

2. Section 0.91 is amended by redesignating paragraphs (j) through (l) as paragraphs (k) through (m) and by adding new paragraph (j) to read as follows:

§ 0.91 Wireline Competition Bureau.

* * * * *

(j) Act on petitions for *de novo* review of decisions of the Administrative Council for Terminal Attachments regarding technical criteria pursuant to § 68.614.

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§ 0.303 [Removed and Reserved]

3. Section 0.303 is removed and reserved.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

4. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 155 and 303.

5. Section 68.211 is amended by revising paragraph (b) to read as follows:

§ 68.211 Terminal equipment approval revocation procedures.

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(b) *Notice of intent to Revoke Interconnection Authority.* Before revoking interconnection authority under the provisions of this section, the Commission, or the Enforcement Bureau under delegated authority, will issue a written Notice of Intent to Revoke Part 68 Interconnection Authority, or a Joint Notice of Apparent Liability for Forfeiture and Notice of Intent to Revoke Part 68 Interconnection Authority pursuant to §§ 1.80 and 1.89 of this chapter.

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§§ 68.400 through 68.412 [Removed and Reserved]

6. Sections 68.400 through 68.412 are removed and reserved.

[FR Doc. 03-6781 Filed 3-20-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95-184, MM 92-260; FCC 03-9]

RIN 4105

Telecommunications Services Inside Wiring Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises rules which the Commission adopted relating to cable home run wiring. This document also resolves issues raised by the Commission regarding exclusive and perpetual contracts and related matters.

DATES: Effective May 20, 2003 except for §§ 76.620, 76.802, and 76.804 which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the modifications to these sections. Written comments by the public on the new and/or modified information collection(s) are due May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Kornegay, Media Bureau at (202) 418-7200 or via Internet at ckornega@fcc.gov; or Wanda Hardy, Media Bureau, (202) 418-2129. For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418-0217, or via the Internet at lesmith@fcc.gov. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's First Order on Reconsideration and Second Report and Order ("Order" and "2nd R&O"); CS 95-184, MM 92-260, FCC 03-9, adopted January 21, 2003 and released January 29, 2003. This document revises rules which the Commission adopted in the Report and Order and Second Further Notice of Proposed Rulemaking; 62 FR 61016, November 14, 1997, ("R&O" and "2nd FNPRM"); concerning cable home run wiring. The rules adopted by the Commission established specific procedural mechanisms requiring the sale, removal or abandonment of home run wiring in multiple dwelling unit buildings. This document addresses the eight petitions for reconsideration and ten oppositions or responses to the petitions for reconsideration received by the Commission in response to the Report and Order. This document also resolves issues raised by the Commission in the 2nd FNPRM relating to (1) exclusive and perpetual contracts; (2) the application of cable home wiring and subscriber termination rights to non-cable and cable MVPDs; (3) the

exemption of small MVPDs from the annual signal leakage requirements; and (4) a proposal to establish a virtual demarcation point from which alternative providers could share cable wiring. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com or may be viewed via Internet at <http://www.fcc.gov/mb/>.

Paperwork Reduction Act: This Order contains new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Order and required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due May 20, 2003.

Synopsis of First Order on Reconsideration

Legal Authority of the Commission

1. Several petitioners questioned the Commission's authority to regulate the disposition of cable home run wiring in the first instance. We considered these arguments at length previously in the *R&O* and concluded that the Commission has authority under section 4(i) and 303(r) of the Communications Act of 1934 ("Communications Act"), in conjunction with the pervasive regulatory authority committed to the Commission under Title VI, and particularly section 623, to establish procedures for the disposition of MDU home run wiring upon termination of service.

Application of Building-by-Building Disposition Procedures

2. The *R&O* adopted procedures for two categories of home run wiring disposition: building-by-building and unit-by-unit. A multiple dwelling unit ("MDU") owner may invoke the building-by-building disposition procedures when the incumbent multichannel video programming distributors ("MVPD") owns the home run wiring, but no longer has a legally enforceable right to remain in the building and the MDU owner wants to use that wiring for service from another provider. A MDU owner may invoke the unit-by-unit disposition procedures when the incumbent MVPD owns the

home run wiring, but no longer has a legally enforceable right to maintain its home run wiring dedicated to a particular unit or units, and the MDU owner wants to permit multiple service providers to compete to serve individual units in the building and to use the existing wiring.

