

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

In the Matter of:)	
)	
FrontierVision Operating Partners, L.P., Harron)	
Communications Corporation and Richmond Cable)	CSR 5622-E
Television Corporation, each d/b/a Adelphia Cable)	
Communications)	
)	
Petition for Determination of Effective)	
Competition in Certain Communities in Vermont)	

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2001

Released: March 5, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTIONS

1. FrontierVision Operating Partners, L.P., Harron Communications Corporation and Richmond Cable Television Corporation, each d/b/a Adelphia Cable Communications (“Adelphia”) have filed with the Commission a petition pursuant to Sections 76.7 of the Commission's rules for a determination of effective competition in the Vermont communities listed in Attachment A (the “Communities”).¹ Adelphia alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended (“Communications Act”),² and the Commission's implementing rules,³ and are therefore exempt from cable rate regulation. Adelphia claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and DISH Network. Adelphia claims it is thus subject to effective competition under the “competing provider” test in each of the Communities. The Vermont Department of Public Service⁴ and the Vermont Public Service Board filed letters stating they do not oppose the request for relief.⁵ No opposition to the petition was filed.

¹See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 1291, dated November 22, 2000, at p. 5.

²47 U.S.C. § 543(a)(2).

³47 C.F.R. § 76.905(b)(2).

⁴The Vermont Public Service Board issued three Certificates of Public Good (“CPG”) in Docket No. 6244, 6242 and 5891 authorizing Adelphia to provide cable service in the Communities as shown on Attachment A. Petition at 1, n. 2.

⁵The petition is styled as a petition to revoke the certification of the Vermont Public Service Board to regulate basic cable rates. Since the Vermont Public Service Board’s cable franchising and regulatory authority arises from
(continued...)

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁶ as that term is defined by Section 76.905 of the Commission's rules.⁷ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁸ Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15%) of the households in the franchise area.⁹

II. DISCUSSION

3. Adelphia submitted information showing that both prongs of the effective competition test are met by the two DBS providers. Turning to the first prong of the competing provider test, we find that the programming of DBS providers, such as DirecTV and DISH Network, satisfy the Commission's programming comparability criterion. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹⁰ Adelphia has provided evidence of the advertising of DBS service in the national media serving the franchise areas.¹¹ With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.¹² We find that Adelphia has demonstrated that the Communities served by Adelphia are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.

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Vermont statutes and not from any Commission certification (*See* Vermont Public Service Board letter dated December 14, 2000), the petition will be treated as a petition for determination of effective competition pursuant Section 76.907 of the Commission's rules. The Certificates of Public Good are not implicated in this proceeding. *See also* Vermont Department of Public Service letter dated December 11, 2000.

⁶47 C.F.R. § 76.906.

⁷47 C.F.R. § 76.905.

⁸*See* 47 C.F.R. §§ 76.906 & 907.

⁹Communications Act, Section 623(l)(1)(B), 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

¹⁰*See* MediaOne of Georgia, 12 FCC Rcd 19406 (1997).

¹¹Petition at 5 and Exhibit C.

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5-6 and Exhibit D. Exhibit D includes channel line ups for Adelphia's cable systems serving these communities as well as those of Direct TV and DISH Network.

A. Communities Served by FrontierVision Operating Partners, L.P., (“Harron”) and Richmond Cable Television Corporation (“Richmond”)

5. Adelphia provided information showing that the residential subscribership of FrontierVision and Richmond in the Communities they each serve exceeds the aggregate total of DBS subscribers in those Communities, establishing that these cable operators are the largest MVPDs, respectively, in those Communities. The information provided by Adelphia shows that FrontierVision provides service to 11302 subscribers in the franchise area it serves.¹³ The two DBS providers provide service to 6213 residential subscribers among the 20,223 households in the franchise areas served by FrontierVision, for a 31 percent penetration in those Communities.¹⁴ Richmond provides service to 2398 subscribers in the franchise area it serves.¹⁵ The two DBS providers provide service to 851 residential subscribers among the 4,167 households in the franchise area served by Richmond, for a 20 percent penetration in those Communities.¹⁶ Based on this information, we find that the DBS providers provide comparable programming to more than 15 percent of franchise area households served by FrontierVision and Richmond, satisfying the second prong of the effective competition test in these Communities.

B. Communities Served by Harron Communications Corporation (“Harron”)

6. With respect to the franchise area served by Harron, Adelphia was unable to produce data indicating with certainty which MVPD is the largest.¹⁷ However, that does not preclude a determination that MVPDs other than the largest serve at least 15 percent of the households in the relevant franchise areas.¹⁸ Harron provides service to 372 of the 955 households for a 38.95 percent penetration.¹⁹ The two DBS providers provide service to 702 subscribers among the 955 households in the franchise area served by Harron, for a 74 percent penetration in those Communities.²⁰ In these franchise areas, both Harron’s subscriber totals as well as the combined subscriber totals of DBS providers exceed 15 percent of the franchise area households. Thus, if it is assumed that Harron is the largest MVPD, the combined DBS subscriber numbers show that more than fifteen percent of the households are served by alternative MVPDs, here the DBS providers. Conversely, assuming Harron is not the largest MVPD but one of the DBS providers is, counting Harron’s subscribers as those subscribing to an MVPD other than the largest, then Harron’s subscriber level exceeds fifteen percent in the franchise area Harron serves. Therefore, we find that Harron is subject to effective competition in the franchise area it serves.

7. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence

¹³Petition at 7 and Exhibit F.

¹⁴Petition at p 7-8 and Exhibits G, H, I & J. The subscribership of all MVPDs, other than the largest MVPD, may be aggregated to satisfy the 15 percent threshold. *Time Warner Entertainment Co., L.P. et al. V. FCC*, 56 F.3d 151 (D.C. Cir. 1995).

¹⁵Petition at 7 and Exhibit F.

¹⁶Petition at p 7-8 and Exhibits G, H, I & J.

¹⁷Harron indicates that it is able to get DBS subscribership figures only in an aggregate form that includes subscribership numbers for DIRECTTV, Echostar, and C-band providers. Petition at 8-9.

¹⁸See *Mountain Cable Company d/b/a Adelphia Cable Communications et al.* 14 FCC Rcd 13994, 14101 (CSB 1999).

¹⁹Petition at 8-9 and Exhibits F, G, H, I & J.

²⁰Petition at 8-9 and Exhibits G, H, I & J.

demonstrating that its cable systems serving the Communities listed in Appendix A are subject to effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by FrontierVision Operating Partners, L.P., Harron Communications Corporation and Richmond Cable Television Corporation, each d/b/a Adelphia Cable Communications **IS GRANTED**.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²¹47 C.F.R. §0.321.

ATTACHMENT A
File No. CSR 5622-E

Communities	CUID Nos.	Communities	CUID Nos.
FrontierVision Operating Partners, L.P.		Harron Communications Corporation	
Communities Authorized by		Communities Authorized by	
Certificate of Public Good Doc. No. 6244		Certificate of Public Good Doc. No. 6242	
City of St. Albans	VT0047	Town of Wells	VT0142
Town of St. Albans	VT0128		
Town of Higate	VT0251	Richmond Cable Television Corporation	
Town of Swanton	VT0078	Communities Authorized by	
Town of Morristown	VT0125	Certificate of Public Good Doc. No. 5891	
Town of Hyde Park	VT0140		
Town of Johnson	VT0135	Town of Jerico	VT0188
Town of Hardwick	VT0030	Town of Richmond	VT0189
Town of Hartford	VT0021	Town of Underhill	VT0195
Town of Hartland	VT0170		
Town of Norwich	VT0096		