

A REVIEW OF THE FCC'S INSIDE WIRING RULES

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September, 2006

Community associations rarely face questions about the rules governing wiring used to transmit telephone, cable television and Internet services on their premises, but when they do, it can be very confusing. These questions are beginning to come up more often, now that the telephone industry is beginning to offer video programming, and more and more association residents are getting their phone service from the cable company. The “triple play” of voice, video and Internet service makes the situation even more confusing. Not only are the rules very technical, but for historical reasons there are two separate sets of rules, one originally governing cable operators and the other regulating telephone companies.

This overview will briefly describe how the two sets of rules work.

The Cable Television Rules

The FCC's cable inside wiring rules apply to “multi-channel video programming distributors,” or “MVPDs”. Originally, this referred primarily to cable operators, but now that the telephone companies are providing video programming, the term MVPD probably includes telephone companies as well.

The cable inside wiring rules have two main components, known as the “cable home wiring rule” and the “cable home run wiring rule.” Both rules depend on a key concept: the “demarcation point.” The demarcation point is “a point at (or about) twelve inches outside of where the cable wire enters the resident's individual apartment unit, or, when the wire is physically inaccessible, at the closest practicable point that does not require access to the individual unit.” 47 CFR § 76.5(mm)(1). The cable home wiring runs from the demarcation point into and throughout each unit. The home run wiring is the wiring between the demarcation point and the point at which the wiring serving that unit meets the cable operator's distribution network for the rest of the building. The goal of both rules is to prevent an existing a cable operator from blocking entry by a competitor, but they do this in different ways.

The cable home wiring rule allows individual cable subscribers to buy the wiring in their homes if they terminate service with a particular cable company. This rule also allows an association to acquire the wiring on behalf if its residents.

The cable home run wiring rule recognizes that subscribers who live in condominiums and other multiple dwelling units face an additional problem: even if they own the wiring in their units, the cable company controls the distribution network outside each unit. If a competitor wishes to

serve an individual resident, it must get access to the cable home wiring, either by extending its network to the demarcation point, or by getting the right to use the home run wiring.

The home run wiring rule allows an association to acquire all of the home run wiring in a building under one of two methods. 47 C.F.R. § 76.804. The “unit-by unit” method anticipates that an association might allow more than one provider to serve a building, and individual residents would need to be able to switch from one provider to another. The “building-by building” method anticipates that an association might grant an exclusive contract, and then change providers at the end of a contract term. Both methods apply only when an agreement is about to terminate, or the incumbent has no continuing right either to remain on the premises or to maintain any particular home run wire. If an association chooses to exercise its rights under either method, the incumbent provider can choose to remove the wiring, abandon the wiring, or negotiate to sell the wiring to the owner or the new provider. This process is cumbersome, limiting the rule’s usefulness.

The Telephone Rules

The rules governing inside wiring are just as mysterious and confusing. Traditionally, until the early 1980’s, wiring inside multiunit buildings was owned by the telephone company. When the Bell System was broken up, however, the FCC decided to make the provision of inside wiring a competitive business. To do this, building owners (including associations) were given greater control over telephone inside wiring. Building owners are permitted to take control of wiring on their premises by establishing a single demarcation point for the building at the “minimum point of entry,” typically in the basement or equipment closet. The building owner would then have the right to allow any provider it selected to connect to those wires and serve the building. Historically this has made little difference to homeowner’s associations because telephone service remained essentially a monopoly even after the Bell break up. In theory, though, it would make it easier for the association to bring in bulk telephone service from a competitive provider.

The telephone companies, particularly Verizon but also AT&T (formerly SBC) and BellSouth, are beginning to deploy new high-speed fiber optic networks to replace their old copper wire telephone networks. The FCC has ruled that new fiber optic cable installed to service residential subscribers is deregulated for most purposes, but it has also ruled that the traditional inside wire rules remain in effect.

Because the new fiber networks are used to provide both voice and video, it appears that both sets of rules – the cable rules and the telephone rules -- may apply to those networks, at least in cases in which the telephone company has the right to provide video services inside a building. If the telephone company is only offering voice service, then presumably the telephone rules apply. And if the phone company is offering only broadband Internet service over a fiber network, then it may be that no rules apply.

To complicate matters further, state law also can play a role. Some states have adopted laws or regulations dealing with ownership of telecommunications wiring, and laws governing the treatment of “fixtures” may also be relevant.

Why It Matters

Questions in this area tend to come up when an association is considering bringing in a new provider, either to replace or compete with an existing service provider, or to provide a new service, such as high speed Internet. The inside wiring rules will affect whether it is possible or practical to allow a new company to use existing wiring, which in turn will affect the new operator’s likelihood of success. Matters can be especially tricky if the association has granted an exclusive right to provide a service to an existing company (such as cable service) or is considering granting an exclusive contract for a service to a new company. There is substantial uncertainty regarding how the rules will apply in the new environment. Still, failing to consider them could result in unintended long-term consequences, especially if an agreement proves to be unenforceable or uneconomical. If an association is approached by a provider offering “triple play” services, especially if the provider is an incumbent telephone company, the association should examine these questions carefully.