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SUMMARY

The adoption of consistent regulatory approaches to the placement, ownership, and control of all telecommunications wiring will facilitate and encourage the entry of new competitive providers in both the telephone and video distribution businesses. This sentiment is evident in the comments submitted among a diverse set of telecommunications providers who generally support the establishment of comparable demarcation point policies for telephone and cable services by moving the cable demarcation point to a location closer to that established for telephone, or generally at a "minimum point of entry."

In order for the Commission to be successful in crafting a pro-competitive policy governing telecommunications inside wiring, it must also give all subscribers greater flexibility to select service providers and to control premises wiring on their side of the demarcation point. Consequently, there is broad support for granting immediate pretermination control over cable inside wiring to all subscribers and permit subscriber ownership of cable inside wiring upon installation of service.

Further, in order to facilitate entry into local video distribution markets by new entrants, the Commission should bar existing cable operators from entering into exclusive relationships with multiple dwelling unit owners in excess of 12 months in those markets where alternative providers have announced an intention to enter and be required to conform all existing contracts to this 12 month limitation. The Commission should also avoid the codification of detailed technical standards and guidelines where such standards can best be left to competitive markets and/or established industry standards-setting organizations.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf of its domestic telephone operating companies and GTE Media Ventures Incorporated (collectively, GTE), respectfully submits this reply to comments submitted in response to the Notice of Proposed Rulemaking (*Notice*) in the above-captioned proceeding, FCC 95-504, released January 26, 1996.¹

I. INTRODUCTION.

In its comments submitted in response to the *Notice*, GTE recommended that the Commission grant immediate pretermination control over cable inside wiring to all subscribers and establish consistent demarcation policies for telephone and cable services. GTE believes that the Commission should employ the same framework

¹ The *Notice* (at ¶ 5) requests comments on: (a) potential changes in the location of the demarcation point; (b) technical connection parameters; the regulation of telephone simple and complex inside wiring, and residential and non-residential inside wiring; (d) subscriber ownership of, or access to, inside wiring; (e) issues arising from the dual regulation of inside wiring by federal and local authorities; (f) service provider access to private property; and, (g) the regulation of customer premises equipment.

established for the deregulation of telephone inside wiring as a model in crafting these policy changes.

With the exception of the cable television industry, there is broad support for the overall policy changes recommended in the *Notice*. The adoption of consistent regulatory approaches to the placement, ownership, and control of all telecommunications wiring will facilitate and encourage the entry of new competitive providers in both the telephone and video distribution businesses. This sentiment is evident in the comments submitted by a diverse set of telecommunications providers -- IXCs, wireless video distributors, independent cable operators and telephone companies.²

In opposition are the incumbent cable monopolists. At the very time in which much of the cable industry is demanding interconnection with local telephone company facilities at practically every conceivable location within the network, they argue in this proceeding *against* efficient and cost effective interconnection of alternative video networks with cable system wiring at a customer's premises. In essence, the cable industry desires to preserve its monopoly stranglehold on wireline video distribution services as far as possible by insisting that competing providers duplicate existing in-home facilities to service subscribers, rather than allowing interconnection with customer wiring at a point which is both economical and technically feasible. GTE urges the Commission to proceed with its efforts to craft practical and flexible regulatory

² See, *generally*, the comments of Wireless Cable Association (WCA), AT&T, Independent Cable and Telecommunications Association (ICTA), Media Access Project and Consumer Federation of America, and USTA.

policies which will accommodate growing competition in video distribution markets to the direct benefit of service providers and subscribers alike.

II. THE COMMISSION SHOULD ESTABLISH COMMON DEMARCATION POINT POLICIES FOR TELEPHONE AND CABLE SERVICES.

Commenters generally support the notion of establishing common telephone and cable demarcation point policies for single unit dwellings. Most advocate a cable demarcation point for single unit dwellings located on the exterior of the residence. *E.g.*, AT&T at 5; NYNEX at 7.

