

under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(b) The following criteria will be used for review of applications:

(1) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner;

(2) The adequacy of the staff and faculty;

(3) The adequacy of institutional resources available to conduct graduate level education, to include the adequacy of teaching facilities;

(4) The adequacy of recruitment and placement assistance for students in accord with the legislative purpose and intent; and

(5) The extent to which the application justifies the purpose, scope, and need for traineeship and or special project grant.

(Approved by the Office of Management and Budget under control number 0915-0060)

§ 58.225 [Amended]

6. Section 58.225 is amended by revising the section number "791A in the formula to read "771".

§ 58.228 [Removed]

7. Section 58.228 is removed.

§ 58.229 [Redesignated as § 58.228]

8. Section 58.229 is redesignated as § 58.228 and is amended by revising paragraph (a) to read as follows:

§ 58.228 Who is eligible for financial assistance as a trainee?

* * * * *

(a) The individual must be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Republic of Palau, a citizen of the Republic of the Marshall Islands or a citizen of the Federated States of Micronesia.

* * * * *

§ 58.230 [Redesignated as § 58.229]

9. Section 58.230 is redesignated as § 58.229.

§ 58.231 [Redesignated as § 58.230]

10. Section 58.231 is redesignated as § 58.230.

§ 58.232 [Redesignated as § 58.231]

11. Section 58.232 is redesignated as § 58.231.

§ 58.233 [Redesignated as § 58.232]

12. Section 58.233 is redesignated as § 58.232 and is amended by removing the parenthetical phrase at the end of the section; by removing the footnote to the CFR citation "45 CFR part 83" and by revising the section numbers "799A and 845" in the citation's heading to read "794 and 855"; and by adding the following CFR reference at the end of the section to read as follows:

§ 58.232 What additional Department regulations apply to grantees?

* * * * *

45 CFR part 93—New restrictions on lobbying

§ 58.234 [Redesignated as § 58.233]

13. Section 58.234 is redesignated as § 58.233 and is revised to read as follows:

§ 58.233 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 75 concerning audit and inspection.

§ 58.235 [Redesignated as § 58.234]

14. Section 58.235 is redesignated as § 58.234.

Subpart E (§§ 58.401–58.414)— [Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart E (consisting of §§ 58.401 through 58.414).

Subpart F (§§ 58.501–58.515)— [Removed and Reserved]

1. Part 58 is amended by removing and reserving subpart F (consisting of §§ 58.501 through 58.515).

[FR Doc. 96-3054 Filed 2-15-96; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-260; FCC 95-503]

Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule; First Order on Reconsideration.

SUMMARY: The First Order on Reconsideration denies petitions for reconsideration of the Commission's

cable home wiring rules, except to specify the procedure a cable operator must follow when a subscriber terminates cable service. This order will facilitate competition in the video marketplace by clarifying rules governing the disposition of wiring.

EFFECTIVE DATE: Upon approval by the Office of Management and Budget. At a later date, the Commission will publish a document reflecting the actual effective date.

FOR FURTHER INFORMATION CONTACT: Lynn Crakes or Rick Chesson, Cable Services Bureau, (202) 416-0800. For additional information concerning the information collections contained in this Order contact Dorothy Conway at 202-418-0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This First Order on Reconsideration contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13. It has been submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Title: 47 CFR 76.802 Disposition of Cable Home Wiring

Type of Review: New Collection

Respondents: Business of other for profit; individuals or households

Number of Respondents: 11,400 cable operators

Estimated Time Per Response: .083 hours (5 minutes)

Total Annual Burden: 18,039 hours

Needs and Uses: This information disclosure requirement ensures that consumers are informed of their cable home wiring purchase rights upon termination of cable service, including information regarding the purchase of their home wiring in a single contact, and the use of wiring to connect to an alternative video programming service. This rule promotes competition by clarifying the disposition of wiring upon termination of cable service. Cable operators' responsibilities are clearly defined and their property rights protected.

This is a synopsis of the Commission's First Order on Reconsideration in MM Docket No. 92-260, FCC No. 95-508, adopted December 15, 1995 and released January 26, 1996.

I. Introduction

1. In this First Order on Reconsideration, we grant in part and

deny in part petitions for reconsideration of the Commission's initial cable home wiring regulations implementing Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). Generally, we: (1) deny the petitions for reconsideration of the Commission's cable home wiring rules, except (a) to specify the procedure a cable operator must follow when a subscriber voluntarily terminates cable service, if the operator wishes to remove the home wiring, and (b) to shorten from 30 days to seven business days the time period after termination of service within which the cable operator has the right to remove any home wiring it owns.

