DOCKET FILE COPY ORIGINAL

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

FCC 95-503

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-260
and Competition Act of 1992:	)	
	)	
Cable Home Wiring	)	

FIRST ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 15, 1995 Released: January 26, 1996

By the Commission: Commissioner Chong issuing a statement.

Comment Date: March 18, 1996
Reply Comment Date: April 17, 1996

Table of Contents

Paragraph

I. Introduction 1
II. Order on Reconsideration 2
  A. Customer Access to Cable Home Wiring prior to Termination of Service 2
  B. Disposition of Cable Home Wiring upon Termination of Service 10
  C. Demarcation Point for Multiple Dwelling Units with Non-Loop-Through Wiring 23
  D. Multiple Dwelling Unit Buildings with Loop-Through Wiring 31
  E. Inclusion of Passive Splitters within Cable Home Wiring 35
III. Further Notice of Proposed Rulemaking 38
  A. Multiple Dwelling Unit Buildings with Loop-Through Wiring 38

B. Others' Rights to Cable Home Wiring 39
IV. Regulatory Flexibility Analysis 41
V. Procedural Provisions 53
VI. Ordering Clauses 57

Appendix A: Petitions for Reconsideration, Responses and Replies
Appendix B: Revised Rules

I. INTRODUCTION

1. In this *First Order on Reconsideration and Further Notice of Proposed Rulemaking*, we grant in part and deny in part petitions for reconsideration of the Commission's initial cable home wiring regulations implementing Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"),[1] and request comment on certain outstanding issues, as provided below. Generally, we: (1) deny the petitions for reconsideration of the Commission's cable home wiring rules, except (a) to specify the procedure a cable operator must follow when a subscriber voluntarily terminates cable service, if the operator wishes to remove the home wiring, and (b) to shorten from 30 days to seven business days the time period after termination of service within which the cable operator has the right to remove any home wiring it owns; and (2) issue a *Further Notice of Proposed Rulemaking* requesting comment on (a) whether the cable home wiring rules should apply to so-called "loop-through" configurations where all subscribers in a particular system elect to switch to an alternative multichannel video programming service provider, and (b) whether persons other than the individual subscriber should have the right to purchase cable home wiring under certain specific circumstances.

2. The Commission received three petitions for reconsideration of the *Report and Order* in MM Docket No. 92-260 ("*Cable Wiring Order*")[2] -- all from potential or current competitors to cable operators -- as well as replies to these petitions from cable operators.[3] The regulations adopted in the *Cable Wiring Order* state that cable operators, upon voluntary termination of service by a subscriber, must give the subscriber the opportunity to purchase the cable home wiring for no more than the per-foot replacement cost. Cable home wiring is defined as the internal cable wiring within the premises of the subscriber, beginning at the

---

[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 521, *et seq.* (1992). The 1992 Cable Act amends Title 6 of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 151 *et seq.*

[2] 8 FCC Rcd 1435 (1993).

[3] A list of parties who filed petitions for reconsideration, responses and replies in MM Docket No. 92-260 is attached as Appendix A.

demarcation point. The rules define the demarcation point as at or about 12 inches outside of where the wire enters the subscriber's premises or dwelling unit. If the subscriber declines to purchase the wiring, the operator must remove the wiring within 30 days, or make no subsequent attempt to remove it or restrict its use.[4] Petitioners' arguments include the following (a) that subscribers should be permitted to purchase or to control the cable home wiring upon installation rather than upon termination of service, (b) that cable operators should be prohibited from misrepresenting whether they intend to remove or abandon the home wiring following termination of service, (c) that the demarcation point for multiple dwelling units should be relocated, (d) that loop-through wiring configurations should be included within our rules under certain circumstances, and (e) that passive cable equipment should be included within the definition of cable home wiring.

II. ORDER ON RECONSIDERATION

A. Customer Access to Cable Home Wiring prior to Termination of Service

1. Background

3. Section 16(d) of the 1992 Cable Act requires the Commission to "prescribe rules concerning the disposition, after a subscriber terminates service, of any cable installed by the cable operator within the premises of such subscriber."[5] The Commission's regulations implementing Section 16(d) provide that, when a customer voluntarily terminates service, the cable operator must give that subscriber the opportunity to acquire the wiring before the operator removes it. The subscriber may purchase the wiring inside his or her premises up to the demarcation point, which we defined as a point at or about twelve inches outside the subscriber's premises. The operator may not charge the subscriber any more than the replacement cost of the wire, priced on a per-foot basis. If the subscriber declines to purchase the wiring, the operator must remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.[6]

4. In the 1993 *Cable Wiring Order*, we said that it was not "necessary or appropriate under the statute" to apply our cable home wiring rules prior to the time the customer terminates cable service.[7] We noted that the plain language of Section 16(d) of the 1992 Cable Act refers only to the disposition of cable home wiring after termination of service, and that cable home wiring is different from telephone wiring in that, for example, cable operators have the responsibility to prevent signal leakage which can cause harmful

---

[4] 47 C.F.R. §§ 76.801, 76.802.

[5] Communications Act, § 624(i), 47 U.S.C. § 544(i).

[6] 47 C.F.R. §§ 76.5(ll) - (mm), 76.801, 76.802.

[7] *Cable Wiring Order*, 8 FCC Rcd at 1435.

interference to licensed radio spectrum users, a responsibility telephone companies do not have.[8] We also cited the House Report on the 1992 Cable Act which stated that Section 16(d) itself "does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service."[9] At the same time, the Commission stated:

> [a]lthough 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.[10]

2. *Petitions*

5. The NYNEX Telephone Companies, New England Telephone and Telegraph Company and New York Telephone Company (collectively, "NYNEX") urge the Commission to apply the cable home wiring rules prior to termination of service so that the subscriber may control cable home wiring immediately upon installation.[11] NYNEX asserts, among other things, that consumers should be able to control the cable home wiring upon installation so that they can obtain additional services from other multichannel video programming service providers through simultaneous use of the wire's spare capacity.[12] The United States

---

[8] *Id.* at 1436.

[9] *Id.* at n.13, *citing* H.R. Rep. No. 628, 102d Cong., 2d Sess., at 118 (1992) ("House Report").

[10] *Id.* at 1436.

