DOCKET FILE COPY ORIGINAL

FCC MAIL SECTION

SEP 2 11 32 AM '97

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

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

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 27, 1997 **Released: August 28, 1997**

By the Commission:

Comment Date: September 25, 1997
Reply Comment Date: October 2, 1997

Table of Contents

Paragraph No.

I. Introduction 1
II. Background 5
III. Further Notice on Cable Inside Wiring in Multiple Dwelling Unit Buildings 10
A. Comments in Response to Inside Wiring Notice 10
B. The Competitive Landscape 25
C. Disposition of Home Run Wiring 32
1. Building-by-Building Disposition of Home Run Wiring 35
2. Unit-by-Unit Disposition of Home Run Wiring 39
3. Ownership of Home Run Wiring 44
4. Impact on Incumbent Video Service Providers 46
5. Application of Procedural Framework 48
6. Statutory Authority 50
7. Constitutional Arguments 70

D. Disposition of Cable Home Wiring 73
1. Building-by-Building Disposition of Home Wiring 75
2. Unit-by-Unit Disposition of Home Wiring 79
E. Alternatives to Procedural Framework 83
IV. Initial Regulatory Flexibility Act Analysis 87
V. Paperwork Reduction Act of 1995 Analysis 108
VI. Procedural Provisions 110
VII. Ordering Clauses 113

Appendix A: Parties that Filed Comments and Reply Comments regarding the Issues Discussed in this *Further Notice*
Appendix B: Time Line Summary of Building-by-Building Wiring Disposition Procedures
Appendix C: Time Line Summary of the Unit-by-Unit Wiring Disposition Procedures
Appendix D: Proposed Rules

I. INTRODUCTION

1. This *Further Notice of Proposed Rulemaking* ("*Further Notice*") sets forth specific proposals for addressing certain issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95-184 ("*Inside Wiring Notice*")[1] and the *First Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket 92-260 ("*Cable Home Wiring Further Notice*")[2] regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace. The issues raised in this *Further Notice* are intended to supplement the issues already discussed in the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice*.

2. As described below, we believe that our inside wiring rules could more effectively promote competition and consumer choice, but believe that the record would benefit from additional comment on our specific proposals. We stress that the Commission intends to act quickly on these proposals. The proposals herein are set forth in great detail and generally are limited to a single issue: the disposition of cable inside wiring in multiple dwelling unit buildings ("MDUs") upon termination of service. In addition, our proposals herein are similar to a proposal first made by the Independent Cable & Telecommunications Association ("ICTA") in its initial comments in this proceeding,[3] described more fully by ICTA in an ex parte letter to the Commission,[4] and discussed by interested parties in ex parte letters.[5] Accordingly, and in light of the extensive comments and ex parte meetings and comments

[1] 11 FCC Rcd 2747 (1996).

[2] 11 FCC Rcd 4561 (1996).

[3] *See* para. 15, below.

[4] *See* paras. 15-16, below.

[5] *See, e.g.*, Ex Parte Letter from Gina Harrison, SBC Communications, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (May 22, 1997); Ex Parte Letter from Thomas O. Might, Cable One, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (July 1, 1997).

received in response to the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice*, we have set shorter deadlines than usual for interested parties to file comments and reply comments. We ask parties to refrain from filing comments that are repetitive of their comments filed in response to the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice*. All such comments will be considered as part of the record filed in response to this *Further Notice* to the extent they remain relevant.

3. The extensive record in this proceeding reflects a range of issues beyond those raised in this *Further Notice*, including, among other things: (1) the competitive impact of exclusive service contracts; (2) the ability of alternative telecommunications carriers to obtain access to telephone inside wiring; (3) the feasibility of multiple entities providing service simultaneously over a single wire; and (4) the applicability of our cable signal leakage rules to other multichannel video programming distributors ("MVPDs"). We intend to address those issues in subsequent action in this docket.

4. In this *Further Notice*, we tentatively conclude that we should adopt new procedural mechanisms that will provide certainty regarding use of the "home run" wiring in MDUs (which runs from the point at which the wiring becomes dedicated to serving an individual subscriber to the demarcation point) upon termination of service. We also propose to apply our rules regarding the disposition of cable inside wiring to all MVPDs using broadband wiring. In addition, we propose to modify our cable home wiring rules so that they will operate in harmony with these proposed procedures for home run wiring.

II. BACKGROUND

5. Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"),[6] codified at Section 624(i) of the Communications Act, requires the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."[7] In February 1993, the Commission issued a Report and Order implementing Section 624(i) (the "*Cable Wiring Order*").[8] The *Cable Wiring Order* provided that when a subscriber voluntarily terminates cable service, the operator is required, if it proposes to remove the wiring, to inform the subscriber: (1) that he or she may purchase the wire; and (2) what the per-foot charge is.[9] If the subscriber declined to purchase the home wiring, the operator was required to remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.[10] These rules were designed to advance Section 624(i)'s goals of avoiding the disruption

[6]Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. §§ 521, *et seq.* (1992).

[7]Communications Act, § 624(i), 47 U.S.C. § 544(i).

[8]*Report and Order*, MM Docket No. 92-260 (Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring), 8 FCC Rcd 1435 (1993).

[9]*See Cable Wiring Order*, 8 FCC Rcd at 1438. We provided that the operator may not charge the subscriber any more than the replacement cost of the wire, priced on a per-foot basis. *Id.*

[10]*Id.*

of having the wiring removed and permitting subscribers to use the wiring with an alternative video service provider.[11]

6. We further provided that the subscriber may purchase the cable home wiring inside his or her premises up to the demarcation point.[12] As in the telephone context, a demarcation point generally is the point at which a service provider's system wiring ends and the customer-controlled wiring begins. From the customer's point of view, this point is significant because it defines the wiring that he or she may own or control. For purposes of competition, the demarcation point is significant because it defines the point where an alternative service provider may attach its wiring to the customer's wiring in order to provide service.

7. For MDUs with non-"loop-through" wiring,[13] the cable demarcation point was set at (or about) 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit.[14] Generally, in a non-loop-through configuration, each subscriber in an MDU has a dedicated line (often called a "home run") running to his or her premises from a common "feeder line" or "riser cable" that serves as the source of video programming signals for the entire MDU. The riser cable typically runs vertically in a multi-story building (e.g., up a stairwell) and connects to the dedicated home run wiring at a "tap" or "multi-tap," which extracts portions of the signal strength from the riser and distributes individual signals to subscribers. Depending on the size of the building, the taps are usually located in a security box (often called a "lockbox") or utility closet located on each floor, or at a single point in the basement. Each time the riser cable encounters a tap its signal strength decreases. In addition, the strength of a signal diminishes as the signal passes through the coaxial cable. As a result, cable wiring often requires periodic amplification within an MDU to maintain picture quality. Amplifiers are installed at periodic intervals along the riser based upon the number of taps and the length of coaxial cable within the MDU. Non-cable video service providers typically employ a similar inside wiring scheme, except that many of them (e.g., multichannel multipoint distribution services ("MMDS"), satellite master antenna services ("SMATV") and direct broadcast satellite ("DBS") providers) use wireless technologies to deliver their signal to an antenna on the roof of an MDU, and then run their riser cable down from the roof to the taps and dedicated home run wires.

---

[11] *Id.* at 1435.

[12] We defined "cable home wiring" as the internal wiring contained within the premises of a subscriber which begins at the demarcation point, not including any active elements such as amplifiers, converter or decoder boxes, or remote control units. *Id.* at 1436; 47 C.F.R. § 76.5(ll).

[13] Loop-through cable wiring configurations, where a single cable provides service to multiple subscribers such that every subscriber on the loop must receive the same cable service, are generally excluded from our cable home wiring rules. *Cable Home Wiring Order*, 8 FCC Rcd 1437. We are currently considering whether the Commission should require cable operators to allow MDU owners to purchase loop-through wiring in the limited situation where all subscribers in a building want to switch to a new service provider. *See Cable Home Wiring Further Notice*, 11 FCC Rcd at 4582.

[14] 47 C.F.R. § 76.5(mm)(2).

