

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