

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

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REPLY COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its reply comments in the above referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the United States.

The comments filed in this proceeding reinforce the concerns expressed by USTA when it, in conjunction with Media Access Project and Citizens for a Sound Economy, petitioned the Commission to initiate a proceeding to examine the manner by which all consumers can have access to cable home wiring. With the exception of the franchised cable operators, the majority of commenters believe the current designation of the cable demarcation point stifles or prohibits competition and should be moved. Over 100 comments were filed by entities representing Multiple Dwelling Units (MDUs). Those commenters indicated a clear preference for moving the demarcation point of commercial buildings inside the premises, preferably at the telephone vault or frame room.

The National Cable Television Association (NCTA) and some of its largest members claim that moving the demarcation point would only benefit the LEC industry. They are wrong. Moving the demarcation point would benefit the consumer - and so is clearly in the public interest. Illustrative of the cable industry distortion is the following excerpt from Time Warner:

In the MDU context, however, the entrenched monopoly telephone companies have suggested a dramatic change in the current pro-competitive demarcation point for broadband installations. They are advocating moving the MDU demarcation point far outside the dwelling units of individual end users. Such a rule would allow telephone companies to protect and expand their monopolies in MDU buildings by seizing facilities from cable operators which are essential to the ability to compete with such telephone companies. Moreover, such an alteration to the MDU demarcation point would have the practical effect of giving greater power to landlords and building owners to dictate the communications provider within MDU buildings, rather than allowing consumers to make their own choices and reap the benefits of competition.<sup>1</sup>

If NCTA and Time Warner were correct, there would not be a variety of commenters, some of them potential competitors representing Satellite Master Antenna Television Systems (SMATV), Multichannel Multipoint Distribution Service (MMDS) and Direct Broadcast Satellite (DBS) providers (who are not entrenched providers), seeking reform of the demarcation point rule. They all cite its current anti-competitive nature.<sup>2</sup> The argument Time Warner makes that

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<sup>1</sup> Comments of Time Warner Cable and Time Warner Communications, p. 4. While not using the identical language, the same arguments are made by NCTA, Continental Cablevision, Inc. and Cablevision Systems Corp., and the Joint Commenters of Media Cable Co., American Cable Entertainment, Greater Media, Inc., and nine cable television associations.

<sup>2</sup>See the Comments of Pacific Bell and Pacific Telesis Video Services; Comments of GTE; Comments of DIRECTV, Inc.; Joint Comments of Building Owners and Managers Association International (BOMA), National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management, and National Association of Home Builders; Comments of Media Access Project (MAP) and Consumer Federation of America (CFA); Comments of Independent Cable & Telecommunications

landlords and building owners will dictate who the communications providers will be is nothing if not ironic, for the current rules will keep the cable operators as the entrenched dictators.

Landlords would be held hostage by those franchised operators who would threaten lawsuits<sup>3</sup> to prevent a competitor from using their wiring or would force multiple wiring through the MDUs.

Would-be competitors encounter barriers such as no space in the MDU for additional service providers, landlords or coop/condo boards that can not outlay the additional capital associated with duplicate facilities or do not want to mar or devalue their property.

NCTA states that "...it takes facilities to have facilities-based competition." Later, it states "Each multi-channel video programming distributor should install and maintain its own distribution facilities in order to facilitate the consumer's ability to choose among end-to-end broadband networks."<sup>4</sup> NCTA interprets facilities-based competition to mean installation of systems which directly parallel cable systems, right down to the installation of inside wiring. It is not necessary that every last item down to the nail and the staple be duplicated to have facilities-based competition. No landlord or building owner will permit an endless array of wiring to be installed. Reality dictates that the customers' needs, building owners' concerns, and the new service providers' ability to enter the market be addressed and satisfactorily resolved.

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Association (ICTA); Comments of Building Industry Consulting Service International (BICSI); Comments of Tandy Corp.; Comments of AT&T; Comments of Liberty Cable Company; Comments of Circuit City Stores, Inc.; Comments of State of New Jersey Board of Public Utilities; and Comments of Interactive Cable Systems, Inc. and Active Tel, L.D., Inc.

<sup>3</sup> See Comments of ICTA, p. 22.

