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

In the Matter of	)	
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Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications of 1996	)	CC Docket No. 98-146

Reply Comments of RCN Telecom Services, Inc.

October 8, 1998

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Summary

RCN, alone and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or OVS services, primarily to residential subscribers. RCN employs a variety of technologies to offer these services in direct competition with many of the nation's largest, most well-established telephone and cable incumbents. Together with its corporate parent, RCN Corporation, RCN's capital budget in 1998 and 1999 for all of its telecommunications activities is estimated to be $850 Million. RCN has approximately 710,000 subscriber connections delivered through a variety of owned and leased facilities. RCN's business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one bundled offering. Generally, RCN offers these services, both in a package or individually, at rates lower than RCN's competitors.[1/]

RCN's current offerings include open video system ("OVS") service in the Boston and New York City markets, with initiation of OVS service in the Washington, D.C. market by year end 1998. Thereafter OVS services will be offered in northern New Jersey, and the Philadelphia and San Francisco urban areas. RCN also offers CLEC service and franchised cable service in the northeast corridor. As the owner of Erols and other ISPs, RCN is the largest regional internet service provider in the northeast. RCN's business plan is to provide these three services – video, telephone, and data,

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1/ For example, RCN's competitive local exchange service is generally priced five percent less than the incumbent local exchange carrier's.

over the same fiber optic facility. Construction of the distribution facility is well underway with plant functioning already in two markets.

In its tripartite service offerings, RCN competes with some of the nation's largest and most successful incumbents – Bell Atlantic, Time Warner Cable, Cablevision Systems, and MediaOne. Nevertheless, RCN believes that it can be successful in concentrating on serving the niche composed of residential customers who prefer to receive all of their telecommunications services from a single entity at rates more favorable than those being charged by the incumbents. RCN is confident its service offerings constitute advanced telecommunications capacity ("ATC") and that, if fair competitive conditions exist, RCN will be able to compete with a minimum of regulatory oversight.

Unfortunately, such fair conditions do not exist. RCN has experienced difficulties with the ILECs in respect to local loop and central office access and with incumbent cable companies who have mounted a massive anticompetitive campaign against RCN. Given these difficulties, which are the products of the incumbents' monopoly positions and ownership of bottleneck facilities (the "last mile" in telephone parlance and the "last 100 feet" in respect to cable service in multiple dwelling unit buildings ("MDUs"), it is essential that the FCC remain involved in supervising and policing the provision of local telephone and cable service by the incumbents. The Commission should rely on section 706 of the Telecommunications Act of 1996 which is the focal point of this proceeding to conclude that continued regulation of bottleneck facilities is necessary to assure that advanced telecommunications capacity is made available to the ordinary residential subscriber.

Specifically, RCN seeks Commission assistance with respect to gaining access to unbundled local loops and related infrastructure and services such as collocation, OSS facilities, billing information. RCN also seeks Commission assistance in gaining access to cable distribution wiring in MDUs in Boston in which Cablevision controls the wiring but refuses to allow RCN to use the wiring to provide competitive cable services. In these instances continued regulation is essential to foster the growth of competitive services. Accordingly, while RCN believes that its services can prosper in an atmosphere free of monopoly control of bottleneck facilities, the present circumstances require active Commission involvement to assure that bottleneck facilities, whether the "last mile" or the "last 100 feet" are open to competitive providers on fair and equitable terms.

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Reply Comments of RCN Telecom Services, Inc.

RCN Telecom Services, Inc. ("RCN") respectfully submits its Reply Comments in the above-captioned matter concerning the deployment of advanced telecommunications capacity to the U.S. public.[2/] RCN applauds the Commission for its thoughtful Notice of Inquiry ("NOI") concerning a subject which is of crucial importance to the using public and to the Nation.

