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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	)	

REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 9, 1997 **Released: October 17, 1997**

By the Commission:

Comment Date: December 23, 1997
Reply Comment Date: January 22, 1998

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I. INTRODUCTION

1. This *Report and Order and Second Further Notice of Proposed Rulemaking* ("*Order*" and "*Second Further Notice*") addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95-184 ("*Inside Wiring Notice*"),[1] the *Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260 ("*Cable Home Wiring Further Notice*")[2] and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95-184 and MM Docket No. 92-260 ("*Inside Wiring Further Notice*")[3] regarding potential changes in our telephone and cable inside wiring[4] rules in light of the evolving telecommunications marketplace.[5] We adopt the amended rules as provided in Appendix A.

2. In this *Order*, we reach the following conclusions:

(a) Disposition of Home Run Wiring

We adopt our proposal in the *Inside Wiring Further Notice* for the disposition of the cable "home run" wiring (i.e., the wiring from the point at which it becomes dedicated to an individual unit in a multiple dwelling unit building ("MDU") to the cable "demarcation point" at or about 12 inches outside that unit) upon a termination of service. We adopt specific procedural mechanisms requiring the sale, removal or abandonment of the home run wiring where the MDU owner[6] (1) terminates service for the entire building and wishes to use the home run wiring for an alternative video service provider, or (2) wants to permit more than one multichannel video programming distributor ("MVPD") to

[1] 11 FCC Rcd 2747 (1996).

[2] 11 FCC Rcd 4561 (1996). Comments and reply comments filed in MM Docket No. 92-260 are referred to herein as "Docket No. 92-260 Comments" and "Docket No. 92-260 Reply Comments," respectively.

[3] *See* FCC 97-304, 62 FR 46453 (released August 28, 1997). Comments and reply comments filed in response to the *Inside Wiring Further Notice* are referred to herein as "Further Comments of . . ." and "Further Reply Comments of . . . ," respectively.

[4] Inside wiring is the portion of a system's wiring on a customer's premises that is used to transmit signals to and/or from the customer premises equipment ("CPE"), such as a telephone, television or a cable set-top box. Unlike the network/system wiring, which always remains under the service provider's control and responsibility, inside wiring may under some circumstances be owned or controlled by the customer pursuant to the Commission's rules.

[5] Appendix B contains a list of the parties that filed comments and reply comments in response to the *Inside Wiring Notice*, the *Cable Home Wiring Further Notice* and the *Inside Wiring Further Notice*, as well as the abbreviations used herein to refer to such parties.

[6] The term "MDU owner" (sometimes referred to as the "premises owner") as used herein includes whatever entity owns or controls 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.

compete for the right to use the home run wiring on a unit-by-unit basis. We will apply our rules regarding the disposition of cable home run wiring to all MVPDs.

(b) Sharing of Molding

We generally will allow MVPDs to install one or more home run wires within the molding of an MDU where the MDU owner finds that there is sufficient space within existing molding to permit the installation of the additional wiring without interfering with the ability of an existing MVPD to provide service, and the MDU owner gives its affirmative consent. Where the MDU owner finds that there is insufficient space and gives its affirmative consent to the installation of larger molding and additional wiring, we will permit the MDU owner to replace the existing molding at the alternative provider's expense. Alternative providers will be required to pay any and all installation costs and damages associated with the addition of wiring and/or any larger molding that is necessary.

(c) Disposition of Cable Home Wiring

We conclude that the MDU owner may purchase the wiring within an MDU's individual dwelling units when the MDU owner terminates a video service provider's service for the entire building. We also conclude that the MDU owner may purchase the home wiring if the terminating resident declines to do so. In both cases, the owner may permit an alternative provider to purchase the home wiring. In addition, we conclude that, if a cable operator intends to remove the cable home wiring, it must do so within the seven days provided by our rules if an individual subscriber declines to purchase the wiring and vacates the premises, so long as the operator has reasonable access to the premises during those seven days.

(d) MDU Demarcation Point

We conclude that it is premature to establish a common telephone and cable demarcation point. Maintaining different sets of rules will not cause confusion because it appears that telephone and cable services will continue to be delivered over separate inside wiring networks for the near future. If and when telephone and cable services begin to be delivered on a wide-scale basis over the same inside wiring, we will revisit this issue. We therefore maintain the current telephone and cable demarcation points.

(e) Loop-through cable inside wiring

We conclude that cable operators should be required to allow MDU owners to purchase loop-through home wiring where such an owner elects to switch to a new service provider. We will also permit the MDU owner to invoke our procedures for the disposition of home run wiring with regard to the loop-through wiring outside the individual unit up to the riser or feeder cable.

(f) Video service provider access to private property

We will not establish a federal mandatory access law, nor will we preempt state mandatory access laws. We will not prohibit service providers from entering into exclusive contracts with property owners. As noted below, we will seek comment, however, on whether we should adopt certain restrictions on exclusive contracts in order to further promote competition in the MDU marketplace.

(g) Subscriber access to cable home wiring prior to termination of service

We will require cable operators to permit consumers to provide or to install their own cable home wiring inside their dwelling unit, or redirect, reroute or connect additional wiring to the cable operator's home wiring, so long as the cable operator's wiring is not substantially altered or harmed and no electronic or physical harm is caused to the cable system. We will not, however, presume that cable subscribers already own their home wiring.

(h) Signal leakage

We will apply our cable signal leakage rules to non-cable MVPDs that pose a similar threat of interference with frequencies used for over-the-air communications. We will provide a five-year transition period for certain non-cable MVPDs to comply with some of the signal leakage rules.

(i) Signal quality

We will not apply our cable rules regarding signal quality to other MVPDs.

(j) Means of connection

We will not mandate a specific type of connector that broadband service providers must use.

(k) Dual regulation

We conclude that we need not modify the current dual nature of regulation of cable wiring by federal and local authorities, or of telephone wiring by federal and state authorities.

(l) Simple/complex and residential/non-residential

We conclude that, at this time, we will not modify the definitions within the common carrier and cable rules regarding simple versus complex and residential versus non-residential wiring.

(m) Customer premises equipment

We conclude that the issues raised in the *Inside Wiring Notice* regarding customer premises equipment ("CPE") have been superseded by the Telecommunications Act of 1996 (the "1996 Act"),[7] and that the issues will be addressed in our proceeding arising under new Section 629 of the Communications Act.

