

long as it is determined by private negotiations between the conduit owner and the alternative provider seeking to gain access in the conduit.⁵²

V. A NUMBER OF COMMENTERS AGREE THAT OWNERSHIP RIGHTS IN NEW CABLE INSTALLATIONS SHOULD BE GOVERNED BY PRIVATE NEGOTIATIONS

A number of commenters agree that the Commission should not mandate ownership rights in new cable installations.⁵³ The Community Associations Institute correctly notes that a mandated ownership transfer should not be adopted because it would "impose a great hardship on others who are unprepared and unable to assume the associated expense and managerial responsibilities."⁵⁴ Similarly, Cablevision Communications and Jones Intercable explain that such rules are unnecessary because building owners may purchase cable home wiring today if they wish to do so and thus the "market will dictate the most economically efficient disposition of the wiring in each instance."⁵⁵ GTE agrees with these commenters that the Commission lacks a sound policy basis to implement a mandated ownership rule.

⁵² GTE recognizes NCTA's concern about providing just compensation for access to molding and conduit. See NCTA Comments at 25-26. Nonetheless, molding and conduits are potential bottleneck facilities that could be used by incumbents to stifle competition. Therefore the Commission should require conduit and molding owners to negotiate in good faith with new providers to permit third party use of these facilities.

⁵³ See, e.g., CableVision/Comcast Comments at 28, CAI Comments at 16; NCTA Comments at 27; SBC Comments at 5.

⁵⁴ CAI Comments at 16.

⁵⁵ Jones Intercable Comments at 17.

Those commenters who advocate requiring transfers of new installations fail to consider the limited scope of the FCC's jurisdiction in this regard.⁵⁶ GTE maintains that the Commission has no statutory authority to adopt a rule that would regulate the private contractual relationship between MVPDs subject to effective competition and MDU building owners. Any mandated ownership rule in such circumstances would be inconsistent with the Act and Commission precedent where the agency has declined to assert jurisdiction over building owners or private property owners, even where their actions would affect communications services to the public.⁵⁷

VI. CONCLUSION

GTE commends the Commission for moving forward with its effort to bring meaningful video competition to MDU building residents despite incumbent cable operators' attempts to retain their overwhelming advantage in such markets. In this effort, the Commission should not be persuaded by the cable industry's renewed, self-serving objections to the FCC's proposed framework or its attempt to disable the effectiveness of the Commission's proposals by creating anticompetitive roadblocks.

⁵⁶ See, e.g., CEMA Comments at 13; Media Access Project Comments at 21.

⁵⁷ See GTE Comments at 17-20.

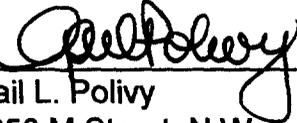
Rather, it should promptly adopt its proposal with the minor modifications suggested by GTE so that consumers will not be further delayed in receiving the benefits of competition and increased choice among video providers.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on October 6, 1997 to all parties of record.

A handwritten signature in black ink, appearing to read "Ann D. Berkowitz", written in a cursive style.

Ann D. Berkowitz