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	)	

JOINT REQUEST FOR OFFICIAL NOTICE OF
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
NATIONAL REALTY COMMITTEE
NATIONAL MULTI HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION
INSTITUTE OF REAL ESTATE MANAGEMENT
NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS
INTERNATIONAL COUNCIL OF SHOPPING CENTERS

The joint commenters, representing the owners and managers of multi-unit properties,[1] request that the Commission take official notice of certain comments filed by other parties in the Commission's rulemakings in IB Docket No. 95-59 and CS Docket No. 96-83.

In their Inside Wire Comments, the joint commenters argued that granting service providers the right to enter buildings and install their facilities without the consent of the building

[1] The Building Owners and Managers Association International, the National Realty Committee, the National Multi Housing Council, the National Apartment Association, the Institute of Real Estate Management, and the National Association of Real Estate Investment Trusts filed joint comments in this docket on March 18, 1996 (the "Inside Wire Comments"), and reply comments on April 17, 1996. The International Council of Shopping Centers filed separate comments on March 18, 1996.

owner or manager would constitute a taking under the Fifth Amendment, within the holding of Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). In IB Docket No. 95-59 and CS Docket No. 96-83, several representatives of the telecommunications industry have stated that granting third-party service providers the unilateral right to install DBS, MMDS and over-the-air television receiving antennas and related facilities, without the consent of the building owner or manager, would constitute a taking under Loretto. See Comments of DIRECTV, Inc., filed September 27, 1996, at 9-10; Comments of United States Satellite Broadcasting Co., Inc., filed September 27, 1996, at 7; and Comments of the Wireless Cable Association, International, filed September 27, 1996, at 5. Copies of the foregoing comments are attached.

We urge the Commission to take note of the attached comments in its consideration of the analogous issues raised in this docket.

Respectfully submitted,

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December 27, 1996

Attachments: Comments of DIRECTV, Inc., in IB Docket No. 95-59 and CS Docket No. 96-83 filed, September 27, 1996.
Comments of United States Satellite Broadcasting Co., Inc., in IB Docket No. 95-59 and CS Docket No. 96-83, filed September 27, 1996.
Comments of the Wireless Cable Association, International, in IB Docket No. 95-59 and CS Docket No. 96-83, filed September 27, 1996.

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10

Before the
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Washington, D.C. 20554

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

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Introduction

The Building Owners and Managers Association International, the Institute of Real Estate Management, the International Council of Shopping Centers, the National Apartment Association, the National Association of Real Estate Investment Trusts, the National Multi-Housing Council, and the National Realty Committee (jointly, the "Real Estate Associations"), pursuant to Section 1.429(f) of the Commission's rules, hereby oppose the petitions for reconsideration of the Media Access Project and the Consumer Federation of America ("MAP/CFA"); the North Carolina Cable Television Association ("NCCTA"); and Time Warner Cable ("Time Warner"). The petitions for reconsideration are based in part on incorrect statements and assumptions about the nature of competition in the MDU video programming

market and the role of building owners and managers in that market. Consequently, their conclusions are flawed and must be rejected. In addition, MAP/CFA argues that the Commission should have applied Section 207 of the Telecommunications Act of 1996 and other extraneous policy considerations in this proceeding. This argument is equally flawed.

I. IT IS THE ECONOMICS OF PROVIDING VIDEO SERVICE IN APARTMENT BUILDINGS -- NOT THE DESIRES OF BUILDING OWNERS -- THAT DEFINES COMPETITION IN THE MDU MARKET.

The petitions for reconsideration assert that building owners act as "bottlenecks" to competition and that the only way to bring competition to the video programming market is to deny building owners the right to determine which providers may serve their buildings. Time Warner Petition at 9-11; NCCTA Petition at 5-6; MAP/CFA Petitions at 3, 7. They assert that the profit motive will cause building owners to ignore the best interests of their residents. The Commission, on the other hand, has recognized that the profit motive is actually an inducement to meeting the needs of residents, not an obstacle. *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC No. 97-376 (released October 17, 1997) (the "Home Wiring Order") at ¶ 61. We ourselves have made this point on a number of occasions.[1] We urge the Commission to stand by that conclusion, and we submit this opposition simply to assure the Commission that the basis for its original decision remains valid.

