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

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

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

To: The Commission

COMMENTS OF MULTIMEDIA DEVELOPMENT CORP.

MULTIMEDIA DEVELOPMENT CORP.

Rini, Coran & Lancellotta, P.C.
Dupont Circle Building
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

Its Attorneys

March 18, 1996

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SUMMARY

MultiMedia Development Corp. ("MultiMedia") supports the Commission's initiatives in the two rule making proceedings to comprehensively review the cable home wiring rules, the telephone inside wiring rules, and other Commission rules and policies which may affect communications services and the expected convergence of multichannel video, telephone and other communications delivery systems.

The competitive market for multichannel video services is greatly handicapped by "mandatory access" laws in some states which grant building access as a matter of right to franchised cable operators but not to other competing multichannel video program distributors ("MPVDs"). These laws, relics of the past before competition between MVPDs, unjustifiably discriminate against non-franchised MVPDs such that they cannot compete on an equal footing with respect to multiple dwelling unit ("MDU") buildings. These laws are inconsistent with express federal policy and it is within the Commission's authority to preempt such laws. Inasmuch as there is no likelihood of eliminating these discriminatory laws at the state and local level, the Commission should preempt them to the extent they do not apply equally to franchised and non-franchised MVPDs.

The cable home wiring rules must allow to the fullest extent possible the ability to freely change from one MVPD to another in the marketplace. The Commission should harmonize the cable home wiring rules with the telephone inside wiring rules, which

provide a practical and proven model for defining the point of demarcation and for ownership issues.

For single dwelling unit buildings, no adaptation of the telephone model is necessary. However, for most MDU buildings it is necessary to modify the telephone inside wiring regime with respect to common wiring. For MDU buildings with common wiring, MultiMedia urges the Commission to adopt a system of two demarcation points. The first, the point at which dedicated subscriber "drop" lines connect to common wiring, would mark the subscriber's home wiring. The second demarcation point, at the location defined in the telephone inside wiring rules, marks the separation between MVPD facilities and MDU building common wiring. The disposition and other rights under the cable home wiring rules should be extended to the MDU building owner for the common wiring.

MultiMedia also urges the Commission to modify its rules to specify that, at least on a prospective basis, ownership rights to installed cable home wiring passes to the subscriber (and the MDU building owner in the case of common wiring) upon installation.

Multimedia does not believe that these changes will undermine the effectiveness of the Commission's signal leakage rules, and supports applying the rules to all MVPDs with respect to the wiring they feed.

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COMMENTS OF MULTIMEDIA DEVELOPMENT CORP.

MultiMedia Development Corp. ("MultiMedia"), by its attorneys, hereby submits these Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 95-504, released January 26, 1996, 61 Fed. Reg. 3657 (1996), in CS Docket No. 95-184, and First Order on Reconsideration and Further Notice of Proposed Rule Making ("Further Notice"), FCC 95-503, released January 26, 1996, 61 Fed. Reg. 6210 (1996), in MM Docket No. 92-260, as captioned above.

Introduction

MultiMedia operates wireless cable television systems in the Albuquerque, Las Cruces and Santa Fe markets in New Mexico and

currently serves 8,000 subscribers. MultiMedia also is participating in the on-going FCC auction proceedings for MDS Basic Trading Area licenses for those and other markets.

Like most wireless cable system operators, MultiMedia has a small but growing market share in providing multichannel video services in a competitive environment. Notwithstanding the growth of MultiMedia and other wireless cable operators, preexisting cable television systems continue to enjoy almost complete system penetration of multiple dwelling unit ("MDU") buildings. Competing cable systems, bolstered by the ineffectiveness of the Commission's inside wiring rules, have utilized this market power to deny MultiMedia access to internal wiring and, as MultiMedia begins to focus its marketing efforts on the lucrative MDU market, further problems can be expected. For these reasons, MultiMedia is vitally interested in the Commission's efforts to foster fair competition in the multichannel video services marketplace, and it supports the Commission's policies of enhancing such competition through refinement of its cable home wiring and telephone inside wiring rules.

