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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Telecommunications Services )  
Inside Wiring )  
)  
Customer Premises Equipment )

CS Docket No. 95-184

In the Matter of )  
)  
Implementation of the Cable )  
Television Consumer Protection )  
and Competition Act of 1992: )  
)  
Cable Home Wiring )

MM Docket No. 92-260

**COMMENTS OF THE  
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION**

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## SUMMARY OF POSITION

The Consumer Electronics Manufacturers Association ("CEMA") strongly supports the principle of providing customers with access to, and control over, the cable wiring inside multiple dwelling unit ("MDU") buildings. Customer access will promote consumer choice, foster competition among video service providers, reduce maintenance fees and service charges, encourage innovation, and facilitate the provision of more than one type of service by different companies. As the Commission correctly notes, space limitations in many MDUs require that a single backbone of common wiring be available for use by multiple video providers. The issue confronting the Commission is the best method for ensuring competitive access to this wiring.

CEMA supports the overall thrust of the proposal set forth in the *Further Notice*, but it is concerned that the Commission has not proposed an optimum approach to ensure a pro-competitive outcome for inside wire. CEMA has previously argued in this docket that the demarcation point in MDU buildings should be moved from a point 12 inches outside each individual dwelling unit to either: (1) the point at which the line becomes dedicated to an individual subscriber's use; or (2) the "minimum point of entry" inside or outside the MDU building where the service provider attaches to the building's common home wiring (*e.g.*, basement, street, or telephone pole). Changing the demarcation point would greatly increase MDU owners' willingness to allow alternative providers to provide service to MDU buildings, thereby fostering competition and enhancing consumer choice.

The Commission has apparently decided instead to embrace a procedural mechanism to determine access and control to MDU inside wire originally formulated by the

Independent Cable & Telecommunications Association ("ICTA"). ICTA's proposed procedural mechanism, however, is complex, may prove difficult to administer, and would be limited in its utility by conflicting state and local law and by the efforts of those incumbent operators which decide to "game the system." If the procedural mechanisms proposed in the *Further Notice* prove ineffective, as CEMA fears they may, the Commission should commit itself now to revisit this issue so as to ensure that its pro-competitive goals for inside wire are met.

In order to improve the chances that the proposed procedural approach will prove effective, the Commission must preempt state mandatory access statutes and other state laws that would effectively void the Commission's ability to open up cable home run wiring to competition in some of the country's largest, most populous states. To permit a significant percentage of the United States to fall outside the purview of the Commission's proposed cable wiring rules is bad national policy and is unnecessary as a legal matter.

In addition, the Commission should supplement the proposed procedural mechanisms by adopting the tentative conclusions and proposals set forth as "Alternatives to the Procedural Framework" in paragraphs 83-85 of the *Further Notice*. The Commission should also implement enforcement mechanisms to deter misuse of the proposed procedural mechanisms for purposes of delaying the advent of competition. Without such penalties, incumbent operators will have incentives to slow down the transition to competition.

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**COMMENTS OF THE  
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION**

The Consumer Electronics Manufacturers Association ("CEMA") hereby submits the following comments in response to the Further Notice of Proposed Rulemaking which the Commission issued in the above captioned proceedings ("*Further Notice*").<sup>1</sup>

CEMA is the principal trade association of the U.S. consumer electronics industry. CEMA's members design, manufacture, import, distribute and sell a wide variety of consumer electronics equipment, including television receivers, cable set-top boxes, VCRs, camcorders, audio equipment, cordless telephones, personal computers, answering machines, and in-home

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<sup>1</sup> See *Telecommunications Services Inside Wiring -- Customer Premises Equipment*, Further Notice of Proposed Rulemaking, FCC 97-304, CS Docket No. 95-184 (rel. Aug. 28, 1997) ("*Further Notice*").

network wiring and equipment. As an association of companies that manufacture consumer electronics equipment for use with competing video and telecommunications services, including cable and telephone service, CEMA has an interest in ensuring that the residents and owners of multiple dwelling unit ("MDU") buildings have the flexibility to use cable home wiring and so-called "home run wiring" (*i.e.*, wiring in the MDU dedicated to a particular subscriber but external to the subscriber's premises) in ways which best meet their needs, including the interconnection and use of competitively supplied video services and equipment.

