

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

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

Adopted: January 18, 2001

Released: January 23, 2001

By the Commission:

**I. INTRODUCTION**

1. Guenter Marksteiner, Permittee of Station WHDT-DT, Channel 59, Stuart, Florida (“WHDT”) has filed a Petition for Declaratory Ruling (“Petition”) pursuant to Section 1.2 of the Commission's rules.<sup>1</sup> WHDT asks the Commission to issue a ruling that a new digital-only (“DTV”) television station, which seeks carriage of a single channel of video programming, is entitled to mandatory carriage under Section 614 of the Communications Act of 1934, as amended (“Act”).<sup>2</sup> The Petition was placed on public notice and a time frame was established for filing comments and reply comments.<sup>3</sup>

**II. BACKGROUND**

2. Pursuant to Section 614 of the Act, and the implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order (“*Must Carry Order*”), a commercial television broadcast station is entitled to request carriage on cable systems located within the station's market.<sup>4</sup> A station's market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>5</sup> A DMA is a

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<sup>1</sup>47 C.F.R. §1.2.

<sup>2</sup>47 U.S.C. §534.

<sup>3</sup>See *Petition for Declaratory Ruling that Digital Television Stations Have Must Carry Rights*, Public Notice, DA 00-1406 (rel. July 3, 2000). A list of commenters and reply commenters is set forth in Appendix A and includes the acronyms and abbreviations by which they are referred in this item.

<sup>4</sup>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, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C).

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.<sup>6</sup> Congress intended the mandatory carriage provisions to ensure the continued availability to the public of television broadcast service.

3. The Commission has adopted rules to provide for the transition from analog television service to digital television service.<sup>7</sup> In brief, the Commission has stated that each existing analog television licensee or permittee is eligible to construct and operate a new digital station with a roughly comparable service area using 6 MHz of spectrum.<sup>8</sup> A digital television licensee may offer high definition digital television (“HDTV”) or standard definition digital television (“SDTV”).<sup>9</sup> The rules governing the transition also provide for a staggered implementation schedule contingent upon the size of the television market.<sup>10</sup> At the end of the transition, a broadcast licensee is required to cease broadcasting its analog signal and return to the government the 6 MHz of spectrum used to broadcast analog television service.<sup>11</sup> The target date for the end of the digital transition is December 31, 2006.<sup>12</sup>

4. As required by the Act,<sup>13</sup> the Commission commenced a proceeding to determine a cable operator’s digital broadcast signal carriage obligations.<sup>14</sup> In light of the significant changes to the broadcast and cable industries resulting from the conversion to digital technology, the Commission sought comment in that proceeding on how to accomplish the goals reflected in Section 614 and the other statutory broadcast signal carriage provisions.

5. In a recent Memorandum Opinion and Order regarding band clearing of the 700 MHz spectrum, the Commission clarified two limited issues related to cable carriage of digital signals as part of voluntary band clearing agreements:

First, we wish to clarify that cable systems are ultimately obligated to accord “must carry” rights to local broadcasters’ digital signals. Existing analog stations that return their analog spectrum allocation and convert to digital are entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions. Second, 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

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<sup>6</sup>*Market Modification Final Report and Order*, 14 FCC Rcd at 8369.

<sup>7</sup>47 C.F.R. §§73.622-624.

<sup>8</sup>*See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809 (1997)(“*Fifth Report and Order*”).

<sup>9</sup>A broadcast station may also use its allotted digital spectrum for datacasting opportunities.

<sup>10</sup>*Fifth Report and Order*, 12 FCC Rcd at 12840-41.

<sup>11</sup>*Id.*; *Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

<sup>12</sup>Balanced Budget Act of 1997, Pub. L. No. 105-33, 11 Stat. 251 (1997).

<sup>13</sup>47 U.S.C. §534(b)(4)(B).

