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

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 94-150
Regulations Governing Attribution of	)	
Broadcast and Cable/MDS Interests	)	
	)	
	)	
Review of the Commission's	)	
Regulations and Policies Affecting	)	MM Docket No. 92-51
Investment in the Broadcast Industry	)	
	)	
	)	
Reexamination of the Commission's	)	MM Docket No. 87-154
Cross-Interest Policy	)	
	)	

**REPLY COMMENTS OF  
NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA") hereby submits its reply comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include cable television operators serving over 80 percent of the cable television households in the nation, and over 100 national and regional program networks.

## INTRODUCTION

In its Further Notice of Proposed Rulemaking, the Commission seeks comment on an array of proposed changes to its ownership attribution rules. Those rules determine whether a particular entity is deemed an owner of a media company for purposes of various regulations restricting crossownership and multiple ownership of media in overlapping local markets and nationwide. For the most part, the proposed amendments apply to the rules restricting multiple ownership of *broadcast* stations and crossownership of broadcast stations and other media, including co-located cable television systems. In addition, however, the Commission has asked for comment on proposed modifications of the ownership attribution rules that apply to the statutory restriction on cable/multipoint distribution service (“MDS”) crossownership.

Specifically, the Commission proposes to liberalize the cable/MDS ownership attribution rules, which currently treat a five percent voting or non-voting stock interest or a five percent limited partnership equity interest held by a non-institutional investor (or a ten percent interest held by an institutional investor) as an attributable interest. The proposed amendments would raise the attributable ownership thresholds to ten percent for non-institutional investors and 20 percent for institutional investors, and would treat non-voting stock and certain insulated limited partnership interests as non-attributable. The Commission’s proposal would, however, treat otherwise non-attributable equity and/or debt holdings as attributable in certain circumstances where the interest holder also held certain other interests in or relationships to the cable operator or MDS licensee and where the equity and/or debt holding exceeded a 33 percent threshold.

**I. THE ATTRIBUTION RULES FOR PURPOSES OF THE CABLE/MDS CROSSOWNERSHIP PROHIBITION SHOULD BE LIBERALIZED, BUT THE "LIMITED EXCEPTION" TO THE PROHIBITION PROPOSED BY THE WIRELESS CABLE ASSOCIATION SHOULD BE REJECTED.**

NCTA has never believed that a cable/MDS crossownership prohibition was warranted or served the public interest. As NCTA has pointed out in the past, it would frequently be economically efficient to use cable and MDS distribution in a complementary manner to provide service throughout a franchise area. The cost of extending cable to some areas may, for various reasons, be unusually high or prohibitive. In other areas, terrain or other factors may make MDS distribution impossible.

The Commission and Congress have concluded, however, that the potential efficiencies of crossownership are outweighed by the risk that cable operators might "warehouse" MDS licenses in order to foreclose competition in the multichannel video programming distribution marketplace. Whether or not it ever would have made economic sense for cable operators to engage in such "warehousing" -- and NCTA has shown in the past that it would not<sup>1/</sup> -- the advent of DBS service clearly precludes any such anticompetitive incentives. It makes little sense to try to preserve market power and foreclose competition by investing in MDS licenses when cable operators face actual and potential competition not only from SMATV systems, telephone companies, electric utilities and other wireline overbuilders but also from DBS

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<sup>1/</sup> Amendment of Parts 21, 43, 74 and 94 of the Commission's Rules Pertaining to Rules Governing Use of Frequencies in the 2.1 and 2.5 GHz Bands, Gen. Docket No. 90-54, Comments and Reply Comments of the National Cable Television Assoc. (filed May 7, 1990 and June 20, 1990).

providers whose subscribership is already substantial and who, according to some observers, may capture “over 20% of all cable subscribers by the year 2000.”<sup>2/</sup>

For these reasons, NCTA generally supports changes to the ownership attribution rules that would relax the restriction in a manner that is technology-neutral. Thus, we agree with the Wireless Cable Association (“WCA”) that the Commission’s proposed changes to the attribution rule raising the ownership thresholds and exempting non-voting stock and certain limited partnership interests should be adopted. We also agree with WCA that, for purposes of the cable/MDS crossownership rule, the proposed 33 percent “equity or debt plus” provision is unnecessary and unwarranted. But WCA also urges the Commission to recommend to Congress a further liberalization of the cable/MDS crossownership rule that would not be technology-neutral and that would favor companies that serve a majority of their subscribers using MDS rather than cable. Such a statutory amendment would not be in the public interest, and the Commission should not recommend its enactment.

