

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

REPLY COMMENTS OF DIRECTV, INC.

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DIRECTV, Inc. ("DIRECTV") hereby submits the following Reply Comments in connection with the above-captioned Notice of Proposed Rulemaking.¹

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Introduction

In its initial comments, DIRECTV urged the Commission to modify its inside wiring rules to reflect the current telecommunications marketplace.² In particular, DIRECTV requested that the Commission take into account the concerns of direct broadcast satellite ("DBS") companies in revising those rules. DIRECTV continues to support the modification of the inside wiring rules.³

New rules are critical to ensuring competition among service providers for consumers residing in MDUs.

DIRECTV believes that the Commission should move forward expeditiously with the

¹ In the Matter of Telecommunication Services Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184, Notice of Proposed Rulemaking, (released January 26, 1996) ("Notice").

² Notice ¶ 1.

³ Id.

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inside wiring rulemaking to facilitate competition among service providers. In doing so, DIRECTV urges the Commission to favor proposals that empower the tenant, who is, after all, the ultimate customer.⁴

The proposal by Tele-Communications, Inc. (“TCI”) that the Commission wait until the marketplace “settles down”⁵ and “shakes out”⁶ would lead to continued domination of the MDU markets by the incumbent providers. Numerous responses to this Notice point out examples of the problems new entrants face, in particular the undesirable practices of some landlords.⁷ The incumbent operators have had the benefit of years of protected and guaranteed access to MDU residents.

Many of the practices currently used to displace incumbent operators, such as exclusive contracts⁸ with “kickbacks,”⁹ will not and should not survive, but they are indicative of the stranglehold that incumbent operators have. Optel contends that landlords can negotiate good exclusive deals for their tenants because “they can guaranty access to a stable supply of customers

⁴ DIRECTV agrees with Continental Cablevision, Inc. *et al.* that the rights of the tenant to choose his or her service provider should take precedence over those of the landlord. *See* Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation at 21-24.

⁵ Comments of Tele-Communications, Inc. at 2.

⁶ *Id.* at 7. In its comments, TCI describes some of the technical experimentation that is occurring today as “flavor-of-the-month.” *Id.* TCI also asserts that if the Commission issues rules now, they will probably need to be re-written later when technological choices are finalized. *Id.* Waiting until all of that technical experimentation is concluded merely would allow for a continuation of the anti-competitive environment currently prevalent in MDUs.

⁷ *See, e.g.*, Comments of Liberty Cable Company, Inc. at 6-10; Comments of Wireless Cable Association International, Inc. at 4, 6-8; Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation at 22; Comments of State of New Jersey Board of Public Utilities at § IIA.

⁸ Comments of Optel, Inc. at 7. DIRECTV strongly disagrees with Optel’s insupportable assertion that exclusive service agreements promote competition.

⁹ *See* Comments of Marcus Cable Company *et al.* at 8 n.7; *see also* Comments of Cable Telecommunications Association at 9.

over a long period of time.”¹⁰ However, a policy which relies on the benevolence of landlords as a means of promoting competitive services, but only on an exclusive basis, is destined to fail. The Commission should recognize this and provide a mechanism to overcome the current gatekeeping practices. DIRECTV agrees with GTE “that the Commission should forcefully counter these anti-competitive actions by entrenched cable operators. Specifically, the Commission should bar incumbent operators from entering into or enforcing any exclusive arrangement.”¹¹ In summary, rules must be written to facilitate competition.

Regarding TCI’s implied assertion that the Commission has better things to do, the goals of this rulemaking are not only consistent with the Telecommunications Act of 1996, but are also critical to effectively carrying out the Act.¹²

Access must be granted to competitive service providers.

Contrary to what some commenters have suggested,¹³ it is possible and practical to uphold the First Amendment rights of consumers to have access to all forms of information from competitive service providers without violating the Fifth Amendment rights of property owners and incumbent providers. In their comments, the Media Access Project and Consumer Federation of America point out that the Supreme Court has found that “assuring that the public has access to a multiplicity of information sources is a government purpose of the highest order, for it

¹⁰ Comments of Optel, Inc. at 7.

