MDU tenants have a full opportunity to choose among competing broadband services, and should diminish the ability of landlords to dictate a single broadband services provider for all of their tenants.

IV. EXTENDING THE CABLE DEMARCATION POINT IN MDUs RAISES SERIOUS TECHNICAL AND SAFETY ISSUES

By expanding the cable demarcation point in MDUs -- and thus discouraging competitors from deploying their own internal wiring within such buildings --, the Commission would be fostering the transfer of internal MDU wiring back and forth between competitors, whenever subscribers -- or landlords and buildings owners -- decide to switch service providers. Thus, changing the cable demarcation point in MDUs raises a number of serious technical and safety issues associated with transferring cable network wiring back and forth between providers.

Sound technical reasons exist for the different inside wiring rules applicable to cable and telephony.[43/] Cable and telephone technologies have different power requirements, signal leakage concerns, and tolerance of interference. Telephony requires a simple direct current signal that is only live when used for calls. Signals are very robust, operate at low frequencies, and are immune to interference. In contrast, cable signals modulate many discrete carriers into a single composite signal transmitted constantly to all users. Cable signals are highly susceptible to noise from other radio frequency signals.

[43/] Indeed, the Commission has already acknowledged the significant differences between cable and telephony signals. See, e.g., Cable Home Wiring Recon Order at ¶ 10; see also Notice at ¶¶ 20-22.

Cable companies are subject to signal leakage, signal quality and other technical standards by virtue of their legal status as operators of cable systems.[44] Potential competitors that would obtain control over MDU hallway wiring, such as SMATV providers and telephone companies entering the video programming business on any basis other than as a cable operator, are not presently covered by such obligations.[45] Thus, there is a threshold issue of whether such technical standards would even continue to be upheld if MDU inside wiring was transferred to non-cable video programming competitors.

More importantly, even if such obligations were extended to non-cable video programming competitors, the risk that such standards would be breached is significantly heightened by transferring control over MDU hallway wiring back and forth between providers.[46] As the Commission recognizes, "cable leakage interference can come from a single leak in wiring or from the cumulative effect of many smaller leaks," both of which are more likely to occur where network wiring is being continually disconnected and reconnected as it is transferred between providers.[47] Accordingly, signal leakage, unwanted signal

---

[44] 47 C.F.R. §§ 76.605(a) and 76.610-76.617. Signal leakage standards are necessary because cable systems transmit signals on the same frequencies utilized by over-the-air broadcasters, aeronautical navigation systems, and public safety personnel. See Notice ¶ 20.

[45] Id. at ¶ 22.

[46] As the Commission acknowledges, telephone companies do not have experience adhering to the type of signal leakage standards imposed upon cable operators, because "the transmission of telephony requires only a fraction of the signal power used to transmit video programming, and telephone signals are carried over a much narrower, as well as a different, portion of frequency spectrum than aeronautical communications." Id.

[47] Id. at ¶ 20. For example, if a new entrant disconnects an operator's wiring before the incumbent cable operator terminates its signal at the tap, the risk of signal leakage and unwanted signal ingress is substantially heightened.

ingress, and service interruptions are more likely to result due to actions by competing maintenance personnel.[48]

Requiring the Joint MSOs to turn over to competitors control of their hallway wiring systems and riser cables also will create considerable confusion regarding responsibility for breaches in signal leakage and signal quality standards, as well as potential violations of local fire, health and safety codes. Because of the uncertainty and potential conflict regarding responsibility for any maintenance and service, the proposal could force the Joint MSOs to bear the risk of being held accountable for violations of standards caused by a competitor's inadequate workmanship, use of substandard or nonspecification cable, improper shielding or installation practices, or interference with plant that was installed in accordance with applicable codes.

Without the ability to retain control over their internal distribution facilities within MDUs, cable operators also could not protect the integrity and quality of their service, even if they regained control over wiring transferred temporarily to a competitor. For example, because of the two-way capabilities and services provided by Cablevision's New York City system, it is critical for the company to detect and prevent any wire maintenance problems that might cause unwanted signal ingress back to the head-end. On the other hand, a competing provider uninterested in offering two-way services that obtains control over an MDU's hallway wiring for some period of time might have no concern about such issues, heightening the risk

---

[48] The adverse effects of unwanted signal ingress are particularly significant on systems with two-way capabilities, since any interference with return signals going into the headend from subscriber premises and points within the system will undermine the system's monitoring capabilities, and the delivery of interactive and two-way services such as pay-per-view video, data base access, telephony, and other electronic information services.