What WCA proposes is “a limited exception to the statutory cable/MDS crossownership ban to allow a wireless cable operator to serve fewer than 50% of its total number of subscribers nationwide with coaxial cable that crosses a public right-of-way.”<sup>3/</sup> Such an exception is needed, according to WCA, because

[i]n both urban and rural areas there have been and will continue to be instances where wireless cable operators must use hard wire to serve customers in residential developments, trailer parks and other private enclaves where

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<sup>2/</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Third Annual Report, CS Docket No. 96-133, FCC 96-496 (1997).

<sup>3/</sup> Wireless Cable Association (“WCA”) Comments at 14.

antennas are not feasible due to terrain factors and/or man-made obstructions, or where use of outdoor antennas is otherwise restricted. In other cases, small communities have invited wireless cable operators to provide traditional cable service in areas that are terrain-blocked and thus cannot receive wireless transmissions.<sup>4/</sup>

Where a multichannel MDS (“MMDS”) operator faces competition from a franchised cable operator, nothing in the cable/MDS crossownership rule currently prevents the MMDS operator from serving “terrain-blocked” areas with traditional cable service. Section 613(a)(3) of the Act specifically provides that neither the cable/MDS crossownership prohibition nor the cable/SMATV crossownership provision shall apply “to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(1).”<sup>5/</sup>

Thus, the only effect of WCA’s proposed rule would be to allow the owner of a cable system that does *not* face effective competition to provide MMDS service in the cable system’s franchise area if the owner serves more MMDS subscribers than cable subscribers nationwide. But Congress and the Commission have already determined that the need to ensure that MMDS systems are used to *compete* with the sole franchised cable operator in an area outweighs any efficiencies that might result from allowing such a cable operator to *supplement* its wireline service with a commonly owned MMDS system. As noted, NCTA would support revisions of the prohibition to complement wired service. But until such revision, it makes no sense to draw the distinction WCA does. WCA offers no reason why

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<sup>4/</sup> *Id.* at 12-13.

<sup>5/</sup> 47 U.S.C. § 533(a)(3).

the mere fact that the sole franchised cable operator happens to be owned by a company that predominantly provides MMDS service *elsewhere* should alter the general prohibition.

Creating such an exception would give companies predominantly engaged in the provision of MMDS service an artificial advantage over other cable operators in acquiring cable franchises and in providing cable service. Because those companies could provide complementary cable and MMDS services while others could not, they would enjoy unique efficiencies in offering service throughout a franchise area that are denied to other cable operators. Moreover, as a result of this regulatory disparity, companies predominantly engaged in the provision of MMDS service would place a higher value than other companies on existing cable systems and on new cable franchises and would offer to acquire them at a correspondingly higher price -- without regard to whether, in all other respects, they would operate such systems in a superior, more efficient manner than other companies. This distortion of the marketplace would be unfair and contrary to the public interest.

## **II. THE COMMISSION SHOULD ENSURE THAT ITS OWNERSHIP RULES PROMOTE REGULATORY PARITY.**

The Commission's objective, in re-examining its crossownership attribution rules, is to encourage investment in the media affected by such rules where such investment does not pose a significant threat to the policy interests that underlie the various crossownership restrictions. In this regard, Tele-Communications, Inc. ("TCI") has submitted comments supporting the Commission's proposed liberalization of the attribution rules with respect to the restriction on common ownership of broadcast stations and cable systems in overlapping areas. Such a liberalization, as TCI points out, could increase available capital for broadcasters and cable operators alike.

Beyond its legitimate objective of eliminating unnecessary restrictions on investment, the Commission should also ensure that its ownership rules and restrictions result in regulatory parity for all media, including cable television. It has been announced in trade reports, for example, that a DBS company that owns local broadcast stations intends to include local broadcast stations in its multichannel video programming package.<sup>6/</sup> Were this to occur in the manner in which it has been proposed, or in some similar arrangement, there would be no rational policy basis for banning cable-broadcast crossownership while allowing functionally identical DBS-broadcast crossownership arrangements to go forward. In any case, it may soon be time to review the logic of and need for the broadcast crossownership restriction, even apart from the issue of regulatory parity.

### CONCLUSION

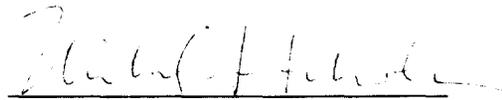
In sum, the Commission, as it reviews its ownership restrictions and associated attribution rules, should consider the impact of such rules and restrictions on efficiency of operations, on the availability of capital, and on regulatory parity. With these concerns in mind, and for the foregoing reasons, NCTA supports the Commission's proposal to liberalize

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<sup>6/</sup> See, e.g., "The Sky is Rising," *Broadcasting and Cable* (Mar. 17, 1997) at 30-31.

the ownership attribution rules for purposes of the cable/MDS crossownership prohibition. But WCA's proposed "limited exception" to the prohibition, which it urges the Commission to propose to Congress, would not serve the public interest and should be rejected.

Respectfully submitted,



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