

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

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In the Matters of)
)
Telecommunications Services) CS Docket No. 95-184 ✓
Inside Wiring)
)
Customer Premises Equipment)
)
Implementation of the Cable Television)
Consumer Protection and Competition) MM Docket No. 92-260
Act of 1992)
)
Cable Home Wiring)

COMMENTS

WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

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Its Attorneys

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COMMENTS

The Wireless Cable Association International, Inc. (“WCA”), by its attorneys, hereby submits its initial comments in response to both the *Notice of Proposed Rulemaking* (“NPRM”) in CS Docket No. 95-184^{1/} and the *Further Notice of Proposed Rulemaking* (“FNPRM”) portion of the *First Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260.^{2/}

I. STATEMENT OF INTEREST AND EXECUTIVE SUMMARY.

The *NPRM* and the *FNPRM* represent the culmination of a process begun by Congress in 1992 to establish rules governing inside broadband wiring that will enable wireless cable

^{1/}*Telecommunications Services: Inside Wiring; Customer Services Equipment*, CS Docket No. 95-184, FCC 95-504 (rel. Jan. 26, 1996).

^{2/}*Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-260, FCC 95-503 (rel. Jan. 26, 1996).

operators and others to compete with franchised cable operators in single family homes and multiple dwelling units (“MDUs”). Seizing the opportunity to look beyond the relatively narrow provisions of Section 16(d) of the Cable Consumer Protection and Competition Act of 1992 (the “1992 Cable Act”), the Commission now proposes to adopt comprehensive “inside wiring” rules that will enhance competition and accommodate the anticipated convergence of video and non-video services delivered to the home.^{3/} Given the pro-competitive policies enunciated in the recently passed Telecommunications Act of 1996, the *NPRM* could not be more timely.

WCA’s members have a vital interest in the outcome of these proceedings. As the Commission is well aware, WCA and its members have frequently demonstrated that without full and fair access to previously installed inside wiring, wireless cable and other emerging

^{3/}See, e.g., *NPRM* at ¶ 4 (“[W]e seek comment on whether and how we should revise our current telephone and cable inside wiring rules to . . . promote competition, but ensuring that the Commission’s inside wiring rules continue to facilitate the development of new and diverse services for the American public.”). Section 16(d) of the 1992 Cable Act had directed the Commission “to prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.” Pub. L. No. 102-385, 102 Stat. 1460 (1992). The Commission’s implementation of Section 16(d) has been limited to defining the relevant demarcation point, setting appropriate charges for cable home wiring, and establishing procedures by which a subscriber may purchase cable home wiring upon voluntary termination of service. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, 8 FCC Rcd 1435 (1993); *partial recon. granted*, FCC 95-503 (rel. Jan. 26, 1996) [the “*First Reconsideration Order*”]. By contrast, the *NPRM* is not limited by the strictures of Section 16(d), and thus enables the Commission to explore in greater depth the wide range of competitive and regulatory issues arising from ownership of *all* types of inside wiring both before and after termination of service.

technologies will be unable to fully compete with entrenched franchised cable providers.^{4/} Indeed, in the *First Order on Reconsideration and Further Notice of Proposed Rulemaking*, the Commission adopted a series of proposals advanced by WCA to simplify the procedures that govern the right of subscribers to purchase home wiring after terminating service pursuant to Section 16(d).^{5/} At least in single family homes, the Commission's action will allow subscribers to obtain multichannel video service from wireless cable and other alternative providers on a more expedited and less disruptive basis, and thus will promote exactly the type of marketplace competition envisioned by Congress. WCA applauds the Commission's decision and hopes it is indicative of how the Commission intends to address the broader inside wiring issues raised in the *NPRM*.

For the most part, the marketplace conditions which prompted WCA to first propose rules and policies to govern inside wiring more than three years ago still exist today.^{6/} Today, as then, very few of the approximately 190 wireless cable systems in the United States qualify as

^{4/}See Comments of the Wireless Cable Association International, Inc., MM Docket No. 92-260 (filed Dec. 1, 1992); Reply Comments of the Wireless Cable Association International, Inc., MM Docket 92-260 (filed Dec. 14, 1992); Petition for Partial Reconsideration filed by the Wireless Cable Association International, Inc., MM Docket 92-260 (filed April 1, 1993); Reply of the Wireless Cable Association International, Inc., MM Docket 92-260 (filed May 28, 1993); Comments of the Wireless Cable Association International, Inc., MM Docket 92-260, RM-8380 (filed Dec. 21, 1993).

^{5/}See *First Reconsideration Order*, at ¶¶ 17-24.

^{6/}Comments of the Wireless Cable Association International, Inc., MM Docket No. 92-260 (filed Dec. 1, 1992).

