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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Carriage of the Transmissions of) CS Docket No. 98-120
Digital Television Broadcast Stations)

**CONSOLIDATED RESPONSE TO OPPOSITIONS TO
PETITION FOR PARTIAL RECONSIDERATION**

I. INTRODUCTION

Adelphia Communications Corporation ("Adelphia"), by its attorneys, hereby files its Consolidated Response to Oppositions filed against Adelphia's Petition for Partial Reconsideration ("Petition") in the above-captioned rulemaking.¹ Two parties have filed oppositions against Adelphia's Petition - a joint opposition filed by the Association for Maximum Service Television, Inc., the National Association of Broadcasters, and the Association of Local Television Stations, Inc. (collectively "MSTV/NAB/ALTV") and an opposition filed by Guenter Marksteiner, permittee of Station WHDT-DT, Stuart, Florida ("Station WHDT").² Both oppositions attempt to argue that allowing new digital-only stations

¹Adelphia filed a Motion for Extension of Time to File A Consolidated Response on June 4, 2001. While MSTV/NAB/ALTV hand delivered its Opposition, Station WHDT sent its Opposition by mail. With its Motion, Adelphia sought to notify the Commission that the MSTV/NAB/ALTV and Station WHDT Oppositions were served on Adelphia's counsel by different means of delivery, thereby establishing different filing deadlines, and to request an extension of three days with respect to MSTV/NAB/ALTV's Opposition to allow it to file a consolidated response.

²See *In the Matter of Carriage of Digital Television Broadcast Stations*, MSTV/NAB/ALTV Opposition to Petitions for Reconsideration, CS Docket No. 98-120 (May

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and broadcasters that have returned their analog spectrum to require cable operators to carry their digital signals in an analog format furthers the transition to digital television.

The Commission must recognize the significance of its ultimate decision regarding Adelphia's Petition in this proceeding. The Commission's initial decision inexplicably and unjustifiably gave new digital-only television stations and those that return their analog spectrum the sole discretion to determine whether to seek analog or digital carriage of their digital signals, something that previously was understood to be, and more appropriately should be, a matter subject to marketplace negotiations.³ As Adelphia demonstrates below, this shift in policy will actually hinder the digital transition.

Adelphia believes that the Commission's decision to give new digital-only stations and broadcasters that have returned their analog spectrum the unfettered discretion to demand carriage of their digital signals in an analog format has compromised Congress' preference for

25, 2001)(*"MSTV/NAB/ALTV Opposition"*); *In the Matter of Carriage of Digital Television Broadcast Stations*, Consolidated Opposition to Petitions for Reconsideration of Guenter Marksteiner, CS Docket No. 98-120 (May 25, 2001)(*"WHDT Opposition"*).

³ See *In the Matter of Carriage of Digital Television Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking in CS Docket No. 98-120, FCC 01-22 (rel. Jan. 23, 2001) at ¶ 74 (*"Digital Must Carry Order"*); see also *In the Matter of WHDT-DT, Channel 59, Stuart, Florida, Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, Memorandum Opinion and Order in CSR-5562-Z, FCC 01-23 (rel. Jan. 23, 2001) (*"WHDT Order"*); But see *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-168, CS Docket No. 98-120, and MM Docket No. 00-39, FCC 00-224 (rel. June 30, 2000) at ¶ 65; see also *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules* Third Report and Order in WT Docket No. 99-168, CS Docket No. 98-120, and MM Docket No. 00-39, FCC 01-25 (rel. Jan. 23, 2001) (*"700 MHz Third Order"*).

marketplace solutions. While Adelphia continues to believe that the Commission's decision was wrongly decided on both statutory and constitutional grounds, Adelphia refers the Commission to its reply in the *WHDT* proceeding and instead focuses this discussion on important policy considerations.⁴