[11] NYNEX Petition at 5; *see also* Electronic Industries Association, Consumer Electronics Group ("EIA/CEG") Comments at 3; Ex Parte Letter from Barbara N. McLennan, Staff Vice President, Technology Policy, Consumer Electronics Group of the Electronics Industries Association, to William F. Caton, Acting Secretary, Federal Communications Commission (January 26, 1995) at 1. EIA/CEG favors allowing consumers to own or lease their cable home wiring and to choose the quality, configuration and usage of wiring that best suit their needs. This approach, EIA/CEG contends, would limit the exercise of monopoly power in the wiring market and make it easier for consumers to shift from cable service to an alternative video distribution service. EIA/CEG Comments at 3; EIA/CEG Ex Parte Letter, *supra*, at 1.

[12] NYNEX Petition at 6.

Telephone Association ("USTA") and the Bell Atlantic telephone companies[13] ("Bell Atlantic") support NYNEX's proposal.[14]

6. On the other hand, the National Cable Television Association, Inc. ("NCTA"), states that the Commission's current rules fully effectuate the statutory language and the underlying purposes of the 1992 Cable Act.[15] NCTA and Time Warner Entertainment Company, L.P. ("Time Warner"), claim that the Commission lacks the authority under the 1992 Cable Act to mandate that operators convey ownership to subscribers at the time of installation.[16]

7. Time Warner also contends that any "forced abandonment" of a cable operator's ownership interest in home wiring, whether before or after termination of service, constitutes an impermissible "taking" of property without just compensation.[17] Specifically, Time Warner asserts that the Commission's current rules violate the takings clause by providing that if a cable operator fails to remove its home wiring within 30 days following termination of service, the operator is prohibited from subsequently attempting to remove the wiring or restrict its use.[18]

3. Discussion

8. The Commission's current cable home wiring rules implement the specific directive of Section 16(d) of the 1992 Cable Act, i.e., to establish rules governing the disposition of cable home wiring upon termination of cable service. Our current rules promote the goals of Section 16(d), which are to protect customers from unnecessary disruption and expense caused by the removal of home wiring and to allow subscribers to use

---

[13] As of the date of their filing in this proceeding, the Bell Atlantic telephone companies were The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company and New Jersey Bell Telephone Company.

[14] USTA Supporting Statement at 3-4; USTA Reply Comments at 1-5; Bell Atlantic Reply at 2-3; *see also* GTE Supporting Comments at 2.

[15] NCTA Opposition at 1.

[16] *Id.* at 10; Time Warner Response at 11.

[17] Time Warner Response at 11-12.

[18] *Id.*

the wiring for an alternative multichannel video programming delivery system.[19] On reconsideration, we are not persuaded, based on the record in this proceeding at this time, to expand our cable home wiring rules under Section 16(d) of the 1992 Cable Act. At the same time, we recognize that new competitors, such as wireless cable, satellite master antenna television services ("SMATVs") and telephone companies, and new technologies, such as video dialtone, are likely to change the video programming delivery marketplace. The Commission must therefore consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding in determining whether to expand the cable home wiring rules in ways that could have competitive implications for cable operators and other multichannel video programming providers, as well as other providers of telecommunications services. Given the potential for the convergence of telephone, data and video technologies, it may be appropriate to consider requiring cable operators to permit subscriber access to inside wiring prior to termination of service in order to promote consumer choice and competition. Parity with telephone inside wiring may also be desirable if a cable operator wants to provide telephone or other common carrier service over its coaxial cable, but the record in this proceeding does not provide us with sufficient information upon which to base such a determination. The Commission will therefore further explore this issue in the *Notice of Proposed Rulemaking* ("*NPRM*") in CS Docket No. 95-184 being adopted concurrently herewith.

9. In addition, we determine that our current rules (as well as our revised rules described below) do not constitute an unconstitutional taking, because they implement a clear statutory directive and provide that, upon termination of service, the cable operator can receive just compensation for its home wiring or remove the wiring. See *United States v. Riverside Bayview Homes, Inc.*, which states that "so long as compensation is available for those whose property is in fact taken, the governmental action is not unconstitutional."[20] Nor do we believe that our rules are rendered unconstitutional by the fact that the cable operator is deemed to have waived the availability of compensation if it fails to remove its home wiring within a given time period following termination of service. Compensation is available, under reasonable terms and conditions, if the cable operator chooses to take that option. See *United States v. Locke*,[21] which rejects a Fifth Amendment taking claim where the plaintiff failed to comply with a statutory requirement for filing a mining claim that would have indicated its intent to retain its property right. *Texaco, Inc. v. Short*[22] notes that the U.S. Supreme Court has never required giving compensation to a private property owner who fails

---

[19] *See* House Report at 118; S. Rep. No. 92, 102d Cong., 1st Sess., at 23 (1991) ("Senate Report"); *see also Cable Wiring Order*, 8 FCC Rcd at 1435; *Notice of Proposed Rulemaking* in MM Docket No. 92-260, 7 FCC Rcd 7349.

[20] 474 U.S. 121, 128 (1985).

[21] 471 U.S. 84, 107 (1985).

[22] 454 U.S. 516, 530 (1982).

to take reasonable actions imposed by law for the consequences of his own neglect. We note that the prescribed time period (formerly 30 days and, as described below, now seven business days) within which a cable operator may remove the cable home wiring it owns provides the operator with a reasonable opportunity to remove the wire if it so wishes.

10. With regard to NYNEX's contention that consumer access to cable home wiring prior to termination of service would allow consumers to obtain broadband services from more than one multichannel video programming service provider simultaneously over one coaxial cable, it is our understanding that, while such simultaneous use may be possible in the laboratory, it is not technically or economically feasible in the marketplace at the present time.[23] Apparently, for example, broadband networks are highly susceptible to signal impairments from outside sources, such as over-the-air broadcast signals, a danger that would be magnified significantly by the insertion of an additional broadband service within the wiring itself.[24] Therefore, we deny NYNEX's petition as premature insofar as it seeks rules designed to allow simultaneous use by a broadband video competitor of excess capacity on cable home wiring. Furthermore, we note that the current cable wiring rules do not prohibit simultaneous use, regardless of whether the cable operator or the subscriber owns or controls the cable home wiring. Because we agree that simultaneous use of the same wire by competitors could promote competition and increase consumer choice, however, if simultaneous use of cable wiring becomes economically and technically feasible, the Commission may address any issues raised at that time.