The Commission should also bear in mind that the difficulty of promoting competition in the MDU market is not the result of disincentives on the part of building owners but of disincentives on the part of programming providers. As we demonstrated in our recent Further

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[1] Joint Comments of the Real Estate Associations in CS Docket No. 95-184 (filed Mar. 18, 1996) at 18-26; Joint Reply Comments (filed Apr. 17, 1996) at 2-5; Further Joint Comments in CS Docket No. 95-184 and MM Docket No. 92-260 (filed Sep. 25, 1997) at 8.

Before the
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In the Matter of	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992:	)	MM Docket No. 92-260
Cable Home Wiring	)	

JOINT COMMENTS OF
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
NATIONAL REALTY COMMITTEE
NATIONAL MULTI HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION
INSTITUTE OF REAL ESTATE MANAGEMENT AND
NATIONAL ASSOCIATION OF HOME BUILDERS

Summary

The Commission's authority to regulate cable inside wiring under Section 16(d) of the 1992 Cable Act is severely limited by the statutory text and by the varied state property laws subject to which it operates. Consequently, Section 16(d) does not allow the Commission to comprehensively regulate the disposition of such wiring. Rather than attempting to use the rules to give all subscribers the right to acquire wiring, the Commission should concentrate on regulating the abandonment of wiring by cable operators. The gaps in the Commission's authority are exacerbated by the disparate treatment of inside wiring under different state laws, as well as the many contractual provisions between service providers and building owners. The result is that any attempt to further regulate this area would create

disparate effects on different classes of subscribers and would prove extremely difficult to administer.

Indeed, to the extent that the Commission's current rules authorize rental apartment residents to purchase home wiring, the Commission has already entered this morass. The Commission appears to have recognized this, at least in part, by seeking comment on the disposition of wiring when a subscriber vacates his or her premises before the operator has had a chance to remove it. In light of the complications and absurd results produced by the current rules, we believe this would be an appropriate time for the Commission to take another look at the true benefits to apartment residents of the current rules. In any event, the Commission should not extend its current rules to include loop-through wiring, nor should it bar further installation of loop-through wiring.

Any regulatory scheme must take into account the legal and factual differences among apartment residents, cooperative residents, and condominium owners. They form three distinct categories, each with different legal rights and obligations and each raising different management concerns for building operators. No single rule could equitably address all three categories.

Apartment residents in particular do not benefit from the right to acquire non-loop-through cable home wiring provided by the current rules, nor would they benefit from the right to acquire loop-through wiring. Not only do they not have a long-

term interest in the property, but as a practical matter, under the statute they normally would have the right only to acquire wiring at the same time that they are leaving the unit. Thus the right does them no good. Even in those cases in which a resident remains in an apartment after terminating service, her or she has no interest in acquiring the wiring because there is no mechanism for recovering the cost of wiring when he or she does leave. Finally, to the extent video programming is delivered to the resident's premises through common spaces under the ownership and control of the building owner, ownership of the wiring in the demised premises, standing in isolation, is of no use to the individual resident at all.

Requiring building owners to acquire wiring at the behest of residents does not solve these problems. Apartment building operators must retain full control over their properties, including discretion regarding which service providers have access. In addition, the Commission has no authority to require building owners to buy wiring under any circumstances, nor to admit a service provider to ducts, conduits, and wire closets in common areas against the owner's will.

There are only two logical models for governing the ownership of inside wiring in an apartment building: the wiring may be owned either by the building owner or by the service provider. In fact, as the Further Notice of Proposed Rulemaking recognizes, both models exist today.

It is only the case in which the service provider owns the

wire that concerns the Commission, but here also the Commission would do well to leave the matter to the private sector. It is not clear whether incumbent operators are more concerned with preventing a true economic loss, or with stifling competition. If leaving wire behind represents only a small loss, the Commission is being asked to intervene for no good reason. But if it is significant, regulation might implicate the Fifth Amendment. Rather than run those risks -- or attempt to impose substantial new costs on building operators -- the Commission should leave well enough alone.

