

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[VA-5029a; FRL-5921-4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC RACT Determinations for Individual Sources; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; corrections.

SUMMARY: This document corrects the preamble to a direct final rule published in the **Federal Register** of October 14, 1997 regarding the approval of Reasonably Available Control Technology (RACT) for six major sources of volatile organic compounds (VOC) located in Virginia. The document contains an incorrect annual emission rate and a typographical error.

DATES: Effective November 28, 1997.**FOR FURTHER INFORMATION CONTACT:** Kimberly Peck, (215) 566-2165.

SUPPLEMENTARY INFORMATION: In direct final rule FRL-5904-3, beginning on page 53243 in the **Federal Register** issue of October 14, 1997, make the following corrections, in the Preamble section. On page 53243 in the middle column, change the second full paragraph to the following:

"The uncontrolled stack VOC emissions from the Bermuda Hundred Facility are estimated to be 93.4 tons per year."

On page 53243 in the middle column, change the third full paragraph to the following:

"RACT as prescribed in the Consent Agreement, Registration Number 50722, dated March 26, 1997 is determined to be no controls as Virginia determined that add-on controls were not economically feasible or cost-effective."

Dated: November 3, 1997.

Thomas C. Voltaggio,*Acting Regional Administrator, Region III.*

[FR Doc. 97-30020 Filed 11-13-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 76**

[CS Docket No. 95-184; MM Docket No. 92-260; FCC 97-376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Second Further Notice of Proposed Rulemaking* segment of this decision may be found elsewhere in this issue of the **Federal Register**. The *Report and Order* ("Order") segment amends the Commission's regulations relating to the disposition of cable home wiring and establishes regulations for the disposition of home run wiring and related issues including the sharing of molding, the demarcation point for multiple dwelling unit buildings ("MDUs"), loop-through cable wiring configurations, customer access to cable home wiring before termination of service, and signal leakage. This action was necessary because competition is currently being deterred by disputes over control and use of the wires necessary to reach each unit in an MDU. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to broaden consumers' ability to install and maintain their own wiring.

DATES: Amendments in §§ 76.613, 76.802 and 76.804 contain information collection requirements, and will not become effective until approved by the Office of Management and Budget ("OMB"). Amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 become effective December 15, 1997. However, compliance with amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in §§ 76.613, 76.802 and 76.804. When approval is received, the Commission will publish a document announcing the effective date of the amendments in §§ 76.613, 76.802 and 76.804, and the date of compliance for the amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806.

Written comments by the public on the modified information collections are due on or before January 13, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418-7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

Paperwork Reduction Act

The *Order* contains modified information collection requirements. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. 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.

OMB Approval Number: 3060-0692.

Title: Cable Inside Wiring Provisions.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals; Businesses or other for-profit entities.

Number of Respondents: 30,500 (20,500 MVPDs and 10,000 MDU owners).

Estimated Time Per Response: 5 minutes to 30 minutes.

Total Annual Burden to Respondents:

46,114 hours, calculated as follows: This collection (3060-0692) accounts for all information collection requirements that may come into play during the disposition of cable home wiring in single dwelling units, as well as the disposition of home run wiring and cable home wiring in multiple dwelling units. All multichannel video programming distributors ("MVPDs"), both cable and non-cable alike, will be subject to the disposition rules in MDUs. Pursuant to the Paperwork Reduction Act, when modifying only portions of an information collection, agencies are still obligated to put forth the entire collection for public comment.

This information collection also now accounts for information collection stated in 47 CFR 76.613, where MVPDs causing harmful signal interference may be required by the Commission's District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures. Through the course of this rulemaking proceeding, the Commission

has identified this information collection requirement as not having previously been reported to OMB for approval. We estimate that no more than 10 interference reports will be submitted annually to the Commission's District Director and/or Resident Agent, each having an average burden of 2 hours to prepare. (10 reports \times 2 hours = 20 hours).

47 CFR 76.620 applies the Commission's signal leakage rules to all non-cable MVPDs. Our rules require that each cable system perform an independent signal leakage test annually, therefore, non-cable MVPDs will now be subject to the same requirement. We recognize, however, that immediate compliance with these requirements may present hardships to existing non-cable MVPDs not previously subject to such rules. We will allow a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The transition period will apply only to systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. Considering non-cable MVPD systems that will be built after January 1, 1998, we estimate that 500 new entities will be subject to signal leakage filing requirements, with an estimated burden of 20 hours per entity. (500 systems \times 20 hours = 10,000 hours). 47 CFR 76.802, Disposition of Cable Home Wiring, gives individual video service subscribers in single unit dwellings and MDUs the opportunity to purchase their cable home wiring at replacement cost upon voluntary termination of service. In calculating hour burdens for notifying individual subscribers of their purchase rights, we make the following assumptions: There are approximately 20,000 MVPDs serving approximately 72 million subscribers in the United States. The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year. MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination and subscribers or property owners already have gained ownership of the wiring in the other 50% of occurrences (e.g., where the MVPD 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). Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement. We believe in most cases that MVPDs

will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, e.g., by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (.083 hours). Estimated annual number of occurrences is 72,000,000 \times 12% \times 50% \times 5% = 216,000. (216,000 \times .083 hours = 17,928 hours).

In addition, 47 CFR 76.802 states that if a subscriber in an MDU declines to purchase the wiring, the MDU owner or alternative provider (where permitted by the MDU owner) may purchase the home wiring where reasonable advance notice has been provided to the incumbent. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. We estimate that 2,000 MDU owners will provide advance notice to the incumbent that the MDU owner or alternative provider (where permitted by the MDU owner) will purchase the home wiring where a terminating individual subscriber declines. The estimated average time for MDU owners to provide such notice is estimated to be 15 minutes (.25 hours). The estimated average time consumed in the process of the MVPD's subsequent disclosure and the MDU owner or alternative provider's election is 5 minutes (.083 hours). Estimated annual time consumed is 2,000 notifications \times .333 hours = 666 hours. 47 CFR 76.802 also states that, to inform subscribers of per-foot replacement costs, MVPDs may develop replacement cost schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file available for public inspection during regular business hours. We estimate that 50% of MVPDs will develop such cost schedules to place in their public files. Virtually all individual subscribers terminate service via telephone, and few subscribers are anticipated to review cost schedules on public file. The annual recordkeeping burden for these cost schedules is estimated to be 0.5

hours per MVPD. (20,000 MVPDs \times 50% \times 0.5 hours = 5,000 hours).

47 CFR 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns or controls the common areas of the MDU or have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes. We use the term "MDU owner" to include whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. For building-by-building disposition of home run wiring, the MDU owner gives the incumbent service provider a minimum of 90 days' written notice that its access to the entire building will be terminated. The incumbent then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. Also, regarding cable home wiring, when the MDU owner notifies the incumbent service provider that its access to the building will be terminated, the incumbent provider must, within 30 days of the initial notice and in accordance with our home wiring rules, (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove, and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. The MDU owner must then notify the incumbent provider as to whether the MDU owner or an alternative provider intends to purchase the home wiring not later than 30 days before the incumbent's access to the building will be terminated.

For unit-by-unit disposition of home run wiring, an MDU owner must provide at least 60 days' written notice to the incumbent MVPD that it intends to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent service provider then has 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires

dedicated to individual subscribers who may later choose the alternative provider's service, it will remove the wiring, abandon the wiring, or sell the wiring to the MDU owner. In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch service providers; that election will then be implemented each time an individual subscriber switches service providers. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. The MDU owner also must provide reasonable advance notice to the incumbent provider that it will purchase, or that it will allow an alternative provider to purchase, the cable home wiring when a terminating individual subscriber declines. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election during the initial 30-day notice period for each subscriber who switches back from the alternative provider to the incumbent MVPD.