of degradation of the wire's two-way capabilities. Thus, even if Cablevision regained the opportunity to provide service to that unit, it likely would have to reinstall another wire in order to ensure that the subscriber has access to the full complement of services offered by the company.[49]

V. THE COMMISSION LACKS STATUTORY AUTHORITY TO EXTEND THE CABLE DEMARCATION POINT

The Commission clearly lacks the statutory authority to mandate transfer of any home wiring beyond the immediate vicinity of a subscriber's premises. The 1992 Cable Act only authorizes the Commission to prescribe rules regarding post-termination of service disposition of "any cable installed by the cable operator *within the premises* of" subscribers.[50] Congress

---

[49] The signal leakage and technical concerns noted here also can arise in the context of permitting subscribers pretermination access to inside wiring. Cable operators today are not required to offer their customers pretermination access to wiring located on the subscriber's side of the demarcation point. Both Congress and the Commission have declined to mandate pretermination access to cable inside wiring, see e.g., 47 U.S.C. § 544(i), because such access aggravates the risk of signal leakage, as well as signal theft. See H.R. Rep. No. 628, 102d Cong., 2d Sess. at 118 (1992) ("Cable Act House Report"); Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring, 8 FCC Rcd 1435, 1436 (1993) ("Cable Wiring Order"). The fact that telephone companies offer pretermination access to their inside wiring is of little consequence in assessing whether to impose such a requirement on cable companies, since the signal theft and signal leakage concerns that arise in the cable context do not arise in connection with telephony.

Some cable operators, however, including Continental, have voluntarily agreed to provide such access to their customers in the context of the current rules establishing the cable demarcation point. See, e.g., Social Contract for Continental Cablevision, Public Notice, FCC No. 96-76 (March 6, 1996); Social Contract for Time Warner, Memorandum Opinion and Order, FCC No. 95-478 at ¶ 74 (released Nov. 30, 1995). Certainly operators that develop methods for controlling the risks associated with permitting pretermination access are entitled to make a business decision that the benefits of offering such access outweigh those risks. The Commission's current rules thus strike the proper balance by permitting -- but not mandating -- pretermination access by subscribers. Mandatory pretermination access to inside wiring should be deferred at least until the critical technical issues identified herein are resolved.

[50] Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-305, Section 16(d), 106 Stat. 1460 (1992), 47 U.S.C. § 544(i) (emphasis added).

specifically decided to limit the Commission's power to order transfers of home wiring only to cable installed within the premises of subscribers. Thus, notwithstanding its general authority under other provisions of the Communications Act, any effort by the Commission to expand its current inside wiring rules to require transfers of cable located beyond subscriber premises is prohibited.[51] Accordingly, the Commission is constrained by the 1992 Cable Act from mandating subscriber or competitor access to hallway wiring and riser cables in MDUs, since such facilities are clearly beyond a particular subscriber's premises. Likewise, the facial statutory language clearly precludes the Commission from mandating wiring transfers prior to termination of service.[52]

The 1996 Telecommunications Act also forbids precisely the type of government-mandated transfer of cable facilities that the Commission proposes in the Notice. The 1996 Act prohibits local exchange carriers from obtaining access to the transmission facilities of a cable system between the last multi-user terminal and the premises of an end user absent the concurrence of the affected cable operator.[53] Thus, the Commission is not authorized to

---

[51] See, e.g., Morales v. Trans World Airlines, Inc., 112 S.Ct. 2031, 2037 (1992) (commonplace of statutory construction that the specific governs the general); Gozlon-Peretz v. U.S., 111 S.Ct. 840, 848 (1991)(specific provision controls over one of more general application); Mail Order Ass'n of America v. U.S. Postal Service, 986 F.2d 509, 515 (D.C. Cir. 1993) (noting obligation to prefer the more specific statute over a conflicting general one).

[52] Moreover, conformity of the cable inside wiring rules with the Commission's rules developed for telephone inside wiring would result in the treatment of cable operators as common carriers. The Communications Act forbids the treatment of cable systems as common carriers by virtue of their provision of cable service. See 47 U.S.C. § 541(c). The legislative history of the Cable Act makes clear that Congress did not "intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers homes." Cable Act House Report at 118-19.