3. We believe that the record would benefit from additional comment on the following issues described in the *Second Further Notice*: (1) exclusive service contracts between service providers and MDU owners; (2) applying certain of our cable inside wiring rules to all MVPDs; (3) signal leakage reporting requirements; and (4) simultaneous use of cable home run wiring by multiple MVPDs.

II. BACKGROUND

A. Telephone Inside Wiring Rules

4. Part 68 of the Commission's rules governs the terms and conditions under which customer premises equipment ("CPE") and wiring may be connected to the telephone network. Part 68 is designed to ensure that terminal equipment and wiring can be connected to the network without causing harm to the network.[8] We have previously stated that Part 68 restrictions should be no greater than necessary to ensure network protection.[9] Furthermore, carriers generally have the burden of showing that any particular Part 68 restriction is necessary.[10]

5. In 1984, the Commission adopted Section 68.213 of the Commission's rules, which allowed customers to connect one and two-line business and residential telephone wiring to the network.[11] The Commission established a demarcation point to mark the end of the carrier network and the beginning of customer-controlled wiring. Under Section 68.213, the demarcation point would "be located on the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's reasonable and nondiscriminatory standard operating practices."[12]

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[7]Pub. L. No. 104-104 (1996).

[8]*See* 47 C.F.R. § 68.1.

[9]*See, e.g., Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network), 3 FCC Rcd 1120, 1122 (1988).

[10]*Id.*

[11]*See First Report and Order*, CC Docket No. 81-216 (Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment Systems and Protective Apparatus to the Telephone Network), 97 F.C.C.2d 527 (1984).

[12]*See* 97 F.C.C.2d at 566. The telephone company protector is a device designed to protect equipment, buildings and persons by preventing the transmission of hazardous voltages through the telephone line. Hazardous voltages can result from lightning or power surges. The protector allows only the correct amount of current to pass into a

6. The Commission also issued orders detariffing the installation and maintenance of telephone inside wiring.[13] The Commission first detariffed the installation of complex wiring.[14] In 1986, the Commission extended detariffing to the installation of simple inside wiring and the maintenance of all inside wiring.[15] The Commission allowed carriers to retain ownership of telephone inside wiring, but prohibited carriers from: (1) using their ownership to restrict the removal, replacement, rearrangement or maintenance of telephone inside wiring; (2) requiring customers to purchase telephone inside wiring; and (3) imposing a charge for the use of such wiring.[16] By these detariffing orders, the Commission sought to "foster competition in the inside wiring installation and maintenance markets, to promote new entry into those markets, . . . and to foster the development of an unregulated, competitive telecommunications marketplace."[17]

7. In 1990, the Commission issued a *Report and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 88-57 ("*Common Carrier Wiring Order*"), which, among other things, amended the definition of the demarcation point for both simple and complex wiring to ensure that the demarcation point would be near the point where the wiring entered the customer's premises.[18] The revised definition required that the demarcation point generally be no further than twelve inches inside the customer's premises. For single unit installations, the demarcation point must be within twelve inches

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building and diverts excess current into an earth ground wire.

[13] The Commission detariffed the installation and maintenance of both simple and complex inside wiring. The term "simple inside wiring" includes telephone wiring installations of up to four access lines. We use the term "complex wiring" to refer to all other wiring installations. *See* 47 C.F.R. § 68.213; *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network), FCC 97-209 (released June 17, 1997) ("*Common Carrier Wiring Reconsideration Order*"). The installation of complex wiring is governed by Section 68.215 of the rules and must be performed under the supervision of specially trained personnel. *See* 47 C.F.R. § 68.215(b)-(c).

[14] *Report and Order*, CC Docket No. 82-681 (Modifications to the Uniform System of Accounts for Class A and Class B Telephone Companies Required by Detariffing of Customer Premises Equipment and Proposed Detariffing of Customer Provided Cable Wiring), 48 Fed. Reg. 50534 (1983) ("*Complex Wire Detariffing Order*"); *see also Memorandum Opinion and Order*, CC Docket No. 79-105 (Detariffing the Installation and Maintenance of Inside Wiring), 1 FCC Rcd 1190, 1190-91 (1986) ("*Detariffing Recon.*") (subsequent history omitted). The Commission took this action because it had detariffed the installation of new CPE, and it would have been inconsistent to continue having complex wiring installed under tariff. *See* 1 FCC Rcd at 1190-91.

[15] *Second Report and Order*, CC Docket No. 79-105 (Detariffing the Installation and Maintenance of Inside Wiring), 51 Fed. Reg. 8498 (1986) ("*Inside Wire Detariffing Order*"), *recon. in part, Detariffing Recon.*, 1 FCC Rcd at 1190, *further recon., Memorandum Opinion and Order*, 3 FCC Rcd 1719 (1988).

[16] *Detariffing Recon.*, 1 FCC Rcd at 1195.

[17] *Id.* at 1191.

[18] *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 88-57 (Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Competition of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association), 5 FCC Rcd 4686 (1990) ("*Common Carrier Wiring Order*").

of the protector, or if there is no protector, within twelve inches of the point at which the wiring enters the customer's premises.[19] For existing multiunit installations, the demarcation point is determined in accordance with the carrier's reasonable and nondiscriminatory standard operating practices.[20] For new wiring installations in multiunit premises, including additions, modifications and rearrangements of existing wiring, the carrier may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry.[21] When the carrier does not have such a practice, the multiunit premises owner determines the location of the demarcation point or points.[22] If there are multiple demarcation points for either existing or new multiunit installations, the demarcation point for any particular customer may not be further inside the customer's premises than twelve inches from the point at which the wiring enters the customer's premises.[23]

8. In June 1997, the Commission issued the *Common Carrier Wiring Reconsideration Order*.[24] Among other things, the Commission clarified that the carrier standard operating practices which determine the demarcation point for multiunit installations under Section 68.3(b)(1) are those practices in effect on August 13, 1990, and that Section 68(b)(1) does not authorize changing the demarcation point for an existing building to the minimum point of entry.[25] Reiterating that carriers may not require the customer or building owner to purchase or pay for the use of carrier-installed wiring that is now on the customer's side of the demarcation point, the Commission concluded that the carrier may not remove such wiring.[26]

9. The *Common Carrier Wiring Reconsideration Order* also amended the telephone demarcation point definition to do the following: (1) clarify that the demarcation point may be located within twelve inches of the point at which the wiring enters the customer's premises "or as near thereto

[19]*See* 47 C.F.R. § 68.3(a).