**I. THE CURRENT REGULATORY ENVIRONMENT FOR CABLE WIRING DOES NOT PROMOTE ACCESS AND PREVENTS CUSTOMERS IN MDU BUILDINGS FROM HAVING A COMPETITIVE CHOICE OF VIDEO SERVICE PROVIDERS.**

CEMA strongly supports the principle of providing customers with access to, and control over, the cable wiring inside MDU buildings. Customer access will promote consumer choice, foster competition among video service providers, reduce maintenance fees and service charges, encourage innovation, and facilitate the provision of more than one type of service by different companies. CEMA therefore applauds the Commission for determining that "more is needed to foster the ability of subscribers who live in MDUs to choose among competing service providers."<sup>2</sup> As the Commission correctly notes, space limitations in moldings and conduits in many MDUs require that a single backbone of common wiring be available for use by multiple video providers; there simply is not enough space to permit or require each video service provider to install its own wiring:

The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their

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<sup>2</sup> *Id.* at ¶ 25.

properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage.<sup>3</sup>

In those MDUs where incumbent cable operators control access to the backbone cable home run wiring, the incumbents have the ability and the incentive to deny access to alternative video providers.<sup>4</sup> Access by alternative providers to the cable wiring at the current demarcation point can be denied because either: (1) the demarcation point is physically inaccessible inside brick, plaster, or cinder blocks; or (2) the demarcation is physically accessible, but the MDU owner will not permit installation of a second molding for the additional wiring and the incumbent operator will not permit shared use of its existing molding.<sup>5</sup> The Commission correctly concludes that the current situation "den[ies] MDU residents the ability to choose among competing service providers, thereby contravening the purposes of the Communications Act, and particularly Section 624(I), which was intended to promote consumer choice and competition."<sup>6</sup>

CEMA is gratified that the Commission has elected to act quickly on this important issue. CEMA is concerned, however, that the Commission has not proposed an optimum approach to rectifying the current situation. As discussed below, the procedural mechanisms proposed in the *Further Notice* may not prove effective in ensuring competitive access to cable inside wire. CEMA has proposed several ways in which the Commission's proposal could be

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<sup>3</sup> *Id.*

<sup>4</sup> *See id.* at ¶ 31 ("[I]ncumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition.").

<sup>5</sup> *Id.* at ¶ 11.

<sup>6</sup> *Id.* at ¶ 26.

strengthened. Moreover, if the proposal set forth in the *Further Notice* is adopted, the Commission should commit itself to monitoring the results of the proposal's implementation. If competitive access to cable inside wire is not achieved, the Commission should revisit these issues and consider other approaches such as those advocated by CEMA and set forth below.

**II. MOVING THE CABLE DEMARCATION POINT TO THE MINIMUM POINT OF ENTRY IS A SIMPLE AND EFFECTIVE SOLUTION THAT AVOIDS THE ADMINISTRATIVE PROBLEMS INHERENT TO THE PROCEDURAL APPROACH PROPOSED IN THE *FURTHER NOTICE*.**

In this docket's initial Notice of Proposed Rulemaking, the Commission recognized that the current cable demarcation point in MDUs was anticompetitive. The Commission noted that "the record in our cable home wiring proceeding (MM Docket No. 92-260) indicates that the current cable demarcation point in multiple dwelling unit buildings may impede competition in the video programming delivery marketplace."<sup>7</sup> The Commission stated that it was sufficiently concerned about the potentially anticompetitive effects of the current demarcation point that it "intend[ed] to resolve this issue expeditiously."<sup>8</sup>

During that proceeding, CEMA, along with many other parties, argued that the demarcation point in MDU buildings should be moved from a point 12 inches outside each individual dwelling unit to either: (1) the point at which the line becomes dedicated to an individual subscriber's use; or (2) the "minimum point of entry" inside or outside the MDU building where the service provider attaches to the building's common home wiring (*e.g.*,

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<sup>7</sup> *Telecommunications Services Inside Wiring -- Customer Premises Equipment*, Notice of Proposed Rulemaking, 11 FCC Rcd 2747, 2756-57 (1996).