B. Disposition of Cable Home Wiring upon Termination of Service

1. Background

11. The *Cable Wiring Order* provides that when a subscriber calls to voluntarily terminate cable service, the operator is required, if it proposes to remove the wiring, to inform the subscriber (a) that he or she may purchase the wire, and (b) what the cost per-foot charge is.[25] If the subscriber declines to purchase the home wiring, the operator must remove it within 30 days or lose the right to remove it or restrict its use.[26] These rules were designed to advance Section 16(d)'s goals: to avoid the disruption of having the wiring removed and to

---

[23] *See, e.g.*, TKR Cable Company ("TKR") Opposition at 5-6; Time Warner Response at 14.

[24] *See, e.g.*, Ex Parte Letter from Continental Cablevision, Inc. to William F. Caton, Secretary, Federal Communications Commission (January 26, 1995).

[25] *Cable Wiring Order*, 8 FCC Rcd at 1438.

[26] *Id.*; *See* 47 C.F.R. § 76.802.

permit subscribers to use the wiring with an alternative video service provider.[27]

2. *Petitions*

12. Wireless Cable Association International, Inc. ("WCA") asserts that cable operators may attempt to deter subscribers from switching to alternative multichannel video programming service providers by claiming that they intend to remove the cable wiring even if they intend to abandon it.[28] WCA posits that the cable operator might falsely proclaim such an intent in order to prevent an alternative provider from using the wiring during the 30-day period afforded the operator to remove the wiring. WCA argues that a cable operator could thus force a subscriber who wants to receive service from an alternative provider to either: (a) go without service for up to 30 days; (b) tolerate the inconvenience and "visual blight" of having a second cable installed; or (c) pay for cabling that the cable operator generally abandons. WCA claims that, since some subscribers might elect to remain with the incumbent cable operator rather than face such a choice, the current rules could defeat the purpose behind Section 16(d).[29]

13. WCA proposes that the Commission take several steps to address its concern: (a) decrease the period following termination during which cable operators must remove cable home wiring from 30 days to seven days; (b) prohibit cable operators from terminating service until either the cable is removed or the seven-day period expires; and (c) establish procedures for the filing of complaints against cable operators that demonstrate a pattern of misrepresenting their intentions to remove wiring.[30] In addition, WCA urges the Commission to bar cable operators from discriminating against consumers who terminate service in favor of an alternative service provider.[31] Finally, WCA suggests that the "appointment window" rules adopted in MM Docket No. 92-263 (Customer Service Standards)[32] apply to appointments to remove wiring, and that a failure to comply would result in the automatic transfer of the wiring to the subscriber.[33] Several parties have filed comments in support of

---

[27] *Cable Wiring Order*, 8 FCC Rcd at 1435.

[28] *See* WCA Petition at 3-5.

[29] *Id.*

[30] *Id.* at 5-6.

[31] *Id.* at 6-7.

[32] *See* 47 CFR § 76.309(c)(2)(iii).

[33] WCA Petition at 5, n.8.

WCA's proposals.[34]

14. In response, TKR Cable Company argues that WCA's claim that operators will falsely state their intention to remove the wiring is "speculative," and, even if true, would not warrant action on reconsideration.[35] Similarly, Time Warner asserts that WCA's concern that cable operators will discriminate against customers who choose an alternative service provider is unfounded because a cable operator cannot require any subscriber to purchase his home wiring, and that WCA's proposal to shorten the period for operators to remove or abandon the wiring from 30 days to seven days is "simply another twist on the argument articulated by NYNEX supporting forced abandonment of the wiring upon installation."[36] Moreover, NCTA argues that WCA's proposals are merely an attempt by alternative video programming service providers to gain a "free ride" off wiring installed by and belonging to the incumbent cable operator. As an alternative, NCTA states that alternative providers could offer to purchase the wiring from the incumbent operator, or at least offer to reimburse the subscriber if the subscriber chooses to purchase the wiring.[37] NCTA further argues that the 30-day removal period ensures that subscribers have ample time to decide whether or not to purchase the wiring.

15. In reply, WCA asserts that none of the responses addresses the fundamental unfairness of permitting cable operators to discriminate against subscribers who terminate service in favor of an alternative service provider.[38] WCA argues that, pursuant to the uniform pricing mandate of the 1992 Cable Act, cable operators should be prohibited from establishing separate purchase policies for those who terminate service in order to subscribe to another distributor's offering.[39] WCA further states that NCTA's argument that the alternative service provider could purchase the wiring ignores two points: first, the alternative provider often cannot use the incumbent operator's wiring, and thus a delay in the removal of the wiring forces the consumer either to have two wires installed or to delay installation of the new service; second, there is an anti-consumer impact of fraudulently inducing anyone (including the alternative service provider) to purchase home wiring that the cable operator

---

[34] *See* USTA Supporting Statement at 2; WJB-TV Limited Partnership Response at n.2; Bell Atlantic Response at n.7.

[35] TKR Opposition at 6-7.

[36] Time Warner Response at 14-15 and n. 29.

[37] NCTA Opposition at 2-3.

[38] WCA Reply at 3-4.

[39] *Id.* at 4-5. *See also* WCA Petition at 6-7.

intends to abandon, since that cost will ultimately be passed on to the consumer.[40] Regarding its proposal to shorten the length of time afforded a cable operator to remove home wiring that is not purchased by a terminating subscriber, WCA asserts that Time Warner provides no factual support for its claim that requiring the removal of home wiring within seven days is tantamount to a forced abandonment.[41] Indeed, WCA argues that such a suggestion is "absurd," given that NCTA's own voluntary customer standards, and the Commission's customer service standards, provide that service interruptions generally must be repaired within one day and that standard new installations must be complete within seven business days.[42] Finally, WCA asserts that NCTA's argument that the thirty-day time period ensures that subscribers have ample time to determine whether to purchase the wiring is "disingenuous, at best," since the thirty day period for removal of the home wiring does not begin running until the subscriber decides whether or not to make a purchase.[43]

16. In addition, Ameritech New Media Enterprises, Inc. ("Ameritech") proposes that ownership of cable home wiring should transfer to the subscriber upon termination.[44] Ameritech proposes that, at a minimum, in cases of voluntary termination where a subscriber is notified of the right to purchase his or her home wiring and the subscriber exercises that right, constructive ownership should vest with the subscriber immediately and the subscriber should be free to authorize the connection of the wiring to a competing service provider. Ameritech asserts that failure of the incumbent cable provider to notify the subscriber of his or her right to purchase the home wiring upon termination should result in the immediate transfer of ownership rights in the wiring to the subscriber.[45]

3. Discussion

17. As we noted in the *Cable Wiring Order*, the purpose of Section 16(d) is to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination, and to subsequently utilize that wiring for an alternative video programming service.[46] While we believe that our current

---

[40] *Id.* at 5-6.