[20]*See* 47 C.F.R. § 68.3(b)(1).

[21]47 C.F.R. § 68.3(b)(2). The minimum point of entry is defined as either the closest practicable point to the location at which the wiring crosses a property line or the closest practicable point to the location at which the wiring enters a multiunit building. *See* 47 C.F.R. § 68.3. The telephone company's reasonable and nondiscriminatory standard operating practices determine which of these two standards applies. *Id.*

[22]*See* 47 C.F.R. § 68.3(b)(2).

[23]*See* 47 C.F.R. § 68.3(b)(1)-(2).

[24]FCC 97-209 (released June 17, 1997).

[25]*Common Carrier Wiring Reconsideration Order* at para. 26. The Commission also clarified that the change in the demarcation point rules does not affect the Commission's current or future policies that determine whether equipment is network equipment or CPE. Thus, in certain limited circumstances, some carrier equipment may be located on the customer side of the demarcation point. *Id.* at para. 34.

[26]*Id.* at para. 32.

as practicable;"[27] (2) indicate that only major additions or rearrangements of existing wiring are to be treated as new installations under the rule;[28] (3) allow multiunit building owners to restrict customer access to only that wiring located in the customers' individual unit;[29] and (4) require local telephone companies to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point (in order to facilitate owners' service and maintenance of such wiring).[30] The *Common Carrier Wiring Reconsideration Order* also requested comment on certain issues pertaining to the application of the telephone demarcation point rule to complex wiring, the location of the telephone demarcation point away from a building, and telephone wire quality standards for simple inside wiring.

B. Cable Inside Wiring Rules

10. Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"),[31] codified at Section 624(i) of the Communications Act, requires the Commission to "prescribe rules concerning the disposition, after a subscriber terminates service, of any cable installed by the cable operator within the premises of such subscriber."[32] In February 1993, the Commission issued a Report and Order implementing Section 624(i) (the "*Cable Wiring Order*").[33] 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 cost per-foot charge is.[34] 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.[35] These rules were designed to advance Section 624(i)'s goals of avoiding the disruption of having the wiring removed and permitting subscribers to use the wiring with an alternative video service provider.[36]

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[27] *Id.* at paras. 3, 15 (there may be instances where physical and safety considerations make the twelve inch requirement difficult to meet, and the "closest practicable point" could just as easily be outside the customer's premises as deeper inside those premises).

[28] *Id.* at paras. 3, 20.

[29] *Id.* at paras. 3, 24.

[30] *Id.* at paras. 3, 30.

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

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

[33] *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).

[34] 47 C.F.R. § 76.802; *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. *Cable Wiring Order*, 8 FCC Rcd at 1438.

[35] *Cable Wiring Order*, 8 FCC Rcd at 1438.

[36] *Id.* at 1435.

11. We further provided that the subscriber may purchase the cable home wiring inside his or her premises up to the demarcation point.[37] From the customer's point of view, the demarcation 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.

12. For single family homes, the cable demarcation point generally is at (or about) 12 inches outside of where the cable wire enters the subscriber's premises.[38] For MDUs with non-"loop-through" wiring,[39] the cable demarcation point is at (or about) 12 inches outside of where the cable wire enters the subscriber's individual dwelling unit.[40] 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 building. 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 to taps and dedicated home run wires from the roof.

13. In the *Cable Wiring Order*, we said that it was not "necessary or appropriate under the statute" to apply our cable home wiring rules prior to the time the customer terminates cable service.[41] We noted that the plain language of Section 624(i) refers only to the disposition of cable home wiring after termination of service, and that cable home wiring is different from telephone wiring in that, for example, cable operators have the responsibility to prevent signal leakage, a responsibility telephone

[37]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 1435-36.

[38]*See* 47 C.F.R. § 76.5(mm)(1).

[39]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 Wiring Order*, 8 FCC Rcd at 1437. See Section III.E. below for a discussion of certain issues pertaining to loop-through cable wiring in MDUs.

[40]47 C.F.R. § 76.5(mm)(2).

[41]*Cable Wiring Order*, 8 FCC Rcd at 1435.

companies do not have.[42] We also cited the House Report on the 1992 Cable Act which stated that Section 16(d) itself "does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service."[43] Also in the *Cable Wiring Order*, the Commission stated:

> [a]lthough we generally believe that broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings, because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this proceeding.[44]

14. In January 1996, the Commission issued the *Cable Home Wiring Further Notice*.[45] 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.[46] 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 transfers immediately to the subscriber, who may authorize a competing service provider to connect with and use the home wiring.[47] 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.[48]

15. The *Cable Home Wiring Further Notice* also requested comment on certain issues pertaining to home wiring. These issues included: (1) whether cable operators should be required to allow a building owner to purchase loop-through home wiring where all subscribers on a loop want to switch to a new video service provider; (2) whether our home wiring rules should apply when an MDU owner terminates service for the entire building; (3) the disposition of cable home wiring when a subscriber terminates cable service, elects not to purchase the wiring and vacates the premises within the time period the operator has to remove the home wiring; and (4) whether, when a subscriber voluntarily

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[42] *Id.* at 1436; *see* 47 C.F.R. §§ 76.605(a) and 76.610-76.617.

[43] *Cable Wiring Order*, 8 FCC Rcd at 1436 n.13 (citing H.R. Rep. No. 628, 102d Cong., 2d Sess., at 118 (1992) ("1992 House Report")).

[44] *Id.* at 1436.

[45] 11 FCC Rcd 4561.

[46] *Id.* at 4572.