RCN uniquely seeks to serve a particular market niche of heretofore underserved residential customers. By deploying broadband high capacity fiber optic cable, RCN combines in one offering traditional local exchange and interexchange telecommunications service, high speed Internet access, and video programming. RCN believes that its services, especially when combined, offer a new level of sophistication and economy to the residential marketplace. In four major cities on the East coast and in the San Francisco area, RCN is becoming the major

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2/ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Notice of Inquiry*, FCC 98-187, *rel.* August 7, 1998.

developer of the OVS model created by Congress in Section 653 of the 1996 Telecommunications Act (the "1996 Act").[3/]

In this fashion RCN is advancing the goals of the 1996 Act to encourage marketplace innovation, and specifically Section 706 thereof, which is the focal point of the NOI. However, RCN's path is not free of obstacles, most of which have been created by incumbents who do not wish to compete with RCN in their historic monopoly markets. These obstacles, as set forth below, are most acute in respect to interconnection, collocation, and related telephone issues and in regard to the inside wiring problems faced by RCN in multiple dwelling units ("MDUs"). RCN believes that it can be an important instrument of Congressional and FCC policy. However, RCN urges the Commission to take note both of its successes and of its continuing problems in seeking to implement the mandate of the 1996 Act, especially Section 706 thereof. Paragraph 8 of the NOI asks "who is able and motivated to deploy advanced services soon, especially to residential consumers."[4/] The short answer is that RCN is able and is motivated.

I. Introduction

RCN, alone and through various affiliations,[5/] is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional

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[3/] 47 U.S.C. § 573.

[4/] NOI, at ¶ 8.

[5/] In the Boston market RCN operates through an LLC in which BeCoCom, a subsidiary of the Boston Edison Company, is an investor. A similar arrangement exists in the Washington D.C. metropolitan area where Starpower Communications, LLC, owned jointly by RCN and an unregulated Pepco subsidiary, is the OVS certificate holder.

franchised cable and/or OVS services, primarily to residential subscribers. RCN employs a variety of technologies to offer these services in direct competition with many of the nation's largest, most well-established telephone and cable incumbents. Together with its corporate parent, RCN Corporation, RCN's capital budget in 1998 and 1999 for all of its telecommunications activities is estimated to be $850 Million. RCN has approximately 710,000 subscriber connections delivered through a variety of owned and leased facilities.[6/] RCN's business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one bundled offering. Generally, RCN offers these services, both in a package or individually, at rates lower than RCN's competitors.[7/]

The Company expects that the substantial growth of the Internet and in high speed data services will play an important role in the demand for its fiber optic networks. RCN believes that its high capacity advanced fiber optic networks provide RCN with certain competitive advantages such as increased capacity (including the ability to offer bundled voice, video and data services) and generally superior signal quality and network reliability relative to the typical networks of the

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6/ A "connection" for this purpose is a unit of service, such as a local telephone line, Internet customer, or a video services customer. As of June 30, 1998, RCN had approximately 48,200 subscribers to its fiber-based services, approximately 40,900 connections attributable to its wireless video systems and approximately 661,800 connections attributable to its off-net voice, video and cable systems. As of the same date, RCN passed 123,000 homes with its advanced fiber.

7/ For example, RCN's competitive local exchange service is generally priced five percent less than the incumbent local exchange carrier's.

incumbent service providers. By using advanced fiber optic networks capable of delivering multiple services, RCN is able to address a larger number of potential subscriber connections in its target markets than incumbent service providers which typically provide only single or limited services.

RCN seeks to be the first operator of an advanced fiber optic network providing voice, video and data services to residential customers in each of its target markets. RCN believes that it is unique in offering a wide range of bundled services to customers in residential areas and in striving to connect residential customers directly to its advanced fiber optic networks. The Company estimates that RCN's loop lengths are a small fraction of the incumbents. RCN also believes that residential customers will be attracted to lower prices, broader service offerings, enhanced levels of customer care and consumer choice.