[53] 47 U.S.C. § 572(d)(2).

mandate the transfer of cable operator facilities beyond the demarcation point.[54] If Congress had intended the Commission to require cable operators to transfer cable network facilities beyond the current demarcation point, it would not have included a provision that permits such usage only with cable operator concurrence.[55]

VI. THE COMMISSION SHOULD NOT REVISE ITS INSIDE WIRING POLICIES BASED UPON THEORETICAL PROJECTIONS REGARDING THE PACE AND DIRECTION OF CONVERGENCE

The proposals in the instant Notice have arisen in response to a perceived need to harmonize inside wiring rules applicable to telephone and cable companies.[56] Uniformity, however, should be a means to an end, not an end in itself. The real objective is competition in the provision of cable, telephony, telecommunications, multimedia and other broadband services. There is no evidence that uniformity of inside wiring rules is necessary or useful to

---

[54] To the extent that the Commission contemplates increasing the role that local franchising authorities play in the regulation of cable operator wiring as part of its effort to harmonize the dual regulatory schemes for cable and telephone inside wiring, Notice ¶¶ 56-57, the Commission's authority to do so is strictly proscribed. The 1996 Act prohibits franchising authorities from imposing any requirement that would restrict or condition in any way the right of cable operators to provide telecommunications services. 1996 Act, § 303, amending 47 U.S.C. § 541(b)(3)(B). The 1996 Act also prohibits regulations by franchising authorities that would limit a cable system's use of any subscriber equipment or transmission technology. Id. at § 301(e), amending 47 U.S.C. § 544(e).

[55] The 1996 Telecommunications Act also contains a number of provisions affecting the regulation of cable customer premises equipment (CPE). Section 301(f) of the 1996 Act, amending 47 U.S.C. § 544a, limits the Commission's regulatory authority with respect to promoting cable equipment compatibility, while Section 304(a), 47 U.S.C. § 549, prescribes new standards for the Commission to follow in connection with promoting commercial availability of CPE used to receive cable service and other services provided over multichannel video programming networks. Accordingly, the CPE issues raised in the Notice, see Notice ¶¶ 65-76, should be considered in the context of rulemaking implementing those provisions of the 1996 Act.

[56] Id. at ¶ 4.

the accomplishment of that objective. Nor is there any evidence suggesting that the lack of uniformity between the cable and telephony demarcation points is inhibiting competition or slowing the process of convergence that the Commission seeks to hasten. To the contrary, the Joint MSOs' experience demonstrates that divergent demarcation points are actually helping to promote new forms of competition, since, for example, the assurance of cable operator control over its broadband plant deployed within MDUs encourages network upgrades in those buildings that permit operators to offer telephony, Internet access, and other new services.

The Commission's policies should be based on market and technological realities. The real danger inherent in a number of the proposals set forth in the Notice is that their adoption would dictate the pace and direction of convergence, and thus constrain the development of competition, new services and technological innovation by establishing policies and standards based upon unrealized projections about how convergence will unfold.

It is illustrative that Congress, in the 1996 Telecommunications Act, resisted the impulse to legislate convergence into existence. To the contrary, the Act is premised upon the notion that cable and telephony are different services,[57] but that cable and telephone companies have increasing incentives and opportunities to enter each other's businesses. The distinction is critical: Congress removed entry barriers that prevented cable and telephone companies from entering each other's businesses, but it did not attempt to prod those businesses into becoming more alike. Instead, Congress left it to the market to determine the

---

[57] For example, the Act preserves separate regulatory regimes applicable to the provision of cable service under Title VI and telephony under Title II. Likewise, the Act does not disturb the prohibition against treating cable systems as common carriers when they provide cable service. See 47 U.S.C. §541(c). In addition, key components of the bill -- such as, for example, the obligation to provide unbundled access to network elements, resale of services, and network collocation -- are applicable in connection with the provision of local exchange service but not cable service. See 47 U.S.C. §251(c).

pace and direction of convergence. The Commission should do the same and defer consideration of the proposals set forth in the Notice at least until the convergence upon which they are premised becomes more of a reality in the marketplace.

CONCLUSION

For the foregoing reasons, the Commission should retain its current cable and telephone inside wiring rules without change.

Respectfully submitted,

CONTINENTAL CABLEVISION
CABLEVISION SYSTEMS CORPORATION

Frank W. Lloyd
Christopher J. Harvie
Charon J. Harris
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Howard B. Homonoff
Director, Corporate and Legal Affairs
Brenda Fox
Vice President -- Federal Relations
Continental Cablevision
Lewis Wharf, Pilot House
Boston, Massachusetts 02110
(617) 742-0530

Barbara M. Kessler
Senior Associate Counsel - Cable Operations
Jennifer Schwinn
Attorney - Cable Operations
Cablevision
One Media Crossways
Woodbury, New York 11797
(516) 393-1557

Of Counsel

March 18, 1996
F1/49916.2