

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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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

CONSOLIDATED RESPONSE OF OPTEL, INC.

OpTel, Inc. ("OpTel"), submits this consolidated response to the petitions for reconsideration filed regarding the Commission's Report and Order (the "R&O"), released October 17, 1997, in the above-referenced proceeding.

DISCUSSION

The Commission has, over the course of several years, developed an extensive record in this proceeding regarding the competitive issues relating to the use and abuse of cable inside wiring. Following this in-depth review, and based upon literally thousands of pages of public comments and hundreds of hours of *ex parte* meetings, the Commission issued the R&O in which a variety of changes were made to the cable inside wiring rules. Perhaps most significantly, the R&O established a default procedure to govern the transition of one MVPD to another in multiple dwelling unit ("MDU") settings.

Despite the expansive record developed in this proceeding and the Commission's careful efforts to balance competing concerns while fulfilling its obligations under the law, several parties have filed petitions for reconsideration of the R&O — in many cases merely dredging up arguments that already have been rejected by the Commission — seeking, as it were, a second bite at the apple. No such second bite is warranted.



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Further, although a few parties offer helpful suggestions for minor modifications to the Commission's MDU inside wire transition procedures, the majority of the petitions seek changes that would fundamentally alter the balance struck in the R&O and, consequently, undermine the substance of the inside wiring rules. On this basis, and with the exceptions described below, the Commission should dismiss the petitions for reconsideration of the R&O filed in this proceeding.

I. A Minor Modification To The Commission's New MDU Inside Wire Procedures Would Smooth MVPD Transitions And Promote Competition.

OpTel agrees with those petitioners who have advocated minor changes to the Commission's new inside wire transition procedures to help ensure that service changes are transparent to the customer.¹ As noted by these petitioners, the current rules allow incumbents to remove home run wiring prior to the installation of new wiring by an alternative MVPD and, therefore, provide incumbents with an opportunity to discourage MDU owners from electing to switch service providers. The Commission should, therefore, amend its rules to prohibit incumbents from terminating service prior to the time at which the new provider is able to provide service.

II. The Commission Should Reject Efforts Of Franchised Cable Operators To Resurrect Arguments That have Already Been Rejected.

Several franchised cable interests have petitioned the Commission for reconsideration of the R&O merely, it appears, to reargue positions that already have been considered in detail by the Commission and rejected on their merits.² None of these petitioners, however, has offered a compelling reason for the Commission to reexamine its conclusions in the R&O. In fact, there is none.

The R&O was not a casually drafted item. To the contrary, the R&O was the product of an extensive rulemaking record and an administrative review that lasted

¹ See Petition for Partial Reconsideration of Ameritech at 6-9, Petition for Reconsideration of the Wireless Cable Association at 15; Petition for Reconsideration of DirecTV at 5. OpTel does not agree, however, with the assumption of WCA that the new transition rules provide incumbents with a federal access right if an MDU owner refuses to engage in binding arbitration regarding the sale of home run wiring. See WCA Petition at 8. Naturally, where the cable operator has no statutory or other legal right to remain on the premises, a property owner may always evict the cable operator, whether or not the property owner is switching to an alternative provider.

² See Petition for Reconsideration of the North Carolina Cable Telecommunications Association; Petition for Reconsideration of the National Cable Television Association; Petition for Reconsideration of Time Warner Cable.

more than two years. The calls of the franchised cable interests, therefore, for “reconsideration” of issues such as the application of the rules in so-called “mandatory access” states, which the Commission considered at length and addressed specifically in the R&O, ring hollow. Further delay or reconsideration of these procedures will only impede the development of competition, undermine consumer welfare, and allow incumbent providers to become further entrenched in the market. The Commission should, therefore, reject these petitions outright.

III. The Commission Should Dismiss Petitions Seeking A Fundamental Reconsideration Of Its Pro-Competitive Approach In The R&O.

One petitioner — the Media Access Project (“MAP”) — has requested more than modifications in the transition procedures and has asked, instead, for a fundamental reconsideration of the pro-competitive approach taken in the R&O. This petition too, though well-intentioned, should be dismissed.

At bottom, MAP’s complaint is that the Commission’s new transition rules allow property owners (in many cases) to determine who will have access to their property in order to provide service to those that live on the property. As it has throughout this proceeding, MAP has argued that individual consumers should, in all cases, have the option of using the MVPD service provider of their choice.

As OpTel and others have explained before, however, an undue emphasis on individual unit-by-unit competition actually will have the perverse effect of diminishing competition in the market generally. For the same reasons that competitors are not rushing to overbuild entire communities, few new entrants will endeavor to install facilities in MDUs solely to compete against an entrenched incumbent provider on an subscriber-by-subscriber basis. Indeed, given the risk versus reward trade-off involved, the capital markets simply will not support such an effort.

The choice, therefore, is not between competition at the MDU level versus competition at the MDU-resident level; the choice faced by the Commission and properly resolved in the R&O, is between competition at the MDU level versus little or no competition at all in the vast majority of markets. The approach taken in the R&O is, in fact, pro-competition and pro-consumer.

CONCLUSION

With the exceptions noted above, OpTel urges the Commission to deny the petitions for reconsideration filed in this matter.

Respectfully submitted,

OPTEL, INC.

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January 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Response of OpTel, Inc. was sent by first-class mail, postage prepaid, this 15th day of January, 1998, to each of the following:

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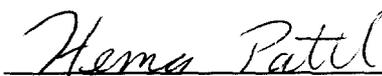
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