8. In January 1996, the Commission issued the *Cable Home Wiring Further Notice*[15] and the *Inside Wiring Notice*.[16] In the *Cable Home Wiring Further Notice*, among other things, the Commission clarified that, during the initial telephone call in which a subscriber voluntarily terminates cable service, if the operator owns and intends to remove the home wiring, it must inform the subscriber: (1) that the cable operator owns the home wiring; (2) that it intends to remove the home wiring; (3) that the subscriber has a right to purchase the home wiring; and (4) what the per-foot replacement cost and total charge for the wiring would be, including the replacement cost for any passive splitters attached to the wiring on the subscriber's side of the demarcation point. Where an operator fails to adhere to these procedures, it is deemed to have relinquished immediately any and all ownership interests in the home wiring, and thus, is not entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use.[17] If the cable operator informs the subscriber of his or her rights and the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer immediately to the subscriber, who may authorize a competing service provider to connect with and use the home wiring.[18] If, on the other hand, the subscriber declines to purchase the home wiring, the operator has seven business days to remove the wiring or make no subsequent attempt to remove it or restrict its use.[19]

9. In the *Inside Wiring Notice*, we sought comment on "whether and how our wiring rules can be structured to promote competition both in the markets for multichannel video programming delivery and in the market for telephony and advanced telecommunications services."[20] In particular, we requested comment on whether and where the Commission should establish a common demarcation point for wireline communications networks, whether we should continue to establish demarcation points based on the services provided over facilities (i.e., telephony or cable), or whether we should create demarcation points based upon the nature of the facilities ultimately used to deliver the service (i.e., narrowband termination facilities or broadband termination facilities).[21] We noted that we "recognize that numerous other factors may affect the proper location of the cable network's demarcation point, as well as one's control over cable inside wiring and cable service generally."[22] We also sought comment on the "legal and practical impediments faced by telecommunications service providers in gaining access to subscribers."[23]

---

[15] 11 FCC Rcd 4561.

[16] 11 FCC Rcd 2747.

[17] *Cable Home Wiring Further Notice*, 11 FCC Rcd at 4571-72.

[18] *Id.* at 4572-73. The alternative video programming service provider is free to reimburse the subscriber for the cost of the home wiring. *Id.* at n.52.

[19] *Id.* at 4574.

[20] *Inside Wiring Notice*, 11 FCC Rcd at 2755-56.

[21] *Id.*

[22] *Id.* at 2757.

[23] *Id.* at 2775.

III. FURTHER NOTICE ON CABLE INSIDE WIRING IN MULTIPLE DWELLING UNIT BUILDINGS

A. Comments in Response to Inside Wiring Notice

10. The main purpose of this *Further Notice* is to solicit comment on a procedural framework for the disposition of cable home run wiring in MDUs. This home run wiring has already been the subject of substantial debate in this proceeding. In the *Inside Wiring Notice*, we sought comment on, among other things, moving the cable demarcation point to encompass the cable home run wiring within our cable home wiring rules.[24] Since the comments received regarding the cable demarcation point are relevant to understanding the proposed procedural framework on which we seek additional comment, we will summarize those comments briefly.

11. Many commenters argue that the current cable demarcation point in MDUs (at or about 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit) is anticompetitive. These commenters assert that, as a physical matter, the cable wiring at the demarcation point is often embedded in brick, plaster, or cinder blocks, or encased in conduits or moldings, particularly in older MDUs.[25] These commenters state that, as a practical matter, a large majority of property owners refuse to allow installation of a second set of cable wires in their buildings due to the risk of property damage, space limitations[26] and aesthetic concerns.[27] Alternative MVPDs contend that property owners routinely insist that a competitor to the incumbent cable operator may only provide service to the consumers residing in the MDU if the competitor uses the existing wiring within the building.[28] These commenters assert that, given the growing number of MDU residents, this is a significant nationwide problem.[29]

---

[24]*See Inside Wiring Notice*, 11 FCC Rcd at 2756-57.

[25]*See, e.g.*, OpTel Reply Comments at 6; Media Access Project/CFA Comments at 5-7; Liberty Comments at 2; WCA Comments at 11.

[26]*See* WCA Comments at 13 (space limitations often place a de facto cap on the number of competing service providers that may serve an MDU property, such that a property owner often cannot give an alternative service provider the space necessary to compete in the building); *see also* Multimedia Development Comments at 15; Riser Mgmt. Comments at 4 (stating that "there are many buildings in which conduits, riser shafts, entrances links, or crawl space are already crowded to the point that limits access" or that makes the "installation of separate systems by each [provider] physically impossible").

[27]*See, e.g.*, ICTA Comments at 21 ("Virtually all property owners refuse to allow installation of a second set of separate cable wires . . . [because] . . . [p]ost-wiring a building generally negatively impacts the appearance of the property because [the wiring] cannot be hidden without tampering with the structure of the building."); DIRECTV Comments at 2 ("The MDU owners and tenants are typically unreceptive to assuming the cost and inconvenience of overbuild installations, which causes an intractable barrier to entry for new service providers.").

[28]ICTA Comments at 21.

[29]Liberty cites the U.S. Bureau of the Census in describing data that MDUs accounted for 28% of the entire U.S. housing market in 1990, and that the number of dwelling units in MDUs in the U.S. increased by 51% between 1980 and 1990, while the number of households and single family residences grew by only 14% and 15%, respectively.

12. Alternative providers make several different proposals. Most commenters urge the Commission to establish a new cable demarcation point at the point at which the wiring becomes solely dedicated to an individual subscriber -- e.g., at the lockbox, where the riser cable connects to each unit's dedicated home run wiring.[30] Other proposals include: (1) placing the cable demarcation point at the minimum point of entry, as it typically is located in the telephone context;[31] (2) moving the cable demarcation point to a location near the entry to the building, such as a basement, telephone vault or frameroom;[32] and (3) placing the cable demarcation point within the MDU's common areas where existing wiring is first readily accessible to competitors.[33]

13. Alternative service providers argue that moving the cable demarcation point to the point where the wiring becomes dedicated to an individual unit will promote competition in the video marketplace. They assert that adopting their proposal would allow an alternative service provider, upon termination of the incumbent provider's service by a subscriber, to attach its network quickly and easily to the wiring solely dedicated to the individual subscriber's use.[34] They also argue that this new demarcation point would permit a second entrant to provide service without disrupting hallway walls or

---

Liberty Comments at Tables 1 and 2, Figures 1-2; *see also* DIRECTV Comments at 2 (stating that MDUs constitute "roughly one-fourth of the United States' TV households").

[30]*See, e.g.*, GTE Comments at 4; USTA Comments at 3; ICTA Comments at 20-24; Multimedia Development Comments at 13-14; MultiTechnologies Services Comments at 2; RCN Comments at 2; OpTel Comments at 10-11; Media Access Project/CFA Comments at 10-11; U S West Comments at 5; New Jersey BPU Comments at 6-7; Compaq Comments at 36; WCA Comments at 10-12; AT&T Comments at 7-8; NYNEX Comments at 7; DIRECTV Comments at 7-8; PacTel Comments at 3-5; Ameritech Comments at 8; Liberty Comments at 2-3.

[31]*See, e.g.*, CEMA Comments at 4-5; Ameritech Comments at 5-6 ("[I]n a converging marketplace where telephone companies and cable operators are providing a variety of broadband services . . . different regulations for premises wire based on the identity of the provider no longer are reasonable or necessary, especially where different services are provided over the same wire."); Bell Atlantic Reply Comments at 12-14 (recommending that the minimum point of entry be established as the common demarcation point for buildings that are built or substantially rewired after January 1, 1998, which would prevent premises owners from having to give up valuable corridor space for multiple feeder cables, and would maximize the amount of wiring that can be provided by companies other than the service providers); AT&T Comments at 3; Tandy Comments at 6; GTE Comments at 7; Circuit City Comments at 14-15; Cincinnati Bell Comments at 2; Media Access Project/CFA Comments at 4; GTE Comments at 3; Riser Comments at 3; California PUC Comments at 1-2.

[32]Building Owners, et al., Comments at 38. Many commenting property managers and owners state that "[d]epending on the type of property, the demarcation point should be outside the building or outside of the premises of each resident." *See, e.g.*, 1st Lake Comments at 1; Community Associations Institute Comments at 1; Real Estate Board of New York, Inc. Comments at 2.

[33]DIRECTV Comments at 7-8; Liberty Petition for Reconsideration of the *Cable Wiring Order* at 1; WJB-TV Limited Partnership Response to Petitions for Reconsideration of the *Cable Wiring Order* at 3; WCA Reply Comments to Petitions for Reconsideration of *Cable Wiring Order* at 7; USTA Supporting Statement on Petitions for Reconsideration of *Cable Wiring Order* at 2.

