

**Before the  
Federal Communications Commission  
Washington, D. C. 20554**

In the Matter of:	)	
	)	
Complaint of Shop at Home, Inc.	)	
	)	
v.	)	CSR 5251-M
	)	
Parnossos, L.P, d/b/a Adelphia Cable Communications	)	
	)	
for Carriage of WOAC-TV, Canton, Ohio in Chardon,	)	
Geneva, Ashtabula and Conneaut, Ohio	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 23, 1999**

**Released: November 30, 1999**

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

**I. INTRODUCTION**

1. Shop at Home, Inc ("Shop at Home"), licensee of commercial television station WOAC-TV, Canton, Ohio, filed the captioned complaint pursuant to Section 76.7(e) of the Commission's rules for an order requiring the carriage of WOAC-TV on cable systems of Parnossos, L.P., d/b/s Adelphia Cable Communications ("Adelphia")<sup>1</sup> serving Chardon, Geneva, Ashtabula, and Conneaut, Ohio and twenty five other communities.<sup>2</sup> Adelphia filed an opposition to the complaint.<sup>3</sup>

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission *in Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>4</sup> A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.<sup>5</sup> An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing.

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<sup>1</sup>A controlling interest in TCI Cablevision of Ohio, Inc., initially named as respondent in the complaint, was acquired by Adelphia as of August 1, 1998. See Opposition at n. 1. Therefore, the complainant will be referred to as Adelphia or the Cable Operator.

<sup>2</sup>See Complaint at Exhibit 1.

<sup>3</sup>The opposition was filed after the submission of several Consent Motions for Extension of Time as the parties pursued a resolution of the matter. Those motions are hereby granted.

<sup>4</sup>*Must Carry Order*, 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>5</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available,

3. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.<sup>6</sup> One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>7</sup> Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under our rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>8</sup>

### III. ALLEGATIONS OF THE COMPLAINT

4. In the complaint, Shop at Home asserts that Adelphia has failed to carry WOAC-TV despite the requirements of the must carry statutory provisions and the Commission's rules. Shop at Home submitted with its complaint copies of correspondence with Adelphia dated March 27, 1998 showing that Shop at Home requested carriage of WOAC-TV on the cable systems serving the communities at issue here. Shop at Home also provided copies of correspondence dated March 31, 1998 from the Cable Operator stating that signal strength and quality tests performed at the cable system headends resulted in sub-standard signal levels or signals that could not be detected. Shop at Home asserts that none of the letters from the Cable Operator complied with the standard for cable operator responses set forth in the Commission's rules but did result in discussions between the parties in an effort to resolve the signal strength issue. Shop at Home states it filed the complaint to preserve its rights under the rules.

5. Shop at Home further states that should Adelphia be unable to receive a quality signal off-air from WOAC-TV, it is committed to acquiring and installing at no cost to Adelphia any and all necessary improvements and equipment need to deliver a good quality WOAC-TV signal to the cable systems.<sup>9</sup> Shop at Home claims that the cable operator did not respond to the request. Shop at Home asserts that WOAC-TV and Adelphia's cable systems are all located in the Cleveland ADI and that carriage of WOAC-TV will not increase copyright liability for the cable operator. Pointing to its commitment to install any and all equipment necessary to deliver a good quality WOAC-TV signal to the cable systems, Shop at Home argues that WOAC-TV satisfies the requirements of 47 U.S.C. § 534(h)(1)(B)(ii)-(iii) and 47 C.F.R. § 76.55(c)(2)-(3) and is therefore entitled to mandatory carriage on the cable system serving the communities at issue.

6. Adelphia contends that the complaint should be dismissed because WOAC-TV does not deliver a good quality signal of sufficient strength to its system headends located in Ashtabula, Chardon, Conneaut and Geneva, Ohio. Adelphia refers to the March 31, 1998 correspondence mentioned above and to signal strength tests performed in October of 1996 in response to earlier requests for carriage, which

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commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provides that the ADIs to be used to implement the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*. Effective January 1, 2000, Section 76.55(e) will require that a commercial broadcast television station's market shall be defined by Nielsen Media Research's designated market areas ("DMAs"). For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order*, 14 FCC Rcd 8366 (1999) ("Market Modification Final Report and Order").

<sup>6</sup>*Must Carry Order*, 8 FCC Rcd at 2990.

<sup>7</sup>47 C.F.R. §76.55(c)(3).

<sup>8</sup>*Must Carry Order*, 8 FCC Rcd at 2991.

<sup>9</sup>Shop at Home Complaint at 5.

Adelphia contends show that WOAC-TV does not provide a sufficient strength signal to the cable system headends.<sup>10</sup> Adelphia also points out that Shop at Home, in recognition of the lack of signal strength, scheduled several signal strength tests over the nine month period following filing of the complaint. Adelphia asserts that those tests showed that there was no useable signal and no visible picture from WOAC-TV at the system headends.<sup>11</sup> Adelphia also states that the signal of translator station W67AL, located between WOAC-TV and the cable system at Geneva, Ohio, and operated on the same frequency as WOAC-TV, appeared on the testing monitor used at the Geneva headend instead of the signal of WOAC-TV. Adelphia further points out that WOAC-TV is geographically remote from the communities served by its cable system. Specifically, Adelphia asserts that the distance from Canton, Ohio, WOAC-TV's city of license, to its cable communities averages seventy (70) miles, and that the nearest cable community, Chardon, is 54 miles from Canton.

#### IV. DISCUSSION AND ANALYSIS

7. The complaint establishes that WOAC-TV and the communities served by Adelphia's cable systems are located within the Cleveland, Ohio ADI and that carriage of WOAC-TV will not cause any increase in the cable systems' copyright liability. Accordingly, we find that WOAC-TV is a local television station qualified under the provisions of 47 C.F.R. § 76.55(c) for carriage on Adelphia's cable system at issue here, provided it delivers a good quality signal to those cable system headends. However, we find that station WOAC-TV fails to provide a good quality signal over the principal headends of Adelphia's cable systems at issue. Not only do the signal strength test results provided by Adelphia show an inadequate signal strength level at every location tested, but Shop at Home tacitly conceded as much by its commitment of considerable time and effort during the nine months between the filing of the complaint and the filing of the opposition trying to establish an adequate signal at the cable system headends. The record shows, however, that despite this effort Shop at Home failed to cause WOAC-TV to deliver an adequate signal at any of the relevant locations. We conclude on the basis of this record that WOAC-TV fails to deliver a good quality signal to Adelphia's cable system headends.

8. Although WOAC-TV fails to provide a good quality signal to the headends of Adelphia's cable systems, Shop at Home has made a commitment to install special equipment necessary to deliver a good quality WOAC-TV signal to the cable systems. Therefore, we find that Shop at Home has made an unqualified commitment on this record to deliver an adequate signal to Adelphia's cable systems and to pay any associated equipment and costs, in accordance with §614(h)(1)(B)(iii) of the Communications Act of 1934.

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<sup>10</sup>See Opposition at 2-3 and Exhibit 1.

<sup>11</sup>See Opposition at 2-3 and Exhibits 2 and 3.

**V. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534), that the petition filed by Shop at Home **IS GRANTED**, and Parnossos, L.P., d/b/s Adelphia Cable Communications ("Adelphia") **IS ORDERED** to commence carriage of television station WOAC-TV within sixty (60) days after Shop at Home delivers a good quality signal to Adelphia's cable systems' principal headends located at Chardon, Geneva, Ashtabula, and Conneaut, Ohio. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau