

on the respondents, including the use of automated collection techniques or other forms of information technology.

56. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

57. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before March 18, 1996 and reply comments on or before April 17, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

58. Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

VI. ORDERING CLAUSES

59. Accordingly, IT IS ORDERED that the Petitions for Reconsideration in MM Docket No. 92-260 are GRANTED IN PART and DENIED IN PART, as provided above herein.

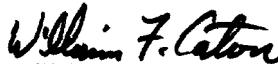
60. IT IS FURTHER ORDERED that Part 76 of the Commission's rules IS HEREBY AMENDED as shown in Appendix B. The portions of the *First Order on Reconsideration* imposing information collections will not go into effect until approved by the Office of Management and Budget.

61. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j) and 624(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 544(i), NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the

proposals, discussions, and statement of issues in this *Further Notice of Proposed Rulemaking*, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

62. IT IS FURTHER ORDERED that the Secretary shall send a copy of this *First Order on Reconsideration and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

Parties Who Filed Petitions for Reconsideration, Responses and Replies

Petitions For Reconsideration of the *Cable Wiring Order*

- Petition of Liberty Cable Company , Inc. for Reconsideration and Clarification, filed April 1, 1993 ("Liberty Petition")
- Petition for Reconsideration of the NYNEX Telephone Companies, filed April 1, 1993 ("NYNEX Petition")
- wireless Cable Association International, Inc. Petition for Partial Reconsideration, filed April 1, 1993 ("WCA Petition")

Responses to Petitions for Reconsideration

- Response of Bell Atlantic to Petitions for Reconsideration, filed May 18, 1993 (" Bell Atlantic Response")
- Comments of the Consumer Electronics Group of the Electronic Industries Association, filed May 15, 1993 ("EIA/CEG Comments").
- Supporting Comments of GTE Service Corporation, filed May 18, 1993 ("GTE Supporting Comments")
- National Cable Television Association, Inc. Opposition to Petitions for Reconsideration filed May 18, 1993 ("NCTA Opposition")
- Pacific Bell and Nevada Bell Comments on Petitions for Reconsideration, filed May 18, 1993 ("Pacific Bell Comments")
- Time Warner Entertainment Company, L.P. Response to Petitions for Reconsideration, filed May 18, 1993 ("Time Warner Response")
- Opposition of TKR Cable Company to Petitions for Reconsideration, filed May 18, 1993 ("TKR Opposition")
- Supporting Statement of the United States Telephone Association, filed May 18, 1993 ("USTA Supporting Statement")
- Response of WJB-TV Limited Partnership to Petitions for Reconsideration, filed April 15, 1993 ("WJB-TV Limited Partnership Response")

Replies to Responses to Petitions for Reconsideration

- Reply of Bell Atlantic to Comments on Reconsideration, filed June 3, 1993 ("Bell Atlantic Reply")
- Reply of the Nynex Telephone Companies to Oppositions to their Petition for Reconsideration, filed June 3, 1993 ("NYNEX Reply")
- Reply Comments of the United States Telephone Association, filed June 2, 1993 ("USTA Reply Comments")
- Wireless Cable Association Reply to Oppositions to Petitions for Reconsideration, filed May 28, 1993 ("WCA Reply")

APPENDIX B

Revised Rules

Part 76 of Title 47 of the Code of Federal Regulation is amended as follows:

1. Part 76.5 is amended to read as follows:

Section 76.5(II) Cable home wiring.

The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

2. Section 76.802 is amended to read as follows:

Section 76.802 Disposition of Cable Home Wiring.

(a) Upon voluntary termination of cable service by a subscriber, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the cable home wiring multiplied by the length in feet of the cable home wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point. If the subscriber declines to acquire the cable home wiring, the cable system operator must then remove it within seven (7) business days, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(b) During the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator -- if it owns and intends to remove the home wiring -- must inform the subscriber:

- (1) that the cable operator owns the home wiring;
- (2) that the cable operator intends to remove the home wiring;
- (3) that the subscriber has the right to purchase the home wiring; and
- (4) what the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

(c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in subsection (b) hereof apply.

(d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility -- if it wishes to remove the wiring -- to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in subsection (b) hereof.

(e) If the cable operator fails to adhere to the procedures described in subsection (b) hereof, 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 shall make no subsequent attempt to remove it or restrict its use.

