

interstate and intrastate telephone services, they are regulated by both federal and state regulatory authorities. The extent of dual regulation depends generally on whether the Commission has preempted state authority to regulate exclusively a particular aspect of telephone service rates. For example, we have preempted states from regulating the prices and terms and conditions under which complex wiring services are offered to the public, thus allowing subscribers to obtain complex wiring services in a fully competitive market.<sup>85</sup> On the other hand, we have not generally preempted the states from setting rates, terms and conditions for simple inside wiring services.

54. With respect to simple wiring services, however, we have maintained certain federal standards with which state regulations must comply. For example, if a state chooses to regulate the rates under which telephone companies provide simple inside wiring, the state regulations must require the telephone companies to unbundle the inside wiring charges from the charges for basic transmission services.<sup>86</sup> Moreover, a state may not establish rules that will impede the competitive provision of telephone inside wiring. In addition, any state regulations governing the terms or conditions under which inside wire services are provided must be consistent with the technical standards set forth in Part 68 of our rules.<sup>87</sup>

55. In addition, the Commission has instituted a system to monitor state regulatory programs for inside wire to assess their impact on our goal of achieving full competition in the market for inside wire services. We require a telephone company with annual operating revenues of \$100 million or more to file with the Commission a copy of any state or local statute, rule, order, or other document that regulates, or proposes to regulate, the price or prices the telephone companies charge for inside wire services. If a state chooses to regulate simple inside wire, we believe that these documents will enable us to determine the costing methodology used by it to set prices for simple inside wire and to consider whether those prices are consistent with our goals for inside wire services.<sup>88</sup>

## 2. *Request for Comment*

56. We first solicit comment on whether it may be necessary to harmonize these respective disparate systems of regulation as the similarity increases between the technology employed to deliver telephony and video programming. For example, as stated previously, it is possible that in the future both telephony and video programming will be delivered over a single wire; thus, an issue may arise over which dual system regulation should govern, i.e.,

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<sup>85</sup> *Third Report and Order* in CC Docket No. 79-105 (Detariffing the Installation of Inside Wiring), 7 FCC Rcd 1334, 1341 (1992) ("*Preemption Order*").

<sup>86</sup> *Preemption Order*, 7 FCC Rcd at 1335.

<sup>87</sup> *Id.* at 1341. (citing 47 C.F.R. Part 68).

<sup>88</sup> *Id.* at 1337.

Commission-local franchising authority (cable service) or Commission-state public utility commission (telephone service). We seek comment on whether the Commission has legal authority to change or harmonize these dual systems of regulation to accommodate the situation where broadband or multiple services are provided over a single wire or multiple wires, and how this could be accomplished. Similarly, if we were to adopt a common demarcation point for both cable and telephone networks, confusion also might arise over which relationship between local and federal authorities should govern. Therefore, we also seek comment generally on any conflicts that may arise from unifying these disparate systems of dual regulation between cable and telephone service for inside wiring, in light of the definition of the network or system demarcation points as well as the other standard technical requirements for the two services.

57. State and local governments are indispensable to the regulation of cable television and telephone service. For example, as stated above for cable services equipment, the Commission's broad federal policies and rules in most instances are implemented by local regulators. Increased convergence between the technologies used to deliver cable television and telephone services, and the traditional identities of the companies providing such services, likely will blur the lines between regulatory oversight. For example, we may see the Commission, a state public utility commission, and a local cable franchising authority all involved in overseeing the broadband services provided by a single company. Thus, we also ask commenters to discuss the role of non-federal regulation in setting the prices, terms and conditions for telecommunications services inside wiring. Currently, many local regulators regulate cable wiring. We seek comment on whether the non-federal regulation of telephone wiring should be altered if the delivery systems for telephony and video programming become more similar. With respect to federal involvement, difficulties also may arise in determining the proper level of our involvement in the oversight of wiring as telephone and video programming technologies advance. In this context, we seek comment on whether we should expand or decrease our monitoring of charges for inside wiring used to provide video service, or increase or decrease our oversight of telephone inside wiring.

## **F. Service Provider Access to Private Property**

### **1. Background**

58. We also wish to examine the right of various service providers to obtain access to private property, such as multiple dwelling unit buildings, private housing developments, and office buildings. If, in the interest of competitive parity, we ultimately were to adopt a uniform demarcation point for the networks of all companies providing similar services, that goal may not be achieved if all providers do not have equal access to the customer's wiring at the demarcation point.

