

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

In the Matter of:)	
)	
Century-TCI California, L.P.)	
)	CSR 5899-E
Petition for Determination of Effective)	
Competition in Arcadia, California)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2002

Released: September 26, 2002

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 alleging that Adelphia’s cable system is subject to effective competition from competing service providers in the City of Arcadia, California (“Arcadia”) and requests revocation of Arcadia’s certification to regulate basic cable service rates. Adelphia alleges that its’ cable system is 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 percent of the households in the franchise area; and (b) the number of households subscribing to

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.

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 Arcadia.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 Arcadia 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 the franchise area. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Arcadia, that there exists no regulatory, technical, or other impediments to households within Arcadia taking the services of the DBS providers, and that potential subscribers in Arcadia 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 for Arcadia by purchasing a five-digit zip code specific subscriber report from SkyTrends that identified the DBS subscribers in the Adelphia franchise area.¹⁰ However, rather than simply accepting SkyTrends' figures, Adelphia assumes that some of the DBS subscribers identified in the report may actually live outside of Arcadia.¹¹ To account for such a possibility, Adelphia has devised a formula that compares U.S. Census household data for Arcadia and the relevant zip codes in order to derive an allocation to apply against the DBS subscriber count.¹² Adelphia also reduces the estimated DBS subscriber count by 10 percent to reflect the possibility that some households have subscribed to both cable and DBS service and to take into account commercial or test accounts.¹³ The Commission believes that Adelphia's methodology is sound since it seeks to accurately quantify subscribers using the best available DBS subscriber data.

6. Adelphia is the largest MVPD in Arcadia with 11,126 subscribers.¹⁴ Adelphia submitted

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* Adelphia Petition at 4-5 and Exhibit A.

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

⁹ Adelphia Petition at 5.

¹⁰ *Id.* at 7 and Exhibit E.

¹¹ *Id.* at 7-9.

¹² *Id.* at Exhibits G and I.

¹³ *Id.* at 7. According to documentation previously provided to the Commission, SkyTRENDS' zip code subscriber numbers are inflated by roughly ten percent "due to dual receivers, and limited commercial and test accounts." *See Charter Communications*, DA 02-1919 at n.13 (MB rel. Aug. 6, 2002).

¹⁴ *Id.* at 7.

2000 Census data indicating that there are 19,149 households in Arcadia.¹⁵ Adelphia submitted a January 31, 2002 SkyTrends' report which identified 4,032 DBS subscribers.¹⁶ Using the methodology described above, Adelphia asserts that there are 3,113 DBS subscribers in Arcadia resulting in a penetration rate of 16.2 percent.¹⁷ Adelphia also submitted an October 31, 2001 SkyTrends report for Arcadia.¹⁸ Again, using the attribution methodology described above, Adelphia asserts that, as of October 31, 2001, there were 2,933 DBS subscribers resulting in a 15.31 percent penetration rate.¹⁹ Accordingly, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by a provider other than the largest MVPD exceeds 15 percent of the households in Arcadia. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence demonstrating that its cable system serving the City of Arcadia, California has been subject to effective competition since October 2001.

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 certification to regulate basic cable service rates of Arcadia, California **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
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¹⁵ *Id.* at Exhibit F.

¹⁶ *Id.* at 8 and Exhibit E (January 31, 2002 SkyTrends Report).

¹⁷ *Id.* (3,113 DBS subscribers ÷ 19,149 households = 16.2%).

¹⁸ *Id.* at 9 and Exhibits H and J (October 31, 2001 SkyTrends Report).

¹⁹ *Id.* (2933 DBS subscribers ÷ 19,149 households = 15.31%).

²⁰ 47 C.F.R. § 0.283.