“effective competition” to a franchised cable system.^{7/} This is attributable in no small part to the difficulties wireless cable system operators have encountered in serving residents of MDUs -- obstacles that derive variously from legitimate concerns of property owners, anticompetitive cable operator conduct and/or discriminatory cable mandatory access laws that effectively obstruct wireless cable operators from obtaining access to MDUs.^{8/}

Hence, in these comments WCA recommends a straightforward approach to inside wiring that will serve the competitive objectives of the *NPRM* and *FNPRM* while fulfilling the requirements of the 1992 Cable Act and preserving the respective rights of subscribers, cable operators and property owners. As WCA has in the past, it urges the Commission to use the telephone model as its starting point for developing new inside wiring rules for providers of broadband multichannel video service.^{9/} However, the Commission’s broadband inside wiring rules must depart from the telephone inside wiring rules where necessary to accommodate the practical differences between the wiring topologies employed in MDUs by telephone and cable

^{7/}See Comments of the Wireless Cable Association International, Inc., CS Docket No. 95-61, at 2, 6-7 (filed June 30, 1995).

^{8/}See Comments of the Wireless Cable Association International, Inc., MM Docket No. 92-260 at 3-4 (filed Dec. 1, 1992) [noting that franchised cable operators were attempting to harass former subscribers who opt for an alternative service provider by precluding them from using the coaxial cable left behind in their homes]; see also pp. 5-9, *infra* [discussion of State mandatory access statutes].

^{9/}See, e.g., Comments of the Wireless Cable Association International, Inc., RM-8380, at 2 (filed Dec. 21, 1993) [“Adoption of rules based on the telephone inside wiring model that afford consumers greater control over the wiring used to provide cable television services will advance the Commission’s efforts to introduce competition into the multichannel video programming marketplace while reducing costs to consumers.”].

systems, and to resolve the resulting obstacles faced by multichannel video service providers in obtaining access to MDUs.

With this fundamental premise in mind, WCA urges the Commission to: (1) create a level playing field by preempting all State mandatory access and similar laws which afford the franchised cable operator favored access to property; (2) redefine the cable home wiring demarcation point so that each resident of an MDU has the right to purchase any and all wiring and associated passive devices devoted exclusively to the provision of service to his or her individual unit;^{10/} and (3) empower MDU property owners^{11/} to respond to marketplace demand for alternative providers of multichannel video and telephony services by giving MDU property owners ownership and control of all wiring located between the demarcation point for cable home wiring and a “minimum point of entry” determined in a manner akin to that provided for under the Commission’s telephone rules. WCA also offers brief comments on signal leakage and

^{10/}In these comments, WCA’s discussion of MDUs will generally be limited to those situations in which individual residents enter into individual service agreements with video providers and are separately billed. In those situations where a cable operator provides service on a bulk basis (*i.e.* the service is provided to all residents at no individual charge and a single bill is issued to the landlord, condominium association, etc.), the entity being billed should be deemed the “subscriber” for purposes of Section 16(d) and the Commission’s implementing rules. Thus, upon termination of bulk billed service, the landlord, condominium association, etc. must be afforded the opportunity to acquire all of the inside wiring on its side of the demarcation point — the point twelve inches outside of where the wiring first enters the building.

^{11/}For purposes of this pleading, WCA will use the term “property owner” to generally refer to a landlord, condominium association, cooperative association or other person or entity that owns and controls the space within MDUs that are not owned or leased to individual residents.

other selected issues raised in the *NPRM*, and addresses issues raised in the *FNPRM* regarding the respective rights of MDU property owners, subscribers and cable operators to purchase or claim ownership of inside wiring in special situations.

II. DISCUSSION.

A. *The Commission Should Create A Level Playing Field By Preempting Discriminatory State Mandatory Access Laws.*

In the *NPRM*, the Commission observed that:

parity of access rights to private property may be a necessary predicate for any attempt to achieve parity in the rules governing cable and telephone network inside wiring, because without access to the premises the inside wiring rules and proposals discussed in [the] *NPRM* will not even be implicated.^{12/}

WCA agrees, but would describe the problem in even stronger terms: it will be virtually impossible for the Commission to promote a competitive marketplace for multichannel video services unless the Commission preempts all State mandatory access laws which discriminate in favor of franchised cable operators.

As already noted by the Commission, a number of states have passed statutes giving cable operators mandatory access to MDUs.^{13/} These statutes, however, give *only* the locally-franchised cable operator a right to mandatory access; wireless cable operators and other alternative providers must still obtain the property owner's consent to provide service to the

^{12/}*NPRM* at ¶ 61.