59. Telephone companies traditionally have gained access to private property through private easements and contracts with the property owners. As common carriers, they also have the use of public right-of-ways and can exercise the power of eminent domain. Thus,

when they seek to provide telephone service, there has been little objection to their right to access private property.

60. Cable operators' right to gain access to private property has been less clear. Currently, approximately thirteen states have passed some form of cable mandatory access statute, including Connecticut, Delaware, Florida, Illinois, Kansas, Maine, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Rhode Island and Wisconsin. In addition, some cable operators have sought to obtain a right of access to private property under the Communications Act,<sup>89</sup> the First Amendment,<sup>90</sup> and various common law theories,<sup>91</sup> seemingly with little success.

## 2. Request for Comment

61. 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 this *NPRM* will not even be implicated. An inequality in access can unfairly benefit one provider over another. For instance, if one service provider has an unrestricted right of access to

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<sup>89</sup> These actions have been based on Section 621(a)(2) of the Communications Act, 47 U.S.C. § 541(a)(2), which provides that "[a]ny franchise shall be construed to authorize the construction of a cable system . . . through easements which have been dedicated for compatible uses . . ." See, e.g., *Cable Holdings of Georgia, Inc. v. McNeil Real Estate Fund VI, Ltd.*, 953 F.2d 600 (11th Cir.), cert. denied, 113 S. Ct. 182 (1992) (holding that Section 541(a)(2) does not afford access to private easements -- as opposed to an easement formally relinquished for general utility use -- held by a utility company or third party provider of video programming services); *Media General Cable of Fairfax, Inc. v. Sequoyah Condominium Council of Co-Owners*, 991 F.2d 1169 (4th Cir. 1993) (same); *Cable Investments, Inc. v. Woolley*, 867 F.2d 151 (3d Cir. 1989) (holding that Section 541(a)(2) did not authorize cable operator to obtain access to multiple dwelling unit building over property owner's objection); but see, *Mumaugh v. Diamond Lake Area Cable Television Co.*, 456 N.W. 2d 425, 183 Mich. App. 597 (1990) (finding that Section 541(a)(2) encompassed access to exterior private easements).

<sup>90</sup> See, e.g., *Cox Cable of San Diego v. Bookspan*, 195 Cal. App. 3d 22 (1987) (rejecting argument that First Amendment required property owner to grant access).

<sup>91</sup> See, e.g., *Woolley*, 867 F.2d at 161 (summarily rejecting "tenant easement" theory); *Multi-Channel TV Cable v. Madison City, Inc.*, No. 2549, 1989 WESTLAW 11500, (Ohio Ct. App., Jan. 23, 1989) (finding that cable operator was not entitled to an injunction to prevent its ejection from a mobile home park, and that operator was a mere licensee whose access rights were terminable at will by the property owner).

private property -- even over the objection of the property owner -- that service provider would be able to compete for individual subscribers in every multiple dwelling unit building, private housing development and office building, while the provider without such a right could only compete in those buildings in which it had managed to obtain the property owner's consent. In addition, we have received conflicting information about the ability of alternative service providers to obtain the permission of multiple dwelling unit building owners: (a) to enter the building at all; (b) to run a common feeder line up a stairwell, for example, to a security closet or lockbox; and (c) to run individual wiring down hallways from the lockbox to individual units.<sup>92</sup> We seek comment on the legal and practical impediments faced by telecommunications service providers in gaining access to subscribers. For instance, as discussed above,<sup>93</sup> moving the cable demarcation point farther away from the subscriber, such as back to the lockbox, could alleviate much of the access problem if building owners primarily objected to running additional wiring down the hallways; on the other hand, moving the demarcation point may have little impact if building owners have been denying alternative providers access to the property altogether.