[41] *Id.* at 6.

[42] *Id.* at 6-7. *See also* WCA Petition at 5.

[43] *Id.* at n.11

[44] *See* Ex Parte Letter from Ameritech to William F. Caton, Acting Secretary, Federal Communications Commission (September 7, 1995).

[45] *Id.*

[46] *Cable Wiring Order*, 8 FCC Rcd at 1435.

rules advance these goals,[47] we believe that they do not address certain issues -- such as when actual control of the home wiring transfers to the subscriber -- that could cause needless consumer confusion and marketplace uncertainty. We therefore believe that the goals of Section 16(d) would be better served if our rules set forth a simple, clear process by which: (a) consumers can obtain, in a single contact, the information they need to decide whether they wish to purchase their home wiring upon termination; (b) consumers can thereafter quickly and easily use the wiring to connect to an alternative video programming service provider; and (c) cable operators' legitimate property rights are protected. Thus, we hereby amend our rules regarding the disposition of home wiring upon the voluntary termination of service as follows.

18. During the initial telephone call in which a subscriber advises the cable operator that he or she is voluntarily terminating service, the operator -- if it owns and intends to remove the home wiring -- must inform the subscriber of four things:

(a) that the cable operator owns the home wiring -- as discussed in the *Cable Wiring Order*, the record reveals that, in many circumstances, the subscriber already owns the home wiring at termination (e.g., where the operator has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture); it is the operator's responsibility to maintain adequate records to document its ownership;[48]

(b) that the cable operator intends to remove the home wiring;

(c) that the subscriber has a right to purchase the home wiring; and

(d) what the per-foot replacement cost and total charge for the wiring would be, including the replacement cost for any passive splitters attached to the wiring on the subscriber's side of the demarcation point[49] -- our current rules state that the operator

---

[47] Again, our current rules provide that when a subscriber calls to voluntarily terminate cable service, the operator is required, if it proposes to remove the wiring, to (a) inform the subscriber that he or she may purchase the wire, and (b) what the cost per foot charge is. *Cable Wiring Order*, 8 FCC Rcd at 1438.

[48] *Cable Wiring Order*, 8 FCC Rcd at 1437. A "fixture" is an article of personal property that has been so annexed to the realty that it is regarded as part of the land. *See Black's Law Dictionary* 574 (5th ed. 1979).

[49] *See* Section II.E. below for our discussion of the inclusion of passive splitters within the definition of cable home wiring.

must inform the subscriber of the per-foot replacement cost,[50] and that its charge for the wiring may be based on "a reasonable approximation" of the length of cabling in the subscriber's premises.[51] An operator has two options for making a "reasonable approximation" of the total charge during the contact terminating service. First, the operator can develop schedules to make such approximations based on readily available information, such as whether the subscriber lives in a single family dwelling or an apartment, the number of outlets installed, or the number of television sets in use. If the operator chooses to develop such schedules, it must place them in a public file and make them available for public inspection during regular business hours. In the alternative, the operator may maintain records reflecting the actual amount of home wiring installed on subscribers' premises, but this information must be available for calculating the total charge for the wiring during the initial phone call.

Where an operator fails to adhere to the above procedures, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use. By referring to "subscriber" herein, we do not intend to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf.

19. We believe that the vast majority of subscribers who terminate cable service do so over the telephone. If, however, a subscriber voluntarily terminates cable service in person (i.e., at the cable operator's offices), the same procedures apply. If a subscriber requests termination in writing, it is the operator's responsibility -- if it intends to remove the wiring -- to make reasonable efforts to contact the subscriber prior to the date of service termination and provide the subscriber with the information set forth above. Again, where an operator fails to comply with these procedures, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use.

20. If the cable operator informs the subscriber as described above, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to

---

[50] In the *Cable Wiring Order* (at n. 39), we stated that we expected the per foot charge to be based on the replacement cost of coaxial cable in the community; for instance, we noted that the record indicated that new coaxial cable was being sold for six cents per foot by District Cablevision in Washington, D.C.

[51] *Cable Wiring Order*, 8 FCC Rcd at 1438.

authorize a competing service provider to connect with and use the home wiring.[52] We believe that such a transfer of control presents no Fifth Amendment difficulties, since the operator will ultimately be compensated for its wiring (at which point actual ownership of the wiring will transfer to the subscriber).[53] We are, however, cognizant of the potential for harmful signal leakage if this change-over is mishandled. The Commission has repeatedly expressed its concern over the threat posed by excessive signal leakage, and in particular the threat to aeronautical communications and other safety-of-life users that operate over the same frequencies.[54] Thus, where the incumbent cable operator has not yet terminated service and "capped off" its line,[55] the alternative video programming service provider will be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements.[56] If there is no alternative provider -- i.e., if the subscriber is terminating service but will not be using the home wiring to receive another multichannel video service -- the cable operator will remain responsible for properly capping off its own line. We require incumbent cable operators to take reasonable steps within their control to ensure that the alternative service provider has access to the home wiring at the demarcation point (e.g., by providing prompt access to the cable operator's lockbox where the placement of the lockbox impedes access to the demarcation point), and for incumbents and alternative multichannel video programming delivery service providers to minimize the potential for signal leakage, theft of service and unnecessary disruption of the consumer's premises.

---

[52] Of course, as NCTA states, the alternative video programming service provider is free to reimburse the subscriber for the cost of the home wiring. We expect such reimbursement to be a common practice, since from both an economic and customer relations standpoint, reimbursing a subscriber for the purchase of existing home wiring will almost certainly be preferable to re-wiring the premises.

[53] *See United States v. Riverside Bayview Homes*, 474 U.S. 121, 128 (1985) (Fifth Amendment does not prohibit "takings," only uncompensated ones).

[54] *See, e.g., Amendment of Part 76 of the Commission's Rules to Add Frequency Channelling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems*, Second Report and Order in Docket No. 21006, 99 F.C.C.2d 512 (1984); *recon. denied*, 100 F.C.C.2d 117 (1985).