2. The Commission received three petitions for reconsideration of the Report and Order in MM Docket No. 92-260 ("Cable Wiring Order"), 58 FR 11970 (March 2, 1993)—all from potential or current competitors to cable operators—as well as replies to these petitions from cable operators. Petitioners' arguments include the following (a) that subscribers should be permitted to purchase or to control the cable home wiring upon installation rather than upon termination of service, (b) that cable operators should be prohibited from misrepresenting whether they intend to remove or abandon the home wiring following termination of service, (c) that the demarcation point for multiple dwelling units should be relocated, (d) that loop-through wiring configurations should be included within our rules under certain circumstances, and (e) that passive cable equipment should be included within the definition of cable home wiring.

II. Order on Reconsideration

A. Customer Access to Cable Home Wiring Prior to Termination of Service

1. Background

3. Section 16(d) of the 1992 Cable Act requires the Commission to "prescribe rules concerning the disposition, after a subscriber terminates service, of any cable installed by the cable operator within the premises of such subscriber." The Commission's regulations implementing Section 16(d) provide that, when a customer voluntarily terminates service, the cable operator must give that subscriber the opportunity to acquire the wiring before the operator removes it. The subscriber may purchase the wiring inside his or her premises up to the demarcation point, which we defined as a point at or about twelve inches outside the subscriber's premises. The operator may not charge the subscriber any more than

the replacement cost of the wire, priced on a per-foot basis. If the subscriber declines to purchase the wiring, the operator must remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.

4. In the 1993 Cable Wiring Order, we said that it was not "necessary or appropriate under the statute" to apply our cable home wiring rules prior to the time the customer terminates cable service. We noted that the plain language of Section 16(d) of the 1992 Cable Act refers only to the disposition of cable home wiring after termination of service, and that cable home wiring is different from telephone wiring in that, for example, cable operators have the responsibility to prevent signal leakage which can cause harmful interference to licensed radio spectrum users, a responsibility telephone companies do not have. We also cited the House Report on the 1992 Cable Act which stated that Section 16(d) itself "does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service." At the same time, the Commission stated:

[a]lthough we generally believe that broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings, because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this proceeding.

2. Petitions

5. Some petitioners urge the Commission to apply the cable home wiring rules prior to termination of service so that the subscriber may control cable home wiring immediately upon installation. NYNEX asserts, among other things, that consumers should be able to control the cable home wiring upon installation so that they can obtain additional services from other multichannel video programming service providers through simultaneous use of the wire's spare capacity. On the other hand, NCTA states that the Commission's current rules fully effectuate the statutory language and the underlying purposes of the 1992 Cable Act. NCTA and Time Warner claim that the Commission lacks the authority under the 1992 Cable Act to mandate that operators convey ownership to subscribers at the time of installation. Time Warner also asserts that the Commission's current rules violate the takings clause by providing that if a cable operator fails to remove its home wiring within 30 days following termination of service, the operator is

prohibited from subsequently attempting to remove the wiring or restrict its use.

3. Discussion

6. The Commission's current cable home wiring rules implement the specific directive of Section 16(d) of the 1992 Cable Act, i.e., to establish rules governing the disposition of cable home wiring upon termination of cable service. Our current rules promote the goals of Section 16(d), which are to protect customers from unnecessary disruption and expense caused by the removal of home wiring and to allow subscribers to use the wiring for an alternative multichannel video programming delivery system. On reconsideration, we are not persuaded, based on the record in this proceeding at this time, to expand our cable home wiring rules under Section 16(d) of the 1992 Cable Act. At the same time, we recognize that new competitors, such as wireless cable, satellite master antenna television services ("SMATVs") and telephone companies, and new technologies, such as video dialtone, are likely to change the video programming delivery marketplace. The Commission must therefore consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding in determining whether to expand the cable home wiring rules in ways that could have competitive implications for cable operators and other multichannel video programming providers, as well as other providers of telecommunications services. Given the potential for the convergence of telephone, data and video technologies, it may be appropriate to consider requiring cable operators to permit subscriber access to inside wiring prior to termination of service in order to promote consumer choice and competition. Parity with telephone inside wiring may also be desirable if a cable operator wants to provide telephone or other common carrier service over its coaxial cable, but the record in this proceeding does not provide us with sufficient information upon which to base such a determination. The Commission will therefore further explore this issue in the Notice of Proposed Rulemaking ("NPRM") in CS Docket No. 95-184 being adopted concurrently herewith.

