Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of:

Telecommunications Services Inside Wiring	)	CS Docket No. 95-184
Customer Premises Equipment	)	
In the Matter of the Cable Television Consumer	)	
Protection and Competition Act of 1992: Cable	)	MM Docket No. 92-260
Home Wiring	)	

Further Notice of Proposed Rule Making

Comments of the

Independent Multi-Family Communications Council

(IMCC)

IMCC
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Washington, DC 20015
202 364 0882
William J. Burhop
Executive Director

November 15, 2004

Introduction

The Independent Multi-Family Communications Council (IMCC) represents a cross-section of companies that provide telecommunications services to residents of the numerous types of multiple dwelling unit communities. Members include Private Cable Operators (PCOs), shared tenant services providers, equipment manufacturers, program distributors, Broadband Internet service providers (ISPs) and, importantly, residential property management and development companies. IMCC members employ a variety of communications technologies, including wired, wireless and direct broadcast satellite (DBS) transmission. IMCC members compete directly with franchised cable companies and incumbent local exchange carriers (LECs). Without the competition fostered by IMCC provider members, PCOs and DirecTV, and other emerging technology companies, MDU owners and managers, but primarily residents, would have little choice among providers and the positive influences of competition would be diminished further eliminating any incentive for the large franchised providers to contract for quality products and services to residents.

Our comments reflect the real world of competition and the impact certain FCC regulations, certainly the FCC MDU Inside Wiring Rules (Rules), have on the delivery of services to MDUs. This is not a theoretical analysis. It reflects the real world of contract negotiation and installation of equipment to provide service to MDU residents. PCOs and MDUs have a mutuality of interests and, consequently, work together to provide quality products and services for the benefit of residents. These providers and users recognize that unless that level of service is provided that residents will move to communities where it is provided. In order for the marketplace to function to enhance competition this cooperation must exist. Another ingredient in that process is the actual functioning of a regulatory environment that is based on an intent to enhance competition and that the FCC Rules really work in day-to-day applicable. We believe the subject of this FNPRM is important and how the FCC and courts decide this matter will either stimulate more competition and benefits for residents or it will not. We urge that the

FCC to adopt the expanded definition of "physically inaccessible" which will benefit many thousands of residents.

IMCC Support For Enhanced Video Competition

IMCC and its member PCOs and MDU owners and managers have supported the 1996 Congressional action to require the FCC to pursue regulations that will enhance competition among video providers (MVPDs) to better serve MDU residents. One such regulatory effort was the 1997 adoption of regulations to facilitate MDU and alternative provider control and ownership of MDU inside wiring, the home run wiring. The adoption and application of the FCC MDU Inside Wiring Rules (Rules) has indeed made it possible for hundreds of thousands of residents to subscribe to the products and services offered by alternative providers, such as PCOs. Although those Rules are unnecessarily complex and far less efficient than they could be, they have been a stimuli for competition.

IMCC has continued to urge the FCC to amend the Rules to improve them for the benefit of MDU residents and alternative providers. IMCC has done so in filings on related matters, in Letters seeking Declaratory Rulings and in other ways. For instance, IMCC has independently, and in cooperation with other organizations, urged the FCC to adopt regulations to expand the definition of "physically inaccessible" to include sheet rock/drywall, rather than only cement, metal conduit and brick. The current definition is essential if the FCC intends the Rules to be effective and that intention would be more attainable if the definition were expanded.

IMCC has also urged the FCC to adopt other amendments to the Rules. Those recommendations are not the subject of the rule making. Therefore, further elaboration at this point is not purposeful. Those recommendations can be found in several previous filings by IMCC.

Franchised Cable Opposition

Large franchised cable companies and their trade association have been vigorous opponents of adoption and application of the Rules, including the portion addressing physically inaccessible. That opposition is not surprising given that the Rules and their procedures do in fact enhance competition in the MDU market place. That opposition is why this issue is before the Commission, once again. This regulatory action would not be necessitated if those interests supported the Congressional intent of the 1996 Act and the consequent regulatory actions designed to enhance competition and benefit MDU residents.

Another Opportunity to Enhance Competition

The instant FNPRM requests respondents to submit views regarding several questions. The following addresses those questions. This filing expresses the views of IMCC, but also includes letters submitted by PCOs explaining why expansion of the definition to include sheet rock/drywall is prudent for MDU owners, alternative providers and residents and why failing to do so would retard competition and will continue the inefficiency of the current Rules.

The core questions posed by the FCC seek comment regarding the following:

1. Will the expanded definition involve significant modification of or damage to an MDU's building preexisting structural elements?
2. Will the expanded definition add significantly to the difficulty and cost of wiring an MDU?

Regarding the first question, it is our view that sheet rock/drywall are examples of preexisting structural elements that are an integral and a permanent part of an MDU structure. Based on years of experience in literally thousands of MDU communities, it is clear to us that expansion of the definition will not increase intrusion into the MDU structures, but in fact will reduce intrusion into the structural elements of the buildings.

