

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

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

**REPLY COMMENTS OF
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments in the above-captioned proceeding.

I. COMMENTERS HAVE CONFUSED THE COSTS OF ACCESSING WIRING AT THE DEMARCATION POINT WITH THE COSTS OF INSTALLING THEIR OWN “HOME RUN” WIRING.

The issue on remand in this proceeding is specific and narrow. The issue is whether it is difficult, costly or damaging to access a demarcation point behind sheet rock. But some commenting parties seem to think that the question of “physical inaccessibility” turns on whether the cost to an alternative provider of *installing* its own “home run” wiring behind sheet rock is significantly greater than simply using the incumbent cable operator’s wiring.

For example, RCN Telecom Services, Inc. argues that after accessing a residential unit’s wiring at the demarcation point, “RCN must still get its own subscriber line back to the junction box to its network interface. This process can be extremely difficult to undertake behind

sheetrock.”¹ Similarly, Verizon maintains that “locating *and replacing* the embedded cable wiring for a particular unit is no easy task.... [*R*]unning new cable wiring behind the sheet rock in an MDU is invasive.... For example, in order to run cable wiring to a unit on the second floor of a three-story MDU, the company installing the wiring might require access to the units above, below, or beside the unit seeking service *in order to ‘fish’ the wire through the interior wall or between floors of the MDU.*”²

The Commission made clear, in adopting rules governing the disposition of “home run” wiring, that alternative providers are not entitled to acquire and use such wiring simply because it is easier and less costly than installing their own. If that had been the case, it would have adopted the proposal of alternative providers simply to “mov[e] the demarcation point to the point at which it becomes dedicated to an individual subscriber,”³ thereby effectively subjecting home run wiring to the same requirements as the wiring inside subscribers’ residential units. Instead, it decided to move the demarcation point only when *that point* – at or about 12 inches outside the residential unit – is inaccessible. And once an alternative provider is able to access the wiring, the home run wiring rules govern the extent to which that provider can obtain the incumbent’s home run wiring.

The home run wiring rules provide procedures that, in most circumstances, give alternative providers the ability to acquire such wiring – especially where it is costly or difficult for the incumbent to remove it. But the incumbent operator cannot be *forced* to sell the *home run* wiring at *replacement cost*, as is the case for wiring inside residential units, which is governed by

¹ Comments of RCN Telecom Services, Inc. at 5

² Comments of Verizon at 3 (emphasis added).

³ *Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 3659, 3729 (1997).

the “cable home wiring” rules. The operator has the option of removing the home run wiring *or* offering to sell it to the building owner or alternative provider at a *negotiated* price, subject to binding arbitration.⁴

The Commission’s express statutory mandate and authority regarding the disposition of wiring in multiple dwelling unit buildings (“MDUs”) is limited to wiring “within the premises” of subscribers⁵ – *i.e.* inside their residential units. Forcing incumbents to sell “home run” wiring *outside* residential units whenever a resident or building owner chose an alternative provider would, especially in the absence of any specific statutory mandate or authorization, raise serious jurisdictional and constitutional problems. Indeed, the Commission based its conclusion that its rules were constitutionally permissible under the Fifth Amendment precisely because “there is no forced taking of the incumbent’s physical property, since the incumbent has a reasonable opportunity to remove, abandon, or sell the wiring”⁶

So, to the extent that the comments, affidavits and declarations submitted in this proceeding address the costs and difficulties of *installing* home run wiring behind sheet rock, they are not on point. And, relatedly, if a building owner refuses to allow an alternative provider to install new home run wiring behind sheet rock, that is a problem that has nothing to do with the accessibility or inaccessibility of existing wiring at a single point outside the residential unit.

The difference can be demonstrated by the following example: If there were an existing wall plate located 12 inches outside the residential unit, so that an alternative provider could

⁴ See 47 C.F.R. § 76.804.

⁵ 47 U.S.C. § 544(i).

⁶ *Report and Order and Second Further Notice of Proposed Rulemaking, supra*, 13 FCC Rcd at 3709.

easily *access* the residential unit's inside wiring at that point without having to cut into and repair any sheet rock at all, the alternative provider would still have all the same costs associated with *installing* new home run wiring behind the sheet rock. But the demarcation point clearly would *not* be inaccessible.

If, as the commenting parties allege, it would be too difficult or costly, in that case, to install new home run wiring behind sheet rock, alternative providers could install *their* wiring behind molding – as long as they could attach that wiring to the inside wiring at the demarcation point. If a building owner refused to allow the installation of *any* new wiring, whether behind sheet rock, under molding or anywhere else, that, too, would not be an issue of the “physical inaccessibility” of the demarcation point under the rules. Building owners cannot subject an incumbent cable operators “home run” wiring to the forced sale rule that apply to wiring inside residential units simply by refusing to allow alternative providers to install new wiring. Such a ruling would effectively extend the “cable home wiring” rules to “home run” wiring, which is exactly what the Commission refused to do in adopting its “home run” wiring rules.