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

[48] *Id.* at 4574.

terminating service does not own the premises, the premises owner should have the right to purchase the home wiring if the subscriber declines to purchase it.[49]

16. Also in January 1996, the Commission issued the *Inside Wiring Notice*, where we sought comment on whether and how we should revise our current telephone and cable inside wiring rules to reflect these new realities and promote competition, by ensuring that the Commission's inside wiring rules continue to facilitate the development of new and diverse services for the American public.[50] In particular, we sought comment on whether it is technically and competitively desirable to create a uniform set of inside wiring rules that would apply to telephone companies and cable operators alike, or, in the alternative, that would apply according to the technical characteristics of the service -- e.g., narrowband or broadband[51] -- or the type of wiring used -- e.g., fiber optics, coaxial cable or twisted-pair wiring. Specific issues on which we sought comment include: (1) the location of the demarcation point; (2) the legal and practical impediments faced by telecommunications service providers in gaining access to subscribers; (3) subscriber ownership of, or access to, inside wiring; (4) technical connection parameters; (5) issues arising from the dual regulation of inside wiring by federal and local authorities; (6) the regulation of telephone simple and complex inside wiring, and of residential and non-residential wiring; and (7) the regulation of customer premises equipment used to receive cable and telephone service.[52]

17. In addition, as described below, the Commission issued the *Inside Wiring Further Notice* in August 1997 to request comment on proposed procedures for the disposition of home run wiring in MDUs when an MDU owner decides to terminate service for the entire building and when an MDU owner is willing to permit two or more video service providers to compete for subscribers in the MDU on a unit-by-unit basis.[53]

III. REPORT AND ORDER

A. Disposition of Home Run Wiring

1. Background

a. Commission Proposal

18. In the *Inside Wiring Further Notice*, we sought comment on a proposal to establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides

[49] *Id.* at 4582-83.

[50] *Inside Wiring Notice*, 11 FCC Rcd at 4550.

[51] Narrowband services typically require only a small amount of radio frequency spectrum (e.g., a phone conversation) where as broadband services commonly use a large portion of radio frequency spectrum (e.g., a multichannel video system).

[52] *Inside Wiring Notice*, 11 FCC Rcd at 4550.

[53] *Inside Wiring Further Notice*, FCC 97-304, 62 FR 46453 (released August 28, 1997).

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. The Commission's proposal was a modified version of a procedural mechanism proposed by ICTA, which ICTA argued would accomplish many of the same objectives as moving the cable demarcation point.[54]

19. We generally proposed that, under our building-by-building procedures, where the incumbent service provider owns the home run wiring in an MDU and does not (or would 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. 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;[55] or (3) to sell the wiring to the MDU owner.

20. We also generally proposed that, under the unit-by-unit procedures, where the incumbent video service provider owns the home run wiring in an MDU and does not (or would not at the conclusion of the notice period) have a legally enforceable right to maintain its home run wiring on the premises, 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. Where an MDU owner wishes to permit such head-to-head competition, the MDU owner would have to provide at least 60 days' notice to the incumbent provider of the owner's intention to invoke the following procedure.[56] 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 would: (1) remove the wiring and restore the MDU to its prior condition; (2) abandon the wiring without disabling it;[57] or (3) sell the wiring to the MDU owner.[58]

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[54]*See* 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). For a fuller description of ICTA's proposal, see paras. 15-17 of the *Inside Wiring Further Notice.*

[55]Under our proposal, if the incumbent elects to abandon the wiring, its ownership would be determined as a matter of state law. *Inside Wiring Further Notice* at n.98.

[56]Under our proposal, 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. *Id.* at n.102.

[57]Again, under our proposal, if the incumbent elects to abandon the wiring, its ownership would be determined by state law. *Id.* at n.103.

[58]As in the building-by-building situation, we proposed to allow the alternative provider to purchase the home run wiring if the MDU owner refuses to purchase it. *Id.* at n.104.

21. 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.[59] We proposed that, 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 proposed that if the current service provider 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.

22. We expressed a preference that, where the incumbent provider elects to sell the wiring in either the building-by-building or the unit-by-unit context, the price be determined through private negotiations.[60] We also sought comment, however, on whether the Commission should establish broad guidelines, a default price or a general rule or formula if market forces are insufficient to ensure a reasonable price.[61] We proposed that, if the parties could not agree on a price during the 30-day negotiation period, the incumbent provider would be required to elect one of the other two options (i.e., abandonment or removal).[62] We sought comment on whether we should impose penalties on incumbent providers that elect to remove their home run wiring and then fail to do so.[63]

b. Comments

23. Several parties offer general support for the Commission's disposition of home run wiring proposals.[64] For example, GTE asserts that the Commission's proposals would resolve current uncertainties over wiring ownership and would foster competition.[65] Ameritech and SBC state that the Commission's proposals would promote competition and customer choice.[66] OpTel believes that the proposed disposition procedures would reduce entry barriers and increase competition.[67] Certain cable

[59]We also proposed 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. *Id.* at para. 39.

[60]*Id.* at paras. 37, 40.

[61]*Id.* at 37.

[62]*Id.* at 38, 40.

[63]*Id.* at 36.

[64]*See, e.g.,* Further Comments of Building Owners, et al., at 1-2; Further Comments of Community Associations Institute at 1-2, 4; Further Reply of Community Associations Institute at 1; Further Reply of Info. Tech. Industry Council at 2; Further Reply of ICTA at 7-8; Further Reply of Telebeam at 2.

[65]*See* Further Comments of GTE at 1-2; *see also* Further Comments of Heartland Wireless at 3; Further Comments of Skyzone at 1.

[66]Further Comments of Ameritech at 1-2; Further Comments of SBC at 2.

[67]Further Comments of OpTel at 3, 5.

interests concede that the proposed procedures for the unit-by-unit disposition of home run wiring would promote competition and consumer choice.[68]

24. Cable interests generally argue that the Commission lacks statutory authority to adopt the proposed procedures.[69] They also claim that the procedures will not further Congressional objectives or the Commission's stated goals of promoting consumer choice and competition in the multichannel video programming delivery marketplace.[70] NCTA, for example, claims that Congress did not intend for the Commission's rules to deal with MDU wiring outside the individual subscriber's premises, and that the rules do nothing to achieve their intended purpose of bringing order and certainty to the disposition of home run wiring.[71]

25. GTE appears to support the Commission's proposed time frames for the procedures, claiming in its comments that they would afford incumbents an adequate opportunity to evaluate their options, without causing unnecessary delay.[72] Comcast, et al., contend that the time periods under the procedures must be flexible because the incumbent may need more time to remove the wiring or the new MVPD may not be ready to provide service.[73] Other commenters urge the Commission to shorten the time periods.[74] For example, ICTA proposes shortening the time frame for unit-by-unit dispositions of home run wiring. ICTA recommends giving MDU owners 15 days to provide notice to the incumbent that it intends to allow a second provider access. The incumbent would then have to provide its written election notice by the end of that same 15-day period. An abandonment election would become effective

[68]*See* Further Comments of Adelphia, et al., at 18; Further Comments of Time Warner at 40.