According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. In many instances, incumbent service providers may no longer own the home run wiring or may continue to have a legally enforceable right to remain on the premises. Also, MDU owners may forego the notice and election processes for various other reasons, e.g., they have no interest in purchasing the home run or cable home wiring. We estimate that there will be approximately 12,500 notices and 12,500 elections made on an annual basis. The number of notices accounts for the occasions when the MDU owner simultaneously notifies the incumbent provider that: (1) It is invoking the home run wiring disposition procedures, and (2) whether the MDU owner or alternative provider intends to purchase the cable home wiring. It also accounts for those occasions when the MDU owner makes a separate notification regarding the purchase of cable home wiring. The number of elections accounts for instances when the incumbent elects to

sell the wiring but the parties are unable to agree on a price, therefore necessitating a second election. We assume all notifications and elections (except when an individual subscriber is terminating service) will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare. (25,000 notifications and elections \times 0.5 hours = 12,500 hours).

Total Annual Cost to Respondents: \$37,510, estimated as follows: Under the annual operation and maintenance costs category, we estimate that stationery and postage costs for interference reports submitted to the Commission pursuant to § 76.613 to be \$1 per report. (10 reports \times \$1 = \$10). We estimate stationery and postage costs for signal leakage filings to be \$1 per filing. (500 filings \times \$1 = \$500). We estimate that 50% of the 20,000 MVPDs will annually develop cost schedules. We estimate recordkeeping expenses for these schedules to be \$1 per MVPD. (20,000 \times 50% \times \$1 = \$10,000). We estimate stationery and postage costs for the various disposition notifications and elections to be \$1 per occurrence. (27,000 notifications and elections \times \$1 = \$27,000). There are no estimated capital and start-up costs.

Needs and Uses: The various notification and election requirements in this collection (3060-0692) are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers. **SUPPLEMENTARY INFORMATION:** The following is a synopsis of the Commission's *Report and Order* in CS Docket No. 95-184 and MM Docket No. 92-260, FCC No. 97-376, adopted October 9, 1997 and released October 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800 (phone), (202) 857-3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

The *Order* addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95-184, 61 FR 3657 (February 1, 1996) ("*Inside Wiring Notice*"), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) ("*Cable*

Home Wiring Further Notice"), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95-184 and MM Docket No. 92-260, 62 FR 46453 (September 3, 1997) ("*Inside Wiring Further Notice*") regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Disposition of Home Run Wiring

1. We believe that one of the primary competitive problems in MDUs is the difficulty for some service providers to obtain access to the property for the purpose of running additional home run wires to subscribers' units. Home run wiring is defined as the wiring from the point at which it becomes dedicated to an individual unit in an MDU to the cable demarcation point. The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Incumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition. The result, regardless of the cable operators' motives, is to chill the competitive environment.

2. In the *Order*, we establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides to convert the entire building to a new video service provider) and for unit-by-unit disposition of the home run wiring (where an MDU owner is willing to permit two or more video service providers to compete for subscribers on a unit-by-unit basis) where the MDU owner wants the alternative provider to be able to use the existing home run wiring. We believe that our procedural mechanisms will not create or destroy any property rights, but will promote competition and consumer choice by bringing order and certainty to the disposition of the MDU home run wiring upon termination of service. We clarify that riser cable is not covered by the following procedures.

A. Building-by-Building Procedures

3. We adopt the following procedures for building-by-building disposition of home run wiring. Where the incumbent service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises, and the MDU owner wants to be able to use the existing home run wiring for service

from another provider, the MDU owner may give the incumbent service provider a minimum of 90 days' written notice that the provider's access to the entire building will be terminated. By adopting this procedural mechanism, we do not intend to affect any contractual rights the parties may have to terminate service in a different manner. We believe that it is reasonable to require, and thus our rules will require, that MDU owners that wish to avail themselves of these procedures notify the incumbent providers of termination of service for the entire building in writing. The incumbent provider will have 30 days to notify the MDU owner in writing of its election to do one of the following for all the home run wiring inside the MDU: (1) to remove the wiring and restore the MDU consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; (2) to abandon and not disable the wiring at the end of the 90-day notice period; or (3) to sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative video service provider to purchase it. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider will be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service.

4. If the incumbent elects to abandon the wiring, its ownership will be determined as a matter of state law. Passive devices such as splitters, as in the cable home wiring context, will be considered part of the home run wiring for this purpose. While the operator may remove its amplifiers or other active devices used in the wiring, it may do so only if an equivalent replacement can easily be reattached. Our decision in this proceeding assumes adherence to standards of good faith that are necessary elements of an orderly transition. In addition, we will require the party removing any active elements to comply with the notice requirements and other rules regarding the removal of home run wiring. Although we will not require that incumbents must transfer or relinquish all rights in molding or conduit when they sell, remove or abandon their wiring, we will prohibit incumbent providers from using any ownership interests they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede or in any way

interfere with the ability of an alternative MVPD to use the home run wiring.

5. Where the incumbent provider elects to sell the home run wiring, we will allow the parties to negotiate the price of the wiring. We believe that market forces will provide adequate incentives for the parties to reach a reasonable price, particularly in these circumstances where the incumbent has no legally enforceable right to remain on the premises. The parties will have 30 days from the date of the incumbent's election to negotiate a price for the home run wiring. The parties may also negotiate to purchase additional wiring (e.g., riser cables) at their option. As stated above, our procedures do not apply to riser cable in that the incumbent provider is not required to sell, remove or abandon its riser cable, but it does have the option of doing so if all parties agree. If the parties are unable to agree on a price, the incumbent will then be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. If the incumbent fails to comply with any of the deadlines established herein, it will be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment will become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it will have to do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

6. At this time we decline to establish a penalty for an incumbent provider that fails to remove wiring after electing to do so, or, for that matter, for any other party that violates our cable inside wiring rules. We expect all parties participating in the procedures for the disposition of home run wiring to cooperate and act in full compliance with our rules and the policies underlying them. Similarly, at this time we will not require the incumbent to post a performance bond prior to removal. There is not sufficient evidence to conclude that a significant problem will exist, or that MDU owners are unable to protect their interests pursuant to contract or state law.

7. If the incumbent chooses to abandon or remove its wiring, it must

notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. In addition to this and other notice requirements, we will adopt a general rule requiring the parties to cooperate to avoid service disruption to subscribers to the extent possible. One of our overriding goals in this proceeding is to ensure as seamless a transition as possible. Our rules are premised on the good faith cooperation of all parties to protect against such disruption. We expect service providers to cooperate and to make all necessary efforts to minimize any service disruption when a transition is undertaken. We believe that the current notification requirements, in conjunction with a general rule requiring a seamless transition, are sufficient to protect subscribers from lengthy service disruptions when switching providers. We therefore will not require incumbents to continue service until the new provider is connected.

8. If the parties are unable to agree on a price and the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent will have no further obligations under our home run wiring disposition procedures.

B. Unit-by-Unit Procedures

9. We adopt the following procedures for unit-by-unit disposition of home run wiring. Where the incumbent video service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain its home run wiring on the premises, the MDU owner may permit multiple service providers to compete head-to-head in the building for the right to use the individual home run wires dedicated to each unit. Where an MDU owner wishes to permit such head-to-head competition, the MDU owner must provide at least 60 days' written notice to the incumbent provider of the owner's intention to invoke the following procedure. The incumbent service provider will then have 30 days to provide the MDU owner with a written election as to whether,

for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will: (1) remove the wiring and restore the MDU consistent with state law; (2) abandon the wiring without disabling it (as in the building-by-building situation, if the incumbent elects to abandon the wiring, its ownership will be determined by state law, and passive devices will be considered part of the home run wiring); or (3) sell the wiring to the MDU owner (as in the building-by-building situation, the MDU owner may permit the alternative provider to purchase the home run wiring if the MDU owner refuses to purchase it). In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch video service providers; that election will then be implemented each time an individual subscriber switches service providers. As in the context of building-by-building dispositions of home run wiring, incumbent providers will be prohibited from using any ownership interests they may have in property on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with the ability of an alternative MVPD to use the home run wiring. If the MDU owner permits the alternative service provider to purchase the home run wiring, the alternative service provider will be required to make a similar election within this same 30-day period for any home run wiring that the alternative provider subsequently owns (i.e., after the alternative provider has purchased the wiring from the current incumbent provider) and that is solely dedicated to a subscriber who switches back from the alternative provider to the incumbent.