^{13/}*See id.* at ¶ 60.

property.^{14/} Moreover, certain State “right-of-way” statutes have a similar effect of guaranteeing cable operators preferential access to potential subscribers residing in MDUs.^{15/} This regulatory imbalance works to the decided disadvantage of wireless cable systems: while a cable operator may impose itself on the property owner by dint of state law, a wireless cable system enjoys no such right and thus cannot serve MDU residents unless it convinces the property owner to give his or her consent.

As a practical matter, structural limitations, fear of property damage and related aesthetic considerations often discourage an MDU property owner from allowing multiple providers onto his or her property unless existing wiring can be re-used. Where the drop lines to each subscriber’s apartment are installed during the construction of a multiple dwelling unit, the wiring can be placed inside the walls of the building and thus provide access to an individual apartment through an outlet similar to an electrical outlet. This “prewiring,” which benefits only the incumbent franchised cable operator, is a cheaper, more aesthetically pleasing and more

^{14/}*See, e.g.*, Conn. Gen. Stat. Ann. § 16.333a(b) (1994) [Connecticut statute requiring owners of multiunit residential buildings to grant access to cable operators upon request by tenants]; Kan. Stat. Ann. § 58-2553 (1994) [Kansas statute prohibiting landlords from interfering with franchised cable service]; Me. Rev. Stat. Ann. tit. 14 § 6041 (1995) [Maine statute allowing property owner to refuse access to cable operator only for good cause]; Nev. Rev. Stat. § 711.255 (1995) [Nevada statute prohibiting landlords from interfering with provision of cable service to tenants]; N.J. Stat. Ann. § 48:5A-49 (1995) [New Jersey statute preventing property owners from preventing tenants from receiving cable service]; and NY Exec Law § 828 (McKinney 1995) [New York State statute prohibiting landlords from interfering with installation of cable television facilities].

^{15/}*See, e.g.*, Ia. State Ann., § 477.1 (1995) [Iowa statute giving cable operators right to construct lines on public and private property].

convenient alternative to “postwiring” the building after construction is complete and the residents have moved into the apartments. Postwiring requires that wires be strung either on the outside of buildings or on the inside along hallways, or fished through completed walls and ceilings/floors. In addition, because the wires ultimately must run into individual units, postwiring requires coordination with the residents of the building.^{16/} Understandably, then property owners are reluctant to suffer the burdens that postwiring imposes on their properties.^{17/}

In these situations, a cable mandatory access statute effectively precludes the possibility of wireless cable service. This is because a property owner who is willing to suffer the intrusion of only a single set of wires will invariably deny access to other service providers if by law he or she must provide access to the franchised cable operator. Thus, State mandatory access and similar laws create exactly the type of non-competitive environment that the Commission is trying to eliminate in this proceeding.

Accordingly, WCA requests that the Commission level the playing field, at least to some extent, by preempting all State mandatory access and similar laws that discriminate in favor of the incumbent cable operator.^{18/} Preemption of discriminatory State mandatory access and

^{16/}*Cable Investments, Inc. v. Wooley*, 867 F.2d 151, 153 (3rd Cir. 1989) [citation omitted].

^{17/}*See, e.g.*, Response of WJB-TV Limited Partnership, MM Docket 92-260, at 4 (filed Apr. 15, 1993) [“To replace or, more specifically, to duplicate [inside] wiring might require destruction of walls and floors and disruption to tenants . . . Many owners and tenants would rather avoid this hassle, even if it means retaining their present cable provider.”].

^{18/}That the Commission has authority to do so is beyond peradventure. *See, e.g., City of New York v. FCC*, 486 US 57, 64 (1988) [“The statutorily authorized regulations of an agency will preempt any state or local law that conflicts with such regulations or frustrates the purposes thereof.”]. *See also New York State Commission on Cable Television v. FCC*, 669 F.2d 58 (2d

similar statutes would be consistent with prior Commission preemption of other State laws which effectively hinder the provision of video service via MDS channels.^{19/} Preemption would also harmonize the Commission's inside wiring rules with other Congressional policies disfavoring State and local initiatives that discriminate against wireless cable operators.^{20/} Finally, and perhaps most importantly, the elimination of discriminatory mandatory access and similar laws via federal preemption would break down a substantial barrier to real competition between cable operators and alternative providers of multichannel video service, and thus would serve the public interest. As the Commission stated recently:

Cir. 1982).

^{19/}See *Orth-O-Vision, Inc.*, 48 F.C.C. 2d 503 (1980), aff'd *New York State Commission on Cable Television v. FCC*, 669 F.2d 58 (2nd Cir. 1982). In the *Orth-O-Vision* case, the Commission preempted the State of New York from imposing franchising requirements on an MATV system that received its programming from an MDS licensee. In so doing, the Commission ruled that the proposed State regulation would have "[inhibited] the growth of MDS in the provision of freely competitive interstate services." 48 F.C.C.2d at 507-09. As to their impact on competition, discriminatory State mandatory access statutes are indistinguishable from franchising requirements: both types of regulation have the effect of precluding or at least substantially delaying the introduction of wireless cable service to MDU properties. Accordingly, WCA submits that the rationale for preemption in the *Orth-O-Vision* case should apply with equal force in the mandatory access context.

