

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

In the Matter of:	)	
	)	
Century Colorado Springs Partnership d/b/a	)	
Adelphia Cable Communications	)	CSR 5884-E
	)	
Petition for Revocation of Certification and	)	
Determination of Effective Competition in	)	
Colorado Springs, Colorado (CO0030)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 1, 2002**

**Released: November 5, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Century Colorado Springs Partnership d/b/a Adelphia Cable Communications ("Adelphia") has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for revocation of the certification of the City of Colorado Springs, Colorado to regulate basic cable service rates due to the presence of effective competition.<sup>1</sup> Adelphia alleges that its cable system serving Colorado Springs is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"), and the Commission's implementing rules, and is therefore exempt from cable rate regulation.<sup>2</sup> Adelphia claims the presence of effective competition stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and DISH Network, and other multi-channel video programming distributors ("MVPD") as described below. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup> 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.<sup>5</sup> Based on the record in this proceeding, Adelphia has met this burden.

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(2) and 76.907.

<sup>2</sup> 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

<sup>5</sup> 47 C.F.R. §§ 76.906 & 907.

3. 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 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 all MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>6</sup>

4. Turning to the first prong of the competing provider test, 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.<sup>7</sup> Adelphia has provided evidence of the advertising of DBS service in local media serving Colorado Springs.<sup>8</sup> We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including several non-broadcast channels.<sup>9</sup> We find that Adelphia has demonstrated that Colorado Springs is 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 Colorado Springs. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Colorado Springs, that there exists no regulatory, technical, or other impediments to households within Colorado Springs taking the services of the DBS providers, and that potential subscribers in Colorado Springs have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>10</sup> Therefore, the first prong of the competing provider test is satisfied.

5. 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. Adelphia provided information showing that, as the provider of MVPD services to 89,998 cable subscribers, it is the largest provider of MVPD services in Colorado Springs.<sup>11</sup> Adelphia provided subscriber information obtained from SkyTRENDS which indicated that there are 16,502 aggregate DBS subscribers in Colorado Springs.<sup>12</sup> Adelphia further provided subscriber information for other MVPDs serving certain multiple dwelling units ("MDU") and residential customers in Colorado Springs. Adelphia obtained these subscriber figures through marketing contacts that identified the MVPDs that served fourteen MDUs located throughout Colorado Springs and the number of subscribers served by those MVPDs.<sup>13</sup> This data indicated that 3,266 subscribers within those MDUs are served by competing MVPDs.<sup>14</sup> Adelphia also conducted a marketing campaign for the specific purpose of identifying

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<sup>6</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup> Petition at 5 and Exhibit B.

<sup>9</sup> *See* 47 C.F.R. § 76.905(g). *See also* Petition at 5 and Exhibits J & B. Exhibit J includes channel line-ups for Adelphia's cable system serving Colorado Springs; Exhibits D through I include those of Direct TV, DISH Network, and the other competing MVPDs serving Colorado Springs.

<sup>10</sup> Petition at 4-5 and Exhibit A.

<sup>11</sup> *Id.* at Exhibit K.

<sup>12</sup> *Id.* at 8 & Exhibit C.

<sup>13</sup> *Id.*, Exhibit A at 2 and Attachment 1.

<sup>14</sup> *Id.* at 8 and Exhibit A.

residential households in Colorado Springs served by Sprint/American Telecasting Inc. (“Sprint/ATI”). Households being served by Sprint/ATI were identified by the presence of exposed outdoor reception devices. As a result of this campaign, Adelphia identified 2,500 residential households in Colorado Springs served by Sprint/ATI.<sup>15</sup> Adelphia reconverted approximately 200 of these 2,500 subscribers to its service, leaving approximately 2,300 households served by Sprint/ATI.<sup>16</sup> Adelphia also provided 2000 U. S. Census data showing a total of 141,516 households in Colorado Springs.<sup>17</sup>

6. To summarize, the record indicates that 16,502 Colorado Springs households are served by DBS providers, and 5566 residential and MDU households are served by other competing MVPDs, for a total of 22,068 households subscribing to MVPD providers other than the largest MVPD, Adelphia. These 22,068 MVPD subscribers represent a 15.59 percent penetration in the Colorado Springs franchise area. Therefore, the second prong of the competing provider test is satisfied. Based on the forgoing, we conclude that Adelphia has demonstrated that its cable system serving Colorado Springs, Colorado is subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, that the captioned petition for revocation of the certification of Colorado Springs, Colorado to regulate basic cable service rates and for a determination of effective competition in Colorado Springs filed by Century Colorado Springs Partnership, d/b/a Adelphia Cable Communications **IS HEREBY GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates of Colorado Springs, Colorado **IS REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>15</sup> Because its campaign relied on visual observation of Sprint/ATI outdoor reception devices, Adelphia may have under-represented the competitive presence of Sprint/ATI in Colorado Springs.

<sup>16</sup> Petition at 8 & Exhibit A.

<sup>17</sup> *Id.* at 8 & Exhibit L.

<sup>18</sup> 47 C.F.R. § 0.283.