

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

In the Matter of:)	
)	
Century-TCI California, L.P., d/b/a Adelphia)	
Cable Communications)	CSR 5885-E
)	
Petition for Determination of Effective)	
Competition in Various California Communities)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2003

Released: February 21, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Century-TCI California, L. P., d/b/a 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)(1) of the Commission’s rules for a determination of effective competition in three California 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.²

II. DISCUSSION

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

¹ See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(1). The Communities are Hermosa Beach, Manhattan Beach, and Redondo Beach. Each is certified to regulate basic cable service rates.

² Redondo Beach filed an opposition requesting an extension of time to file a more detailed opposition, however, there has been no subsequent filing.

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 and 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 (15 percent) of the households in the franchise area.⁶

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.⁷ Adelphia has provided evidence of the advertising of DBS service in the news media serving the three Communities.⁸ 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.⁹ 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 franchise area. 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.¹⁰ 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 within the Communities on a five-digit zip code basis.¹¹ Adelphia asserts that it is the largest MVPD in the three Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those franchise areas. If the subscriber penetration for the aggregate DBS information exceeds 15 percent in the franchise area, the second prong of the competing provider test is satisfied.

6. In the City of Hermosa Beach, Adelphia is the largest MVPD serving 6,818 subscribers out of the 9,476 Census 2000 Hermosa Beach households.¹² The DBS providers' penetration rate for Hermosa Beach is 19.0 percent.¹³ In the City of Manhattan Beach, Adelphia is the largest MVPD serving 9,898 subscribers out of the 14,474 Census 2000 Manhattan Beach households.¹⁴ The DBS providers'

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

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *See* Adelphia Petition at 4 and Exhibit A.

⁹ *See* 47 C.F.R. §76.905(g); *see also* Adelphia Petition at 5-6 and Exhibits B, C, and D.

¹⁰ Adelphia Petition at 5 and Exhibit B.

¹¹ *Id.* at 7 and Exhibit F.

¹² *Id.* at 7 and Exhibits E and G.

¹³ *Id.* and Exhibits F and G (1,797 DBS subscribers ÷ 9,476 households = 19.0%).

¹⁴ *Id.* at 7-8 and Exhibits E and G.

penetration rate for Manhattan Beach is 20.9 percent.¹⁵ In the City of Redondo Beach, Adelphia is the largest MVPD serving 16,955 subscribers out of the 28,566 Census 2000 Redondo Beach households.¹⁶ The DBS providers' penetration rate for Redondo Beach is 21.4 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 each of the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving Hermosa Beach, Manhattan Beach, and Redondo Beach, California 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 Century-TCI California, L.P., d/b/a Adelphia Cable Communications **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications of Hermosa Beach, Manhattan Beach, and Redondo Beach, California 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. Broecker
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¹⁵ *Id.* at 7-8 and Exhibits E and G (3,022 DBS subscribers ÷ 14,474 households = 20.9%).

¹⁶ *Id.* at 8 and Exhibits E and G.

¹⁷ *Id.* and Exhibits F and G (6,104 DBS subscribers ÷ 28,566 households = 21.4%).

¹⁸ 47 C.F.R. § 0.283.