II. MARKETPLACE SOLUTIONS, NOT GOVERNMENT FIAT, SHOULD GUIDE ANALOG VERSUS DIGITAL CARRIAGE OF DIGITAL SIGNALS.

The Commission's decision goes too far to the extent that the determination of whether a cable operator will carry a digital television station's signal in digital or analog format has shifted from marketplace negotiations to a right held exclusively by broadcasters. The Commission's decision to this effect seems to rest on its belief that it will "support[] the ultimate conversion to digital signals and facilitat[e] the return of the analog spectrum."⁵ The Commission's decision, however, remains fundamentally at odds with stated congressional preference for marketplace solutions in lieu of governmental regulation in promoting the availability of diverse views and information through cable television.⁶ By giving broadcasters the right to demand analog

⁴See *In the Matter of WHDT-DT, Channel 59, Stuart, Florida, Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, Reply to Oppositions to Petition for Partial Reconsideration of Adelphia Communications Corporation, CSR-5562-Z (March 19, 2001) ("*WHDT Reconsideration Petition Reply*") (Attachment A). Adelphia incorporates by reference its *WHDT Reconsideration Petition Reply*.

⁵See *Digital Must Carry Order* at ¶ 74. While the Commission recites this cursory statement in support of its decision to vest in broadcasters the power to demand analog carriage of their digital signals, the *700 MHz* proceeding similarly dealt with issues relating to the transition to digital television, yet the Commission did not find it necessary to cast aside marketplace negotiations in favor of government regulation.

⁶See H.R. Rep. 102-862, 102d Cong., 2d Sess. at 4 (1992).

carriage of their digital signals, the Commission's decision instead provides a disincentive to market-based solutions.

Not only will analog carriage of digital signals not move the digital transition forward, it will actually impede it. Interestingly, not only will "permitting digital-to-analog conversion . . . not provide an impetus for cable subscribers to purchase digital television sets,"⁷ but it will serve as a disincentive to their purchase. Commissioner Tristani elucidated this point in her partial dissent to the Commission's *700 MHz Third Order* –

[i]n the event a broadcaster chooses to engage in digital-only operation, however, it will almost certainly request that the local cable operator to carry its signal in an analog format, following the approach outlined in the *WHDT Order*. In this case, consumers who subscribe to cable services will have one less reason to buy a digital set.⁸

Therefore, allowing broadcasters to demand analog carriage of digital signals remains counterproductive.

The *WHDT* proceeding provides an example of how the Commission's action displaces possible marketplace solutions and will hinder the ultimate completion of the digital transition. While Station WHDT's initial Petition for Declaratory Ruling sought analog carriage of its digital signal, Station WHDT remained amenable to either digital or analog carriage.⁹ In fact, the

⁷See *Digital Must Carry Order* at ¶ 74.

⁸See *700 MHz Third Order*, FCC 01-25 (Separate Statement of Commissioner Gloria Tristani, dissenting in part).

⁹See *ex parte* notice of Guenter Marksteiner, CSR-5562-Z (September 21, 2000) at 1 (outlining Station WHDT's proposal whereby "cable systems in the Station's market would be required to carry the Station in either analog or digital format within 90 days after election pursuant to Section 76.64(f)(4) of the Commission's Rules."); see also *ex parte* notice of Guenter

parties had had initial discussions regarding digital carriage prior to the Commission's *WHDT Order*,¹⁰ but Station WHDT has not responded to Adelphia's attempts since the Commission's decision allowing Station WHDT to demand analog carriage to further discuss the viability of digital carriage. Armed with a Commission decision suggesting that it may demand analog carriage of its digital signal, Station WHDT has no further incentive to discuss digital carriage. Absent reversal of the Commission's decision, Adelphia would have to carry that digital signal in an analog format, and consumers will have little incentive to purchase digital receivers, delaying completion of the digital transition.

It is noteworthy that Station WHDT filed its Petition for Declaratory Ruling before attempting to negotiate carriage rights directly with cable operators.¹¹ The success or failure of marketplace solutions therefore remains untested. To remain truthful to Congress' preference, the Commission should allow an opportunity for resolution of the issues posed by digital-only stations in the marketplace rather than by artificial, unprecedented regulatory intercession. The Commission therefore should reverse its earlier decision giving digital-only broadcasters the ability to demand analog carriage.

