cost of removing the wiring. If MDU owners are allowed to get away with such practices, cable operators might be held responsible for premises damage, and the repair thereof, which should never have occurred in the first place.

As demonstrated above, the intent of Congress in adopting the home wiring provisions of the 1992 Cable Act was to allow the subscribers (e.g., the actual residents of MDU buildings) to use the internal wiring installed within the dwelling unit to receive video programming from the distributor of their choice. Thus, if the cable operator elects not to remove the internal wiring from an MDU unit after a tenant terminates cable service and moves out, but rather elects to leave the wiring in place so that the next tenant can use that wiring to obtain multichannel video programming from the multichannel video programming distributor of his choice, the Commission should clarify that any actions by the landlord to remove or otherwise tamper with such wiring are prohibited. Landlords should not be allowed to undermine the Congressional policy underlying the home wiring provisions of the 1992 Cable Act.

For all the foregoing reasons, and for the reasons set forth in Time Warner's previous submissions to the Commission regarding cable home wiring, the Commission should not amend or interpret its home wiring rules to apply broadly to MDUs or to bestow

benefits and privileges on MDU owners rather than on the residents thereof.

Sincerely,

Arthur H. Harding

Arthur H. Harding

Attachment

cc: Meredith Jones
Gregory Vogt
Olga Madruga-Forti
Marian R. Gordon
Lynn Crakes
John Wong

\20493

ATTACHMENT 1

LAW OFFICES OF
SIMON V. HABERMAN, P.C.
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CABLE SOLICITOR NY
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November 14, 1994

LeBoeuf, Lamb, Greene & MacRae
125 West 55th Street
New York, New York 10019-5389

Att: John G. Nicolich, Esq.

Re: Removal of wiring at 251
Central Park West

Dear Mr. Nicolich:

Since your client did not adhere to my client's request that your client immediately remove all cable wiring from apartments 4B, 9B, 12B and 5F in the above building, my client will hire its own contractor to do so and bill your client for these costs.

On the other hand, if your client now claims that all the wiring becomes the property of the landlord, please notify your client that the landlord intends to charge your client for use of this wiring for any subsequent hook-up in these apartments.

Please govern yourself accordingly.

Very truly yours,

SIMON V. HABERMAN

SVH:rd

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December 16, 1993

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Response to Ex Parte Notices -- Cable Home Wiring, MM Docket No. 92-260

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's Rules, Time Warner Entertainment Company, L.P. ("Time Warner") hereby submits this response to the ex parte presentations filed by Liberty Cable Company, Inc. ("Liberty") and the NYNEX Telephone Companies ("NYNEX") in this proceeding on July 28, 1993; September 24, 1993 and October 19, 1993. Time Warner submits this response in order to address points raised by Liberty and NYNEX that fail to recognize both the plain language of the home wiring statute and the practical application of the home wiring rules as proposed by Liberty and NYNEX.

- Liberty and NYNEX are proposing modifications to the cable home wiring rules which would allow unfranchised multichannel video programming distributors ("MVPDs") to confiscate substantial portions of a cable operator's plant, well outside the customer's dwelling unit, beyond the scope of the statutory home wiring provisions.

- Liberty and NYNEX are attempting to subvert the intent of the home wiring rules to afford even greater competitive advantages to unfranchised MVPDs when competing with franchised cable operators.

- Liberty and NYNEX seek to contort the home wiring rules to thwart competition by allowing multiple dwelling unit ("MDU") building owners and managers to interfere with the ability of individual dwelling unit residents to select the multichannel video programming distributor of their choice.

I. The most practical point of demarcation in MDUs is the wall plate in each individual unit, but in no event should it extend beyond twelve inches from where the wiring enters the individual dwelling unit.

The Commission has established a demarcation point for home wiring in MDUs at (or about) twelve inches from the point where the cable wiring enters the individual dwelling unit.[1] As the Commission has recognized,[2] Congress has stated that the scope of the home wiring provision is limited to "the cable installed within the interior premises of a subscriber's dwelling unit," and that it is "not intended to cover common wiring within the MDU building."[3] Accordingly, Time Warner and numerous other commenters urged that the demarcation point in MDUs should be set at the wall plate inside the individual dwelling unit. As shall be shown below, setting the demarcation point at the wall plate is the only practicable alternative in the case of MDUs with distribution cable wiring in inaccessible conduit.[4]

In order to fully appreciate the situation, it is necessary to understand the basic types of video distribution architecture typically employed in MDU buildings. MDU video distribution architecture can generally be categorized as either "homerun" or "loop-through." Loop-through and related series configurations are discussed in Sec. III, infra. In a homerun configuration, the video distribution cable enters the MDU building and then is typically distributed to each floor through vertical "risers." See Diagram A. The riser cable typically carries signal to numerous locations throughout the building, and thus any break in the riser could interfere with the ability to provide service to customers located "downstream," just as in the case of loop-through or series configurations discussed in Sec. III, infra.