^{20/}In Section 207 of the Telecommunications Act of 1996, Congress directed the Commission to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of . . . multichannel multipoint distribution service." Pub. L. No. 104-104, 110 Stat. 114 (1996). In its recent *Report and Order and Further Notice of Proposed Rulemaking* regarding preemption of local zoning regulation of satellite earth stations, the Commission deferred consideration of its Section 207 MMDS regulations to a separate proceeding, which is scheduled to commence shortly. *Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket No. 95-59, FCC 96-78 at ¶ 55 (rel. March 11, 1996).

[T]he Commission is committed to ensuring access to all technologies including those that compete with cable. . . The federal interest we are protecting is not that of ensuring that the American people can get less costly television service, but rather that they have wide access to all available technologies and information services. If nonfederal regulations are acting as obstacles to this federal interest, they are subject to preemption.^{21/}

B. The Commission Should Redefine Its Demarcation Point for Cable Home Wiring In Multiple Unit Dwellings To Include All Wiring And Associated Passive Devices Devoted Exclusively To A Subscriber's Individual Unit.

The Commission's established demarcation point for a resident's "cable home wiring," *i.e.*, that which the resident may purchase from the cable operator upon voluntary termination of service, remains the subject of substantial debate. On reconsideration of its initial *Report and Order* in the cable home wiring proceeding, the Commission elected not to modify its rule setting the demarcation point at or about twelve inches outside of where the cable wire enters the subscriber's dwelling unit.^{22/} Nonetheless, the Commission acknowledged that the current demarcation point "may impede competition in the multichannel video programming delivery marketplace,"^{23/} and in the *NPRM* has accordingly requested comment on whether the demarcation point should be moved to better accommodate competing providers of multichannel video programming and telecommunications services.^{24/}

^{21/}*Id.* at ¶ 15 (1996).

^{22/}*First Reconsideration Order* at ¶ 31.

^{23/}*Id.*

^{24/}*NPRM* at ¶¶ 16-19.

WCA commends the Commission's recognition of this fundamental flaw in its twelve inch rule and its decision to solicit additional inquiry. Throughout these proceedings, WCA and a variety of other parties have urged the Commission to modify its MDU demarcation point so that each resident may exercise control over any and all wiring and associated passive devices devoted exclusively to the provision of service to his or her individual unit. As already noted by one prominent alternative provider of multichannel video programming service, the Commission's current demarcation point is impractical because "wire within twelve inches of a subscriber's premises is buried in a brick, concrete or cinder block wall or concealed in a conduit and is not, therefore, readily accessible without causing substantial damage to the building and the subscriber's apartment."^{25/} Similar sentiments were expressed by WCA, wireless cable operator WJB-TV Limited Partnership, the United States Telephone Association, Bell Atlantic, Pacific Bell, Nevada Bell, and the NYNEX Telephone Companies.^{26/}

Accordingly, WCA reiterates its earlier proposal that the Commission define its demarcation point so that an MDU resident's "cable home wiring" consists of all cabling -- even that which is routed through common areas -- *dedicated solely to the distribution of program-*

^{25/}Petition of Liberty Cable Co. for Reconsideration and Clarification, MM Docket No. 92-260, at 3 (filed April 1, 1993).

^{26/}See Comments of WCA, MM Docket No. 92-260, at 1 n.2 (filed Dec. 1, 1992); Response of WJB-TV Limited Partnership, MM Docket No. 92-260, at 2-5 (filed April 15, 1993); Reply Comments of USTA, MM Docket No. 92-260, at 5-6 (filed June 2, 1993); Response of Bell Atlantic, MM Docket No. 92-260, at 3-4 (filed May 18, 1993); Petition for Reconsideration of the NYNEX Telephone Companies, MM Docket No. 92-260, at 3-4 (filed April 1, 1993); Comments of Pacific Bell and Nevada Bell, MM Docket No. 92-260, at 2 (filed May 18, 1993).

ming to the resident's apartment unit.^{27/} For example, in a multi-story apartment building where cabling from each unit on a given floor interconnects at that floor with a riser cable running up the building, all cabling from each unit to the riser should be deemed the resident's cable home wiring. This proposal provides a readily identifiable point of demarcation between cable home wiring and all other internal wiring that is based on functionality rather than an arbitrary distance from the resident's apartment unit. Furthermore, defining the demarcation point in the manner suggested by WCA will help eliminate the most difficult obstacle to competitive multichannel service in an MDU environment, namely the inability of alternative providers to install their facilities without significantly damaging the walls, ceilings and other areas of the building. WCA thus urges Commission to adopt WCA's proposal, and make the new demarcation point effective immediately.