3. At least one petitioner suggested that the Commission's home run wiring disposition procedures should only apply where an MDU owner agrees to allow unit-by-unit competition and not where the owner seeks to contract with a new MVPD to serve the entire building. As we concluded in the *R&O*, this proposal wrongly assumes that any MVPD that serves the entire building has the ability to act like an entrenched monopolist, without regard to the quality and quantity of the video service provided. We observed in the *R&O* that MVPDs competing for the right to serve the building will have to offer the mix of video service, quality, quantity and price that will best help the MDU owner compete in the marketplace.

Control of Home Run Wiring

4. Both the building-by-building and unit-by-unit home run wiring disposition procedures allow the MDU owner, rather than individual subscribers, the option to acquire the home run wiring of a departing MVPD. In the *R&O* the Commission addressed comments from at least six other parties contending that MDU owners do not act in the best interest of residents and therefore should not have the authority to choose among service providers. The Commission concluded in the *R&O* that many MDU owners are tenant-based condominium associations and cooperative boards that cannot be presumed to be non-representative of their tenant's interests. The Commission also concluded that the property owner should have the ability to control the wiring because the property owner is responsible for the common areas of a building. The Commission noted that property owners have safety and security responsibilities, maintain compliance with building and electrical codes, maintain the aesthetics of the building, and balance the concerns of the residents. The Commission concludes in the Order that considerations of fairness and efficiency persuade it to leave the rules addressing control of home run wiring rules intact.

Removal of Wiring by Incumbent Providers

5. Several petitioners asked the Commission either to eliminate entirely an incumbent operator's option to remove its home run wiring or to qualify

that option by requiring the incumbent to first offer to sell the wiring to the MDU owner or an alternative MVPD at replacement cost or salvage value. The Commission concludes in the *R&O* that the record in this proceeding reveals almost no concrete examples of incumbents removing their wiring rather than abandoning or selling it. The Commission is not inclined to make a decision to qualify or eliminate an incumbent's right to remove its property without a compelling record of the need to do so. Also, because the record contains no concrete examples of incumbent operators engaging in pricing activities that the negotiation and arbitration process cannot accommodate, the Commission declined to require an incumbent that elects to sell its home run wiring to do so at replacement cost or salvage value.

Arbitration/Independent Pricing Experts

6. A petitioner asked the Commission to require MDU owners to agree to purchase the home run wiring at a price set through binding arbitration as a precondition to entering into negotiations with the incumbent regarding the sale price of the wiring. The record provides no evidence that MDUs have not or would not bargain in good faith under the current rules. We question whether a commitment by the parties to engage in binding arbitration prior to the onset of negotiations will improve the chances for successful negotiations. Instead such a requirement could act as a disincentive for MDU owners to invoke the inside wiring rules. We will not adopt the petitioner's proposal to impose upon the MDU owner an obligation to purchase home run wiring once an incumbent has elected to sell it.

MDU Owner Compensation

7. Several petitioners argue that MDU owner decisions are improperly influenced by the level of consideration offered by an MVPD to the MDU owner, rather than by which MVPD offers the widest array of programming, most attractive prices, or best customer service. These petitioners contend that the Commission's home run wiring disposition rules should not apply in any situation where the owner has received any form of excess. As we determined in the *R&O*, the petitioners have not suggested definitions or guidelines as to what they consider "excessive" and have produced no evidence that such payments have resulted in competitive harm. We are unable to conclude that such payments are anti-competitive and warrant exclusion of MDU owners who accept

them from the protection of the inside wiring rules.