Marksteiner, CSR-5562-Z (December 19, 2000).

¹⁰See *ex parte* notice of Guenter Marksteiner, CSR-5562-Z (December 19, 2000) at 2 (noting that Station WHDT had an initial discussion with Adelphia regarding carriage).

¹¹See *In the Matter of WHDT-DT, Channel 59, Stuart, Florida*, Petition for Declaratory Ruling, CSR-5562-Z (June 21, 2000).

III. THE COMMISSION'S DECISION UNFAIRLY REQUIRES CABLE OPERATORS TO SUBSIDIZE DIGITAL-ONLY STATIONS.

The Commission's decision unfairly requires cable operators to subsidize digital-only stations, both newly licensed and those that have returned their analog spectrum, during the transition. The Commission attempts to rationalize its decision on grounds that it would "allow new digital stations and stations that return their analog spectrum to continue to reach cable subscribers who have only analog receivers while commencing over-the-air service to attract and reach non-cable viewers who purchase digital television sets."¹² Station WHDT and MSTV/NAB/ALTV's Oppositions echo this reasoning.¹³

Unfortunately, this reasoning rests on faulty logic. Only the proliferation of unique, quality digital content, from whatever source (over-the-air broadcast or satellite cable programming), will prompt consumers to purchase digital receivers. However, as long as broadcasters can demand analog carriage of their digital signals, the status quo will be maintained and consumers will have no need or desire to buy digital television sets. This will

¹²See *Digital Must Carry Order* at ¶ 74.

¹³See *WHDT Opposition* at 16 (arguing that requiring cable operators to carry new digital signals in an analog format will "promote the digital transition by helping to ensure the survival of a DTV station to the end of the transition, while DTV receivers penetrate the market. Such rights also promote the ability of viewers to see the programming of new DTV-only stations prior to the time when digital receivers fall to a more affordable level. . . . [I]t is not purpose of must-carry to promote the purchase of DTV receivers, but rather to preserve the DTV-only stations until DTV receivers penetrate the market due to other forces. . .). See *MSTV/NAB/ALTV Opposition* at 3 ("[l]imiting a digital-only television to digital carriage at this stage of the transition would effectively eliminate its audience and kill the station. This, in turn, would thwart the goals of the digital transition by decreasing the number of digital stations on the air. It would thus discourage set manufacturers from bringing reasonably priced digital sets to market quickly.").

only prolong the transition to digital television. In the meantime, the burden falls on cable to not only subsidize digital-only stations, but in some instances create the audience for them.

IV. CONCLUSION

For the foregoing reasons, Adelphia respectfully requests that the Commission reject the MSTV/NAB/ALTV and Station WHDT Oppositions. Adelphia further encourages the Commission to repeal its decision to give digital-only stations the right to demand analog carriage, in favor of marketplace solutions.

Respectfully submitted,

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June 7, 2001

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ATTACHMENT A

**REPLY OF ADELPHIA COMMUNICATIONS COMMISSION
IN CSR-5562-Z**

BEFORE THE
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WASHINGTON, DC 20554

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MAR 19 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
WHDT-DT, Channel 59, Stuart, Florida) CSR-5562-Z
)
Petition for Declaratory Ruling that Digital)
Broadcast Stations have Mandatory Carriage)
Rights)

REPLY

Adelphia Communications Corporation ("Adelphia"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby files its Reply to the Oppositions to Adelphia's Petition for Partial Reconsideration of the Commission's Memorandum Opinion and Order in the above captioned proceeding.¹

I. THE CONSTITUTIONALITY OF THE ORIGINAL MUST CARRY RULES AND THE TURNER DECISIONS ARE NOT DECISIVE HERE.

From a constitutional perspective, WHDT regards a requirement for carriage of a digital station in an analog format as being indistinguishable from requiring carriage from an analog television station. While perhaps not dissimilar (but also not the same) in the functional sense because both scenarios require a cable operator to allocate 6 MHz of system capacity for carriage of the broadcaster's signal, the constitutionality of mandating carriage of a digital signal in an analog format cannot, and does not, simply rest on the constitutionality of the original must carry rules, or the government interests and analysis set forth in *Turner Broadcasting System, Inc. v. FCC*.²

¹See *WHDT-DT, Channel 59, Stuart, Florida, Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, CSR-5562-Z, FCC 01-23 (rel. January 23, 2001) ("*WHDT Order*").