7. In addition, we determine that our current rules (as well as our revised rules described below) do not constitute an unconstitutional taking, because they implement a clear statutory directive and provide that, upon termination of service, the cable operator can receive just compensation for its home wiring or

remove the wiring. Nor do we believe that our rules are rendered unconstitutional by the fact that the cable operator is deemed to have waived the availability of compensation if it fails to remove its home wiring within a given time period following termination of service. Compensation is available, under reasonable terms and conditions, if the cable operator chooses to take that option. See *United States v. Locke*, 471 U.S. 84, 107 (1985), which rejects a Fifth Amendment taking claim where the plaintiff failed to comply with a statutory requirement for filing a mining claim that would have indicated its intent to retain its property right. *Texaco, Inc. v. Short* notes that the U.S. Supreme Court has never required giving compensation to a private property owner who fails to take reasonable actions imposed by law for the consequences of his own neglect, 454 U.S. 516, 530 (1982). We note that the prescribed time period (formerly 30 days and, as described below, now seven business days) within which a cable operator may remove the cable home wiring it owns provides the operator with a reasonable opportunity to remove the wire if it so wishes.

8. With regard to NYNEX's contention that consumer access to cable home wiring prior to termination of service would allow consumers to obtain broadband services from more than one multichannel video programming service provider simultaneously over one coaxial cable, it is our understanding that, while such simultaneous use may be possible in the laboratory, it is not technically or economically feasible in the marketplace at the present time. Apparently, for example, broadband networks are highly susceptible to signal impairments from outside sources, such as over-the-air broadcast signals, a danger that would be magnified significantly by the insertion of an additional broadband service within the wiring itself. Therefore, we deny NYNEX's petition as premature insofar as it seeks rules designed to allow simultaneous use by a broadband video competitor of excess capacity on cable home wiring. Furthermore, we note that the current cable wiring rules do not prohibit simultaneous use, regardless of whether the cable operator or the subscriber owns or controls the cable home wiring. Because we agree that simultaneous use of the same wire by competitors could promote competition and increase consumer choice, however, if simultaneous use of cable wiring becomes economically and technically feasible, the Commission

may address any issues raised at that time.

B. Disposition of Cable Home Wiring Upon Termination of Service

1. Background

9. The Cable Wiring Order provides that when a subscriber calls to voluntarily terminate cable service, the operator is required, if it proposes to remove the wiring, to inform the subscriber (a) that he or she may purchase the wire, and (b) what the cost per-foot charge is. If the subscriber declines to purchase the home wiring, the operator must remove it within 30 days or lose the right to remove it or restrict its use.

2. Petitions

10. Some petitioners assert that cable operators may attempt to deter subscribers from switching to alternative multichannel video programming service providers by claiming that they intend to remove the cable wiring even if they intend to abandon it. They posit that the cable operator might falsely proclaim such an intent in order to prevent an alternative provider from using the wiring during the 30-day period afforded the operator to remove the wiring, and that since some subscribers might elect to remain with the incumbent cable operator rather than face such a choice, the current rules could defeat the purpose behind Section 16(d).

11. WCA proposes that the Commission: (a) decrease the period following termination during which cable operators must remove cable home wiring from 30 days to seven days; (b) prohibit cable operators from terminating service until either the cable is removed or the seven-day period expires; and (c) establish procedures for the filing of complaints against cable operators that demonstrate a pattern of misrepresenting their intentions to remove wiring. Finally, WCA suggests that the "appointment window" rules adopted in MM Docket No. 92-263 (Customer Service Standards) apply to appointments to remove wiring, and that a failure to comply would result in the automatic transfer of the wiring to the subscriber.

12. In response, some cable companies argue that WCA's claim that operators will falsely state their intention to remove the wiring is "speculative," and, even if true, would not warrant action on reconsideration. They assert that WCA's concern that cable operators will discriminate against customers who choose an alternative service provider is unfounded because a

cable operator cannot require any subscriber to purchase his home wiring. Moreover, NCTA argues that WCA's proposals are merely an attempt by alternative video programming service providers to gain a "free ride" off wiring installed by and belonging to the incumbent cable operator. As an alternative, NCTA states that alternative providers could offer to purchase the wiring from the incumbent operator, or at least offer to reimburse the subscriber if the subscriber chooses to purchase the wiring.

13. In reply, WCA asserts that none of the responses addresses the fundamental unfairness of permitting cable operators to discriminate against subscribers who terminate service in favor of an alternative service provider.

14. Ameritech proposes that ownership of cable home wiring should transfer to the subscriber upon termination. Ameritech proposes that, at a minimum, in cases of voluntary termination where a subscriber is notified of the right to purchase his or her home wiring and the subscriber exercises that right, constructive ownership should vest with the subscriber immediately and the subscriber should be free to authorize the connection of the wiring to a competing service provider.