<sup>8</sup> *Id.* at 2757.

basement, street, or telephone pole).<sup>9</sup> Such a change in the demarcation point would permit a competing provider to connect its wires without disrupting an MDU's hallways because the connection would be effected in a hidden area of the MDU, such as the basement; installation of additional moldings in conspicuous places such as hallways would be unnecessary. Changing the demarcation point would, therefore, greatly increase MDU owners' willingness to allow alternative providers to provide service to MDU buildings, thereby fostering competition and enhancing consumer choice.<sup>10</sup>

The demarcation point approach is a simple, time-tested solution that was successfully implemented in the telephone context. For example, in 1986 the Commission deregulated telephone inside wiring and transferred control to subscribers immediately. Although control was immediately transferred, telephone companies were permitted to maintain ownership of the wiring until it had been fully expensed.<sup>11</sup> The Commission rejected the suggestion that deregulation constituted an unconstitutional taking of telephone company property.<sup>12</sup> The Commission found that in most buildings, telephone companies had fully expensed the costs of their home wiring and therefore had been fully compensated for their investment. Furthermore,

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<sup>9</sup> See "Reply Comments of the Consumer Electronics Manufacturers Association," CS Docket No. 95-184, at 11-12 (filed Apr. 17, 1996) ("*CEMA Reply Comments*"); *Further Notice* at ¶¶ 11-13.

<sup>10</sup> *Further Notice* at ¶ 13.

<sup>11</sup> See *Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190, 1195-96 (1986).

<sup>12</sup> See *Detariffing the Installation and Maintenance of Inside Wiring*, Second Report and Order, 59 Rad. Reg. 2d 1143 at ¶ 48 (1986).

the Commission determined that the salvage value of inside wiring (after taking into account the costs of removal) is zero.<sup>13</sup>

Similarly, in 1990, the Commission amended the definition of the telephone demarcation point for both simple and complex wire to ensure that the demarcation point would be near the point where the wiring entered the customer's premises.<sup>14</sup> In a 1997 reconsideration order, the Commission emphasized that "moving the demarcation point does not transfer ownership and that carriers may retain ownership over carrier-installed wiring."<sup>15</sup> Again, the Commission ruled that the telephone companies had already recovered the costs of the inside wiring and that, therefore, "carriers are not entitled to additional compensation for such wiring."<sup>16</sup>

In an era of rapidly converging media and telecommunications delivery technologies, CEMA regrets that the Commission has not proposed rule changes based on a uniform approach to demarcation points placed between service providers and the subscribers they serve, consistent with the minimum point of entry into an MDU building. Instead, the Commission has apparently decided to embrace a procedural mechanism to determine access and control to MDU inside wire originally formulated by the Independent Cable & Telecommunications Association ("ICTA"). ICTA's proposed procedural mechanism, however,

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<sup>13</sup> *See id.* at ¶¶ 46, 49.

<sup>14</sup> *See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 5 FCC Rcd 4686, 4691-93 (1990).

<sup>15</sup> *Id.*, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88-57, FCC 97-209, at ¶ 32 (rel. Jun. 17, 1997).

<sup>16</sup> *Id.*

is complex, may prove difficult to administer, and, as discussed below in Section III, would be limited in its utility by conflicting state and local law and by the efforts of those incumbent operators which decide to "game the system." Ensuring that MDU owners, individual subscribers, and incumbent cable operators comply with the many different notice requirements would be an enforcement challenge. The negotiation process for determining the price of the wiring purchased from incumbents by MDU owners will likely be adversarial and messy, with no guarantee that the parties will participate in good faith. Stalemate may be a common result of these negotiations. The complex nature of such a procedural mechanism invites litigation, something the Commission itself recognizes is "rarely conducive to generating competition."<sup>17</sup>

The *Further Notice* recounts, but does not address, the arguments that have been made in this proceeding that a change in the demarcation point to a minimum point of entry will not implicate incumbents' constitutional rights under the takings clause of the Fifth Amendment.<sup>18</sup> As noted above, in the telephone context, the incumbent telephone company retains ownership of telephone inside wire, but customers and building owners have the right to remove, rearrange, replace, or maintain such wiring. No taking is implicated because ownership is not transferred and telephone companies have been fully compensated for the costs of installing and maintaining such wire. In the cable context, CEMA recognizes that not all incumbent operators have recovered the costs of their home wiring. In those cases where cable operators have not fully recovered their costs for the installation and maintenance of inside wiring, the Commission should

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<sup>17</sup> *Further Notice* at ¶ 31.