²See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994) ("*Turner I*"); *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*").

A. It Is Not Enough To Simply Rely on *Turner* As Justifying the Constitutionality of Any Requirement for Analog Carriage of Digital-Only Signals.

WHDT suggests that the "analog carriage requirement in the *Stuart Order* is identical to that upheld by the *Turner* Court."³ WHDT's attempt to analogize the two, distinct obligations of analog carriage of an analog signal and analog or digital carriage of a digital signal,⁴ and the Commission's apparent willingness to accept this analogy,⁵ are incorrect. As Adelphia explained in its Petition for Partial Reconsideration, the government has not met its burden to prove the constitutionality of an analog carriage requirement for digital signals.⁶

The government's concern in adopting the original must carry rules involved not simply the possibility that a few broadcasters might not gain carriage on cable systems but concern for systemic elimination of free, over-the-air broadcasting, and the effects this would have on the government's interest in promoting "widespread dissemination of information from a multiplicity of sources" and "competition in the market for television programming."⁷

³See Opposition of Guenter Marksteiner, Permittee of Station WHDT-DT, Channel 59, Stuart, Florida, CSR-5562-Z (March 7, 2001) at 9 ("*WHDT Opposition*"). Paxson Communications Corporation also filed an Opposition claiming that the Commission has statutory and constitutional authority to order analog carriage of a digital station's signal, and to so require would serve the public interest. Opposition to Petition for Partial Reconsideration, Paxson Communications Corporation, CSR-5562-Z (March 7, 2001). To the extent that Paxson bases its constitutionality arguments on *Turner Broadcasting System, Inc v. FCC*, Adelphia addresses those concerns in this Reply. The public interest considerations, however, remain more appropriately as part of the *Digital Must Carry* proceeding in CS Docket No. 98-120, in which Paxson has elsewhere suggested it will seek reconsideration.

⁴It is important to remember that in the absence of analog carriage, a digital-only television station still has the opportunity for digital carriage. It is not an all-or-nothing situation.

⁵See *WHDT Order* at ¶ 16 ("Commentors opposing WHDT's petition have not presented evidence persuading us that the [*Turner*] Court's holding, and the Congressional basis for mandatory carriage, are in any way inconsistent with application of Section 614 to carriage of a DTV-only signal.")

⁶See Petition for Partial Reconsideration of Adelphia Communications Corporation, CSR-5562-Z (February 22, 2001) at 4-8.

⁷See *Turner I* at 662.

One can hardly claim that the failure of cable systems to carry WHDT in an analog format will devastate free, over-the-air broadcasting. Broadcasters transmitting in both modes continue to have carriage rights for their analog signals under the original rules. New digital-only stations, like WHDT, may demand carriage of their digital signals. If the Commission did not allow broadcasters to require cable systems to carry their digital-only signals in an analog format, there would be no impact on the viability of broadcasting like that which led the *Turner* Court to uphold the original must carry rules.

B. The Commission's Decision Lacks Meaningful Analysis of the Necessity of Analog Carriage of Digital-Only Stations.

WHDT also attempts to argue that the Commission's decision adequately identifies other important governmental interests that would support the constitutionality of requiring cable systems to carry digital signals in an analog format. It wrongly suggests that there was "substantial discussion in paragraph 14 [of the Commission's decision] as to why grant of analog carriage would facilitate the Congressionally mandated transition to DTV."⁸ Unfortunately, the Commission's decision remains devoid of any such meaningful discussion. Instead, it summarily states, without further explanation, that

[t]he *DTV Order and FNPRM* concludes that for purposes of supporting the ultimate conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its HDTV or SDTV television signals be carried on the cable system for delivery to subscribers in an analog format.⁹

Certainly WHDT, or the Commission, could not expect a court to sustain the Commission's decision based on this statement alone.