¹¹ Comments of GTE at 22.

¹² See, e.g., Telecommunication Act of 1996, Pub. L. No. 104-104, § 302, 110 Stat. 56, 114 (1996) (cable service provided by telephone companies).

¹³ See, e.g., Joint Comments of Building Owners and Managers Association International et al. (“BOMA”) at 5-9.

promotes values central to the First Amendment.”¹⁴ We therefore agree with the many comments that access must be granted to competitive providers in order to ensure competition in MDUs.¹⁵

Several commenters suggested that granting access to MDUs to competitive providers poses a security and safety risk.¹⁶ DIRECTV disagrees. It is quite possible to allow access to customers by legitimate service providers without endangering either security or safety. An owner should be able to schedule building access, as with all other service providers, while ensuring that fire and building codes are not violated.¹⁷

The implication that a competitive service provider would be less capable of performing work in accordance with fire codes than an incumbent provider is similarly without merit.¹⁸ All installers should be held to the same set of standards and should not be allowed to perform the work unless they can do so safely. In fact, the DIRECTV position that competitive service

¹⁴ Comments of Media Access Project and Consumer Federation of America at 3.

¹⁵ In its comments, Multimedia Development Corp. provides a very good discussion of the great handicap that is placed on non-franchised providers by the many one-sided “mandatory access” state laws, as well as an important example of how the current laws can unfairly further the stranglehold that franchised operators enjoy in MDUs. Comments of Multimedia Development Corp. at I, 5 n.3.

¹⁶ See, e.g., Comments of BOMA at 31-32.

¹⁷ The declaration of Lawrence G. Perry filed in support of its comments by BOMA discusses the fire dangers of multiple cables. Perry Declaration at ¶ 6. DIRECTV believes that these concerns can be addressed without restricting the ability of a service provider to gain access to subscribers. In fact, the shared wire approach discussed *infra* further assuages the fire concerns by minimizing the number of cables that must pass through fire walls. BOMA also contends that landlords need to “coordinate among tenants and services providers.” Comments of BOMA at 3; see Comments of Niles Investment Corp. at 2. It is difficult to perceive any need for coordination beyond that which would apply to any other building entrant, such as a mover delivering furniture or a TV repairman.

¹⁸ See, e.g., Comments of BOMA at 27-30.

providers should be allowed to share the existing inside wiring completely obviates the concern about increased fire hazards due to extra wires and holes in the fire walls.

Another position advanced by certain landlords¹⁹ is that being able to “refuse access” provides them with “bargaining power” to negotiate for better services on behalf of their tenants. To the contrary, any policy which assumes commonality of interests between landlords and tenants has far more dangers than benefits. The tenants should be able to decide for themselves which services have merit based on their individual needs. As the competitive marketplace evolves, more and more service providers will rely on serving specific niche markets. These markets are not delineated by the MDU building in which a subscriber resides, but instead by common interests, occupational needs and other items that cannot be uniformly negotiated by a landlord.

Three demarcation points are needed for MDUs.

1. The point where a service provider connects to an individual subscriber.

Many commenters agree with DIRECTV that it is appropriate to establish a demarcation point at the point where a service provider connects to an individual subscriber.²⁰ Those who

¹⁹ See, e.g., Comments of Sentinel Real Estate Corporation at 2.