10. We continue to believe that it would streamline and expedite the process of changing service providers if alternative service providers and MDU owners were permitted to act as subscribers' agents in providing notice of a subscriber's desire to change services. However, consistent with our intention not to "create or destroy any property rights" by these procedures, we will not create any new right of MDU owners and alternative providers to act on behalf of subscribers in terminating service. Nor will we restrict the rights of such MDU owners and alternative providers under state law. We therefore decline at this time to adopt specific procedures to guard against unauthorized changes in service, i.e., "slamming." ("Slamming" is the

unauthorized change of a consumer's chosen long distance service. We use the term more generically here to mean an unauthorized change in any communications service.)

11. As with the proposed building-by-building procedures, we will permit the parties to negotiate for the sale of the home run wiring. If one or both of the video service providers elects to negotiate for the sale of the home run wiring it may own, the parties will have 30 days from the date of such election to reach an agreement. During this 30-day negotiation period, the incumbent, the MDU owner and/or the new provider may also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment. An up-front lump sum payment would permit either service provider to use the home run wiring to provide service to a subscriber without the administrative burden of paying separately for each home run wire every time a subscriber changes providers.

12. If the parties cannot agree on a price, the provider that has elected to sell the wiring will be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. Again, if the MDU owner (or, in some cases, the alternative provider) refuses to submit the issue to arbitration, the incumbent's obligations under our procedures will cease. If the incumbent fails to comply with any of the deadlines established herein, the home run wiring will be considered abandoned and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service.

13. If the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen would be required to assess the price for the wiring within 14 days. We realize that the expert's price determination may not be issued for up to 28 days after the 60-day notice period has expired. If subscribers wish to switch service providers during this period, the procedures set forth below should be followed, subject to the price established by the arbitrator. If the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent's obligations under the Commission's home run wiring procedures will cease.

14. After completion of this initial process, a provider's election will be carried out if and when the provider is notified either orally or in writing that a subscriber wishes to terminate service and that an alternative service provider intends to use the existing home run wire to provide service to that particular subscriber. At that point, a provider that has elected to remove its home run wiring will have seven days to do so and to restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period will begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination).

15. If the current service provider has elected to abandon or sell the wiring, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent will be required to inform the subscriber or the subscriber's agent (whichever is notifying the incumbent that the subscriber wishes to terminate service) at the time of the request for service termination of the date on which service will be terminated. In addition, the incumbent provider must disconnect the home run wiring from its lockbox and leave it accessible for the new provider within 24 hours of actual service termination.

16. We base the above procedures on the assumption that the alternative service provider will have an incentive to ensure that the incumbent is notified that the alternative service provider intends to use the existing home run wire to provide service. If, however, the subscriber's service is simply terminated without any indication that a competing service provider wishes to use the home run wiring, the incumbent service provider will not be required to carry out its election to sell, remove or abandon the home run wiring. This might occur, for instance, where an MDU tenant is moving out of the building. In such cases, we do not believe that it would be appropriate to require the incumbent to sell, remove or abandon the home run wiring when it might have every reasonable expectation that the next tenant will request its service. However, the incumbent provider will be required to carry out its election with regard to the home run wiring if and when it receives notice from a subsequent tenant (either directly or through an alternative provider) that

the tenant wishes to use the home run wiring to receive a competing service.

17. Where the incumbent receives a request for service termination but does not receive notice that an alternative provider wishes to use the home run wiring, the incumbent will still be required to follow the procedures set forth in our cable home wiring rules—e.g., to offer to sell to the subscriber any cable home wiring that the incumbent provider otherwise intends to remove. The required notice in the unit-by-unit context may be effected in two stages (i.e., the subscriber may call to terminate service and the alternative provider may separately notify the incumbent that it wishes to use the home run wiring). In order for the home run wiring and the home wiring to be disposed of in a coordinated manner, we believe that our cable home wiring rules must apply upon any termination of service. In addition, we believe that subscribers should have the right to purchase their home wiring to protect themselves from unnecessary disruption associated with removal of home wiring, regardless of whether they intend to subscribe to an alternative service.

C. Ownership of Home Run Wiring

18. In both the building-by-building and unit-by-unit approaches, the MDU owner will have the initial option to negotiate for ownership and control of the home run wiring because the property owner is responsible for the common areas of a building, including safety and security concerns, compliance with building and electrical codes, maintaining the aesthetics of the building and balancing the concerns of all of the residents. Moreover, vesting ownership of the home run wiring in the MDU owner, as opposed to the alternative service provider, will reduce future transaction costs since the above procedures will not need to be repeated if service is subsequently switched again. Nevertheless, we recognize that some MDU owners may not want to own the home run wiring in their buildings; in such cases, the MDU owner may permit the alternative service provider to purchase the wiring.

19. We will not require video service providers to transfer ownership of cable inside wiring to MDU owners upon installation. At this time, we believe this issue is best left to marketplace negotiations between the service provider and the MDU owner. Some MDU owners may choose to bargain for ownership of the inside wiring, while others may prefer to let the service provider maintain ownership. We are not convinced that MDU owners have insufficient bargaining power in this

situation to protect their interests. Even under the home run disposition procedures adopted above, we recognize that some MDU owners may not wish to exercise ownership over the inside wiring. We believe that MDU owners should have the same option at the time of installation.

20. We do believe, however, that all parties involved would benefit from additional certainty regarding ownership of the home run wiring upon termination of a service contract. For any contracts between MVPDs and MDU owners entered into after the effective date of our rules, we will require the MVPD to include a provision describing the disposition of the home run wiring upon the contract's termination. We believe that such a rule will provide certainty to the parties and permit them to address the disposition of home run wiring in light of their circumstances. Where the parties' contract clearly and expressly addresses the disposition of the home run wiring, our procedures will not apply. We also reiterate that the parties may rely upon any existing contractual rights upon termination, in addition to the procedures we are adopting.

D. Application of Procedural Framework

21. As noted above, the procedural mechanisms we are adopting will apply only where the incumbent provider no longer has an enforceable legal right to maintain its home run wiring on the premises against the will of the MDU owner. These procedures will not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. We also reiterate that we are not preempting any rights the incumbent provider may have under state law. In the building-by-building context, the procedures will not apply where the incumbent provider has a legally enforceable right to maintain its home run wiring on the premises, even against the MDU owner's wishes, and to prevent any third party from using the wiring. In the unit-by-unit context, the procedures will not apply where the incumbent provider has a legally enforceable right to keep a particular home run wire dedicated to a particular unit (not including the wiring on the subscriber's side of the demarcation point) on the premises, even against the property owner's wishes.

22. We will adopt a presumption that the building-by-building and unit-by-unit procedural mechanisms will apply unless and until the incumbent obtains a court ruling or an injunction enjoining its displacement during the 45-day

period following the initial notice. The incumbent will still be required to make its election to sell, remove or abandon the wiring by the end of the initial 30-day period in the absence of such a ruling or injunction. In light of this rule, we decline to shorten the initial election period. We also decline to stay our procedures until all judicial procedures are terminated, including all appeals. We have not received evidence sufficient to persuade us that state courts will not respond expeditiously. Significantly, the record indicates state courts' ability to protect incumbents' rights. The record continues to support our judgment that an incumbent's failure to obtain a state court injunction justifies a presumption that the incumbent no longer has an enforceable legal right to remain on the premises. We do not believe that this presumption interferes with the incumbent's state law rights. A court applying state law will continue to be the ultimate arbiter of whether the incumbent has a legally enforceable right to remain on the premises, and possesses the ability to take any necessary and appropriate steps to make the parties whole under state law. Our presumption simply means that if the incumbent cannot obtain an injunction to maintain its home run wiring on the premises, it is appropriate to permit the MDU owner to invoke our procedures pending any further litigation.

23. We will adopt one exception to our presumption that our procedures will apply in the absence of a state court ruling or injunction obtained within 45 days of the initial notice. We will not require an incumbent provider to obtain such a ruling or injunction where a state's highest court has found that, under its state mandatory access statute, the incumbent always has an enforceable right to maintain its home run wiring on the premises. We believe that to require the incumbent to initiate court proceedings in this situation is wasteful and unnecessary. In such cases, we believe that the burden should shift to the new provider to obtain a judicial determination to the contrary.