It is important that alternative video service providers be able to interconnect with existing cable home wiring in a manner which minimizes disruption to the homeowner while providing for adequate safety considerations. For this reason, the Commission should affirm that the demarcation point for cable services provided at single unit dwellings be located outside of the premises at an appropriate location for grounding and wiring purposes. See US West at 4. This location should be within twelve inches, and on the subscriber's side, of the ground block or network interface device (NID) (if employed) for both new and existing locations. Where there is no ground block or NID, alternative video service providers should be allowed to attach to the existing wiring at the most convenient point on the exterior of the dwelling. This approach is consistent with the termination of the telephone network at a point within twelve inches of the protector and will allow alternative providers to easily connect to existing cable inside wiring configurations.

While there is somewhat less of an agreement among commenters concerning the exact placement of a network termination point for cable services within multiple

dwelling units (MDUs), most telephone companies, alternative distribution providers, governmental agencies, and public interest concerns support the movement of the cable demarcation point to a location closer to that established for telephone, or generally at a "minimum point of entry" (MPOE). Many commenters characterize this location as a point where the wire or cable is solely dedicated to serving a single unit (*e.g.*, AT&T at 7; NYNEX at 7), where an individual customer's dedicated line meets the common feeder line (PacBell at 5), a point at which cabling is solely dedicated to the distribution of programming to a resident's unit (WCA at 12), or at a location where the tenant's wires could be detached from the cable operator's wires without damaging the building or interfering with service (GTE at 10). Given these definitions, the demarcation point could be located within the common areas of a MDU, at a designated common area on each level of a building (Ameritech at 8), or at a single point at the entry of the building, such as a basement, telephone vault or framerom (GTE at 11; Building Owners and Managers Association at 38).

GTE believes that the Commission can achieve the objective of moving the cable and telephone demarcation points "closer together" by simply adopting a "minimum point of entry" policy for cable systems, similar to the policy applicable to telephone networks. However, such a policy must be flexible to accommodate a wide variety of technical solutions, service arrangements and changing market demands. Therefore, the Commission need only to apply consistent policies to both services -- not to dictate specific demarcation point locations or mandate that such points be always in the same physical space. Indeed, GTE agrees with many commenters that some flexibility in establishing cable demarcation points should be allowed -- for both

architectural and technical considerations (Ameritech at 8) as well as consideration as to the building owner's needs (US West at 7). In all cases, however, the demarcation point location must provide competitors with reasonable access to the subscriber's inside wiring.

Under existing rules, telephone companies are given the flexibility to establish reasonable operating practices to comply with the minimum point of entry requirement.

Pursuant to Section 68.3, "Minimum Point of Entry" is defined as:

. . . the closest practical point to where the wiring crosses a property line or the closest practical point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply. The telephone company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply.

Thus, while contemplating that a single demarcation point could be established at a MDU, Section 68.3 does not preclude carriers from adopting operating practices which could result in multiple termination points for certain types of MDU premises or from negotiating alternative locations with property owners as conditions dictate.³ As long as competitive providers have access to such demarcation points, GTE believes

³ GTE agrees with BellSouth (at 6) that, optimally, the Commission should best facilitate competition "by encouraging the market to operate through negotiation, rather than regulation." Therefore, to the extent that the Commission desires to establish common demarcation point policies, it "should not attempt to determine which of all possible solutions is best for all parties, for all purposes, and for all times; in doing so it can only limit the potential diversity of marketplace solutions." Consequently, the Commission should reject the suggestion of the Building Owners (at 38) that different demarcation point locations be defined for different types of buildings (*i.e.*, high rise versus garden-style apartments).

that establishing a similar policy for cable services would be a reasonable approach to achieving the Commission's goal of "harmonizing" its cable and telephone service rules

In contrast to such a pro-competitive policy, the Commission should discount the self-serving comments of the cable industry which vigorously oppose any change whatsoever in the cable inside wiring rules in order to preserve their monopoly status as a provider of cable services to MDUs. As the Commission has noted, there are numerous obstacles that a competing video provider must overcome in order to offer services in an efficient and economical manner to MDU building owners and tenants (*Notice* at ¶ 9). These impediments to competitive entry are echoed by those companies who are willing and able to provide services to such locations but are prevented from doing so due to cable's tight control over interconnection to MDU inside wiring. See *WCA* at 11; *DirectTV* at 2; *Liberty Cable* at 6-10.

