

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

In the Matter of:)	
)	
Adelphia Cable Communications)	CSR 6364-E
)	
)	
Petition for Determination of Effective Competition)	
in Five Local Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2005

Released: November 4, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a petition that Adelphia Cable Communications (“Adelphia”) has filed with the Commission pursuant to Sections 76.7, 76.905(b)(2), and 76.907 of the Commission's rules for a determination that it is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission's implementing rules,² and is therefore exempt from cable rate regulation in the local franchise areas listed in Attachments A and B (the “Franchise Areas”). The petition is unopposed. Finding that Adelphia is subject to effective competition in the listed Franchise Areas, we grant the petition.

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 623(1) of the Communications Act of 1934, as amended, and 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

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its 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.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") 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 The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Franchise Areas listed in Attachment A are DBS subscribers, we conclude that the population of the Franchise Areas at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. 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 substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that Adelphia has demonstrated that the Franchise Areas 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 Areas. 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. Adelphia sought to determine the competing provider penetration in the Franchise Areas by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Franchise Areas on a zip code basis. Adelphia asserts that it is the largest MVPD in the Franchise Areas listed in Attachment A because its subscribership exceeds the aggregate DBS subscribership for those Franchise Areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, 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 Franchise Areas. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Adelphia submitted sufficient evidence to demonstrate that its cable systems serving the Franchise Areas set forth in Attachment A are subject to competing provider effective competition.

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

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

⁸ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2793 (2005).

⁹ *See* 47 C.F.R. § 76.905(g).

B. Low Penetration Effective Competition

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹⁰ Adelphia provided information showing that less than 30 percent of the households within the franchise area specified in Attachment B subscribe to its cable services. Accordingly, we conclude that Adelphia has demonstrated the existence of low penetration effective competition for that franchise area under our rules.

6. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence to demonstrate that its cable systems are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Adelphia for a determination of effective competition in the Franchise Areas listed in Attachments A and B **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Adelphia **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁰47 U.S.C § 543(l)(1)(A).

¹¹47 C.F.R. § 0.283.

Attachment A

Franchise Areas Subject to Competing Provider Effective Competition

Franchise Area	CUID	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Barrow County	GA0279	34.48%	9,142	3,152
Clermont	GA0597	41.61%	161	67
Lula	GA0491	43.69%	531	232
Winder	GA0278	29.20%	3,877	1,132

CPR= Percent DBS penetration

+ = See Adelpia Petition

Attachment B

Franchise Area Subject to Low Penetration Effective Competition

Franchise Area	CUID	Franchise Area Households⁺	Cable Subscribers⁺	Penetration Level
Hall County	GA1008	36,323	2,248	6.19%

+ = See Adelpia Petition