24. We decline, however, to provide that our procedures do not apply in states that have enacted mandatory access statutes. Several parties take issue with our statement that where the incumbent provider's mandatory right of access is dependent upon a subscriber's request for service, the provider may no longer have a legally enforceable right to maintain that subscriber's home run wiring on the premises against the MDU owner's wishes once the subscriber no longer requests service. We clarify that we did

not intend to and do not now express any opinion on the merits of this issue. The enforceability of a state mandatory access statute is an issue for the state courts to decide under their particular statutes. We are unwilling to conclude that state mandatory access statutes always grant incumbents the right to maintain their home run wiring in an MDU over the MDU owner's objection. Similarly, we express no opinion on whether state mandatory access statutes permit an incumbent MVPD to block moldings or conduits with unused wiring. Contrary to the arguments of some cable operators, this is not an issue of the right to install wiring. Rather, the issue is whether the incumbent has a legally enforceable right to maintain its home run wiring on the premises over the objection of the MDU owner. Accordingly, our procedures will apply in mandatory access states to the extent state law does not permit the incumbent to maintain its home run wiring (in the case of a building-by-building disposition) or a particular home run wire to a particular subscriber (in the case of a unit-by-unit disposition) against the will of the MDU owner.

25. The above procedural mechanisms will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We believe that this will ensure competitive parity among MVPDs and ensure that MDU owners are able to benefit from these procedures regardless of the MVPD that initially wired their buildings.

III. Sharing of Molding

26. We will permit an alternative MVPD to install its wiring within an incumbent's existing molding, even over the incumbent provider's objection, where the MDU owner agrees that there is adequate space in the molding and the MDU owner gives its affirmative consent. We believe that such a rule will promote head-to-head competition among MVPDs by overcoming the resistance of MDU owners to the installation of redundant molding. At this time we will not require the sharing of space within conduits. However, we will not apply this rule where the incumbent has an exclusive contractual right to occupy the molding. Since we do not believe that the incumbent ordinarily will have a property interest in the vacant air space inside the hallway molding, we will not require the alternative MVPD to compensate the incumbent for the placement of its

wires. The alternative provider will, however, be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property.

27. Under the rule we will adopt, where the MDU owner does not agree that there is adequate space in the molding for the additional wiring, and the MDU owner is willing to permit the installation of larger molding that could contain both the incumbent's and the alternative MVPD's wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding (and return the molding to the incumbent, if appropriate) and replace it with the larger molding at the alternative MVPD's expense. Again, the alternative MVPD would be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property. This rule will not apply if the incumbent has contracted for the right to maintain its molding on the MDU owner's property without alteration by the MDU owner. Absent such a contractual provision, we believe that the incumbent has no right to prevent the MDU owner from altering the molding in its hallways and other areas of its property.

IV. Disposition of Cable Home Wiring

28. The procedural framework discussed above addresses the disposition of MDU home run wiring. Here, we set forth specific rules on how to address certain issues regarding the disposition of MDU cable home wiring that were not addressed in our prior home wiring order. Cable home wiring is defined as the internal wiring contained within the premises of a subscriber which begins at the demarcation point, not including any active elements such as amplifiers, converter or decoder boxes, or remote control units. As in the context of home run wiring, our MDU home wiring rules will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent will commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We therefore will apply all of our cable home wiring rules for multiple-unit installations to all MVPDs. We also believe that it may be beneficial to apply our cable home wiring rules for single-unit installations to all MVPDs. We seek comment on this

issue in the *Second Further Notice of Proposed Rulemaking*, which is summarized elsewhere in the **Federal Register**.

A. Disposition of Home Wiring When Service is Terminated for an Entire MDU

29. We conclude that, if the MDU owner has the legal right, either by law or by contract, to terminate the subscriber's cable service, the owner terminating service for the entire building is effectively voluntarily terminating service on the subscriber's behalf, and our home wiring rules would be triggered. We conclude that providing the cable operator a single point of contact (i.e., the MDU owner) will further the statutory purposes of minimizing disruption and facilitating the transfer of service to a competing video service provider. Because we believe that it would be impractical and inefficient for the incumbent provider to deal with each individual subscriber regarding the disposition of his or her cable home wiring when the entire MDU is switching providers, we will deem the MDU owner to be acting as the terminating "subscriber" for purposes of the disposition of the cable home wiring within the individual dwelling unit where the cable home wiring is not already owned by a resident. We clarify, however, that we are not changing our definition of subscriber to include MDU owners. We believe that, when as a matter of law or contract, the MDU owner has the right to terminate service, the MDU owner is effectively terminating service on behalf of the subscriber. Similarly, with regard to exclusive bulk service contracts, we conclude that it is logical for the landlord to be deemed the subscriber, and thus for the landlord to have the right to purchase the home wiring as provided in our general rules.

30. For those MDU owners proceeding under our home run wiring disposition procedures, we will adopt the following framework in order to ensure the orderly disposition of the home wiring. When an incumbent provider is notified under our home run wiring disposition procedures that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider must, within 30 days: (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove; and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring.

31. As with the home run wiring, if an MDU owner declines to purchase the cable home wiring not already owned by a resident, the MDU owner may permit the alternative service provider to purchase the wiring upon service termination under our rules. We will require that the MDU owner decide whether it or the alternative provider will purchase the cable home wiring and so notify the incumbent provider no later than 30 days before the termination of access to the building will become effective. If the MDU owner and the alternative service provider decline to purchase the home wiring, the incumbent provider will not be permitted to remove the home wiring until the date of actual service termination, i.e., likely 90 days after the building owner notified the incumbent that its access to the entire building will be terminated. We will modify our current home wiring rules to allow the incumbent provider 30 days after service termination, rather than the current seven days, to remove all of the cable home wiring for the entire building if the MDU owner has terminated service for the entire building and has declined to purchase the home wiring. We believe this is appropriate given the amount of home wiring that may need to be removed from an entire building. Under these circumstances, if the incumbent provider fails to remove the home wiring within 30 days of actual service termination, it cannot make any subsequent attempt to remove the wiring or restrict its use.

B. Disposition of Home Wiring When Service Is Terminated by an Individual Subscriber

32. We will continue to apply our rules permitting individual terminating subscribers (or their agents) to purchase the cable home wiring up to a point at or about 12 inches outside their individual units. We continue to believe that this is consistent with the purposes of section 624(i) 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 service. If the subscriber declines to purchase its home wiring, we believe that the premises owner should be permitted to purchase the cable home wiring within the individual's premises based on the per-foot replacement cost. This approach will preserve the current subscriber's rights, and still allow the premises owner to act on behalf of future tenants, thus promoting competition and

consumer choice. As with the home run wiring in an MDU, if the premises owner declines to purchase the cable home wiring, the owner may permit the alternative service provider to purchase it.

33. Where an individual MDU resident terminates service, the MDU owner must provide reasonable advance notice to the incumbent provider if it wishes to purchase the home wiring (or that the alternative provider will purchase it) if and when an individual subscriber declines. The MDU owner will be required to inform the incumbent provider one time for the entire building. If the MDU owner fails to provide the incumbent with such notice, the incumbent will be under no obligation to sell the home wiring to the MDU owner or the alternative provider when an individual subscriber terminates and declines to purchase the wiring. Where an MDU owner does not or cannot invoke our unit-by-unit home run wiring disposition procedures (e.g., if it elects to have two-wire competition to each unit), we will require the MDU owner to provide the incumbent provider reasonable advance notice if the MDU owner or the alternative provider intends to purchase the home wiring if and when a subscriber declines.

34. In addition, where an individual subscriber is terminating service, we will change the time in which an incumbent provider must remove the home wiring or make no further effort to use it or restrict its use in single unit installations from seven business days to seven calendar days after the individual subscriber terminates service. We believe that this minor change is sufficient time for removal of a single subscriber's cable home wiring, and will avoid customer confusion by having the time permitted for the provider to remove the home wiring within the individual unit run concurrently with the time permitted for the provider to remove, sell or abandon the home run wiring under our procedural framework.