[69]*See* Further Comments of Adelphia, et al., at 2; Further Comments of CATA at 3-8; Further Comments of Comcast, et al., at 13-14; Further Comments of Jones Intercable, et al., at 2-7; Further Comments of NCTA at 2-3, 6-13; Further Comments of TCI at 2, 4-8; Further Comments of Time Warner at 49-62.

[70]*See, e.g.,* Further Comments of CATA at 8 (proposed procedures "do anything but protect the subscriber, because they discourage new entrants from installing a second wire that would increase subscriber choice and head-to-head competition"); Further Comments of Comcast, et al., at 13-14 (the only one that will have any additional choice of MVPDs is the MDU owner); Further Comments of Time Warner at 3, 7-8, 15-20 (proposal will not enhance consumer choice and, contrary to Congressional policies, they will encourage the removal and destruction of cable facilities).

[71]Further Comments of NCTA at 7-10, 14.

[72]Further Comments of GTE at 6-7. *But see* Further Reply of GTE at 17-18 (endorsing ICTA's proposals for shorter time frames).

[73]Further Comments of Comcast, et al., at 16-19.

[74]*See* Further Comments of ICTA at 7-8; Further Comments of RCN at 13; Further Comments of WCA at 12-13; Further Comments of Heartland Wireless at 4; Further Comments of SBC at 3-4; Further Comments of Ameritech at 2-4; Further Comments of Leaco at 3-4; Further Comments of Skyzone at 1; Further Comments of Echostar at 2-3; Further Comments of Building Owners, et al., at 7; Further Reply of ICTA at 8-9; Further Reply of Telebeam at 5; Further Reply of Media Access/CFA at 18; Further Reply of Ameritech at 9-10. *But see* Further Reply of Time Warner at 18-20 (shortening deadlines is a transparent attempt to burden incumbent's ability to protect its property rights); Further Reply of Jones Intercable, et al., at 4 (30 days is not too long to assess rights and take steps necessary to protect them or transfer wiring); Further Reply of Cox at 6.

immediately and a removal election would have to be implemented within seven days after the second provider gives notice to the incumbent that the replacement wire is installed and functional. ICTA proposes that, under a sale election, the parties would have 30 days to negotiate a price and, after an agreement is reached, the parties would have seven days to effectuate the sale on a per unit basis if there has been no lump sum purchase. If within the 30-day period, negotiations are terminated or if the 30-day period closes, the incumbent would have seven days to elect removal or abandonment. To speed negotiations, ICTA suggests that the incumbent provider be required to include its asking price at the time of its written election for a sale.[75]

26. Community Associations Institute, on the other hand, suggests that a longer notice period might be appropriate for deciding the sale of wiring and negotiating a price.[76] Community Associations Institute suggests that community association boards be allowed to make an initial election regarding the desire to purchase wiring on day 30, or as soon thereafter as the association board is able to meet, and that the negotiation period be extended to 60 days after the date of the board's decision with transfer of ownership on the earlier of (1) 30 days following the end of the negotiation period, or (2) the date of actual service termination.[77] Community Associations Institute also believes that, under the unit-by-unit procedure for the disposition of home run wiring, MDU owners should be allowed to decide whether they or the alternative provider will purchase the wiring when the subscriber declines to do so on day 60, after they have received the per foot replacement cost from the incumbent, rather than on day one.[78]

27. With regard to imposing penalties for an incumbent's failure to fulfill a removal election, SBC argues that the incumbent's desire to maintain good will in the community obviates the need to adopt such penalties.[79] Several commenters, however, recommend imposing steep fines on cable operators that, in an effort to discourage MDU owners from switching providers, falsely elect the removal option when they have no intention of removing the wire.[80] Nat'l Assn. of Realtors recommends that the Commission

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[75]Further Comments of ICTA at 7-8.

[76]Further Comments of Community Associations Institute at 11-14; Further Reply of Community Associations Institute at 9-10.

[77]Further Comments of Community Associations Institute at 13.

[78]*Id.* at 13-14.

[79]Further Comments of SBC at 4-5.

[80]*See* Further Comments of WCA at 5-7 (proposing a minimum forfeiture of $500 per unit and a minimum total forfeiture of $27,000); Further Comments of Heartland Wireless at 5-6 (endorsing WCA's proposal); Further Comments of Ameritech at 5-6 (incumbents that elect to remove their wiring and then abandon it should be required to pay the alternative provider three times the amount the alternative provider paid to install a second set of home run wires); Further Comments of RCN at 13-14 (suggesting a fine of $25,000 per day for continuing violations); Further Comments of OpTel at 4 (asserting that the Commission should initiate forfeiture proceedings in cases where MVPDs willfully or repeatedly mislead others with respect to the disposition of home run wiring); Further Comments of ICTA at 8-9 (suggesting a minimum fine of $27,000 each time an incumbent fails to honor its election and a minimum fine of $15,000 each time an incumbent fails to comply with a time deadline); Further Comments of GTE at 9-10 (stating that, if an alternative provider relies on an incumbent's false claim that it will remove the wiring, the incumbent should be required to reimburse the alternative provider for all costs incurred in installing duplicative

give MDU owners the right to have incumbent service providers remove all wiring belonging to the incumbent provider that cannot be used by the owner or the incoming provider.[81]

28. In their reply comments, cable operators generally oppose any rule that would make an election to remove irrevocable or that would impose any penalty on an incumbent's failure to remove its wiring after electing to do so. Time Warner and NCTA argue that to make a removal election irrevocable would interfere with the parties' ability to reach a negotiated settlement after such an election.[82] In addition, NCTA argues that the Commission's existing complaint procedures can address the issue of penalties on a case-by-case basis.[83]

29. Several parties support the adoption of a general rule requiring the parties to cooperate in good faith to ensure a seamless transition in order to protect new entrants against anticompetitive tactics not otherwise covered by the Commission's rules.[84] RCN proposes that an incumbent not be allowed to remove or disable any equipment until the earlier of the date upon which the alternative provider is ready to initiate service or 30 days after the incumbent elects to abandon or remove the wiring.[85] ICTA urges

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cable wiring); Further Comments of CEMA at iii, 7, 9, 14 (arguing that, if the proposal is to succeed, the Commission must implement enforcement mechanisms such as the imposition of penalties to deter misuse of the proposed procedural mechanisms); Further Comments of DIRECTV at 12-13 (arguing that, while a monetary penalty may help to discourage some incumbent operators from electing to remove home run wiring and then abandoning it, the penalty will not inhibit incumbents that are simply attempting to threaten MDU owners with disrupted service or damage to the physical structure of the MDU); *see also* Further Comments of Summit at 1.

