

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

In the Matter of:)	
)	
Adelphia Cable Partners, L.P.)	
)	CSR 5879-E
Key Biscayne Cablevision)	
)	
Petition for Determination of Effective)	
Competition in Various Florida Communities)	
(FL0375), (FL0401) and (FL0528))	

MEMORANDUM OPINION AND ORDER

Adopted: February 10, 2003

Released: February 12, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Adelphia Cable Partners, L.P. and Key Biscayne Cablevision, each doing business as Adelphia Cable Communications ("Adelphia"), has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules for a determination of effective competition in three Florida communities (the "Communities").¹ Adelphia alleges that its cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). 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,² as that term is defined by Section 76.905 of the Commission's rules.³ 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.⁴ Based on the record presented in this proceeding, Adelphia has met this burden.

¹See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). The Communities are Florida City, Key Biscayne and a portion of unincorporated Miami Dade County ("Miami-Dade"). Florida City and Miami-Dade are certified by the Commission to regulate basic cable service rates.

²47 C.F.R. § 76.906.

³47 C.F.R. § 76.905.

⁴See 47 U.S.C. §§ 76.906 and 76.907.

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 (“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 of the households in the franchise area.⁵

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.⁶ Adelphia has provided evidence of the advertising of DBS service in the news media serving the three Communities.⁷ 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.⁸ We find that Adelphia has demonstrated that the communities 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 Communities. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.⁹ 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 sought to determine the competing provider penetration in the Communities by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers in the Communities on a five-digit zip code basis.¹⁰ Adelphia asserts that it is the largest MVPD in the Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those three franchise areas.¹¹ If the subscriber penetration for the aggregate DBS information exceeds 15 percent of the households in the franchise area, the second prong of the competing provider test is satisfied.

6. In Florida City, Adelphia is the largest MVPD with 1,258 subscribers out of the 2,247 Census 2000 Florida City households.¹² The DBS providers' penetration rate for Florida City is 18.8 percent.¹³ In Key Biscayne, Adelphia is the largest MVPD with 5,642 subscribers out of the 4,259

⁵47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

⁶*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷*See* Adelphia Petition at 4-5 and Exhibit A.

⁸*See* 47 C.F.R. §76.905(g). *See also* Adelphia Petition at 5-6 and Exhibits B, C and D.

⁹Adelphia Petition at 4-5 and Exhibit A.

¹⁰*Id.* and Exhibit F.

¹¹*Id.* at 7-8.

¹²*Id.* at 7 and Exhibits E and G.

¹³*Id.* (422 DBS subscribers ÷ 2,247 Florida City households = 18.8%).

Census 2000 Key Biscayne households.¹⁴ The DBS providers' penetration rate for Key Biscayne is 19.3 percent.¹⁵ In Miami-Dade, Adelphia is the largest MVPD with 72,844 subscribers out of the 200,597 Census 2000 Miami-Dade households.¹⁶ The DBS providers' penetration rate for Miami-Dade is 21.7 percent.¹⁷ Based on this record, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD, exceeds 15 percent of the households in the Communities. We conclude that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving Florida City, Key Biscayne, and Miami-Dade are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Adelphia Cable Partners, L.P. and Key Biscayne Cablevision, each doing business as Adelphia Cable Communications **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications of Florida City (FL0401) and Miami-Dade County (FL0375) to regulate basic cable service rates **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴Adelphia acknowledges the discrepancy between the number of Census 2000 Key Biscayne households and its purported Key Biscayne subscribership. Adelphia has verified that its subscribership figures are correct and explains that the discrepancy results from the fact that it has many subscribers in this franchise area that maintain a year-round cable subscription, but are classified as seasonal housing units and therefore not included in the count of Key Biscayne households for census purposes. See July 15, 2002, Letter from Charles S. Walsh, counsel for Adelphia, to Kenneth Lewis, FCC, citing *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 4316, 4324 (1994) (households are equated with occupied housing units, but generally exclude dwellings that are used solely for seasonal, occasional, or recreational use); see also 47 C.F.R. § 76.905(c). Adelphia also asserts that the number of households in Key Biscayne has increased since Census 2000 was conducted.

¹⁵ Adelphia Petition at 7 (823 DBS subscribers ÷ 4,259 Key Biscayne households = 19.3%).

¹⁶*Id.* at 8 and Exhibits E and G.

¹⁷*Id.* (43,429 DBS subscribers ÷ 200,597 Miami-Dade households = 21.7%).

¹⁸47 C.F.R. § 0.283.