According to NCTA and other cable commenters, changing the cable demarcation point would purportedly undermine competition, lead to a "one wire" world, and would discourage the offering of new services. *NCTA* at 3; *Continental* at 13. NCTA's assertion that tenants of MDU buildings would consequently never have a choice of broadband service providers is without merit. In fact, the existing rules, which effectively discourage alternative cable providers from connecting to a tenant's inside wiring, do little more than insure that such customers are never allowed to view alternative cable programming. It is the inaccessibility of cable inside wiring that is hampering the growth of competition in the market for serving MDU locations.

The movement of the cable demarcation point to a location closer to that of telephone services would not necessarily result in a "one wire" environment and

certainly would not restrict building owners from allowing more than one service provider on their premises. If a building owner felt it desirable to allow service providers to duplicate the wiring that exists in its structure today, there should be nothing in the Commission's rules to prevent this. Alternatively, if the building owner decided to completely change service providers, connection to a demarcation point that is readily accessible by the provider it selects would minimize disruption in the MDU owner's operations and avoid unnecessary and costly damage to existing structures. Indeed, the displaced cable operator would likely elect to retain its existing feeder cables to the demarcation point in the hope of regaining the MDU owner's business in the future.

Adopting a minimum point of entry policy would not prevent cable operators from offering and providing new and advanced telecommunications services to customers -- no more that such a policy prevents telephone companies from doing so today. As telecommunications markets become more competitive, both service providers and building owners alike will develop new and innovative solutions to marketing and delivering new services to subscribers. Although a building owner may elect to change its video programming distributor, there is nothing to prevent the previous provider from servicing the owner's other communications needs, either through wireline or wireless solutions.

Finally, it is difficult to believe that cable operators intending to enter the local telephone service markets would advocate the that telephone inside wiring rules be amended to reflect the positions they are taking in this proceeding. If locating a separate cable demarcation point at each individual tenant's dwelling unit does indeed promote facilities-based competition and encourages the provision of new services as

cable claims, then it would hold that such a policy would provide the same result in local telephone service markets. Of course, the Commission rejected this notion years ago when its established inside wiring rules for telephone services, and it should do so here. As telephone companies are required to provide interconnection to their networks in order for incumbent cable companies to provide local telephone services, telephone companies should, at a minimum, be allowed to interconnect with cable inside wiring at a point that is efficient and cost effective. Accordingly, the Commission should subject cable inside wiring configurations in MDU locations to a minimum point of entry requirement similar to that applied to telephony.

III. THE COMMISSION HAS AUTHORITY TO ALLOW SUBSCRIBERS TO EXERT THE SAME CONTROL OVER THEIR CABLE INSIDE WIRING AS THEY CURRENTLY NOW HAVE FOR TELEPHONY.

In order for the Commission to be successful in crafting a pro-competitive policy governing telecommunications inside wiring, it must give all subscribers greater flexibility to select service providers and to control premises wiring on their side of the demarcation point. Although the Commission has recently taken steps to facilitate the transfer of cable service from one provider to another, the rules continue to restrict a subscriber's ability to control its inside wiring absent making a decision to change service providers.⁴ Under the revised rules, cable operators still have the incentive to adversely affect the subscriber's decision to change providers by making it potentially

⁴ In MM Docket No. 92-2660, the Commission established additional procedures that cable operators must follow upon termination of cable service and shortened the amount of time in which a cable operator must remove its inside wiring after the subscriber notifies it of its intention to terminate the service (seven days). FCC 95-503, January 26, 1996.

costly for the subscriber to terminate service (*i.e.*, purchasing the inside wire) or by otherwise misrepresenting their intention to remove the wiring.

The Commission's tentative conclusion reached in the *Notice* (at ¶ 42) is correct -- cable television subscribers should have the right, on their side of the demarcation point, to provide and to install their own inside wiring and to access wiring (for purposes of, for example, installing additional outlets, performing maintenance or reconfiguring existing wiring) on their premises which has been installed by a service provider.