Notice Period and Transition Period for the Unit-by-Unit Disposition Procedures

8. In the *R&O* the Commission recognized that MDU owners may permit service providers to compete head-to-head in a building for the right to use the individual home run wires dedicated to each unit in an MDU. Our unit-by-unit disposition procedures apply when the incumbent service provider does not have (or will not have at the conclusion of the notice period) the right to maintain its home run wiring dedicated to a particular unit in an MDU. If the MDU owner wishes to permit alternative MVPDs to compete for the right to use the individual home run wires dedicated to each unit, the MDU owner must give the incumbent 60 days written notice that it intends to invoke the home run wiring procedures. The incumbent will then have, with respect to all of the incumbent's home run wiring in the MDU, 30 days to elect to remove, abandon or sell the wiring dedicated to individual subscribers who may subsequently choose the alternative MVPD's service. Several petitioners argued that the 60-day notice period is inordinately long. They suggest that the notice period will discourage vigorous unit-by-unit competition by allowing incumbents time to develop a competitive counterattack in response to the arrival of an alternative MVPD, to reprice or restructure their service offerings and to lock individual subscribers into long-term service contracts.

9. On reconsideration, we are not convinced that a notice period for unit-by-unit transitions of less than 60 days would allow enough time to facilitate a smooth and timely transition when an alternative provider enters a building. The procedures adopted in the *R&O* are intended to provide all parties sufficient notice and certainty regarding how existing home run wiring will be made available to the alternative MVPD so that a change in service can be made efficiently. While a 60 day notice period may provide an opportunity for the incumbent to organize a competitive response to the alternative provider's service offering, we have no reason to believe the incumbent will necessarily have a market advantage over the alternative provider. The incumbent has an existing relationship with its subscribers, but that relationship may not be a positive one. Where subscribers are eager to obtain the services of an alternative provider, due in part to the failings of the incumbent, the existing relationship may hurt rather than help

the incumbent. Where subscribers are more than satisfied with the service provided by the incumbent, that existing relationship should help the incumbent in its efforts to retain subscribers to retain subscribers in the face of an alternative provider's competitive efforts. Beyond the fact of an existing relationship, an alternative provider possesses many of the same competitive tools available to the incumbent, such as pricing and designing service offering attractively and attempting to induce subscribers to enter into long term contracts. We decline to shorten the notice period.

10. A petitioner suggests that in cases where the incumbent has elected to sell or abandon its home run wire, our rules should be modified to eliminate an existing ambiguity with respect to when the incumbent provider will make the home run wiring accessible to the alternative provider. The current rule provides that such access will be provided to the alternative provider "within 24 hours of actual service termination."

11. We agree that the requirement as it is presently written is ambiguous. Accordingly, we will amend § 76.804 of our rules to provide that where the MDU owner or the alternative provider chooses to purchase the home run wiring, the incumbent must provide access during the 24-hour period prior to actual service termination to enable the new provider to avoid a break in service.

Unauthorized Transfer of Customers

12. A petitioner urges the Commission to amend its home run wiring rules to include an express prohibition against unauthorized customer transfers. Another petitioner contends that such rule modifications are not necessary because MVPD service does not present the same opportunities for "slamming" or the unauthorized transfer of customers, as telephone service transfers. The Commission is not aware of any unauthorized transfer complaints filed within the more than four years that the home run wiring disposition rules have been in effect. Absent such complaints, we find no basis for modifying our rules.

Mandatory Access

13. Mandatory access laws generally provide franchised cable operators with a legal right to install and maintain cable wiring in MDU buildings, even over MDU owners' objections. Mandatory access statutes were generally enacted to ensure that MDU tenants would have cable programming service and to prevent MDU owners

from denying access based on aesthetic or other considerations.

14. We continue to believe that mandatory access laws may impede competition in the MDU marketplace and that they tend to preclude alternative (non-cable) MVPDs from executing MDU contracts. This is due to the fact that most mandatory access laws give the franchised cable operator a legal right to wire and remain in an MDU. The predictable result is that competitive providers are less likely to take the financial risk of entering, or to secure the necessary financial backing to enter the MDU marketplace in a mandatory access state. While we recognize the negative impact that mandatory access statutes can have, we cannot ignore the possibility that, but for the existence of mandatory access statutes, some MDU owners would refuse to allow their buildings to be wired for cable programming. Federal preemption of mandatory access laws could, conceivably, leave some MDU tenants without access to non-broadcast video programming altogether. We will retain our conclusion in the *R&O* that we can not support federal preemption of state mandatory access rules at this time.