[34]Liberty Petition for Reconsideration of the *Cable Wiring Order* at 2.

ceilings, or installing additional hallway molding in order to conceal a second set of home run wiring.[35] These commenters contend that this would greatly increase property owners' willingness to allow them to enter the building and compete, thereby fostering competition and enhancing consumer choice.[36]

14. Some commenters that advocate moving the cable demarcation point to the "solely dedicated" point, as described above, urge the Commission to deem the MDU property owner the "subscriber" for purposes of Section 624(i) and to allow the property owner to purchase the home run wiring upon termination of the cable service.[37] These commenters argue that to permit a tenant to purchase the wiring would constitute an impermissible taking of the property owner's property,[38] would be beyond the Commission's authority under Section 624(i),[39] and would not be sound policy since only the MDU owner has a long term interest in the property and the services available to the MDU.[40]

15. As an alternative to moving the cable demarcation point, ICTA proposes that the Commission adopt a procedural mechanism that it argues would accomplish many of the same objectives.[41] ICTA's proposal would apply to MDUs where the entire building converts to the service of a new provider and where the MDU owner does not already own the wiring in the building by operation of law

---

[35]*See* OpTel Reply Comments at 6; Media Access Project/CFA Comments at 6; Ameritech Comments at 3-4; New Jersey BPU Comments at 6-7; GTE Comments at 4; WCA Comments at 11-12; NYNEX Comments at 7-8; PacTel Comments at 3; USTA Comments at 3; RCN Comments at 5 & n.5; Riser Comments at 5; AT&T Reply Comments at 6; Liberty Comments at 2-3; DIRECTV Comments at 8; OpTel Comments at 10-11; Multimedia Development Comments at 13-14; AT&T Comments at 7.

[36]*See* Ameritech Reply Comments at 2; AT&T Comments at 4-8; TIA Comments at 7; Media Access Project/CFA Comments at 6-10; Circuit City Comments at 15; GTE Comments at 2; DIRECTV Comments at 1-2; ITI Comments at 3; NYNEX Comments at 7-8; RTE Comments at 2; MFS Comments at 2; Multimedia Development Comments at 2.

[37]OpTel Comments at 12-13; ICTA Comments at 11, n.4. ICTA states that this approach is consistent with the legislative history of Section 624(i), which indicates that the provision was enacted to protect the interests of property owners in avoiding damage to their property from a cable operator's removal of wiring. ICTA Comments at 10.

[38]ICTA Comments at 11-19.

[39]*See id.* at 8-10 (arguing that the Commission only has authority under Section 624(i) over cable "within the subscriber's premises," and that the Commission therefore does not have the authority to extend the demarcation point further from the rental unit if the tenants are given the option of purchasing the wiring).

[40]*See id.* at 25-26; OpTel Comments at 12-14; WCA Comments at 15-16; Multimedia Development Comments at 14-15 (stating that "[t]he interests of an MDU property owner, whether it is a condominium association or landlord, closely parallels those of its building residents regarding building services," and that in order to attract and retain residents, a premises owner "seeks to provide the best possible building environment at the most reasonable cost."); Building Owners, et al., Reply Comments at i-ii (stating that "the real estate business is extremely competitive, and landlords have very strong incentives to meet their tenants' needs. Over the long run, the building operators that do so will succeed, and those that do not will fail, because the real estate industry is not a monopoly.").

[41]ICTA Comments at 29; *see also* Ex Parte Letter from Treg Tremont, Winston & Strawn, on behalf of ICTA, to William F. Caton, Acting Secretary, Federal Communications Commission (April 16, 1997) ("ICTA Proposal").

or pursuant to private contractual arrangements.[42] Under ICTA's proposal, an MDU owner would provide written notice of the conversion to the incumbent provider at least 90 days prior to the date of the conversion. Within 30 days of the receipt of notice, the incumbent video provider in turn would give written notice to the owner that it has elected one of the following three options: (1) removal of the inside wiring, except the wiring within each individual unit and that portion extending twelve inches outside thereof, which either the tenant (under the Commission's existing rules) or the owner (under ICTA's proposal) will have purchased; (2) abandonment of such inside wiring without disabling it; or (3) sale of such inside wiring to the owner or the new provider.

16. If the incumbent chooses to sell the wiring, it would then have 30 days to negotiate the sale with the MDU owner or new provider. If the parties are unable to agree to terms for the sale, the incumbent must choose between the other two options (i.e., removal or abandonment) and disconnect its feeder lines (without disabling the wiring) at the end of the failed negotiation period or complete the removal of the wiring within 30 days from that date. ICTA states that its model would only work if the Commission establishes an enforcement mechanism to ensure that the incumbent provider adheres to its initial election, acts within the specified time frames and abides by whatever terms may be negotiated for a sale of the wiring. ICTA's proposal does not specify the form such an enforcement mechanism would take.[43]

17. ICTA also stated that a modified version of its proposal could apply in those situations where there are two providers serving an MDU and a tenant intends to switch from its current provider to the other provider, such as might arise in an access state[44] or where an MDU owner has determined that there should be two providers.[45] In that instance, ICTA proposes that the tenant would notify the other provider of its intent to receive that provider's service, either orally or in writing. Within seven days of that notice, the other provider would notify the tenant's current provider of the request. The current provider then would have seven days in which to negotiate a sale, with the tenant or owner, of that portion of the inside wiring dedicated to that tenant's unit, excluding the cable home wiring which either the tenant will already have purchased pursuant to the Commission's existing cable home wiring rules under Section 624(i) or the owner will have purchased as empowered under the ICTA model. ICTA proposed that, if the providers are unable to reach agreement on the terms of the sale, the current provider must either formally abandon and disconnect this wiring (without disabling) at the end of the failed negotiation

[42]*See* ICTA Proposal, *supra*, at 2.

[43]*Id.* ICTA's current proposal differs somewhat from the initial version of this alternative. In its comments, ICTA proposed that the cable operator make an election to remove the wiring within seven business days after receiving notice of service termination. If the operator declines to remove the wiring or fails to make an election, ICTA proposed that the wiring be deemed abandoned. In contrast, if the operator elected to remove the wiring, ICTA proposed that the operator be required to remove the wiring (without disabling) within ten business days after the termination date. If the operator fails to remove the wiring in a timely manner after electing to do so, ICTA proposed that the operator will be deemed to have abandoned the wiring and will be liable to the property owner for damages. *See generally* ICTA Comments at 30-31.

[44]In "access" or "mandatory access" states, cable operators and/or other MVPDs have a statutory right of access to property in order to provide service.

[45]*See* ICTA Proposal, *supra*, at 2.

period, or remove the wiring within seven days. The current provider would be required to notify the other provider in writing of which election it has chosen.[46]

18. Cable operators generally argue that the Commission should not modify the current cable demarcation point in MDUs.[47] Some cable operators argue that the alternative service providers have failed to support their assertions that the current cable demarcation point is often inaccessible and that the cost of installing additional home run wiring is prohibitive.[48] Cable operators contend that they often are the second entrant into an MDU, and that in such circumstances they install their own inside wiring, including home runs.[49] In addition, some cable operators assert that alternative service providers typically assuage concerns of landlords through compensation for access to the MDU, which they claim cable operators may be precluded by law from doing.[50] Alternatively, Charter/Comcast urges the Commission to move the demarcation point for broadband services inside the customer's premises, such as to the wall plate.[51]

19. Cable operators argue that moving the cable demarcation point would restrict their ability to compete to provide telephony and other telecommunications services, such as Internet access, if a subscriber chose a competitor's video services.[52] They assert that consumers would benefit from additional

---

[46]*Id.*

[47]Adelphia Comments at 1-2 ; CATA Comments at 6-7; Time Warner Comments at 6-8; Continental/Cablevision Comments at 6-10; Charter/Comcast Comments at 17; Guam Cable TV Comments at 3-4; Joint Cable Parties Comments at 8-9; NCTA Comments at 4-5; TCI Comments at 45; TKR Comments at 10.

[48]*See, e.g.,* Cox Reply Comments at 10-11; Joint Cable Parties Reply Comments at 7; *see also* Time Warner Comments at 17-18 (asserting that, contrary to claims by Liberty and NYNEX, only approximately two percent of MDUs in New York City have home runs that are inaccessible to competitors because the wiring is concealed behind old plaster walls or ceilings, and that even in those cases, "true" inside wiring is available at the wall plates of the individual dwelling units).

[49]Cox Reply Comments at 10-11 (citing Charter/Comcast Comments at 18-19 (arguing that post-wiring a condominium building costs less than $10,000)). Guam Cable TV states that MDU subscribers in Guam are able to receive multiple services from multiple providers because: (1) most contractors use large interior conduit together with miniature coaxial cable; (2) premises owners insist that service providers leave in a pull cord for use by the next provider; and (3) wiring is often concealed in unobtrusive exterior moldings on older buildings. Guam Cable TV Comments at 4-5. Cable operators argue that Guam's experience proves that the costs of installing additional wire is not an impediment to new providers, and add that, "if building owners wish it, as the Congress does, subscribers can have a real choice of MVPDs." Joint Cable Parties Reply Comments at 9; CATA Reply Comments at 6.

