

reinforce existing cable monopolies, and reduce competitive opportunities for SMATV providers within the cable service area.

10. The Commission reviews the arguments and positions of the petitioners for reconsideration, including those that argue that it was an error to prohibit cable operators from acquiring existing SMATV systems within their service areas. The Commission decides to modify the rules based upon a revised analysis of the language of Section 613(a)(2) and the Congressional intent underlying that provision. The Commission notes that the modified rules are consistent with the diversity and competitive considerations associated with the statutory ownership restriction. The Commission concludes that the statutory language means that cable operator may not offer SMATV service anywhere in its franchised service area unless such service is offered together with or as part of the cable service provided pursuant to its local cable franchise agreement. In other words, if a cable operator offers SMATV service to subscribers within its franchised service area, it must offer this otherwise unregulated multichannel video programming service to those subscribers pursuant to the same terms and conditions upon which the regulated cable television service is offered to subscribers within that same franchise. Thus, cable operators may not use facilities that meet the statutorily-created SMATV exception to the definition of a cable system to provide multichannel video programming service that does not comply with franchise obligations or the Commission's rules.

11. The Commission declines to adopt an interpretation of the statutory language that suggests that the statute requires the physical interconnection of commonly-owned cable systems and facilities that would otherwise qualify for the SMATV exception. Rather, the Commission concludes that the statutory "separate and apart" language refers to the service, not the delivery system, and are used to limit cable operators' ability to offer the unregulated SMATV service. Accordingly, the Commission states its belief that the statutory language requires cable operators to comply with all franchise requirements in their delivery of multichannel video programming without regard to whether any part of the facilities used might qualify as a SMATV system.

12. The Commission reviews the legislative history and concludes that in the context of the SMATV provision,

Congress was unconcerned with the manner in which SMATV systems are obtained by cable operators and was mostly concerned with the manner in which such service is "offered" to subscribers in the cable operator's franchised service area; i.e., "separate and apart from any franchised cable service." Accordingly, on further analysis the Commission concludes that revising the rule to eliminate the regulatory distinction between the acquisition and construction of SMATV systems accurately and appropriately interprets the statutory provision. The Commission further explains its belief that the revisions more closely comport with Congressional intent in enacting the SMATV ownership restriction.

13. The Commission also explains its belief that Congress's intent to preclude franchised cable operators from owning SMATV services in their franchise areas was not directed at the technology involved but rather at prohibiting cable operators from using the SMATV exception to offer service that does not comply with federal law and franchise obligations. The Commission notes that its interpretation ensures competitive opportunities for SMATV operators and is consistent with the interpretation proffered in the FR&O where it also required cable operators to comply with the terms and conditions of their franchise agreements if they offered multichannel video programming services through SMATV facilities in the unserved portions of their service areas. The Commission further believes that the revisions are consistent with the overall policy goals of the 1992 Cable Act.

14. The Commission finds that the record contains insufficient evidence on which to base an economic analysis as to the workings of the SMATV marketplace and on which to conclude with any degree of certainty that either the rule adopted in the FR&O or the revision would have particular economic consequences. Nevertheless, the Commission notes that the availability of capital necessary to construct a SMATV system is often dependent on the availability of exit strategies, and in particular on the ability to recoup sunk costs by being able to sell to a locally-franchised cable operator when that operator is the only potential buyer and that the revision would eliminate that constraint and level the competitive field for initial entry.

15. Accordingly, the Commission reconsiders the decision in the FR&O that cable operators may not acquire SMATV systems located within their service areas, and in this MO&O,

modifies the rules by permitting cable operators to purchase SMATV systems located within their franchise areas, provided they operate such systems in accordance with the terms and conditions of their local franchise agreements. By this action the Commission notes that it eliminates the regulatory distinction drawn in the FR&O accorded disparate regulatory treatment based upon distinctions between the construction and acquisition of SMATV systems. The Commission concludes that the revised rule is more consistent with and more accurately and appropriately interprets the language of Section 613(a)(2) than the rule adopted in the First Report & Order.

16. The Commission next addresses cable operators' use of SMATV facilities within their franchise areas and rejects arguments that it lacks authority to require franchised cable operators to operate SMATV systems under their ownership, control or management within their franchise areas in accordance with their franchise obligations, that there are no public policy reasons for requiring cable operators to operate SMATV systems in accordance with their franchise obligations, and that the economies of providing SMATV service in an MDU are sufficiently different from those involved in providing franchise-wide cable service that a cable operator acquiring a cable system should not be required to operate the SMATV system in accordance with its franchise agreement requirements. The Commission notes that the decision to permit cable operators to acquire SMATV facilities within their service areas renders moot concerns regarding conveyances of access contracts and distribution facilities. The Commission further notes that in two separate *Erratum* to the FR&O the Mass Media Bureau corrected the relevant MMDS-cable and SMATV-cable cross-ownership rules to grandfather authorized combinations in existence as of October 5, 1992, as required by the statute. The Commission declines to also grandfather arrangements between private parties that were merely agreed to prior to December 4, 1992.

17. The Commission next addresses the anti-trafficking rules. Section 617 of the Communications Act establishes a three-year holding requirement for cable systems that, with certain exceptions, restricts the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a thirty-six month period following either the acquisition or initial construction of the system. The statute expressly exempts from the