While facilitating the conversion to digital television may be a valid government interest, it in no way rises to the level of eradication of free, over-the-air broadcasting that led to the imposition of the

⁸See *WHDT Opposition* at 12.

⁹See *WHDT-DT Order* at ¶ 14 (citing *Carriage of Digital Television Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking in CS Docket No. 98-120, FCC 01-22 (rel. January 23, 2001) at ¶ 74 ("*Digital Must Carry Order*")

original must carry rules. In that sense, the government's burden here is that much greater and should not be treated lightly. The Commission, however, has not met its burden in this regard.

II. SECTION 614 DOES NOT SUMMARILY REQUIRE CABLE SYSTEMS TO CARRY LOCAL TELEVISION STATIONS WITHOUT LIMITATION.

WHDT argues that, "as the *Stuart Order* states, . . . the primary basis for WHDT's carriage rights, in both 'analog' and 'digital' formats, is found in Sections 614(a) and 614(b)(1)(B) [the requirement to carry 'local commercial television stations'] and Section 614(h)(1)(A) [definition of local commercial television]."¹⁰ That WHDT may meet the definition of a "local television station" has no bearing on the appropriateness of the Commission's decision to require cable systems to carry digital-only television stations' signals in either a digital or analog format.

The Commission's decision relies on Section 614 as the basis for its conclusion that "WHDT is entitled to cable carriage of its digital broadcast signal within the West Palm Beach-Ft. Pierce television market."¹¹ The Commission, however, does not suggest that Section 614 provides the right for digital-only stations to demand either analog or digital carriage.¹² In fact, the Commission's discussion regarding its decision to allow analog carriage of a digital signal makes no reference to Section 614 at all.¹³

As explained in Adelpia's Petition, the Commission's authority to require carriage of a broadcaster's signal is limited to the authority expressly granted by the must carry provisions in the Act.¹⁴ Section 624(f)(1) of the Act states that "any federal agency . . . may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title." Section 614(b)(4)(B)

¹⁰See *WHDT Opposition* at 7.

¹¹See *WHDT Order* at ¶ 12.

¹²See *id.* at ¶¶ 12-14.

¹³See *id.* at ¶¶ 13-15.

¹⁴See Adelpia Petition for Partial Reconsideration at 2-3.

of the Act requires the Commission to revise its must carry rules "to ensure cable carriage of [digital] broadcast signals of local commercial television stations which have been changed to conform with such modified standards." Whatever the Commission's authority to mandate carriage of a signal broadcast in digital format, no comparable authority exists to require a cable operator to carry the analog version of a digital broadcaster's programming.

Interestingly, the Commission's *700 MHz Order*, which WHDT cites in support of its contention that the "Commission properly rejected Adelphia's . . . statutory argument,"¹⁵ does not conclude that analog carriage is part of the carriage requirement. In the *700 MHz Order*, the Commission stated that

to facilitate the continuing availability during the transition of the analog signal of a broadcaster who is party to a voluntary band clearing agreement with new 700 MHz licensees, such a broadcaster could in this context and at its own expense, provide its digital broadcast signal in an analog format for carriage on cable systems. In these circumstances, nothing prohibits the cable system from providing such signals in analog format to subscribers, in addition or in place of the broadcast digital signal, pursuant to an agreement with the broadcaster.¹⁶