<sup>4</sup> Comments of NCTA, Inc., pp. 8 and 15.

The scenario painted by NCTA that every would-be competitor should install and maintain its own inside wire would never permit such a resolution to occur.

NCTA references Section 652 (d) (2) of the Telecommunications Act of 1996 to try to convince readers that only with the concurrence of the cable operator should any entity be allowed to use its inside wiring. USTA maintains that the language of Section 652 (d) (2) of the Telecommunications Act of 1996 which references “transmission facilities” does not refer to inside wiring. This view is shared by the Independent Cable & Telecommunications Association (ICTA). “That section does not cover inside wiring at all, but rather addresses the exterior cable drop running from the curb up to the single family home or MDU building. ICTA strongly believes that to hold otherwise would create a total conflict with the purposes behind Section 16(d)...”<sup>5</sup>

USTA would further point to the Commission’s conclusions regarding the interpretation of transmission facilities issued in a November, 1994, order on video dialtone.

We also conclude that allowing telephone companies to lease cable company drop wires, if the lease is limited in scope and duration, would not be inconsistent with the prohibition on the acquisition of cable facilities and the goals underlying that prohibition or with our other video dialtone policies.<sup>6</sup>

This interpretation is consistent with the language of Section 652 (d) (2): “...a local exchange carrier may obtain...the use of that part of the transmission facilities of a cable system...if such

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<sup>5</sup> Comments of Independent Cable & Telecommunications Association, pp. 28-29.

<sup>6</sup> Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in CC Docket No. 87-266 and RM-8221 (FCC 94-269), Released November 7, 1994, para. 54.

use is reasonably limited in scope and duration, as determined by the Commission.” It is clear to USTA that when the Commission reviews Section 652 it will draw the same conclusion -- the issue is cable company drop wires (which are part of the cable network), not inside wiring (which should be controlled by the customer).

GTE correctly notes that “...cable inside wire rules continue to reflect the antiquated nature of cable television monopolies and must be reformed if competition is to flourish in local video distribution markets.”<sup>7</sup> Facilities-based competition is much more rationally contemplated if one envisions a system which allows other service providers access to wiring at the point where the line first becomes dedicated to an individual customer’s use.<sup>8</sup> USTA agrees with the assessment of DIRECTV, Inc. that “...competition is stifled by requiring redundant and unnecessary cables internal to MDUs...The present concept of adding a wiring network throughout an MDU for every new, competitive service provider makes no sense and results in unnecessary costs being passed on to the public.”<sup>9</sup>

NCTA claims that LECs are trying to use cable operators’ property without paying for it and to avoid the investment required to install their own wiring. As BOMA, et. al. have stated, “A building has a finite amount of physical space...Even if that space can be expanded, it cannot be expanded beyond certain limits, and it can certainly not be expanded without significant

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<sup>7</sup> Comments of GTE in CS Docket No. 95-184, March 18, 1996, p. 2.

<sup>8</sup> Comments of Pacific Bell and Pacific Telesis Video Services, p. 3; Comments of GTE, p.4; Comments of DIRECTV, Inc., p. 7; Comments of State of New Jersey Board of Public Utilities, pp. 6-7; Comments of Independent Cable & Telecommunications Association, p. 3; and Comments of AT&T, p. 2.

<sup>9</sup> Comments of DIRECTV, Inc., p. 2.

expense.”<sup>10</sup> As the Media Access Project (MAP) and the Consumer Federation of America (CFA) note “While most incumbent cable operators have had to bear the costs of wiring their subscribers both inside and outside the demarcation point, the critical difference is that they did not face competition at the time... Competitive providers (who) will face price competition are less able to pass through this cost. If they lose would-be subscribers as a result of high installation costs and perceived inconvenience, their handicap will be even greater.”<sup>11</sup>

Other commenters explain that “...uniform demarcation points ultimately will benefit all parties -- tenants, building owners and service providers.”<sup>12</sup> While the exact point may differ, depending on the type of property (commercial, condominiums, high- and mid-rise apartments, etc.), the parties agree that the arrangement that exists today and which the cable industry seems intent on perpetuating should not continue. Furthermore, NCTA does not seem to appreciate that building owners are interested and eager to meet the telecommunications requirements of their tenants. The telephone industry successfully completed similar inside wire changes, so can the cable industry.