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[1] 47 C.F.R. § 76.5(mm).

[2] See Cable Home Wiring Report and Order, MM Docket 92-260, 8 FCC Rcd 1435, ¶ 10 (1993) ("Report and Order").

[3] H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report").

[4] Report and Order, 8 FCC Rcd 1435, n.26.

At various points throughout the building, the riser in a homerun configuration enters a distribution box, which is often located in the stairwell. See Diagram B. From the distribution box, a separate, dedicated cable is installed through the common areas of the building (hallways, party walls, floors, ceilings, etc.) to the premises of each MDU resident on the floor or floors served from that distribution box. See Diagram C. It is this dedicated cable extending from the distribution box which is often referred to as the "homerun." The riser cable then carries signal on to the next distribution box, often located on another floor.

In the case of such homerun MDU installations, the demarcation point established in the Commission's rules for multiple unit installations, 47 C.F.R. § 76.5(mm), does not distinguish between cables that enter individual apartment units directly from adjacent publicly accessible areas such as hallways (Situation I), and installations that enter through internal conduits or common closets not accessible in any public area of the building in the vicinity of the apartment (Situation II). The Commission's twelve-inch rule is concededly workable in Situation I, at least so long as the Commission rejects Liberty's proposal which would allow the competing MVPD to seize splitters or other hardware which may be located within this 12-inch zone and which may be necessary to provide service to other MDU residents. As interpreted by Liberty, however, the rule would not be workable in Situation II, because the cable cannot be accessed 12 inches outside the perimeter of the terminating subscriber's apartment without invading the apartment of another tenant and/or causing significant physical damage to walls, floors, or ceilings in which cable or conduit housing cable may be encased.

As a preliminary matter, it must be stressed that Liberty has presented a grossly distorted view of common MDU construction practices in New York City. Time Warner's experience is that the overwhelming majority of MDU buildings fall into Situation I, where the homerun cable is located in readily accessible public areas such as hallways, often enclosed in wiremold which allows convenient splices. Situation II, where homerun cable is inaccessible, is clearly the exception. In any event, based on its interpretation of the rule to render it unworkable, Liberty asks the Commission to amend the rule to allow the tenant to acquire cable hundreds of feet outside the apartment on the false pretext that is necessary in order to permit a competing MVPD to use the home wiring in the tenant's apartment. Liberty's proposal is at odds with the plain language and purpose of Section 16(d) of the 1992 Cable Act, 47 U.S.C. § 544(i). Congress intended only that the Commission prescribe rules for the disposition of "cable installed by the cable operator within

the premises of [a] subscriber," 47 U.S.C. § 544(i), not cable facilities in other areas of a multi-unit building. Indeed, Liberty's interpretation would flatly contradict the express Congressional directive that the home wiring rules are "not intended to cover common wiring within the MDU building."[5] Moreover, Liberty's conclusion that the implementing rule promulgated by the Commission is unworkable in Situation II is based on an unnecessarily rigid and untenable interpretation of the rule.

To facilitate a logical, practical interpretation of the rules as applied in Situation II, the point "where the cable wire enters the subscriber's dwelling unit," 47 C.F.R. § 76.5(mm), should be understood to mean the point at which the cable enters the interior living space of the apartment (becoming visible to the eye without use of X-ray equipment), not the point where the cable technically crosses the outside wall of the apartment unit. The latter point, as Liberty acknowledges, may not be visible or accessible (or, in some cases, even ascertainable) by the tenant or the cable operator.

Furthermore, the term "at (or about) twelve inches," 47 C.F.R. § 76.5(mm), should be interpreted flexibly yet rationally, with a particular emphasis on the words "or about" in Situation II. The Commission presumably did not intend to apply its twelve-inch guideline so rigidly as to require a cable operator or tenant to sever "home wiring" at a place that is impracticable to access. Under such circumstances, the demarcation point must necessarily be the nearest accessible point within 12 inches of the place where the cable enters the interior living space of the apartment.

The foregoing interpretation of the rule is in keeping with the language and purpose of Section 16(d). Liberty's proposal to amend the rule, by contrast, would permit tenants of a building (for a nominal price that would not include any component for the labor incurred to install cable throughout the building) to assume ownership and control of vast extents of cable well beyond the perimeters of their respective apartments. Homerun cable terminating at the wall plate in a particular apartment will often extend vertically several stories above or below the apartment, and a hundred or more feet horizontally before reaching its point of origin in a junction box in a stairwell or other common area of the building.