<sup>18</sup> *Id.* at ¶ 71.

ensure that cable operators are fully compensated.<sup>19</sup> The larger point, however, is that Commission precedent demonstrates that the demarcation point of cable wiring can be changed without any transfer of ownership and without violating the takings clause. A change in the demarcation point would shift the control over access and use of inside wiring to customers and building owners, and would thus promote competition among video service providers.

In contrast, the procedures proposed by ICTA give incumbent operators the right to negotiate a sales price for their wiring, even if the costs for such wiring have already been fully recovered through cable service charges. Moving the demarcation point to the minimum point of entry avoids this problem because it entitles the incumbent operator to compensation *only* if the wiring has not been completely expensed. Forcing the MDU owner to pay for wiring that has already been completely expensed is not only unfair, but will discourage competition by imposing an unnecessary financial burden on MDU owners contemplating a switch to an alternative video service provider.

**III. IF THE COMMISSION ADOPTS THE PROCEDURAL APPROACH, IT MUST: (1) PREEMPT STATE LAWS THAT WOULD FRUSTRATE THE PROPOSAL'S PRO-COMPETITIVE OBJECTIVE; (2) ADOPT ITS PROPOSED ALTERNATIVES TO THE PROCEDURAL FRAMEWORK; AND (3) IMPLEMENT ENFORCEMENT MECHANISMS TO ENSURE THE INTEGRITY OF THE NEGOTIATION PROCESS.**

As discussed above, CEMA believes that moving the demarcation point is a much simpler and more effective solution than the procedural mechanisms proposed by ICTA. Nevertheless, if the Commission is intent on adopting the ICTA proposal, it *must* preempt state mandatory access statutes and other state laws that would effectively void the proposal's ability

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<sup>19</sup> See 47 C.F.R. §§ 76.922 and 76.923(a).

to open up cable home run wiring to competition. In addition, the Commission should supplement the proposed procedural mechanisms by adopting the tentative conclusions and proposals set forth as “Alternatives to the Procedural Framework” in paragraphs 83-85 of the *Further Notice*. The Commission should also implement enforcement mechanisms to deter misuse of the proposed procedural mechanisms for purposes of delaying the advent of competition.

**A. The Commission *Must* Preempt State Mandatory Access Statutes and Other State Laws Which Frustrate Competition in Cable Wiring.**

In the *Further Notice*, the Commission states that the procedures that it proposes to determine the disposition of home run wiring:

would not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. . . . 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.<sup>20</sup>

The *Further Notice* provides no explanation why such rights created by state law should be given weight over the Commission's authority under Sections 1 and 601 of the Communications Act to regulate cable systems. CEMA believes that the “reverse preemption” by state law of Commission rules to promote competition and consumer choice in the evolving telecommunications marketplace would severely undermine the efficacy of those rules. As discussed below, the policy and legal arguments in favor of such “reverse preemption” are without merit. The Commission should move decisively to preempt state and local laws that create unfair, anticompetitive advantages for incumbent operators in access to inside wiring.

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<sup>20</sup> *Further Notice* at ¶ 34.

The Commission notes that nearly 20 states have enacted mandatory access statutes that appear to benefit only the franchised cable operator.<sup>21</sup> For example, the New York statute prohibits the landlord from "interfer[ing] with the installation of cable television facilities upon his property . . . ." <sup>22</sup> Similarly, the Pennsylvania statute states that the cable operator "shall retain ownership of all wiring and equipment used in any installation or upgrade of a CATV system in multiple dwelling premises." <sup>23</sup> Obviously, absent preemption, the Commission's proposed cable wiring rules will be inapplicable in some of the country's largest, most populous states (*e.g.*, New York, Pennsylvania, Illinois, Florida).<sup>24</sup> To permit a significant percentage of the United States to fall outside the purview of the Commission's proposed cable wiring rules is bad national policy and is unnecessary as a legal matter. The Commission *must* preempt such state laws if it intends to fulfill its promise to open up MDU buildings to video service competition.<sup>25</sup>

