

## Federal Communications Commission

DA 03-2554

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

In the matter of	)	
	)	
Century TCI-California, L.P.	)	CSB-A-0690
	)	
Appeal of Order Setting Basic Service Rates of	)	
Los Angeles CA (CA0253, CA 1194)	)	

**ORDER**

**Adopted: July 29, 2003**

**Released: July 29, 2003**

By the Chief, Policy Division, Media Bureau:

1. This interlocutory matter arose when Century-TCI California, L.P., d/b/a/ Adelphia Communications Corporation ("Adelphia"), the franchised cable operator serving parts of the City of Los Angeles, California, petitioned for an emergency stay of the rate order (styled an "Ordinance") concerning Adelphia's basic service tier ("BST") issued by the City of Los Angeles ("the City") on May 30, 2003.<sup>1</sup> The City has opposed the stay.<sup>2</sup>

2. The rate order in question concerned four parts of Los Angeles, called Areas C, F, G, and H. The order rejected the Forms 1240 that Adelphia filed with the City in the spring of 2002. The City denied rate increases proposed in those Forms 1240, finding them unjustified. The City instead kept the previous rates filed by Adelphia in effect or made reductions based on information not contained in Adelphia's recently filed Forms 1240.

3. The Commission evaluates petitions for stay under well settled principles. To win a stay, a petitioner must demonstrate that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.<sup>3</sup> The likelihood of success on the merits is an important element in a petitioner's showing. However, the degree to which a probability of success on the merits must be found will vary according to the Commission's assessment of the other factors.<sup>4</sup> When confronted with a case in which other elements strongly favor interim relief, the Commission may exercise its discretion to grant a stay.

4. The parent corporation of Adelphia has been charged with serious financial misconduct,

<sup>1</sup> Request for Emergency Stay of Local Rate Order ("Request"), filed June 9, 2003.

<sup>2</sup> Opposition of the City of Los Angeles, California to Request for Emergency Stay of Local Rate Order ("Opposition"), filed June 16, 2003. On June 18, 2003, Adelphia filed a Reply to Opposition to Request for Emergency Stay of Local Rate Order. 47 C.F.R. § 1.45(d) provides that replies to oppositions to requests for stay or other temporary relief should not be filed and will not be considered.

<sup>3</sup> *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>4</sup> See *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843-44 (D.C. Cir. 1977).

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including the submission of false financial data to other entities.<sup>5</sup> After these charges were made, the City asked Adelphia's new management to re-sign the certification at the end of the Forms 1240 that Adelphia's prior management had signed. Form 1240 requires the cable operator to certify that the statements made in the form "are true and correct to the best of my knowledge and belief, and are made in good faith." Adelphia refused to re-certify, saying "Adelphia is not in a position to reply to this request in such short order. The new management has simply not had sufficient time to review these filings and the supporting data to make a determination, one way or the other. As well, we are unable to predict with any certainty when Adelphia would be in a position to definitively respond to this request."<sup>6</sup> Adelphia has not yet re-certified its Forms 1240 and has not committed to do so by a date certain.<sup>7</sup>

5. Adelphia, speaking through its new management, alleges that the City's rate order erred in several respects.<sup>8</sup> Adelphia also states that it has cooperated as fully as possible with the City's requests for information and is working to restore Adelphia's financial records to satisfactory condition. The City, in response, says that it has struggled unsuccessfully to obtain the information to which it is entitled and made reasonable decisions about rates in good faith, using the best available information<sup>9</sup> and seeking to protect subscribers from excessive charges.<sup>10</sup> We cannot find, based on the filings before us, that Adelphia has established that its view is likely to prevail on the merits. This finding is without prejudice to our later determination after a full examination of the parties' filings on the merits.<sup>11</sup>

6. Adelphia has not established that it will suffer irreparable harm if a stay is not granted. If, when we rule on the merits of Adelphia's appeal, we find that it was entitled to more than the City allowed it, our Rules expressly allow it the opportunity to recoup what the City should have allowed it.<sup>12</sup>

7. It also appears that other interested parties might be harmed if the stay is granted. Although Adelphia has offered to make "appropriate" refunds,<sup>13</sup> its financial condition creates uncertainty about its ability to effect the offer and Adelphia has not offered to post a bond or put any increased revenues in escrow.<sup>14</sup>

<sup>5</sup> Financial managers at Adelphia's parent have pleaded guilty to crimes including securities fraud and conspiracy to commit securities fraud. Associated Press, *Ex-Adelphia Accountant Pleads Guilty to Fraud*, <http://www.smartpros.com/x36671.xml> (visited July 22, 2003). Other proceedings concerning Adelphia's financial records include *Adelphia Commun. Corp.* 285 B.R. 580 (S.D.N.Y. 2002) and *United States v. Rigas*, 258 F. Supp. 2d 299 (S.D.N.Y. 2003).

<sup>6</sup> Request, Exhibit C at I.

<sup>7</sup> Opposition at 4-6.

<sup>8</sup> Request at 2-7.

<sup>9</sup> *Falcon First Commun., L.P.*, 14 FCC Rcd 7277, 7282 (1999) ¶ 12 ("while the County may prescribe a rate if the operator has had an opportunity to participate meaningfully in the rate review process and has failed to meet its burden, the prescribed rate should be based on the best available information at the time of the County's order.").

<sup>10</sup> Opposition at 2-9.

<sup>11</sup> Appeal of Local Rate Order, filed by Adelphia on June 26, 2003; Opposition of the City of Los Angeles, California to Adelphia's Appeal of Local Rate Order, filed on July 11, 2003; Reply to Opposition to Appeal of Local Rate Order, filed on July 21, 2003.

<sup>12</sup> 47 C.F.R. § 76.944(c) provides: "An operator that uses the annual rate adjustment method under Section 76.922(e) may include in its next true up under Section 76.922(e)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal."

<sup>13</sup> Request at 14.

<sup>14</sup> Request at 14-15; Opposition at 12 & n.34.

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8. Finally, Adelphia has not established that the public interest favors the stay it requests. The City's concern about the refusal of Adelphia's present management to certify its own Forms 1240 is not frivolous. More generally, although we appreciate the difficulties faced by Adelphia's current management and shareholders, the company's subscribers bear no responsibility for these difficulties. Fairness leads us to spare the subscribers from a loss caused by Adelphia and its parent.

9. Accordingly, **IT IS ORDERED** that the Request for Emergency Stay filed by Adelphia **IS DENIED**.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules. 47 C.F.R. § 0.283.

**FEDERAL COMMUNICATIONS COMMISSION**

Mary Beth Murphy  
Chief, Policy Division, Media Bureau

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