[55] "Capping off" is a procedure whereby a terminating "cap" is placed over a wire to prevent potentially harmful signal leakage.

[56] *See* 47 C.F.R. §§ 76.605(a)(13) and 76.610 -76.617. Among other sanctions, the Commission has the authority to impose forfeiture penalties for violations of its signal leakage rules of up to $25,000 for each violation or each day of a continuing violation, not to exceed $250,000 for a single act or failure to act. *See* Communications Act, Section 503(b), 47 U.S.C. § 503(b).

21. If, on the other hand, the subscriber declines to purchase the home wiring, the operator will have seven business days, rather than the current 30 days, to remove the wiring. If the operator does not remove the home wiring within this seven business day period, the operator may make no subsequent attempt to remove it or restrict its use. We believe that requiring subscribers to wait 30 days before learning whether the cable operator would remove its wiring causes needless uncertainty for the consumer and the possibility of a lengthy disruption in service. We also believe that, under normal operating conditions, it is not unreasonable to require cable operators to remove their wiring within seven business days. We note, in this regard, that the Commission's customer service standards, and NCTA's own voluntary standards, provide that cable operators should perform standard installations within seven business days.[57] We agree with WCA that if cable operators can be expected to install home wiring within seven business days, it is not unreasonable to expect them to remove that wiring within the same time frame.[58] However, we decline at this time to apply the Commission's "appointment window" rules to appointments to remove wiring; we believe that WCA has not submitted sufficient evidence to demonstrate that such a change is necessary at this time. Given the uniform federal and industry standard on installations, we reject Time Warner's contention that a seven-day removal period is a forced, rather than a voluntary, abandonment of property. It is the operator's failure to act within a reasonable time after the subscriber requests that its wiring be removed -- not the Commission's rule -- that extinguishes the cable operator's rights.[59] We also reject NCTA's assertion that a 30-day removal period is required to ensure that consumers have adequate time to decide whether or not to purchase the wiring. If the subscriber asks for more time to make a decision on whether to purchase the home wiring, the seven business-day period will not begin running until the subscriber declines to purchase the wiring. Until the subscriber contacts the operator with a decision, he or she may not use the wiring to connect to an alternative service provider.

22. We believe that the above procedures, although not unduly burdensome, may not be necessary in most circumstances. We understand that cable operators typically abandon cable home wiring because the cost and effort required to remove it generally outweigh its value. Abandoning the wiring also permits easy reconnection if a subscriber later decides to re-institute service. Accordingly, in most cases, the cable operator may simply remain silent on the subject of home wiring when the subscriber requests termination of service. If, for whatever reason, the cable operator does not discuss the disposition of the

---

[57] 47 C.F.R. § 76.309(c)(2); *see Notice of Proposed Rulemaking* in MM Docket No. 92-263, 7 FCC Rcd 8641, 8643-44 (1993) (noting NCTA standard and that Congress suggested that the NCTA standard may be an appropriate federal "benchmark").

[58] *See* WCA Petition at 5; WCA Reply at 7.

[59] *See Texaco*, 454 U.S. at 530 (noting that the Court has never required compensation to a private property owner who fails to take reasonable actions imposed by law for the consequences of his own neglect).

home wiring with the subscriber in accordance with the above procedures, the operator will be deemed to have relinquished immediately any and all ownership interests in the home wiring. Thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use.

23. While we acknowledge WCA's concerns that cable operators could misrepresent their intention to remove the wiring, or that operators may discriminate against subscribers who terminate service in favor of an alternative provider, there is no evidence in the record for us to conclude that these are significant problems. Moreover, we believe we have alleviated WCA's concern regarding subscribers being without service for up to 30 days by requiring cable operators to remove the home wiring within seven business days. Also, a subscriber could be assured of continuous service simply by agreeing to purchase the home wiring at termination of service.[60]

24. As stated above, we believe that the above clarifications and modifications will further the purposes of Section 16(d). Consumers will be presented with the information they need regarding their home wiring in a single telephone call, and can quickly and easily use the wiring to connect to an alternative video programming service. Incumbent operators' responsibilities are clearly defined and their property rights protected. Alternative video programming delivery service providers will be able to assure potential customers that switching services will not be an onerous process and that their service will not be disrupted.

C. Demarcation Point for Multiple Dwelling Units with Non-Loop-Through Wiring

1. Background

25. Section 16(d) of the 1992 Cable Act states that the Commission shall prescribe rules concerning cable wire "within the premises of [the] subscriber."[61] Section 76.5(ll) of the Commission's rules defines cable home wiring as the "internal wiring contained within the premises of a subscriber which begins at the demarcation point."[62] Under the current rules, the demarcation point is the point from which the customer has the right to purchase cable home wiring upon voluntary termination of service, the location from which the subscriber may control the internal home wiring if he or she owns it, and the point where a potential alternative multichannel video programming service provider can attach its wiring to the subscriber's wiring in order to provide service. The Commission's rules set the demarcation

---

[60] Again, we believe that, as a matter of economics and customer relations, alternative video programming service providers may often reimburse subscribers for the cost of the home wiring.

[61] Communications Act, § 624(i), 47 U.S.C. § 544(i).

[62] 47 C.F.R. § 76.5(ll).

point for single dwelling units "at (or about) twelve inches outside of where the cable wire enters the subscriber's premises," and for multiple dwelling units "at (or about) twelve inches outside of where the cable wire enters the subscriber's [individual] dwelling unit."[63] The *Cable Wiring Order* states that this rule is consistent with the legislative history and comments, and that it gives alternative providers adequate access to cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises.[64]

26. The wiring in multiple dwelling unit buildings is generally in either a non-loop-through or loop-through configuration. In a non-loop-through configuration, each subscriber has a dedicated line extending from a trunk or feeder line to the individual's premises. The point at which the drop meets the feeder line in multiple dwelling unit buildings is usually in a security box or utility closet. Depending on the size and layout of the multiple dwelling unit building, security boxes can be located on each floor on a stairwell wall or in a closet, or at a single point either inside a basement or outside the multiple dwelling unit building. A loop-through configuration is one in which a single cable provides service to a group of subscribers by being strung from one subscriber's unit to the next subscriber's unit in the same building. See Section II.D. below for our discussion of loop-through wiring configurations.

