

EX PARTE OR LATE FILED



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Mr. William Caton
Secretary
Federal Communications Commission
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December 5, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ex Parte Meeting:
MM Docket No. 92-260
and RM-8380

Dear Mr. Caton:

On December 5, 1995, Mary McDermott and Kathy Woods, representing the United States Telephone Association, met with Ms. Mary McManus to discuss USTA's Petition for Rulemaking to initiate a proceeding to establish rules mandating cable-subscriber access to cable home wiring. The attached written material was distributed and discussed. The viewpoints expressed were consistent with USTA's written filings in the above referenced proceedings.

An original and a copy of this ex parte meeting are being filed in the Office of the Secretary. Please include them in the public record of this proceeding.

Respectfully submitted,

Mary McDermott
Vice President
Legal & Regulatory Affairs

Attachment

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

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JUL 27 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
RM-

JOINT PETITION FOR RULEMAKING OF MEDIA ACCESS PROJECT,
UNITED STATES TELEPHONE ASSOCIATION, AND
CITIZENS FOR A SOUND ECONOMY FOUNDATION

MEDIA ACCESS PROJECT

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July 27, 1993

On February 1, 1993, the Commission adopted Cable Home Wiring rules¹ implementing section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").² The Cable Act of 1992 directed the Commission to formulate rules governing the disposition of cable home wiring after a cable subscriber terminates service.

Media Access Project, United States Telephone Association and Citizens for a Sound Economy Foundation (Petitioners) commend the Commission for the expeditious manner in which it resolved the issue of access to cable home wiring after a cable subscriber terminates service.

A number of commenters asked that the Commission apply the rules at the time of installation.³ Others urged the Commission to adopt rules that are similar, if not identical, to those applied to telephone inside wiring.⁴

The Commission declined to broaden the rulemaking to include

¹ In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, February 1, 1993.

² Public Law 102-385, Section 16(d), 106 Stat. 1460 (1992).

³ See, for example, Comments of Liberty Cable Company, Inc., at 5, and Comments of the Wireless Cable Association International, Inc., at 7.

⁴ See, for example, Ex Parte Comments of the Consumer Federation of America at 1-2, Comments of Bell Atlantic at 4, Comments of USTA at 4, comments of the Utilities Communications Council at 4-5, Comments of Multiplex Technology, Inc., at 1, Comments of Building Industries Consulting Service International at 3, Comment of the Consumer Electronics Group, Electronics Industry Association at 5, and Comments of the American Public Power Association at 1-2.

consideration of these issues. The Commission did note, however, that consideration may be appropriate at some future time.

In particular, the Commission found that:

"Although we generally believe that broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings, because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this proceeding."⁵

Petitioners therefore request that the Commission initiate a new proceeding to determine how cable subscribers may have access to cable home wiring for the delivery of competing and complementary services before termination of service. Petitioners believe that cable television subscribers should have access to cable home wiring whether or not they have terminated service.

As the Commission well knows, cable and telephone technologies are converging. Cable firms may soon be offering telephone service,⁶ and telephone firms will be delivering cable services pursuant to the Commission's video dial tone decision.⁷ A wide range of new broadband services will soon be available to consumers. For example, members of the Consumer Electronic Group

⁵ REPORT AND ORDER, MM Docket No. 92-260, at 4.

⁶ For example, its plan to invest \$1.9 billion to install fiber optic cable throughout its system over with next four years will allow Tele-Communications, Inc., to offer local telephone service. Similarly, Comcast Corporation has demonstrated how, using wireless and cable technologies, telephone calls can be made without using the public network.