C. Effect of Subscriber Vacating the Premises on the Application of Cable Home Wiring Rules

35. We conclude that our cable home wiring rules should apply even when the subscriber terminates cable service, elects not to purchase the wiring and vacates the premises within the seven-day time period the operator has to remove the home wiring. A cable operator that owns the wiring and intends to remove it must offer to sell the cable home wiring to the subscriber upon voluntary termination, and if the

subscriber declines, the operator must remove the wiring within seven days or make no further effort to remove it or restrict its use. We expressly state that the cable operator must be given reasonable access to the individual premises during the removal period. We believe that the foregoing policy will promote the objectives of section 624(i) by minimizing disruption and facilitating subsequent subscribers' ability to use their home wiring to connect to the video service provider of their choice.

36. The disposition of the cable home wiring under these circumstances will not affect our rules for the unit-by-unit disposition of the MDU home run wiring. As described above, our rules regarding the disposition of the home run wiring are not triggered where a subscriber terminates service and vacates the premises unless and until a new or subsequent subscriber (or his or her agent) notifies the incumbent service provider that the subscriber wishes to receive service from an alternative service provider lawfully serving the premises.

V. MDU Demarcation Point

37. We believe that it is not necessary to establish a common cable and telephone demarcation point at this time. At least as far as inside wiring is concerned, telephony generally appears to continue to be delivered over twisted pair wiring and multichannel video programming generally appears to be delivered over coaxial cable. Based on the record in this proceeding, it appears that cable operators and other entities planning to offer telephone service generally will do so by connecting to the existing telephone inside wiring network. The record before us indicates that this distinction is likely to continue for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules. We note that, as a practical matter, the telephone demarcation point in new single family home installations may be located at a point outside of where the wiring enters the home, near the cable demarcation point. Similarly, the points at which the telephone and cable inside wiring become devoted to individual multiple dwelling units may be at similar locations (e.g., in garden-style apartment buildings, such points may both be located in the basement of the individual buildings). While such examples may create a de facto convergence in many cases, so long as the cable and telephone inside wiring networks remain distinct, we do not

believe that the Commission need require such a result.

38. At this time, we will not modify the cable demarcation point in MDUs. We will, however, adopt our tentative conclusion that where the cable demarcation point is "physically inaccessible" to an alternative MVPD, the demarcation point should be moved to the point at which it first becomes physically accessible. We clarify that this movement should be the closest point at which the wiring becomes physically accessible that does not require access to the subscriber's unit. Moving the demarcation point into the unit in such situations would add significantly to the disruption and inconvenience of switching service providers, contrary to the intent of section 624(i).

39. In addition, we will adopt a definition of "physically inaccessible" which asks whether accessing the demarcation point (1) would require significant modification or damage of preexisting structural elements, and (2) would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring. For example, wiring embedded in brick, metal conduit or cinder blocks would likely be "physically inaccessible" under this definition; wiring simply enclosed within hallway molding would not.

VI. Loop-Through Cable Wiring Configurations

40. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire MDU. Every subscriber on the loop is therefore limited to receiving video services from the same provider. If the cable is broken or removed, signals to all succeeding units are interrupted. Previously, we excluded MDU loop-through wiring from the cable home wiring rules because we believed that applying our rules to loop-through wiring would give the initial subscriber control over cable service for all subscribers in the loop. Because loop-through configurations are excluded from the home wiring rules, cable operators are not currently required to offer to sell the wire to subscribers upon termination of service, and no subscriber on the loop has the right to purchase that portion of the loop-through cable wiring located inside his or her dwelling unit. The ownership of loop-through wiring therefore currently depends on the circumstances (e.g., who installed the wire, whether the wire has been sold and state fixture law) and is not affected by our rules.

41. As with other cable inside wiring configurations in MDUs, a wiring loop

may include both wiring inside the individual dwelling unit and wiring in common areas which extends outside the individual dwelling unit to the riser or feeder cable. We now believe that, for purposes of our cable inside wiring rules, all loop-through wiring should not be treated the same. We therefore conclude that, when the property owner or the entity that owns or controls the common areas elects to switch to a new service provider, our cable home wiring rules will apply to that portion of the loop-through wiring that is inside the individual dwelling unit (up to the demarcation point(s) discussed below). For example, when an MDU owner wishes to terminate service for a building with loop-through wiring and invokes our building-by-building procedures for disposition of the home run wiring, those procedures will govern the disposition of the wiring that is dedicated to each loop other than the cable home wiring within each unit. Consistent with our building-by-building procedures, the MDU owner will be permitted to purchase the loop-through home wiring pursuant to our cable home wiring rules. In addition, where the MDU owner terminates service for the entire loop but does not or cannot invoke our procedures for the disposition of home run wiring, the MDU owner will nevertheless have certain rights to the home wiring within the individual dwelling units.

42. Where a building is comprised of rental units, the building owner will have the right to elect to switch service providers and the right to purchase the loop-through home wiring. In buildings in which persons have a direct or indirect ownership interest in individual units (as with condominiums and cooperatives), the election of whether to switch service providers will be determined under the rules of the association or entity that owns and controls the building's common areas, in a manner similar to other decisions made by the entity with respect to the common areas. If the MDU owner elects to switch to a new service provider but does not wish to purchase the loop-through home wiring, the new service provider may elect to purchase the wiring.

43. Allowing the MDU owner to purchase loop-through home wiring under these circumstances will allow that party to control the wiring. We believe that, at least in competitive markets, the MDU owner has a significant incentive to represent the subscribers' interests. In addition, the management structures of condominium or cooperative buildings are designed to reflect their residents' interests.

Allowing the MDU owner to control loop-through home wiring gives the subscriber an opportunity for increased choice and enhanced service, and furthers section 624(i)'s statutory purpose of facilitating the transfer to an alternate service provider with minimal disruption to the subscriber. We previously excluded loop-through wiring from our cable home wiring rules because we did not believe it was appropriate to give the initial individual subscriber in the loop control over the cable service of all remaining subscribers on the loop. Under the procedures we adopt today, that situation cannot occur.

44. We clarify that our rules will provide the MDU owner, not the alternative provider, with the first opportunity to purchase the loop-through wiring. Once the MDU owner owns and controls the wiring, the cable operator will be on equal footing under our rules with other video service providers with regard to subsequently providing service to the tenants. Only if the MDU owner declines to purchase the wiring will the alternative provider have the opportunity to purchase the loop-through wiring.

45. We will set the demarcation points, i.e., the points between which the MDU owner may purchase the loop-through home wiring under our cable home wiring rules, at or about 12 inches outside the point at which the loop enters or exits the first and last individual dwelling units on the loop, or as close as practicable where 12 inches outside is physically inaccessible. In some cases, the loop may begin and end outside of the same unit, and thus the demarcation points shall be 12 inches outside the point at which the loop enters and exits that one unit, or as close as practicable where 12 inches outside is physically inaccessible. We believe that this is consistent with section 624(i), i.e., the loop-through home wiring is within the customer's premises, and with the cable demarcation point for non-loop-through configurations. We note that one of our prior concerns was that establishing a separate demarcation point for each subscriber on the loop was not feasible. Under the rules set forth herein, however, one entity will be purchasing the entire home wiring loop, making it unnecessary to set a demarcation point for each subscriber's unit.

46. We will apply the same rules with respect to compensation and technical standards that we apply to non-loop-through wiring systems as well. In other words, the loop-through wiring on the subscriber's side of the demarcation point may be purchased by the MDU

owner at the replacement cost as defined in § 76.802(a). The loop-through wiring outside the demarcation points up to the point at which the loop connects with the riser or feeder cable may be addressed pursuant to the procedures set forth above with regard to the disposition of home run wiring.

47. Despite the competitive drawbacks of loop-through wiring, we do not believe it necessary for the Commission to prohibit future installations of loop-through wiring configurations. We believe that such a prohibition would unduly restrict the configuration options available to building owners and service providers. We have found no evidence in the record that cable operators have installed loop-through wiring in order to evade our rules since they were implemented in 1993. Also, the application of our home wiring rules to loop-through systems where the MDU owner seeks to switch service providers should reduce any incentive cable operators may have to install loop-through configurations for anti-competitive reasons.