62. We seek comment on the above discussion and several other specific issues related to provider access. First, we seek comment on the current status of the law regarding access to private property by cable operators and telephone companies. For instance, what type(s) of access do state statutes granting mandatory access for cable operators provide? Who qualifies for such mandatory access (e.g., only franchised cable operators)? Have cable operators been successful in obtaining access to private property under any other statutory or common law theories? Similarly, what type(s) of access to private property do the states grant to telephone companies? Is such access related to the type of service provided or to the identity of the company? Do the statutes permit telephone companies to obtain access to

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<sup>92</sup> See, e.g., Liberty Petition for Reconsideration in MM Docket No. 92-260 at 4 (stating that building owners are "understandably unwilling" to allow Liberty to damage custom designed hallway mirrors or wall coverings in order to access wiring located in conduits or molding, and that building owners "are not keen on" Liberty installing a second wire on top of expensive hallway mirrors or wall coverings even in those cases where existing wiring is accessible near the door of a subscriber's unit); compare with Time Warner *Ex Parte* Notice -- MM Docket No. 92-260 (filed Dec. 5, 1994) at 8 ("Because landlords typically receive handsome compensation from unfranchised MVPDs based on a percentage of their revenues from the building, most landlords have a strong incentive to allow Liberty or another MVPD to install cable in hallway moldings, or on the outside of the building. Installation of a second wire in common areas of the buildings is a one-time disturbance to owners of MDUs. . . .").

<sup>93</sup> See *supra*, Section II.A. We do not intend to imply that we are predisposed to adopt any conclusions regarding the legal or policy justifications for moving the demarcation point, but simply cite this example as one possibility for overcoming a particular access problem.

private residences, such as multiple dwelling units, or simply to run their lines across private property? In other words, can an individual resident in a multiple dwelling unit obtain telephone service over the property owner's objection?

63. We also seek comment on whether and how the rules governing access to customers' premises should be harmonized in a world in which the cable operator, the telephone company and possibly others may be offering telephony, video and other services over a single wire. Can and should cable operators that offer telephony be permitted to use the telephone companies' easements to obtain access to private property? Can and should cable operators or telephone companies, if they have an easement to provide telephony, also be permitted to provide video or other services using the same easement? Should it make a difference whether the services are provided over one wire or two? We seek comment on whether allowing a company that possesses an easement for one service to rely on that easement in providing another service would constitute an impermissible "taking" without just compensation, in contravention of the property owner's Fifth Amendment rights.

64. Finally, we request comment on whether the Commission can and should attempt to create access parity among service providers, and what our rule should say regarding the terms of such access. We also seek comment on any statutory or constitutional impediments to this goal. In particular, we ask commenters to address the concern that any right of access to private property may constitute an impermissible "taking" in violation of the property owner's Fifth Amendment rights. We realize that a number of these potential service providers are not common carriers and their right to access is not well established in state or federal law. We seek comment on the potential constraints this lack of common carrier status will have on the rules we prescribe.

## G. Customer Premises Equipment

### 1. *Background*

65. Telephone-related customer premises equipment (CPE) constitutes all telephone equipment located on the customer's side of the demarcation point, including private branch exchanges (PBXs), key systems, modems, and telephone handsets. In the *Computer II* Final Decision,<sup>94</sup> we concluded that Title II regulation of CPE was no longer warranted. We found that deregulation "fosters a regulatory scheme which separates the provision of regulated common carrier services from competitive activities that are independent of, but related to, the underlying utility service."<sup>95</sup> We first found that our pro-competitive policies for CPE had created a market in which vigorous competition among equipment vendors was providing new

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<sup>94</sup> *Computer II*, 77 F.C.C.2d 384 (1980).

<sup>95</sup> *Computer II*, 77 FCC 2d at 447.

and innovative types of CPE to subscribers, as well as improved maintenance and reliability.<sup>96</sup> Earlier decisions removed tariff provisions that restricted customers' rights to attach non-carrier provided CPE to the telephone network. Those earlier efforts culminated in a registration program that allows consumers to connect their own equipment to the network if the equipment conforms to certain technical standards and is properly registered with the Commission under Part 68 of our rules. These decisions confirmed the existence of broad consumer right under Sections 201(b) and 202(a) of the Act.<sup>97</sup>

66. In *Computer II*, we were also concerned that carriers' practices of bundling CPE charges with charges for basic services could undermine our efforts to ensure that regulated service rates accurately reflected the costs of providing the associated service.<sup>98</sup> Given the variety of CPE products and suppliers, we were confident that our unbundling and detariffing of CPE would not adversely affect consumers.

67. Cable-related CPE,<sup>99</sup> regulated under Part 15 of the Commission's rules for emission and interference, generally includes equipment located on the customer's side of the demarcation point, such as television receivers ("TVs"), video cassette recorders ("VCRs"),

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<sup>96</sup> *Id.* at 439.