Signal Leakage

15. In the *R&O*, the Commission adopted a rule extending the signal leakage requirements to MVPD providers other than cable systems, including telephone companies and other telecommunications service providers that deliver video service. The Commission granted a five-year exemption from these requirements, however, for non-cable MVPDS that were "substantially built" as of January 1, 1998, in order to allow those MVPDs sufficient time to bring themselves into compliance. "Substantially built" was defined as having 75% of the distribution plant completed.

16. A petitioner suggested that we adopt a rule providing that a wireless cable system is "substantially built," for purposes of the five year exemption from our signal leakage testing and reporting requirements, when its headend/transmitter facilities are constructed and operational. We reject this proposal. We note that the headend and transmitter of a wireless cable plant do not constitute distribution plant. The receiver and down-converter and associated cable strand, amplifiers, etc., constitute distribution plant subject to signal leakage. It is the deployment of such equipment that is relevant for purposes of the exemption.

Sharing of Molding

17. In the *R&O*, the Commission adopted a rule permitting an alternative MVPD to install its wiring within an incumbent cable operator's existing molding, even over the incumbent's objection, where the MDU owner agrees that there is adequate space in the molding and the MDU owner gives its affirmative consent.

18. A petitioner argues that our rule effects an unconstitutional taking of private property where an incumbent provider owns the molding or has contracted with the MDU owner for the exclusive right to occupy the moldings or conduits. The Commission's rule does not apply where the incumbent has an exclusive contractual right to occupy the molding or where the incumbent has contracted for the right to maintain its molding on the MDU property without alteration by the MDU owner. Accordingly, our rule does not interfere with the incumbent's property rights and does not constitute a taking, and, therefore, no compensation need be paid.

MDU Demarcation Point

19. Our rules prohibit an incumbent MVPD from interfering with a competitor's access to existing MDU wiring at the demarcation point. The demarcation point for MDU installations is defined as "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. A location is "physically inaccessible" when accessing the wire at that point "would require significant modification of, or significant damage to, preexisting structural elements, and would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring. The rule provides examples of wiring that is "physically inaccessible," such as "wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings."

20. In the *R&O*, the Commission considered and rejected various proposals to relocate the demarcation point. Location of the demarcation point is significant because, under our rules, the demarcation point is the place where competing providers may access existing home wiring in an MDU building. A demarcation point that allows relatively unimpeded access to existing wire is likely to foster

competitive entry into the MDU marketplace.

21. We conclude that cable wiring behind sheet rock is "physically inaccessible" as that term is used in 47 CFR 76.5(mm)(4) of the Commission's rules. As stated, our rule defines "physically inaccessible" as "require[ing] significant modification of, or significant damage to, preexisting structural elements." We believe that the term "structural elements" encompasses sheet rock, otherwise known as wallboard. The "Note" appended to § 76.5(mm)(4), which helps define "inaccessibility," states that "wiring embedded in brick, metal conduit or under cinder blocks with limited or without access openings would likely be physically inaccessible; wiring within hallway molding would not." Sheet rock and other similar materials are not identified specifically. In our view, sheet rock is more like "brick or cinder block," materials also commonly used to form ceilings and hallways, than molding, which is not.

22. The definition of "physically inaccessible" also requires that accessing the wiring at that point would "add significantly to the physical difficulty and/or cost" of connecting. While we acknowledge that cutting a hole through and repairing sheet rock is neither as physically difficult nor as costly as boring through brick, metal or cinder block, we are satisfied that it adds significantly to the physical difficulty and cost of wiring an MDU. For this reason we conclude that wiring that is hidden behind the sheet rock in an MDU wall or ceiling is "physically inaccessible" as the term is used in the Commission's rule. We will amend the "Note" appended to § 76.5(mm)(4) to include sheet rock.

Open Video System Providers

23. In the 1996 Act, Congress recognized the open video system (OVS) as a means by which a local exchange carrier may provide cable service to subscribers within its telephone service area. Although subject to streamlined regulation as compared to their cable counterparts, OVS operators have clearly defined obligations and responsibilities, such as offering up to two-thirds of their channel capacity to unaffiliated programmers on a non-discriminatory basis.