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<sup>21</sup> *Id.* at ¶ 29. *See, e.g.*, N.Y. Pub. Serv. Law § 228; 68 Pa. Cons. Stat. § 250.503-B; 55 Ill. Comp. Stat. 5/5-1096; Fla. Stat. § 718.1232; Mass. Gen. Laws ch. 166A, § 22; N.J. Rev. Stat. § 48:5A-49; W. Va. Code § 5-18A-4(d); Kan. Stat. Ann. § 58-2553(5); Me. Rev. Stat. Ann. tit. 14, § 6041; R.I. Gen. Laws § 39-19-10; D.C. Code Ann. § 43-1844.1.

<sup>22</sup> N.Y. Pub. Serv. Law § 228(1)(a).

<sup>23</sup> Pa. Cons. Stat. § 250.503-B; *see also* W. Va. Code § 5-18A-4(d) ("The cable operator shall retain ownership of all wiring and equipment used in any installation or upgrade of a cable system within any multiple dwelling premises.").

<sup>24</sup> The number of states not subject to the Commission's proposed cable wiring rules may even be greater than those 15-20 odd states with mandatory access statutes, because some states delegate regulation of cable television systems to county governments and municipalities, many of which may also have imposed similar mandatory access regulations. *See, e.g.*, Ga. Code Ann. § 36-18-2.

<sup>25</sup> The presence of these mandatory access laws is another reason why the Commission should change the demarcation point in MDU buildings rather than adopt ICTA's proposal. As described above, changing the demarcation point does *not* transfer ownership of the wiring and would, therefore, not run afoul of these state laws.

The Commission's statutory authority to preempt these state laws is beyond question. In 1989, the D.C. Circuit Court of Appeals ruled that Section 1 of the Communications Act authorized the Commission to preempt state laws that frustrated the Commission's policy of encouraging competition in the provision, installation, and maintenance of telephone inside wiring.<sup>26</sup> The Court ruled that inside wiring is a part of interstate service and thus the Commission can both regulate it and preempt inconsistent state laws:

Based on the record before us, it is clear that certain otherwise legitimate state actions regulating intrastate telephone service could interfere with the Commission's achievement of its valid goal of providing interstate telephone users with the benefits of a free market and free choice in the installation and maintenance of inside wiring. . . . The FCC may preempt state regulation of the installation and maintenance of simple inside wiring, but only to the extent that such regulation negates the federal policy of ensuring a competitive market for such services.<sup>27</sup>

Based on this court decision, the Commission subsequently preempted all state regulations that required or allowed telephone companies to bundle charges for simple inside wiring services with charges for tariffed services.<sup>28</sup>

The Commission's Section 1 preemption authority extends to cable television. In 1984, the U.S. Supreme Court ruled that the Commission may preempt virtually any state

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<sup>26</sup> *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422, 429-30 (D.C. Cir. 1989).

<sup>27</sup> *Id.* at 430-31.

<sup>28</sup> *Detariffing the Installation and Maintenance of Inside Wiring*, Third Report and Order, 7 FCC Rcd 1334, 1335 (1992).

regulation involving cable television service if it conflicts with the federal policy promoting the widespread availability of cable service nationwide:

[T]he Commission has determined that only federal pre-emption of state and local regulation can assure cable systems the breathing space necessary to expand vigorously and provide a diverse range of program offerings to potential cable subscribers in all parts of the country. While that judgment may not enjoy universal support, it plainly represents a reasonable accommodation of the competing policies committed to the FCC's care, and we see no reason to disturb the agency's judgment.<sup>29</sup>

Although some may argue that cable wiring is an intrastate service and thus not within the Commission's purview, courts have expressly rejected this argument. As noted above, the D.C. Circuit Court ruled that telephone inside wiring was an integral part of interstate communications and within the Commission's jurisdiction. Similarly, with respect to video services, a 1982 Second Circuit case ruled that the Commission could preempt state regulations aimed at regulating master antenna systems in MDU buildings because these regulations had the effect of impeding the growth of interstate wireless cable services.<sup>30</sup> Most recently, in 1996, a U.S. District Court concluded that "[f]ederal preemption may provide a defense to . . . underlying state law causes

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<sup>29</sup> *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 708 (1984); see also *Cable Television Association of New York, Inc. v. William B. Finneran*, 954 F.2d 91, 97 (2d Cir. 1992) ("[T]he Court placed within the FCC's discretion the power to pre-empt virtually any state regulation of the cable industry."). Although the 1984 Supreme Court decision was issued prior to the enactment of the 1984 Cable Act, which stripped the Commission of some regulatory authority (e.g., rate regulation), the 1992 Cable Act has restored to the Commission much of this authority.