3. Discussion

15. As we noted in the Cable Wiring Order, the purpose of Section 16(d) is to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination, and to subsequently utilize that wiring for an alternative video programming service. While we believe that our current rules advance these goals, we believe that they do not address certain issues—such as when actual control of the home wiring transfers to the subscriber—that could cause needless consumer confusion and marketplace uncertainty. We therefore believe that the goals of Section 16(d) would be better served if our rules set forth a simple, clear process by which: (a) consumers can obtain, in a single contact, the information they need to decide whether they wish to purchase their home wiring upon termination; (b) consumers can thereafter quickly and easily use the wiring to connect to an alternative video programming service provider; and (c) cable operators' legitimate property rights are protected. Thus, we hereby amend our rules regarding the disposition of home wiring upon the voluntary termination of service as follows.

16. During the initial telephone call in which a subscriber advises the cable operator that he or she is voluntarily terminating service, the operator—if it owns and intends to remove the home wiring—must inform the subscriber of four things:

(a) that the cable operator owns the home wiring—as discussed in the Cable Wiring Order, the record reveals that, in many circumstances, the subscriber already owns the home wiring at termination (e.g., where the operator has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture); it is the operator's responsibility to maintain adequate records to document its ownership;

(b) that the cable operator intends to remove the home wiring;

(c) that the subscriber has a right to purchase the home wiring; and

(d) what the per-foot replacement cost and total charge for the wiring would be, including the replacement cost for any passive splitters attached to the wiring on the subscriber's side of the demarcation point—our current rules state that the operator must inform the subscriber of the per-foot replacement cost, and that its charge for the wiring may be based on “a reasonable approximation” of the length of cabling in the subscriber's premises. In the Cable Wiring Order (at n. 39), we stated that we expected the per foot charge to be based on the replacement cost of coaxial cable in the community; for instance, we noted that the record indicated that new coaxial cable was being sold for six cents per foot by District Cablevision in Washington, D.C. An operator has two options for making a “reasonable approximation” of the total charge during the contact terminating service. First, the operator can develop schedules to make such approximations based on readily available information, such as whether the subscriber lives in a single family dwelling or an apartment, the number of outlets installed, or the number of television sets in use. If the operator chooses to develop such schedules, it must place them in a public file and make them available for public inspection during regular business hours. In the alternative, the operator may maintain records reflecting the actual amount of home wiring installed on subscribers' premises, but this information must be available for calculating the total charge for the wiring during the initial phone call.

Where an operator fails to adhere to the above procedures, it will be deemed

to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use. By referring to “subscriber” herein, we do not intend to prohibit a subscriber from delegating to an agent the task of terminating service and authorizing the purchase of home wiring on his or her behalf.

17. If a subscriber voluntarily terminates cable service in person (i.e., at the cable operator's offices), the same procedures apply. If a subscriber requests termination in writing, it is the operator's responsibility—if it intends to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and provide the subscriber with the information set forth above.

18. If the cable operator informs the subscriber as described above, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring. Of course, the alternative video programming service provider is free to reimburse the subscriber for the cost of the home wiring. We believe that such a transfer of control presents no Fifth Amendment difficulties, since the operator will ultimately be compensated for its wiring (at which point actual ownership of the wiring will transfer to the subscriber). We are, however, cognizant of the potential for harmful signal leakage if this change-over is mishandled. Thus, where the incumbent cable operator has not yet terminated service and “capped off” its line, the alternative video programming service provider will be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. “Capping off” is a procedure whereby a terminating “cap” is placed over a wire to prevent potentially harmful signal leakage. If there is no alternative provider—i.e., if the subscriber is terminating service but will not be using the home wiring to receive another multichannel video service—the cable operator will remain responsible for properly capping off its own line. We require incumbent cable operators to take reasonable steps within their control to ensure that the alternative service provider has access to the home wiring at the demarcation point (e.g., by providing prompt access to the cable operator's lockbox where the placement of the lockbox impedes

access to the demarcation point), and for incumbents and alternative multichannel video programming delivery service providers to minimize the potential for signal leakage, theft of service and unnecessary disruption of the consumer's premises.

19. If, on the other hand, the subscriber declines to purchase the home wiring, the operator will have seven business days, rather than the current 30 days, to remove the wiring. If the operator does not remove the home wiring within this seven business day period, the operator may make no subsequent attempt to remove it or restrict its use. We believe that requiring subscribers to wait 30 days before learning whether the cable operator would remove its wiring causes needless uncertainty for the consumer and the possibility of a lengthy disruption in service. We also believe that, under normal operating conditions, it is not unreasonable to require cable operators to remove their wiring within seven business days. However, we decline at this time to apply the Commission's “appointment window” rules to appointments to remove wiring; we believe that WCA has not submitted sufficient evidence to demonstrate that such a change is necessary at this time. Given the uniform federal and industry standard on installations, we reject Time Warner's contention that a seven-day removal period is a forced, rather than a voluntary, abandonment of property. It is the operator's failure to act within a reasonable time after the subscriber requests that its wiring be removed—not the Commission's rule—that extinguishes the cable operator's rights. We also reject NCTA's assertion that a 30-day removal period is required to ensure that consumers have adequate time to decide whether or not to purchase the wiring. If the subscriber asks for more time to make a decision on whether to purchase the home wiring, the seven business-day period will not begin running until the subscriber declines to purchase the wiring. Until the subscriber contacts the operator with a decision, he or she may not use the wiring to connect to an alternative service provider.

