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

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-260 FCC 95-503
	)	
Cable Home Wiring	)	

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REPLY COMMENTS OF AMERITECH NEW MEDIA, INC.

Ameritech New Media, Inc. offers the following reply to the initial comments filed by others with respect to the issues raised in the Commission's Further Notice of Proposed Rulemaking ("Further NPRM") released in this docket on January 26, 1996.

The initial comments addressed the Commission's proposals relating to (1) multiple dwelling units ("MDUs") with loop-through wiring, and (2) the rights of others, besides the subscriber and cable operator, to purchase cable home wiring.[1]

[1] Several parties incorporated their comments in Docket No. 95-184 by reference in the record here. Accordingly, Ameritech New Media incorporates by reference Ameritech's March 18, 1996 comments and April 17, 1996 reply comments from Docket No. 95-184, as well.

I.

THE COMMISSION SHOULD DO ALL IT CAN IN THIS DOCKET TO INCREASE COMPETITION AND CUSTOMER CHOICE FOR CUSTOMERS RESIDING IN MDUs WITH LOOP-THROUGH WIRING.

Ameritech New Media made several recommendations in its initial comments on further steps the Commission could take to promote competition among video service providers and customer choice for subscribers residing in MDUs with loop-through wiring.

A. The owner of a building with loop-through wiring, or a tenant association, should be given increased options to purchase that wiring.

Many other parties supported Ameritech New Media's argument that increasing the MDU building owners' and tenants' options to purchase loop-through wiring would promote competition and customer choice.[2] Some parties noted in their initial comments that current restrictions make it impossible for alternative providers to compete for subscribers in MDUs unless they overbuild the wiring within the MDU.[3] Bell Atlantic is correct when it argues that the Commission should pursue a single objective: to permit individual tenants or, if that is technologically impossible, the building owner to obtain cable service from competing service providers in the least disruptive fashion and with the minimum of service

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[2] ICTA at 3; OpTel at 2; Liberty at 3; RCN at 4; Bell Atlantic at 2-3; NYNEX at 3 and Pacific at 2.

[3] OpTel at 2. Other parties favor deployment of a second wire by an alternative provider. E.g. Marcus et al. at 2. However, many MDU building owners object to a second wire for a variety of reasons, including space limitations, architectural considerations and general concerns about building disruptions. See e.g. CATA at 4.

delay.[4]

Several incumbent cable operators say they should be allowed to continue their control over loop-through wiring in MDUs,[5] and alternative providers that want to provide cable service to MDU residents should be required to install their own wiring.[6] However, this simply would further entrench the incumbent cable operator's monopoly status in MDUs because the building owners acknowledge there very often is no space available to run a second wire to the individual units.[7] Furthermore, certain MDU building owners have asserted their rights to deny access by competing service providers to ducts, conduit and wire closets, whether or not adequate space exists in those structures.[8] If the Commission wants to increase the level of competition among various video service providers and increase the choices MDU customers have with respect to those services, then the owner of a building with loop-through wiring, or a tenant association, should be given increased options to purchase that wiring. Otherwise, an incumbent cable operator with loop-through wire will maintain a "lock" on customers served by the common "bus" over which the incumbent maintains exclusive control, but also have access to (1) any new dedicated wire installed by a competitor and (2) the telephone inside wire, thus having the best of all worlds.

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[4] Bell Atlantic at 1. And there is no basis for limiting these options simply because the MDU building receives cable service via a bulk service agreement. See Charter at 6-7.

[5] Some are even willing to go so far as to say -- incredibly enough -- that competition will actually suffer unless the incumbent cable operator is allowed to maintain exclusive control over the wire. CATA at 2; Time Warner at 6; Charter at 11.

[6] Time Warner at 6; Marcus et al., 95-184 Comments at 5.