2. Petitions

27. NYNEX asks that the Commission reconsider its decision to locate the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable enters a subscriber's individual dwelling unit.[65] Where there are active electronics located in the multiple dwelling unit, NYNEX contends that "subscriber control should extend to the point at which unpowered coaxial cable begins."[66] Where there are no active electronics located in the multiple dwelling unit, NYNEX asserts that "subscriber control of cable home wiring should extend to the grounding block, or if there is no grounding block, to an interface point established on the exterior of the multiple unit premises."[67] NYNEX states that the Commission's current rules are anti-competitive because they require an alternative cable service provider to install duplicate wire up to the twelve-inch point outside of where the wire enters the subscriber's premises, which would either be prohibitively expensive or

---

[63] 47 C.F.R. § 76.5(mm)(1)-(2) (1992); *see also Cable Wiring Order*, 8 FCC Rcd at 1437.

[64] *Cable Wiring Order*, 8 FCC Rcd at 1437.

[65] The demarcation point for single dwelling unit installations is not an issue raised on reconsideration.

[66] NYNEX Petition at 3.

[67] *Id.* at 4-6.

impossible due to space limitations or the location of the wiring inside a wall in a building.[68]

28. Liberty Cable Company, Inc. ("Liberty"), asks that the demarcation point for multiple dwelling units be at the point outside a subscriber's premises and within the common areas of the multiple dwelling unit building where the individual subscriber's wires can be detached from the cable operator's common wires without harming the multiple dwelling unit and without interfering with the cable operator's provision of service to other residents in the building.[69] Liberty contends that this would allow alternative multichannel video programming service providers to access existing cable home wiring without disrupting either the subscriber's home or the multiple dwelling unit building's common area, and would enhance competition by making it easier for the subscriber to switch from one alternative multichannel video programming service provider to another.[70] In response to Time Warner's suggestion that any "forced abandonment" of cable wiring within a multiple dwelling unit building would constitute an impermissible taking, Liberty asserts that the inside wiring rules do not compel the permanent physical possession of the wiring by a third party, but merely regulate the manner in which the wiring is dealt with upon termination of the voluntary commercial relationship between the cable operator, the subscriber and the multiple dwelling unit building owner.[71] Citing *FCC v. Florida Power Corp.*,[72] Liberty argues that this type of regulation, affecting only the terms and conditions of a voluntary commercial relationship, does not constitute a taking.

29. WCA agrees with Liberty, stating that the Commission should establish the demarcation point in multiple dwelling units "at the point where the wire is solely dedicated to serving a single unit."[73] USTA supports the petitions for reconsideration submitted by WCA, Liberty and NYNEX in asking the Commission to define the demarcation point to be at a relatively convenient and cost effective access point.[74] USTA reasons that access to an alternative service provider should be no more burdensome than access by the existing provider.[75] EIA/CEG supports adoption of generalized demarcation policies for cable, based

---

[68] *Id.* at 3; *see also* Pacific Bell Comments at 1-2.

[69] Liberty Petition at 4-5; *see also* WJB-TV Response at 3.

[70] Liberty Petition at 2.

[71] *See* Liberty Response (November 14, 1994) at 7.

[72] 480 U.S. 245 (1987).

[73] WCA Reply at 7.

[74] USTA Supporting Statement at 2; USTA Reply Comments at 5-6.

[75] *Id.*

on the regulatory model now applied to telephone.[76]

30. On the other hand, NCTA, Time Warner and TKR Cable Company ("TKR") oppose Liberty's and NYNEX's proposals to change the demarcation point for multiple dwelling units, arguing that the proposals do not definitively measure the exact point of demarcation and are contrary to the plain language of the statute. They argue that Section 16(d) of the 1992 Cable Act states that the home wiring rules are to apply to "cable installed by the cable operator within the premises of [the] subscriber."[77] NCTA states that allowing a new service provider to go much beyond twelve inches invades the common wiring, which is the cable operator's property.[78] Time Warner recommends that the most practical demarcation point in multiple dwelling units is the wall plate in each individual unit, not beyond twelve inches from where the wiring enters the individual dwelling unit.[79]

3. Discussion

31. We deny reconsideration of our rule setting the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable wire enters the subscriber's dwelling unit. While the record in this proceeding does indicate that the Commission's current rules with regard to location of the demarcation point in multiple dwelling units may impede competition in the multichannel video programming delivery marketplace, the record is insufficient at this time to indicate whether a different demarcation point might better promote competition and consumer choice in the multichannel video programming delivery marketplace without an undue impact on competition in the market for other telecommunications services. We are concerned with more than simple competition in the broadband multichannel video programming market. We want to promote competition and consumer choice in all types of telecommunications markets through multiple technologies and services. The Commission therefore must consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding before modifying the cable home wiring rules in ways that could have competitive implications for cable operators and other telecommunications service providers. Specifically, before the Commission can address the demarcation point in this context, we need a more

---

[76] EIA/CEG Ex Parte Letter, *supra* note 11, at 1. *But see* Cable Telecommunications Association ("CATA") Ex Parte Comments (January 27, 1995) at 1-2 (treating cable and telephone infrastructures the same would, among other things, create a new "bottleneck" and the consumer would ultimately lose the opportunity to choose multiple broadband services from different providers).

[77] NCTA Opposition at 5 *citing* 47 U.S.C. § 544(i) (1992); Time Warner Response at 4; TKR Opposition at 2.

[78] NCTA Opposition at 5.

[79] Time Warner Response at 2.

complete record on several issues, including the impact of the convergence of telephone, broadband video and other technologies on the demarcation point location, and the appropriate level of compensation to be paid to a cable operator if the demarcation point is moved farther away from the subscriber's unit.

32. Accordingly, while we deny reconsideration of our current definition of the cable demarcation point for multiple dwelling unit buildings, we believe that it would be appropriate to revisit this issue in a broader competitive context -- in other words, one which takes into account all of the technical and legal factors that come into play with the convergence of telephone, broadband video and other technologies. We are, therefore, requesting comment on this demarcation point issue in our *NPRM* in CS Docket No. 95-184 being adopted concurrently herewith. We expect to act quickly in the *NPRM* proceeding to resolve the demarcation point issue.