<sup>97</sup> *See, e.g., Carterfone*, 13 FCC 2d 420, *recon den.* 14 FCC 2d 571 (1968); *Telerent Leasing Corp. et. al.*, 45 FCC 2d 204 (1974), *aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F. 2d 787 (4th Cir.), *cert. den.*, 429 U.S. 1027 (1976); *Mebane Home Telephone Co.*, 53 FCC 2d 473 (1975), *aff'd Mebane Home Telephone Co. v. FCC*, 535 F.2d 1324 (D.C. Cir. 1976); *First Report and Order in Docket No. 19528*, 56 FCC 2d 593 (1975); *on reconsideration*, 57 FCC 2d 1216 (1976), 59 FCC 2d 716 (1976) and 59 FCC 2d 83 (1976). *Second Report and Order in Docket No. 19528*, 58 FCC 2d 736 (1976); *on reconsideration, aff'd sub. nom. North Carolina Utilities Commission v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. den.* 434 U.S. 874 (1977); *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1 (1977); *Implications of the Telephone Industry's Primary Instrument Concept*, 68 FCC 2d 1157 (1978); *Second Report in Docket No. 2003*, FCC 80-5, released January 29, 1980; *First Report and Order in CC Docket No. 79-143*, FCC 80-88, released March 19, 1980.

<sup>98</sup> *Computer II*, 77 FCC 2d at 445.

<sup>99</sup> We note that while practically all telephone-related equipment is specifically designed to be connected to telephone networks, most of the current cable-related CPE mentioned, such as TVs and VCRs, were designed and can function without connection to cable systems. Thus, the connection of customer-owned CPE to cable system equipment may result in the loss of certain CPE features, such as picture-in-picture and viewing one channel while recording another.

remote control units, and set-top converter descramblers ("set-top boxes").<sup>100</sup> In addition, we anticipate that future CPE used by cable and telephone subscribers may include computers, component decoders and tuning devices, and facilities used for interactive services. While set-top boxes are generally provided by the cable operator, TVs and VCRs are generally provided by the subscriber. Our current cable regulations do not specifically address the rights of cable subscribers to connect CPE to cable operators' facilities. Therefore, unlike equipment used to receive common carrier telephone service, there is some ambiguity as to whether cable operators may prohibit or limit subscribers' ability to connect CPE to operators' facilities for services other than cable service.

68. The 1992 Cable Act directed the Commission to establish standards that relied upon actual cost to set the rates charged to lease equipment used by subscribers to receive basic cable service.<sup>101</sup> Only some cable-related CPE are subject to this statutory provision, including set-top boxes, remote control units, connections for additional outlets, and inside wiring. We note that the 1992 Cable Act also directed the Commission to ensure compatibility between consumer equipment and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their television receivers and VCRs.<sup>102</sup>

69. What is more, and as stated previously, we anticipate that the technologies used to deliver and receive cable and telephone service may become more similar. For example, future video programming and telephony may not only be delivered over a single broadband wire, but future subscribers may receive both services using a single piece of equipment, such as a computer modem or a "videophone." It is also possible that the subscriber may only need one piece of customer premises equipment to interact with both services, such as an enhanced set-top box or stand-alone interface unit. In addition, multi-use devices may be developed that allow subscribers to receive video, data and voice services, akin to the present functions of a telephone modem used to reach computer networks. In such cases, the disparate regulatory schemes for cable-related CPE and telephone-related equipment could cause confusion for service providers as well as subscribers and regulators. For example, service providers may be uncertain whether rates for such equipment are subject to regulation. Similarly, subscribers may be uncertain of their rights to connect CPE to the network(s) over which they receive service.

## 2. *Request for Comment*

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<sup>100</sup> Cable operators often protect their extended basic and premium services with proprietary scrambling techniques. In these cases, the subscriber must obtain a set-top box from the cable operator in order to descramble the signals.

<sup>101</sup> 47 U.S.C. § 543(b)(3).

<sup>102</sup> 47 U.S.C. § 544(b)(1). *See infra* note 96.

70. *Interconnection.* Since the Commission deregulated telephone CPE, the Commission's goals of promoting marketplace entry by communications equipment vendors, increasing competition among these vendors, and producing cost savings for both consumers and common carriers have largely been fulfilled. We believe that exploring and possibly establishing the rights of consumers to provide and connect unregulated CPE to cable operator facilities can similarly benefit cable subscribers, provided that service providers' interests in protecting against theft of service, ability to provide new innovative services, and network and system integrity can be adequately addressed. We also believe that creating a record on these and other related issues will enable the Commission to establish simple and pro-competitive rules setting forth the rights and responsibilities of both service providers and subscribers with respect to CPE.