<sup>14</sup>*Carriage of the Transmissions of Digital Television Broadcast Stations*, Notice of Proposed Rulemaking, 13 FCC Rcd 15092 (1998)(“*DTV Must Carry Notice*”). The Commission first sought and received comments addressing digital broadcast television carriage issues in 1995. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, 10 FCC Rcd 10540 (1995)(“*Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry*”).

context and at its own expense, provide its broadcast digital 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 to or in place of the broadcast digital signal, pursuant to an agreement with the broadcaster.<sup>15</sup>

### III. DISCUSSION

#### A. WHDT's Petition

6. WHDT is licensed to serve Stuart, Florida, which is located in the West Palm Beach-Ft. Pierce television market.<sup>16</sup> According to Nielsen Media Research, there is an 84% cable penetration rate in this DMA.<sup>17</sup> This market is served by several cable operators, including Comcast and Adelphia.<sup>18</sup> There are six other full power commercial television stations licensed to communities in the West Palm Beach-Ft. Pierce DMA.<sup>19</sup>

7. WHDT states that the Commission granted on April 25, 2000 its initial construction permit.<sup>20</sup> According to WHDT, its programming will “uniquely serve the public interest” with locally produced news and informational programming; international news, arts and informational programming from the German network Deutsche Welle,<sup>21</sup> and American syndicated programming and movies.<sup>22</sup> WHDT states that currently there are no other DTV-only stations authorized by the Commission.<sup>23</sup> WHDT adds that because only a very small portion of the public have DTV television receivers, it is initially dependent on cable carriage to reach viewers and obtain the advertising revenue necessary to

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<sup>15</sup>See *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, FCC 00-224 (released June 30, 2000) at ¶ 65 (footnotes omitted) (“700 MHz Order”).

<sup>16</sup>West Palm Beach-Ft. Pierce is the 43<sup>rd</sup> largest television market in the United States. See January 1, 2001-Nielsen Media Research Estimates. Existing commercial television stations in this market have until May, 2002 to initiate digital television service. See *Fifth Report and Order*, 12 FCC Rcd at 12841.

<sup>17</sup>See Nielsen Cable Penetration by DMA, July 2000.

<sup>18</sup>AT&T Broadband also has cable systems in this market, as do several smaller cable operators. We note that DirecTV is providing local-into-local television service in this market as well.

<sup>19</sup>The local commercial television stations include: (1) WFGC (Ch. 61-Ind.); (2) WFLX (Ch. 29-Fox); (3) WPBF (Ch. 25-ABC); (4) WPEC (Ch. 12-CBS); (5) WPTV (Ch. 5-NBC); and WTVX (Ch. 34-UPN). The market is also served by two noncommercial educational television stations: (1) WTCE (Ch. 21-Ft. Pierce) and (2) WXEL (Ch. 42-West Palm Beach).

<sup>20</sup>WHDT explains that it originally filed an application for an analog station on Channel 59, Stuart, Florida. See 47 C.F.R. § 73.606. After the settlement of competing applications for that allotted channel was filed, WHDT amended its application to specify DTV-only operation, pursuant to the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998).

<sup>21</sup>According to WHDT, Deutsche Welle is the largest international news network in the world, other than CNN. It states that the programming presented on Channel 59 will be predominantly in the English language. WHDT Petition at 2.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

survive.<sup>24</sup> WHDT states that its narrow request should be granted because it does not involve complex constitutional and definitional issues related to the carriage of multiplexed digital signals or concurrent carriage of analog and digital signals from the same broadcaster.<sup>25</sup> Rather, WHDT states that it is asking for carriage of a single channel of television programming, equivalent in bandwidth and function to the transmission of an analog television station. WHDT will request that its signal be carried in digital format provided all cable subscribers with digital television sets could watch it.<sup>26</sup> WHDT states that it would not object to a cable operator converting its signal to analog format at the cable operator's principal headend, and will provide the necessary conversion equipment to the cable system.<sup>27</sup> WHDT states that if its signal is carried in an analog format, it should be done in a manner consistent with the channel positioning requirements in Section 76.57 of the Commission's rules.<sup>28</sup> WHDT also states that the signal strength requirements for analog television signals, under Section 76.55(c)(3), should be applied in this case.<sup>29</sup>