C. The Commission Should Promulgate Inside Wiring Rules That Encourage Property Owners To Respond To Marketplace Demand For Alternative Multichannel Service Providers.

In an ideal world, all residents of MDUs would have uninhibited access to the full range of multichannel video service providers, and thus could select the services they want based entirely on their own individual preferences. Unfortunately, however, this simply is not practical. Provision of multichannel video service to an MDU property is not solely a matter of obtaining access to the property's inside wiring. Other equipment for signal reception, processing and/or amplification usually must be located somewhere on the property as well. As

^{27/}Comments of the Wireless Cable Association International, Inc., MM Docket No. 92-260 at 1 n.2 (filed Dec. 1, 1992).

a result, the physical burdens each multichannel service provider imposes in the MDU environment preclude absolute freedom of subscriber choice. For instance, space limitations in the basements, attics and conduits of MDUs place a *de facto* cap on the number of competing providers who may serve an MDU property. Similarly, limitations on rooftop space effectively restrict the number of satellite and/or microwave-based multichannel providers who may be given access to a single MDU property.^{28/} In many MDUs, it is simply not possible to afford every competitor the space it needs to install equipment in common areas.

Further complicating the matter is the fact that there are different wiring topologies for telephony and video services in the MDU environment. Ordinarily, inside wiring for telephone services consists of direct lines from each subscriber's apartment to the "minimum point of entry." As noted by the Commission, this "minimum point of entry" is usually in the basement of the building.^{29/}

By contrast, multichannel video programming service can be provided to subscribers through at least three different types of wiring topologies. In a "loop-through" configuration, a single cable is used to provide service to either a portion of or an entire multiple dwelling unit building. Since each apartment does not have its own dedicated line, every subscriber on the loop is limited to receiving video services from the same provider; there is no capacity for

^{28/}These providers would include, for example, wireless cable, DBS and wired cable operators who use microwave or "CARS" licenses to deliver their signal to unwired areas.

^{29/}*NPRM* at ¶ 8.

individual choice.^{30/} Non-loop-through configurations can have two basic topologies when each individual unit is served by a dedicated wire. In most cases that dedicated line connects to a common trunk line that is the source of video programming for all residents of the building. In some cases, each dedicated line runs to a single junction point, usually in the basement or on an outside wall. Under the Commission's current cable home wiring rules, upon voluntary termination of service, a subscriber may purchase only that portion of the wiring located within his unit and to a point up to 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit.^{31/} The remaining internal wiring is not "cable home wiring" under the Commission's cable home wiring rules, and thus cannot be purchased by the subscriber upon voluntary termination of service.

In any situation (whether loop-through or non-loop-through), even if every single resident in an MDU were to demand service from a wireless cable system instead of the incumbent cable operator, the unavoidable fact is that the wireless cable system cannot provide service unless the property owner gives the wireless cable operator access to common areas of the building. Moreover, unless the property owner has obtained ownership of the wiring not already subject to purchase by the subscriber upon termination of service, he or she cannot accommodate a

^{30/}*First Reconsideration Order* at ¶ 33. Subject to comments submitted in response to the *FNPRM*, the Commission has excluded loop-through wiring from its home wiring rules on the theory that its inclusion would give the building manager or the initial subscriber on the loop excessive control over cable service for all other subscribers in the loop. *Report and Order*, 8 FCC Rcd 1435, 1437 (1993).

^{31/}47 C.F.R. §§ 76.5(11), (mm)(2).

wireless cable system without “postwiring” the building to include additional trunk lines and/or drop cables to each individual dwelling unit. Structural limitations and related aesthetic considerations thus become an obstacle to obtaining property owner consent, particularly if any postwiring cannot be installed without damaging wall coverings, hallway mirrors, etc.

It is extremely unlikely that wireless cable operators will ever be able to obtain significant relief from this situation through State mandatory access laws. As noted above, current State mandatory access laws discriminate in favor of the incumbent cable operator, and the political influence of franchised cable operators combined with the sheer physical impossibilities of universal mandatory access will discourage most States from adopting laws requiring property owners to give mandatory access to *all* providers of multichannel video service. The net effect of this scenario is that the wireless cable operator is kept out of the property.