Not doing so will continue the current situation in which accessing the resident's home wiring at the demarcation point 12 inches outside each unit in fact adds significantly to the physical difficulty of doing so. It also will be made clear, addressing question number 2, that expanding the definition will reduce the capital cost of applying the Rules in MDU communities and, thereby, serve as a further stimulus so that alternative providers can compete more effectively. Not doing so adds significantly to the cost of implementing the Rules. It is clear to us that accurate and realistic answers to the questions will lead the Commission to again adopt the expanded definition of physically inaccessible.

It should be recognized that if the FCC is serious about enhancing competition then not expanding the definition would be counterproductive. Also, if franchised cable did not seek to frustrate the goals of Congress and the FCC and sought to follow the Rules as they were clearly intended then those companies would also support the expanded definition to help achieve efficiency in application of the Rules and to improve the delivery of products and services to MDU residents, the publicly espoused goal of franchised cable companies.

MDU Inside Wiring Behind Sheet Rock/Drywall Is Inaccessible

The phrase "physically inaccessible", what that definition includes and how it is applied, has significant impact on the application of the Rules. While it is physically possible to cut through sheet rock/drywall or cinder block/brick and find the wiring outside each individual subscriber's unit it is not a simple or inexpensive process. Building owners, based on resident views, frequently object to substantial physical impact on their properties and any dislocation for residents. In addition, the cost of such access to the wiring is substantial. This impact, dislocation and cost are frequently great enough that MDU and PCO contract negotiations fail and the franchised provider continues to be or becomes the video provider. That does not benefit the resident.

There are several factors that justify the expanded definition. They include the following:

A. In order for the PCO to connect to the home run wiring at the demarcation point 12 inches outside each unit is not a simple matter because it requires numerous steps that impact the structure and increases cost for the PCO and the ultimate subscriber. For each unit, often several hundred in each building, the new provider must open the wall or ceiling at each unit which requires cutting a six to 18 inch square or rectangle.
B. Once the hole is cut and the wire connection is made at each unit the wire must either be "fished" through the hallway, back to the junction box or pedestal, and/or installed in some form of molding where the ceiling and wall meet.
C. Each such penetration at each unit must then be patched twice, sanded twice, primed and painted to match (if possible) the prior paint. These actions require work over a minimum of a three-day period and require several hours of labor. In the case of many upscale properties entire hallways may have to be re-wallpapered or repainted in order to restore the original finish.
D. If the resident has been there for more than one year or is a smoker, touch-up painting will be insufficient and the entire unit may need repainting.
E. Most property owners will not allow a contractor to enter a resident's unit with out a property representative. This means that the property owner must incur the cost of one or more representatives to accompany the cable installer.

Moving the demarcation point to the junction/lock box/pedestal would only require the co-location of a competitor's lock box next to the incumbent's lock box. Then when a customer changes service from the incumbent to the competitor, a wire is simply moved from lock box A to lock box B with no destruction of property; therefore, no need for any sort of repairs and painting/re-wallpapering. This produces significant cost savings due to reduced labor, no intrusion into the structural elements of the property and no dislocation for residents.

This situation is even more egregious in urban environments that are generally characterized by hi-rise buildings that prohibit placement of wiring on the outside of buildings and requires much higher costs for any such construction.

PCO and MDU Real World Experience

Attached are letters from two PCOs expressing their views about the above matters. Their experience is typical of the industry. Many more letters could be submitted for the record, if the Commission should desire.

The attached letters include the following:

--From a PCO in Atlanta, Bryan Rader says, "…expanding the definition will not have any negative impact on a building's structural elements. In fact, the opposite is true…there would be less damage."

"(Expanding the definition) will be another step to help MDU owners find alternative service providers because those providers will me able to provide competition in more buildings with less interference and at lower cost."

"Our estimate of additional work for the process is 2-4 hours per unit. Therefore, for one such hole it will add $150.00 to $250.00 to the cost of wiring that unit. In a typical 200-unit building that adds up to $40,000.00. This added cost could really be a deterrent to building a private cable system on certain communities."

--From a PCO Manager in California, Rich Baxter writes saying, "It is hard to imagine any other effect than a positive one from such a change. Doing so aids in limiting damage to MDU structures, … minimizes the inconvenience of residents and allows alternative providers to more effectively compete."

In fact, accessing the home run wiring in an MDU 12 inches outside each unit is virtually impossible in most instances, as that location would be 12 inches inside the neighboring residence. In other words, the prescription of "12 inches outside each residential unit" means no access to the home run wiring. Therefore, it is necessary to install a completely separate home run wire from the junction location to an access point within the residence. The typical cost to do so would be a minimum of $200.00 per unit."

Conclusion

The Independent Multi-Family Communications Council recommends that the Federal Communications Commission adopt a regulation expanding the definition of "physically inaccessible" to include sheet rock and drywall.