## B. Ripeness for Review

8. Several cable programmers argue that WHDT's petition is not ripe for review by the Commission. They assert that WHDT's petition is premature for three reasons: (1) the station is not currently on-the-air; (2) WHDT has not made requests for carriage on local cable systems; and (3) the Commission has not yet issued digital broadcast signal carriage requirements for cable operators.<sup>30</sup> In response, WHDT argues that its request for carriage is not premature, noting its \$13 million investment and the fact that the station's studio is fully constructed.<sup>31</sup> While it could have requested carriage of its station on local cable systems in the standard manner pursuant to the Commission's rules, WHDT states that it purposefully asked for a declaratory ruling prior to engaging in a formal cable request because it acknowledged that cable operators might question their carriage obligations with regard to a DTV-only station.<sup>32</sup> Moreover, WHDT argues that the complex legal issues discussed in the *DTV Must Carry Notice* are different from the narrow issue presented by WHDT's petition, and, as such, should be addressed independently.

9. We find no support for the contention that WHDT's petition is premature. First, over-the-air broadcasting is not a prerequisite to a Commission determination of the must carry rights of a broadcaster. The record indicates that WHDT is committed to commence broadcast service and provide

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<sup>24</sup>*Id.*

<sup>25</sup>WHDT Petition at 1. We note that the carriage of both the analog and digital television station signals, as well as the carriage of multiple programming streams carried on a digital television signal, are the core issues in the *Digital Broadcast Signal Carriage* proceeding.

<sup>26</sup>See WHDT *Ex Parte* Letter to the Commission, dated September 21, 2000; WHDT *Ex Parte* Letter to the Commission, dated October 27, 2000.

<sup>27</sup>If the Commission allows a cable operator to carry the station's signal in an analog format, WHDT explains that it would provide at its own expense to each cable operator, a standard antenna "cut" to receive channel 59, as well as a DTV receiver. WHDT Petition at 2-3. WHDT explains that this receiver is a slightly modified version of an off-the-shelf set-top device, approximately the size of a standard videotape, and acts to convert the station's signal from digital to analog format. *Id.*

<sup>28</sup>*Id.* at 2; see 47 C.F.R. §76.57.

<sup>29</sup>*Id.*; see 47 C.F.R. §76.55(c)(3).

<sup>30</sup>Joint Comments of A&E Television Network, Black Entertainment Television, Inc., Courtroom Television Network, and Ovation at 6.

<sup>31</sup>WHDT Reply Comments at 12.

<sup>32</sup>*Id.* at 13.

programming service to its local community once it has completed construction of its station facilities. Waiting for WHDT to commence over-the-air broadcasting before providing guidance on this issue would serve no discernable purpose. Second, while WHDT could have filed requests for carriage with cable operators in its DMA, we agree with WHDT that such requests would have resulted in confusion and unnecessary delay because local cable operators would undoubtedly have raised the same objections to any must carry requests that they have raised herein.

### C. Carriage Rights

10. WHDT asserts that commercial television stations, including DTV-only stations such as WHDT, have broad carriage rights under the Act.<sup>33</sup> According to WHDT, the 1992 Cable Act was premised on the principles of preserving the existence of local broadcasters and promoting competition in the provision of video programming. WHDT argues that the carriage of DTV-only stations is mandated by the Act.<sup>34</sup> To support this contention, WHDT refers to the language of Section 614(b)(1)(B) of the Act, which provides that:

A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.<sup>35</sup>

In this regard, Section 614(h)(1)(A) of the Act defines:

[T]he term “local commercial television station” [as] any full power television broadcast station, other than a qualified noncommercial educational television station ... licensed and operating on a channel regularly assigned to its community by the Commission....<sup>36</sup>