Some incumbent cable operators argue that if the Commission establishes a demarcation point for MDU buildings with loop-through wiring reasonably close to where the wire enters the building so that the wiring is readily accessible to competing providers, that will violate Section 652(d)(2) of the Telecommunications Act of 1996 which establishes certain requirements for the joint use of a cable operator's transmission facilities "extending from the last multi-user terminal to the premises of the end user ... ." These incumbent cable operators argue that this language prohibits the Commission from giving competitors reasonable access to the loop-through wiring at the point where the wire enters the building. However, the language in Section 652(d)(2) seems to be based on the nearly identical language in the Commission's video dialtone reconsideration order regarding the leasing of cable drop wire and in that order the Commission was referring to "curb to the home" or "drop wires,"[9] terms ordinarily used to describe wiring located outside the structure being served or very near the point of entry. Thus, in the context of MDU buildings, the "premises" referred to in Section 652(d)(2) is the building, itself, and not the individual units.[10] If the Commission were to hold otherwise, then every alternative service provider would be required to install a separate wire to each unit -- on Guam, for example, the incumbent

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[7] Insignia Management Group, 95-184 Comments; Thomas Group, 95-184 Comments.

[8] BOMA et al., 95-184 comments at 12, fn. 6 and 15, fn. 8.

[9] In the Matter of TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration, rel. November 7, 1994 at pars. 44, 54.

[10] Thus, wiring within the MDU building is not part of the "transmission facilities of a cable system" for purposes of Section 652(d)(2) and, for that matter, is not even part of the "Cable System" defined in 47 U.S.C. Section 522(7)(B) because wire within the building does not use "any public right-of-way."

cable provider says as many as fifteen separate wires may be required[11] -- and it is doubtful that any MDU building owners would allow that kind of disruption in their building. Thus, the end result of the cable operators' Section 652(d)(2) argument is less competition and that could not be what the Congress intended.

B. If an MDU owner purchases the loop-through wiring in the building, the rules for compensation and technical standards for non-loop-through wiring should apply.

There was not a lot of comment on this particular point in the initial comments. Some argue that a per-foot replacement cost is inadequate for loop-through wiring because it would not account for the additional costs associated with any interior conduit placed by the operator.[12] The way to address this potential problem, however, is to allow for exceptions to the general rule that compensation is based on a per-foot replacement cost of the wiring. If a cable operator can demonstrate that additional costs must be recovered, then it should be given the opportunity to make that showing and recover those additional costs. But failing that, the general rule should apply.

C. The general rule for the demarcation point for MDUs with loop-through wiring should be no more than approximately 12 inches from the point of entry to the building (inside or outside) the building or the closest practical point to the point of entry, provided that the point is reasonably accessible to competing providers.

The location of the demarcation point must allow for ready access to the loop-through wiring by alternative video service providers. Otherwise,

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[11] Guam Cable at 2-3.

[12] New York City Department of Information Technology and Telecommunications ("NYC") at 5-6.

the incumbent cable operator will be able to continue using that wiring as a way to exclude potential competitors from serving the MDU.

Some assert that the demarcation point should be at the tap for the individual unit.[13] Others say this point is accessible via an access cover in the common hallway.[14] Yet, a demarcation point within hallway molding outside an individual dwelling unit in a MDU building is not "accessible" if the building owner does not allow a competing provider to run a second wire throughout the building, as many MDU owners are unwilling to do because of architectural considerations or other reasons.[15] The end result in those situations is that the subscriber has little or no choice of alternative service providers and that is exactly the condition incumbent cable operators are trying to perpetuate by making this argument.

Some incumbent cable operators argue that if the demarcation point for loop-through wiring is established at a point that is reasonably accessible by alternative providers, then the building owner will become the "gatekeeper" for the entire building and may even bar the incumbent cable operator's personnel from the building.[16] However, given the nature of loop-through wiring, some form of "gatekeeper" will be present by definition. The incumbent cable operator has served that role in the past. Whether the incumbent will continue to serve in that role and exercise unilateral control

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[13] NYC at 6.
[14] Time Warner at 7-8.
[15] CATA at 4.
[16] Marcus et al. at 2.

over the wiring are issues for the Commission's consideration. And for the reasons stated in its initial comments, Ameritech New Media believes that as between the incumbent cable operator and the building owner, the building owner is more likely to be the one that would exercise control over the loop-through wiring for the benefit of the residents.

Some incumbent cable operators say that if the Commission makes the loop-through demarcation point readily accessible to alternative providers, that will not increase competition, but simply increase the opportunities for building owners to switch cable providers. Ameritech New Media believes that opportunity does increase competition and is exactly the reason why the demarcation point must be made accessible to alternative providers.

