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December 18, 2000

VIA COURIER

Ms. Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Reply Comments of Adelpia Communications Corporation in Docket No. 97-80

Dear Ms. Salas:

Adelpia Communications Corporation ("Adelpia") respectfully submits the enclosed Reply Comments of Adelpia in response to the Further Notice of Proposed Rulemaking in the Commission's ongoing navigation devices proceeding, CS Docket No. 97-80. Please find enclosed an original, four copies and a stamp-and-return copy of Adelpia's Reply Comments. A diskette containing these Reply Comments in electronic form, accompanied by a cover letter, has been sent to Mr. Thomas Horan pursuant to instructions given in the Further Notice of Proposed Rulemaking.

Kindly stamp this letter and the enclosed stamp-and-return copy and give them to the courier for return delivery to us. Please do not hesitate to contact undersigned counsel should you have any questions regarding Adelpia's submission.

Respectfully submitted,



David N. Tobenkin

For: Adelpia Communications Corporation

Enclosures

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

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In the Matter of)
)
Implementation of Section 304 of the)
Telecommunications Act of 1996)
)
Commercial Availability of Navigation Devices)

CS Docket No. 97-80

**REPLY COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

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December 18, 2000

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

In the Matter of)
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Implementation of Section 304 of the) CS Docket No. 97-80
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Commercial Availability of Navigation Devices)

**REPLY COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

Adelphia Communications Corporation (“Adelphia”), by its attorneys, hereby submits its reply comments in response to the Commission’s Further Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceeding.¹

Adelphia is in the middle of a rebuild and upgrade program designed to offer its 5.6 million subscribers advanced and digital services. Consumer electronics retailers in their comments mistake this program as “stockpiling” and deploying integrated devices just to harm competition from retailers.² The fact is that cable operators like Adelphia are rolling out innovative services to consumers in a marketplace in which powerful competitors are vying for the same customers.³ The set-top is not a profit center to Adelphia. The set-top device is merely the device needed to deliver

¹ Further Notice of Proposed Rulemaking, *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, FCC 00341 (released September 18, 2000) (“Notice”).

² See Comments of the Consumer Electronics Association (“CEA Comments”) at 17. The Consumer Electronics Retailers Coalition resorts to an even more farfetched claim: that cable operators sought to obstruct the Commission’s navigation devices rules through the filing of “bad faith” waivers of Section 76.1204. See Comments of the Consumer Electronics Retailers Coalition (“CERC Comments”) at 11. As the Commission made clear in its final order, the waivers were narrow, focused, dealt with dual carriage of analog signal on systems pending rebuild, and were granted. Memorandum Opinion and Order, *In the Matter of: Charter Communications, Inc. et al., Petition for Waiver of the Requirement To Provide Point of Deployment Modules Contained in Section 76.1204 of the Commission’s Rules*, DA 00-1870, 2000 FCC LEXIS 4314 (C.S.B., Aug. 15, 2000).

³ See, e.g., Linda Moss, *Adelphia Rebuild Plan Needs Help from Nets*, Multichannel News, Oct. 2, 2000, at 1 (discussing a plan under consideration by Adelphia as an interim solution--a temporary upgrade--for non-rebuilt facilities at 350- to 400-megahertz capacity that includes the deployment of new digital set-top boxes. The article notes that “[t]hose systems are being clobbered, losing customers to DBS.”)

services. Consumer benefits to date include the rapid upgrades of service with multiple channels of digital video and the offering of an ever-expanding variety of other new services.

Digital expansion has allowed rapid deployment of advanced data and video services. Adelphia, for example, recently signed a multiyear deal with Wink Communications to deliver Wink's elementary interactive TV service to customers in Buffalo, NY and additional markets by year-end. Moreover, Adelphia continues to add additional channels of programming options for consumers, including channels aimed at minority viewers,⁴ and to provide generous support and extensive free coverage of civic events.⁵

Adelphia's strategic plan for improving its offerings to consumers will be jeopardized should the Commission adopt a suggestion advanced in the comments of the consumer electronics retailers: that the ban on the deployment of new integrated navigation devices should be advanced from January 1, 2005. Advancing the ban would result in at least five distinct types of harm to Adelphia's deployment of digital and advanced services:

- A reduction in deployment volumes and an increase in costs for obtaining and deploying set-top boxes. The impact would be even greater if the ban precludes recycling of previously purchased set-tops through the normal churn process. We estimate that this would increase the cost of boxes to consumers by at least \$75 per unit.
- Curtailment of R&D associated with integrated boxes and reduced incentives for future research. This would include a loss of sunk expenditures for marketing, research, development and distribution in the event integrated devices are banned earlier than expected. That, in turn,

⁴ See, e.g., David Lieberman, *Romance Classics gets program make-over*, Chicago Sun-Times, Nov. 30, 2000, at 44 (describing a makeover of the Romance Classics cable channel into WE: Women's Entertainment that will broaden its focus, replacing some vintage tearjerker movies with original series, specials and films, and noting that new agreements with Adelphia and Charter Communications will help put WE in at least 30 million homes in three years).