24. A petitioner argues that OVS operators should not be able to avail themselves of the home run wiring rules because OVS operators have no basis to claim a right to use pre-existing MDU home run wiring. The petitioner submits that OVS operators are legally required to construct end-to-end

facilities all the way to end user MDU residents. OVS operators, the petitioner concludes, have an obligation to construct end-to-end facilities to the demarcation point of each subscriber residence and MDU unit within its service area. Yet the statute prohibits an OVS operator provider from consuming all capacity with affiliated programming, and whether the OVS operator acquires existing home run wiring in an MDU or installs the wiring itself is irrelevant to the question of statutory compliance.

25. It is not clear how an OVS operator's obligation to carry affiliated and nonaffiliated programming on a non-discriminatory basis would interfere with the operator's eligibility to avail itself of the home run wiring rules. The petitioner assumes an OVS provider will consume all capacity with affiliated programming, and that, in some way, a requirement that OVS operators must install new home wiring in MDUs will prevent that from happening. Yet the statute prohibits an OVS provider from consuming all capacity with affiliated programming, and whether the OVS operator acquires existing home run wiring in an MDU or installs the wiring itself is irrelevant to the question of statutory compliance.

Synopsis of Second Report and Order

Background

1. In the *R&O*, the Commission amended its cable television inside wiring rules for the purpose of facilitating competition in video distribution markets. The new rules were intended to foster opportunities for multichannel video programming distributors ("MVPDs") to provide service in multiple dwelling units ("MDU") by establishing procedures regarding how and under what circumstances the existing cable home run wiring would be made available to alternative service providers.

2. In the *2nd R&O*; the Commission declined to restrict exclusive contracts for the provision of video services in multiple dwelling unit buildings ("MDU"). The Commission also declined to ban perpetual contracts for the provision of video services in MDUs or subject such contracts to a fresh look window. The Commission concluded that the cable home wiring and cable home run wiring rules should apply to all multichannel video programming distributors ("MVPDs") in the same manner that they currently apply to cable operators. The Commission adopted a limited exemption for small non-cable MVPDs from its signal leakage reporting requirements but

declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

Exclusive and Perpetual MDU Contracts

3. Exclusive and perpetual contracts between MDU owners and MVPDs grant incumbent MVPDs the legal right to remain on MDU properties and thus limit application of the Commission's inside wiring rules. Exclusive contracts generally refer to those contracts that specify that, for a designated term, only a particular MVPD and no other provider may provide video programming and related services to residents of an MDU. Perpetual contracts generally refer to those contracts that grant the incumbent provider the right to maintain its wiring and provide service to the MDU for indefinite or very long periods of time, or for the duration of the cable franchise term, and any extensions thereof.

4. Commenters noted that most long-term exclusive and perpetual MDU contracts were executed at a time when local competition for the provision of multi-channel video programming was scarce or non-existent. As the Commission has observed, recent advancements in video and communications technology have contributed toward a more dynamic, evolving marketplace with cable and new alternative providers competing for MDU subscribers. It appears that some property owners who might now prefer to choose other providers' services may be bound by exclusive or perpetual contracts.

5. In the *2nd FNPRM*, the Commission recognized that exclusive contracts for video services in MDUs may have competitive consequences. Exclusive contracts could bar alternative MVPDs access to, and thus inhibit competition for MDUs. The Commission also noted arguments that exclusive contracts enable alternative providers to recoup the investment required to enter MDUs and thus to become or remain viable. The Commission asked commenters to address whether it would be appropriate to cap exclusive contracts to open up MDUs to potential competition on a building-wide or unit-to-unit basis, and if so, what would represent a reasonable cap.

6. Commenters identified with real estate interests, private cable operators and some telecommunications entities tend to support exclusive contracts for video programming services as enabling alternative MVPDs to gain a foothold in the MDU market. These commenters generally advocated long-term or no caps on exclusive contracts. Other commenters were critical of exclusive

contracts and proposed, if they were to be permitted at all, very short caps of three to five years.