There is general support among commenters for allowing cable subscribers to assume control and/or ownership of cable inside wiring on their premises.⁵ AT&T (at 10) urges the Commission to establish a rebuttable presumption that cable subscribers have acquired title to their premises wiring. Similarly, DirectTV (at 12) supports a presumption of ownership and where such a presumption is rebutted, the MDU owner should have the right to purchase the wiring *prior* to termination. Most commenters

⁵ The term "cable subscriber" should be defined as one that contracts or arranges for video programming distribution services from a cable television service provider or other multi-channel video programming distributor. A "subscriber" may be a residential homeowner, and MDU building manager, a condominium owner, an individual tenant, or authorized representative for a business. In the case of MDUs, if a building owner contracts for cable services for the entire building(s), control over the inside wire should remain with the building owner. To the extent that a cable operator deals directly with individual tenants concerning their service arrangements, or a building owner allows subscribers to choose among competing video service providers, control over the wiring should be placed with the individual subscriber. In this way, under a minimum point of entry guideline, tenants themselves may be able to freely make decisions concerning the change of cable providers.

agree that cable subscribers should be given control of inside wiring upon installation (e.g., Ameritech at 13; NYNEX at 9).

GTE believes the most effective approach would be to allow subscriber ownership of cable inside wiring upon installation and to immediately confer pretermination rights to subscribers for all existing wiring. While the application of a "rebuttable presumption of ownership" of cable inside wire may represent an improvement over the current situation, GTE believes that such a policy would be subject to manipulation by cable operators seeking to restrict customer's abilities to change providers with questionable or insupportable "rebuttals" or claims to ownership. Cable service subscribers should have a clear understanding of what they are allowed to do with wiring on their premises and their ability to change service providers. The best way to encourage competition and the development of alternative programming sources for the public would be to notify existing subscribers that they now have the ability to freely change service providers without any additional impediments to making such a decision.

The cable industry asserts that any transfer of ownership or control of cable inside wiring to subscribers is not justified, is outside of the Commission's statutory authority, and would constitute an impermissible "taking." See, e.g., Time Warner at 11; NCTA at 12. However, there is ample justification and authority for the Commission to do so.

The assumption of control by cable subscribers of their inside wiring would not be tantamount to a taking if: (1) the Commission finds that existing policies and rules governing such wiring are inconsistent with existing federal statutes, and (2) if cable

operators who currently control such wiring are properly compensated for its use. GTE believes that the Commission possesses the statutory authority to alter the policies governing cable services pursuant to its general obligation under Title VI of the Act to establish national policies concerning cable communications and to promote competition. 47 U.S.C. § 521. NCTA's argument that the Commission lacks authority in this respect under the 1992 Cable Act is incorrect. For example, Section 623(b) of the Act, as amended, specifically expresses a "preference for competition" over regulation in setting rates for cable services. Thus, federal statutes place a heavy reliance on promoting and encouraging competitive markets with respect to the establishment of federal rules and policies. Since giving cable subscribers greater control over their cable inside wiring will provide access to more service options and arrangements, will lead to greater competition in the market for inside wire and could result in lower costs to consumers, the Commission is within its statutory duty to take such an action.

In any event, deregulating the rates for cable inside wiring and giving subscribers immediate control over cable-installed wiring would not constitute an unconstitutional "taking" as long as the operator is compensated for the cost of the wiring.⁶ Cable operators may continue to recover the costs of embedded inside wiring as a component of the ratebase used to determine basic cable rates and should be allowed to charge for any installation of cable wiring when a new subscriber initiates service. However,

⁶ See *In the Matter of Detariffing the Installation and Maintenance of Inside Wiring*, Memorandum Opinion and Order, CC Docket No. 79-105, FCC 86-513, released November 21, 1986 at ¶ 30.

as in the case of telephone inside wire deregulation, cable operators should be precluded from asserting a claim of ownership as a basis for restricting the removal, replacement, rearrangement or maintenance of inside wiring or assessing any additional charges for such wiring other than reasonable (and optional) maintenance fees.