II. Comments

A. Services

With respect to video programming, RCN currently offers traditional franchised cable service in a number of communities and OVS service in portions of New York City and Boston. It will be expanding in both metropolitan areas in the next few months. RCN expects to initiate OVS service in the Washington, D.C. metropolitan area in the fourth quarter of 1998. The systems will have an initial capacity of 750 MHz (110 video channels) and are designed for analog transmission although the company plans to migrate to digital as soon as the economics of doing so become more attractive. RCN offers a full line-up of up to 110 channels of high quality basic,

premium and pay-per-view video programming.[8/] In its OVS Form 1275 filings RCN indicated that, depending on demand, it would construct a system capable of handling up to 330 analog video channels. However, in none of the three OVS markets in which the open enrollment period has ended was there sufficient demand to justify constructing more than a 110 channel system.

RCN's OVS certification for the Boston area encompasses the City of Boston and more than 40 surrounding communities.[9/] RCN currently provides OVS service to some 8,500 subscribers in the City of Boston, most of whom are MDU residents. OVS service will be initiated shortly to additional customers in Newton and Arlington. While some of these subscribers take only OVS service, most take the three-way combination of voice, video and data. In New York, RCN provides service to over 40,000 subscribers. At present, most of these are served by a wireless cable system pending completion of fiber construction in Manhattan. Some 14,500 New York subscribers are served by the RCN fiber optic network.

At present RCN's telephone service is offered on a resale basis, generally at prices five percent below the incumbent local exchange carrier and at 9.9¢/minute for interexchange traffic. RCN has acquired a number of Internet-related companies, including Erols, UltraNet, Interport and JavaNet. Together these companies make RCN the largest regional ISP in the

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[8/] RCN also offers the latest "impulse" technology which allows convenient impulse pay-per-view ordering of movies and special events using a customer's remote control.

[9/] Subsequent to receipt of its OVS certificate in 1997, to fulfill the preferences of local cable advisory committees, RCN secured traditional cable franchise agreements in a number of these communities, including Somerville and Framingham, and expects to negotiate franchises in additional municipalities.

country. RCN offers a comprehensive selection of Internet services including dial-up access, web hosting, dedicated connectivity, co-location and web development.

The combination of these three elements of telecommunications, offered predominantly over fiber optic facilities which are currently being deployed, makes RCN a unique provider of broad-based services. Its emphasis on the residential market is unusual but promises to give the general public the opportunity to share in the technological revolution which, heretofore, has been made available principally to commercial subscribers or others with heavy or specialized demand. In these ways RCN believes that it is unique, fulfilling the broad mandate of the 1996 Act and specifically the Congressional interest in the deployment of the most advanced telecom services to all the public.

B. Facilities

RCN's advanced fiber optic networks in Boston and New York City are, and RCN expects that its future networks will be, designed to support voice, video and data services via a switched, fiber-rich network architecture. The Company's full service advanced fiber optic networks in Boston and New York City consist of owned or leased fiber optic cables, local and long distance digital switches, video headends, video and voice transmission and distribution equipment and associated wiring and network termination equipment. The Company's local telephone switching network (consisting of Lucent 5ESS-2000 switches) is installed and fully operational in Boston and in New York City. The networks' leased fiber optic cables make up the fiber backbone, which acts as the common signal transport medium for both digital signals (voice and data) and

analog signals (video). In both New York City and Boston, the digital backbone transmission network utilizes synchronous optical network ("SONET") self-healing rings that provide high speed, redundant connections for the delivery of RCN's voice and data services. Facility connections from the backbone network to individual buildings or service areas are provided by either leased facilities provided by MCI WorldCom (formerly owned by MFS), BeCoCom, a Boston Edison affiliate, the incumbent LEC, or through RCN-owned fiber. This fiber backbone includes over 5,267 fiber miles in New York City and over 9,347 fiber miles in Boston.