As set forth below, the Commission should exercise its authority to preempt state and local mandatory property access laws that discriminate against non-franchised multichannel video programming distributors ("MVPDs"). In addition, the Commission should for the first time fully consider and adopt a regulatory model for cable home wiring which takes into account the recent regulatory and competitive developments in the industry and the

inevitable convergence of multichannel video, telephone and other communications delivery systems. Now and for the future, the cable home wiring rules must operate in harmony with the provisions governing telephone inside wiring, while allowing for differing characteristics of video and telephone distribution systems.

I. THE COMMISSION SHOULD PREEMPT DISCRIMINATORY STATE AND LOCAL MANDATORY ACCESS LAWS.

MultiMedia, like other wireless cable operators, competes in markets against cable systems that use their ubiquitous penetration of the marketplace, including MDU buildings,[1] to dominate the multichannel video marketplace. The ability of wireless cable systems and other MVPDs to compete fairly in the marketplace is severely impaired by some existing state and local laws and regulations which give franchised cable systems a right of access as a matter of right to customers in MDU buildings, but which do not afford the same right to other (non-franchised) MVPDs. Most of these so-called "mandatory access" laws stem from the era (not long ago) when there was only one provider of multichannel video services in a given area -- the cable system franchisee -- and local franchise authorities desired to ensure that MDU buildings would have multichannel video service and to prevent property

[1] A substantial share of households in many markets are MDU households. In MultiMedia's Albuquerque market, for example, about 40% of all households are in MDU buildings.

owners from denying access based on aesthetic or other considerations.

Times have changed. In a marketplace where consumer demand for multichannel video services has increased and the "one-provider" monopoly has given way to competition, an MDU building simply would not, absent some unusually compelling reason, bar building access to multichannel video service. Moreover, where only the local cable television franchisee existed before, in most cities wireless cable systems, private cable operators, and other alternative MVPDs now compete for MDU business. Unfortunately, as in many other instances of state and local regulation of communications services, mandatory access laws have not kept pace with this marketplace evolution and federal regulatory policy. Because many of these laws still address only cable systems or "franchised" MVPDs, the laws now distort market forces by discriminating against competing MVPDs. Where an alternative (non-franchised) MVPD is lawfully providing multichannel video service to an MDU, these laws permit the cable system to access the building, regardless of the wishes of the condominium association or other property owner.[2] However, non-franchised MVPDs are denied

[2] The MDU building may prefer the alternative MVPD, for example, because it receives better value from lower rates or more desirable programming or other services.

the same right in buildings in which a cable system is the incumbent.[3]

MultiMedia simply seeks elimination of this discrimination, and urges the FCC to use its preemption authority to level the playing field. The Commission has authority to preempt state and local regulation where it is inconsistent with and frustrates the execution of federal policy over interstate communications matters.[4] Both the Commission and Congress have placed great emphasis on the goal of fostering a fully competitive multichannel video services

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[3] An example of a perverse effect of this regulatory imbalance occurs in MDU buildings where an "overbuild" of a second common wiring system would severely disrupt the building's architecture or aesthetics. Under these laws, the cable system franchisee is able to use its unilateral right of access to threaten the building with an overbuild. Since the existing service from the (non-franchised) MVPD does not satisfy the building's mandatory access obligation, the building must replace service from the existing MVPD with that of the cable system in order to avoid the intrusive overbuild.

[4] See Louisiana PSC v. FCC, 476 U.S. 355 (1986); National Ass'n of Regulatory Utility Comm'rs v. FCC, 880 F.2d 422 (D.C. Cir. 1989) (upholding the Commission's authority to preempt state regulation of telephone simple inside wiring, which provides both interstate and intrastate service, because the regulation thwarted the federal goal to promote competition in interstate telecommunications).

