

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