WCA therefore believes that it is necessary for the Commission to modify its inside wiring rules to empower property owners to provide access to wireless cable operators and other alternative providers in response to resident demand, without forcing the property owner to undertake the burdens of postwiring. First and foremost, WCA requests that the Commission adopt a rule providing that ownership of wiring not designated as “cable home wiring” in a multiple dwelling unit transfers automatically to the property owner immediately upon installation.^{32/} Once the property owner is given ownership of this wiring, he or she may then

^{32/}To ensure uniform treatment of all multiple dwelling units under this rule, and to facilitate competition within the large number of multiple dwelling units which have already been prewired for cable television service, WCA requests that the rule apply to such wiring installed before or after the effective date of the Commission’s *Report and Order* terminating

accommodate an alternative multichannel service provider simply by giving that provider access to the wiring, rather than postwiring the building as described above. The Commission will thus remove a major disincentive for property owners to consider competitors to cable, and thereby will enable property owners to make their decisions based on factors such as quality of service and price rather than structural and aesthetic considerations that are unrelated to what cable's competitors have to offer.

WCA believes there is a sound legal basis for the Commission to give property owners ownership of inside wiring upon installation. Of course, to the extent that property owners have already acquired ownership of the wiring by virtue of State law or separate agreements with the incumbent cable operator, the Commission's action will have no impact.^{33/} Indeed, recent Commission decisions reflect that some cable operators already have adopted "wire maintenance

this proceeding. In the alternative, WCA requests that, at a minimum, the FCC adopt a rule stating that, where a cable operator retains ownership of the wiring, it may not prohibit the property owner from utilizing that wiring at no charge, replacing, rearranging or maintaining that wiring, regardless of ownership. *See Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190 (1986).

^{33/}State courts have already revised numerous decisions regarding the ownership of inside wiring. Ironically, most of those cases arose because the cable operator, in order to secure favorable tax treatment, agreed that the inside wiring is owned by the homeowner once installed. Based on State property and tax laws, some courts have ruled that the homeowner owns the inside wiring. *See State Dept. of Assessments and Taxation v. Metrovision of Prince George's County, Inc.*, 607 A 2d 110 (MD. Ct. 1992); *T-V Transmission, Inc. v. County Board of Equalization of Powell County, Nebraska and Pawnee County*, 338 N.W. 2d 752 (Neb. 1983); *Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area*, 1992 Ohio App. LEXIS 356 (Jan. 30, 1992).

service plans,” under which the ownership of inside wiring is transferred to the subscriber, who only pays the cable operator a monthly maintenance fee.^{34/}

Second, there is precedent in the telephone context supporting the transfer of inside wiring to property owners upon installation. As the Commission observed in the *NPRM*, effective January 1, 1987, the Commission deregulated the installation of simple inside wiring and maintenance of all inside wiring installed by telephone companies.^{35/} Initially, the Commission required telephone companies to relinquish ownership when their inside wiring costs had been expensed or fully amortized (*i.e.*, when they had a zero net investment in inside wiring). With respect to expensed inside wiring, the Commission noted:

[W]e see no essential difference between [inside] wiring installed by the telephone companies who may claim a continuing ownership interest and inside wiring installed by other nonregulated parties who do not claim a continuing ownership interest. In both cases, the costs considered in terms of time, labor and materials have been recovered.^{36/} In both cases the investment is labor intensive and the value of the wire itself is low in relation to the total cost of installation; and with respect to the wire itself, the physical in-service characteristics are the same with respect to low salvage value and location - - on

^{34/}*See, e.g., Omnicom Cablevision of Illinois*, 1996 LEXIS 284, DA 96-66 (CSB, rel. Jan 24, 1996); *see also TCI of Southeast Mississippi*, 10 FCC Rcd 8728 (CSB, rel. Aug. 15, 1995); *ML Media Partners, L.P.*, 1995 FCC LEXIS 4011, DA 95-1352 (CSB, rel. June 19, 1995).

^{35/}*NPRM* at ¶ 40, citing *Second Report and Order* in CC Docket No. 79-105 (Detariffing the Installation and Maintenance of Inside Wiring), FCC 86-63, 51 FR 8498 (rel. March 12, 1986) [the “*Telephone Inside Wiring Second Report and Order*”].

^{36/}Similarly, with respect to fully amortized inside wiring, the Commission noted that “When fully amortized the net book value [of the wiring] will be zero and that will adequately approximate the economic value of the embedded wiring to the telephone company. Carriers will have received ‘just compensation’ because they will have been fully compensated for their investment.” *Telephone Inside Wiring Second Report and Order* at ¶ 49 n.40.

the premises of someone other than the telephone company and, in many cases, permanently affixed. In such circumstances, prudent business practice would dictate abandonment of the wire. In view of full recovery and the absence of any characteristics which would distinguish it from wiring installed by others, valid ownership claims already seem to have been surrendered.^{37/}

Accordingly, the Commission concluded that its relinquishment requirement did not raise a Fifth Amendment “takings” issue, since the telephone companies were being justly compensated for their inside wiring costs before being required to relinquish ownership.^{38/}

Third, there is nothing in Section 16(d) of the 1992 Cable Act that precludes the Commission from turning wiring that is not “cable home wiring” over to the property owner, even before termination of service. This is because the statute only addresses cable installed “within the premises of [the] subscriber”; it does not address any other wiring that is outside of

^{37/}*Telephone Inside Wiring Second Report and Order* at ¶ 46; see also *id.* at ¶ 49 (“The main value of [inside wiring] to the extent it exists is associated with labor costs and not its physical attributes. While there may be some attribution of value to the copper, as some parties suggest, in most cases it cannot be reused without the incurrence of additional costs for removal and reinstallation which outweigh its value.”).