The fiber optic cable utilized by RCN's networks has the increased capacity and bandwidth necessary for complex data and video transmission. It typically contains between 12 and 288 fiber strands, each of which is capable of providing many telecommunications channels or "circuits." Depending on transmission electronics, a single pair of glass fibers on RCN's networks currently can transmit tens of thousands of simultaneous voice conversations, whereas even with multiplexing equipment a typical pair of copper wires can carry a maximum of 24 simultaneous conversations. Although the LECs commonly use copper wire in their local networks, they are currently deploying fiber optic cable to upgrade portions of their copper based network, particularly in areas served by RCN.[10/] RCN expects that continuing development in communications equipment will increase the capacity of each optical fiber, thereby providing even more capacity at relatively low incremental cost.

[10/] As the Commission is also well aware, xDSL equipment is deployable to significantly increase the capacity of copper local loops.

The Company's advanced fiber optic networks in New York City and Boston support a voice network that provides both switched and non-switched (private line) services. Individual buildings are connected to the network backbone via fiber extensions that are generally terminated on SONET equipment, which provide redundant and fail-safe interconnection between the building and the RCN central office or switch location. In this regard, RCN has in place arrangements which allow it to lease certain facilities owned by the incumbent LECs (unbundled local loops and T-1 facilities) to provide voice services. This enables RCN to provide voice and data services to off-net subscribers who are not physically connected to RCN's advanced fiber optic network. As RCN's network expands to reach more areas within a target market, subscribers served by these temporary connections will be migrated to RCN's advanced fiber optic network. Within a building (or small grouping of buildings) a voice service hub is the point of interface between the SONET backbone facility and the intra-building wiring. Each integrated digital loop carrier (IDLC) is installed with a standby power system and is capable of serving up to 672 lines. The IDLC is capable of supporting a wide range of both nonswitched services (DS-1, digital data) and switched voice services and features including ISDN, Custom Calling and CLASS features. Within each building, internal wiring (twisted pair copper cable) connects the IDLC to the customer premises and the customer-owned telephone equipment.

RCN owns two General Instrument video headends (one in Boston and one in New York City) that are installed and in service. As of December 31, 1997, RCN had connected 493 buildings (424 in NYC and 69 in Boston) to its facilities. The video headends consist of optical

transmitters, optical receivers, satellite receivers, signal processors, modulators, encoding equipment and network status monitoring and automated tape distribution equipment. From the headend, the video signal is distributed to individual fiber nodes or receivers via the same fiber cable backbone used to deliver the voice and data service. The fiber optic cable terminates in a fiber optic receiver within an individual building or service area. From the fiber node, coaxial cable and related distribution equipment is used to distribute the video signals to the customer premises. The bandwidth of the video distribution currently is a minimum of 750 MHZ, which is capable of supporting a minimum of 110 video channels. This distribution plant is specifically designed to be predominately fiber-based, which increases the reliability and improves the quality of the services delivered compared to traditional cable television distribution architectures.

RCN's Internet access and data transmission services are currently provided over the advanced fiber optic network via dial-up modems facilitated through the RCN voice network in on-net subscriber applications. In off-net situations, subscribers use conventional dial-up modems through the incumbent LEC network to access RCN's Internet transmission network. RCN is beginning to offer Internet and data transmission services via cable modems. Cable modems, which utilize the broadband coaxial plant, offer higher speed access for data transmission than the speeds achieved by conventional telephone dial-up technology. Erols provides high quality Internet access services to businesses by utilizing high-speed access via ISDN, frame relay, fractional T-1, T-1 and T-3 circuits. Erols' network infrastructure currently supports modems with dial-access speeds of up to 56 Kbps.