VII. Video Service Provider Access to Private Property

A. Federal Mandatory Access Requirements

48. While we believe that nondiscriminatory access for video and telephony service providers enhances competition, we will not adopt a federal mandatory access requirement at this time. We note that telecommunications carriers' access to telephone companies' facilities and rights-of-way under the 1996 Act are currently under reconsideration in *First Report and Order* in CC Docket No. 96-98 and CC Docket No. 95-185 ("Interconnection Order"). We do not believe that the record in this proceeding provides a sufficient basis for us to address these issues. We will defer decisions on these issues to that proceeding. Similarly, we do not decide herein whether under section 207 of the 1996 Act viewers living in rental properties, and those who need access to common property, have the right to receive certain video programming services over the property owner's objections. This issue will be addressed in IB Docket No. 95-59 (Preemption of Local Zoning Regulation of Satellite Earth Stations) and CS Docket No. 96-83 (Implementation of section 207 of the Telecommunications Act, Restrictions on Over-the-Air Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service).

49. In addition, commenters in this proceeding urged the Commission to construe section 621(a)(2) to prohibit a property owner from denying a franchised cable operator access to an easement on the property when the owner has already granted or is obligated to grant an easement to other utilities, whether public or private. Section 621(a)(2) provides that "[a]ny franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses * * *." Numerous court decisions have interpreted the statutory language and legislative history of section 621(a)(2), several finding that this section does not provide cable operators access to purely private easements granted to utilities. We decline to address those rulings here, but will continue to examine these issues as we seek to ensure parity of access among all telecommunications and video services providers. Similarly, we decline at this time to adopt a mandatory access rule under section 706 of the 1996 Act, but may revisit this issue as we consider issues of service provider access in the broader competitive context.

50. We believe that whether an incumbent provider may use its existing easements or rights-of-way to provide new or additional services generally depends on state law interpretations of the terms of the easements or rights-of-way. While we decline at this time to decide as a general matter whether such easements and rights-of-way permit the provision of additional services, we believe that we do have the authority in certain instances to review restrictions imposed upon such use.

B. State Cable Mandatory Access Requirements

51. According to the record in this proceeding, some form of mandatory access law may exist in approximately 18 jurisdictions, including Connecticut, Delaware, the District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia and Wisconsin. The record also indicates that there may be local ordinances that provide similar access rights. We believe that the record in this proceeding does not support the preemption of state mandatory access laws at this time. While commenters opposing state mandatory access laws argue that these laws act as a barrier to entry, the record also indicates that

property owners deny access for reasons unrelated to the state laws, including property damage, aesthetic considerations and space limitations. We believe that our rules regarding the building-by-building and unit-by-unit disposition of home run wiring adopted herein will lower many of these barriers to entry and may alleviate some of the advantages incumbent providers may have with respect to providing service to particular buildings.

52. We remain concerned, however, about disparate regulation of MVPDs that unfairly skews competition in the multichannel video programming marketplace. Despite our decision not to preempt state and local mandatory access laws at this time, we encourage these jurisdictions to evaluate present laws and circumstances to determine whether a nondiscriminatory and competitively neutral environment exists. We believe that establishing competitive parity under these statutes will promote competition among MVPDs and will expand consumer choice.

C. Exclusive Service Contracts

53. We recognize that there are significant competitive issues regarding exclusive contracts. We are concerned that long-term exclusive contracts may raise anti-competitive concerns because they "lock up" properties, preventing consumers from receiving the benefits of a newly competitive market. However, we also note that alternative providers cite the competitive benefits of exclusive contracts as a means of financing "specialized investments." Without exclusive contracts to allow recovery over time on the cost of new installation, these parties assert that they will be unable to compete with the incumbent cable operator. We believe that the record would benefit from further comment on these issues. In the *Second Further Notice of Proposed Rulemaking*, summarized elsewhere in the **Federal Register**, we seek comment on various options, including: (1) adopting a maximum "cap" on the enforceability of all MVPDs' exclusive contracts; (2) limiting the ability of MVPDs with market power from entering into exclusive contracts; and (3) adopting a "fresh look" period for so-called "perpetual" exclusive contracts.

VIII. Customer Access to Cable Home Wiring Before Termination of Service

54. We will establish a rule allowing customers to provide and install their own cable home wiring within their premises, and to connect additional home wiring within their premises to

the wiring installed and owned by the cable operator prior to termination of service. Under this rule, customers will be able to select who will install their home wiring (e.g., themselves, the cable operator or a commercial contractor). In addition, customers may connect additional wiring, splitters or other equipment to the cable operator's wiring, or redirect or reroute the home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. Subscribers will not be permitted to physically cut, improperly terminate, substantially alter or otherwise destroy cable operator-owned inside wiring. To protect cable operators' systems from signal leakage, electronic and physical harm and other types of degradation, we will permit cable operators to require that any home wiring (including any passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator. If, however, the subscriber's connection to, redirection of or rerouting of the home wiring causes electronic or physical harm to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. We believe that subscriber access to home wiring is necessary to enhance competition, which will result in lower and more reasonable rates for services such as the installation of additional outlets. Indeed, where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice.

55. We do not believe that the rule we are adopting will pose an undue risk of signal leakage or harm to the cable system. Many subscribers already own and control their home wiring—e.g., where the cable operator charges for it upon installation or where state law deems home wiring to be a "fixture." Indeed, as many cable interests have pointed out in this proceeding, the marketplace has established the F-type connector as the de facto standard for connecting coaxial cable to CPE. Such connectors are readily available and, if properly used, provide adequate signal leakage protection. In addition, cable operators can provide guidance to subscribers who install their own wiring. Also, as stated above, we will permit cable operators to establish reasonable technical specifications for subscriber-installed home wiring

(including passive splitters, connectors and other equipment used in the installation of home wiring), not to exceed the specifications of their own wiring and equipment. Furthermore, we will protect the cable system from electronic and physical harm by allowing the cable operator to impose additional technical specifications where such harm exists.

56. We will not modify our current requirement that cable operators monitor signal leakage and eliminate harmful interference while they are providing service, regardless of who owns the home wiring. We also will continue to require cable operators to discontinue service to a subscriber where signal leakage occurs, until the problem is corrected. See 47 CFR 76.617. A cable operator will not be held responsible for facilities over which it no longer provides service. We believe that the continuation of these requirements will appropriately balance the interests of subscribers with the interests of those engaged in licensed over-the-air communications and cable operators in maintaining the security and integrity of the cable systems.

57. Allowing subscribers to install their own cable home wiring prior to termination of service may raise concerns regarding physical and electronic harm to the cable system and degradation of signal quality, including interference with other customers' service. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, we will allow cable operators to discontinue service to that subscriber, as operators may do where a customer's wiring causes signal leakage, until the degradation or interference is resolved. We note, however, that cable operators are not responsible for degradation of signal quality to the subscriber where a subscriber has added outlets or owns and maintains his or her own wiring. While we recognize that theft of cable service is a legitimate concern, we do not agree that our rules granting customers pre-termination access to cable home wiring will promote theft of service. Some cable companies already provide customer pre-termination access to wiring, and there is no evidence in the record that these policies have resulted in increased theft of service. In addition, cable operators may take security measures, such as scrambling of their signals, to deter theft of service.

58. We will neither establish a presumption of ownership of cable home wiring nor deregulate home

wiring rates at this time. These issues are beyond the scope of this proceeding. We believe that our rules allowing consumers to install, redirect and reroute their cable home wiring adequately promote the goals of expanded competition and consumer choice without the need to address ownership issues. We also note our obligation under section 623 to regulate the rates of equipment used by subscribers to receive the basic service tier. See 47 U.S.C. § 543.

IX. Signal Leakage

59. The purpose of the Commission's signal leakage rules is to protect licensed over-the-air communications, including aeronautical, police, and fire safety communications, from interference caused by signal leakage. Until now, the Commission rules governing signal leakage have been applied only to cable systems, which often deliver signals over the same frequency bands as many over-the-air licensees. Specifically, § 76.605(a)(12) establishes the maximum individual signal leakage limits for all cable operators using frequencies outside the broadcast television bands, while §§ 76.610–76.617 impose more stringent operating and monitoring requirements for cable systems operating in the bands that are used by aircraft for communications and navigation.

60. An increasing number of MVPDs are competing with cable operators in the provision of video programming and other services. Because these MVPDs often transmit signals over the same public safety and navigation frequencies as cable operators, they may be a source of potentially harmful signal leakage. The public safety concerns that underlie application of our signal leakage regulations to cable operators are equally present with respect to other MVPDs such as SMATV, MMDS and open video system operators and others. We will therefore modify our rules to extend existing cable signal leakage requirements to non-cable MVPDs. In light of the potential harm to public safety that may be caused by broadband signal leakage interfering with aeronautical, navigational and communications radio systems, we will not rely on labelling requirements, installation instructions or cable performance specifications.