71. We therefore seek comment on the costs and benefits of harmonizing or revising our rules to accommodate better the possible convergence of technologies used to receive and to interact with network-delivered video programming and telephony. We seek comment on whether to allow customers to use and connect their cable-related CPE, such as set-top boxes, to cable facilities while allowing cable operators to protect their legitimate security interests and to provide new and innovative services without inhibiting the use of existing customer CPE. We recognize that new and innovative services often require proprietary equipment which may not be compatible with existing CPE. We seek comment on the technical and economic impediments to requiring new services to be compatible with existing CPE. We also solicit comment on whether we should establish a common regulatory scheme to govern both cable and telephone network CPE.

72. We also understand that the technology of future CPE may take a variety of forms (e.g., component decoders, computer modems). We note that technologies to deliver voice and video service on an integrated basis continue to evolve. We seek comment on whether we should tailor our rules to accommodate different types of CPE technologies and functions. For example, perhaps there should be a different set of rules for cable-related equipment that is designed to both transmit and receive, than for equipment that is designed only to receive. We tentatively conclude that consumers should be able to connect cable-related equipment, as well as purchase this equipment, and seek comment on how the Commission may best achieve this goal. We note that in the 1992 Cable Act, Congress recognized that there are a number of compatibility problems between cable service and consumer electronics equipment. Congress was particularly concerned about the inability of cable subscribers to use the special features and functions of their TV sets and VCRs when receiving cable signals which are most often precluded by the use of a cable supplied set-top box. These features include picture-in-picture, timed recordings and the ability to view one channel while recording another. Presently, the Commission is awaiting finalization of a standard for a Decoder Interface connector. This standard is being developed by the Cable-Consumer Electronics Compatibility Advisory Group in conjunction with the Joint Engineering Committee of the Electronics Industry Association and NCTA. We believe that special rules must govern subscribers' access to and connection of CPE with access control functions that are consistent with these efforts. In this context, we seek comment on how

best to protect against theft of cable service or other damage to cable operators' facilities if we were to change our rules to accommodate the possible convergence of technology used to deliver and receive cable and telephone service.<sup>103</sup>

73. We are not proposing to change our *Computer II* framework for equipment connected to narrowband facilities, or for equipment used in conjunction with Title II services but not Title VI services. We tentatively conclude that CPE used in conjunction with Title VI services provided over narrowband facilities should also be governed by *Computer II*, and seek comment on this tentative conclusion, including any security concerns that are raised by such a conclusion.

74. We note that Part 68 of the Commission's rules establishes standards for telephone-related CPE and an equipment registration program that are designed to ensure the reliability of telephone networks. Network reliability and safety must be maintained as entities other than traditional telephone companies begin to offer both voice and video services that use or interconnect with the public switched network. We thus seek comment on whether the Commission should enlarge the current registration program to cover cable-related CPE that use or interconnect with the public switched network, if such interconnection is to occur. We further seek comment on whether an equipment registration program similar to the existing Part 68 program should be established for manufacturers of equipment used with future services, both broadband and narrowband, to ensure the integrity and reliability of these networks. Finally, we seek comment on how such a program should be structured to define the rights of both the service providers and the network subscribers, while ensuring the development and maintenance of a competitive CPE market. Such policies might include adoption of standards, for example, such as the Commission has adopted for telephone equipment in Part 68 of its rules.

75. *Equipment Rates.* We believe that improving cable subscribers' rights to acquire and provide their own cable-related CPE would benefit subscribers. Such rules would give subscribers the choice of purchasing, installing or maintaining CPE themselves, or having a vendor other than the cable operator do so. This should promote marketplace entry by communications equipment vendors and facilitate competition among these vendors, as we have seen in the telephone context. A competitive marketplace should lead to the development of innovative types of CPE, improved performance of existing and new CPE,

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<sup>103</sup> We also note that the Commission has taken steps to ensure enhanced compatibility between consumer electronics equipment and cable operators' facilities. See *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Docket 93-7, 9 FCC Rcd 1981 (1994). The regulations adopted in the equipment compatibility proceeding will allow consumers to utilize customer premises equipment offered by a variety of suppliers, including the cable operator, in a competitive market.

and improved maintenance of CPE.