20. We believe that the above procedures may not be necessary in most circumstances. We understand that cable operators typically abandon cable home wiring because the cost and effort required to remove it generally outweigh its value. Accordingly, in most cases, the cable operator may simply remain silent on the subject of home wiring when the subscriber requests termination of service. If, for whatever reason, the cable operator does not

discuss the disposition of the home wiring with the subscriber in accordance with the above procedures, the operator will be deemed to have relinquished immediately any and all ownership interests in the home wiring. Thus, the operator will not be entitled to compensation for the wiring and may make no subsequent attempt to remove it or restrict its use.

21. While we acknowledge WCA's concerns that cable operators could misrepresent their intention to remove the wiring, or that operators may discriminate against subscribers who terminate service in favor of an alternative provider, there is no evidence in the record for us to conclude that these are significant problems. Moreover, we believe we have alleviated WCA's concern regarding subscribers being without service for up to 30 days by requiring cable operators to remove the home wiring within seven business days.

C. Demarcation Point for Multiple Dwelling Units With Non-Loop-Through Wiring

1. Background

22. Section 16(d) of the 1992 Cable Act states that the Commission shall prescribe rules concerning cable wire "within the premises of [the] subscriber." Section 76.5(l) of the Commission's rules defines cable home wiring as the "internal wiring contained within the premises of a subscriber which begins at the demarcation point." Under the current rules, the demarcation point is the point from which the customer has the right to purchase cable home wiring upon voluntary termination of service, the location from which the subscriber may control the internal home wiring if he or she owns it, and the point where a potential alternative multichannel video programming service provider can attach its wiring to the subscriber's wiring in order to provide service.

23. The wiring in multiple dwelling unit buildings is generally in either a non-loop-through or loop-through configuration. In a non-loop-through configuration, each subscriber has a dedicated line extending from a trunk or feeder line to the individual's premises. The point at which the drop meets the feeder line in multiple dwelling unit buildings is usually in a security box or utility closet. A loop-through configuration is one in which a single cable provides service to a group of subscribers by being strung from one subscriber's unit to the next subscriber's unit in the same building.

2. Petitions

24. Some commenters ask that the Commission reconsider its decision to locate the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable enters a subscriber's individual dwelling unit. NYNEX states that the Commission's current rules are anti-competitive because they require an alternative cable service provider to install duplicate wire up to the twelve-inch point outside of where the wire enters the subscriber's premises, which would either be prohibitively expensive or impossible due to space limitations or the location of the wiring inside a wall in a building. Liberty asks that the demarcation point for multiple dwelling units be at the point outside a subscriber's premises and within the common areas of the multiple dwelling unit building where the individual subscriber's wires can be detached from the cable operator's common wires without harming the multiple dwelling unit and without interfering with the cable operator's provision of service to other residents in the building. Liberty contends that this would enhance competition by making it easier for the subscriber to switch from one alternative multichannel video programming service provider to another.

25. On the other hand, cable companies oppose proposals to change the demarcation point for multiple dwelling units, arguing that the proposals do not definitively measure the exact point of demarcation and are contrary to the plain language of the statute. NCTA states that allowing a new service provider to go much beyond twelve inches invades the common wiring, which is the cable operator's property. Time Warner recommends that the most practical demarcation point in multiple dwelling units is the wall plate in each individual unit, not beyond twelve inches from where the wiring enters the individual dwelling unit.

3. Discussion

26. We deny reconsideration of our rule setting the demarcation point for multiple dwelling units at or about twelve inches outside of where the cable wire enters the subscriber's dwelling unit. While the record in this proceeding does indicate that the Commission's current rules with regard to location of the demarcation point in multiple dwelling units may impede competition in the multichannel video programming delivery marketplace, the record is insufficient at this time to

indicate whether a different demarcation point might better promote competition and consumer choice in the multichannel video programming delivery marketplace without an undue impact on competition in the market for other telecommunications services. We are concerned with more than simple competition in the broadband multichannel video programming market. We want to promote competition and consumer choice in all types of telecommunications markets through multiple technologies and services. The Commission therefore must consider broad telecommunications issues which extend beyond the 1992 Cable Act and the record in this proceeding before modifying the cable home wiring rules in ways that could have competitive implications for cable operators and other telecommunications service providers. Accordingly, while we deny reconsideration of our current definition of the cable demarcation point for multiple dwelling unit buildings, we believe that it would be appropriate to revisit this issue in a broader competitive context. We are, therefore, requesting comment on this demarcation point issue in our NPRM in CS Docket No. 95-184 being adopted concurrently herewith. We expect to act quickly in the NPRM proceeding to resolve the demarcation point issue.