RCN owns and operates hybrid fiber/coaxial cable television networks in Pennsylvania, New Jersey and New York State (outside of New York City), all within 75 miles of New York City. These networks offer expanded bandwidth and a platform for two-way services, and have an aggregate of 658 route miles of fiber optic cable, including separate high capacity fiber optic rings with a minimum 84 fibers in Pennsylvania (covering approximately 69 route miles) designed and constructed as competitive telephony networks. The New York system includes 211 route miles of fiber optic cable serving 98 nodes from one headend. Approximately 70% of the New York system is two-way active 750 MHZ plant with 84 active channels of programming. The New Jersey system has deployed 144 route miles of fiber optic cable (over 30 miles of which is two-way active) from two headends, and generally operates a 400/450 MHZ plant providing 62 channels of video programming. The Pennsylvania system operates 2,649 miles of coaxial cable and over 234 route miles of fiber with 43 nodes from one headend, operating at 550 MHZ with 84 active channels. All of the Company's hybrid fiber/coaxial cable systems are 100% one-way addressable.

These fiber-rich networks provide a basic fiber optic platform capable of enhancement for supporting two-way services, such as high-speed Internet services, in the future. RCN is presently expanding the fiber capacity of certain of these fiber/coaxial cable television networks so that they will be capable of delivering switched two-way services in the future. In August 1997, RCN commenced offering resold local phone service, long distance and internet access to customers in the area served by its Hybrid Fiber/Coaxial Cable Systems in Pennsylvania.

C. Structural Arrangements

RCN has put in place certain strategic alliances and other arrangements in order to provide the full range of its telecommunication service offerings. These relationships include arrangements with MCI/WorldCom to lease portions of its fiber optic network in New York City and Boston. RCN-BeCoCom L.L.C., through which RCN provides its services in the Boston metropolitan area, is a venture with an RCN affiliate and an affiliate of the Boston Edison Company under which RCN has access to Boston Edison Company's extensive fiber optic network in Greater Boston. In the Washington, D.C. metropolitan area, Starpower Communications, L.L.C., has been formed as a venture between an RCN affiliate and Pepco Communication, LLC, an affiliate of PEPCO. RCN also has arrangements to lease unbundled local loop and T-1 facilities from Bell Atlantic.

III. The Commission Must Take An Active Role in Bringing New Services to The Public

The NOI seeks comments and suggestions on how the Commission should address the issues posed by Section 706 of the 1996 Act.[11/] The Commission seeks information on what steps it can take to facilitate the introduction and provision of advanced services by the private sector.[12/] Before addressing substantive matters, it is important to respond to certain erroneous or confused procedural observations advanced in some parties' initial comments. Section 706 requires that the Commission (and State Commissions) study deployment of ATC and, as necessary to achieve

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11/ *See* NOI at ¶ 13, *passim*.

12/ *Id.*

the goals set forth by Congress in that section, use various "regulating methods." Numerous commentators note that Section 706 is not an independent grant of authority[13/] and indeed the Commission itself has already so held.[14/] RCN agrees However, some commentators appear to lose themselves in semantic labyrinths about the "regulatory" or "deregulatory" nature of Section 706 and what that section authorizes or compels the Commission to do.[15/] Time Warner, for example, argues that any action ultimately taken to promote the goals of Section 706 must be "deregulatory in nature. Neither the terms of Section 706 nor sound policy supports the introduction of further regulation to promote the deployment of advanced services."[16/] But this is not what the statute says. To the contrary, it directs the Commission, if it believes it necessary to do so, to use, *inter alia*, regulating [sic] methods that remove barriers to infrastructure investment." Sec. 706 (a).

Section 706 requires the Commission (and state commissions) to study the issues set forth and to take action if such study indicates that action is required to achieve the ATC deployment described in the section. If such action is required, it would be pursuant to the powers which the Commission possesses arising from other sections of the Communications Act, including the

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13/ *See, e.g.* Comments of Comcast Corp., pp 8-9, Comments of Time Warner Cable, pp. 1-7.

14/ *See Memorandum Opinion and Order and Notice of Proposed Rulemaking in Docket No. 98-147*, FCC 98-188, *rel.* Aug. 7, 1998, at ¶ 69.