76. As previously stated with respect to equipment rates, the 1992 Cable Act directed the Commission to establish a rate-setting methodology for equipment used to receive basic cable service, including set-top boxes, remote control units, wiring, and additional cable outlets. In response, the Commission's regulations link maximum permitted rates for regulated equipment to operators' actual costs of providing the equipment. We note, however, that Congress exhibited a clear preference for competition over regulation in the setting of rates for cable service and equipment.<sup>104</sup> We believe that deregulating rates for currently regulated CPE would be in the public interest if the marketplace for CPE becomes competitive, and seek comment on this tentative conclusion. We wish to make clear that we are not proposing to re-regulate currently deregulated telephone CPE rates. We also seek comment on whether the Commission has authority to deregulate cable CPE rates under the Communications Act, and specifically whether the Commission possesses such authority under Sections 623(b), 632(b), 4(i), and 1. We further seek comment on whether specifically deregulating rates for currently regulated CPE would be inconsistent with the 1992 Cable Act, given that market forces in the resulting marketplace should determine rates. Finally, we seek comment on whether it would be necessary to establish a transition period prior to the deregulation of currently regulated CPE rates, until a competitive marketplace for CPE exists.

### III. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

77. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of the *NPRM*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

78. The Commission issues this *NPRM* to consider changes in our telephone and cable inside wiring rules and policies in light of today's evolving and converging telecommunications marketplace.

79. *Objectives.* To explore the development of new cable and telephony service rules in the following areas in light of converging technology: demarcation point, means of connection, simple and complex residential and non-residential wiring, installation, maintenance, access and ownership of inside wiring, compensation, dual regulation and

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<sup>104</sup> 47 U.S.C. § 543(a)(2).

service provider access.

80. *Legal Basis.* Action as proposed for this rulemaking is contained in Section 1, 4(i), 201-205, 214-215, 220, 623, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 543 and 552.

81. *Description, Potential Impact and Number of Small Entities Affected.* The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

82. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

83. *Federal Rules which Overlap, Duplicate or Conflict with these Rules.* None.

84. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

#### **IV. PROCEDURAL PROVISIONS**

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

86. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. Comments are due on March 18, 1996, and reply comments are due on April 17, 1996. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

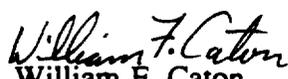
#### **V. ORDERING CLAUSES**

87. **IT IS ORDERED** that, pursuant to Sections 1, 4(i), 201-205, 214-215, 220, 623, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214-215, 220, 543 and 552, **NOTICE IS HEREBY GIVEN** of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*, and that **COMMENT IS SOUGHT** regarding such proposals, discussion, and statement of issues.

88. IT IS FURTHER ORDERED that the Secretary shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

89. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by the Media Access Project, *et al.*, to the extent it concerns making cable home wiring rules the same as those governing telephone inside wiring, is HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**SEPARATE STATEMENT**  
of  
**COMMISSIONER ANDREW C. BARRETT**

RE: *Telecommunications Services Inside Wiring*

Today, we issue a notice of proposed rulemaking to consider changes to our telephone and cable "inside wiring" rules and policies.<sup>1</sup> While this notice is limited to the Commission's telephone and cable inside wiring rules and policies, many critical issues must be carefully and fully considered if the Commission is to encourage and foster facilities-based telecommunications competition. Among several significant issues, the NPRM seeks comment specifically on establishing a common demarcation point; technical connection parameters; regulation of the installation of inside wiring; subscriber ownership of, or access to, inside wiring; the dual regulatory scheme of telephone and cable inside wiring; service provider access to private property; and the regulation of customer premises equipment (CPE) used to receive cable and telephone service, respectively.

It will come as no surprise to an experienced observer of this industry that, frequently, our rules need revision or "fine tuning" to address changes precipitated by legislation, technology, or market forces. These drivers of change are all at work in the telephone and cable television industry segments. First, Congress is currently considering major legislation that, among many things, would eliminate many of the traditional boundaries between the telephone and cable businesses. If enacted, this legislation would open long-closed markets to competition, benefitting both service providers and consumers. Second, recent technological advances have made it possible for several services, such as voice, video, and data, to be transported simultaneously over the same transmission path. For their part, several local telephone companies, including Bell Atlantic, Southern New England Telephone Co. (SNET), and U S WEST Communications, Inc., have been evaluating various network technologies and architectures for the delivery of integrated voice, video, and data services. Finally, market conditions, such as pressure from the financial community, are compelling service providers to pursue new sources of revenue to supplement long-stable "core" lines of business as those businesses are opened to competition. For example, pursuant to Commission initiatives and court decisions, several telephone companies have begun to offer video services in competition with cable operators. Indeed, at least one Regional Bell Operating Company has decided to become a cable operator and offer cable services directly to its telephone subscribers within its service area. By the same token, multiple cable system operators, through joint ventures and alliances with other telecommunications companies, are aggressively pursuing personal