¹⁵See *WHDT Opposition* at 9. It is in the context of the *700 MHz Order* proceeding's discussion of the appropriateness under Section 614 of a carriage requirement for digital stations' digital signals that the comments of the National Cable Television Association relating to analog carriage of digital signals arose. See *700 MHz Order* at note 128 (citing NCTA *ex parte* filing, June 6, 2000, in WT Docket No. 99-168). WHDT, however, attempts to leverage this statement as signaling the cable industry's acceptance of analog carriage of digital signals. See *WHDT Opposition* at 10; see also Paxson *Opposition* at 4-5. NCTA's *ex parte* letter, however, only said that under certain circumstances, "it may not be objectionable for a cable operator to continue to carry th[e same programming as previously carried on the vacated analog channel], in analog format, on the same channel on which it had been carrying the analog signal" A tentative conclusion "that it may not be objectionable" remains a far cry from definitively concluding, as WHDT suggests the cable industry has, that "carriage of DTV-only stations in analog format would be acceptable to the cable TV industry, and thus presumably, not very burdensome." See *WHDT Opposition* at 10.

¹⁶See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-168, CS Docket No. 98-120 (FCC 00-224) (rel. June 30, 2000) ("*700 MHz Order*") at ¶ 66 (Emphasis added).

The Commission's language in the *700 MHz Order* is significant. It contemplated that analog carriage of digital signals could occur at the cable operator's option. In the *WHDT Order*, the Commission, without explanation or justification, simply reversed its earlier conclusion, stating:

Notwithstanding our statements in that 700 MHz reconsideration decision that assumed that the cable operator could elect to provide a digital-only broadcaster's signal in analog format with agreement of the broadcaster, we clarify herein that the election as to whether the cable operator provides the signal to consumers in analog or digital format is solely that of the broadcaster.¹⁷

It, however, remains a well-established principle that the Commission must explain any decision to change course in its policies or regulations.¹⁸ Absent such explanation, the Commission's decision remains arbitrary and capricious.

III. WHDT'S TECHNICAL ARGUMENTS ARE IRRELEVANT AND INCORRECT.

WHDT asserts that the tentative digital carriage proposal put forth by Adelphia is "impractical and inconsistent with the requirements of the Act and the Commission's Orders."¹⁹ Whatever the merits of this assertion, the argument is irrelevant to the central issue raised in Adelphia's petition, namely, whether the Commission may legally require carriage of WHDT's digital signal in an "NTSC" analog format. In any event, WHDT's arguments are not well-founded since Adelphia's suggested carriage scheme is completely consistent with the rules adopted by the Commission in the *Digital Must Carry Order*.

¹⁷See *WHDT Order* at ¶ 14.

¹⁸See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied* 403 U.S. 923 (1971) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.").

¹⁹See *WHDT Opposition* at 4.

First, WHDT states that carriage of its digital signal in the QAM format preferred by Adelphia will require subscribers to have a special set top box which means that not every basic tier subscriber will be able to view WHDT. This, WHDT argues, violates Sections 614(b)(7) and 623(b)(7) of the Act and Sections 76.56(d) and 76.57(e) of the Commission's rules.²⁰ WHDT goes on to say that only passing through its VSB transmission (or an analog version) will comply. What WHDT is really asking for here is reconsideration of the *Digital Must Carry Order* because both of these matters were considered and decided there.

As to the digital modulation technique used by a cable system to carry a digital broadcast signal, the Commission stated that "...we will permit cable operators to remodulate digital broadcast signals from 8 VSB to 64 or 256 QAM. We will not require cable operators to pass through 8 VSB."²¹ The Commission recognized that the Act requires all subscribers to be able to view the signal of all local commercial television stations. However, in the case of a digital signal the Commission noted that "...digital cable ready receivers will include QAM demodulation capability. In the case of digital television receivers that do not meet the digital cable ready criteria, a subscriber may need a set top box to view broadcast digital signals delivered by cable."²² The Commission went on to say that "[w]e will not require a cable operator to provide subscribers with a set top box capable of processing digital signals for display on analog sets."²³ Thus it can be seen that WHDT's quarrel is not with Adelphia's digital carriage proposal, but rather with the policy decisions made by the Commission in the *Digital Must Carry Order*.

²⁰*Id.* at 14.

²¹*See Digital Must Carry Order* at ¶ 76.

