

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

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)	
)	
Petition for Partial Reconsideration)	

MEMORANDUM OPINION AND ORDER

Adopted: May 28, 2008

Released: June 12, 2008

By the Commission:

I. INTRODUCTION

1. Adelphia Communications Corporation (“Adelphia”) filed a Petition for Partial Reconsideration of the Commission’s Memorandum Opinion and Order (“*WHDT Order*”) in the above-captioned proceeding.¹ Adelphia is seeking reconsideration of only that portion of the Commission’s *Order* that gives a television station the option of electing cable carriage for its digital signal in a converted analog format. Guenter Marksteiner, Permittee of WHDT-DT, Channel 59, Stuart, Florida (“WHDT”) filed an Opposition to Adelphia’s Petition.² Adelphia filed a Reply.³

¹*WHDT-DT, Channel 59, Stuart, Florida: Petition for Declaratory Ruling that Digital Broadcast Stations have Mandatory Carriage Rights*, Memorandum Opinion and Order, 16 FCC Rcd 2692 (2001). Comcast Corporation and Time Warner recently acquired the assets of Adelphia Communications Corporation. In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner, Inc.; Transferee; Time Warner, Inc., Transferor, to Comcast Corporation, Transferee, 21 FCC Rcd 8203 (2006). As part of that proceeding, the parties requested that the Commission’s grant of its consent to the transactions include and accommodate, as appropriate, applications that will have been filed by such licensees relating to such cable systems that are pending at the time of the consummation of the transactions. In this matter, we also will take that request to include this pending petition for reconsideration. Therefore, the action we take in this proceeding will transfer to the successor-in-interest, which is Comcast. The instant proceeding is unrelated to the recent Media Bureau Order, adopted on May 27, 2008 (DA No. 08-1212), acting on a mandatory carriage complaint initiated by Guenter Marksteiner, permittee of television station WHDT-DT, Stuart, Florida, against Comcast Cable Communications, LLC and its subsidiary, Comcast Cable of Florida/Georgia LLC.

² Paxson Communications Corporation (“Paxson”) also filed in Opposition to Adelphia’s Petition.

³ The National Cable and Telecommunications Association (“NCTA”) filed a Reply in support of Adelphia’s Petition.

II. BACKGROUND

2. In June 2000, WHDT filed a Petition for Declaratory Ruling asking the Commission to declare that a new digital-only (“DTV”) television station that seeks carriage of a single channel of video programming is entitled to mandatory carriage under Section 614 of the Act. In the *WHDT Order*, the Commission concluded that, pursuant to Section 614(a), WHDT was entitled to cable carriage of its digital broadcast signal within the West Palm Beach-Ft. Pierce television market.⁴ The Commission held that broadcasters initiating DTV-only service were entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions.⁵ The Commission stated that WHDT was entitled to make its cable carriage election in accordance with the provisions of Section 76.64(f)(4) of the Commission’s rules. The Commission also held that a digital-only television station may demand carriage of its digital signal in a converted analog format provided that the station pays the cost of downconverting the signal. The carriage rights of digital-only television stations and the policy regarding downconversion were matters also raised and resolved in the Commission’s *Digital Broadcast Signal Carriage First Report and Order* (“*DTV Order*”) in CS Docket No. 98-120.⁶

III. DISCUSSION

3. Adelphia presents three arguments in support of its Petition for Partial Reconsideration. First, Adelphia argues that the Commission lacks the statutory authority, under Section 614 of the Act, to order a digital signal to be carried in a converted analog format.⁷ Second, Adelphia argues that providing analog carriage rights to digital-only stations is unconstitutional under the intermediate scrutiny First Amendment test, as applied in *Turner v. FCC*, because there is insufficient record evidence that a digital-only station needs analog carriage rights.⁸ Third, Adelphia argues that mandating carriage of a digital signal in a converted analog format is inconsistent with the basic cable carriage policy of preserving the availability of broadcast stations for households that do not subscribe to cable service.⁹ Adelphia contends that granting carriage rights to a digital-only broadcast station well before the vast majority of households can receive it over the air does not preserve the availability of such a signal for those households.

4. In response to Adelphia’s arguments, WHDT asserts that the Commission has broad authority under Section 614(b)(4)(B) to make any changes in the broadcast signal carriage rules to ensure

⁴ Section 614(a) provides that “[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations ... as provided by this section.” 47 U.S.C. § 534(a).

⁵ *WHDT Order*, 16 FCC Rcd at 2698.

⁶ See *Carriage of Digital Television Broadcast Signals – Amendments to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999 – Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

⁷ Adelphia Petition for Partial Reconsideration (“Petition”) at 2.

⁸ *Id.* at 6 noting that the *Turner* decisions rested on a well-developed record, consisting of “tens of thousands of pages” that included “materials acquired during Congress’ three years of pre-enactment hearings, . . . as well as additional expert submissions, sworn declarations and testimony, and industry documents.” See *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 187 (1997) (“*Turner II*”).

⁹ Adelphia Petition at 3.

carriage of DTV stations.¹⁰ WHDT states that the digital-to-analog conversion policy enunciated by the Commission is one of those changes permitted under the Act. With regard to Adelphia's constitutional claim, WHDT argues that the burden of carrying its signal in an analog format will be no different from the burden on a cable system resulting from the carriage of an analog station, and that such a burden has already been upheld in the *Turner* cases.¹¹ WHDT argues that there is no need to build a voluminous record because the carriage burden imposed on Adelphia in this context is equivalent in bandwidth and function to the transmission of an analog broadcast signal.¹² As for the policy arguments presented, WHDT states that the preservation of DTV service for an over-the-air audience would be accomplished through carriage of WHDT's analog feed by allowing viewers to see the station while DTV receivers penetrate the market.¹³

5. Our response to Adelphia's Petition is governed by Section 1.106 of the Commission's rules.¹⁴ The Commission generally does not entertain arguments on Reconsideration that have already been considered or re-open the record unless circumstances have changed since the last opportunity the parties had to present such matters.¹⁵ In this instance, we find that Adelphia's statutory, constitutional, and policy arguments were all raised and addressed by the Commission in the *WHDT Order* and no new circumstances were asserted in the operator's Petition for Partial Reconsideration. Given that the facts and law in this proceeding have not changed since we rendered our prior *Order*, there is no evidentiary basis warranting reversal. For these reasons, we affirm our decision in the *WHDT Order* and deny the Petition for Partial Reconsideration.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, that the Petition for Partial Reconsideration filed by Adelphia Cable Communications, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰ WHDT Opposition at 7.

¹¹ *Id.* at 15.

¹² *Id.* at 10.

¹³ *Id.* at 8.

¹⁴ Declaratory ruling proceedings are subject to the same administrative regulations as are adjudicatory proceedings. Petitions for Reconsideration of Commission Orders in this context, therefore, are governed by Section 1.106 of the Commission's rules. See 47 C.F.R. § 1.106.

¹⁵ See *id.*