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

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

DOCKET FILE COPY ORIGINAL

RECEIVED
APR 17 '96

REPLY COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

Submitted By

Stephen R. Effros
James H. Ewalt

CABLE TELECOMMUNICATIONS
ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
(703) 691-8875

April 17, 1996

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

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

REPLY COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

1. The Cable Telecommunications Association ("CATA"), hereby files consolidated reply comments in the above-captioned proceedings. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 66 million cable television households. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. These proceedings are largely about Commission proposals to require a common demarcation point for all broadband competitors serving multiple dwelling units ("MDUs"). Comments from cable competitors and apartment building owners were predictable. Telephone companies, wireless cable systems and SMATV systems -- seeking to oust cable

systems from MDUs, want the demarcation point moved to a location more convenient for them. Landlords, in a letter writing campaign not seen since the mischievous rumors in the 1970's that the Commission would cease licensing religious stations, want to be left alone to exact whatever tribute is possible from the use of their buildings. So much for enlightenment. CATA will not review all the comments to the Commission's scores of questions in these proceedings or repeat all of its own previous assertions. Rather, we address these reply comments to the basic issue of whether the Commission can or should adopt rules that move the demarcation point.

3. For the most part, those urging that the demarcation point be moved have ignored unpleasant legal constraints. Unaccustomed as it is, CATA will continue to assume the burden of arguing the law. The point is simple. The Commission's choice of a demarcation point was in order to comply with the 1992 Congressional dictate that it regulate the disposition of inside wiring within a subscriber's premises upon termination of service. The demarcation point defined the premises. Since a subscribers "premises" in an apartment building does not sensibly or legally constitute an area significantly beyond an individual apartment -- for instance the building's common areas, hallways, stairwells, elevators and basement -- the Commission chose a point 12 inches outside the apartment. Presumably, it could have chosen a point 12 inches within the apartment. But given the defining constraint of "premises," the Commission had little flexibility.

4. As CATA argued in its comments, the Commission is further constrained by the Fifth Amendment requirement that those whose property is taken be justly compensated. Were the Commission to re-locate the demarcation point, it would, in effect, be confiscating a cable system's distribution facilities, making it impossible for the system to offer any service at all, present or future. The price for such a drastic taking of property would surely exceed the Commission's present six cents a foot for inside wiring. Moreover, CATA and others have referred the Commission to Section 652 of the Telecommunications Act of 1996 which clearly evidences Congressional intent for achieving competition through the use of more than one wire.

5. Apartment Dwellers, Take Heed. A few commenters have attempted contorted legal justifications for moving the demarcation point. For instance, the Independent Cable & Telecommunications Association argues that, in rental buildings, at least, the rental unit is the premises of the property owner and it is therefore the owner who has the right to claim the wiring upon termination of service. Under this theory, the demarcation point can be moved because the whole building is the premises of the property owner! While internally consistent, this contention fails because its basic premise is incorrect. The home wiring rules were intended to apply to subscribers to cable systems, not to landlords. Under the Association's theory, apartment renters (comprising a significant portion of the population) would be treated as second class citizens with no right to choose multi-channel providers. Obviously, this is not what the Congress intended. Indeed, it is clearly the opposite.

6. Ancillary Jurisdiction -- The Nostalgia Argument. The Compaq Computer Corporation argues that the Commission should define all building wiring dedicated to a subscriber as inside wiring under the subscriber's control. Compaq offers as legal authority for this approach first, the notion that the Commission has ancillary authority to achieve its statutory responsibilities. Of course, ancillary authority is a wonderful thing. For a few years the Commission regulated cable television under the concept that such regulation was ancillary to the regulation of broadcasting. But ancillary authority is invoked in the absence of more specific statutory authority. In the case of home wiring, the Congress has spoken. It has told the Commission what kind of cable wiring it may regulate and under what circumstances it may regulate it. In fact, in the House Report to the Cable Act of 1992, it is specifically stated that Section 624 of the Act deals only with wiring "within the interior premises of a subscribers dwelling unit." The Report goes on to state, "In the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers." (H.R. Rep. 628 102d Cong., 2d Sess. at p. 119 (1992)). The Commission cannot, simply by claiming ancillary authority, proceed to ignore the Congress.