Liberty often misappropriates Time Warner's cable facilities in MDU buildings. Liberty's proposed amendment of the home

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[5] House Report at 118.

wiring rule seeks to have the Commission put its imprimatur on practices amounting to conversion[6] and unfair competition. Liberty and other MVPDs have no right to earn a profit on the incumbent cable operator's investment and to undersell franchised cable service by means of such parasitic behavior.[7]

The example of 170 East 87th Street, a 27-story apartment building in the New York franchise area of Time Warner's affiliate Paragon Cable Manhattan, illustrates the inherent unfairness of the amendments proposed by Liberty. Paragon was requested by the developer to pre-wire the building with a sophisticated conduit cable system while the building was under construction. Paragon had to pay an outside contractor more than $50,000 to install this system and to supply out of Paragon's own inventory the cable and cable facilities installed at an additional cost in excess of $11,000. These costs do not include the extensive time expended by Paragon's own personnel in supervising and participating in the cable installation. In May 1993, the first tenants began to move into the building, and Paragon began to provide service to residents requesting service on an individual subscriber basis. In August 1993, Liberty began to provide service throughout the building pursuant to a building-wide contract with the building's management. Liberty did not construct its own system, but (without notice to or consent of Paragon) assumed control of thousands of feet of cable and related cable facilities, including junction boxes located in stairwells, that had been installed at great cost to Paragon.

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[6]In states with cable access laws like New York's Executive Law § 828, the cable installed in a multi-unit building by the cable operator has been held by the Supreme Court to remain the property of the cable operator following installation. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 n.19, 439 (1982). In some cases the conduit or molding may also have been installed and paid for by the cable operator and may constitute its property. In states without such cable access laws, the cable operator's ownership of cable facilities may be established by contract.

[7]The unfairness of Liberty's proposed amendments is aggravated by Liberty's preferred modus operandi, which is to enter into 100 percent penetration contracts with building owners whereunder all tenants must bear the cost of Liberty's service even if they would prefer to receive franchised cable service. Because tenants are thereby discouraged from exercising their statutory right to choose franchised cable service, Liberty's proposed rule amendment would not only permit it to use Time Warner's cable facilities virtually cost-free, but to use them in a manner calculated to exclude Time Warner.

Paragon lost most of its existing customers (whom it had served for only a few weeks), and new residents are being steered to Liberty.

Liberty's proposed rule amendments would permit Liberty and the building owners with whom Liberty contracts to avoid the legal consequences of such inequitable conduct in buildings throughout Manhattan simply by offering the displaced cable operator a few pennies per foot for the cable expropriated while disregarding the far greater expense incurred in installing and maintaining such cable and related facilities throughout the building. Franchised cable operators, it may be noted, can never hope to even the score by taking over cable facilities installed in buildings by unfranchised MVPDs: the home wiring rule does not apply reciprocally to unfranchised MVPDs.

Liberty's proffered amendments would render the home wiring rule unconstitutional. If the physical property of a cable operator is to be involuntarily taken from it, just compensation must be determined in an adjudicatory proceeding subject to judicial review; the Commission may not "prescrib[e] a 'binding rule' in regard to the ascertainment of just compensation." Florida Power Corp. v. FCC, 772 F.2d 1537, 1546 (11th Cir. 1985), rev'd on other grounds, 480 U.S. 245 (1987). The Commission has no basis to presume that a cable operator will always (or even generally) be justly compensated for the taking of extensive cable facilities outside individual apartments (and installed in the building prior to and independently of particular requests for service) by a payment of a few cents per foot.

Contrary to Liberty's suggestion, alternative service providers do not need to appropriate the cable operator's system in multi-unit buildings in order to provide a competing service. They can install a cable of their own in common areas of the building, either in the existing conduits[8] or, if conduits are not available or cannot accommodate an additional wire, in hallways or similar publicly accessible areas, or on the exterior of the building.[9] All of these methods are commonly used by franchised cable operators, and the same methods can and should be used by unfranchised MVPDs. The home wiring rule was not

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[8]There are several buildings in Manhattan in which Time Warner and Liberty have separate cables in the same conduits.

[9]Since most MDUs in New York have been wired by Time Warner in hallways or on the exterior of the building, Liberty cannot plausibly argue that it cannot successfully use these same methods. Indeed, in several buildings known to Time Warner, Liberty has done so.

intended to guarantee that other service providers will always have the identical point of entry to an apartment as the franchised cable operator.

The home wiring rule is intended for the benefit of subscribers to prevent the possibility that cable which has been run throughout a house or apartment and stapled to floors or moldings or placed beneath carpeting may be involuntarily ripped out to his damage and inconvenience. While the home wiring rule enables a terminating subscriber to allow another MVPD to utilize the home wiring it has acquired, the rule does not guarantee that the MVPD will never have to rearrange some of it or supplement it with additional wire in order to provide its service to the subscriber's home. There are limits to how far the definition of "home wiring" can be stretched to accommodate the desire of competing MVPDs to unfairly shift the normal costs of doing business onto their competitors.