15/ *See e.g.*, Comments of Comcast Corp, p. 4., Comments of Cablevision Systems Corp. pp. 5-6; Comments of Time Warner Cable, pp. 8-11

16/ Time Warner Cable Comments, at 8. (Emphasis in original).

limitation set forth in Section 10 of the 1996 Act[17] to forbear so far as possible. RCN believes the Commission has all the authority it needs under the Communications Act to address and remedy the issues set forth below. There is nothing in the language or purpose of Section 706 or in its legislative history which precludes the steps RCN recommends herein.

In its efforts to bring its unique offerings to the public, RCN has encountered a number of problems which are amenable to, indeed, in need of, direct and vigorous Commission intervention. Among these is a campaign of anticompetitive attacks launched by incumbent cable companies against RCN and its affiliates, the "last hundred feet" problem within MDUs described in the NOI as analogous to the "last mile" problem for telephone traffic,[18] and the growing proclivity of local governments to seek to charge what the traffic will bear for the use of rights-of-way.

A. Access to ILEC "Last Mile" Facilities

Like many other commenters in this docket, RCN is today and for the foreseeable future will remain dependent to a substantial degree on "last mile" facilities provided by the ILECs. The importance of access to unbundled local loops, other UNEs, including switching, pair gain facilities, and dark fiber cannot be overstated. Similarly, fair and reasonable terms for access to collocation facilities is absolutely vital for the full rollout of RCN's competitive services. Both the FCC and relevant state PUCs must remain active, vigilant and aggressive in securing such

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17/ 47 U.S.C. § 160.

18/ *See* NOI at ¶ 53.

facilities and access for RCN. RCN does not elaborate further on these issues in this NOI docket because it has set forth its views in detail in its recent comments in the Commission's companion *Notice of Proposed Rule Making* ("*NPRM*") in Docket No. 98-147.[19/] It suffices to state here that the deployment of ATC is dependent to a high degree on the presence of circumstances which do not exist today, i.e., reliable, predictable and uniform access to bottleneck last mile facilities. The collocation problem is serious, pervasive, and a significant barrier to deployment of ATC. RCN has devoted significant resources to never-ending problems gaining access to the last mile, adequate collocation arrangements, and similar issues. ILEC assurances that these problems have been solved or do not require more activist regulatory intervention are simply wrong.

B. Inside Wiring and Competition Within MDUs

At ¶ 53 the NOI addresses the issue of "the last hundred feet," analogizing the distribution wiring within MDUs to the classic "last mile" in traditional PSTN architecture. The analogy is accurate. Like the PSTN's last mile, distribution wiring in MDUs presents barriers to competition which are greatly disproportionate to the length of the haul. The cost of duplicating or replicating the last 100 feet within MDUs is, as is true of the last mile, extremely high, and in many cases, as described below, substitution of new plant is otherwise essentially impossible for reasons related not only to cost, but to considerations of MDU owners' objections based on esthetics or disruption. As the Commission is well aware, Congress amended the Communications Act in 1996 to address the intractable problem in the telephone industry of local exchange monopolies

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19/ *See* Comments of RCN Telecom Services, Inc., especially at pp. 12-20.

and particularly the problems of the last mile.[20] Compulsory provision of unbundled local loops, other network elements, resale of services, wholesale charging and collocation, among other regulatory measures, have been adopted to open the last mile to competition. RCN does not suggest that the last 100 feet of MDU wiring requires an equally massive legislative or regulatory effort; it does suggest, however, that the issue is essentially the same and that the Commission should vigorously and fully exercise its existing authority to overcome the reluctance of the incumbents to make existing facilities available to new competitors on reasonable and equitable grounds. If the Commission believes its existing statutory authority in this respect needs strengthening, it should promptly seek enhanced statutory authority from Congress to address this issue.