In sum, whether a demarcation point located behind sheet rock is “physically inaccessible” does not depend on whether installing new home run wiring behind sheet rock is difficult, expensive or causes damage to the building. Nor does it depend on whether a building owner *permits* an alternative provider to access such a point. All that matters is whether *accessing* wiring at such a point would cause significant structural damage, difficulty, and expense.

II. THERE IS NO SIGNIFICANT DAMAGE, EXPENSE OR DIFFICULTY ASSOCIATED WITH ACCESSING WIRING BEHIND SHEET ROCK.

As the affidavits and declarations in the record that was before the Court of Appeals showed, and as those submitted with NCTA's initial comments in this remand proceeding confirmed, *accessing* wiring behind sheet rock would result in no such damage, difficulty, or expense. And as the attached reply declaration of Joseph Danno shows, when stripped of their allegations regarding the expense of installing new home run wiring and their assertions regarding building owners' refusal to permit access to wiring behind sheet rock, the affidavits and declarations submitted by alternative providers and building owners do not rebut these showings.

Mr. Danno is Vice President of Midtown Express, Inc., an independent contractor that specializes in installing internal cable television distribution wiring in MDUs. He has 27 years of experience in the cable television industry and, in his current capacity, has "managerial and supervisory responsibility over approximately 200 installers in the field who perform installations involving both new buildings under construction as well as upgrade, replacement and installation of broadband wiring in existing buildings."⁷

Mr. Danno challenges as "highly misleading" the contention that experienced installation technicians would need costly additional training to access wiring at demarcation points behind sheet rock, and that such access threatens the structural integrity and safety of MDU buildings.⁸ He states that "[i]n the performance of their normal duties, such installers *routinely* cut access

⁷ Declaration of Joseph Danno, ¶ 2.

⁸ *Id.*, ¶ 4

holes in sheet rock walls and other non-structural building materials in order to access and/or install home wiring within individual subscriber residences.”⁹ Moreover,

[t]hese installers are intimately familiar with the *structural and fire resistant properties* of sheet rock walls, and *understand perfectly how to protect the integrity and code compliance* of the walls being worked on. The installers also understand how to protect the other elements of the wall and building, including the electrical, plumbing, HVAC, security, telephony and insulation elements.¹⁰

On the specific issues of structural integrity and fire resistance, Mr. Danno states that

[w]hile sheet rock walls do provide shear resistance and fire protection, there is *nothing about cutting and properly repairing a small 2” x 4” hole in the sheetrock that should affect the structural integrity or fire resistance* of the wall or the building. Indeed, in my over 25 years experience, *I have never seen any instance where the process of accessing cable wiring behind sheet rock walls has ever caused any structural or fire resistance damage* to the building at issue.¹¹

While some parties, in describing the magnitude of the disruption and repair work involved, assert that it is necessary to cut holes as large as 12” x 12” to access wiring at a demarcation point behind sheet rock,¹² Mr. Danno dismisses these claims as “grossly overstated”: “In most cases, all that is required is a 2” x 4” hole cut into the hallway sheet rock wall. After the 2” x 4” cut in the sheet rock is made, the home wiring is readily accessible and may be quickly interconnected with the wiring of a competing provider.”¹³

And after the holes are cut and the wiring has been connected, the cuts are “easily repaired through patching, sanding and painting over the hole in a manner compatible with the interior decoration of the building or through installation of an innocuous wall plate.”¹⁴ Based on

⁹ *Id.* (emphasis added).

¹⁰ *Id.* (emphasis added).

¹¹ *Id.*, ¶ 9 (emphasis added).

¹² See Affidavit of John Holbert, ¶ 11, attached to Comments of RCN Telecom Services, Inc.

¹³ Declaration of Joseph Danno, ¶ 5.