Building owners already have the ability to negotiate with cable operators to acquire inside wiring, and neither need nor want Commission protection. For their part, cable operators are rational businessmen, and capable of protecting their own interests. That they may have failed to do so in some instances does not mean the Commission is obliged to step in.

Cooperatives should be treated in the same manner as apartment buildings. The owners as a group can best determine how inside wiring in the building is to be managed. Condominium owners, however, should be treated in the same manner as owners of single family dwellings for purposes of wiring in their individual units. Wiring in common areas should be under the management of the condominium association, unless otherwise provided by state law or private contract.

In sum, further Commission regulation of cable home wiring is unnecessary, and the Commission should take another look at

the practical effects and disparities created by its current rules.

12

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In the Matter of	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992:	)	MM Docket No. 92-260
Cable Home Wiring	)	

JOINT REPLY COMMENTS OF
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
NATIONAL REALTY COMMITTEE
NATIONAL MULTI HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION
NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS
AND INSTITUTE OF REAL ESTATE MANAGEMENT

Introduction

The joint commenters, representing the owners and managers of multi-unit properties, urge the Commission not to further amend its rules to require owners of multiple dwelling units ("MDU's") to acquire cable home wiring under any circumstances, as has been suggested by various commenters. The Commission should also recognize that any demarcation point must be set with protection of the owner's property interests in mind. Any issues regarding ownership or access are best addressed by private contract, not by additional Commission regulations. The marketplace continues to be the most effective and efficient means of governing the interactions of cable operators, building owners and subscribers with respect to cable home wiring.

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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

FURTHER JOINT COMMENTS OF
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
INSTITUTE OF REAL ESTATE MANAGEMENT
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
NATIONAL APARTMENT ASSOCIATION
NATIONAL MULTI HOUSING COUNCIL AND
NATIONAL REALTY COMMITTEE

Summary

The joint commenters recognize that the proposed amendments to the Commission's cable home wiring rules and the proposed new home run wiring regulations are intended, in part, to benefit building owners and managers by making it easier for them to introduce competition for video programming services in their buildings. We support the Commission's goal of enhancing competition and would welcome an approach that advances that goal. To that extent, the joint commenters applaud the Commission's efforts and support the proposed rules.

It is not clear, however, that the Commission has the authority to adopt the rules. The Commission has no jurisdiction over building owners as building owners. It also appears that the Commission has overstated its authority under Sections 624(i), 623(b) and 4(i). The joint commenters do not believe that any of those sections, singly or in combination, gives the Commission the authority to alter the substantive rights of building owners under state law or contract or to exercise jurisdiction over them in any way.

To the extent that the Commission does have authority to adopt the rules, they present a number of practical problems:

- Incumbent operators must be required to post bond before removing wiring. This will greatly reduce the likelihood that cable operators will act carelessly in removing wiring.
- Operators should not be permitted to abandon wiring without the consent of the building owner. Why should the building owners be required to bear the expense of removing accumulated and unwanted wiring?
- Access to molding and conduit should be permitted only with the prior consent of the building owner, to ensure that cable operators notify owners of their presence and to prevent a taking of the conduit.
- The Commission should clarify that the rules are not intended to preempt or supersede state law or contract rights.
- The Commission should shorten the notice requirements and other deadlines.
- Incumbent operators should have an affirmative obligation to provide service until the new provider is ready to begin operations in the building.

The joint commenters are concerned that the Commission is unnecessarily inviting Fifth Amendment challenges by placing an artificial price on cable wiring, rather than letting the market determine the price. The ensuing legal challenges would likely impede progress toward a market-based solution.

The joint commenters see the Commission's proposal as only a first, but incomplete, step until evergreen contracts can be examined. Without "fresh look," the ultimate free-market solution, taking advantage of the natural forces of competition in the real estate market, cannot be achieved.

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INSTITUTE OF REAL ESTATE MANAGEMENT
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
NATIONAL APARTMENT ASSOCIATION
NATIONAL MULTI HOUSING COUNCIL AND
NATIONAL REALTY COMMITTEE

Introduction

The joint commenters agree with the many parties that have recommended modifying the rules proposed in the Commission's Further Notice of Proposed Rulemaking released August 28, 1997 (the "Further Notice") to make them more effective in promoting competition. In addition, we urge the Commission not to require building owners to assume ownership of wiring, but to allow building owners and video programming providers to resolve that issue as they see fit in

individual cases. The Commission should also ensure that any final rules are grounded in solid factual evidence and respect the limits of the Commission's lawful powers.