The concern expressed in the NOI about inside wiring issues in the MDU context has troubled the Commission for many years.[21] The Commission correctly noted in its 1997 assessment of multichannel video programming distributor ("MVPD") Competition that MDUs form an increasingly important market segment.[22] In fact, MDUs are estimated to comprise about

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[20] *See, e.g.*, U.S.C. §§ 251-254.

[21] *See, e.g., Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Report and Order*, 8 FCC Rcd 1435 (1993); In *the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Notice of Inquiry, CS Docket No. 98-102, FCC 98-137, *rel.* June 26, 1998 ("Video Competition NOI") at ¶ 26.

[22] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourth Annual Report, CS Docket No. 97-141, 13 FCC Rcd 1034 (1998) ("1997 Competition Report") at ¶ 129.

27% of the total MVPD market.[23/] RCN has experienced substantial difficulties gaining entrance into MDUs in the Boston market as a result of a concerted campaign by the incumbent cable operator to make such entrance as difficult as possible.[24/] The Commission has gone to great lengths to resolve the many complex bottleneck issues related to inside wiring within MDUs, including the adoption of regulations that attempt to successfully moderate the anticompetitive inclinations of incumbents.[25/] In explaining these procedures, the Commission noted some of the very same problems currently faced by RCN:

> [W]e 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 competition through varied and improved service offerings, the incumbent provider often invokes its alleged ownership interest in the home run wiring. Incumbents invoke written agreements providing for continued service, perpetual contracts entered into by the incumbent and previous owner, easements emanating from the incumbent's installation of the wiring, assertions that the wiring has not become a fixture and remains the personal property of the incumbent, or that the incumbent's investment in the wiring has not been recouped, and oral understandings regarding the ownership and continued provision of services. Written agreements are frequently

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23/ *See* Comments of the National Rural Telecommunications Cooperative filed in CS Docket No. 98-102, *supra* n. 21 at p. 18.

24/ RCN is by no means the only MVPD competitor who has encountered such difficulties. See CS Docket No. 98-102, *supra* n. 21, WCAI Comments at pp. 5 and 12-16; Ameritech Comments at pp. 48-9.

25/ *See Telecommunications Services, Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, Report and Order and Second Further Notice of Proposed Rulemaking,* CS Docket No. 95-184 and MM Docket No. 92-260, 13 FCC Rcd 3659 (1997) ("Inside Wiring Order").

> 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 result, regardless of the cable operators' motives, is to chill the competitive environment [26]

In the City of Boston significant portion of the video programming market consists of MDUs, and in those buildings the incumbent cable operator, Cablevision Systems of Boston, Inc., ("Cablevision") has been following a deliberate policy of noncooperation with RCN. RCN has installed drops for its service in a large number of MDU's. RCN has taken numerous orders from current subscribers of Cablevision and has received permission from MDU owners or managers to provide such service. In many such buildings, however, RCN has found that the demarcation point, or the point at which a competitor may access the existing internal distribution wiring, is inaccessible because it is located behind sheet rock and the MDU managers will not permit RCN to bore through the sheet rock or to install molding to carry its wiring. The MDU managers have also rejected a complete overbuild of the wiring infrastructure due to the disruption to the building.

The Commission's inside wiring rules were drafted in the expectation that incumbent cable companies would be uncooperative with new entrants [27] The rules establish a competitor's right

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[26] *Id.* at ¶ 38 (footnotes omitted).

[27] *See* 47 C.F.R. § 76.802(j), requiring cable operators to take reasonable steps to ensure that an alternative service provider has access to the home wiring at the demarcation point, and 47 (continued...)

to access a subscriber's inside wiring at the demarcation point. If the wiring is readily accessible, this point is located within 12 inches of the subscriber's unit; if the wiring is not accessible, then the demarcation point is located wherever accessibility exists. In cases like those facing RCN in Boston, the most practical way to achieve access to individual MDU units is to interconnect with the existing distribution wire at the incumbent's junction box, which typically is located in a closet on each floor of an MDU building.