D. Multiple Dwelling Unit Buildings with Loop-Through Wiring

1. Background

33. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire multiple dwelling unit building. Every subscriber on the loop is limited to receiving video services from the same provider; there is no capacity for individual choice. If the cable is broken or removed, signals to all succeeding units would be interrupted. In the *Cable Wiring Order*, the Commission excluded multiple dwelling unit loop-through wiring from the cable home wiring rules, reasoning that applying our rules to loop-through wiring would give the building manager or the initial subscriber control over cable service for all subscribers in the loop.[80] Because loop-through configurations are excluded from the home wiring rules, cable operators are not required to offer to sell the wire to subscribers upon termination of service, and no loop-through subscriber has the right to purchase that portion of the loop-through cable wiring located inside his or her dwelling unit. The ownership of loop-through wiring therefore depends on a number of factors (e.g., who installed the wire, whether the wire has been sold and state fixture law) and is not affected by our rules.

2. Petitions

34. NYNEX asks that loop-through cable be included in the home wiring rules and controlled by the multiple dwelling unit building owner. NYNEX and USTA also propose that the Commission require that loop-through and other configurations based on common use of unpowered coaxial cable be eliminated in all future multiple dwelling unit installations of

---

[80] *Cable Wiring Order*, 8 FCC Rcd at 1437.

cable home wiring.[81] Liberty also believes that loop-through systems should be included in the home wiring rules and placed under the control of the building owner, but only in the limited situation where all subscribers on a loop simultaneously decide to switch from one cable service provider to another.[82]

35. On the other hand, NCTA, Time Warner and TKR agree with the Commission's exclusion of multiple dwelling unit building loop-through configurations from the home wiring rules.[83] Time Warner argues that the frequent turnover of multiple dwelling unit residents makes inclusion of loop-through multiple dwelling units impractical.[84]

3. Discussion

36. On reconsideration, we continue to exclude loop-through wiring from our cable home wiring rules. Inclusion of loop-through systems within these rules would be impractical, in part because establishing a separate demarcation point for each subscriber on a loop-through system and deciding how much wiring each subscriber should have the option to buy are not feasible. Furthermore, loop-through configurations, by their nature, preclude individual subscriber control, an essential element of the Commission's cable home wiring rules. Therefore, cable operators are not required to offer to sell loop-through wiring to subscribers upon termination of service, and no loop-through subscriber has the right to purchase loop-through home wiring. We will, however, consider and request comment in our *Further Notice of Proposed Rulemaking* ("*FNPRM*") below regarding Liberty's proposal that we allow the building owner to purchase the home wiring when all of the subscribers on a loop simultaneously decide to switch to an alternative video programming service provider. We will also request comment on NYNEX's and USTA's proposal that we prohibit future loop-through wiring installations and our authority, if any, to do so.

---

[81] NYNEX Reply at 3; USTA Supporting Statement at 2. In addition, Bell Atlantic urges the Commission to bar exclusive contracts between cable operators and the owners or managers of multiple dwelling unit buildings, because such contracts allegedly circumvent the Commission's cable home wiring rules and deny residents the ability to choose between competing services. Bell Atlantic Response at 6. While the current record does not contain sufficient evidence to bear out Bell Atlantic's assertions -- and thus we do not address them further here -- the parties are free to raise this issue in the context of the *NPRM* in CS Docket No. 95-184, adopted concurrently herewith.

[82] Liberty Petition at 6.

[83] NCTA Opposition at 8; Time Warner Response at 8; TKR Opposition at 3-5.

[84] Time Warner Response at 8.

E. Inclusion of Passive Splitters within Cable Home Wiring

1. Background and Petitions

37. Section 76.5(ll) of the Commission's rules defines cable home wiring as the internal wiring contained within the subscriber's premises which begins at the demarcation point. The rule specifically excludes from cable home wiring any active elements such as amplifiers, converter or decoder boxes, or remote control units.[85] In its petition for reconsideration, Liberty asks the Commission to "clarify that cable home wiring includes passive ancillary equipment such as splitters and conduits or molding in which the cable is installed."[86] Liberty asserts that including such passive equipment within the definition of cable home wiring will allow Liberty and other cable competitors to avoid problems that arise when space constraints prohibit the installation of multiple splitters or conduits to access an individual subscriber's wires.[87] Time Warner and NCTA oppose this request, contending that is was the specific intent of Congress to exclude any cable equipment other than actual wiring.[88] Time Warner further contends that conduit and molding should be excluded from the Commission's definition of cable home wiring because they are not cable equipment, but rather the property of the premises owner. Time Warner states that, at a minimum, splitters, which are passive cable equipment, should only be considered part of the home wiring if located within, or up to twelve inches outside the subscriber's premises.[89]

2. Discussion

38. We grant Liberty's request that we include passive splitters within the definition of cable home wiring. Because passive splitters are a physically integral part of the home wiring, we believe that their exclusion could frustrate the purposes behind Section 16(d) of the 1992 Cable Act -- i.e., to permit subscribers to avoid the disruption of having their home wiring removed, and to subsequently utilize the home wiring for an alternative video programming service. For instance, if a cable operator is allowed to remove splitters attached to the home wiring without first offering to sell them to the terminating subscriber, the subscriber could be subjected to the same disruption and inconvenience that would occur if the home wiring was removed. In addition, we do not believe that it will harm the cable operator to be required to offer to sell splitters on the same replacement cost basis as wiring is to be offered. Therefore, operators will be required to offer to sell to a terminating subscriber

---

[85] 47 C.F.R. § 76.5(ll).

[86] Liberty Petition at 5.

[87] *Id.* at 5-6.

[88] Time Warner Response at 7; NCTA Opposition at 7-8.

[89] Time Warner Response at 6-8.

any passive splitters attached to the home wiring on the subscriber's side of the demarcation point, at no more than the replacement cost of the splitters.