²⁰ See, e.g., Comments of United States Telephone Association at 3 (“demarcation point should establish a clearly defined point where common plant wiring meets the wiring dedicated to the individual subscriber”); Comments of Multimedia Development Corp. at ii (supporting a demarcation point at “the point at which dedicated subscriber ‘drop’ lines connect to common wiring”); Comments of Wireless Cable Association International, Inc. at 5 (urging the Commission to “redefine the cable home wiring demarcation point so that each resident of an MDU has the right to purchase any and all wiring and associated passive devices devoted exclusively to the provision of service to his or her individual unit”); Comments of NYNEX at 7 (recommending that “the demarcation point for MDU buildings be changed and established at the point where the cable wire becomes dedicated to the individual subscriber”); Comments of Residential Communications Network, Inc. at 3.

Pacific Bell propose a demarcation point “located where the line first becomes dedicated to an individual customer’s use, but beyond the point at which the service provider must place electronics or related equipment.” Comments of Pacific Bell and Pacific Telesis Video Services at 3. DIRECTV agrees with the first part of this
(Continued)

oppose this demarcation point claim that relinquishing the wire to the individual subscriber, who is then free to select his or her service provider, will hinder their future efforts to provide a different service to that subscriber over that same wire. In fact, the opposite is true. Under this scenario, the subscriber has total freedom to contract with whomever he or she wishes, and to change providers at any time. Moreover, this concern can be mitigated by adopting the shared wire approach discussed below.

Certain commenters also claim that establishing such a demarcation point is a taking of property.²¹ DIRECTV believes that cable inside wiring, as the Commission determined with regard to telephone inside wiring, is essentially abandoned upon installation because of the low salvage value of such material and the labor costs involved in removing it.²² DIRECTV agrees with AT&T's recommendation that "the Commission establish a rebuttable presumption that all cable subscribers have acquired title to (or at a minimum access to and control over) their inside wiring."²³ This approach would in no way implicate the takings clause of the Fifth Amendment to the Constitution.²⁴ Claims of a violation of Fifth Amendment rights²⁵ appear unfounded and,

statement, but is concerned about the second part of the statement. Simple distribution amplifiers, splitters, taps, and other such components should be considered, along with the wiring, as subject to presumption of subscriber ownership. Only more complex and high-valued devices that are particular to an individual provider's delivery system should be allowed to be owned by the particular provider. In this case, the placement and operation of such high-valued electronics should not interfere with the operation of the cable plant and utility of the three demarcation points. DIRECTV believes that this is technically possible and is necessary to prevent the choice placement of low-cost amplifiers by incumbent providers as a means of circumventing the inside wiring rules that will result from this proceeding.

²¹ See, e.g., BOMA at 7; National Cable Television Association, Inc. at 36.

²² DIRECTV agrees with NYNEX's assertion that "[t]he Commission should give consumers control of cable and telephone inside wire upon installation." Comments of NYNEX at 9.

²³ Comments of AT&T Corp. at iii, 10.

²⁴ See Comments of AT&T Corp. at 14 -18.

²⁵ Comments of Cox Communications, Inc. at 13.

instead, would appear to be an attempt to maintain the anti-competitive status quo that violates the First Amendment rights of the tenants.²⁶

2. The point where a service provider connects to an entire MDU.

Many new service providers agree with DIRECTV that it is necessary to establish a point of minimum access to an MDU.²⁷ Establishing this point is critical in order to meet the goals of this rulemaking. Establishing a demarcation point where the service provider connects to the MDU is opposed only by those incumbent providers who are concerned that they will lose exclusive access to their MDU customers.²⁸ This concern, likewise, can be mitigated by adopting the shared wire approach discussed below.

3. The virtual point that allows service providers to share physical wires.

The ability to share inside wiring will ensure true competition among service providers in MDUs. As the Information Technology Industry Council states, “The ability of consumers to switch from one distribution system to another -- or to simultaneously employ multiple distribution systems -- plainly will be increased if users are able to connect to these services through a single premises-based wiring system.”²⁹ Riser Management Systems states, “The goal

²⁶ The Wireless Cable Association provides a case history that demonstrates this point. Comments of Wireless Cable Association International, Inc. at 20 n.42.

