

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

In the Matter of:)	
)	
Three Rivers Cable Associates, L.P., d/b/a)	
Adelphia Cable Communications)	CSR 5905-E
)	
Petition for Determination of Effective)	
Competition in Various Virginia Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2002

Released: September 20, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Three Rivers Cable Associates, L.P., d/b/a Adelphia Cable Communications (“Adelphia”) has filed with the Commission a petition alleging that its cable systems are subject to effective competition from competing service providers in its Altavista, Hurt, and unincorporated Pittsylvania County, Virginia franchise areas (the “communities”). Adelphia alleges that its cable systems are subject to effective competition, pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules.² Adelphia bases its allegation of effective competition on the 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,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. Based on the record in this proceeding, Adelphia has met this burden.

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

¹ 47 U.S.C. § 543.

² 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

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 local media serving its franchise areas.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 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.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 obtained DBS subscriber information from each of the communities by purchasing a five-digit zip code specific subscriber report from SkyTrends that identified the aggregate DBS subscribers in the communities.¹⁰ The SkyTrends' report identified 8,395 DBS subscribers in Adelphia's Pittsylvania franchise area of 23,020 households resulting in a penetration rate of 36 percent.¹¹ In contrast, Adelphia has 4,549 subscribers of 23,020 households resulting in a penetration rate of 19 percent.¹² Because the DBS subscriber number does not provide specific subscriber information for DirecTV and Dish Network, Adelphia is unable to determine the largest MVPD in the franchise area.¹³ We are nevertheless able to establish that the second prong of the competing provider test is satisfied. Assuming that Adelphia is the largest MVPD, the aggregate DBS subscribership exceeds 15 percent. Conversely, assuming that one of the DBS providers is the largest MVPD, Adelphia's penetration rate surpasses the 15 percent threshold of the second prong of the competing provider test. Accordingly, we find that Adelphia has demonstrated that the number of households in Pittsylvania subscribing to programming services other than the largest MVPD exceeds 15 percent.

⁵ 47 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* Petition at 4 and Exhibit A.

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

⁹ Petition at 5-6.

¹⁰ *Id.* at 6-7 and Exhibit E and F.

¹¹ *Id.* (8,395 DBS subscribers ÷ 23,020 households = 36%).

¹² *Id.* (4,549 Adelphia subscribers ÷ 23,020 households = 19%).

¹³ *Id.*

6. Adelpia is the largest MVPD in Altavista with 1,166 subscribers of 1,502 households resulting in a penetration rate of 77 percent.¹⁴ There are 284 aggregate DBS subscribers in Adelpia's franchise area of 1,502 households resulting in a penetration rate of 18 percent.¹⁵ Accordingly, we find that Adelpia has demonstrated that the number of households in Altavista subscribing to programming services other than the largest MVPD exceeds 15 percent.

7. Adelpia is the largest MVPD in Hurt with 369 subscribers of 541 households resulting in a penetration rate of 68 percent.¹⁶ There are 161 aggregate DBS subscribers in Adelpia's franchise area of 541 households resulting in a penetration rate of 29 percent.¹⁷ Accordingly, we find that Adelpia has demonstrated that the number of households in Hurt subscribing to programming services other than the largest MVPD exceeds 15 percent. Based on the foregoing, we conclude that Adelpia has submitted sufficient evidence demonstrating that its cable systems serving Altavista, Hurt, and unincorporated Pittsylvania County, Virginia are subject to effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Three Rivers Cable Associates, L.P. d/b/a Adelpia Cable Communications **IS GRANTED**.

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. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁴ *Id.* at 8 and Exhibits E, F, and G (1,166 Adelpia subscribers ÷ 1,502 households = 77%).

¹⁵ *Id.* (284 DBS subscribers ÷ 1,502 households = 18%).

¹⁶ *Id.* (369 Adelpia subscribers ÷ 541 households = 68%).

¹⁷ *Id.* (161 DBS subscribers ÷ 541 households = 29%).

¹⁸ 47 C.F.R. § 0.283.