7. Wire As A Navigation Device. Compaq's second argument for permitting a subscriber to control wiring throughout a building is more fanciful. Compaq cites Section 304 of the Telecommunications Act of 1996 which it quotes as requiring the Commission to ensure the "commercial availability" of "equipment used by consumers to access multichannel video programming and other services offered over multichannel video

programming systems." By Compaq's lights, cable inside wiring is such "equipment." Of course, Compaq has not bothered to quote the title of Section 304, "Competitive Availability of Navigation Devices." CATA believes, charitably, that Compaq has simply misunderstood the law. Section 304 has nothing whatsoever to do with wiring, but rather converter boxes and interactive equipment. Citing Section 304 in this proceeding, while an amusing diversion, indicates that Compaq, like others, has not discovered legal authority for moving the demarcation point.

8. However much some would prefer for their own economic benefit to have access to someone else's cable wiring, or to control the broadband choices of apartment dwellers, there is no legal basis that permits the Commission to satisfy their concerns. In an MDU, "premises" means apartment. There is no other meaning possible. The concept of demarcation point is wedded to the concept of premises. Unless the Congress, gives the Commission specific authority to "harmonize" the architecture of various telecommunications services, the Commission cannot move the demarcation point. This is particularly so since telecommunications technologies differ so greatly.

9. "One Wire" Service is Premature. Amid the protestations of protectionist property owners and the complaints of cable competitors, several comments in these proceedings stand out for their attempt to shed a more practical light. Cox Cable points out that regardless of all the talk of a multitude of telecommunications services being provided over a single cable, for the foreseeable future, companies will provide broadband video over

co-axial cable and telephony services through twisted pair copper wires. Cox explains that, "Most ongoing technology development to provide telecommunications service is dedicated to support convergence of services within the *network*, not within the *home or dwelling unit.*" Cox argues that, even if the Commission had the legal authority to move the cable demarcation point, there is no justification for doing in the foreseeable future. Thus, added to the fact that the Commission has no authority to move the demarcation point, and that to do so would be anti-competitive, we see that even consideration of the issue is premature.

10. Comes Now Guam. Many in these proceedings have argued that it is either impractical, unsightly or otherwise undesirable to have more than one set of cables in an MDU. Thus, it is argued, the only way a subscriber can switch to another service is if connection can be made to a more accessible demarcation point (leaving a subscriber with only one service provider). We learn, however, that use of multiple wires does not seem to be a universal problem -- at least not in the Pacific. For instance, Guam Cable TV notes that it has shared interior half-inch conduits with Guam Telephone Authority's telephone wires for over twenty years. Guam points out that by using the proper design and miniature co-axial cable, half-inch conduits can accommodate three or four cables. Moreover, Guam explains, contractors of larger buildings on Guam follow its recommendations for 3/4" conduits, enabling multiple cables to serve a building. Even in older buildings, exterior molding has been installed which does not mar a building's appearance. The point of these anecdotes from the Pacific should be clear. If building owners wish it, as the Congress does, subscribers can have a real choice of multi-channel video providers.

11. Conclusion. The Commission is in the fortuitous position of lacking legal authority to take an undesirable action. Under this circumstance, the Commission should abandon any notion of moving the demarcation point and move on to finding a better way to encourage broadband competition in MDUs. The goal should be to give subscribers not merely a choice of providers, but a choice of services. Competitive providers should have the ability to offer their services to all.

12. Building owners must permit broadband competitors access to their property. Whether from a misplaced concern that having more than one wire is not possible or a desire to continue to play one industry against another and extort high payments, building owners are adamant that they should not be told what to do with their property. This is not a simple matter and as building owners and others, including CATA, have pointed out in these proceedings, the Commission has no present authority to enact competitive access regulations. The Commission can, however, pursue competitive access legislation with the Congress, and encourage it at the state and local levels. Given competitive access, with appropriate safeguards and payments to building owners, those wishing to serve subscribers in MDUs would be on a level playing field. There would be no reason for one company to take over the wiring of another company (except, of course, because it might be less expensive). There would be no concerns about who is responsible for radiated emissions. There would be no bidding contests with landlords or lawsuits between competitors fighting over access to buildings. Most important, subscribers would have the opportunity to enjoy

various levels of broadband services from different companies. There would be true competition. This is the goal the Commission should be addressing.

Respectfully submitted,

CABLE TELECOMMUNICATIONS
ASSOCIATION

By: Stephen R. Effros
Stephen R. Effros
James H. Ewalt

CABLE TELECOMMUNICATIONS
ASSOCIATION
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
(703) 691-8875

April 17, 1996

F:\ssdoc\64768\\45528.1d