D. Multiple Dwelling Unit Buildings With Loop-Through Wiring

1. Background

27. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire multiple dwelling unit building. Every subscriber on the loop is limited to receiving video services from the same provider; there is no capacity for individual choice. In the Cable Wiring Order, the Commission excluded multiple dwelling unit loop-through wiring from the cable home wiring rules, reasoning that applying our rules to loop-through wiring would give the building manager or the initial subscriber control over cable service for all subscribers in the loop.

2. Petitions

28. Telephone companies ask that loop-through cable be included in the home wiring rules and controlled by the multiple dwelling unit building owner, and propose that the Commission require that loop-through and other configurations based on common use of unpowered coaxial cable be eliminated in all future multiple dwelling unit installations of cable home wiring. In

addition, Bell Atlantic urges the Commission to bar exclusive contracts between cable operators and the owners or managers of multiple dwelling unit buildings, because such contracts allegedly circumvent the Commission's cable home wiring rules and deny residents the ability to choose between competing services. While the current record does not contain sufficient evidence to bear out Bell Atlantic's assertions—and thus we do not address them further here—the parties are free to raise this issue in the context of the NPRM in CS Docket No. 95–184, adopted concurrently herewith.

29. On the other hand, cable companies agree with the Commission's exclusion of multiple dwelling unit building loop-through configurations from the home wiring rules. Time Warner argues that the frequent turnover of multiple dwelling unit residents makes inclusion of loop-through multiple dwelling units impractical.

3. Discussion

30. On reconsideration, we continue to exclude loop-through wiring from our cable home wiring rules. Inclusion of loop-through systems within these rules would be impractical, in part because establishing a separate demarcation point for each subscriber on a loop-through system and deciding how much wiring each subscriber should have the option to buy are not feasible. Furthermore, loop-through configurations, by their nature, preclude individual subscriber control, an essential element of the Commission's cable home wiring rules. Therefore, cable operators are not required to offer to sell loop-through wiring to subscribers upon termination of service, and no loop-through subscriber has the right to purchase loop-through home wiring. We will, however, consider and request comment in our Further Notice of Proposed Rulemaking ("FNPRM") published simultaneously in this issue regarding Liberty's proposal that we allow the building owner to purchase the home wiring when all of the subscribers on a loop simultaneously decide to switch to an alternative video programming service provider. We will also request comment on NYNEX's and USTA's proposal that we prohibit future loop-through wiring installations and our authority, if any, to do so.

E. Inclusion of Passive Splitters Within Cable Home Wiring

1. Background and Petitions

31. Section 76.5(l) of the Commission's rules defines cable home

wiring as the internal wiring contained within the subscriber's premises which begins at the demarcation point. The rule specifically excludes from cable home wiring any active elements such as amplifiers, converter or decoder boxes, or remote control units. In its petition for reconsideration, Liberty asks the Commission to "clarify that cable home wiring includes passive ancillary equipment such as splitters and conduits or molding in which the cable is installed." Liberty asserts that including such passive equipment within the definition of cable home wiring will allow Liberty and other cable competitors to avoid problems that arise when space constraints prohibit the installation of multiple splitters or conduits to access an individual subscriber's wires. Cable companies oppose this request, contending that it was the specific intent of Congress to exclude any cable equipment other than actual wiring. Time Warner further contends that conduit and molding should be excluded from the Commission's definition of cable home wiring because they are not cable equipment, but rather the property of the premises owner. Time Warner states that, at a minimum, splitters, which are passive cable equipment, should only be considered part of the home wiring if located within, or up to twelve inches outside the subscriber's premises.

2. Discussion

32. We grant Liberty's request that we include passive splitters within the definition of cable home wiring. Because passive splitters are a physically integral part of the home wiring, we believe that their exclusion could frustrate the purposes behind Section 16(d) of the 1992 Cable Act—i.e., to permit subscribers to avoid the disruption of having their home wiring removed, and to subsequently utilize the home wiring for an alternative video programming service. Therefore, operators will be required to offer to sell to a terminating subscriber any passive splitters attached to the home wiring on the subscriber's side of the demarcation point, at no more than the replacement cost of the splitters.