[81]Further Comments of Nat'l Assn. of Realtors at 1 (stating that when providers abandon wiring, it forces the MDU owner to bear the cost of removal, and face the safety hazards associated with abandoned obsolete wiring).

[82]Further Reply of Time Warner at 15-17 (also arguing that the ability to remove is not always within the sole control of the incumbent); Further Reply of NCTA at 11-12.

[83]Further Reply of NCTA at 11-12.

[84]Further Comments of OpTel at 2, 5 n.7; Further Comments of RCN at 14; Further Comments of WCA at 11-12; Further Comments of Skyzone at 1 (the time periods set forth in the proposed procedures will help ensure a seamless transition between providers).

[85]Further Comments of RCN at 14; *see also* Further Comments of Building Owners, et al., at 7-8 (incumbent operators must have an obligation not only to cooperate but to provide service until the new provider is able to commence operations in the building); Further Comments of Community Associations Institute at 18 (rules should help ensure as seamless a transition between service providers as possible); Further Comments of EchoStar at 2 (incumbent should be required to continue service until the expiration of the MDU owner or tenant notice termination date, unless both the incumbent provider and the alternative service provider agree in writing on a different date); Further Comments of Philips, et al., at 4-5, 16-17 (Commission must require the incumbent to provide service until the new provider is in a position to offer full and complete service); Further Comments of Summit at 1-2 (incumbent should be required to continue service until a minimum of 90 days after the question of wiring ownership is decided, or earlier if the MDU owner requests earlier service termination); Further Comments of WCA at 12 n.23 (incumbents should not be permitted to remove wiring until the new provider has installed its own wiring or to disable abandoned wiring). *But see* Further Reply of Time Warner at 20-21 (with no valid contract, incumbent has no assurance of being compensated for service; especially unreasonable to require continuation of service until new provider builds facilities, which is beyond incumbent's control); Further Reply of Cox at 7 (if incumbent elected to remove wiring,

the Commission to clarify that "any service termination by the incumbent provider prior to the end of the established date certain cannot abrogate any contractual right of the MDU owner and that such termination cannot occur in advance of the alternative service provider's initiation of service" (unless both the incumbent and alternative provider agree in writing on a different date certain).[86] ICTA argues that allowing the incumbent to terminate service before the end of the notice period would cause a disruption in service and thus discourage MDU owners from switching providers.[87] Building Owners, et al., suggest that, in order to assure proper performance during removal of the wiring and restoration of the building, the Commission require that the incumbent post a security bond worth twice the value the operator sets for the wiring.[88]

30. DIRECTV believes that in order for the proposed rules to be effective: (1) the incumbent must remove the wiring in its entirety without disabling the ability of other providers to connect new home run wiring; (2) incumbents must be required to coordinate removal of the home run wiring with the MDU owner so that the new provider can lay new wiring before the old wiring is removed; (3) restoration should not occur until the new home run wiring is installed; and (4) the MDU owner must be allowed to restore the building itself and charge the incumbent all reasonable restoration costs, if the incumbent completes removal before the new MVPD is ready to replace the wiring.[89]

31. In reply, NCTA argues that state courts should decide whether and in what circumstances incumbents have a duty to restore a building after termination, and whether and to what extent damages are appropriate.[90] Time Warner proposes that, instead of a restoration requirement, the Commission simply require the removing MVPD to "repair any damages to the MDU building directly caused by negligent removal of such wiring," similar to the standard in Section 621(a)(2)(C) of the Communications Act.[91] Cable operators argue that the proposal to require a performance bond is merely an effort to restrict the incumbent's ability to remove the wiring, in the hope of receiving a windfall,[92] and that there is no evidence that failure to repair damage is a problem.[93]

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it is up to new provider to ensure seamless service, not incumbent).

[86]Further Comments of ICTA at 3-5.

[87]*Id.*

[88]Further Comments of Building Owners, et al., at 4-5; *see also* Further Comments of Community Associations Institute at 14-15; Further Comments of ICTA at 5-6; Further Comments of RCN at 14-15 (post bond worth three times the cost of removal and restoration); Further Reply of Media Access/CFA at 18.

[89]Further Comments of DIRECTV at 14-15.

[90]Further Reply of NCTA at 12-13; *see also* Further Reply of Jones Intercable, et al., at 5 (private contracts and state law already provide MDU owners with adequate modes of protection against property damage by MVPDs).

[91]Further Reply of Time Warner at 18.

[92]Further Reply of Time Warner at 17-18; Further Reply of TCI at 7.

[93]Further Reply of Time Warner at 17-18; Further Reply of Comcast, et al., at 7-8.

32. Media Access/CFA argues that because the removal option would allow incumbents to add cost and delay to the commencement of an alternative service, removal or abandonment should not become options unless the subscriber, MDU owner, and alternative provider have declined to purchase the wiring.[94] GTE argues that since access to molding and conduits is essential to effectuate access to cable wiring, the Commission must clarify that incumbents are required to transfer or relinquish all rights in molding or conduit when they sell, remove, or abandon their wiring.[95]

33. DIRECTV believes that, if the Commission fails to move the demarcation point, it should at least apply the rules adopted for home wiring to home run wiring so that cable operators will be required to offer to sell home wiring to the subscriber at the replacement cost of the wire.[96] DIRECTV would define the replacement cost for wiring tendered at the conclusion of the contract term as the salvage value, while it would define the replacement cost for wiring tendered at any other time as the wholesale replacement cost.[97] DIRECTV states that the rules should also provide the option for an incumbent to sell the wiring at a nominal price or abandon it, and that removal should only occur after an offer for sale has been declined.[98]

34. Media Access/CFA claims that, by impeding viewers' access to a multiplicity of news and information sources, the proposed framework would contravene the First Amendment, Section 624 of the Communications Act, and Section 207 of the 1996 Act.[99] Media Access/CFA argues that this proceeding and the Commission's Section 207 proceeding are interdependent and must be considered together because a viewer's ability to install an over-the-air reception device under Section 207 is meaningless without access to inside wiring.[100] Similarly, NAB argues that the Commission's proposals overlook the fact that Section 207 grants individual viewers the right to access over-the-air broadcast signals including, if necessary, via a rooftop antenna.[101]

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[94]Further Comments of Media Access/CFA at 14-16; *see also* Further Comments of DIRECTV at 11; Further Reply of Nat'l Rural Telecom. Coop. at 4-5 (removal should not be an option); Further Reply of Bell Atlantic at 3-4 (same).