IV. SERVICE PROVIDER ACCESS TO PRIVATE PROPERTY.

The ability of alternative service providers to access subscribers may become increasingly difficult as telecommunications markets become more competitive. At the same time in which telephone companies, cable operators and other alternative telecommunications providers are seeking to serve all of a customer's communications needs, landlords and building owners may be increasingly resistant to allowing access to their structures by multiple providers as well as expanding closets and equipment rooms to accommodate their needs. Further, conflicting local and state statutes and ordinances may severely restrict the ability of the Commission to establish national policies which would insure that all service providers, including those which are not deemed to be common carriers, can obtain equal access to private property in all circumstances. Therefore, as NYNEX (at 17) points out, it may be difficult for the Commission to achieve support for a unified approach to insuring grants of access to private property for all providers.

GTE believes that the Commission should take steps within its authority to remove any existing barriers to market entry faced by alternative providers. As noted in its comments, many incumbent operators have been successful in manipulating state and local laws to prohibit alternative providers from establishing exclusive relationships

with MDU owners even though the cable operator itself has entered into long-term *exclusive* contracts with MDUs, in an overt attempt to thwart competition. The Commission should bar incumbent operators from entering into or enforcing any exclusive arrangements unless alternative providers may also enforce exclusive contracts. NYNEX at 17. Existing cable operators should not be allowed to use their current monopoly position to thwart competition. Therefore, they should be barred from entering into exclusive relationships in excess of 12 months in those markets where alternative providers have announced an intention to enter and be required to conform all existing contracts to this 12 month limitation.

V. THE COMMISSION SHOULD RELY ON INDUSTRY STANDARDS SETTING ORGANIZATIONS AND MARKETPLACE FORCES WHEREVER POSSIBLE.

The Commission should avoid the codification of detailed technical standards and guidelines where such standards can best be left to competitive markets and/or established industry standards-setting organizations. However, if the Commission determines that the adoption of specific technical standards are necessary, they should be applied in an equitable manner across all competitors.

Among comments submitted in response to technical standards issues raised in the *Notice*, there is general support for applying signal leakage and service quality requirements in Part 76 to all video distribution providers. USTA at 4; PacBell at 10. However, while GTE is not opposed to adhering to established service quality standards, increased competition will reduce any future need to rely on Part 76 to ensure that acceptable service levels are provided to subscribers.

Cable companies generally assert that there is no need for the Commission to adopt technical connection standards. Similarly, others claim that the marketplace forces have resulted in the establishment of the F-type connector as the *de facto* cable industry connection standard. NCTA at 35; USTA at 5. GTE agrees that technical standards should be allowed to evolve as technology changes and without regulatory intervention. At the very most, any technical standards issues relative to the development of broadband networks should be dealt with in the appropriate industry forums. For example, it may be beneficial to establish certain minimum standards and qualifications applicable to third parties that install broadband wiring, similar to those in Part 68 regarding the installation of telephone wiring, in order to protect the integrity of public networks. US West at 10, 11.

Finally, the many commenters suggest that the Commission defer any action on the deregulation of cable CPE and, instead, focus on the CPE-related provisions of the 1996 Act. Time Warner at 49, NCTA at 30. There is no need to promulgate any additional rules or policies related to cable CPE until the Commission determines how it will provide for the retail availability of set top boxes and other equipment in response to the directives set forth in the 1996 Act.

VI. CONCLUSION.

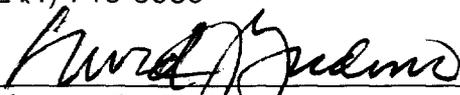
There is broad-based support for the establishment of consistent inside wire policies for telephone and cable services. The Commission should take immediate action to modify its demarcation point policies for cable services and give all cable subscribers pretermination rights over cable inside wiring installed in their premises.

Respectfully submitted,

GTE Service Corporation, on behalf of its
domestic telephone operating companies and
GTE Media Ventures Incorporated

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6969

By



David J. Gudino
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5212

April 17, 1996

Their Attorneys

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on April 17, 1996 to all parties of record.


Ann D. Berkowitz