Finally, it should be stressed that even in a homerun configuration, the homerun cable located outside the dwelling unit is never intended to be permanently dedicated to the exclusive use of the particular unit where the homerun terminates. Indeed, serious operational problems would be occasioned by Liberty's proposal to change the demarcation point to permit a terminating subscriber to acquire cable outside his apartment all the way to its interface with a riser (and NYNEX's similar proposal to permit acquisition up to the "grounding block"). Even in a homerun configuration, it often happens that the homerun cable becomes damaged or goes bad and cannot be repaired or replaced. In such situations it is necessary to splice a splitter onto another functioning line so that it can serve two apartments instead of one. If another MVPD is allowed to use that line to provide service to one of the apartments, it has the effect of cutting off service also to the other apartment which still wishes (or in the future may wish) to receive franchised cable service.

A similar operational problem would occur in situations where multiple cable outlets in a single apartment or dwelling unit are spaced so far apart that (in order to avoid signal loss) it is necessary to serve certain of the outlets in the apartment by means of a splitter spliced onto a line formerly dedicated solely to an adjacent apartment unit. As in the previous example, the acquisition of such a homerun line by a terminating subscriber may have the effect of cutting off franchised cable television service to a neighbor. In both Situations I and II, the 12" rule cannot be expanded without impinging upon homerun distribution wiring which is used or could be used to provide service to more than one resident, thus interfering with Time Warner's ability to provide cable service upon request.

Since acquisition of homerun lines and/or equipment by a terminating subscriber may have the effect of cutting off franchised cable service to an MDU resident, a cable operator must be allowed to retain control of any cables or equipment (including splitters) that are used or could be used to provide service to more than one customer in any case where such facilities are located outside the "the interior premises of a subscriber's dwelling unit."[10]

II. The home wiring rules are applicable only upon termination of service by a subscriber.

NYNEX has also proposed that the home wiring rules should apply immediately upon installation of cable home wiring.[11] Such a proposition is directly contrary to the plain language of the statute,[12] and creates very real concerns for cable operators. At 170 East 87th Street, the example cited above, the building was still mostly vacant at the time Liberty entered into its contract and commenced to provide its service using Paragon's facilities. When Liberty provides service to new residents as they move into this building, it therefore uses extensive cable wiring previously installed by and at the expense of Paragon that Paragon has never used to serve any subscriber for any period of time, however brief. NYNEX's proposed amendment, therefore, would compound the unfairness and unconstitutionality of Liberty's proposal to extend the definition of home wiring to include cable in common areas of the building.

Furthermore, a cable operator must maintain ownership and control of any cable it has installed that is still being used by it to provide cable service. If subscribers, building management or competitors are free to tamper with or attempt to use such wiring for another purpose, the cable operator cannot be expected to properly carry out its legal responsibility to prevent and correct signal leakage, nor will it be in a position to detect and enforce the statutory provisions against theft of cable service.

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[10]House Report, supra, at 118.

[11]See NYNEX Petition for Recon. at 5-6.

[12]"[T]he Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed. . ." 47 U.S.C. § 544(i) (emphasis added).

III. The Commission should retain its exclusion for loop-through or other similar series cable configurations.

The Commission has wisely excluded loop-through "or similar series cable wire" from its home wiring rules,[13] recognizing that even one break in the wire would result in a loss of cable service to all subscribers "downstream" from the break.[14] Liberty and NYNEX urge the Commission to reverse its decision relating to "loop-through" or other cable wiring installed in a series configuration. Liberty suggests that the alternate provider should be allowed to seize the cable operator's loop-through wiring where "all of the residents want to terminate franchised cable service."[15] NYNEX proposes that the use of loop-through common wiring should be dictated by the building owner. Both proposals ignore the practical realities of provision of multichannel video programming service to MDUs and would thwart competition.

First, it must be recognized that Liberty's suggestion that all residents of a particular building might unanimously and simultaneously elect to switch from Time Warner to Liberty is misleading and unrealistic in the extreme. In Time Warner's experience in Manhattan, even when Liberty signs a building-wide service agreement with the building owner, some residents insist upon retaining franchised cable television service. However, in an effort to achieve "unanimity," Liberty or the building's management sometimes engage in deception or strong-arm tactics to coerce reluctant tenants to terminate franchised cable television service and accept Liberty's service. Even when Liberty procures signed consent forms from tenants, Time Warner, in calling its subscribers to confirm their intentions, sometimes learns that consent forms were procured by pressure or through false or misleading statements and that tenants did not truly wish to terminate their franchised cable television service. Amendment of the rule as proposed by Liberty would cause an increase in the use of such coercive and deceptive practices at apartment buildings in which franchised cable television service is provided by means of a loop-through system, in order to generate an illusory unanimity in favor of an unfranchised service.[16]

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[13] See 47 C.F.R. § 76.5(mm).