The Commission has Congressional authority to promote the nationwide development of wireless cable, and thus may preempt any state law that impedes the Commission's own regulatory scheme. See Orth-O-Vision, Inc., 82 F.C.C.2d 178 (1980), aff'd New York State Commission on Cable Television v. FCC., 669 F.2d 58 (2d Cir. 1982) ("Orth-O-Vision"). In Orth-O-Vision, the Commission preempted a state regulation that prohibited master antenna television systems ("MATVs") receiving multipoint distribution service ("MDS") transmissions from operating without cable television franchises. The Commission found that the regulation allowed municipalities to protect cable systems from MDS competition by denying franchises to the MATVs that carried MDS signals, resulting in MDU buildings served by these MATVs being denied MDS service contrary to Commission policy. The court affirmed the Commission's preemption of the state law, because it impeded Commission authority over MDS.

market in both the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") and the Telecommunications Act of 1996.[5] There is a substantial federal interest in promoting this competition, which involves markets and services which are interstate in nature.

Discriminatory mandatory access laws have a market-corrupting effect which is directly at odds with this express federal policy. Remedying this inequity at the state or local level is problematic, because in many locales alternative MVPDs are relatively recent entrants and are only nascent competitors. On the other hand, cable operators benefit from interdependency with many franchise authorities by virtue of the franchise fees cable operators collect and pay from their revenue streams. The budgets of many municipalities are at least partly reliant on these revenues, creating an atmosphere where they may be inclined to continue favoring cable systems over alternative MVPDs (paying no franchise fees) in political and legislative discourse. Although non-franchised MVPDs pay no franchise fees (by virtue of the fact that they do not use public rights-of-way),[6] they are no less entitled to compete on an equal footing in the marketplace.

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[5] See Sen. Conf. Rep. No. 102-862, 102d Cong., 2d Sess. 1-2, 4-5 (1992); 47 USC §521(6); Sen. Conf. Rep. No. 104-458, 104th Cong., 1st Sess. 61 (1996).

[6] Wireless cable operators, for their part, pay other "fees" depending on the manner in which such systems are configured. They pay lease fees to ITFS and MDS licensees for airtime, as well as spectrum auction and other license-related payments to the federal government.

Because there simply is no reasonable likelihood of eliminating these provisions at the various state or local levels, it is up to the Commission to weigh in on this matter.[7] The Commission should, indeed must, invoke its preemption authority to ensure that federal policy is protected in all jurisdictions. MultiMedia strongly urges the Commission to invoke its federal preemption authority and preempt any state or local mandatory access laws which do not apply with equal force and effect to both franchised and non-franchised MVPDs.

II. THE COMMISSION SHOULD REVISE ITS INSIDE WIRING RULES TO ENCOURAGE COMPETITION AND REFLECT PRACTICAL NEEDS AND LIMITATIONS.

MultiMedia welcomes further Commission review of the cable television inside wiring rules. For a competitive multichannel video services marketplace to function effectively, the cable home wiring rules must be structured to freely permit the replacement of one MVPD with another as market forces dictate. MultiMedia believes that the current rules must be further modified to meet the practical needs and limitations of real world operations and, most especially, to ensure that the rules themselves do not become needless barriers to competition as heretofore separate lines of business in telecommunications begin to converge. Consistent with

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[7] Commission consideration of this issue is most appropriate in this proceeding. As discussed below, the Commission must consider all issues germane to cable home wiring if the rules are to serve the public interest during and after the coming convergence of communications systems and competitors.

these realities, it is ripe for the Commission to reassess and modify its cable home wiring rules as well as its telephone inside wiring rules.

Previously the Commission's deliberations regarding cable home wiring have been intentionally limited in scope. Faced with an extremely tight time deadline under Section 16(d) of the 1992 Cable Act,[8] the Commission declined to undertake a broad review of its options.[9] On reconsideration, the Commission in the Further Notice again declines to consider broader issues beyond the bare minimum requirements of the 1992 Cable Act,[10] but wisely recognizes that:

> new competitors, such as wireless cable, satellite master antenna television services ('SMATVs') and telephone companies, and new technologies, such as video dialtone, are likely to change the video programming marketplace. The Commission must therefore consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding in determining whether to expand the cable home wiring rules in ways that could have implications for cable operators and other multichannel video programming providers, as well as other providers of telecommunications services.[11]

MultiMedia believes that now, more than ever, it is imperative that the Commission move its cable home wiring rules beyond the "cable services" focus of 1992 and towards a model which will serve

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[8] The initial Notice of Proposed Rule Making in MM Docket No. 92-260, 7 FCC Rcd 7349 (1992), was released on November 6, 1992, and the rules were required by the 1992 Cable Act to be in place by February 2, 1993, less than three months later. Report and Order in MM Docket No. 92-260, 8 FCC Rcd 1435, 1435, 1435 n.1 (1993)("Cable Wiring Order").