WHDT states that it meets the requirements for carriage under Section 614(b)(1)(B). WHDT asserts that it is a “local commercial television station,” in that it is a full power commercial television broadcast station, “licensed to and soon to be operating on a Channel 59 regularly assigned to its community (Stuart, Florida) by the Commission.”<sup>37</sup> WHDT argues that if Congress had intended to exclude from Section 614 the carriage of DTV stations, which were explicitly anticipated by Congress at the time of the passage of the 1992 Cable Act, it would have done so through express language in Section 614.<sup>38</sup> The Association for Maximum Service Television (“MSTV”) contends that as soon a station transmits a DTV signal, it is entitled to carriage.<sup>39</sup>

11. Several cable commenters argue that Section 614(b)(4)(B) of the Act supports the view that carriage of WHDT’s signal is not required. Section 614(b)(4)(B), in pertinent part, reads:

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<sup>33</sup>WHDT Petition at 4.

<sup>34</sup>*Id.*

<sup>35</sup>47 U.S.C. §534(b)(1)(B).

<sup>36</sup>47 U.S.C. §534 (h)(1)(A).

<sup>37</sup>WHDT Petition at 4, citing 47 U.S.C. §534(h)(1)(A).

<sup>38</sup>*Id.*

<sup>39</sup>MSTV Comments at 3 and 5.

the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of [advanced television] broadcast signals of local commercial television stations which have been changed to conform to such modified standards.<sup>40</sup>

NCTA argues that Section 614(b)(4)(B) requires only the carriage of signals that have been changed into a digital format and that there should be no single digital carriage obligation until the closeout of analog television.<sup>41</sup> The International Channel similarly asserts that carriage is only required at the end of the transition period when the signals of all broadcast stations in a market are digitally transmitted to a substantial portion of over-the-air viewers.<sup>42</sup> Adelphia asserts that while digital broadcast signals would certainly be subject to must carry in a post-transition environment, the analog carriage of a brand new DTV-only facility during the transition period presents a different issue.<sup>43</sup>

12. We agree with WHDT and MSTV that, pursuant to Section 614 of the Communications Act and the Commission's rules, WHDT is entitled to cable carriage of its digital broadcast signal within the West Palm Beach-Ft. Pierce television market and disagree with the cable commenters that Section 614(b)(4)(B) requires a different result. 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."<sup>44</sup> The statutory definition of "local commercial television station" includes any full power commercial television station, other than a qualified noncommercial education television station, licensed by the Commission. The Commission is charged with issuing regulations and establishing standards ensuring the transition to advanced television technology, pursuant to Section 614(b)(4)(B). Insofar as WHDT is concerned, this transition will have taken place when it commences broadcasting. Indeed, as we indicated in the First Report and Order and Further Notice of Proposed Rulemaking ("*DTV Order and FNPRM*"), when a television station seeks carriage of only one signal, whether digital or analog, the cable system is obligated to carry the signal, and may not require the television station to wait until the end of the transition period.<sup>45</sup> In the *700 MHz Order*, which also addressed the relevant comments from the *DTV Must Carry Notice*, the Commission clearly stated that digital television signals have carriage rights under the Act and that these rights exist now in situations where the transition is complete. Although this decision focused on the immediate carriage rights of stations that have returned their analog spectrum allocation and commenced digital broadcasting, we see no relevant distinction in terms of cable carriage rights between a station that has surrendered its analog allocation and one that commences digital broadcasting without an analog frequency pair to surrender. In this respect, WHDT's petition is squarely within the language of the *700 MHz Order*. WHDT is a digital-only station, operating on Channel 59, seeking carriage only for its high definition digital signal. As in the *700 MHz Order*, we conclude that broadcasters initiating DTV-only service "are entitled to mandatory carriage for their digital signals consistent with applicable statutory and

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<sup>40</sup>47 U.S.C. §534(b)(1)(B).

<sup>41</sup>NCTA Comments at 2-3.

<sup>42</sup>International Cable Comments at 4.

<sup>43</sup>Adelphia Reply Comments at 2.

