

PUBLIC UTILITIES COMMISSION

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March 15, 1996

DOCKET FILE COPY ORIGINAL

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

RECEIVED
MAR 18 1996

Re: CC Docket No. 95-184

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

Mary Mack Adu
Attorney for California

MMA:nas

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECORDED ORIGINAL

MAR 18 1996

In the Matter of)
)
Telecommunications Services) CS Docket No. 95-184
Inside Wiring)
)
Customer Premises Equipment)
_____)

**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE
OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit their comments on the notice of proposed rulemaking ("NPRM") regarding possible changes to the telephone and cable inside wire rules in the above-referenced docket. The Federal Communications Commission ("FCC" or "Commission") recognizes that changes are necessary to these rules in light of the converging communications marketplace. In California, it is quite clear that in the not too distant future cable operators will be using their facilities to offer telephone service and telecommunications companies will use their facilities to provide video services to customers. This convergence of technologies need not alter substantially the different regulatory treatment of cable and telephone inside wire. Only those changes that foster competition and reduce

confusion should be made within the existing regulatory framework.

California would like to focus its comments on two issues raised in the NPRM -- the demarcation point and dual regulation. California believes that the Commission should make the demarcation points for cable and telephone inside wire consistent. California also believes that the Commission should allow states and local jurisdictions to retain the authority they have over the maintenance of inside wire. States and local jurisdictions are in a better position to enforce inside wire regulations and should be given the opportunity to do so.

II. DISCUSSION

A. The Demarcation Point

The Commission asks for comment on whether it should establish a common demarcation point for wireline communications networks -- regardless of whether such networks are broadband or narrowband, or cable or telephony systems. California believes that the Commission should do so. By establishing a common demarcation point, the Commission will reduce confusion and expense for consumers, property owners and service providers. One demarcation point will allow for the clear definition of where a carrier's responsibility for the inside wire facilities ends and a customer's responsibility begins. In this new age where cable companies will compete directly with telephone companies for customers, it will be difficult for customers to understand their responsibilities regarding inside wire if they

were to change from one carrier to the other. If the demarcation point is the same, customer confusion will diminish.

Additionally, creating a common demarcation point will facilitate competition between service providers. Service providers will be clear with regard to their responsibilities regarding the point at which their facilities end, no matter which service or combination of services they are providing the customer. When new facilities-based service providers enter the market, they will know where their property ends and the property of their customers begins.

If the Commission agrees with California's proposal that the Commission should develop a common demarcation point, the question then becomes what point should the Commission designate. California would like the Commission to designate the current telephone demarcation point as the common demarcation for both telephone and cable service providers. The installation of simple and complex telephone inside wire facilities is deregulated. This deregulation came after years of hearings and decisions on the issues. The market for telephone inside wire installation in California is now competitive. A common demarcation point located at the existing cable point will make it difficult for competitors to access the inside wiring. Placing the common demarcation point at a place that is difficult to access can adversely affect competition for the installation of inside wire. To protect the existing competitive market, California believes the Commission should adopt the current telephone demarcation point as the common demarcation point.

B. Dual Regulation

California would also like to address the Commission's concerns regarding the dual regulatory aspects of inside wire. The Commission asks if it may be necessary to harmonize the disparate systems of regulation for cable and telephone services as the technological delivery of those services increase in similarity. NPRM, ¶56. The Commission further seeks comment on whether the Commission has the legal authority to change or harmonize these dual systems of regulation. Ibid. The CPUC does not believe that it is necessary to make wholesale changes in regulation in anticipation of confusion that could potentially result from the convergence of the technology that delivers telephone and cable services. Notwithstanding the technological advances enabling telephone and cable services to be carried over the same wire, the dual regulatory system mandated by Congress should remain intact. There are ways of accommodating changes in technology without contravening Congressional intent that there should be a dual system of regulation for wire communications.

Beginning with the Communications Act of 1934, Congress intended, and the courts have so held, that while that statute grants the Commission jurisdiction over all interstate and foreign communication by wire or radio, Section 152(b) expressly limits the FCC's jurisdiction by reserving certain matters to the states:

"[N]othing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in

connection with intrastate communication
service by wire or radio of any carrier...."

The court has construed this provision as fencing off intrastate matters from the Commission's reach or regulation.¹ It further agreed that "sections [151 and 152(b)] are naturally reconciled...to enact a dual regulatory system...." Ibid.; emphasis in original. Moreover, the most recent federal legislation leaves intact the dual regulation originally envisioned by Congress.² Indeed, the Commission itself recognizes that "[s]tate and local governments are indispensable to the regulation of cable television and telephone service." NPRM, ¶57. Not only are states in the best position to implement broad federal policies, but also to tailor their own policies with the specificity necessary to meet state and local needs.

1. Telephone Wiring Provisions

The Commission states that "[t]he extent of dual regulation depends generally on whether the Commission has preempted state authority to regulate exclusively a particular aspect of telephone service rates." NPRM, ¶53. Indeed, the court has ruled that the Commission may preempt state regulation of the installation and maintenance of simple inside wiring, "but only

1. National Ass'n of Reg. Utility Com'rs v. F.C.C., 880 F.2d 422, 428 (D.C.Cir. 1989).

2. The Telecommunications Act of 1996 makes no changes to Section 152 which the courts have interpreted as reflecting Congressional intent to establish dual regulation.

to the extent that such regulation negates the federal policy of ensuring a competitive market in such services." NARUC v. FCC, supra, at 431. The Commission has the burden of showing with specificity that state regulations negate federal policy. Where state regulations implement and enhance federal policy, they should be encouraged rather than preempted or prohibited.