¹⁴ *Id.*, ¶ 6.

his experience; Mr. Danno states that these procedures “are *not difficult* for experienced technicians to perform, are *entirely safe* for the installers when properly performed, are relatively *inexpensive* and should have *no adverse impact on the structural elements or the physical integrity* of the building.”¹⁵ Moreover, “[a]fter this work is properly completed, there are *no lasting adverse esthetic effects* to the building.”¹⁶

Mr. Danno also confirms that cutting and repairing a hole in sheet rock in order to access wiring at a demarcation point “almost never involves the disruption of adjacent units or units on other floors.”¹⁷ And, while some commenting parties have suggested that wiring located behind sheet rock can be difficult to locate, Mr. Danno states that “installers commonly use inexpensive cable locator devices to pinpoint the location of such wiring.”¹⁸

With respect to cost of accessing wiring behind sheet rock, Mr. Danno points out that “the majority of the cost is associated with labor as the cut and materials are inexpensive.”¹⁹ He makes two key points with respect to that labor cost. First, he notes that, contrary to the calculations set forth by some commenting parties, “the per-unit MDU cost where multiple units are accessed is much lower than the cost to cut and repair only a single unit.”²⁰

In a letter attached to the comments of the Independent Multi-Family Communications Council, Bryan J. Rader, President/CEO of MediaWorks, a “private cable operator,” notes that the process requires workers to “open the wall, make the attachment, plaster board the hole in the

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.*, ¶ 10.

¹⁸ *Id.*, ¶ 11.

¹⁹ *Id.*, ¶ 8.

²⁰ *Id.*

sheet rock/drywall, and wait for it to dry, sand and apply two coats of paint.”²¹ He estimates that this process consumes 2-4 hours per unit (which, in his view, would add \$150 - \$250 in labor costs), and leaps from this estimate to the conclusion that accessing all the demarcation points in a 200-unit building would cost 200 times as much (\$40,000).

The obvious fallacy here, as Mr. Danno explains, is that a large portion of the 2-4 hour process is “downtime, involving the drying of patching and repairing materials used in the installation.”²² Experienced technicians would not work on one unit at a time, sitting and waiting for the patching to dry before painting and moving on to the next unit. They would “multi-task and assembly line the cut and repair process, with one installer completing a task on multiple unit demarcation points before moving on to the next project, while another follows up with the next task.”²³ This “greatly reduces” the downtime and the overall cost of the project.²⁴

Mr. Danno’s second – and critically important – point is that while these most of the expense of accessing wiring at demarcation points behind sheet rock is associated with the cost of the labor involved, “*this cost is about the same as it would cost to access wiring in hallway molding.*”²⁵ Again, it may be the case that *installing* new home run wiring behind sheet rock throughout the building would be more expensive than installing it behind molding. But what is at issue in this proceeding is not the incremental cost and difficulty of installing home run wiring behind sheet rock, as opposed to installing it behind molding. All that is at issue is the cost and

²¹ Letter from Bryan J. Rader to Bill Burhop, Oct. 27, 2004, p.2, attached to Comments of Independent Multi-Family Communications Council.

²² Declaration of Joseph Danno, ¶ 7.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, ¶ 8 (emphasis added).

difficulty of accessing a residential unit's wiring behind sheet rock, for purposes of *attaching it to home run wiring*.

The Commission's rules specifically provide that wiring at a demarcation point located behind molding is *not* physically inaccessible. It follows that if the costs and difficulty of accessing wiring at a point located behind sheet rock are comparable to the costs of accessing wiring behind molding, then wiring behind sheet rock is also not physically inaccessible. Mr. Danno says the costs are "about the same." And two affidavits submitted with NCTA's initial comments stated that accessing wiring behind sheet rock "is not significantly more difficult or expensive than accessing wiring that is behind molding."²⁶

CONCLUSION

The Commission previously concluded, when all the evidence in the record was to the contrary, that a demarcation point where wiring is located behind sheet rock should be deemed "physically inaccessible," as that term is defined in the rules. The Court of Appeals found no basis or explanation for that conclusion and remanded the matter to the Commission.

The Commission has now provided parties with an opportunity to augment the record, but the weight of the evidence remains the same. Accessing wiring at a demarcation point located behind sheet rock does not add significantly to the difficulty or cost of connecting to a resident's wiring, nor does it result in significant modification of, or damage to, any structural elements of the building.

²⁶ Affidavits of John Kuhn and William J. Kelly, ¶ 6.

Building owners and alternative providers seek a ruling that would effectively bring “home run wiring” within the scope of the Commission’s “cable home wiring” rules – which is precisely what the Commission properly refused to do when it adopted the “home run wiring” rules. The record shows that accessing wiring behind sheet rock is not like accessing wiring behind brick, metal or cinder block, but is a common, inexpensive and harmless process that is comparable to accessing wiring behind molding. In other words, the record shows – and the Commission should rule – that a demarcation point behind sheet rock is *not* “physically inaccessible.”

Respectfully submitted,

/s/ Daniel L. Brenner

Daniel L. Brenner
Michael S. Schooler
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

Counsel for the National Cable &
Telecommunications Association

December 6, 2004

DECLARATION OF JOSEPH DANNO

I, Joseph Danno, hereby declare under penalty of perjury as follows:

1. I am the Vice President of Midtown Express, Inc., an independent contractor that specializes in installing internal cable television distribution wiring in multiple dwelling unit (“MDU”) buildings.