<sup>44</sup>47 U.S.C. §534(a).

<sup>45</sup>See *Carriage of Digital Television Signals*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22, ¶ 15 (rel. January 23, 2001).

regulatory provisions.”<sup>46</sup> WHDT is entitled to make its cable carriage election in accordance with the provisions of Section 76.64(f)(4).

#### D. Manner of Carriage

13. According to C-Span, there is no support in either the Act or the Commission’s rules for imposing a requirement that a cable operator convert a digital-only signal into an analog format at the headend.<sup>47</sup> WHDT states that it is offering to convert its digital signal to analog at local cable headends in order to accommodate carriage of its DTV signal. By converting its signal to an analog format, WHDT states that concerns regarding compatibility with digital set-top boxes, signal strength standards, and channel positioning will be eliminated.<sup>48</sup> WHDT points out that the signal of many analog stations go through a similar process after signals are delivered to cable TV headends via microwave or fiber-optic links.<sup>49</sup> Several broadcast commenters assert that once conversion of WHDT’s signal from digital to analog is complete, the signal would be indistinguishable from any station broadcasting in an analog format.<sup>50</sup> As such, carriage of one channel of a digital-only station in this manner will not subject cable operators to additional burdens.<sup>51</sup>

14. Having concluded that WHDT’s signal is entitled to carriage, it is appropriate that we provide some guidance regarding the manner of carriage required. To facilitate the availability of service to consumers during the start of the transition period, as we indicated in the *700 MHz* proceeding, carriage in a converted analog format would be acceptable. Concurrent with our decision herein, the Commission has adopted the *DTV Order and FNPRM* with regard to the carriage of digital television broadcast signals.<sup>52</sup> The *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.<sup>53</sup> Consistent with this conclusion, WHDT may elect cable carriage of its digital signal in a converted analog format. If WHDT elects analog carriage, it must supply to cable operators at its own expense conversion equipment to translate the signal to analog.<sup>54</sup> Cable operators carrying WHDT’s signal in analog format must do so in accordance with the analog carriage requirements set forth in the Commission’s rules.<sup>55</sup> As indicated in the *700 MHz* proceeding, the status and duration of any such converted analog carriage arrangements would be subject to review after 2003 as the progress of the transition is considered. 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

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<sup>46</sup>See *700 MHz Order* at ¶ 65.

<sup>47</sup>C-Span Comments at 5.

<sup>48</sup>WHDT Reply Comments at 6, footnote 6.

<sup>49</sup>WHDT Petition at 3.

<sup>50</sup>NAB Comments at 6; KM Communications Comments at 6.

<sup>51</sup>KM Communications Comments at 6.

<sup>52</sup>See *Carriage of Digital Television Signals*, FCC 01-22 (rel. January 23, 2001).

<sup>53</sup>*Id.* at ¶ 74.

<sup>54</sup>Any conversion equipment supplied by WHDT must be of comparable quality to that of other signal processing equipment at the cable operator’s principle headend. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Clarification Order, 8 FCC Rcd 4142, 4143 (1993).

<sup>55</sup>See 47 C.F.R. §§ 76.55-64; see also *700 MHz Order*, at ¶ 65.

with the 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. As the transition moves forward, WHDT and other television broadcast stations will be required to deliver their signals in digital format and cable operators will be required to carry them in digital format.<sup>56</sup>

15. If a cable system carries WHDT's signal in digital format, we recognize that a number of questions were previously unresolved regarding the specific mechanics of carriage. The *DTV Order and FNPRM* should resolve the issues related to the mechanics of carriage raised by WHDT's petition. To the extent that the rules and policies adopted in the *DTV Order and FNPRM* may not sufficiently address a particular issue, we expect parties to cooperate in resolving such issues.