33. However, we deny Liberty's request that other passive equipment be included within the cable home wiring definition. We believe that molding and conduit are not necessarily cable equipment and are often the property of the premises owner. In addition, we believe that, considering the wide variety of passive equipment and related property, it would be too burdensome to require cable operators to be prepared to

quote the replacement cost of such equipment and property upon the subscriber's termination of service. Nevertheless, we understand Liberty's concern that cable operators not be permitted to use their ownership of other property relating to the cable home wiring to frustrate the purposes of our cable home wiring rules and Section 16(d) of the 1992 Cable Act. We will therefore prohibit cable operators from using any ownership interests they have in property located on the subscriber's side of the demarcation point, for example, cable molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service.

III. Regulatory Flexibility Analysis

34. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the First Order on Reconsideration is as follows:

35. Need and Purpose of this Action. The Commission amends its rules pertaining to cable home wiring to better effectuate the purposes of Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 544(i) (1992).

36. Summary of Issues Raised by the Public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

37. Significant Alternatives Considered and Rejected. Petitioners representing cable interests and competitive video providers did not submit comments regarding the administrative burden of the home wiring rules.

IV. Procedural Provisions

38. Initial Paperwork Reduction Act of 1995 Analysis. This First Order on Reconsideration contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this Order as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the FNPRM; OMB comments are due 60 days from the date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

39. *Ex parte* Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

40. Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

V. Ordering Clauses

41. Accordingly, it is ordered that the Petitions for Reconsideration in MM Docket No. 92–260 are granted in part and denied in part, as provided above herein.

42. It is further ordered that Part 76 of the Commission's rules is hereby amended as shown below, effective upon approval by the Office of Management and Budget. The portions of the First Order on Reconsideration imposing information collections will not go into effect until approved by the Office of Management and Budget.

43. It is further ordered that the Secretary shall send a copy of this First Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Revised Rules

Part 76 of Title 47 of the Code of Federal Regulation is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1084, 1085, 1101; 47 U.S.C. § 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 632, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 543, 552.

2. Section 76.5 is amended by revising paragraph (II) to read as follows:

§ 76.5 Definitions.

* * * * *

(II) Cable home wiring. The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

* * * * *

3. Section 76.802 is revised to read as follows:

§ 76.802 Disposition of cable home wiring.

(a) Upon voluntary termination of cable service by a subscriber, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. The cost is to be determined based on the replacement cost per foot of the cable home wiring multiplied by the length in feet of the cable home wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point. If the subscriber declines to acquire the cable home wiring, the cable system operator must then remove it within seven (7) business days, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(b) During the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator—if it owns and intends to remove the home wiring—must inform the subscriber:

(1) That the cable operator owns the home wiring;

(2) That the cable operator intends to remove the home wiring;

(3) That the subscriber has the right to purchase the home wiring; and

(4) What the per-foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

(c) If the subscriber voluntarily terminates cable service in person, the procedures set forth in paragraph (b) of this section apply.

(d) If the subscriber requests termination of cable service in writing, it is the operator's responsibility—if it wishes to remove the wiring—to make reasonable efforts to contact the subscriber prior to the date of service termination and follow the procedures set forth in paragraph (b) of this section.

(e) If the cable operator fails to adhere to the procedures described in paragraph (b) of this section, it will be deemed to have relinquished immediately any and all ownership interests in the home wiring; thus, the operator will not be entitled to compensation for the wiring and shall make no subsequent attempt to remove it or restrict its use.

(f) If the cable operator adheres to the procedures described in paragraph (b) of this section, and, at that point, the subscriber agrees to purchase the wiring, constructive ownership over the home wiring will transfer to the subscriber immediately, and the subscriber will be permitted to authorize a competing service provider to connect with and use the home wiring.

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) business day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

(h) If an alternative video programming service provider connects its wiring to the home wiring before the incumbent cable operator has terminated service and has capped off its line to prevent signal leakage, the

alternative video programming service provider shall be responsible for ensuring that the incumbent's wiring is properly capped off in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(i) Where the subscriber terminates cable service but will not be using the home wiring to receive another alternative video programming service, the cable operator shall properly cap off its own line in accordance with the Commission's signal leakage requirements. See Subpart K (technical standards) of the Commission's Cable Television Service rules (47 CFR 76.605(a)(13) and 76.610 through 76.617).

(j) Cable operators are prohibited from using any ownership interests they may have in property located on the subscriber's side of the demarcation point, such as molding or conduit, to prevent, impede, or in any way interfere with, a subscriber's right to use his or her home wiring to receive an alternative service. In addition, incumbent cable operators must take reasonable steps within their control to ensure that an alternative service provider has access to the home wiring at the demarcation point. Cable operators and alternative multichannel video programming delivery service providers are required to minimize the potential for signal leakage in accordance with the guidelines set forth in 47 CFR 76.605(a)(13) and 76.610 through 76.617, theft of service and unnecessary disruption of the consumer's premises.