²²*Id.* at ¶ 77.

²³*Id.* at ¶ 79.

In addition to its inappropriate policy-based argument, WHDT's opposition contains statements and a Technical Appendix which purport to demonstrate how impractical Adelphia's carriage proposal is. Unfortunately for WHDT, however, its pleading and Technical Appendix contain enough errors and omissions to undermine whatever credibility it might have had.

WHDT spends time discussing signal transport between a television station and a cable system's headend. It is not accurate to assert that there is a common cable architecture, but more importantly, this is immaterial because the only relevant discussion relates to carriage from the headend to the subscriber. WHDT's ultimate goal appears to be cable retransmission in a digital "ATSC" format (VSB). The ATSC standard has two relevant parts, called "annexes", the modulation format (8 or 16 VSB) and MPEG encoding rates. In informal discussions WHDT's principal, Guenter Marksteiner, has told Adelphia that he wants to use a higher order modulation scheme (24 VSB) than is specified in the ATSC standard. Moreover, he has yet to tell Adelphia which bit rate he will use in the transmission of his signal. Thus it is still unclear whether the signal which WHDT will be transmitting is even within the ATSC standard.

WHDT is misleading when it says that Adelphia's proposal only delivers a viewable signal to a computer monitor and not to a television receiver. Adelphia's QAM digital format does require a set top box for a television set which is not digital cable ready.²⁴ The output from the converter is fed into an HDTV set via the baseband video input. The Commission is well aware of the present need for a set top converter and, as discussed above, this is an accepted part of the Commission's digital carriage scheme. WHDT tries to make it seem as if Adelphia is doing something wrong when, in fact, Adelphia is offering to carry WHDT in exactly the same fashion as it presently carries other digital programming services.

²⁴WHDT makes a point of saying that an ATSC signal can be received directly by an HDTV receiver from the cable system without intervening equipment. However, this is only true for basic service tier subscribers. Subscribers who take additional services must have a converter. WHDT's VSB signal would thus have to be stripped from the cable (via a splitter) in order to bypass the converter.

WHDT also incorrectly implies that Adelphia's carriage proposal cannot deliver an HDTV signal to a television receiver. Adelphia would retransmit WHDT's signal at 19.4 Mbps on a digital channel, which would take up approximately 3 MHz of space. A modified Scientific-Atlanta digital converter would deliver an undegraded high definition signal to subscribers who own HDTV sets.²⁵

In sum, WHDT has attempted to make a technical mountain out of the proverbial molehill in order to make its case that analog carriage is the only viable alternative because Adelphia's digital carriage proposal is so fraught with problems. This is not so. Adelphia is offering carriage strictly within the parameters of the Commission's newly-adopted digital carriage rules. WHDT simply doesn't like the new rules. This is no basis for the remedy WHDT seeks.

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²⁵WHDT incorrectly states that only subscribers who pay for the added digital tier of service offered by Adelphia would be able to view WHDT. Although subscribers without digital cable ready television sets will be asked to pay an equipment rental fee for the modified digital converter, there would be no monthly fee for service unless the subscriber also wished to receive other digital services. Thus, a basic service tier subscriber who wanted to view WHDT would only need to rent the modified converter.

CONCLUSION

For the foregoing reasons and those put forth in the Petition for Partial Reconsideration, Adelphia respectfully requests the Commission to reconsider that portion of its decision in the captioned proceeding whereby WHDT has been given the option to request cable carriage of its digital signal in an analog format.

Respectfully submitted,

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Dated: March 19, 2001

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Oppositions to Petition for Partial Reconsideration was served this 19th day of March, 2001, via first-class mail, postage prepaid, upon the following parties:

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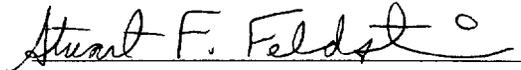
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Response to Oppositions to Petition for Partial Reconsideration was sent this 7th day of June, 2001, first-class mail, postage prepaid, to the following parties:

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