⁷ See, Telephone Company/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd. 5781 (1992). The Commission has approved one and has pending three video dialtone applications.

of the Electronic Industry Association (EIA) are developing a

"multi-faceted model for electronic services for the home, which is intended to standardize communications between home appliances and thereby to enable the development and deployment of a wide variety of home automation capabilities."⁸

EIA also notes that, "numerous cross industry alliances have been announced, and market definitions are blurring."⁹

In this environment, subscriber access to cable home wiring would remove a barrier to the delivery of new telecommunications services. Specifically, the cost and inconvenience of installing redundant wiring in a consumer's home would be avoided.¹⁰ Liberty Cable Company, Inc., a satellite master antenna television operator in New York City, found that "a subscriber's enthusiasm for competing services quickly dissipates if the subscriber perceives that he or she will encounter any difficulty in making the transition."¹¹ The cost of installing home wiring can also serve as an insurmountable barrier to new entrepreneurial firms offering

⁸ Comments of the Consumer Electronics Group, Electronics Industry Association at 5.

⁹ Ibid at 8. For example, pending before the Commission is a video dialtone application from Bell Atlantic which proposes to build a fiber-to-the-curb network in Dover Township, New Jersey and lease capacity for 60 channels to FutureVision of America.

¹⁰ The typical cost of installing cable inside wire is \$50 or more (see Comments of Bell Atlantic at 3.) In some areas the cost can be even higher. In the Washington, D.C. metropolitan area, for example, the typical cost is \$93 (see Comments of Bell Atlantic, at 3, fn 4).

¹¹ Comments of Liberty Cable, Inc., at 3.

"cutting edge" telecommunications services to consumers.¹²

Several commenters in the cable home wiring proceeding noted that cable operators can and do use their bottleneck control of broadband services into the home to thwart competition.¹³ The American Public Power Association (APPA), for example, described how the cable industry was able to hinder the City of Glasgow, Kentucky's proposal to offer a competing cable service. The City spent two years in court and hundreds of thousands of dollars in legal fees before overcoming the cable industry's attempts to prevent access to cable home wiring after termination.¹⁴

Petitioners believe that the Commission has provided reasonable protection for subscribers who terminate cable service. Petitioners now ask that the Commission initiate a new proceeding to determine how subscribers who have not terminated service can have equal access to competing and complementary services over existing cable home wiring.

New services such as video-on-demand are being made available

¹² For example, based on an average cost of \$50 per subscriber, the cost to install redundant home wiring for a video-on-demand service in a market with 50,000 subscribers could be as high as \$2.5 million (See Comments of Bell Atlantic at 3, fn 5).

¹³ See, for example, Comments of CFA at 4.

¹⁴ Comments of the American Public Power Association at 13. The Wireless Cable Association, Inc., also reports that "it is not unheard of for cable systems to threaten criminal action against homeowners who permit wireless cable operators to utilize inside cabling." See Comments of the Wireless Cable Association, Inc., at 4. WJB-TV Limited Partnership, a wireless cable operator, chose to rewire an entire building rather than engage in a legal battle with a prior cable operator regarding ownership of the inside wire. See Comments of WJB-TV Limited Partnership at 2-5.

to consumers who may or may not subscribe to cable television programming. For those who do, the decision to subscribe to a video-on-demand service may be in addition to their existing basic cable service or in place of premium cable movie channels such as HBO and Showtime. Petitioners believe that cable television subscribers should have access to cable home wiring for the delivery of video-on-demand services and that the Commission should act to ensure that incumbent cable operators do not use their bottleneck control to block competition and limit consumer choice.

The Commission recognizes that there are certain circumstances under which subscribers do, in fact, own the cable wiring in their homes prior to terminating service:

"The record reveals that, in many circumstances, the cable home wiring already belongs to the subscriber, having been transferred by the operator and/or paid for by the subscriber pursuant to specific agreement. In these situations further compensation is not warranted. For example, where the cable operator has transferred ownership of inside wiring at installation or termination of service, or has been treating the wiring as belonging to the subscriber for tax purposes, or the wiring is considered to be a fixture by state or local law in the subscriber's jurisdiction, then the subscriber already has the right to use the cable with an alternative provider without further compensation and may not be prevented from doing so by the cable operator."¹⁵
(emphasis added)

The Commission did not, however, address whether or not subscribers who already own cable home wiring may use it to receive competing and complementary services prior to terminating cable service.

The Commission should initiate a new rulemaking with the goal

¹⁵ REPORT AND ORDER, MM Docket No. 92-260, paragraph 15, at 8.

of creating a "level playing field" providing equal access to cable home wiring for all cable subscribers.