61. Systems transmitting digitized signals may operate in the restricted aeronautical and public safety bands. Our signal leakage rules provide that systems operating in the restricted bands are only subject to the testing and monitoring requirements when they operate above a threshold power level.

Systems using digital transmissions normally operate below this power threshold. Systems using digital technology that operate below our threshold power level therefore would not generally be subject to the most rigorous sections of our signal leakage rules. For digital transmissions that may operate above the power threshold, the Commission shall continue to apply the same requirements as those for analog transmissions due to the potential harm to public safety. MVPDs using digital transmission will be subject to section 76.605(a)(12) which sets forth the maximum signal leakage limits for systems, regardless of the frequency band or power level in use.

62. We will require that all MVPDs comply with § 76.613 of our rules upon the effective date of the *Order*. Section 76.613 protects licensed over-the-air communications from harmful interference and requires prompt action to eliminate such interference. We believe that immediate compliance with § 76.613 is necessary because, unlike our other signal leakage rules that are designed to minimize the risk of interference by requiring that leakage be detected and repaired, § 76.613 provides that once harmful interference actually occurs it must be promptly eliminated. We recognize, however, that immediate compliance with many of our other signal leakage requirements may present hardships to existing MVPDs not previously subject to such rules. We will allow for a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The five-year transition period will apply only to the systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. We will define "substantially built" as having 75% of the distribution plant completed. The signal leakage requirements under Part 15 of the Commission's rules will continue to apply during the transition period.

63. Our rules require that each cable system perform an independent signal leakage test annually. 47 CFR 76.611. Based on the current record, we will not amend our rules to treat MDUs or different geographic areas connected by microwave link as separate systems for testing purposes. We believe that for the past six years our testing criteria have provided effective standards for monitoring and rectifying signal leakage in 31,000 cable communities nationwide. Cognizant of the changing technologies that may be used by MVPDs, we will continue to review specific systems' operations and designs

that may warrant adjustments to our signal leakage testing criteria.

64. We will not establish any new signal leakage testing procedures such as tracking systems to identify the source of signal leakage. We believe that MVPDs are capable of devising and selecting the most appropriate methods for detecting signal leakage on their own systems. We encourage MVPDs to work together to develop methods that will permit them to accurately identify the source of any signal leakage.

65. While our signal leakage rules generally require cable operators to perform signal leakage monitoring and testing, § 76.615 requires cable operators to file specific information with the Commission. In particular, § 76.615(b)(7) requires that cable operators annually file with the Commission the results of signal leakage testing. The reporting requirements of § 76.615(b)(7) may impose undue burdens on small MVPDs. In the *Second Further Notice of Proposed Rulemaking*, we seek comment on whether certain MVPDs should be exempted from the reporting requirements of § 76.615(b)(7). Since § 76.615(b)(7) is one of the provisions covered by the five-year transition period, all non-cable MVPDs will have five years to comply with the filing requirements; the *Second Further Notice of Proposed Rulemaking* seeks comment on whether we should create a permanent exemption for certain types of MVPDs.

X. Signal Quality

66. By statute, the Commission is charged with promulgating regulations governing the quality of television signals delivered to cable subscribers. We believe that continued application of the Commission's signal quality standards to cable operators is necessary because, despite the recent entrance of other service providers into the video market, cable operators, in most areas of the country, still exercise significant market power. We do not believe at this time that market forces alone will ensure that cable subscribers receive the quality picture they are entitled to expect. With regard to non-cable broadband service providers, we believe that government regulation of signal quality would be unnecessary and unduly intrusive. These alternative providers do not exercise market power and virtually always compete with an incumbent cable operator. Head-to-head competition with a cable operator should ensure that alternative MVPDs deliver a good quality picture in order to attract and retain customers. We believe that, as cable operators become subject to vigorous competition, market

forces will ensure that they, too, deliver a good quality picture. As competition develops and its effects become clearer, we expect to leave the issue of signal quality wholly to market forces.

XI. Means of Connection

67. Based on the record, we will not adopt uniform technical standards for jacks and connectors for broadband service. The F-type connector has emerged as the de facto broadband connection standard within the cable industry. We believe that, properly used, the F-type connector is an effective means of connecting coaxial cable to customer premises equipment while minimizing the potential for signal leakage. Non-cable video service providers also use the F-type connector to connect their services via coaxial cable to customer premises equipment. Further government action in this area is therefore unwarranted at this time. In addition, in light of the fact that we are extending our cable signal leakage rules to all broadband service providers, we believe that such providers will have the incentive and obligation to ensure that connections are properly made with high quality materials, without the Commission mandating a connection standard.

XII. Dual Regulation

68. We do not believe that the record before us provides sufficient information to address the issue of whether and how to harmonize the dual systems of regulation governing cable and telephone companies where broadband or multiple services are provided over a single wire or multiple wires. Based on the current record, it appears that service providers will continue to use separate inside wiring to provide cable and telephone service for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules.

XIII. Regulation of Simple and Complex and of Residential and Non-Residential Wiring

69. We will not, at this time, establish common definitions in the common carrier and cable rules with regard to simple versus complex wiring and residential versus non-residential wiring. See 47 CFR 68.213, 68.215. In the telephone context, we believe that our distinction between simple and complex wiring has proven to be a workable and effective way to promote competition while ensuring network protection. Similarly, in the cable context, there may be substantial differences between residential and

commercial buildings which would make it difficult to adopt uniform rules for all kinds of property. We do not believe that the current record provides sufficient evidence to support the need for a modification of our rules, nor does it provide adequate guidance on the direction any such modification should take. We therefore will not modify our rules at this time.

XIV. Customer Premises Equipment

70. The issue of whether we should revise our rules regarding customer premises equipment will be addressed in a separate ongoing Commission rulemaking proceeding arising under new section 629 of the Communications Act.

XV. Final Regulatory Flexibility Act Analysis

71. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 ("RFA"), Initial Regulatory Flexibility Analyses ("IRFAs") were incorporated in the *Inside Wiring Notice*, the *Cable Home Wiring Further Notice*, and the *Inside Wiring Further Notice*. The Commission sought written public comments on the proposals in these notices, including comments on the IRFAs. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 ("CWAAA"), Public Law 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

Need for Action and Objectives of the Rule

72. This *Order* adopts new procedural mechanisms to provide order and certainty regarding the disposition of MDU home run wiring upon termination of existing service. In addition, this *Order* promotes competition and consumer choice by establishing rules for the disposition of cable "loop through" wiring upon termination of service. This *Order* also permits consumers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring. These rules will promote competition among MVPDs as well as cable wiring services, which will result in lower prices, greater technological innovation, and additional consumer choice. Finally, to protect public safety and navigation frequencies, this *Order* applies the cable signal leakage rules to all broadband service providers that

pose a similar threat of interference with licensed over-the-air communications.

Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

73. In response to the IRFAs contained in the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice*, Building Owners, et al., filed comments arguing that the proposed rules would have a significant effect on small residential and commercial building operators and that the Commission should exempt these entities from any final rules. In response to the IRFA contained in the *Inside Wiring Notice*, CATA filed comments and an ex parte submission requesting that the Commission rescind the *Inside Wiring Notice* and reissue it as a notice of inquiry or reissue it with specific proposed rules. CATA argues that the *Inside Wiring Notice* failed to propose specific rules, thereby preventing both the Commission staff and small entities from analyzing and commenting on the effects of proposed rules on small entities. RTE Group filed its comments and reply comments as "a response by a small business pursuant to section 603 of the Regulatory Flexibility Act." The issues raised by RTE Group are addressed above. No comments were filed in response to the IRFA contained in the *Inside Wiring Further Notice*.

Description and Estimate of the Number of Small Entities Impacted

74. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we adopt in this *Order* will affect video service providers and MDU owners.

75. Small MVPDs: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution

systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We will address each service individually to provide a more succinct estimate of small entities.

