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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEB - 9 1993

In the Matter of )  
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Implementation of Sections 11 )  
and 13 of the Cable Television )  
Consumer Protection and Competition )  
Act of 1992 )  
 )  
Horizontal and Vertical Ownership )  
Limits, Cross-Ownership Limitations )  
and Anti-trafficking Provisions )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 92-264

To: The Commission

**COMMENTS REGARDING NOTICE OF  
PROPOSED RULE MAKING AND NOTICE OF INQUIRY**

Transworld Telecommunications, Inc., ("TTI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments regarding the Federal Communications Commission's Notice of Proposed Rule Making and Notice of Inquiry, ("NPRM\NOI"), FCC 92-542, released December 28, 1992, in the above captioned proceeding. The NPRM\NOI was initiated to implement Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385 ("1992 Cable Act").

TTI is filing these comments seeking Commission clarification of its policy concerning common ownership of a multichannel multipoint distribution service ("MMDS") and satellite master antenna television ("SMATV") service within the same geographic area. Specifically, TTI requests that the Commission clarify that SMATV systems are not cable systems for the purpose of Section 21.912 of the Commission's Rules. As discussed below, the Commission has always allowed common ownership of SMATV and MMDS

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within the same geographic area, thereby allowing entrepreneurs to combine SMATV and MMDS technologies to provide competition for the franchised cable operators.

TTI, through a wholly-owned subsidiary, operates a combined wireless cable and SMATV operation in the Tampa, Florida area, in competition with franchised cable operators such as Paragon and Jones Intercable.<sup>1</sup> By integrating both SMATV and wireless cable technologies into one multichannel video delivery system, TTI is able to better serve subscribers in the market. TTI utilizes MMDS to provide service to single family dwellings. For multi-family complexes and housing developments, TTI combines the two technologies, by using the MMDS to transmit programming to a head-end within the private complex or development, and SMATV to link the homes within the development to the master MMDS receive antenna. Without utilizing both technologies TTI could not provide cost-effective service to its subscribers and therefore would be unable to successfully compete against the franchised cable operators in the Tampa market.

The present prohibition on franchised cable/MMDS cross-ownership is codified in Section 21.912 of the Commission's Rules. That section repeatedly references the "franchise area" of the cable system as the area where cross-ownership is prohibited, which means that cross-ownership is prohibited only where there is some

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<sup>1</sup> Although TTI serves over 5,000 subscribers, the franchised cable systems have the bulk of the market share. TTI intends to expand its reach by both wireless cable and SMATV wherever feasible to increase market share and serve as a brake upon the franchised cable operators' market power.

franchise area in the first place. Thus, an SMATV system, although it physically uses hardware to reach the subscriber, is not itself a "cable system" for the purposes of Section 21.912. This interpretation is reinforced by the language of the Commission in its Report and Order in Gen. Dkt. Nos. 90-54 and 80-113, 5 FCC Rcd. 6410, 6439 n.34 (1990), where the Commission specifically chose to adopt the definition of "cable system" then found in Section 522(7) of the Communications Act of 1934 as amended ("Act") (which definition excluded SMATV),<sup>2</sup> rather than the definition found in the Commission's Rules (which definition arguably included SMATV).

There are overwhelming policy reasons for continuing to encourage common ownership of MMDS and SMATV systems in a market. The Commission has recognized that the best way to encourage market competition to franchised cable systems is to allow alternative providers to combine technologies such as MMDS and SMATV. In order to reach a sufficient number of households, the unfranchised competitor has to employ both technologies. Just as the Commission missed the opportunity to develop viable competition in 1983 (when it prohibited common ownership of E- and F-channel groups in MMDS), so the Commission would be hamstringing would-be cable competitors now if it limited the number of households a competitor could pass by denying the use of multiple technologies.

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<sup>2</sup> At that time, the definition in the statute excluded some SMATV systems but included others. The U.S. Court of Appeals for the D.C. circuit has since found the statute's differentiation among SMATV systems to be an unconstitutional denial of equal protection. See, Beach Communications, Inc. v. FCC, 965 F.2d 1103 (1992), cert. granted sub nom. FCC v. Beach Communications, Inc., \_\_\_\_\_ U.S. \_\_\_\_\_ (1992).

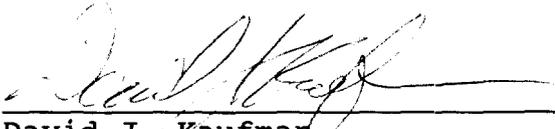
To recall, for many years, the development of MMDS was retarded by misguided Commission policies which assumed that MMDS served a separate market from cable, thus requiring diverse ownership of MMDS channels within a market. As a result, for a long time an MMDS operator could not own both the E and F Group channels in a particular market. Without an adequate number of channels, a wireless cable operator could not offer sufficient programming to be competitive with franchised cable operators. The Commission subsequently discarded that policy, and recognized that MMDS competes with cable to serve a single video viewing market. See, Report and Order, 5 FCC Rcd. 6410 (1990); Order on Reconsideration, 6 FCC Rcd. 6764 (1991); Second Report and Order, 6 FCC Rcd. 6792 (1991).

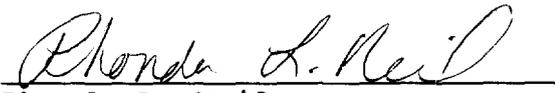
If cable companies or misguided Commission staff are allowed to contend that Section 21.912 imposes any prohibition on cross-ownership between MMDS and SMATV, the public interest would be harmed. Therefore, it is imperative that the Commission clarify that its policy in Section 21.912, like that of the Congress in Section 11 of the 1992 Cable Act, is to encourage competition from unfranchised providers of video programming, not to hinder such competition.

WHEREFORE, for the foregoing reasons, TTI respectfully requests the Commission clarify its existing policy of not including SMATV within the definition of a "cable system" in Section 21.912 of the Rules.

Respectfully submitted,

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