[9] Cable Wiring Order, 8 FCC Rcd at 1436 (¶ 6).

[10] Further Notice at 5-6 (¶ 8).

[11] Id. at 6 (¶ 8).

the future and the inevitable "convergence of telephone, data and video technologies."[12] The present cable home wiring rules, merely an embellishment of the arbitrary concept of a "12 inches outside" point of demarcation,[13] will soon in many instances have no practical meaning or usefulness in a world where telephone companies will be delivering video, and cable systems and other MVPDs will provide local exchange telephone and other new services. The recent enactment of the Telecommunications Act of 1996 will greatly accelerate these changes. For the purposes of cable home wiring, the future is now, and the Commission simply must structure its rules accordingly.

A. The Commission Must Harmonize The Cable Home Wiring Rules With Its Telephone Inside Wiring Rules.

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[12] Id.

[13] It is an understatement to say that the "12 inches outside" definition is arbitrary and does not adequately address the real-world architecture of MDU building video systems. In some cases in MDU buildings, this "demarcation point" turns out to be in the middle of a wall or at a point inside a conduit or molding not readily accessible. See Further Notice at 16-17 (¶ 27). And because the rule does not relate to the location of cable system connections, even if this 12 inch point is accessible, the point may often fall in the middle of a dedicated cable run between the subscriber premises and a junction with common wiring or the cable "lock box." The existing rule produces the peculiar result that such wiring, dedicated to serving a single MDU unit, falls partially on one side of the demarcation and partially on the other. Any change of MVPD in such situations requires a cutting and splicing procedure at the 12-inch point in the cable run rather than a more logical change of connection from one MVPD to another at an existing connection point. The rule thus forces system configuration to depart from what may otherwise be optimal and efficient design based on engineering considerations.

Recognizing all of this imminent change, the Commission professes that "parity with telephone inside wiring may also be desirable if a cable operator wants to provide telephone or other common carrier service over its coaxial cable..."[14] MultiMedia believes that, in order for the cable home wiring rules to work in the evolving marketplace, there must indeed be "parity" with telephone wiring rules to the fullest extent possible.

The telephone inside wiring rules have ably served the interests of telephone companies, telephone service and equipment companies, property owners and customers alike for almost a decade. The Commission should restyle its cable home wiring rules after its proven telephone inside wiring rules, with proper allowances for the differing characteristics of video broadband distribution systems as set forth below.

It is impossible to foretell how the various services provided by the competing companies will be delivered to the customer premises and distributed within the premises (e.g., fiber optic cable, coaxial cable, existing telephone wiring using technology now under development, wireless technologies, future technology, or some combination). However, there is obvious public policy value in having a common, reasonable delivery point for all such services, now and in the future, so that efficient use of embedded

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[14] Further Notice at 6 (¶ 8).

premises wiring[15] can be maximized and restrictions upon consumer choice minimized. To the extent that the demarcation point for all service providers should end up in one place, it would be far more practical to have the comparatively lesser-developed cable infrastructure adapt to the telephone demarcation location than vice versa. The telephone wiring demarcation point, defined in Section 68.3 of the Commission's Rules,[16] is the service handoff point at which the telephone company -- the most ubiquitous service provider of all and a likely future provider of multichannel video competing services -- already delivers its services. The telephone demarcation point definition has been proven over time, in millions more installation locations than for cable television, to be a practical architectural dividing point which results in demarcation at sensible locations in both single unit and multi-unit dwellings. Although service and system convergence may warrant some adjustment to the telephone inside wiring model as suggested in the NPRM, MultiMedia believes the telephone rules provide the most useful and logical model for the regulation of broadband video, telephony and other services.

