

Inside Wiring: Looking at the Past and Thinking About the Future

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In negotiating cable TV or satellite TV contracts, the Association is often confronted with issues involving the ownership and use of the wiring in the building. The purpose of this article is to provide some background information regarding the Federal Communications Commission's (FCC's) Orders that govern cable inside wiring, and discuss the future implications of these Orders on how an Association can control the use of its inside wiring by video service providers. For the purpose of this article, the use of "inside wiring" will refer only to cable inside wiring. Note that the FCC also has rules governing telephone inside wiring; however, a discussion about these rules is beyond the scope of this article. Also note there may be state and local municipal rules and regulations governing inside wiring; a discussion of these rules and regulations is also beyond the scope of this article.

The FCC has released several Report and Orders ("Order(s)") regarding the FCC rules governing inside wiring for multiple dwelling unit buildings ("MDU"). A condominium building does qualify as an MDU. Through these Orders, the FCC has sought to set forth rules with regard to ownership and usage rights of a MDU's inside wiring, and the FCC has also sought to foster competition among video service providers for MDUs.

The first significant Order regarding inside wiring was released in October 1997 (the "1997 Order"). This order dealt with, among other things, the disposition of home run wiring, the disposition of cable home wiring, and the MDU demarcation point.

The second significant Order was released in January 2003 (the "2003 Order"). The FCC released this order in response to the petitions for reconsideration it received with regard to its 1997 Order. In this Order, the FCC modified the inside wiring rules regarding availability of the inside wiring in the event of a sale and further defining the determination of the demarcation point.

The third significant Order was released in June 2007 (the "2007 Order"). In this Order, the FCC further clarified determining the demarcation point between home wiring and home run wiring. Perhaps the most significant aspect of the 2007 Order is the FCC's conclusion that cable wiring located behind sheet rock is considered "physically inaccessible." The significance of this conclusion is that inside wiring previously classified as "home run wiring" is now reclassified as "cable home wiring".

The FCC released another Order in November 2007 that indirectly dealt with inside wiring. However, the primary purpose of that particular Order was to establish a prohibition on exclusivity clauses in service contracts between video service providers (cable TV companies, but not satellite dish companies) and MDU owners.

Before continuing with this discussion on inside wiring, some important inside wiring related terms must be understood. Three important terms are: home run wiring, cable home wiring, and demarcation point.

Home run wiring is defined as “the wiring from the demarcation point to the point at which the multichannel video programming distributor’s wiring becomes devoted to an individual subscriber or individual loop” (47 C.F.R. § 76.800(d)). In other words, home run wiring is the inside wiring that runs from the common junction box through the building, generally the hallways, to the individual dwelling unit.

Cable home wiring is defined as “the internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber’s side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units” (47 C.F.R. § 76.5(l)). Generally, cable home wiring is the inside wiring located on the subscriber’s side of the demarcation point, which is usually the inside wiring within the individual dwelling unit.

Demarcation point is defined as “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” (47 C.F.R. § 76.5(mm)(2)). In other words, the demarcation point is the dividing point from which the inside wiring will be classified as either home run wiring or cable home wiring.

The FCC rules start with the presumption that the inside wiring of a MDU was installed by a video service provider, and is therefore, the property of that video service provider. The rules set forth procedures regarding the disposition of the inside wiring upon termination of the video service. Generally, the rules allow for the purchase of the inside wiring by either the MDU owner or the new video service provider, or the removal of the inside wiring by the incumbent service provider. The specific procedures to be followed depend on whether the inside wiring is classified as home run wiring or cable home wiring. However, what are the implications of the inside wiring rules on an Association’s ownership and usage rights if it already owns the inside wiring?

If an Association presently owns the inside wiring in its building, then the issues the Association may face arise in the context of choosing which video service provider or providers to use. Notwithstanding local franchise regulations, an Association may find that the physical wiring itself may limit the number of video service providers that can be engaged to provide video programming to unit owners. For example, let us assume that there is only one set of coaxial cable (the inside wiring) running throughout the building that can be used to provide video programming to the individual units. Let us also assume that there are various factors preventing the building owner (the Association) from having additional inside wiring installed. In this situation, the conventional wisdom

is that only one service provider can use the inside wiring at one time. Therefore, because of the physical limitations of the inside wiring, then only one service provider can be allowed to provide video programming to the building.

Note that there is a distinction between multiple service providers using the same inside wiring versus a single service provider using the same inside wiring to provide multiple services. For example, it is becoming more common for a single service provider to offer cable television and high speed internet in a bundled package to the subscriber. In this instance, both services (the cable television and high speed internet) can be delivered to the subscriber via the same inside wiring because the signal for each service uses a different portion of the spectrum. If two separate service providers provide the same service, such as cable television, then they cannot use the same inside wiring because the signal uses the same portion of the spectrum.

With constant advance of technology, the physical limitation of inside wiring may become a problem of the past. In its 1997 Order, the FCC declined to adopt a proposal by DIRECTV that would specifically address having competing service providers share a single home run wire. It appears that the FCC did not feel that the timing was appropriate to adopt the proposal. The FCC noted that the record reflected varied and contradictory information on the matter which they were unable to resolve. Some commentators hold the perspective that it was technically and/or practically infeasible for competing services to transmit over a single wire. It was also noted that DIRECTV acknowledged the specific limitation that only service providers using different portions of the spectrum could technically share a single wire. Thus, there are clear implications that a change in technology, particularly different service providers using different portions of the spectrum, could result in the real feasibility for multiple service providers to transmit via a single wire. This would allow unit owners a greater choice of service providers without the need for the installation of additional inside wiring.

In reviewing the various Orders released by the FCC regarding inside wiring, it is clear that a primary purpose of the FCC's rules is to increase competition in the market place of video service providers. As technology continues to evolve, the FCC may revisit the DIRECTV proposal and address multiple service providers transmitting over a single wire. Thus, careful contract preparation should address this issue, especially with cable TV contracts being long term agreements.

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