(k) Definitions—Normal operating conditions—The term "normal operating conditions" shall have the same meaning as at 47 CFR 76.309(c)(4)(ii).

[FR Doc. 96-3128 Filed 2-15-96; 8:45 am]

BILLING CODE 6712-01-P

47 CFR Part 90

[PR Docket No. 93-144; PP Docket No. 93-253; FCC 95-501]

The Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *First Report and Order* in PR Docket No. 93-144, and *Eighth Report and Order* in PP Docket No. 93-

253, the Commission adopts final service and competitive bidding rules for the "upper 10 MHz block" of 800 MHz Specialized Mobile Radio (SMR) spectrum and adopts rules which streamline the licensing process for SMR services in the 800 MHz band.

In this *First Report and Order* ("First R&O"), the Commission designates a portion of 800 MHz SMR spectrum for wide-area licensing using license areas defined by the Economic Areas (EAs) established by the U.S. Department of Commerce Bureau of Economic Analysis. Under this wide-area licensing plan the Commission has allocated three channel blocks, one 120-channel block, one 60-channel block, and one 20-channel block.

In this *Eighth Report and Order* ("Eighth R&O"), the Commission reiterated that competitive bidding is an appropriate licensing tool for the 800 MHz SMR service. The Commission also adopts specific auction rules for the upper 10 MHz block, including rules pertaining to competitive bidding design, license grouping, bidding procedures, and treatment of "designated entities" (that is, small businesses, businesses owned by minorities and/or women, and rural telephone companies). The intended effect of this action is to facilitate future deployment of SMR systems in the 800 MHz band through licensing procedures and the use of competitive bidding.

EFFECTIVE DATE: March 18, 1996.

FOR FURTHER INFORMATION CONTACT: David Furth or Lisa Warner at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This *First Report and Order* in PR Docket No. 93-144, and this *Eighth Report and Order* in PP Docket No. 93-253, adopted December 15, 1995, and released December 15, 1995, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 140, Washington, D.C. 20037 (telephone (202) 857-3800).

Synopsis of *First Report and Order* and *Eighth Report and Order*:

I. Background

1. The Commission's current rules for the 800 MHz Specialized Mobile Radio (SMR) service were designed primarily to license dispatch radio systems on a transmitter-by-transmitter basis in local markets. In recent years, however, some SMR licenses have been authorized

through waivers and extended implementation rules to expand the geographic scope of their services and aggregate large numbers of channels to provide service more directly comparable to that provided by cellular operators and that envisioned for Personal Communications Services (PCS). While the 800 MHz SMR rules have proven sufficiently flexible to permit such expansion, the licensing process remains cumbersome because of the need to license each SMR transmitter site individually. In May 1993, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket No. 93-144, 58 FR 33062 (June 15, 1993) ("Notice"), proposing wide-area licensing of the 800 MHz SMR service. In August of 1993, Congress amended the Communications Act of 1934 to modify the regulatory treatment of mobile services. In the *Second Report and Order* in GN Docket No. 93-252, 59 FR 18493 (April 19, 1994) ("CMRS Second R&O"), the Commission reclassified all mobile services into two statutorily-defined categories: commercial mobile radio services (CMRS) and private mobile radio services (PMRS). The Commission concluded that all SMR systems providing or authorized to provide interconnected service would be reclassified as CMRS.

2. In the *Third Report and Order* in GN Docket No. 93-252, 59 FR 59945 (November 21, 1994) ("CMRS Third R&O"), the Commission concluded that 800 MHz SMR licensees either compete or have the potential to compete with other CMRS providers. As a result, the Commission determined that the technical and operational requirements for the 800 MHz SMR service should be made comparable, to the extent feasible, to those applicable to other CMRS providers. In this connection, the Commission concluded that: (1) wide-area licensing should be implemented in the 800 MHz SMR service; and (2) licensing of the 800 MHz SMR spectrum should be accomplished through competitive bidding procedures.

3. On October 20, 1994, the Commission adopted a *Further Notice of Proposed Rule Making* in PR Docket No. 93-144, 59 FR 60111 (November 22, 1994) ("Further Notice"), proposing a new framework for licensing of 800 MHz SMR systems. Specifically, the Commission proposed to assign 10 MHz of SMR spectrum (consisting of 200 contiguous channels) in defined market-based service areas to facilitate the development of wide-area, multi-channel SMR systems, while the remaining 4 MHz of spectrum (consisting of 80 non-contiguous