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[15] For the purposes of these comments, references to cable home "wiring" include all associated non-active components connected to the wiring including signal splitting hardware. See Further Notice at 21-22 (¶ 38).

[16] 47 C.F.R. §68.3. The rule sets forth the various detailed definitions of the demarcation point for single dwelling unit buildings and for "multiunit premises." In the case of multiunit premises, the demarcation point may, depending on the circumstances, be just inside the building or where the wiring crosses the property line.

In today's marketplace, where, for the most part, video distribution systems consist mainly of broadband coaxial cable systems and telephone wiring consists mostly of wire "twisted pairs," some adaptations of the telephone model are necessary for application to video systems. In the case of single dwelling unit buildings, the architecture of video and telephone wiring does not meaningfully differ for the purposes of inside wiring rules. In each case from the demarcation point inward the wiring serves a single subscriber and service may be readily transferred one provider to another. In the case of MDUs, however, the architecture of present-day video system building wiring can differ substantially from that of telephone wiring. Telephone wiring in MDU buildings usually consists of individual wiring from each customer premises to the demarcation point. Some present-day video wiring in MDU buildings is configured that way, in which instance no special rules need apply. MultiMedia believes that a natural consequence of the convergence of different services will be a gradual marketplace transition of all MDU building wiring architecture to accommodate all services in this manner. Future technological and market development and consumer demand will drive this transition. As this occurs, revised FCC rules with a common demarcation point based on the telephone model will reap full benefit for the marketplace by supporting full and universal consumer choice among competing service providers.[17]

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[17] The Commission seeks further comment on whether it should prohibit future installations of so-called loop-through wiring.

For the majority of present-day MDU buildings existing video wiring architecture differs from the telephone model, and allowance must be made for these differences. At present, most cable wiring in MDU buildings makes use of common wiring, either in the form of common "feeder" or "riser" lines to which individual unit "drop" lines connect, or in the form of "loop-through" configurations.[18] As the Commission recognizes, no single subscriber can "own" these common wiring elements. Until such time as MDU buildings with common wiring are reconfigured for subscriber access without reliance upon common wiring, the rules must establish an orderly and logical approach to the control and disposition of common wiring.

MultiMedia strongly urges the Commission to adopt a two-tiered demarcation approach for MDU buildings with common wiring. As suggested by previous commenters in this docket,[19] the cable home wiring rules should be modified to establish the demarcation point for subscriber wiring in such buildings at the point where the wire solely dedicated to serving the single unit meets the common feeder

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Further Notice at 22 (¶ 40). Because the fated convergence of the telecommunications industry is not yet fully underway, MultiMedia believes it is premature for the Commission to take such an approach. The economic limits of current market demand and limits of present technology may require the present use of such wiring in new installations in certain MDU buildings.

[18] Further Notice at 16, 19, 20 (¶¶ 26, 33, 36). See also Cable Wiring Order, 8 FCC Rcd at 1436 (¶ 10).

[19] Further Notice at 17 (¶¶ 28-29).

or riser line.[20] This modification would ensure a demarcation point which is readily accessible and which corresponds to the location of connector hardware where the individual subscribers' wires can be detached from the common wiring without harming property and without interfering with the provision of service to other residents in the building.

A second demarcation point should be established at the location defined in the telephone wiring rules for the purposes of separating the wiring owned by the MVPD(s) serving the MDU building from the common feeder or riser lines. The building owner would have the disposition and other rights between these two demarcation points -- the MDU's common wiring segments.[21]

MultiMedia believes that the competitive MVPD market can best be managed, and the interests of subscribers best represented, by putting control over common wiring in the hands of the MDU property owner. Ownership of common wiring by the MDU property owner would far better represent the interests of the MDU subscribers than continued ownership by the cable operator comapny or other MVPD provider which installed it. The interests of an MDU property

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[20] In the unusual case of full loop-through designs where there is no wiring dedicated to single subscribers, there would be no subscriber wiring under the rules and the property owner would have disposition rights over the loop as common wiring.