Notwithstanding the Commission's inside wiring rules, the incumbent cable operator has recognized that it can significantly delay RCN's penetration of its heretofore captive market by refusing to cooperate with RCN. In so doing, the incumbent has adopted a clearly erroneous interpretation of the wiring rules that RCN must bore through sheet rock regardless of the MDU managers' objections. The incumbent also claimed to own and to have contractual rights to maintain the wiring, although it has not yet produced any evidence to support this claim. Given the fact that RCN and the cable franchisee will be head-to-head competitors in the Boston video marketplace for many years, RCN repeatedly has tried to develop a reasonable *modus operandi* under which either company could quickly and efficiently transfer a subscriber's service, without interruption or disruption to the subscriber or others living in the MDU. RCN has suggested using joint junction boxes, shared possession of keys and access to each other's junction box, coordinated appointments among the respective field staffs, and other similar reasonable measures.

27/ (...continued)
C.F.R. § 76.804 (b)(5), requiring all parties to cooperate to avoid disruption in service to subscribers to the extent possible.

However, the cable company has stubbornly refused all such suggestions, and instead simply insists that RCN bore through the sheet rock regardless of the MDU managers' objections. Indeed, the incumbent has informally admitted to RCN that its goal is simply to frustrate RCN's competitive efforts as long as possible.

Section 624(i) of the Communications Act requires "the Commission . . . [to] prescribe rules concerning the disposition . . . of any cable installed by the cable operator *within the premises* of *such subscriber*."[28/] The Commission defined "cable home wiring" as the "internal wiring contained within the premises of a subscriber which begins at the demarcation point,"[29/] and set the demarcation point in MDUs at or about "12 inches outside of where the cable enters the subscriber's dwelling unit."[30/] All of the Commission's subsequent inside wiring rules and policies are grounded in these definitions. In fashioning these definitions in 1993, the Commission failed to heed the prescient suggestions of alternative MVPDs urging the Commission to define cable home wiring to include all of the wiring dedicated to serving individual subscribers.[31/] As experience has shown, these parties correctly predicted that the Commission's position would not allow competition to develop in MDUs.

28/ 47 U.S.C. § 544(i)(emphasis added).

29/ 47 C.F.R. § 76.5(ll).

30/ *Id.*, § 76.5(mm).

31/ *Report and Order, Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 8 FCC Rcd 1435, 1437 (1993).

The time has come for the Commission to modify its regulations to reflect the realities of competition within MDUs since, despite the Commission's best efforts over the past six and one-half years, RCN and other alternative MVPDs still cannot offer competitive services to customers in many MDUs. Accordingly, RCN urges the Commission to review and amend its rules to foster such competition. An important first step is to interpret Section 624(i) so that the "subscriber" is the MDU owner or manager for purposes of implementing the inside wiring rules in MDUs. Under this approach, MDU owners or managers would be able to rely on the rules as intended by the Commission; that is, they could allow alternative MVPDs to offer competitive services by using the existing home run wiring, including inaccessible wiring behind sheet rock and other obstacles. More broadly, a revision of the Commission's inside wiring rules is necessary to facilitate the provision of competitive service which is available but not yet operational.[32/]

The NOI also asks whether the Commission should suggest to Congress any changes to the Communications Act.[33/] In its *Fourth Annual Assessment of the State of Competition in the MVPD Industry*, the Commission observed that its home run wiring rules apply only where the incumbent provider "no longer has a legally enforceable right to remain on the premises. If the Commission had more explicit authority to address wiring transfer and compensation issues,

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32/ Pending a broad, long range solution to the problems posed by wiring behind sheetrock walls or ceilings, RCN recently filed a request for a letter ruling from the Chief of the Cable Services Bureau seeking a construction of the inside wiring rules which would facilitate the provision by RCN of competitive video services in MDUs in Boston without having to break through existing interior walls to connect its wiring to individual units.

33/ NOI, at ¶ 10.