[14] Report and Order, 8 FCC Rcd 1435, ¶ 10.

[15] Liberty Petition for Recon. at 6.

[16] Furthermore, MDU buildings often have a relatively high turnover rate. Future residents should be allowed to elect to receive franchised cable service (and current residents should be

More importantly, if Time Warner were forced to relinquish control over its loop-through plant in MDUs, the result would be that the MDU management could dictate the MVPD from which all residents must receive service. Such a result would be directly contrary to the pro-competitive goals of Congress as expressed in the home wiring provision. Competition can be enhanced only if the incumbent is allowed to retain use of loop-through wiring so that it can continue to serve those residents desiring to retain its service. The alternate provider should be required to install its own wiring in common areas, just as the incumbent cable operator has done. Moreover, forcing cable operators to forego use of series cable throughout an MDU is completely contrary to Congress' intent because Section 16(d) "is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers."[17] The Commission correctly adhered to Congress' intent in this respect when it excluded all loop-through systems from the home wiring rules.

Time Warner urges the Commission not to amend its home wiring rules according to proposals set forth by Liberty and NYNEX. Rather, the Commission should consider the practical application of the rules, and establish rules that are both workable and fair to the parties involved.

Sincerely,

Arthur H. Harding

Arthur H. Harding

AHH/sbc/12103

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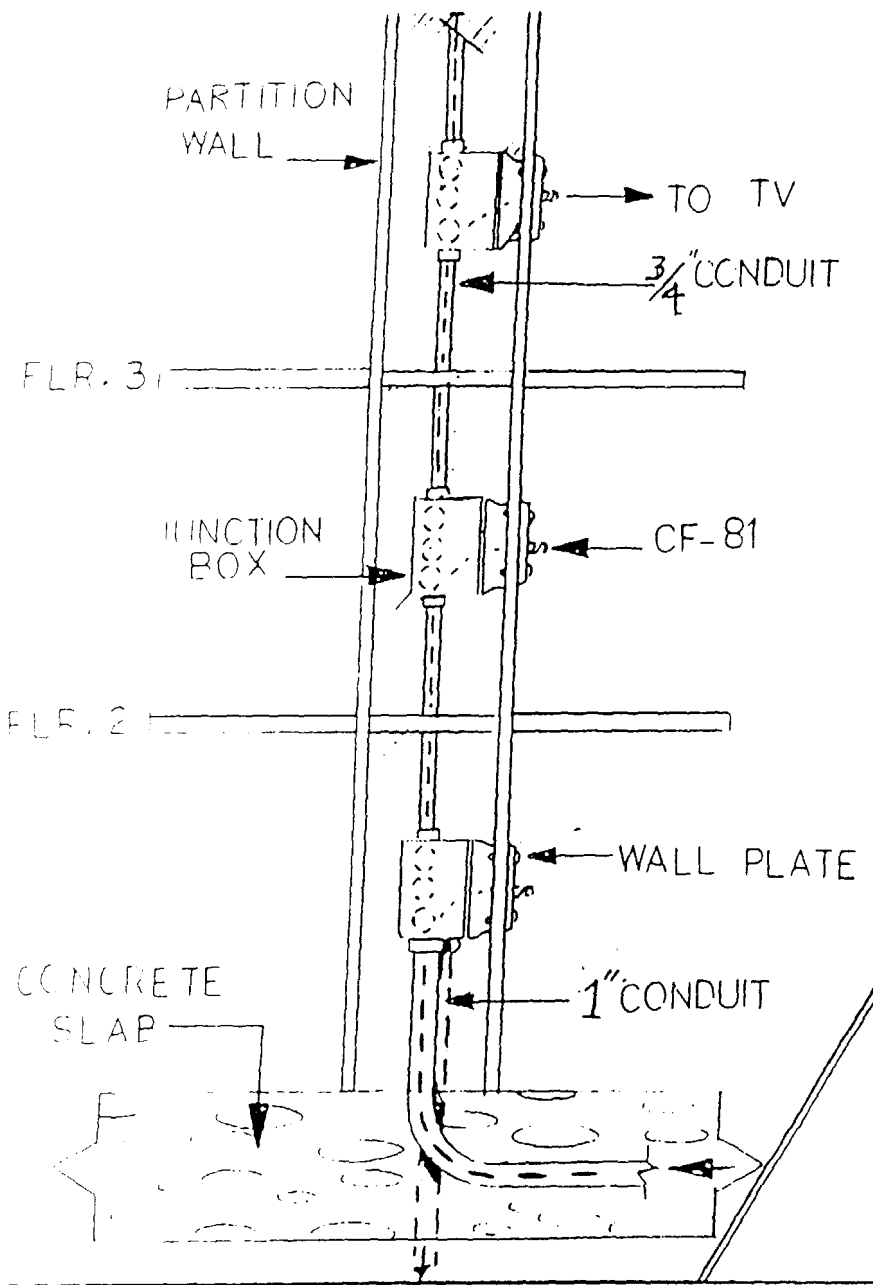
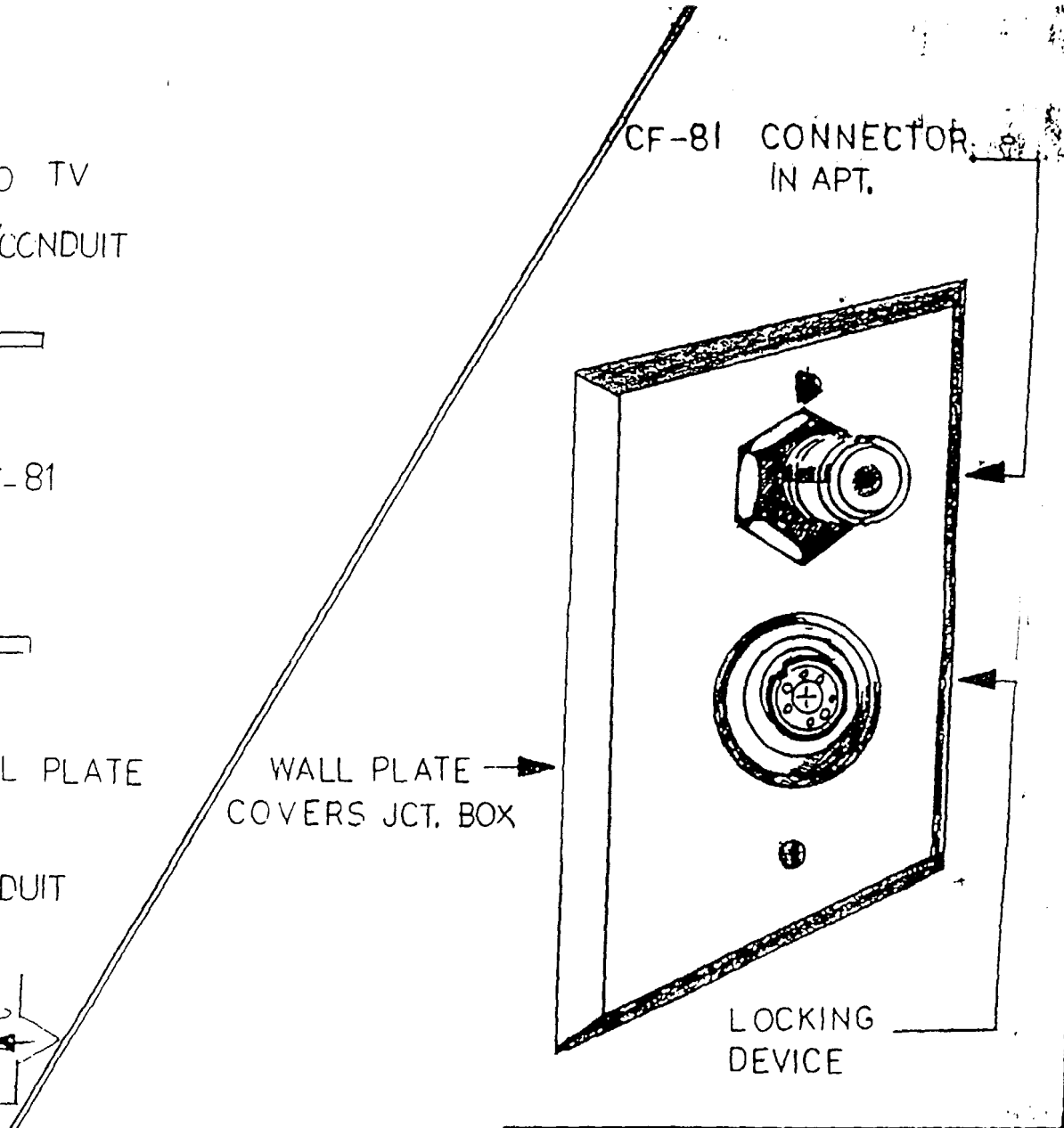
allowed to freely switch among any available MVPD); they should not be bound by the decisions of previous residents. See Time Warner Response to Petitions for Recon. at 8-9.