[21] Extending such rights to the property owner in the case of common wiring in MDU buildings is indistinguishable from -- and no more a "violation" of the property rights of an MVPD than -- the rules' present grant of such rights to subscribers for subscriber wiring. The lawfulness of those rules has already been established by the Commission.

owner, whether it is a condominium association or landlord, closely parallels those of its building residents regarding building services. As a matter of direct interest, the condominium association or landlord seeks to provide the best possible building environment at the most reasonable cost.[22] Market forces and the aesthetic and practical limitations of the property compel the MDU property owner to determine on behalf of residents whether and how many building services, including MVPDs, are desirable.[23] The MDU property owner can also serve residents' interests in bargaining with MVPDs. The property owner may have market power to derive extra value from the MVPD through discounts, bulk pricing or other arrangements. On the other hand, an MVPD which installed wiring in an MDU has none of these incentives or interests and operates in its own best interest and against competitive forces. For all of these reasons, the property owner is clearly the best of the available alternatives, and these factors clearly outweigh any concern as expressed by the Commission that an MDU property owner

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[22] This is true with respect to all choices of building services, whether relating to multichannel video, janitorial, landscaping and snow removal, or refuse disposal services.

[23] As in the case of many MDU units with video common wiring, the property owner may choose to permit the installation of duplicate common wiring systems of competing MVPDs. However, in some cases the practical limitations of the MDU building including aesthetic considerations may limit this ability. Every MDU building is different, and MultiMedia cannot conceive of a Commission rule which could effectively regulate whether and how many competing MVPDs could or should be allowed to construct duplicative common wiring in the myriad of circumstances that can exist. The matter is best left to the MDU property owner until such time as the use of MDU common wiring is phased out by advances of technology and market forces.

"could arguably supersede subscribers' wishes."[24] The public interest will best be served by modifying the cable home wiring rules to extend the cable home wiring rules to MDU common wiring and give the MDU property owner the disposition and other rights over such wiring set forth in the rules.[25]

B. Property Rights To Cable Home Wiring Should Pass To The Subscriber Or Building Owner Immediately Upon Installation.

The Commission should also follow the telephone model with respect to ownership of cable home wiring. The telephone inside wiring rules and deregulation of telephone inside wiring in 1987 were the result of the Commission's desire to foster the development of an unregulated, competitive telecommunications marketplace.[26] The Commission recognized at the time that, as a practical matter, inside wiring is essentially abandoned upon installation because of the low salvage value of such material and the labor cost involved in removing it, and found it was in the

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[24] Further Notice at 22 (¶40).

[25] As set forth below, MultiMedia urges the Commission to modify its rules to provide that, in the future at the time of installation of cable home wiring, title to the wiring is passed to the subscriber (or property owner in the case of MDU building common wiring).

[26] See Memorandum Opinion and Order in CC Docket No. 79-105, 1 FCC Rcd 1190, 1191 (1986)(¶ 8).

public interest to relinquish control to the customer to facilitate consumer choice.[27]

Precisely this situation is presented again with cable home wiring. All of the extensive deliberations in this proceeding are essentially about wiring which is either: 1) not owned by the MVPD once it is installed by operation of property law;[28] or 2) almost universally treated by the installing MVPD as abandoned property upon service termination (even if service is terminated shortly after installation) due to lack of salvage value and high removal cost.[29] The only reason that cable systems or other installing MVPDs seek to protect their ownership over such wiring in this proceeding is to protect their customer base against entry by competitors.[30] To prevent "ownership" from being used as an

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[27] Control of existing wire was transferred over to the customer immediately, while, because of the complex accounting requirements of telephone rate of return regulation, actual title to the wiring, to the extent it remained with the telephone company, was transferred to the customer upon full cost amortization under the Commission's rules.

[28] In many if not most cases, the Commission's cable home wiring rules may not apply to cable home wiring by operation of property law. As the Commission notes, the present cable home wiring rules only apply where the wiring is owned by the MVPD at the time of service termination. Further Notice at 11, 19, 21 (¶¶ 18, 33, 37). Absent an enforceable contract between the property owner and the installing MVPD to the contrary, such installations become a part of the real property into which they are installed under the laws of virtually all states. See id. at 11 n.48.