²⁷ See, e.g., Comments of Multimedia Development Corp. (supporting a demarcation point that “marks the separation between MVPD [multichannel video program distributor] facilities and MDU building common wiring”); Comments of Wireless Cable Association International, Inc. (urging the Commission to “give MDU property owners ownership and control of all wiring located between the demarcation point for cable home wiring and a ‘minimum point of entry’”); Comments of Circuit City Stores, Inc. at 15; Comments of Tandy Corporation at 6.

²⁸ As Multimedia Development Corp. states: “The only reason that cable systems or other installation MVPDs seek to protect their ownership over such wiring in this proceeding is to protect their customer base against entry by competitors.” Comments of Multimedia Development Corp. at 16-17.

²⁹ Comments of the Information Technology Industry Council at ii.

should be a common demarcation point, a common multi-purpose cabling system on the customer side of that demarcation point, and (for multi-tenant properties) a right of virtual access to multiple providers. This model solves the problem of ensuring access to multiple providers, offering multiple kinds of services, while recognizing the sheer physical constraints that make it infeasible for each and every carrier to run separate and duplicative lines through commercial properties.”³⁰

At least one cable commenter agrees with this approach. The Independent Cable & Telecommunications Association states, “It does not appear that each video service provider will need its own separate wiring at MDUs for the transfer of voice, video and data. Thus, it may not be necessary for each provider to have its own wire, as a tenant may be able to obtain video, voice and data from three different providers using the same wire.”³¹

DIRECTV strongly disagrees with the assertion by Continental Cablevision that “[s]imultaneous use of hallway wiring and riser cables between broadband competitors is not technically or economically feasible.”³² Since the sharing of wires by different services from the same provider is not disputed, one cannot dispute the feasibility of such sharing merely because the services are offered by different providers. The technology to accomplish the sharing of wires by different providers has been available for many years. There are technical requirements that depend upon the particular characteristics of the signals sharing a wire, all of which are within the realm of straightforward implementation.³³

³⁰ Comments of Riser Management Systems, L.P. at 3.

³¹ Comments of Independent Cable & Telecommunications Association at 27.

³² Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation at 23.

³³ See Comments of Consumer Electronics Manufacturers Association at 5 (discussing technical requirements for implementing a shared wiring approach).

Marcus Cable states that “it is technologically and economically infeasible for dual providers to use a single coaxial cable drop.”³⁴ Again, DIRECTV strongly disagrees. Marcus’ assertion is that more components are required to combine the signals. In reality, it is possible, given the proper demarcation point, to have a single combiner added to the cable plant. All of the other electronics described by Marcus are unnecessary to the purpose of sharing wires.

Adelphia Communications Corporation states that, “Today, providers willingly develop additional spectrum within their distribution facilities because they are safe in the knowledge that they will not lose the spectrum to a competitor because they did not deploy in that spectrum immediately.”³⁵ DIRECTV agrees that it is up to a service provider to decide when to deploy, but the fact that they are not ready to deploy should not allow them to block access to the customer via the inside wiring. The spectrum should be utilized based on the needs and choices of the tenants. It is in the consumer’s interest to have the available bandwidth as fully utilized as possible.

Some commenters suggest that two and three wire systems are important for “facilities-based” competition.³⁶ The “facilities” that true competition will be based on are the service providers’ backbone delivery systems that bring services to single family homes or to MDUs, not

³⁴ Comments of Marcus Cable *et al.* at 6.

³⁵ Comments of Adelphia Communications Corporation at 5.