⁵ See, e.g., Jonathan Salent, *Cable company offers free convention coverage*, Associated Press, Aug. 14, 2000 ("Adelphia, the largest cable provider in the Los Angeles area, is dedicating 18 hours a day to the Democratic convention, including local demonstrations, events on the convention perimeter and panel discussions with local Democratic and Republican politicians. Programming is running from 6 a.m. to midnight EDT... 'Because the broadcast networks have greatly reduced their coverage of this year's political conventions, our group has stepped forward to fill this void,' said Bill Rosendahl, regional vice president of Adelphia").

would increase the cost of digital deployment by requiring additional time for those processes for new products, resulting in a slowing of deployment of new products to consumers.

- A loss of functionalities and competitive offerings that would result from Adelphia having to redirect energies from offering customers existing digital functionalities to obtaining compliant boxes.
- A reduction of periods to gather consumer behavior information that might invalidate the results of planned behavior studies.
- An undermining of operator procurement procedures, which are complicated, multiyear processes requiring advanced forecasting and testing.

The retailers also wrongly assert that OpenCable participants and set-box manufacturers are somehow denying them access to navigation devices standards or competitive products that they may sell.⁶ The comments of cable industry participants and equipment manufacturers refute these assertions. Thus, many commentors have noted the extraordinary openness of the OpenCable process to participation by a wide variety of industry members.⁷ Likewise, other manufacturers have made clear that retailer claims that they have been denied products or product functionalities provided to MSOs are inaccurate.⁸ MSO-manufacturer set-top manufacture agreements place no constraints on the ability of manufacturers to sell such devices to retailers.⁹ Finally, the recent

⁶ See CEA Comments at 20; CERC Comments at 16.

⁷ See NCTA Comments at 11 (Describing participation of more than 400 diverse participants in the standard-setting process); Comments of Philips Electronics North America Corporation at 2 (Noting that Philips is not a CableLabs member and has participated effectively in the standards-setting process).

⁸ See Comments of Scientific-Atlanta at 3 (“We have offered the exact same device, with no differentiation, to both MSO customers and retailers. No retailer has chosen to place an order for this product even though it could have been available to them at this time”).

⁹ See AT&T Comments at 2, 9.

creation of some set-top box deployment relationships between MSOs and retailers demonstrate that there is no attempt by MSOs to freeze out retailers.¹⁰

CEA also asks that cable operators should fully disclose the technical parameters of all new cable services, so that manufacturers can design and develop navigation devices that are fully interoperable.¹¹ One of the navigation devices rules, 47 C.F.R. § 76.1205, already requires operators to provide on request, and in a timely manner, technical information concerning interface parameters that are needed to permit navigation devices to operate with MVPDs. This is a fair balance between the needs of cable operators and competitors. The retailers, however, seek to go further and transform this proceeding into a design rulemaking, which it is not. The consumer electronics retailers have proposed various forms of mandating exactly the services that may or must be built into the set-top.¹² They are essentially asking the FCC to require navigation devices be built to subsidize their marginal services. Digital services are in a minority of households, and most of the new digital services are still unproven. This should not be a product design rulemaking. As Motorola puts it, “The Commission certainly never intended that OpenCable would design particular retail products – Motorola and its competitors have to take care of that job themselves. The consumer electronics manufacturers that traditionally supply products to electronics retailers – including Motorola – have to assume responsibility for designing products and making arrangements to license the technologies necessary to keep up with the state of the art.” Motorola Comments at 19. Instead, the Commission should wish to encourage first movers to invent an

¹⁰ See AT&T Comments at 2, 12-14 (noting various existing and planned relationships with retailers for the deployment of navigation devices).

¹¹ CEA Comments at 5.

¹² See CERC Comments at 13.

application, and do what is necessary to deploy the product. Some applications will survive, some will fail. That is the nature of innovation and risk-taking.