[95]Further Comments of GTE at 15-16.

[96]Further Comments of DIRECTV at 10.

[97]*Id.* at 10-11.

[98]*Id.* at 13.

[99]Further Comments of Media Access/CFA at 2-3.

[100]*Id.* at 4-7; *see also* Further Reply of Nat'l Rural Telecom. Coop. at 3-4 (MDU residents are entitled to subscribe to DBS service); Further Comments of Philips, et al., at 2-4 (arguing that the rules resulting from implementation of Section 207 and the inside wiring provisions must work together if they are to succeed); Further Comments of DIRECTV at 3-4 (proposing that the Commission rule in either this proceeding or in the proceeding under Section 207 that MDU owners have to make one or more alternative MVPD services available to building residents).

[101]Further Comments of NAB at 5-7.

2. Discussion

a. The MDU Competitive Environment

35. We continue to believe, as discussed at length in the *Inside Wiring Further Notice*, that more is needed to foster the ability of subscribers who live in MDUs to choose among competing service providers.[102] As we found in the *Inside Wiring Further Notice*, 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.[103] 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.[104]

36. We also continue to 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,[105] 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.[106] We continue to believe that the impact is

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[102]*Inside Wiring Further Notice* at paras. 25-31.

[103]*Id.* at para. 25.

[104]*See, e.g.*, OpTel Reply Comments at 6; Media Access/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 service providers.").

[105]*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).

[106]*See Inside Wiring Further Notice* at para. 26; *see also* 1992 House Report at 118; S. Rep. No. 92, 102d Cong., 1st Sess., (1991) ("1992 Senate Report") at 23; *Cable Home Wiring Further Notice*, 11 FCC Rcd at 4570 (citing *Cable Wiring Order*, 8 FCC Rcd at 1435). We make no findings here regarding the rights of viewers under Section 207 of the 1996 Act to receive video programming services. Those rights are the subject of an ongoing Commission proceeding. *See Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, CS Docket No. 96-83 and IB Docket No. 95-59 (In the Matter of Preemption of Local Zoning Regulation of Satellite Earth Stations and In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996,

substantial. As of 1990, there were almost 31.5 million multiple dwelling units in the United States, comprising approximately 28% of the total housing units nationwide.[107] 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.[108] 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.[109]

37. Although some cable operators argue that the current cable demarcation point rule should be maintained in order to encourage property owners to permit the installation of multiple sets of wires,[110] the record does not demonstrate that the current cable home wiring rules, having been in place for four years, provide adequate incentives for MDU owners to permit the installation of multiple home run wires.[111] In its most recent comments, Time Warner asserts that over 104 MDU buildings in Manhattan have opted to allow two-wire competition in the first eight months of 1997, bringing the total to 247 such MDUs.[112] While we do not dispute Time Warner's count, we note that Time Warner has not provided any estimate of the total number of MDUs in Manhattan, nor has Time Warner challenged our stated belief in the *Inside Wiring Further Notice* that the presence of multiple wires in MDUs is substantially due to the existence of state mandatory access statutes (such as New York's) and not to a desire for multi-wire competition on the part of property owners.[113] Even assuming that this belief is incorrect and MDU owners perceive a competitive benefit to two-wire competition, there is nothing in the procedures we adopt today that will prevent or impair an MDU owner's ability to insist that all MVPDs install their own home run wiring.

38. As set forth in the *Inside Wiring Further Notice*,[114] 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

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Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service), 11 FCC Rcd 19276 (1996).

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

[108]*Id.*

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

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

[111]*See Inside Wiring Further Notice* at paras. 27-30.

[112]Further Comments of Time Warner at 11 n.21.

[113]*See Inside Wiring Further Notice* at paras. 27-31; *see also* Further Comments of Cablevision Systems at 6 (stating that the Commission misconstrued cable operators' arguments and evidence regarding two-wire competition in states with mandatory access statutes and that they did not argue that MDU owners favor two-wire competition, but only that they submitted evidence to show that two-wire competition is possible); Further Comments of Adelphia, et al., at 24; Further Comments of Jones Intercable, et al., at 10; Further Comments of Time Warner at 12 ("multiwire competition in MDUs flourishes in mandatory access states").

[114]*Inside Wiring Further Notice* at para. 31.

competition through varied and improved service offerings, the incumbent provider often invokes its alleged ownership interest in the home run wiring.[115] Incumbents invoke written agreements providing for continued service,[116] perpetual contracts entered into by the incumbent and previous owner,[117] easements emanating from the incumbent's installation of the wiring,[118] assertions that the wiring has not become a fixture and remains the personal property of the incumbent,[119] or that the incumbent's investment in the wiring has not been recouped, and oral understandings regarding the ownership and continued provision of services.[120] Written agreements are frequently unclear, often having been entered into 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.[121] The result, regardless of the cable operators' motives, is to chill the competitive environment.

b. Procedures for the Disposition of Home Run Wiring

39. In this *Order*, we 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 our 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.

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[115]*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").

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

[117]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).

[118]*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).

[119]*Id.*

[120]*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).

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

40. As we noted in the *Inside Wiring Further Notice*,[122] alternative video service providers currently 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.[123] 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. This dilemma can impede competition by discouraging MDU owners from considering a change in service. The procedures we are adopting 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 clarify that riser cable is not covered by the following procedures.[124] We conclude that 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.

(1) *Building-by-Building Procedures*

41. We adopt the following rule: 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' written notice[125] that the provider's access to the entire building will be terminated.[126] The incumbent provider will 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 consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first;[127] (2) to abandon and not disable the

[122]*Inside Wiring Further Notice* at para. 33.

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

[124]*See* Further Comments of TCI at 4, 21-22.

[125]We believe that it is reasonable to require, and thus our rules will require, that MDU owners that wish to avail themselves of these procedures notify the incumbent providers of termination of service for the entire building in writing. *See* Further Comments of Jones Intercable, et al., at v, 19-20.