[50]*See, e.g.,* Charter/Comcast Comments at 17 and n.28.

[51]Charter/Comcast Comments at 15; *see also* CEMA Comments at 5 (stating that consumers are likely to want multiple services from multiple providers, and that the most suitable location for the sophisticated electronics and other equipment that will be necessary in these situations is inside the customer's premises).

[52]*See, e.g.,* Ex Parte Letter from Arthur H. Harding, Fleischman & Walsh, counsel for Time Warner Entertainment Company, L.P., to William F. Caton, Acting Secretary, Federal Communications Commission (February 21, 1995) at 2; Cox Comments at 22. Time Warner also argues that the home run wiring is never truly "dedicated" because: (1) even after a subscriber terminates cable service, the operator must retain its entire end-to-

broadband wires to their premises, since they could then have the flexibility of receiving different services from different providers, rather than simply choosing among service providers.[53] Cable operators argue that they should be permitted to maintain control over their wire in order to compete to provide such services, rather than have to relinquish their wire to a competitor and be forced to re-wire in the future.[54]

20. Cable operators also argue that allowing competitors to take over the cable operators' existing plant would undercut their incentives to upgrade and deploy end-to-end broadband networks.[55] Cox states that it is not surprising that telephone companies and other alternative service providers favor a rule that allows them to take over the cable operator's plant, since this allows them to reduce costs while also protecting them from competition from cable operators in the provision of telephony, video and data services.[56] Some cable commenters contend that moving the cable demarcation point would slow network upgrades in areas with a high concentration of MDUs and disadvantage those subscribers residing in MDUs vis-a-vis subscribers residing in single family homes.[57]

---

end distribution system so that other services can be offered to that unit; (2) a home run often serves more than one unit through splitters; and (3) a home run may be redirected for use by another unit. Time Warner thus asserts that the only wiring that is "dedicated" to an individual subscriber's use is the wiring within the premises of each unit. Time Warner Comments at 11.

[53]*See* Time Warner Comments at 11 (a consumer, for instance, may want basic cable service from the incumbent cable operator, expanded basic service from a DBS provider, and telephone service from a local exchange carrier); Adelphia Comments at 2; NCTA Comments at 7-9; Joint Cable Parties Comments at 13-14; Continental/Cablevision Comments at 14-21 (moving the demarcation point would "thwart both competition and consumer choice in MDU units"). Time Warner states that, contrary to the assertions of the Media Access Project/CFA, multiple sets of broadband wires extending to a particular dwelling unit are never "redundant" because the cable operator always will need the wire connection to the subscriber in order to offer non-cable services. Time Warner Reply Comments at 34 (citing Media Access Project/CFA Comments at 5).

[54]*See, e.g.,* NCTA Comments at 7; Continental/Cablevision Comments at 14-21.

[55]Cox Comments at 20; Joint Cable Parties Comments at 5-6; Continental/Cablevision Reply Comments at 10 (allowing alternative service providers to take over the existing network would undermine "the present marketplace incentives that are spurring cable operators to make new investments to upgrade and expand their broadband capacity"); Time Warner Reply Comments at 17-18 (arguing that moving the demarcation point would contradict the intent of Congress expressed in the Telecommunications Act of 1996 to promote private sector investment in advanced telecommunications facilities and infrastructure development) (citing H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) ("1996 House Report")); NCTA Comments at 22-23 (stating that cable operators have invested huge resources in upgrading their networks with fiber optic technology, and that requiring cable operators to forfeit ownership or control over and rebuild this portion of their facilities will eliminate their continued ability to use these facilities to offer cable service and reap the benefits of their efforts).

[56]Cox Comments at 21-22; *see also* Time Warner Comments at 8 (the end result will be that fewer wires will be installed to subscribers); Continental/Cablevision Comments at 10 (stating that such an approach would reward those entities that have been unwilling to invest in their own distribution networks while harming providers that have undertaken the risk and expense of such construction).

[57]*See generally* Time Warner Reply Comments at 21. Others argue that, given the impending competition to cable operators from telephone companies, DBS providers and others, a potential change in the cable demarcation point could not come at a worse time. *See, e.g.,* Continental/Cablevision Comments at 10-11.

21. The end result of moving the cable demarcation point in MDUs, according to cable operators, would be a "one-wire world" in which the MDU owner or manager would become the "gatekeeper" with the power to determine which services and service providers have access to subscribers.[58] Some cable commenters believe that the premises owner will generally promote its own interests at the expense of subscribers residing in the building.[59] These parties believe that, rather than enhancing property owners' power to control access to MDUs, the property owners' power should be minimized, in order to promote competition and enhance consumer choice.[60]

22. In reply, GTE disputes the claim that moving the demarcation point necessarily "would lead to a one-wire world and would discourage the offering of new services."[61] GTE states that, if a building owner wants to allow service providers to duplicate the wiring that exists in its structure, there is nothing in the current rules preventing this. Similarly, ICTA argues that moving the demarcation point would not discourage investment because a cable operator may protect itself by obtaining a property owner's agreement guaranteeing the operator access to the property for a period of time sufficient for the operator to recoup its investment in the wiring and make a reasonable profit.[62]

23. Alternative service providers also dispute the cable industry's argument that moving the cable demarcation point would impair cable operators' ability to offer additional services because the operator will no longer control the existing home run wiring. WCA asserts that this is a consumer decision and that MDU subscribers will do what all consumers do when choosing among providers -- i.e., evaluate the options and determine which one will provide the highest quality service at the lowest price. WCA believes it would be anti-competitive for the cable operator to hold a subscriber hostage to the operator's video programming service only because the cable operator may offer telephony or other services in the future.[63] In addition, ICTA argues that the cable industry should not be able to use its

[58]Cox Comments at 20. Cox further states that, even in those states where cable operators have a mandatory right to access an MDU, an operator will have no incentive to re-enter the building since there is nothing to stop the premises owner from expropriating its wiring again for use by yet another competitor. *Id.* at 20-21.

[59]Joint Cable Parties Comments at 7-8 (citing cases in which premises owners have evicted franchised cable operators in order to provide exclusive access to an affiliated SMATV or one that promises a "kickback" to the developer); Continental/Cablevision Comments at 21-22. Joint Cable Parties contend that forcing cable operators to turn over their wiring to competitors would "create *de facto* exclusive arrangements for MDUs, even where the provider has not contracted for exclusivity, by transforming the cable operator into little more than a contractor for wiring installation." Joint Cable Parties Reply Comments at 9.

[60]Joint Cable Parties Reply Comments at 10; Continental/Cablevision Comments at 21-22; Charter/Comcast Comments at 17; CATA Reply Comments at 3; Cox Reply Comments at 11.

[61]GTE Reply Comments at 6.

[62]ICTA Reply Comments at 7 (citing Cox Comments at 20-21).

[63]WCA Reply Comments at 18-19.

competitive advantage with respect to video programming, which results from its control over inside wiring, to inhibit competition in other markets as well.[64]

24. Finally, some commenters contest cable operators' arguments that property owners will function as anti-competitive gatekeepers if the cable demarcation point is changed. First, these parties state that the cable industry's arguments ignore property owners' incentives to act in tenants' best interests if the owners want to avoid vacancies in their buildings.[65] These parties add that the cable industry ignores the "thousands of times" landlords seek to act in the best interests of their tenants but are "hamstrung" by cable operators' assertions of ownership over wiring, even after the cable operator's service has been terminated.[66] Second, some commenters argue that the issue is not whether there will be or should be a gatekeeper to an MDU, but whether the property owner or the cable operator would make a better gatekeeper. Ameritech, for instance, believes that given cable operators' incentives to preclude competition as compared with property owners' incentives to maintain and attract tenants, the property owners are the better candidates to act in the tenants' interests.[67]

B. The Competitive Landscape

25. The evidence in this proceeding leads us to conclude that more is needed to foster the ability of subscribers who live in MDUs to choose among competing service providers. Based on the record evidence, we believe that one of the primary competitive problems in MDUs is the difficulty for some service providers to obtain access to the property for the purpose of running additional home run wires to subscribers' units. The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage.[68]

---

[64]ICTA Reply Comments at 5-6 (the cable industry ignores the fact that many alternative video service providers are capable of, and currently offer, voice, video and data to subscribers); GTE Reply Comments at 6 (the cable operators' arguments are "self-serving" and clearly demonstrate that the cable industry opposes any change to the cable wiring rules in order to preserve its monopoly status); *see also* USTA Reply Comments at 3 (the cable operators' arguments ignore real-world obstacles to access to MDUs).