39. However, we deny Liberty's request that other passive equipment be included within the cable home wiring definition. We agree with Time Warner that molding and conduit are not necessarily cable equipment and are often the property of the premises owner. In addition, we believe that, considering the wide variety of passive equipment and related property, it would be too burdensome to require cable operators to be prepared to quote the replacement cost of such equipment and property upon the subscriber's termination of service. Nevertheless, we understand Liberty's concern that cable operators not be permitted to use their ownership of other property relating to the cable home wiring to frustrate the purposes of our cable home wiring rules and Section 16(d) of the 1992 Cable Act. We will therefore prohibit cable operators from using any ownership interests they have in property located on the subscriber's side of the demarcation point, for example, cable molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Multiple Dwelling Unit Buildings with Loop-Through Wiring

40. We solicit comment on Liberty's request that the Commission require cable operators to allow a building owner to purchase loop-through wiring in the limited situation where all subscribers in a multiple dwelling unit building want to switch to a new service provider. We ask whether we should apply the same rules regarding compensation (i.e., wiring may be purchased at the per-foot replacement cost) and technical standards to loop-through wiring that we now apply to non-loop-through wiring. We solicit comment on the appropriate demarcation point for this limited application of the home wiring rules. We note, however, that we are concerned with allowing the multiple dwelling unit building owner to control the wiring since such control could arguably supersede subsequent subscribers' wishes. We therefore solicit comment on how to apportion control of a loop-through wiring system, including how to assure that subscribers have a choice of multichannel video programming service providers. We further solicit comment on whether we should prohibit future installations of loop-through wiring configurations, and whether we have the statutory authority to do so.

B. Others' Rights to Cable Home Wiring

41. We solicit comment on several issues raised in this proceeding regarding the rights of persons other than the subscriber or the cable operator to cable home wiring. For instance, it has been asserted that the Commission's cable home wiring rules do not apply when the owner of a multiple dwelling unit building terminates cable service for the entire

building in favor of an alternative multichannel video programming service provider.[90] According to the record, at least one cable operator has contended that no "voluntary termination by the subscriber," as provided in Section 76.802 of our rules,[91] has occurred when it is the building owner or condominium association that terminates the service, or at least that the subscriber has not voluntarily terminated the cable service.[92] In order to promote the goals of Section 16(d) and our rules thereunder, it may be appropriate for the subscriber (where there is a non-loop-through wire configuration) or the building owner (where there is a loop-through wire configuration) to be given the opportunity to purchase the cable home wiring under these circumstances. We request comment on this matter. In addition, we seek comment on whether this right of a building owner with a loop-through system should only apply if all of the individual subscribers want to terminate service and switch to a new video service provider, as described in Section III.A. above.

42. In addition, we ask for comment on the disposition of the cable home wiring in the event that a subscriber terminates cable service, elects not to purchase the wire and vacates the premises within the time period the operator has to remove the home wiring. Apparently some cable operators believe that our rule providing that the cable operator must remove the wire within 30 days (now seven business days) or make no subsequent attempt to remove it or to restrict its use does not apply if the subscriber vacates the premises before the 30-day (now seven-business-day) period elapses. We believe that, as long as the cable operator has been allowed access to the premises to remove its wiring if it so wishes, whether the subscriber vacates the premises has no bearing on the application of our rules, and that the cable operator must therefore remove the wire within seven business days[93] of the subscriber's termination of service, or make no subsequent attempt to remove it or to restrict its use, regardless of who subsequently resides in the premises. We request comment on this matter. Furthermore, we seek comment on whether, when the subscriber voluntarily terminating cable service does not own the premises, the premises owner should have the right to purchase the cable home wiring if and only if the subscriber elects not to purchase the wire.

---

[90] *See* Ex Parte Letter from William R. Gaston, President, Marco Island Cable, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (July 19, 1995).

[91] 47 C.F.R. § 76.802.

[92] *See* Marco Cable Ex Parte Letter, *supra* note 90, at Attachment.

[93] As discussed above, we are amending this rule so that operators will have seven business days to remove the wiring, rather than 30 days.

IV. REGULATORY FLEXIBILITY ANALYSIS

A. Final Regulatory Flexibility Act Analysis for the *First Order on Reconsideration*

43. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's final analysis with respect to the *First Order on Reconsideration* is as follows:

44. *Need and Purpose of this Action.* The Commission amends its rules pertaining to cable home wiring to better effectuate the purposes of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 544(i) (1992).

45. *Summary of Issues Raised by the Public in response to the Initial Regulatory Flexibility Analysis.* There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

46. *Significant Alternatives Considered and Rejected.* Petitioners representing cable interests and competitive video providers did not submit comments regarding the administrative burden of the home wiring rules.

B. Initial Regulatory Flexibility Act Analysis for the *Further Notice of Proposed Rulemaking*

47. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *FNPRM*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *FNPRM*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

48. *Reason for Action.* Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations regarding the disposition of cable wiring within the subscriber's premises after the subscriber terminates service. This *FNPRM* proposes to allow the multiple dwelling unit building owner to purchase the loop-through cable wiring in the situation where all subscribers on a loop in a multiple dwelling unit building want to simultaneously switch to the same alternative multichannel video programming service provider. This *FNPRM* also proposes: (a) to require that the subscriber (where there is a non-loop-through wire configuration) or the building owner (where there is a loop-through wire configuration) be provided with the opportunity to purchase the cable home wiring when the owner of a multiple dwelling unit building terminates cable service for the entire building in favor of an alternative multichannel

video programming service provider; (b) to clarify that, as long as the cable operator has been allowed access to the premises to remove its wiring if it so wishes, the cable operator must remove the wire within seven business days of the subscriber's termination of service, or make no subsequent attempt to remove it or to restrict its use, regardless of when the subscriber vacates the premises and who subsequently resides in the premises; and (c) when the subscriber voluntarily terminating cable service does not own the premises, to give the premises owner the right to purchase the cable home wiring, if and only if the subscriber elects not to purchase the wire.

49. *Objectives.* To propose rules which implement Section 16(d) of the 1992 Cable Act and promote its goals of protecting subscribers from unnecessary disruption and expense caused by the removal of home wiring and to allow subscribers to use the wiring for an alternative multichannel video programming service provider.

50. *Legal Basis.* Action as proposed for this rulemaking is contained in Sections 1, 4(i), 4(j) and 624(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j) and 544(i).

51. *Description, Potential Impact and Number of Small Entities Affected.* The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

52. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

53. *Federal Rules which Overlap, Duplicate or Conflict with these Rules.* None.

54. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

V. PROCEDURAL PROVISIONS

55. *Initial Paperwork Reduction Act of 1995 Analysis.* This *First Order on Reconsideration and Further Notice of Proposed Rulemaking* ("*Order and FNPRM*") contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this *Order and FNPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the *FNPRM*; OMB comments are due 60 days from the date of publication of this *Order and FNPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information