[126]By adopting this procedural mechanism, we do not intend to affect any contractual rights the parties may have to terminate service in a different manner.

[127]We decline to adopt the proposal of Media Access/CFA that removal should not be an option unless the MDU owner, subscriber, and alternative provider all decline to purchase wiring. Further Comments of Media Access/CFA at 15; *see also* Further Comments of Summit at 1. We think this would prolong the process without accruing parallel benefits.

wiring at the end of the 90-day notice period;[128] or (3) to sell the wiring to the MDU owner.[129] If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative video service provider to purchase it. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider will be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service.

42. Certain cable operators argue that the proposed procedures should not apply when an MDU owner terminates service for an entire building.[130] These commenters assert that these circumstances do not engender a competitive choice for each resident. We disagree that the building-by-building procedural mechanism does not benefit consumer choice because it merely substitutes one MVPD for another. This argument assumes that any MVPD that serves the entire building has the ability to act like an entrenched monopolist, without regard to the quality and quantity of the video service provided. We do not believe this assumption is valid. Generally, MVPDs encounter an environment in which the MDU owner must compete with similarly-situated MDU owners to attract and retain tenants. Commenters have not demonstrated that the type of video services offered is irrelevant to such competition among MDUs. MVPDs competing for the right to serve the building generally will have to offer the mix of video service quality, quantity and price that will best help the MDU owner compete in the marketplace.

43. Where the incumbent provider elects to sell the home run wiring, we will allow the parties to negotiate the price of the wiring. We agree with commenters that argue market forces will provide adequate incentives for the parties to reach a reasonable price, particularly in these circumstances where

[128]As we proposed in the *Inside Wiring Further Notice*, if the incumbent elects to abandon the wiring, its ownership will be determined as a matter of state law. *See* Further Comments of Time Warner Comments at 64 (asking that the Commission use the phrase "leave the home wiring in place without disabling such wiring" rather than "abandon and not disable the wiring" because the term abandon has legal implications under state law and the Commission should not interfere with state law). In addition, Time Warner asks the Commission to clarify what "abandon without disabling" means and to clarify that the operator should be permitted to remove its amplifiers, taps, splitters, etc., that are attached to but not part of the home run wiring. Further Comments of Time Warner at 14 n.25. We find that passive devices including splitters, as in the cable home wiring context, should be considered part of the home run wiring. *See* 47 C.F.R. § 76.5(ll). While the operator may remove its amplifliers or other active devices used in the wiring, it may do so if an equivalent replacement can easily be reattached. Our decision in this proceeding assumes adherence to standards of good faith that are necessary elements of an orderly transition. In addition, we will require the party removing any active elements to comply with the notice requirements and other rules regarding the removal of home run wiring.

[129]Although we decline to adopt GTE's proposal that incumbents must transfer or relinquish all rights in molding or conduit when they sell, remove or abandon their wiring (*see* Further Comments of GTE at 15-16), we will prohibit incumbent providers from using any ownership interests they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede or in any way interfere with the ability of an alternative MVPD to use the home run wiring. *See* 47 C.F.R. § 76.802(j) (same prohibition with regard to cable home wiring).

[130]Further Comments of Adelphia, et al., at 17-20, 30; Further Comments of Comcast, et al., at 4-8; Further Comments of Time Warner at 3, 34-35, 39-41; *see also* Further Comments of Leaco at 2-3. *But see* Further Comments of Summit at 1.

the incumbent has no legally enforceable right to remain on the premises.[131] The parties will have 30 days from the date of the incumbent's election to negotiate a price for the home run wiring. The parties may also negotiate to purchase additional wiring (e.g., riser cables) at their option.[132] If the parties are unable to agree on a price, the incumbent will then be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert.[133] If the incumbent fails to comply with any of the deadlines established herein, it will be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment will become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it will have to do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

44. At this time we decline to establish a penalty for an incumbent provider that fails to remove wiring after electing to do so, or, for that matter, for any other party that violates our cable inside wiring rules. As a result, we do not need to establish any particular penalty amounts. We think that our procedures and present and future opportunities provided by the market will afford all parties the necessary incentives to create an effective and efficient transition. We expect all parties participating in the procedures for the disposition of home run wiring to cooperate and act in full compliance with our rules and the policies underlying them. Similarly, at this time we will not require the incumbent to post a performance bond prior to removal. There is not sufficient evidence to conclude that a significant problem will exist, or that MDU owners are unable to protect their interests pursuant to contract or state law.

45. If the incumbent chooses to abandon or remove its wiring, it must 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. In addition to this and other notice requirements, we will adopt a general rule requiring the parties

[131] *See* Further Comments of ICTA at 6-7; Further Comments of Heartland Wireless at 6; Further Comments of RCN at 13; Further Comments of SBC at 4-6; Further Comments of GTE at 10-11; Further Comments of OpTel at 4; Further Comments of Building Owners, et al., at 3-4, 8-9; Further Reply of ICTA at 9-11; Further Reply of OpTel at 4-5; Further Reply of GTE at 19-20. *But see* Further Comments of Adelphia, et al., at 26-27; Further Comments of NCTA at 22-24; Further Comments of Time Warner at 13-15 (all claiming that because the incumbent must remove or abandon the wiring if negotiations fail, establishing the price by negotiation would give the MDU owner and alternative providers undue leverage, and generally asserting that, if the MDU owner is not required to purchase the home run wiring, the MDU owner will stall negotiations, hoping that the incumbent provider will decide to abandon the wiring because removal and restoration would be too expensive, thus giving the wiring to the MDU owner for free); Further Comments of Summit at 1 (incumbent does not have the incentive to negotiate a fair price). Time Warner also contends that, because the incumbent would not want to let its competitor have the wiring for free, the Commission's proposed procedures encourage removal of wiring, which is contrary to Congressional goals. Further Comments of Time Warner at 13-15, 38; *see also* Further Comments of Adelphia, et al., at 27.

[132] As stated above, our procedures do not apply to riser cable in that the incumbent provider is not required to sell, remove or abandon its riser cable, but it does have the option of doing so if all parties agree. *See* Further Comments of TCI at 4, 21-22.

[133] *See* Further Comments of Adelphia, et al., at 28; Further Comments of Time Warner at 38-39 (if negotiations fail, the matter should be submitted to binding arbitration or alternative dispute resolution).