The 1992 Cable Act directed the FCC to give subscribers the right to acquire the internal wiring upon termination of cable service. Clearly, then, Congress intended that the wiring could and would have subsequent use by new and different service providers. The 1992 Act, however,

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<sup>10</sup> Joint Comments of Building Owners and Managers Association International, National Realty Committee, National Multi Housing Council, National Apartment Association, Institute of Real Estate Management, and the National Association of Home Builders, p. 34.

<sup>11</sup> Comments of Media Access Project and Consumer Federation of America, p. 7.

<sup>12</sup> Comments of Building Industry Consulting Service International, p. 3.

did not preclude the FCC from providing this right before termination. As MAP and CFA state “.. In no way did the home wiring provision of the 1992 Cable Act demonstrate that Congress intended to preclude pre-termination access; it was merely silent on the issue.”<sup>13</sup> Furthermore, again quoting MAP and CFA, “The Commission considered - and refrained from - extending its rules in its 1993 Cable Home Wiring Order, stating that it ‘generally believe[s] that broader cable home wiring rules could foster competition.’ Report and Order, Cable Home Wiring, 8 FCCRcd 1435, 1436 (1993). However, its only stated reason for not acting was because it was under the strict time constraints for promulgating rules under the 1992 Cable Act. *Id.*”<sup>14</sup>

Of the 1992 Cable Act, ICTA writes

Section 16(d) was enacted so that property owners could (I) avoid incurring damage to their property by the cable operator’s removal of the wiring after termination; and (ii) avoid the cost and inconvenience of having new wiring installed when a different provider is chosen. Legis. Hist. at 1156...The legislative history further shows that Congress wanted the Commission to prescribe rules “to permit ownership of the cable wiring by the homeowner.” *Id.*<sup>15</sup>

The logic behind these two objectives still holds true in the MDU environment. Congress would not have envisioned such opportunities for property owners of single dwelling units and concluded that the same opportunities should not exist for property owners in multiple dwelling units, especially because the elimination of these opportunities would stifle or deny competition to apartment dwellers who are the MDU equivalents of those who reside in single family dwellings. Furthermore, USTA agrees with the numerous commenting parties who believe the

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<sup>13</sup> Comments of MAP and CFA, p. 9.

<sup>14</sup> *Id.*

<sup>15</sup> Comments of ICTA, p. 10.

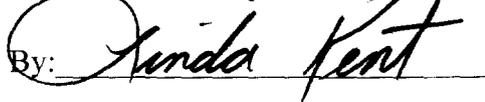
Commission should give the cable subscriber control over cable premises wire, from the point of service initiation, not just at termination of service.<sup>16</sup>

NCTA is misreading Congress' intent. Cable operators should not be allowed to completely disregard the panoply of telecommunications competition that Congress and the FCC envisions and, worse, put up roadblocks for the consumers that the new competitors wish to serve.

USTA urges the Commission to heed the preponderance of comments which clearly indicate that the current rules on cable inside wiring stifle or prohibit competition and to move expeditiously to revise the rules on cable wiring as suggested in USTA's comments, especially as they relate to the demarcation point, installation, and ownership.

Respectfully submitted,

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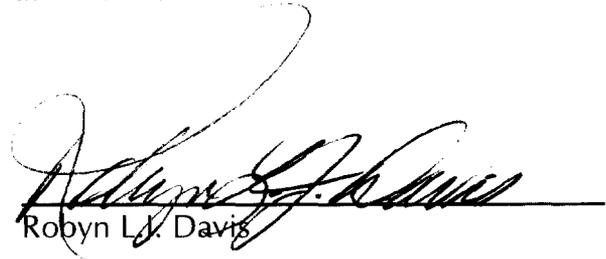
April 17, 1996

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<sup>16</sup> Comments of BICSI, p. 5, Comments of GTE, pp. 17-18, Comments of Pacific Bell and Pacific Telesis Video Services, p. 13, Comments of the State of New Jersey Board of Public Utilities, pp. 14-15.

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on April 17, 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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