^{38/}*Id.* at ¶¶ 48-50. On reconsideration, the Commission eliminated the mandatory relinquishment requirement in favor of simply precluding telephone companies from restricting the removal, replacement, rearrangement or maintenance of inside wiring by subscribers. *Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190, 1195-96 (1986) [the “*Detariffing Reconsideration Order*”]. The Commission did so in recognition of the fact that the States, by virtue of the *Louisiana Public Service Commission* case (106 S.Ct. 1890 (1986)), were no longer required to use the Commission’s amortization methods for inside wiring. As a result, State regulatory agencies were empowered to set intrastate rates using amortization schedules that might preclude telephone companies from recovering their inside costs prior to relinquishment. *Detariffing Reconsideration Order* at 1195. The Commission did not, however, retreat from its earlier conclusion that its relinquishment requirement was permissible under the “takings” clause of the Fifth Amendment.

the subscriber's premises and beyond the Commission-designated demarcation point for home wiring.^{39/} The Senate Report of the 1992 Act more directly addresses the Committee's thoughts on cable wiring prior to termination. In this report, the Committee explains that the Commission permits consumers to remove, replace, rearrange, or maintain telephone wiring inside the home even though it might be owned by the telephone company. The Senate Report states:

The Committee thinks that this is a good policy and should be applied to cable. For cable, however, the FCC should extend its policy to permit ownership of the cable wiring by the homeowner. In doing this, the Committee urges the FCC to adopt policies that will protect consumers against the imposition of unnecessary charges, for example, for home wiring maintenance. The FCC should also require cable operators to describe clearly options concerning home wiring maintenance.^{40/}

It is apparent from the Senate Report that Congress wanted the Commission to promulgate rules concerning cable wiring maintenance issues, which would arise prior to the termination of service by a customer. The Senate Report clearly expresses its preference for both Commission regulation prior to termination and for the Commission subjection cable to similar rules as telephone inside wire.^{41/}

Each of the Commission's above-quoted observations with respect to telephone inside wiring may be applied almost *verbatim* to cable inside wiring within an MDU. It is well settled

^{39/}Pub L. No. 102-385, 102 Stat. 1460 (1992); *see also* H.R. No. 102-628, 102d Cong., 2d Sess., at 119 (1992) (Section 16(d) "is not intended to cover common wiring within the building.").

^{40/}S. 92, 102d Cong., 1st Sess. at 23 (1991).

^{41/}*See* Reply Comments of Pacific Bell and Nevada Bell, RM-8380, pp. 3-4 (filed Jan. 19, 1994) [quoting S. 92, 102d Cong., 1st Sess. at 23 (1991)].

that the cost of cable inside wiring lies primarily in installation and not in the wiring itself, and that salvage value of coaxial cable pales in comparison to the cost of removing the wiring and restoring the premises to its former condition.^{42/} This is particularly true in multiple unit dwellings where the inside wiring must be fished through conduit rather than mounted along interior walls or outside the building. Indeed, WCA is unaware of any instance where a cable operator has removed any inside wiring from an MDU and used it to provide service to another MDU. Moreover, the Commission can resolve the “just compensation” issue simply by clarifying that cable operators may recover *all* of their inside wiring costs by (1) including those costs in their rates for basic service to MDU properties,^{43/} or (2) entering into separate service contracts under which the wiring is transferred to the property owner at no cost but subject to a monthly maintenance fee.^{44/}

^{42/}As one cable operator candidly conceded in a lawsuit involving a homeowner’s right to use internal cabling, “removing the cable was more costly than it was worth, and . . . although the wiring could be removed without causing a great deal of damage, some damage could result from removal of the cable wires.” *Metropolitan Cablevision, Inc. v. Cox Cable Cleveland Area*, 1992 Ohio App. LEXIS 356, at 10 (Jan. 30, 1992). See also, e.g., *Continental Cablevision of Michigan v. City of Roseville*, 425 N.W.2d 53, 56 (S. Ct. Mich. 1988) [in case involving ownership of cable house drops, court noted that component parts had little salvage value and that the cable operator had testified that none had ever been removed]; *State Dept. of Assessments and Taxation v. Metrovision of Prince George’s County, Inc.*, 607 A.2d 110 (Ct. Ap. Md. 1992) [“Metrovision has never removed, and never intends to remove, a drop cable from the premises of a subscriber”].