(f) If the cable operator adheres to the procedures described in subsection (b) hereof, 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 authorize a competing service provider to connect with and use the home wiring.

(g) If the cable operator adheres to the procedures described in subsection (b) hereof, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) business day period described in subsection (a) hereof will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

(h) If an alternative video programming service provider connects its wiring to the home wiring before the incumbent cable operator has terminated service and has capped off its line to prevent signal leakage, the alternative video programming service provider shall be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR §§ 76.605(a)(13) and 76.610-76.617).

(i) Where the subscriber terminates cable service but will not be using the home wiring to receive another alternative video programming service, the cable operator shall properly cap off its own line in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR §§ 76.605(a)(13) and 76.610-76.617).

(j) Cable operators are prohibited from using any ownership interests they may have in property located on the subscriber's side of the demarcation point, such as 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. In addition, incumbent cable operators must take reasonable steps within their control to ensure that an alternative service provider has

access to the home wiring at the demarcation point. Cable operators and alternative multichannel video programming delivery service providers are required to minimize the potential for signal leakage in accordance with the guidelines set forth in 47 CFR §§ 76.605(a)(13) and 76.610-76.617, theft of service and unnecessary disruption of the consumer's premises.

(k) Definitions --

(i) *Normal operating conditions* -- The term "normal operating conditions" shall have the same meaning as at 47 CFR § 76.309(c)(4)(ii).

SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG

Re: Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 92-260

The cable home wiring reconsideration order makes several important improvements to our existing cable home wiring rules, and thus, I generally support it. I am particularly pleased with the portion of the order that makes modifications to procedures for the disposition of cable home wiring upon termination of service. These revised procedures will promote consumer choice and competition by making it easier for consumers to use their home wiring for alternative video programming services and in the future, alternative local telephone services.

Although I support the order, I write separately to note that I would have preferred to have granted the petitions for reconsideration filed by the Nynex Telephone Companies and others. These petitions sought to move the demarcation point in multi-dwelling unit ("MDU") buildings to a point where more convenient and cost-effective access is available.

Our current rules place the demarcation point at 12 inches outside the subscriber's premises. Although this demarcation point appears to be appropriate for single family dwellings, the record in this proceeding has convinced me that the 12 inch rule is problematic in the context of MDUs. In many instances, the demarcation point is not physically accessible because it is inside of a wall. Even in those cases where it is accessible, the competing service provider has to install duplicative, subscriber-dedicated wire in order to access the demarcation point. This process is not only costly, but often requires construction work to be performed in the common areas of the MDU. Such construction work may serve as a disincentive to, or is prohibited by, the building owner.¹ As a practical matter, what this means is that it is less likely that MDU dwellers will have a choice of video providers.

In my view, the proposal made by the Wireless Cable Association ("WCA") to move the demarcation point to the point where the line becomes dedicated to the individual subscriber is consistent with the purpose of Section 16(d) of the Cable Act. The

¹ See Nynex Telephone Companies Petition for Reconsideration at 3-4; Liberty Cable Company, Inc. Petition for Reconsideration and Clarification at 3-5.

purpose of Section 16(d) is to promote consumer choice and competition by permitting subscribers to avoid the disruption of having home wiring removed on voluntary termination and to subsequently utilize that wiring for an alternative video programming service.² WCA's proposal accomplishes these goals by making it significantly easier and less costly for alternative providers to utilize existing wires. In addition, locating the demarcation point at a point where the line becomes dedicated to the individual subscriber ensures that the common line of the incumbent provider is not disturbed, thereby preventing signal theft and interference with service to other customers.

While I would have preferred to move the demarcation point immediately, I am nonetheless heartened that the reconsideration order acknowledges that the current demarcation point may inhibit competition in the multichannel video programming marketplace. I support the commitment the Commission has made to address this issue promptly in the Notice of Proposed Rulemaking, adopted today in our *Telecommunications Services Inside Wiring* proceeding. I support the Notice because I believe that there is value in looking at the cable demarcation point location in a broader proceeding that considers the convergence of telephony, video services and other technology. Finally, I concur that the Commission needs more information on the appropriate level of compensation incumbent cable operators should receive if the demarcation point is extended.

² Cable Home Wiring Order, 8 FCC Rcd 1435 (1993) *citing* H.R. Rep. No. 628, 102d Cong. 2d Sess. at 118.