[65]ICTA Reply Comments at 7; WCA Reply Comments at 15-17; *see also generally* Building Owners, et al., Comments at 18-23 (stating that a property owner's interest in reducing turnover and attracting new residents provide incentives to provide residents with whatever amenities the property can afford).

[66]ICTA Reply Comments at 7; *see also* WCA Reply Comments at 16-18.

[67]Ameritech Reply Comments at 7-8; *see also* CEMA Reply Comments at 12 (stating that property owners can also provide cost savings to tenants by negotiating better service rates than a subscriber could individually).

[68]*See, e.g.*, OpTel Reply Comments at 6; Media Access Project/CFA Comments at 5-7; Liberty Comments at 2-7; WCA Comments at 11, 13 (stating that space limitations often place a de facto cap on the number of competing video service providers that may serve an MDU property, such that a property owner often cannot give an alternative video service provider the space necessary to compete in the building); Multimedia Development Comments at 15; ICTA Comments at 21 (stating that incumbent cable operators typically refuse to let an alternative video service provider share a hallway molding that contains the home run so that the alternative video service provider need not install a second molding); DIRECTV Comments at 2 ("The MDU owners and tenants are typically unreceptive to assuming the cost and inconvenience of overbuild installations, which causes an intractable barrier to entry for new

According to ICTA, "[v]irtually all property owners refuse to allow installation of a second set of separate cable wires . . . [because] . . . [p]ost-wiring a building generally negatively impacts the appearance of the property because [the wiring] cannot be hidden without tampering with the structure of the building."[69]

26. We believe that property owners' resistance to the installation of multiple sets of home run wiring in their buildings may deny MDU residents the ability to choose among competing service providers, thereby contravening the purposes of the Communications Act,[70] and particularly Section 624(i), which was intended to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service.[71] We believe that the impact is substantial. As of 1990, there were almost 31.5 million MDUs in the United States, comprising approximately 28% of the nationwide housing market.[72] Moreover, the trend between 1980 and 1990 indicates that the number of MDUs is growing at a much faster rate than the number of single family dwellings.[73] Data also shows that MDUs make up between 32% and 84% of the housing market in cities with the greatest numbers of households receiving cable service.[74]

27. Although some cable operators argue that the current demarcation rules should be maintained in order to encourage property owners to permit the installation of multiple sets of wires,[75] the record does not demonstrate that the current cable home wiring rules, having been in place for four years, provide adequate incentives for MDU property owners to permit the installation of multiple home run wires. Time Warner submitted information seeking to support the proposition that competition within MDUs is steadily growing in Manhattan. Time Warner states that in 1992, prior to adoption of the current demarcation rules, only 17 MDUs received services from both Liberty (a SMATV operator) and Time

---

service providers.").

[69]ICTA Comments at 21.

[70]*See, e.g.,* Communications Act, § 1, 47 U.S.C. § 151 (Commission created "so as to make available, so far as possible, to all people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service"); Telecommunications Act of 1996 Conf. Report, S. Rep. 104-230 (Feb. 1, 1996) ("1996 Conference Report") at 1 (providing for "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition"); Communications Act, § 601(6), 47 U.S.C. § 521(6) (one of the purposes of Title VI is to promote competition in cable communications).

[71]*See* H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) ("1992 House Report") at 118; S. Rep. No. 92, 102d Cong., 1st Sess., (1991) ("1992 Senate Report") at 23; *see also Cable Home Wiring Further Notice,* 11 FCC Rcd at 4570 (citing *Cable Wiring Order,* 8 FCC Rcd at 1435).

[72]*See* Liberty Comments at Tables 1-4 (citing 1990 Data from the Bureau of the Census).

[73]*Id.*

[74]*Id.* at 5 (citing *1 Cable & Broadcasting Yearbook 1995* at D-75 (1995)).

[75]*See, e.g.,* Time Warner Reply Comments at 3.

Warner (a cable operator), and that this number grew to 57 in 1993, to 91 in 1994, to 120 in 1995, and finally to 143 buildings in 1996.[76]

28. We believe that the presence of multiple wires in 143 buildings in Manhattan does not demonstrate that our rules provide adequate incentives to MDU owners to permit multiple home run wires in their buildings. While Time Warner's letter did not state the total number of MDUs in Manhattan, it appears that 143 MDUs represent only a small fraction of the total.[77] Moreover, while Time Warner alleges an overall increase in the number of buildings with at least two providers, the number of new buildings being served by both providers has declined each successive year since 1993 -- i.e., from 40 new buildings between 1992 and 1993, to 34 between 1993 and 1994, to 29 between 1994 and 1995, to only 23 new competitive buildings between 1995 and 1996.[78]

29. In addition, the 143 MDUs served by both Time Warner and Liberty may also stem from unique circumstances. First, as Time Warner itself has argued in our cable home wiring docket, Liberty may have enjoyed certain advantages over other alternative service providers in gaining access to MDUs.[79] Similarly, Time Warner's ability to install wiring in Manhattan MDUs already served by Liberty may result in part from Time Warner's mandatory access rights under New York state law.[80] Under New York law, an MDU owner cannot deny Time Warner access to its property in order to serve the MDU's residents. Liberty, and other non-cable video service providers do not enjoy such mandatory access rights in New York.[81] Nationally, fewer than 20 states have enacted some form of mandatory access statute (most of which appear to benefit only the franchised cable operator). Notably, Time Warner cites only one example of two-wire competition in the states in which it operates without the benefit of mandatory access statutes. Time Warner's evidence of two-wire competition in MDUs outside of Manhattan consists of "approximately a dozen" apartment complexes in Harrisonburg, Virginia, which are served by both

[76]Ex Parte Letter from Arthur H. Harding, Fleischman & Walsh, counsel for Time Warner Cable, to Meredith J. Jones, Chief, Cable Services Bureau, Federal Communications Commission (October 28, 1996) ("Time Warner October 1996 Ex Parte Letter") at 4.

[77]For instance, based on available census data, we estimate that the 143 buildings cited by Time Warner represent only 2%-4.5% of the number of MDUs in Manhattan. *See* 1996 New York City Housing and Vacancy Survey, Census Bureau, Series 1B (April 1997) at 33. For this purpose, each of the five boroughs was allocated an equal pro rata share of the total number of MDUs.

[78]Similarly, between 1994 and 1995, 18,330 new MDU consumers were exposed to competitive services, while only 9,755 such subscribers were added between 1995 and 1996.

[79]*See* Ex Parte Letter filed in MM Docket No. 92-260 from Arthur H. Harding, Fleischman & Walsh, counsel for Time Warner Entertainment Company, L.P., to William F. Caton, Acting Secretary, Federal Communications Commission (January 27, 1995) at 3 (the alleged inability of competing MVPDs to obtain permission from landlords to install their facilities is vastly overstated, noting that Liberty, for example, is owned by the Milstein family, one of the largest landlords and property management conglomerates in New York City).

[80]*See* New York Pub. Service Law § 228 (1972) ("No landlord shall (a) interfere with the installation of cable television facilities upon his property or premises . . . . ").

[81]*Id.*

Time Warner Cable and a wireless cable provider.[82] Time Warner Cable operates 18 systems in California, 17 systems in Louisiana, 57 systems in North Carolina, 28 systems in South Carolina and 45 systems in Texas,[83] none of which have state mandatory cable access laws, and yet Time Warner cites no examples of two-wire competition in these states.

30. An ex parte submission from Cablevision, another cable operator, appears to support our belief.[84] Cablevision lists 353 MDUs in its service areas in which two broadband wires have been installed.[85] Of these 353 MDUs, Cablevision was the second entrant in 338 (over 95% of the cases). Thus, non-cable MVPDs have overbuilt Cablevision in only 15 MDUs in the same areas in which Cablevision has overbuilt non-cable video service providers 338 times.[86] Cablevision states that its installation of second wires in these MDUs is part of its franchise obligation to serve all residences where there is a request for service. We note, however, that Cablevision's examples of MDU overbuilds are all from New York, Connecticut, Massachusetts and New Jersey, all of which have cable mandatory access statutes. Cablevision has cited no instances of overbuilds in the states in which it operates without mandatory access statutes, such as Alabama (25 systems), Kentucky (17 systems), Missouri (40 systems) and North Carolina (17 systems).[87] Based on the foregoing, we believe that the presence of multiple wires in the MDUs cited by Cablevision is substantially due to the existence of state mandatory access statutes and not to a desire for multi-wire competition on the part of property owners. Accordingly, we find that the record does not demonstrate that our current rules are adequate to promote competition and consumer choice in MDUs by encouraging property owners to install multiple home run wires.