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<sup>1</sup> The term "inside wiring" generally refers to wire and cable facilities that are installed in, or extended to, the customer's premises for connection to terminal equipment.

communications services (PCS) as one strategy to enter the local telephone market.

While I generally support the Commission's efforts to re-evaluate its regulations, as appropriate, I am concerned that, in this specific area, we move carefully so as to not discourage or stifle facilities-based competition. I believe that, in revisiting our policies and rules, we should be mindful not to foreclose opportunities for service providers to construct physical facilities for head-to-head competition. I have believed for some time that certain geographic markets are capable of supporting more than one facilities-based service provider. In these areas, this competition should result in real price and service competition, with prices of services moving rapidly towards their costs. Through such competition and appropriate rules, service providers may be able to offer consumers the much-touted "one-stop-shopping" opportunity. I look forward to parties' submissions in response to the notice.

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SEPARATE STATEMENT OF  
COMMISSIONER RACHELLE B. CHONG

*Re: Telecommunications Services Inside Wiring, Notice of Proposed Rulemaking, CS Docket 95-184*

I strongly support the Commission's initiation of this rulemaking proceeding to consider changes in our telephone and cable inside wiring rules in the context of the converging communications marketplace. During the last six months, when we were considering our cable home wiring rules in a separate proceeding, it became apparent to me that some of the issues in that proceeding had broader implications for industries other than the cable industry. Specifically, given the desire of cable operators to enter the telephony market, and the telephone companies to enter the video market, I thought it wise for the Commission to address convergence issues related to our inside wiring rules for both cable and telephony.

The Commission's current wiring rules were developed at a time when the lines between cable providers and telephony providers were bright and sharply drawn. Cable companies provided video transmission and programming service over coaxial cable, while telephone companies provided telephone service over copper twisted pair. As a result, the wiring rules for the two industries were developed separately and differ substantially.

With the advent of convergence, the lines between cable and telephony are blurring. Video, telephony and data transmission services are beginning to be provided by a variety of competing providers, who will use any combination of fiber, coaxial cable, copper wire and wireless technologies to transmit their services. It is my view that we need to reassess current inside wiring rules to see if they still make sense in this new world.

I write separately to emphasize my belief that it is important for the Commission to be proactive as to convergence issues like this one. It should be our goal to take steps to revise outdated rules before they have any unintended anti-competitive effects. A number of video dialtone market trials are now underway and providers have told us that they plan commercial launches of a number of services next year. Accordingly, I think that it is important that the FCC act quickly to revise its rules to enhance opportunities for competition in the telephony and cable markets.

I also wanted to take this opportunity to set forth the goals that I think should guide us as we undertake this reassessment of our home wiring rules. Our "big picture" goal in this proceeding should be to ensure that our wiring rules promote competition in both the multichannel video programming and telephony markets. In this regard, I believe

that it is crucial that our rules enhance access to existing home wiring by a variety of competing service providers.

Further, I believe that it is important to develop rules that promote regulatory parity and by this I mean that similarly situated competitors should be treated similarly under our rules. To the extent that our rules are not uniform, the differences in the rules should be based on the *technical* characteristics of the service provided – e.g. broadband or narrowband – rather than on the *identity* of the provider. We should recognize that service providers are fast becoming full service *communications* providers, not just telephone providers or cable providers. We should work towards streamlining and simplifying our rules so as to reduce the regulatory burden and confusion among telecommunications providers, landlords and consumers alike.

Finally, I am extremely pleased that the Commission has made a commitment to resolve the demarcation point location issue in an expeditious fashion in this proceeding. As I indicated in my separate statement that I filed today in the *Implementation of the Cable Consumer Protection and Competition Act of 1992: Cable Home Wiring*, First Order on Reconsideration, MM Docket No. 92-260, I believe that the current demarcation point may be impeding competition in the multichannel video programming marketplace and thus, must be addressed as soon as possible.