[17] House Report at 119.





SYSTEM DESIGN SYMBOLS

412 CABLE	TRUNK BRIDGING	LINE EXTENDER	2 WAY SPLITTER
500 CABLE	2 WAY TRUNK-BRDG ALC.	2 WAY LINE EXTENDER	3 WAY SPLITTER
750 CABLE	2 WAY TRUNK	POWER SUPPLY & COUPLER	DIRECTIONAL COUPLER
1000 CABLE	2 WAY TRUNK BRDG W/ALC	IN LINE EQUALIZER	TAP 2 WAY
		TERMINATION	TAP 4 WAY
			TAP 8 WAY

PARAGON CABLE

PROJECT NO	BLOCK	LOT
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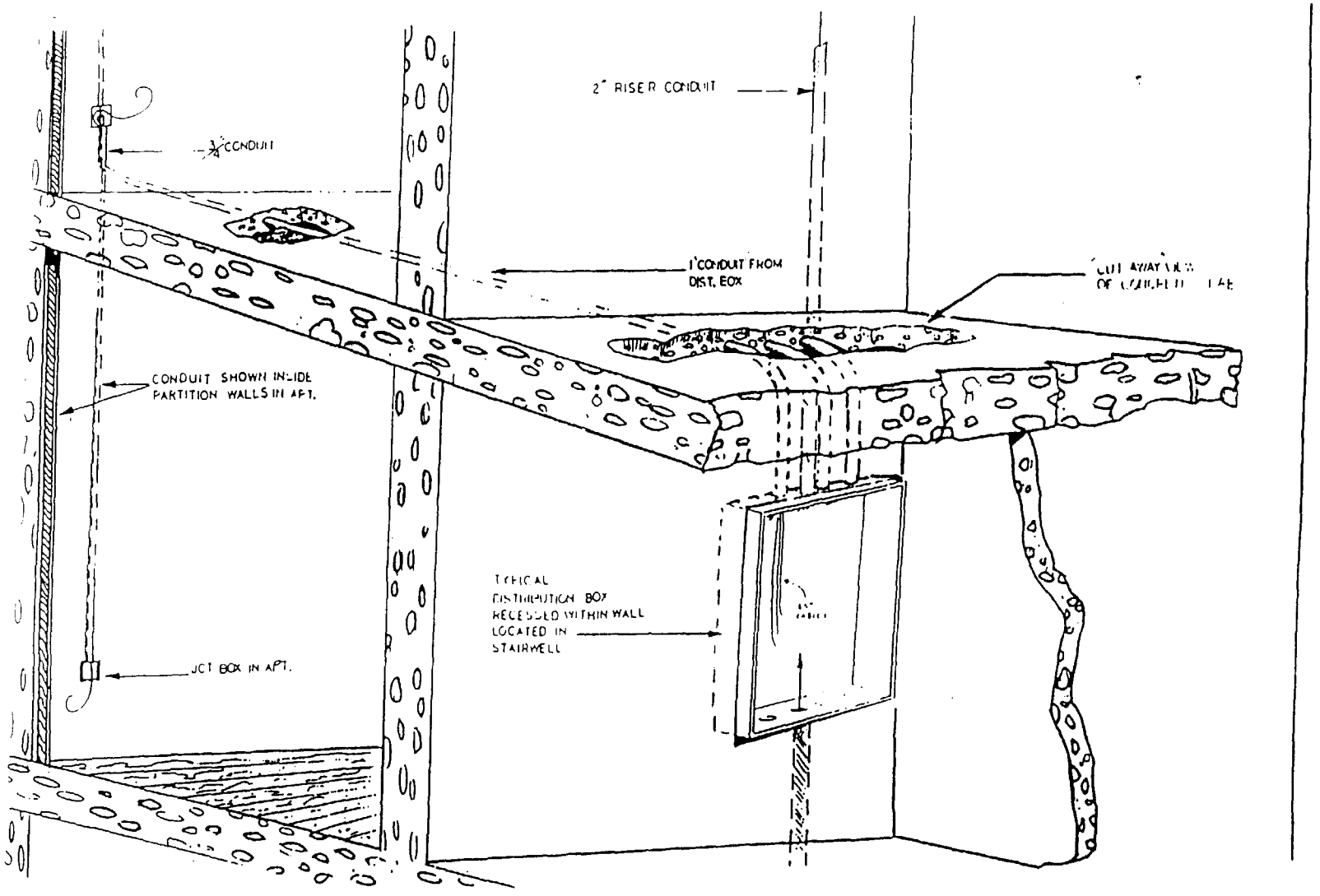
DATE 11-3-93	SCALE	DRAWN BY PASCE, F	DWG. NO. 3