Finally, the retailers assert that the failure of MSOs to reduce analog navigation device rental rates allows MSOs to underprice digital navigation devices and frustrate retailers' entry into the navigation devices marketplace and that some sort of subsidization of retailers or elimination of this supposed "subsidy" to cable is therefore necessary.¹³ Equipment averaging is explicitly authorized under the 1996 Act to promote exactly the digital development in which Adelphia is engaged.

Set-top boxes and other navigation devices are not available on the shelves of retailers because the consumer electronics retailers seem to expect the marketplace to adapt to their business objectives and strategies rather than the reverse. The business model for consumer electronics retailers has been to sell equipment with a mark-up. They have proposed mandatory price supports for their retail sales.¹⁴ If Circuit City and the other retailers are telling the Commission that set-top sales are not a business at this price, that is not a regulatory problem in need of Commission intervention. One waits for Moore's law, or invests in new product development. One does not raise the price to consumers in order to subsidize an uneconomic business. Nor does one ban the lease of set-tops.¹⁵ Given the tremendous rate of technological change in navigation devices and the relatively high cost of set-top boxes, leasing provides customers who could not otherwise afford a set-top box entrée to digital services. Eliminating leasing would represent a regressive policy directly contrary to the Commission's duty to make advanced services and technologies available to

¹³ See CERC Comments at 28-30.

¹⁴ See CERC Comments at 30.

¹⁵ As propose the consumer electronics retailers. *Id.* at 35-37.

the public. Removing such an alternative could benefit only consumer electronics retailers, not consumers. Nor should this rulemaking be transformed into a bargaining chip unrelated to its purpose¹⁶ in which retailers gain regulatory traction in extracting recurring revenue from the applications enabled by set-top devices.¹⁷ Just as independent CPE manufacturers have no stake in the recurring revenues of ILECs, consumer electronics retailers have no vested right in the recurring revenues of cable operators.

Conclusion

Adelphia is aggressively deploying innovative advanced services to its subscribers. It is introducing new and advanced set-top boxes to deploy such services and thereby compete with a rival multichannel video programming distributor that the Commission has seen fit to exclude from its navigation devices rules, DBS, not to frustrate retailers attempts to offer set-top boxes. The comments in this proceeding have made clear that the cable industry has held up its end of the bargain in providing retailers standards that will enable them to compete. However, the retailers have failed to do their part. They have chosen to condition their participation in the market upon cable's acceptance of terms that are at odds with the market and the needs of consumers.

Advancing the ban on deployment by MSOs of new integrated navigation devices, or adopting other burdensome measures suggested by the retailers, would not lead to an expanded navigation devices

¹⁶ See NCTA Comments at 3, 23-24 (retailers have manipulated environment to justify acceleration of ban; comments of retailers evidencing intent to seek to sell more than "just boxes"); Motorola Comments at 9, 10 (retailers have been unwilling to negotiate with equipment manufacturers to buy host set-top boxes; Motorola understood retailers' interest in buying such units to be conditional upon "navigation devices. . . [being] bundled with MVPD services in such a way as to give the retailers some form of payment from the MVPD."), accord: Comments of Scientific-Atlanta ("Scientific-Atlanta Comments") at 3.

¹⁷ *MSOs Tread Carefully Into Retail World: Retailers Want Piece of the Profits, Too*, Multichannel News, May 1, 2000 at 121 (describing how certain major national retailers "hope to hold out for a share of on-going service revenues" before agreeing to market digital cable boxes). See also *Scientific Atlanta Readies for Retail of Set-Top Boxes*, The Atlanta Constitution, June 28, 2000, at E-1, 9 (quoting statement of Wachovia Securities Industry Analyst George Hunt that "[t]he first thing Circuit City wanted was a portion of the monthly cable bill"); *Bickering*

market. It would only work great harm to the efforts of cable operators to provide the widest variety of advanced services to their customers as rapidly as possible.

For the foregoing reasons, the Commission should not accelerate the date by which cable operators would be prohibited from providing new integrated navigation devices, nor adopt any of the restrictions on navigation devices deployment and design advanced in the comments of the retailers.

Delays Retail Debut of Set-Top Cable Boxes, USA Today, July 25, 2000, at B-1 (quoting statement by RadioShack senior executive that “we believe that we deserve a piece of that [cable] revenue stream”).

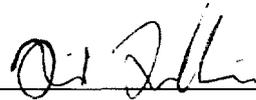
Respectfully submitted,

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