31. We believe that disagreement over ownership and control of the home run wire substantially tempers competition. The record indicates that, where the property owner or subscriber seeks another video service provider, instead of responding to competition through varied and improved service offerings, the incumbent provider often invokes its alleged ownership interest in the home run wiring.[88] Incumbents invoke written agreements providing for continued service,[89] perpetual contracts entered into

---

[82]Time Warner October 1996 Ex Parte Letter, *supra*, at 4.

[83]*See Television and Cable Factbook*, Warren Publishing, Inc. (1997 edition).

[84]*See* Ex Parte Letter from Frank W. Lloyd, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, on behalf of Cablevision, to William F. Caton, Acting Secretary, Federal Communications Commission (January 30, 1997).

[85]*Id.* at Exhibits 1 and 2.

[86]Of these 15 non-cable overbuilds, seven were overbuilds by Liberty and one was a new construction project being wired by both Cablevision and SNET (which has a cable franchise in Connecticut).

[87]*See Television and Cable Factbook*, Warren Publishing, Inc. (1997 edition).

[88]*See* Ex Parte Letter from Henry Goldberg, Goldberg, Godles, Wiener & Wright, on behalf of OpTel, to Reed E. Hundt, Chairman, Federal Communications Commission (February 4, 1997) ("OpTel February 4, 1997 Letter").

[89]Ex Parte Submission by Terry S. Bienstock and Philip J. Kantor, Bienstock & Clark, counsel for Comcast ("Comcast Ex Parte Submission").

by the incumbent and previous owner,[90] easements emanating from the incumbent's installation of the wiring,[91] assertions that the wiring has not become a fixture and remains the personal property of the incumbent,[92] or that the incumbent's investment in the wiring has not been recouped, and oral understandings regarding the ownership and continued provision of services.[93] Written agreements are frequently unclear, often having been consummated in an era of an accepted monopoly, and state and local law as to their meaning is vague. Invoking any of these reasons, incumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition. The property owner or subscriber is frequently left with an unclear understanding of why another provider cannot commence service. The litigation alternative, an option rarely conducive to generating competition, while typically not pursued by the property owner or subscriber, can be employed aggressively by the incumbent.[94] The result is to chill the competitive environment.

C. Disposition of Home Run Wiring

32. We propose to establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides to convert the entire building to a new video service provider) and for unit-by-unit disposition of the home run wiring (where an MDU owner is willing to permit two or more video service providers to compete for subscribers on a unit-by-unit basis) where the MDU owner wants the alternative provider to be able to use the existing home run wiring. We believe that these procedural mechanisms will not create or destroy any property rights, but will promote competition and consumer choice by bringing order and certainty to the disposition of the MDU home run wiring upon termination of service.

33. In today's marketplace, alternative video service providers have no timely and reliable way of ascertaining whether they will be able to use the existing home run wiring upon a change in service.[95] As explained above, MDU owners are similarly unsure of their legal rights. Because of this uncertainty, an MDU owner seeking to change providers may be confronted with choosing among: (1) allowing the alternative provider to install duplicative home run wiring before it knows whether the incumbent will abandon the existing home run wiring when it leaves; (2) waiting to see what the incumbent does with the home run wiring when it leaves the building, risking a potential disruption in service to its residents; (3) staying with the incumbent provider; or (4) allowing the alternative provider to use the home run wiring and risking litigation. The proposed procedures are intended to provide all parties sufficient notice and certainty of whether and how the existing home run wiring will be made available to the alternative video service provider so that a change in service can occur efficiently. We tentatively conclude that

---

[90]Ex Parte Letter from Henry Goldberg, Goldberg, Godles, Wiener & Wright, on behalf of OpTel, to Meredith Jones, Chief, Cable Services Bureau, Federal Communications Commission (July 23, 1996).

[91]*See* Ex Parte Letter from Philip J. Kantor, Bienstock & Clark, to Lawrence A. Walke, Attorney, Policy & Rules Division, Cable Services Bureau, Federal Communications Commission (January 31, 1997).

[92]*Id.*

[93]*See* Ex Parte Letter from Alexandra M. Wilson, Chief Policy Counsel, Cox Enterprises, Inc., to Reed E. Hundt, Chairman, Federal Communications Commission (February 14, 1997).

[94]OpTel February 4, 1997 Letter; Comcast Ex Parte Submission.

[95]*See* ICTA Comments at 31-32.

establishing rules governing the disposition of the MDU home run wiring will represent a substantial step toward increased competition in the MDU video programming service marketplace.

34. We propose that the procedural mechanisms described below would apply only where the incumbent provider no longer has an enforceable legal right to remain on the premises against the will of the MDU owner.[96] In other words, these procedures would not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. In the building-by-building context, the procedures below would not apply where the incumbent provider has a legally enforceable right to maintain its home run wiring on the premises against the MDU owner's wishes and prevent any third party from using the wiring; in the unit-by-unit context, the procedures below would not apply where the incumbent provider has a legally enforceable right to keep a particular home run wire dedicated to a particular unit (not including the wiring on the subscriber's side of the demarcation point) on the premises against the property owner's wishes. We are not proposing to preempt an incumbent's ability to rely upon any rights it may have under state law. We seek comment on the impact of this condition on the efficacy of our proposal, and how any adverse effects should be addressed. In particular, we seek comment on whether the Commission can and should create any presumptions or other mechanisms regarding the relative rights of the parties if the incumbent's right to maintain its home run wiring on the premises is disputed. For example, we seek comment on a presumption that the incumbent does not possess an enforceable legal right to maintain its home wiring on the premises (and therefore that our proposed procedures would apply), unless the incumbent can adduce a clear contractual or statutory right to remain.

1. Building-by-Building Disposition of Home Run Wiring

35. We seek comment on the following proposal: where the incumbent service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises, and the MDU owner wants to be able to use the existing home run wiring for service from another provider, the MDU owner may give the incumbent service provider a minimum of 90 days' notice that the provider's access to the entire building will be terminated.[97] The incumbent provider would then have 30 days to notify the MDU owner in writing of its election to do one of the following for all the home run wiring inside the MDU: (1) to remove the wiring and restore the MDU to its prior condition by the end of the 90-day notice period; (2) to abandon and not disable the wiring at the end of the 90-day notice period;[98] or (3) to sell the wiring to the MDU owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate

[96]The term "MDU owner" herein includes whatever entity owns the common areas of an apartment building, condominium or cooperative. According to the Community Associations Institute, "[i]n a cooperative association, the association owns the common areas. In a condominium, the unit owners own common areas as tenants-in-common, but the association manages these areas." *See* Ex Parte Letter from Robert M. Diamond, President, Community Associations Institute, to Rick C. Chessen, Assistant Chief, Policy and Rules Division, Cable Services Bureau, Federal Communications Commission (October 31, 1996) at 1.

[97]An MDU owner may, of course, choose to terminate the incumbent provider's access rights pursuant to the terms of a contractual agreement between the parties, rather than pursuant to the procedures we propose herein.

[98]Under our proposal, if the incumbent elects to abandon the wiring, its ownership will be determined as a matter of state law.

service before the end of the 90-day notice period, the incumbent provider would be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the MDU owner refuses to purchase the home run wiring, the alternative video service provider may purchase it.

36. We are concerned that an incumbent provider may initially elect to remove its home run wiring and then decide to abandon it. Such conduct could put the alternative service provider to the unnecessary burden and expense of installing a second set of home run wires when the incumbent has no intention of removing the existing wiring. We seek comment on whether to adopt penalties for incumbent providers that elect to remove their home run wiring and then fail to do so.

37. Where the incumbent provider elects to sell the home run wiring, our preference is to let the parties negotiate the price of the wiring. We seek comment on whether market forces would provide adequate incentives for the parties to reach a reasonable price. If market forces are insufficient, we seek comment on how a reasonable price should be established. For instance, we seek comment on whether: (1) the Commission should establish broad guidelines within which negotiations would occur (e.g., a reasonable price should be more than a nominal amount but should not include the incumbent provider's lost opportunity costs); (2) the price should be left to negotiations between the parties but the Commission should establish a default price if the parties cannot reach an agreement; or (3) the Commission should establish a general rule or formula for determining a reasonable price. If parties believe that the Commission should establish guidelines, a default price, a general rule or formula, we seek comment on the type of guidelines, default price, general rule or formula that should be established.