DIAGRAM A



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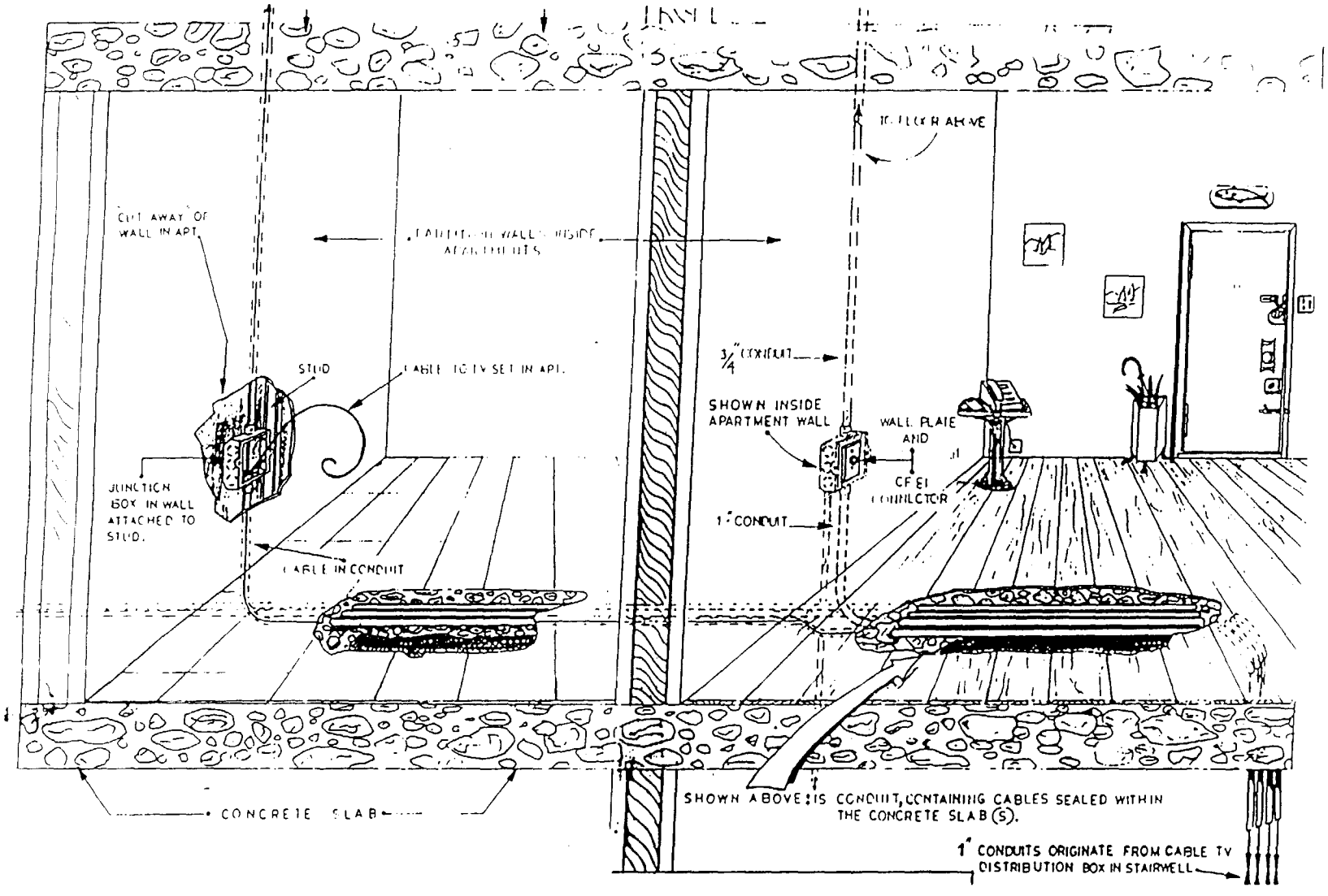
750 CABLE	2 WAY TRUNK	POWER SUPPLY & COUPLER	DIRECTIONAL COUPLER
1000 CABLE	2 WAY TRUNK BRDG W/ALC	IN LINE EQUALIZER	TAP 2 WAY
		TERMINATION	TAP 4 WAY
			TAP 8 WAY

PARAGON CABLE

PROJECT NO	BLOCK	LOT	
TITLE			
DATE	SCALE	DRAWN BY	DWG. NO

DIAGRAM B



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1000 CABLE	2 WAY TRUNK BRDG W/ALC	IN LINE EQUALIZER	TAP 2 WAY
		TERMINATION	TAP 4 WAY
			TAP 8 WAY

PARAGON CABLE MANHATTAN

PROJECT NO	BLOCK	LOT
TITLE		
DATE	SCALE	DRAWN BY	DWG. NO

DIAGRAM C