### E. Other Matters

16. WHDT states that the Supreme Court upheld the constitutionality of the mandatory carriage provisions of the Act, and the principles underlying them.<sup>57</sup> WHDT argues that all of the reasons underlying the Supreme Court's decision to uphold the mandatory carriage provisions of the 1992 Cable Act apply to this case.<sup>58</sup> Conversely, cable commenters argue that none of the interests identified by the Supreme Court are realized in the proposal presented by WHDT.<sup>59</sup> NAB and MSTV assert that without carriage, the benefits of diverse programming and competitive operation in the market, elements the Supreme Court in the *Turner* cases sought to preserve, would be lost.<sup>60</sup> We need not address the constitutional arguments raised by the cable operators in this proceeding other than to recognize that the Court found the Act's cable carriage provisions constitutional against the challenges presented. Commenters opposing WHDT's petition have not presented evidence persuading us that the Court's holding, and the Congressional basis for mandatory carriage, are in any way inconsistent with application of Section 614 to the carriage of a DTV-only signal.

17. WHDT argues that the Commission's support and promotion of free, over-the-air digital broadcast service further support its Petition.<sup>61</sup> WHDT states that the Commission cannot expect broadcasters to provide DTV service without some certainty that they will be able to reach cable subscribers.<sup>62</sup> Comcast, on the other hand, argues that the grant of WHDT's carriage request would not

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<sup>56</sup>See *Carriage of Digital Television Signals*, FCC 01-22 (rel. January 23, 2001).

<sup>57</sup>WHDT Comments at 3 citing *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994) ("*Turner I*"); *Turner Broadcasting System v. FCC*, 520 U.S. 180 (1997) ("*Turner II*").

<sup>58</sup>WHDT Petition at 4. WHDT asserts that the Supreme Court noted that the provisions advanced three interrelated important governmental interests:

- (1) preserving the benefits of free, over-the-air local broadcasting television;
- (2) promoting the widespread dissemination of information from a multiplicity of sources; and
- (3) promoting fair competition in the market for television programming.

*Turner I*, 512 U.S. at 662; see also *Turner II*, 520 U.S. 189-90.

<sup>59</sup>A&E Comments at 10; C-Span Comments at 3; NCTA Comments at 4-5.

<sup>60</sup>NAB Comments at 5; MSTV Reply Comments at 6.

<sup>61</sup>*Id.* at 6.

<sup>62</sup>*Id.*; see Pappas Comments at 4; MSTV Comments at 4; KB Prime Media Comments at 2-3; KM Communications Comments at 7.



spur the purchase of digital television equipment or hasten the digital transition.<sup>63</sup> Adelphia states that the success or failure of a digital-only business strategy undertaken at this time should be determined by the marketplace and not regulatory intercession.<sup>64</sup> While not essential to our decision herein, which involves a straightforward application of the must carry provisions, we find that the licensing and impending operation of WHDT certainly advances the digital transition. As evidenced by our decision in the *700 MHz Order*, we support the rapid conversion of analog television stations to the digital broadcast format. In this regard, we believe that clarifying cable carriage rights for DTV-only stations will foster this process.

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Declaratory Ruling filed by Guenter Marksteiner, Permittee of Station WHDT-DT, **IS GRANTED** to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>63</sup>Comcast Reply Comments at 9.

<sup>64</sup>Adelphia Reply Comments at 5.

**APPENDIX A****Petitioner**

Guenter Marksteiner (“WHDT”)

**Commenters**

Arts & Entertainment Network (“A&E”)/Black Entertainment Television (“BET”)/Courtroom Television Network/Ovation, Inc.

Association for Maximum Service Television (“MSTV”)

C-Span Networks (“C-Span”)

International Cable Channels Partnership, Ltd. (“International Cable”)

KB Prime Media, LLC

KM Communications, Inc.

Maranatha Broadcasting Co.

National Association of Broadcasters (“NAB”)

National Cable Television Association (“NTCA”)

Pappas Telecasting

Paxson Communications Corporation (“Paxson”)

Sonshine Family Television

**Reply Commenters**

Adelphia

American Cable Association (“ACA”)

Comcast

Guenter Marksteiner

MSTV

National Association of Broadcasters

National Cable Television Association