Petitioners believe that the Commission's telephone inside wiring rules provide a reasonable model for cable home wiring. In that proceeding, the Commission's goals were "to increase competition, to promote new entry into the market, [and] to produce cost savings which would benefit the ratepayers."¹⁶ To achieve these goals, the Commission

"...prohibited carriers from using claims of ownership of inside wiring as a basis for restricting the customers removal, replacement, rearrangement or maintenance of inside wiring that had ever been installed or maintained under tariff."¹⁷

That is, telephone companies must give customers unrestricted access to carrier-installed inside wiring on the customer's side of a demarcation point.¹⁸ Cable consumers should have the same access to cable inside wiring that telephone consumers have to telephone inside wiring and for the same reasons: to increase competition, promote market entry, produce cost savings, and to create a

¹⁶ In the Matter of Deteriorating the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Second Report and Order, p. 2. (released February 24, 1986).

¹⁷ Comments of Building Industry Consulting Service International, p. 4. See also Inside Wiring Reconsideration Order, CC Docket 79-105, 1 FCC Rcd 1190, 1195-96 (1986), remanded sub nom. NABUC v. FCC, 880 F. 2d 422 (D.C. Cir. 1989), Third Report and Order, 7 FCC Rcd 1334 (1992).

¹⁸ See In re Review of Sections 68.104 and 68.211 of the Commission's rules Concerning Connection of Single Inside Wiring to the Telephone Network and Petition for Modification of Section 68-211 of the Commission's Rules filed by the Electronic Industry Association, CC Docket No. 88-57, Report and Order, pp. 21-25 & n. 23 (released June 6, 1990).

competitive environment for the development of telecommunications services.

Adopting cable home wiring rules modelled after those for telephone inside wiring would further the primary goal of the Cable Act of 1992 to increase competition and enhance consumer choice in the cable television market.

The Commission has sufficient authority under the Communications Act of 1934, as amended, to adopt cable home wiring rules for all cable television subscribers.

The Communications Act gives the Commission the authority to adopt rules governing the provision of "all interstate... communications by wire or radio" including cable television services.¹⁹ It was this broad grant of authority that the Commission used to implement telephone CPE rules.

The Cable Act of 1992 specifically directs the Commission to adopt rules governing the disposition of cable home wiring after a subscriber has terminated service. Cable operators have seized upon this provision and, in effect, turned it on its head, arguing that it prohibits the Commission from adopting cable home wiring rules as requested by Petitioners herein.²⁰ In deciding not to adopt rules for subscribers who do not terminate service, however, the Commission used no such rationale. The Commission simply

¹⁹ United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968) (citing 47 U.S.C. 152(a)).

²⁰ See, Comments of the National Cable Television Association in Opposition to Petition for Reconsideration of the Report and Order of the Commission, 8 FCC 1435 (1993), at 9-10.

indicated that given the time constraints imposed by the Cable Act of 1992, the issue is best addressed in another proceeding. The Commission reserved final judgment on the issue for another time. The Commission did not agree that it lacked the authority to adopt such rules.

Indeed, the Commission has held that it has an affirmative obligation to regulate cable home wiring and other CPE prior to termination of service.²¹ As noted by Bell Atlantic,²² the Commission determined that Congress, "intended [these] regulations to encourage competition in the provision of equipment and installation."²³

Petitioners believe that applying the telephone inside wire rules to cable is fully consistent with the Commission's determination, and is necessary to allow all subscribers to use competing installation and maintenance services and have access to competing and complimentary video services.

While some parties will more broadly object and claim that the Commission should not intrude into the cable industry's operations, Commission action is entirely appropriate. As the Media Access

²¹ Rate Regulation, MM Docket No. 92-266, Report and Order at 170 (May 3, 1993) ("Section 623(b)(3)...directs the Commission to establish standards for setting...the rates for installation and lease of equipment" including "cable home wiring"); see also House Report No. 102-628, at 83 (June 28, 1991) (Cable equipment includes "internal wiring of private homes and for multiple dwelling units")

²² See, Reply of Bell Atlantic to Comments on Reconsideration. In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, at 3-4.

²³ Rate Regulation Order at 170, 180.

Project noted, the cable industry has benefitted "through receipt of significant benefits from Congress and local governments," such as easements and rights of way not available to other programmers.²⁴

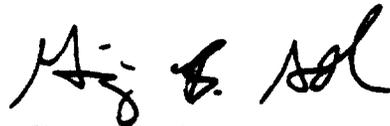
The Commission can and should act now to create fair competition for all providers and consumers of telecommunications services.

Conclusion

Petitioners urge the Commission to initiate a proceeding to examine the manner by which all consumers can have access to cable home wiring for the delivery of competing and complementary services.

Respectfully submitted,

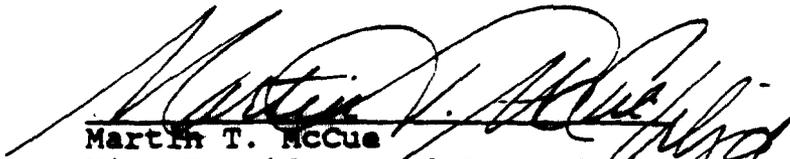
MEDIA ACCESS PROJECT



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²⁴ Comments of Media Access Project, p. 4.

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July 27, 1993

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EX PARTE



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January 27, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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Washington, DC 20554

RECEIVED
JUN 27 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Meeting On Cable Home Wiring, MM Docket No. 92-260 and MM-8380. In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, and Petition for Rulemaking to Establish Rules for Subscriber Access to Cable Home Wiring for the Delivery of Competing and Complementary Video Services, respectively.

Dear Mr. Caton:

On January 12, 1995, I participated in a roundtable discussion of the regulatory issues related to cable home wiring, which was moderated by Mr. Greg Vogt of the Common Carrier Bureau and was facilitated by Mr. Larry Walke and Ms. Jennifer Burton of the Cable Services Bureau. Other participants include representatives of the following organizations: Cable Telecommunications Association, Consumer Electronics Group/Electronic Industries Association, Liberty Cable Company, Media Access Project, National Cable Television Association, National Private Cable Association, Satellite Broadcasting Communications Association, Time Warner Entertainment Company, and Wireless Cable Association. USTA would like to add the essence of our remarks to the public record in the above-captioned proceedings.

USTA believes that cable customers must have ownership of and/or control over their inside wire. To achieve this, the cable industry must relinquish its control. This transition must occur whether or not customers terminate their incumbent cable service. That is the only way to ensure that customers, rather than video suppliers, make the choice of how to use that inside wire. The ownership and control aspects of the telephone industry's inside wire rules support the development of competition in the marketplace. The same principles of customer control should be incorporated into the cable regulations.

Mr. William F. Caton
page 2

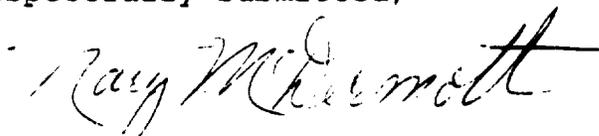
January 27, 1995

On the question of where the demarcation point between the cable network and the cable inside wire should be located, we urge the Commission to take a pragmatic approach. If the demarcation point is not physically accessible by the video suppliers chosen by the customer, the pro-competitive policy behind the Commission's current regulations will not be realized. We believe the Commission should seriously consider designating the demarcation point at the place where common plant meets the wiring dedicated to the individual subscriber. That point will almost always be physically accessible.

We also urge the Commission to grant our July 27, 1993 Petition for Rulemaking and initiate a proceeding to establish rules mandating cable-subscriber access to cable home wiring.

An original and two copies of this ex parte notice are being filed in the Office of the Secretary on January 27, 1995. Please include this notice in the public record of these proceedings.

Respectfully submitted,



Mary McDermott
Vice President and General Counsel

cc: Greg Vogt, Common Carrier Bureau
Jennifer Burton, Cable Services Bureau
Larry Walke, Cable Services Bureau