7. We find that the record does not support a prohibition on exclusive contracts for video services in MDUs, nor a time limit, in the nature of a cap, for such contracts. The parties have identified both pro-competitive and anti-competitive aspects of exclusive contracts. We cannot state, based on the record that exclusive contracts are predominantly anti-competitive. With respect to capping such contracts, there appears to be little agreement over the length of the term. Again, based on the record, we cannot discern the "correct" length. We note that competition in MDU market is improving, even with the existence of exclusive contracts.

Perpetual Contracts

8. The 2nd FNPRM also sought comment regarding whether it would be appropriate to restrict perpetual contracts between MDU owners and MVPDs. Although several commenters question the Commission's authority to act in this area, most commenters addressing the issue assert that perpetual contracts effectively bar alternative and/or new MVPDs entry into the MDU market and are inherently anti-competitive. Nonetheless, the record does not demonstrate the existence of widespread perpetual contracts nor support the need for government interference at this time.

9. The majority of commenters that urged the Commission to restrict perpetual MDU contracts offered only conclusory statements regarding the prevalence of such contracts in the marketplace. One commenter submitted the results of a survey in which it solicited responses from a cross section of MDU owners on issues relating to perpetual contracts. The survey suggests that only a small percentage of MDUs are currently subject to perpetual contracts for video programming services.

10. Given the results of the survey and the lack of other data reflecting the prevalence of perpetual contracts, we cannot conclude that such contracts represent a barrier to competition in the MDU market. Accordingly, we do not find that the current record provides a basis for restricting perpetual contracts.

Application of Cable Inside Wiring to All MVPDs

11. In the 2nd FNPRM, the Commission proposed to modify its rules governing home wiring for single-unit installations and subscribers' pre-termination rights, so that they would apply to non-cable MVPDs, in addition

to cable MVPDs. The Commission suggested that such modifications "would promote competitive parity and facilitate the ability of a subscriber whose premises was initially wired by a non-cable MVPD to change providers." The Commission opined that the modifications would "promote the same consumer benefits as in the cable context: Increased competition and consumer choice, lower prices and greater technological innovation. The Commission sought comment on the proposal to extend its rules to all MVPDs and on its authority to do so.

12. The trend in recent years has been increased competition in the MVPD market. The Commission anticipates this trend to continue with alternative MVPDs increasingly gaining market share, such that the entity responsible for the initial installation in a home could be a cable or a non-cable provider. We find it necessary to broaden our rules to ensure that a subscriber's ability to terminate existing service and accept alternative service is not contingent on whether the wiring was installed by a cable, as opposed to a non-cable provider. We further find that the proposed rule modifications will promote regulatory parity and enhance competition among MVPDs. We will modify our rules governing the disposition of home wiring and subscriber pre-termination rights to apply uniformly to all MVPDs.

Exemption From Signal Leakage Reporting Requirements

13. In the R&O, we extended the application of our signal leakage rules, which had applied only to traditional cable operators, to non-cable MVPDs such as satellite master antenna service ("SMATV"), MMDS, and open video system ("OVS") operators. A transition period for compliance was established for certain non-cable MVPDs. In particular, all non-cable MVPDs were directed to comply with the reporting requirement set forth in CFR 76.1804(g) by January 1, 2003. In the 2nd FNPRM, we sought comment on whether we should exempt small MVPDs, including small cable operators, from these requirements. Section 76.1804(g) of the Commission's rules requires cable operators to file annually with the Commission certain information relating to their use of the aeronautical radio frequency bands. We sought comments in an effort to determine whether the annual reporting requirement may impose undue burdens on small service providers, including small cable operators.

14. Supporters of a reporting exemption for small MVPDs argue that

an exemption would be consistent with congressional directives to reduce regulatory burdens on small MVPDs where feasible. They argue that there is no evidence that a small MVPD exemption will result in abuses of the signal leakage rules or otherwise prompt small MVPDs to be less attentive to their signal leakage obligations. Opponents of an exemption argue that the proposal does not relieve MVPDs of the obligation to conduct tests and that the filing of signal leakage test results is a simple task once the testing is complete. They state that the signal leakage rules represent a Commission effort to protect life and property, and, if reporting is helpful in the oversight of signal leakage, then all MVPDs should report.