I. MANY COMMENTERS AGREE THAT TO BE EFFECTIVE THE PROPOSED RULES MUST BE REVISED IN SEVERAL RESPECTS.

In our Further Comments in these two dockets, filed September 15, 1997, we noted that for the proposed rules to achieve the Commission's goals they would need to be modified in several important respects. In their current form, they leave too much discretion in the hands of the incumbent video programming provider and do not adequately protect the interests of building owners. Many other commenters raised the same issues. There is broad agreement from commenters outside the cable industry that the proposed rules should be changed in the following ways:

- Incumbent operators must be required to post a bond before removing wiring. *See* Independent Cable & Telecommunications Association ("ICTA") Comments at 5-6; Community Associations Institute ("CAI") Comments at 14-15; Comments of RCN Telecom Service, Inc. ("RCN") at 15.

- Operators should not be permitted to abandon wiring without the consent of the building owner. *See* CAI Comments at 16.

- Access to molding and conduit should be permitted only with the prior consent of the building owner. *See* Comments of SBC Communications, Inc. ("SBC") at 6-7; Comments of GTE Service Corp. ("GTE") at 16.

- The Commission should shorten the notice requirements and other deadlines. *See* ICTA Comments at 7-8; CAI Comments at 11-14; SBC Comments at 3-4; RCN Comments at 13; Echostar Communications Corp. Comments at 2; Wireless Cable Association ("WCA") Comments at 12-13; Ameritech New Media ("Ameritech") Comments at 2-4.

- Incumbent operators should have an affirmative obligation to provide service until the new provider is ready to begin operations in the building. *See* ICTA Comments at 3-4; CAI Comments at 18; RCN Comments at 14; WCA Comments at 11-12.

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JOINT SURREPLY COMMENTS OF
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NATIONAL APARTMENT ASSOCIATION
NATIONAL MULTI HOUSING COUNCIL AND
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The Joint Commenters, through their attorneys, submit these Surreply Comments in response to issues raised by various parties in reply comments submitted pursuant to the Commission's Report and Order and Second Further Notice of Proposed Rulemaking in CS Docket No. 95-184 and MM Docket 92-260.

Once again, the Joint Commenters emphasize that we are not choosing sides in the continuing battle between the cable and SMATV industries. We are concerned only with ensuring that building owners are permitted to provide their residents with the services they

require. Given the complexity of the marketplace, the Commission would do best to avoid further regulation in this area.

To assist the Commission in understanding more fully the relationships among video programming providers, building owners, and building residents, the Joint Commenters offer the attached Declaration of Lyn C. Lansdale. Ms. Lansdale is Director of Resident Services of Avalon Properties, Inc., a multi-family residential real estate investment trust with operations in the Northeast, mid-Atlantic and Midwest. The Lansdale Declaration illustrates the complexity of the Commission's task.

The Lansdale Declaration also illustrates the flaws in arguments put forth by a number of parties. For example, it is not true, as stated in the Reply Comments of Adelphia Communications Corp., et al., that mandatory access statutes create more choices for residents. Adelphia Comments at 3. The evidence from the field is exactly the opposite. Lansdale Decl. at ¶¶ 11-13.

Time Warner states that the Commission's conclusion that building owners are more likely than cable operators to protect the interests of building residents is "naive." Time Warner Reply Comments at 2. Even the most basic discussion of the relationships among programming providers, building owners, and residents demonstrates that Time Warner is wrong. Property owners are in the business of pleasing tenants, and they know both what their tenants want and what they will not tolerate. Lansdale Decl. at ¶¶ 3, 6-8.

Ameritech states that our concern that without exclusive contracts some buildings might not have any kind of service is "vacuous" because franchised operators are required to build out their entire franchise areas. Ameritech Reply Comments at 7. This is incorrect. Not all franchises clearly require providers to serve any person that requests service. Furthermore, in the