

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