38. We propose that, if the parties negotiate a price, they would have 30 days from the date of election to negotiate a price for the home run wiring. The parties could also negotiate to purchase additional wiring (e.g., riser cables) at their option. If the parties are unable to agree on a price, the incumbent would be required to elect one of the other two options (i.e., abandonment or removal) and notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment would become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects to remove its wiring and restore the building to its prior condition, it would have to do so by the end of the 90-day notice period. If the incumbent failed to comply with any of the deadlines established herein, it would be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.[99]

2. Unit-by-Unit Disposition of Home Run Wiring

39. We also seek comment on the following proposal for unit-by-unit disposition of home run wiring. Where the incumbent video service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain its home

[99]See Appendix B for a time line summary of the proposed procedures for the disposition of MDU inside wiring on a building-by-building basis.

run wiring on the premises,[100] the MDU owner may permit multiple service providers to compete head-to-head in the building for the right to use the individual home run wires dedicated to each unit.[101] We propose that, where an MDU owner wishes to permit such head-to-head competition, the MDU owner must provide at least 60 days' notice to the incumbent provider of the owner's intention to invoke the following procedure.[102] The incumbent service provider would then have 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will: (1) remove the wiring and restore the MDU to its prior condition; (2) abandon the wiring without disabling it;[103] or (3) sell the wiring to the MDU owner.[104] In other words, the incumbent service provider would be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch video service providers; that election would then be implemented each time an individual subscriber switches service providers. The alternative service provider would be required to make a similar election within this same 30-day period for any home run wiring that the alternative provider subsequently owns (i.e., after the alternative provider has purchased the wiring from the current incumbent provider) and that is solely dedicated to a subscriber who switches back from the alternative provider to the incumbent. We also tentatively conclude that it would streamline and expedite the process to permit the alternative service provider or the MDU owner to act as the subscriber's agent in providing notice of a subscriber's desire to change services.[105] We tentatively conclude that unauthorized changes in service (i.e., "slamming") are unlikely to occur in this context; if slamming does occur, however, we would propose to take additional steps to protect consumers, such as requiring proof of agency.

40. As with the proposed building-by-building procedures, we would prefer to let the parties negotiate for the sale of the home run wiring, and we seek comment on whether market forces will produce a reasonable price. If market forces are not adequate, we seek comment on the appropriate mechanism for establishing a reasonable price for the home run wiring. We propose that, if one or both of the video service providers elects to negotiate for the sale of the home run wiring, the parties have 30 days from the date of such election to reach an agreement. During this 30-day negotiation period, the

---

[100]For example, we believe that if a state mandatory access statute only gives a provider access rights to an MDU if a resident requests service, once the resident no longer requests that provider's service, the provider's right to maintain a home run wiring dedicated to that subscriber would be extinguished.

[101]To the extent that, as Time Warner alleges, a home run wire serves multiple units through the use of splitters, the wire would not be dedicated to a single subscriber and such wiring would not be covered by these procedures.

[102]The MDU owner would also be required to notify the incumbent provider at this time as to whether the MDU owner or the alternative provider will purchase the home wiring within each individual dwelling unit if and when a subscriber declines to purchase the home wiring under our rules. *See* Section III.D. below.

[103]Again, if the incumbent elects to abandon the wiring, its ownership will be determined by state law.

[104]As in the building-by-building situation, we propose to allow the alternative provider to purchase the home run wiring if the MDU owner refuses to purchase it.

[105]This is consistent with our decision in the *Cable Home Wiring Further Notice*, in which we stated: "By referring to 'subscriber' herein, we do not intend to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf." *Cable Home Wiring Further Notice*, 11 FCC Rcd at 4572.

incumbent, the MDU owner and/or the new provider could also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment. An up-front lump sum payment would permit either service provider to use the home run wiring to provide service to a subscriber without the administrative burden of paying separately for each home run wire every time a subscriber changes providers. We also propose that, if the parties cannot agree on a price, the incumbent provider would be required to elect one of the other two options (i.e., abandonment or removal). If the incumbent fails to comply with any of the deadlines established herein, we propose to treat the home run wiring as abandoned and permit the alternative provider to use the home run wiring immediately to provide service.

41. We propose that, after completion of this initial process, a provider's election would be carried out if and when the provider is notified either orally or in writing that a subscriber wishes to terminate service and that an alternative service provider intends to use the existing home run wire to provide service to that particular subscriber. At that point, a provider that has elected to remove its home run wiring would have seven days to do so and to restore the building to its prior condition. We tentatively conclude that seven days is adequate for removal because we believe that, unlike in the building-by-building context, the provider would only be required to remove a single home run wire. If the current service provider has elected to abandon or sell the wiring, the abandonment or sale would become effective seven days from the date it receives a request for service termination or upon actual service termination, whichever occurs first. We would propose that, if the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent would be required to inform the subscriber or the subscriber's agent (whichever is notifying the incumbent that the subscriber wishes to terminate service) at the time of the request for service termination of the date on which service will be terminated. In addition, we would propose to require the incumbent provider to disconnect the home run wiring from its lockbox and to leave it accessible for the new provider by the end of the seven-day period or within 24 hours of actual service termination, whichever occurs first.

42. We base the above procedures on the assumption that the alternative service provider will have an incentive to ensure that the incumbent is notified that the alternative service provider intends to use the existing home run wire to provide service. To the extent this assumption is inaccurate, we seek comment on how the incumbent's election regarding the home run wiring in the unit-by-unit context should be triggered efficiently and so as to minimize disruption of service. If the subscriber's service is simply terminated without any indication that a competing service provider wishes to use the home run wiring, the incumbent service provider would not be required to carry out its election to sell, remove or abandon the home run wiring. This might occur, for instance, where an MDU tenant is moving out of the building. In such cases, we do not believe that it would be appropriate to require the incumbent to sell, remove or abandon the home run wiring when it might have every reasonable expectation that the next tenant will request its service. We would propose, however, that the incumbent provider would be required to carry out its election with regard to the home run wiring if and when it receives notice from a subsequent tenant (either directly or through an alternative provider) that the tenant wishes to use the home run wiring to receive a competing service.[106]

43. Moreover, even where the incumbent receives a request for service termination but does not receive notice that an alternative provider wishes to use the home run wiring, we would still propose to require the incumbent to follow the procedures set forth in our cable home wiring rules -- e.g., to offer

[106]See Appendix C for a time line summary of the proposed procedures for the unit-by-unit disposition of wiring inside MDUs.

to sell to the subscriber any cable home wiring that the incumbent provider otherwise intends to remove. First, the required notice in the unit-by-unit context may be effected in two stages (i.e., the subscriber may call to terminate service and the alternative provider may separately notify the incumbent that it wishes to use the home run wiring). In order for the home run wiring and the home wiring to be disposed of in a coordinated manner, we therefore believe that our cable home wiring rules must apply upon any termination of service. In addition, we believe that subscribers should have the right to purchase their home wiring to protect themselves from unnecessary disruption associated with removal of home wiring, regardless of whether they intend to subscribe to an alternative service.

3. Ownership of Home Run Wiring

44. In both the building-by-building and unit-by-unit approaches, we propose to give the MDU owner the initial option to negotiate for ownership and control of the home run wiring because the property owner is responsible for the common areas of a building, including safety and security concerns, compliance with building and electrical codes, maintaining the aesthetics of the building and balancing the concerns of all of the residents.[107] Moreover, vesting ownership of the home run wiring in the MDU owner, as opposed to the alternative service provider, will reduce future transaction costs since the above procedures will not need to be repeated if service is subsequently switched again. Nevertheless, we recognize that some MDU owners may not want to own the home run wiring in their buildings;[108] we propose that in such cases the alternative service provider should be permitted to purchase the wiring.

45. We do not believe that individual subscribers would be disadvantaged by having the MDU owner own the home run wiring. If a subscriber has the ability to choose between multiple service providers in the unit-by-unit context, the MDU owner has already concluded that it is willing to permit multiple service providers on the premises in order to compete for subscribers. Given that the MDU owner would have voluntarily opened its building to multiple competitors, we do not believe that the MDU owner would deny a resident the ability to use the home run wiring for the resident's provider of choice. Furthermore, we believe that, if the alternative service provider purchases the home run wiring, that provider would not be able to act as a bottleneck and the individual subscriber would continue to be protected because, as described herein, the alternative service provider would also be subject to these same procedures if and when the alternative provider's service is terminated.