<sup>30</sup> *New York State Commission on Cable Television v. FCC*, 669 F.2d 58, 64 (2d Cir. 1982).

of action" such as a claim by a cable operator that an MDU owner had breached a contractual provision giving the cable operator exclusive rights to the cable wiring in the MDU.<sup>31</sup>

Based on the foregoing, the Commission has ample authority under Section 1 of the Communications Act to preempt state mandatory access laws that prevent alternative video providers from accessing the cable wiring in MDUs. The Commission should fully utilize this preemption authority in order to achieve its objective of promoting the availability of competitive video services in MDUs nationwide.

**B. The Commission Should Adopt the "Alternatives to Procedural Framework."**

In paragraphs 83-85 of the *Further Notice*, the Commission proposed requiring that: (1) incumbent providers share moldings with competitors; (2) demarcation points be moved in cases of physical inaccessibility; and (3) control of all cable wiring in newly constructed buildings be immediately transferred to the MDU owner. CEMA wholeheartedly supports all three of these proposals. These alternative proposals will promote competitive entry of alternative video service providers simply and effectively, while avoiding ICTA's complex and time-consuming procedural mechanism. Of course, the benefits of these alternative proposals is limited by the fact that many MDU owners will not permit the installation of a second set of wires in hallway moldings and new-construction MDU buildings represent a tiny fraction of the number of MDU buildings in the market. Nevertheless, these alternative proposals will help expedite competition and should be adopted.

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<sup>31</sup> *Time Warner Entertainment v. Foster Management*, 1996 U.S. Dist. LEXIS 14587, at \*17 (M.D. N.C. 1996).

**C. The Commission Should Adopt Enforcement Policies to Ensure Against Abuses of the Proposed Procedural Mechanisms for Disposition of Home Run Wiring.**

In paragraph 36 of the *Further Notice*, the Commission voices its concern that the incumbent operator may initially elect to remove its home run wiring and then decide to abandon it, which would force any competing provider to incur the expense of installing a second set of wiring. The Commission seeks comment on whether it should impose penalties on incumbent operators who elect to remove the wiring and then fail to do so.

CEMA strongly supports the imposition of penalties on incumbent operators that abuse the procedural mechanism. Without such penalties, incumbent operators will have incentives to slow down the transition to competition. The ways in which an incumbent operator could "game" the system to its advantage are countless. For example, in addition to the example cited above by the Commission, an incumbent operator could actually start to remove wiring from the building and then stop in mid-course, thereby rendering the existing wiring unusable by the alternative video provider. Aborted removal would force the alternative provider to incur the additional expense of finishing the removal process prior to installing its new cable wiring, or else suffer the delay of protracted litigation if the MDU owner sought injunctive relief to require the incumbent operator to finish the job. Such abuses by the incumbent operator should be discouraged with very harsh penalties.

**IV. CONCLUSION**

For all of the reasons set forth above, CEMA strongly supports the Commission's intent to transfer control of cable wiring in MDU buildings from incumbent operators to consumers and MDU owners. CEMA urges the Commission to consider the simple and effective

solution of moving the demarcation point in MDU buildings to either: (1) the point at which the line becomes dedicated to an individual subscriber's use; or (2) the "minimum point of entry." If, however, the procedural mechanisms proposed in the *Further Notice* are adopted, the Commission must: (1) preempt all state mandatory access statutes and similar laws; (2) concurrently adopt the alternative proposals discussed in paragraphs 83-85 of the *Further Notice*; and (3) impose stiff penalties for abuses of the proposed procedural mechanisms that delay the advent of competition. The Commission should also commit to revisit the issue of access to cable inside wire if the procedural mechanisms it chooses to adopt do not prove effective.

Respectfully submitted,

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