D. Future Installations of Loop-through Wiring Should be Prohibited.

Many parties agree with Ameritech New Media that the Commission should prohibit future installations of loop-through configurations.[17] The loop-through configuration is inherently anti-competitive because it effectively restricts subscribers' opportunities to choose an alternative supplier. In fact, disputes over access to loop-through wiring have proliferated over the years and, as result, loop-through wiring has been prohibited since 1990 in New York City franchise renewals.[18]

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[17] Bell Atlantic at 1; USTA at 2; NYNEX at 4; Pacific Bell and Pacific Telesis Video Services at 2; GTE at 6.

[18] NYC at 3. Curiously enough, NYC suggests (NYC at 6-7) that the Commission should not bar further installation of loop-through wiring even though NYC instituted such a ban years ago because of the obvious and inherent competitive limitations of loop-through wiring. NYC at 3.

Most of the incumbent cable operators want to continue to install loop-through wiring but also want that wiring exempt from the Commission wiring rules.[19] The basis for their position is simple. Loop-through wiring that is not governed by the Commission wiring rules will help these incumbent cable operators maintain their strangle-hold on MDU tenants who want a competitor's video programming service. The Commission should not allow that to continue. Instead, the Commission should use its ancillary jurisdiction to prohibit future installations of loop-through configurations. That is the way to promote competition among various video service providers in the MDU environment. If the Commission does not take this action, then at a minimum the Commission should include loop-through wiring in its home wiring rules.

II.

OTHERS, BESIDES THE SUBSCRIBER AND CABLE OPERATOR, SHOULD BE ABLE TO EXERCISE RIGHTS WITH RESPECT TO CABLE HOME WIRING.

In its initial comments, Ameritech New Media said that MDU building owners, in cooperation with their tenant association, should be given increased options to purchase loop-through wiring where service is voluntarily terminated.[20] Where a tenant, or a tenant association, declines to purchase the cable home wire, the building owner should have the right to

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The Commission should also note that some parties say that they no longer install loop-through wiring. OpTel at 4, fn. 6; Charter at 4, fn. 3

[19] CATA at 1,4; TW at 2-4, 7; NCTA at 1-2, 5.

[20] In cases where cable operators abandon the wiring (see OpTel at 3, fn.2), the building owner or tenant may already own the wire on the basis of state property law.

make that purchase. These increased options will promote competition among multichannel video service providers and customer choice with respect to those services.

Some suggest that this would not be a good idea because building owners, or tenant associations, that buy loop-through wire may simply choose the provider that pays the highest premium for the right to serve the building.[21] Ameritech New Media believes the more likely result will be that a variety of considerations -- including price, features and quality -- will come into play when the owner of a MDU building with loop-through wire, in concert with the tenants, makes decisions about obtaining cable service.

Several parties agreed with Ameritech New Media that the application of the Commission's cable wiring rules should not be affected simply because the subscriber vacates the premises after declining to purchase the cable home wire.[22] These parties are correct when they note that the timing of when a tenant vacates leased premises has no bearing on a cable operator's obligation to act, if at all, within seven business days to remove wiring the tenant declines to purchase.[23] Moreover, since most subscribers terminate cable service at the last minute, relieving cable operators of compliance with the

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[21] Marcus et al. at 2. At the same time, however, Marcus Cable acknowledges that customers should be given a choice with regard to their cable provider. Id. at 3.
[22] ICTA at 6; OpTel at 2; NYC at 7-8; Bell Atlantic at 3; NYNEX at 5.
[23] NYC at 7-8; OpTel at 6-7. Moreover, OpTel is correct in noting that removal of the wiring requires just that -- removal -- and not disabling the wire in an attempt to impede a competitor. OpTel at 3, fn. 4.

seven day rule would effectively eliminate any remaining effect.[24] Therefore, the Commission's cable wiring rules should not be affected simply because the subscriber vacates the premises after declining to purchase the cable home wire.

III.

CONCLUSION

Ameritech New Media has offered several ideas on how the Commission can remove the regulatory barricades which deprive MDU residents of competitive choices among various video service providers. Commission adoption of these recommendations will increase competition among video service providers and promote customer choice with respect to those services.

Respectfully submitted,

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[24] Bell Atlantic at 3.

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that copies of the foregoing Reply Comments Of Ameritech New Media, Inc. has been served on the parties listed below, by first class mail, postage prepaid, on this 17th day of April, 1996.

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