76. Cable Systems: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the *Order*.

77. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that

would qualify as small cable operators under the definition in the Communications Act.

78. MMDS: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.

79. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

80. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

81. DBS: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

82. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service

providers, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

83. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

84. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems ("MFS," certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network ("RCN," certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or

have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

85. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

86. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order*, we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than \$40 million. We have not yet received approval by the SBA for this definition.

87. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We

tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

88. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating \$5 million or less in revenue annually. According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than \$5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than \$5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

89. Disposition of MDU Home Run Wiring: The *Order* requires MVPDs to comply with a set of procedural timetables for the disposition of home run wiring upon termination of service when an MDU owner invokes the Commission's procedures. In addition, it requires MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon the termination of the contract. It also requires the parties to cooperate to ensure as seamless a transition as possible for subscribers.

90. Sharing of Molding: The *Order* permits an MVPD to install home run wiring in an existing molding if the MDU owner determines that there is sufficient space, if the incumbent MVPD's ability to provide service is not impaired, and if the MDU owner gives its affirmative consent. If the MDU owner determines that there is not sufficient space, and the MDU owner will permit larger moldings, the MDU owner may install larger moldings at the alternative MVPD's expense.

91. Disposition of Cable Home Wiring: The *Order* requires MVPDs to implement their election to remove or abandon home wiring within seven days of learning that the home wiring will not be purchased.

92. Customer Access to Cable Home Wiring before Termination of Service: The *Order* requires cable operators to permit subscribers to provide or install

their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. The cable operator may choose to impose requirements that any home wiring meet reasonable technical specifications, not to exceed the technical specifications of such wiring installed by the cable operator; however, the cable operator may require additional technical specifications to eliminate electronic or physical harm.

93. Signal Leakage: The *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Section 76.615(b)(7) of the cable signal leakage rules requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to section 76.611.

Significant Alternatives and Steps Taken To Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations adopted, amended, modified, or clarified in this *Order*.

94. Disposition of MDU Home Run Wiring: We considered several alternatives for the disposition of MDU home run wiring, including: (1) Creating a single demarcation point for cable and telephony providers; (2) moving the cable demarcation point; and (3) maintaining our current rules. The record indicates that MDU owners often object to the installation of multiple home run wires for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Small video service providers often are new entrants that will have to install new home run wiring (if they cannot use the existing wiring), while incumbent service providers often are established entities that may resist efforts by both new entrants and MDU operators to arrange for use of the existing wiring. By bringing order and certainty to the disposition of the home run wiring upon termination of service, the rules adopted herein advance the interests of both small video service providers and small MDU owners.

95. Transfer of Ownership of Home Run Wiring in Future Installations: We considered adopting a requirement that,

for future installations, MVPDs transfer ownership of home run wiring to MDU owners. We instead decided to require MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon termination of the contract. This requirement will provide all MDU owners, including small MDU owners, the flexibility to negotiate for ownership of the home run wiring.

96. Sharing of Molding: We considered not requiring the sharing of molding even when empty space exists. We concluded, however, that the ability to share molding often may assist small MVPDs, which frequently are new entrants, to gain access to MDUs. We considered Time Warner's proposal to allow affected MVPDs and the MDU owner to determine whether the molding contains adequate space. Our rule, however, does not require the concurrence of the affected MVPDs in the determination of whether adequate space exists.

97. Customer Access to Cable Home Wiring before Termination of Service: We believe that subscriber access to home wiring will advance the interests of small entities. As customers gain the ability to select who will install and maintain their home wiring, small entities will be able to compete with the incumbent cable operator to provide such services.

98. Signal Leakage: This *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Although this modification will impact small broadband service providers, we are exploring the possibility of exempting certain categories of broadband service providers from the reporting requirements of the signal leakage rules.

Report to Congress

99. The Commission shall send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the *Order* and the FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

XVI. Ordering Clauses

100. *It is Ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, the Commission's rules are hereby amended as set forth below.

101. *It is further ordered* that the amendments in 47 CFR 76.613, 76.802 and 76.804 impose information collection requirements, and will therefore not become effective until approved by the Office of Management and Budget ("OMB"). The amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will become effective 30 days following publication of this *Order* in the **Federal Register**. However, compliance with amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in 47 CFR 76.613, 76.802 and 76.804. The Commission will publish a document at a later date announcing the effective date of the amendments in 47 CFR 76.613, 76.802 and 76.804, and the date of compliance for the amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806.

102. *It is further ordered* that the Commission *shall send* a copy of the *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (mm)(2) and adding paragraphs (mm)(3) and (mm)(4), to read as follows:

§ 76.5 Definitions.

* * * * *

(mm) * * *

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that

does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this paragraph (mm)(3), the term "physically inaccessible" describes a location that:

(i) Would require significant modification of, or significant damage to, preexisting structural elements, and

(ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

Note to paragraph (mm)(4): For example, wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

* * * * *

3. Section 76.613 is amended by revising the heading and by revising paragraphs (b), (c), and (d) to read as follows:

§ 76.613 Interference from a multichannel video programming distributor ("MVPD").

* * * * *

(b) An MVPD that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending MVPD or appropriate elements thereof shall immediately be suspended upon notification by the District Director and/or Resident Agent of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director and/or Resident Agent. When authorized by the District Director and/or Resident Agent, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The MVPD may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

4. Section 76.620 is added to read as follows:

§ 76.620 Non-cable multichannel video programming distributors ("MVPDs").

(a) Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.615(b)(1-6), 76.616, and 76.617 shall apply to all non-cable MVPDs. However, non-cable MVPD systems that are substantially built as of January 1, 1998 shall not be subject to these sections until January 1, 2003. "Substantially built" shall be defined as having 75 percent of the distribution plant completed. As of January 1, 2003, § 76.615(b)(7) shall apply to all non-cable MVPDs.

(b) To comply with § 76.615(b)(2), a non-cable MVPD shall submit its Internal Revenue Service's Employer Identification (E.I.) number instead of an FCC identifier.

5. Subpart M is amended by revising the heading to read as follows:

Subpart M—Cable Inside Wiring

6. Section 76.800 is added to read as follows:

§ 76.800 Definitions.

(a) *MDU*. A multiple dwelling unit building (e.g., an apartment building, condominium building or cooperative).

(b) *MDU owner*. The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD*. A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. 522(13).

(d) *Home run wiring*. The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

7. Section 76.802 is amended by revising paragraphs (a) and (g), and adding paragraph (l) to read as follows:

§ 76.802 Disposition of cable home wiring.

(a)(1) Upon voluntary termination of cable service by a subscriber in a single unit installation, 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. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be

entitled to remove the cable home wiring unless: it gives the subscriber the opportunity to purchase the wiring at the replacement cost; the subscriber declines, and neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

* * * * *

(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) 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.

* * * * *

(l) The provisions of § 76.802, except for § 76.802(a)(1), shall apply to all MVPDs in the same manner that they apply to cable operators.

8. Section 76.804 is added to read as follows:

§ 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring.* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the

wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and

restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under § 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of § 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of

actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If

subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the

home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) of this section shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

9. Section 76.805 is added to read as follows:

§ 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an

existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b) of this section, including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

10. Section 76.806 is added to read as follows:

§ 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: install or provide for the installation of their own cable home wiring; or connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical

integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-258; FCC 97-156]

Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR Sections 76.701 and 76.702, which contained information collection requirements, became effective on October 29, 1997.

These amendments, which were published in the **Federal Register** on May 23, 1997, relate to implementation of the cable television leased access and public, educational, and governmental access indecency provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR Sections 76.701 and 76.702, published at 62 FR 28371, became effective on October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION:

1. On May 7, 1997, the Commission released an order revising its indecency rules for leased access and public, educational and governmental access channels, a summary of which was published in the **Federal Register**. See 62 FR 28371, May 23, 1997. Because they imposed new or modified information collection requirements, 47 CFR Sections 76.701 and 76.702 could not become effective until approved by the Office of Management and Budget ("OMB"). OMB approved these rule changes on October 29, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document confirming the effective date and notifying parties that these rules have become effective. The amendments to 47 CFR Sections 76.701 and 76.702 became effective on October 29, 1997.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 97-29986 Filed 11-13-97; 8:45 am]
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