³⁶ Continental Cablevision suggests that “competitors could enter the broadband services market in MDUs without constructing and deploying the competing end-to-end broadband networks that are an essential precondition to consumer choice in those buildings.” Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation at 3. DIRECTV does not agree that redundant wiring is a precondition to consumer choice. There are physical obstacles to installing an endless number of end run wires. DIRECTV’s proposal facilitates the ability of the subscriber to transition from one provider to a competitor (and back) given those physical constraints by sharing the final wiring and only installing another wire if the total broadband services subscribed to justify the extra wire.

the inside wiring.³⁷

In the future one can expect to have many different service providers using many different networks: one cable provider, one MMDS provider, one LMDS provider, one local telephone provider, one long distance telephone provider, two private telecommunications providers, and perhaps three DBS providers. Some provider networks will be used by multiple providers. For example, the DSS® network is used by DIRECTV and United States Satellite Broadcasting Company. Given multiple providers of multiple services, it would be impractical to expect an equivalent number of coaxial cables will be wired to every unit in an MDU in order to allow individuals to pick and choose among providers based on their individual preferences and needs. In the long run, providers must share cables.

Another example of the sharing of wires is more familiar: local and long distance telephone providers currently share the final run of wiring. Over the last several years it has been increasingly commonplace for consumers to switch long distance carriers without affecting the physical wiring or the local telephone service.³⁸ This model will be facilitated for multichannel video programming distributors by the shared wiring demarcation point proposed by DIRECTV.

It should also be noted that the sharing of wires alleviates some of the anti-competitive problems that arise from loop-through wiring. DIRECTV agrees with the numerous commenters in MM Docket No. 92-260 that propose that the Commission ban future use of loop-through

³⁷ In the case of DIRECTV, the backbone delivery system consists of the satellite link.

³⁸ This model will alleviate the numerous concerns expressed by incumbent providers that establishment of a new demarcation point would void the investments that they have made in upgrading cable plants for the future. *See* Comments of Continental Cablevision, Inc. and Cablevision Systems Corporation at 4. Those providers will still be able to use the high bandwidth end connections to the consumer, but only if the consumer actually wishes to subscribe to their service, not as a block to competitors.

wiring³⁹ as the City of New York has done.⁴⁰ DIRECTV's proposal of sharing of wires provides a means to provide competition in all of the existing loop-through wiring MDUs without completely re-wiring or competing for the sole use of the entire cable plant.⁴¹

Inside wiring should be regulated solely by the federal government.

DIRECTV supports the position of AT&T that the "Commission preempt any state or local regulation that has the effect of impeding the harmonization of telephone and cable regulations."⁴² DIRECTV believes the Commission should go a step further and preempt any state or local law or regulation that would impede any service providers, including a DBS provider, from gaining access to subscribers via inside wiring.

Further support for federal preemption in this area, particularly with regard to DBS providers, is derived from the Telecommunications Act of 1996. In Section 205 of the Act, Congress amended section 303 of the Communications Act of 1934 to include among the general powers of the Commission the "exclusive jurisdiction to regulate the provision of direct-to-home satellite services."⁴³ The legislative history of this provision explains that the purpose of this amendment is to make clear the FCC's exclusive jurisdiction in the arena of DBS services.⁴⁴

³⁹ See, e.g., Comments of Bell Atlantic at 1; Comments of Pacific Bell and Pacific Telesis Video Services at 2; Comments of NYNEX at 4; Comments of Ameritech New Media, Inc. at 3; Comments of United States Telephone Association at 2.

⁴⁰ See Comments of New York City Department of Information Technology and Telecommunications at 3.

⁴¹ See Comments of Residential Communications Network, Inc. at 2.

⁴² Comments of AT&T Corp. at 20.

⁴³ Telecommunications Act of 1996, Pub. L. No. 104-104, § 205(b), 110 Stat. 56, 114 (1996) (emphasis supplied).

⁴⁴ H.R. Conf. Rep. No. 458, 104th Cong., 1st Sess. 165 (1996).

Thus, neither states nor municipalities may impose regulations governing the provision of DBS service.

Conclusion

DIRECTV urges the Commission to adopt the proposals set forth in the foregoing Reply Comments. In particular, the Commission should take into account the need for access by DBS service providers to inside wiring, including the common wiring inside MDUs.

Respectfully submitted,

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