4. Impact on Incumbent Video Service Providers

46. We tentatively conclude that cable operators' argument that the loss of their home run wiring eliminates their ability to provide other telecommunications services is misplaced. Cable operators' ability to compete in the telephony market should be largely unaffected. The procedures proposed herein apply where the incumbent has no legally enforceable right to remain on the premises and the MDU owner and/or the individual subscriber has selected another provider's package -- notwithstanding the incumbent's other telecommunications services. Given MDU owners' resistance to the installation of multiple home run wires, we tentatively conclude that affording consumers a choice among various packages offered by multiple service providers is better than the current situation, in which MDU residents often have no choice at all. Under our proposal, MDU owners would remain free to implement the type

[107] *See, e.g.*, Building Owners, et al., Comments at 18.

[108] *Cf. id.* at 25, 33.

of multiple-wire model advocated by the cable industry by requiring all service providers to install their own home run wires.

47. Cable operators also complain that property owners often act as "gatekeepers" in selecting a service provider and pursue their own interests rather than the interests of their residents.[109] While we acknowledge how these circumstances can exist, we tentatively conclude that where the real estate market is competitive it will discourage MDU owners from ignoring their residents' interests.[110] In addition, the rules we propose do not grant MDU owners any additional rights, but simply establish a procedural mechanism for MDU owners to enforce rights they already have. Moreover, in the unit-by-unit context, the MDU owner would be expanding its residents' choices, not restricting them.

5. Application of Procedural Framework

48. In both the building-by-building and unit-by-unit contexts, one of our goals is to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video service providers. To that end, we have proposed certain rules herein designed to give the subscriber reasonable notice if and when his or her service will be terminated prior to the end of the applicable notice period. In addition, we would propose to adopt a general rule requiring the parties to cooperate to ensure as seamless a transition as possible. We seek comment on whether it is necessary to promulgate such a rule, or whether a provider's desire to win the subscriber back will compel the provider to cooperate during the transition period.

49. We also propose that the above procedural mechanisms would apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others.

6. Statutory Authority

a. Background

50. Throughout the record of this proceeding, commenters have presented widely disparate views on the Commission's authority to address a range of proposals regarding inside wiring. Most of these comments are directed at the Commission's authority to move the cable demarcation point in MDUs. We therefore only briefly summarize them here.

51. In general, cable operators argue that Congress expressed its preference for two-wire, facilities-based competition in the 1996 Act, and that any Commission rule that forces a cable operator to relinquish ownership or control over the home run portion of its network is inconsistent with the

[109] *See, e.g.*, Joint Cable Parties Comments at 7-8; Continental/Cablevision Comments at 21-22.

[110] *See* Building Owners, et al., Comments at 17-18.

Telecommunications Act of 1996 (the "1996 Act").[111] In addition, cable operators argue that Section 652 of the Communications Act, which generally promotes facilities-based competition by prohibiting a local exchange carrier ("LEC") from purchasing a cable company within its service area and a cable operator from purchasing a LEC within its franchise area, contains a "Joint Use" Provision that strengthens their claim that Congress intended that they retain control over the home run wiring.[112] Cable operators contend that the plain language of Section 652 clearly permits a LEC to use a portion of the cable operator's facilities from the last multi-user terminal to the subscriber's premises, but only with the operator's consent, and only for a short period of time.[113] Finally, cable operators contend that the Commission's authority under Section 624(i), which directs the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber," is limited to wiring within the apartment of an MDU subscriber.[114]

52. In response, some commenters challenge the cable operators' implication that facilities-based competition requires alternative providers to install redundant and unnecessary cables all the way

[111]Pub. L. No. 104-104 (1996); *see* NCTA Comments at 6-7; Continental/Cablevision Comments at 6; Cox Comments at 19, 21; Time Warner Comments at 7-8; Joint Cable Parties Comments at 3. TCI argues that Congress intended to promote head-to-head facilities-based competition in the 1996 Act, and to accomplish this result, relied on "regulatory asymmetry, rather than regulatory harmony." TCI Comments at 3-4 (citing (1) Section 271 of the Communications Act, which requires the Bell Operating Companies to provide unbundled network access and interconnection to a facilities-based provider of local exchange service as a precondition to their entry into the interexchange business within their service areas; (2) Section 302(b)(1) of the 1996 Act, which repealed the statutory ban on a telephone company's provision of video programming in the company's telephone service area; and (3) Section 652 of the Communications Act, which restricts a local exchange carrier from purchasing a cable company within its service area and a cable operator's ability to purchase a LEC within its franchise area).

[112] Specifically, Section 652(d)(2) provides:

> Notwithstanding subsection (c) [the prohibition on joint ventures], a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

47 U.S.C. § 572(d)(2).

[113]NCTA Comments at 10-11 (asserting that Congress understood that the "drop" wire portion of cable facilities must continue to "belong" to the cable operator or it would not have permitted a cable operator to set the terms and conditions of a LEC's use of the wire); *see also* Time Warner Comments at 16; CATA Comments at 4; Cox Comments at 14; Joint Cable Parties Comments at 4; Continental/Cablevision Comments at 28-29.

[114]47 U.S.C. § 544(i); *see* Time Warner Comments at 11-12; Adelphia Comments at 2; CATA Comments at 2; Continental/Cablevision Comments at 27; Cox Comments at 13; NCTA Comments at 12; TCI Comments at 4; TKR Comments at 10 (all citing the 1992 Cable Act).

to subscribers' individual dwelling units, including "every last item down to the nail and the staple."[115] In addition, alternative service providers argue that the cable operators misinterpret the Joint Use Provision as limiting the Commission's authority to relocate the cable demarcation point in MDUs.[116] Bartholdi states that Congress intended the Joint Use Provision to: (1) apply only to those cable facilities that are located between the street and the home;[117] and (2) allow telephone companies to share use of such facilities without violating the prohibition against joint ventures contained in Section 652 of the 1996 Act.[118] Moreover, alternative service providers state that the Joint Use Provision merely describes the circumstances in which a telephone company may share a cable operator's wire, whereas Section 624(i) addresses the disposition of the wiring after a cable operator's service has been terminated.[119]

53. Finally, several commenters assert that the Commission's authority to regulate cable inside wiring is not limited by Congress' enactment of the 1992 Cable Act, including Section 624(i).[120] Section

---

[115]USTA Reply Comments at 3-5 (arguing that this would result in unnecessary costs being passed on to the public, and that Congress' intent with respect to facilities-based competition "is much more rationally contemplated if one envisions a system which allows other service providers access to the wiring at the point where the line becomes dedicated to an individual customer's use").

[116]Bartholdi Reply Comments at 9-10; *see also* WCA Comments at 14; ICTA Reply Comments at 5; OpTel Reply Comments at 8 ("Section 652(d)(2) provides local exchange carriers with access to the cable wire running from the street . . . up to the point at which the wire becomes subscriber inside wire. Section 652(d)(2) does not help to define that point."); USTA Reply Comments at 4; ICTA Comments at 28-29.

[117]Bartholdi notes that the Joint Use Provision in the 1996 Act is nearly identical to the provision contained in the U.S. House of Representatives' version of the 1996 Act (H.R. 1555). With respect to the Joint Use Provision in H.R. 1555, the House Report states:

> the exemption would permit a carrier to obtain, by contract with a cable operator, *use of the "drop" from the curb to the home* that is controlled by the cable company, if such use was reasonably limited in scope and duration as determined by the Commission.

1996 House Report at 173 (emphasis added by Bartholdi). Bartholdi contends that the emphasized language indicates that the House intended the exemption to cover only cable facilities that begin at the curb and end at the physical structure where the subscriber resides. Bartholdi argues that it is quite a stretch to suggest that "from the curb to the home" is intended to mean from the lockbox in an MDU stairwell or hallway to an apartment.

[118]1996 House Report at 173 (emphasis added by Bartholdi); *see also* WCA Comments at 14 (Section 652 addresses only the extent to which a telephone company may use a cable operator's wiring).

[119]*See* Bartholdi Reply Comments at 10-11 (arguing that if Congress had intended the Joint Use Provision to limit the application of the Commission's cable home wiring rules, it would have placed the provision together with the other wiring provisions in Section 624(i) of the Communications Act, rather than in the section concerning telephone company-cable system buy-outs and joint ventures); ICTA Reply Comments at 3-5 (noting that the title of the provision -- "Joint Use" -- clearly indicates that Congress intended to address situations where a cable operator and a telephone company share a single wire, rather than situations where the cable operator's service has already been terminated).

[120]Bartholdi Reply Comments at 4.