2. I have been involved in the cable television industry since 1977, holding positions with various companies working throughout the United States and Puerto Rico. My career has included substantial involvement in the field performing actual installations, as well as various managerial and supervisory positions.

3. In my current capacity, I have managerial and supervisory responsibility over approximately 200 installers in the field who perform installations involving both new buildings under construction as well as upgrade, replacement and installation of broadband wiring in existing buildings. Based on my experience, it is common for broadband wiring installation technicians to be experienced in working with, installations located behind sheet rock (also commonly referred to as “drywall”).

4. Suggestions that experienced installation technicians require additional training in order to access MDU wiring at the demarcation points are highly misleading. In the performance of their normal duties, such installers routinely cut access holes in sheet rock walls and other non-structural building materials in order to access and/or install home wiring within individual subscriber residences. These installers are intimately familiar with the structural and fire resistant properties of sheet rock walls, and understand perfectly how to protect the integrity and code compliance of the walls being worked on. The installers also understand how to protect the

other elements of the wall and building, including the electrical, plumbing, HVAC, security, telephony and insulation elements.

5. In the typical high-rise apartment building, cooperative, or condominium complex, any claim that a 12" x 12" or larger hole cut into the hallway sheet rock wall is necessary in order to access the demarcation point of each unit is grossly overstated. In most cases, all that is required is a 2" x 4" hole cut into the hallway sheet rock wall. After the 2" x 4" cut in the sheet rock is made, the home wiring is readily accessible and may be quickly interconnected with the wiring of a competing provider.

6. After the installation is complete, the cut in the sheet rock is easily repaired through patching, sanding and painting over the hole in a manner compatible with the interior decoration of the building or through installation of an innocuous wall plate. After this repair work is properly completed, there are no lasting adverse esthetic effects to the building. These procedures are not difficult for experienced technicians to perform, are entirely safe for the installers when properly performed, are relatively inexpensive and should have no adverse impact on the structural elements or the physical integrity of the building.

7. The time involved in accessing the demarcation points in an MDU might vary from building to building. While the overall time to cut, patch and repair a cut into a sheet rock wall may take as much as 4 hours combined work time, it is highly misleading to assert that the total time to complete work on an entire building is 4 hours times the number of demarcation points accessed. Much of the 4 hour time is downtime, involving the drying of patching and repairing materials used in the installation. Thus, while a single cut and patch may take up to 4 hours, a series of 10-20 cuts and patches may be accomplished in 8-10 hours. This process is accelerated by the fact that installers can multi-task and assembly line the cut and repair process,

with one installer completing a task on multiple unit demarcation points before moving on to the next project, while another follows up with the next task. This process greatly reduces the downtime involved in a single unit project. Experienced contractors are extremely proficient at managing the time spent to complete a building-wide cut and repair project.

8. The efficiencies resulting from such multitasking and assembly-lining in a building-wide project greatly reduce the overall cost of that project. Thus, the per-unit MDU cost where multiple units are accessed is much lower than the cost to cut and repair only a single unit. The majority of the cost is associated with labor as the cut and materials are inexpensive. Also, this cost is about the same as it would cost to access wiring in hallway molding.

9. Claims that cutting and repairing small holes in sheet rock walls affect the structural integrity or fire resistance of the MDU building are also without merit. While sheet rock walls do provide shear resistance and fire protection, there is nothing about cutting and properly repairing a small 2" x 4" hole in the sheetrock that should affect the structural integrity or fire resistance of the wall or the building. Indeed, in my over 25 years experience, I have never seen any instance where the process of accessing cable wiring behind sheet rock walls has ever caused any structural or fire resistance damage to the building at issue.

10. The process of cutting and properly repairing a small 2" x 4" hole in the sheetrock in order to access the demarcation point almost never involves the disruption of adjacent units or units on other floors.

11. Contrary to assertions that MDU cable distribution wiring located behind sheet rock walls are difficult to locate, installers commonly use inexpensive cable locator devices to pinpoint the location of such wiring.

12. Issues of the costs, time and general accessibility of the wiring and demarcation point would be solved simply by expanding the demarcation point definition to include the wall plate inside the unit where the wiring actually enters. At the wallplate inside the unit, the wiring is always readily accessible, and other than unscrewing and rescrewing the wall plate onto the wall, switching wiring at the wallplate involves no alterations to any building element. Including the internal wall plate in the demarcation point definition would also eliminate the need to move the demarcation point hundreds of feet back to a common junction box or riser cable.



Joseph Danno

Dated: December 3, 2004
168534_1