With respect to telephone wiring, in interstate jurisdiction, the Commission has deregulated the installation and maintenance of both simple and complex inside wire.³

Consumers are free to install, maintain, or reconfigure the telephone wiring inside the demarcation point. Memorandum, Opinion and Order, 1 FCC Rcd 1190, 1195 (1986). States have been preempted from regulating the prices and terms and conditions under which complex wiring services are offered to the public.⁴

In intrastate jurisdiction, however, the states are allowed to regulate the prices, terms and conditions on which simple inside wire services are offered to the public. As a later discussion indicates, California is effectively using its authority to protect its consumers while simultaneously providing competitive freedom of choice in the state's telephone simple inside wire market, and should not be prohibited from continuing to do so.

3. See 48 FR at 50541; Second Report and Order in CC Docket No. 79-105 (In the Matter of Detariffing the Installation and Maintenance of Inside Wiring), 51 FR 8498 (Mar. 12, 1986) ("Telephone Inside Wiring Second Report and Order").

4. Preemption Order, 7 FCC Rcd 1334, 1341 (1992).

2. Cable Wiring Provisions

In contrast to consumer control of telephone inside wiring, cable operators generally have control over cable inside wiring before service is terminated. After the subscriber voluntarily terminates service, the Commission has the authority to prescribe rules concerning the disposition of any cable installed on the premises by the cable operator.⁵ With this provision, Congress sought to protect cable customers from unnecessary disruption and expense of removing home wiring, and to allow the wiring to be used for alternative multichannel video programming delivery systems. Report and Order, 8 FCC Rcd No. 5 at 1435, ¶3. The Cable Act of 1992 also granted the Commission the authority to prescribe minimum standards relating to cable systems' technical operation and signal quality. See, 47 U.S.C. 544(e).⁶ This statutory provision provides in part that the Commission has the authority to update such standards periodically to reflect improvements in technology. It is therefore preferable, and would be least disruptive to the dual regulatory scheme, for the Commission to adjust the minimum cable

5. Cable Act of 1992, 47 U.S.C. §544(i). The rules adopted pursuant to Section 16(d) of this act apply only to the subscriber's voluntary termination of service and only to cable wiring installed by cable operators in residential dwelling units. See, Cable Wiring Order, 8 FCC Rcd at 1436.

6. It should be noted, however, that cable rates are regulated by the local franchising authority under rules promulgated pursuant to the 1992 Cable Act. See, 47 C.F.R. §§76.922-76.923, 76.944-76.945.

standards to the extent dictated by technology. This would include harmonizing cable regulations with telephone simple inside wire regulations. This approach could be utilized in conjunction with the monitoring of state regulatory programs to assess their impact on the Commission's goal of achieving full competition for inside wire services.

C. The Case for Continued State Regulation of Simple Telephone Inside Wiring and Possible Extension to Cable Inside Wire

In California, the maintenance of simple telephone inside wire is currently regulated. The CPUC provides a semi-competitive market where consumers have freedom of choice, but are protected when telecommunications companies implement their inside wire policies. The CPUC believes this form of regulation is necessary because the market for maintenance of telephone inside wiring is not well developed. The Commission should continue to allow states to regulate the maintenance of simple telephone inside wire, and consider expanding that authority to include the maintenance of cable inside wire.

The CPUC is particularly interested in the safety and consumer protection issues surrounding cable wiring maintenance. When maintenance of telephone inside wire is necessary, California ratepayers have the option of hiring a telephone utility technician, an independent repair technician, or doing the work themselves. Many homes in California are equipped with system network interfaces which allow ratepayers to test their own wiring for trouble isolation. No system for allowing ratepayers to test the adequacy of their own cable wiring, or

hiring someone other than the cable company technician to do the work has been established. California would like the authority to regulate the maintenance of cable inside wire so that policies similar to those which currently protect telephone consumers can be set in place as cable companies begin to offer telephone service.

III. CONCLUSION

In summary, California has focused its comments on the issues of the demarcation point and dual regulation. California would like the Commission to develop a common demarcation point for cable and telephone inside wire facilities. California strongly opposes moving the demarcation point for telephone inside wire to the current cable wiring demarcation, and would like to see the Commission designate the telephone wiring demarcation as the common point. Additionally, California

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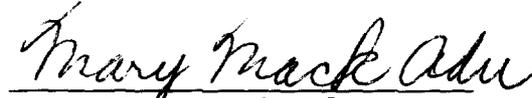
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requests that the Commission allow the CPUC to retain authority over consumer protection rules which affect simple inside wire maintenance.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
MARY MACK ADU

By:


Mary Mack Adu
Mary Mack Adu

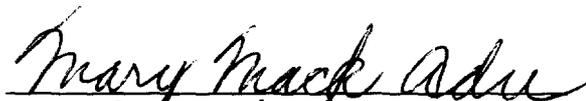
Attorneys for the People of the
State of California and the
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March 15, 1996

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 15th day of March, 1996, a true and correct copy of the forgoing **COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING** was mailed first class, postage prepaid to all known parties of record.


Mary Mack Adu