^{43/}Currently, cable operators are allowed to recover the costs of “cable home wiring.” 47 C.F.R. §§ 76.922, 76.923(a).

^{44/}See *Omnicom, supra*, at n.23.

Finally, WCA wishes to reemphasize that a number of parties from various segments of the communications industry have already expressed support for adoption of the telephone model for disposition of cable home wiring.^{45/} The basis for this support is a fundamental recognition that the easiest and most effective way for the Commission to resolve the inside wiring issue is to simply turn that wiring over to the customer upon commencement of service, and allow the customer to use that wiring to accommodate the multichannel service provider of his or her choice.^{46/} By adopting this approach for common area wiring in MDUs, the Commission will give property owners exactly the same opportunity, and thus empower them to make decisions about communications services that are in the best interests of MDU residents.

D. The Commission Should Adopt The "Minimum Point of Entry" As A Demarcation Point For Common Area Wiring.

Once the Commission settles on the appropriate demarcation point for wiring used specifically to provide service to a subscriber's individual dwelling unit, WCA submits that the Commission must then establish an appropriate demarcation point establishing the metes and bound of the common area wiring that will be owned and/or controlled exclusively by the property owner.

^{45/}See, e.g., Comments of United States Telephone Ass'n, MM Docket No. 92-260, at 4-5 (filed Dec. 1, 1992); Comments of Media Access Project, MM Docket No. 92-260, at 2 (filed Dec. 1, 1992); Comments of the Consumer Electronics Group of the Electronic Industries Ass'n, MM Docket No. 92-260, at 5-9 (filed Dec. 1, 1992); Comments of the Utilities Communications Council, MM Docket No. 92-260 at 3-6 (filed Dec. 1, 1992).

^{46/}Indeed, the largest cable operator in the United States supports the notion that ownership of existing cabling should automatically vest in the consumer upon installation. See Comments of Tele-Communications, Inc., MM Docket No. 92-260, at ii (filed Dec. 1, 1992).

WCA believes that the Commission should once again refer to the telephone model for regulation of inside wiring and apply the “minimum point of entry” concept when defining the demarcation point for common area wiring in a multiple unit dwelling. Under the Commission’s telephone wiring rules, the minimum point of entry is defined as either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiple dwelling unit building.^{47/} The telephone company’s reasonable and nondiscriminatory standard operating practice determines which of these two standards applies, though, as noted by the Commission, the designated minimum point of entry in a multiple unit dwelling is usually the basement of the building.^{48/} Since this is where network interface equipment tends to be located in most MDU properties, the “minimum point of entry” concept is already familiar to many property owners and, in WCA’s view, is the least disruptive way to demarcate wiring, whether it be used to provide video or non-video services, subject to the property owner’s ownership and/or control.

E. Each Multichannel Service Provider Should Remain Responsible For Complying With The Commission’s Signal Leakage Requirements Irrespective Of Who Owns The Inside Wiring.

The Commission has asked for comment on whether and how it should extend its signal leakage requirements to multichannel service providers other than traditional cable operators, and the extent to which its proposals in the *NPRM* may create any increased risk of signal

^{47/}47 C.F.R. § 68.3.

^{48/}*NPRM* at ¶ 8.

leakage generally.^{49/} It continues to be WCA's position that each service provider should be responsible for preventing signal leakage over its own wiring and any other wiring devoted to providing service to its subscribers, regardless of ownership.^{50/} This is precisely how responsibility for signal leakage rests today, and it remains the most efficient and effective way to ensure the signal leakage is monitored on a regular basis and is repaired in a timely manner.

F. The Commission Should Not Extend Its Cable Signal Quality Standards To Wireless Cable.

The *NPRM* also inquires as to whether the cable signal quality standards set forth in Section 76.605 of the Commission's Rules should be extended to other multichannel video programming distributors.^{51/} WCA opposes that notion, as it is totally unnecessary.

The Commission has correctly observed that "in a future competitive environment, quality standards may be unnecessary because signal quality will be one of the factors highlighted by broadband providers in competing for business."^{52/} There is no evidence that wireless cable signal quality is in need of regulation. To the contrary, as the Commission is aware, today's analog wireless cable systems generally provide a signal quality that is superior to that of cable. Moreover, the industry is embracing digital technology with its promise of even

^{49/}*Id.* at ¶¶ 24, 26.

^{50/}Comments of the Wireless Cable Association International, Inc., MM Docket No. 92-260, at 8-10 (filed Dec. 1, 1992).

^{51/}*See NPRM* at ¶ 25.

^{52/}*Id.*