15. We will adopt a very limited exemption to the annual reporting requirement of CFR 76.1804(g) of our rules. This exemption will apply to non-cable MVPDs with less than 1000 subscribers or serving less than 1000 units. Such an exemption furthers congressional directives to reduce the regulatory burden on small entities where feasible. We have no reason to believe that such an exemption will affect enforcement of the Commission's signal leakage rules. We are not exempting MVPDs subject to existing reporting requirements. The annual reporting requirement is scheduled to become effective for all non-cable MVPDs on January 1, 2003. With this exemption, that requirement will not become effective for the smallest non-cable MVPDs. Relief from the annual reporting requirement will allow small non-cable MVPDs to focus on the prevention of leaks by devoting their scarce resources primarily to maintenance, leakage detection, and repair. The exempted systems will continue to perform all signal leakage tests required by our rules and must make the results of those tests available to Commission agents upon request. We believe it is sensible to treat small cable and non-cable MVPDs differently in this regard because of the different environments in which each is likely to operate. Small cable systems have wiring that connects individual residences, is strung on utility poles, and is subject to all of the stresses associated with the outside environment, including temperature fluctuations, wind loading, rain and ice. Small non-cable MVPDs predominately serve MDUs and thus have their wiring and associated electronics protected from exposure to the weather and the risk of damage that could result in signal leakage.

16. Testing will remain an important part of our enforcement program. It is

only the future obligation to report results by the smallest non-cable MVPDs which are changing here. Our signal leakage monitoring and enforcement program, conducted pursuant to CFR 76.613, which includes a vigorous program of field inspections and the impositions of forfeitures, remains unaffected. The Commission's field operations staff conducts routine monitoring for signal leakage and, of course, will continue to respond to aeronautical complaints to ensure the safe operation of aeronautical frequencies.

Simultaneous Use of Cable Home Run Wiring

In the Second Further Notice, we solicited comments on whether we should adopt a proposal from DirecTV to give MDU owners the right to require that incumbent MVPDs allow competitors to share their home run wiring. Most of the comments we received on this issue agree that there are significant unresolved technical problems with the proposal, notwithstanding its merits from a public policy perspective. Most of the technical objections to the DirecTV proposal relate to the possibility of interference when amplified signals are transmitted on a single wire and the possible lack of bandwidth capacity in existing cable plant. We are unable to resolve this issue based on the record before us. Accordingly we decline to adopt DirecTV's line sharing proposal at this time

Ordering Clauses

26. Pursuant to the authority granted in 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, 220, 303, 544 and 552, the petitions for reconsideration filed in response to the *R&O* are *granted in part* and *denied in part*, as provided herein.

27. Pursuant to the authority granted in 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 modifications to the Commission's rules are *hereby adopted*. These modifications shall become effective May 20, 2003.

List of Subjects in 47 CFR Parts 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND 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, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising the note to paragraph (mm)(4) to read as follows:

§ 76.5 Definitions.

* * * * *

(mm) * * *

(4) * * *

Note to § 76.5 Paragraph (mm)(4): For example, wiring embedded in brick, metal conduit, cinder blocks, or sheet rock with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

* * * * *

3. Section 76.620 is amended by revising paragraph (a) 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, 76.1804(a) through (f), 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, § 76.1804(g) shall apply to all non-cable MVPDs serving 1000 or more subscribers or 1000 or more units.

* * * * *

4. Section 76.802 is amended by revising paragraph (l) to read as follows:

§ 76.802 Disposition of cable home wiring.

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

5. Section 76.804 is amended by revising paragraph (b)(3) to read as follows:

§ 76.804 Disposition of home run wiring.

* * * * *

(b) * * *

(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 the 24-hour period prior to actual service termination.

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6. Section 76.806 is amended by adding a paragraph (d) to read as follows:

Section 76.806 Pre-termination access to cable home wiring.

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(d) Section 76.806 shall apply to all MVPDs.

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