Respectfully submitted,

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November 15, 2004

MEDIAWORKS
Private Cable Operator of the Year

VIA – First Class Mail

October 27, 2004

Bill Burhop
IMCC
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Washington, DC 20015

RE: FCC - Physically Inaccessible

Dear Bill:

Thank you very much for asking my opinion regarding "physically inaccessible" wiring, and it's impact today on our business. As you know, MediaWorks serves over 36,000 multi-family units in the southeast region. Many of our properties were once served by the Franchise cable operator, and have been converted to us after their term expires.

The issue of "physically inaccessible wiring" is one that can negatively impact us as the operator, the building owner, and most certainly the customer. I have answered both of your questions below:

1. *Will adding sheetrock/drywall to the definition involve significant modification of or damage to existing structural elements?*

Answer

The answer is no, expanding the definition will not have any negative impact on a building's structural elements. In fact, the opposite is true. There would not be more damage to the building if sheetrock was included in the definition, there would be less damage. Excluding sheetrock/drywall from the definition increases the intrusion into the building and its elements. There would be no damage to the building if sheetrock was included in the definition, there would be less damage than is the case today. Only being able to access wiring 12 inches outside each unit requires much more work to open holes outside each unit, make the needed connection and then close all the holes again. If we could access the wire at the pedestal or lock box that would reduce our installation time and supplies and any potential damage to the building elements. That would not invade the MDU building structure or its integrity in any way, certainly less than opening the ceiling/wall outside of each unit. In point of fact, many MDU owners simply say that if the PCO needs to open a hole at each, unit then the MDU will not proceed with the PCO.

2. Will changing the definition add significantly to the difficulty or cost of wiring an MDU?
Answer
As a PCO, my company has provided wiring and service in over 36,000 units (and 150+ communities) in the southeast area. If we are able to move the demarcation point back to the lock box/pedestal, that will benefit my company and the residents we serve. That is so for the following reasons:

When the FCC adopted the original definition of "physically inaccessible", only including brick and cement block, even that made a positive difference because, in that type of building, it reduced the amount of interference caused to the residents which pleases the MDU owner. It also made it possible to install wiring and get the building prepared for our service at a significant reduction in cost, which makes our product more marketable to MDU owners and residents, which helps generate more contracts, which is what the push for competition is all about. If the definition is amended to include sheetrock/drywall that will be another step to help MDU owners find alternative service providers because those providers will be able to provide competition in more buildings with less interference and at lower cost.

As a matter of cost, here is an example typical of our experience. If a 200-unit apartment building wants to find a new service provider such as a PCO, the PCO does a cost analysis of providing service. The PCO must calculate the cost for the satellite antenna, the headend, the wiring to the pedestal/lockbox and any other related costs. If the demarcation point is at a point 12 inches outside each unit then the PCO must open the wall to access the wiring at that point for each unit. This requires more worker hours to open the wall, make the attachment, plaster board the hole in the sheetrock/drywall, and wait for it to dry, sand and apply two coats of paint. Our estimate of additional work for that process is 2-4 hours per unit. Therefore, for one such hole it will add $150 - $250 to the cost of wiring that unit. In a 200-unit building that adds up to $40,000. This added cost could really be a deterrent to building a private cable system on certain communities, thereby hurting competition in the MDU marketplace.

The alternative is for the FCC to expand the definition, which would then only require my PCO to move one wire from the incumbent provider's lock box to my lock box. That alternative includes no intrusion into the structure of the building and a significant cost savings which also benefits the MDU owner and all of the MDU residents.

Bill, I hope my perspective is helpful.

Respectfully yours,

Bryan J. Rader
President / CEO

BJR/cc

consolidatedsmartsystems

11-15-2004

delivered via email to: **bburhop@imcc-online.org**

Dear Bill;
In response to your inquiry regarding the FCC's consideration of the definition of "Physically Inaccessible" wiring, I would like to submit the following:

Question #1 : Will adding sheetrock/drywall to the definition involve significant modification of or damage to existing structural elements?

It is hard to imagine any other effect than a positive one from such a change. Doing so aids in limiting damage to MDU structures, eliminates concerns on the part of owners about esthetic damage to their properties, minimizes the inconveniencing of residents and allows alternative providers to more effectively compete.

Question #2: Will changing the definition add significantly to the difficulty or cost of wiring an MDU?

Again, changing the definition can only have a positive impact on the costs associated with wiring an MDU. The costs, and inconvenience to owners and their residents associated with attempting to access home run wiring 12 inches outside of a residential unit in an MDU are typically so substantial that it serves to eliminate competition. In fact, accessing the home run wiring in an MDU 12 inches outside each residential unit is virtually impossible in most instances, as that location would be 12 inches inside the neighboring MDU residence. In other words, the prescription of "12 inches outside each residential unit" means no access to the home run wiring. Therefore, it is necessary to install a completely separate home run wire from the junction location to an access point within the residence. The typical cost to do so would be a minimum of $200 per unit.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely

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