[29] See Further Notice at 14 (¶ 22).

[30] There are no other genuine interests in owning this wiring. Ownership of wiring is not germane to maintenance activities, as MVPDs routinely perform maintenance and repair on inside wiring as part of their services without distinction as to whether wire is owned by the MVPD or by the subscriber or property owner.

artificial impediment to competition, the Commission should modify its inside wiring rules to require that title to cable home wiring vest with the subscriber (or with the property owner in the case of common wiring in MDU buildings) upon installation. Such a rule would not impose any hardship on the installing MVPD since the equipment has little or no residual value and likely is fully expensed for tax and regulatory purposes as of installation. Moreover, there would be no issue of an unlawful taking of property if the rule was applied on a prospective basis, only to future installations.[31] Transfer of ownership to the subscriber or property owner upon installation would provide a simple resolution to the concern raised by the Commission regarding potential subscriber use of the wiring for other competitive services.[32]

MultiMedia urges the Commission to modify its rules to provide that, at least in future installations, property rights to the

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Similarly, as set forth below, cable signal leakage protection also does not turn on ownership issues. A cable operator is responsible for signal leakage protection throughout its system, without regard to the portions to which it does not have title.

[31] MVPD wiring installations after the effective date of this rule would thus be made as part of a voluntarily commercial relationship as to which this rule would only affect the terms and conditions. FCC v. Florida Power Corp., 480 U.S. 245 (1987). See Further Notice at 17 (¶28).

[32] In the Further Notice the Commission states that "given the potential for convergence of telephone, data and video technologies, it may be appropriate to consider requiring cable operators to permit subscriber access to inside wiring prior to termination of service in order to promote consumer choice and competition." Further Notice at 6 (¶ 8).

wiring vest in the subscriber (or property owner in the case of MDU building common wiring) upon installation.

C. Adaption Of Telephone Inside Wiring Rules To Video Systems Will Not Undermine The Commission's Signal Leakage Rules.

In discussing the prospect of modifying the cable home wiring rules towards the telephone inside wiring model, the Commission notes that cable home wiring is different from telephone wiring because "cable operators have the responsibility to prevent signal leakage which can cause harmful interference to spectrum users, a responsibility that telephone companies do not have."[33] MultiMedia believes this distinction between MVPDs and telephone companies is of no relevance in determining whether the cable home wiring rules should be modified to comport with the telephone inside wiring rules as set forth above. Under the Commission's signal leakage rules, cable systems are required to protect against signal leakage coming from their systems regardless of demarcation points and whether such leakage emanates from wiring which is legally owned by them. In practice, MVPDs presently "police" substantial portions of their systems which, by operation of property law or the Commission's cable home wiring rules, are no longer under their ownership. MultiMedia believes that holding MVPDs responsible for signal leakage matters as under the current rules is the only practical manner of addressing the signal leakage issue. Changes in wiring demarcation points or ownership as suggested above in no way undermine the this proper functioning of the signal leakage rules.

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[33] Further Notice at 3-4 (¶ 4).

Conclusion

MultiMedia Development Corp. welcomes the Commission's further efforts to harmonize its rules with marketplace realities. As set forth above, the Commission should ensure the existence of competition in multichannel video services by exercising its authority to preempt state and local mandatory access regulations which discriminate against particular MVPDs. In addition, the Commission should for the first time fully consider and adopt a cable home wiring regulatory model which recognizes and is in harmony with similar provisions governing telephone services, especially in view of the recent regulatory and competitive developments in the industry and the inevitable convergence of telephone, cable television and other communications delivery systems. The cable home wiring rules should follow the Commission's preexisting and proven rules regarding telephone inside wiring, taking into account the different technological and architectural limitations of present video coaxial cable distribution systems.

Respectfully submitted,

MULTIMEDIA DEVELOPMENT CORP.

By: William J. Andrle, Jr.

Stephen E. Coran
William J. Andrle, Jr.

Rini, Coran & Lancellotta, P.C.
Dupont Circle Building
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

Its Attorneys

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wja-1/wiring.com