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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 16 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Century-TCI California, L.P.

Order Setting Basic Service Rates

Los Angeles, CA (CA0253, CA1194)

File No. _____

**OPPOSITION OF THE CITY OF LOS ANGELES, CALIFORNIA
TO REQUEST FOR EMERGENCY STAY OF LOCAL RATE ORDER**

Rockard J. Delgadillo
City Attorney
Joshua Perttula
Special Assistant City Attorney
Philip Lam
Deputy City Attorney
200 North Main Street, Suite 800
Los Angeles, CA 90012

Nicholas P. Miller
Frederick E. Ellrod III
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, N.W. #1000
Washington, D.C. 20036-4306
202-785-0600

Counsel for the City of Los Angeles, CA

June 16, 2003

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SUMMARY

Adelphia's request to stay the City's rate order raises an extraordinary and unprecedented question. The petitioner asks the Commission to provide it equitable relief to defeat the very purpose and intent of the Commission's own rules. The petitioner has admitted to criminal fraud; concedes it has not complied with the Commission's rules to certify the data submitted; and has submitted inconsistent data to the City. In this context, a Commission grant of a stay to Petitioner would ignore the Commission's fundamental rules and unjustly enrich Adelphia's unlawful behavior.

Adelphia's failure to confirm its certification of its rate filings presented the City with unprecedented difficulties. The Commission's rate forms require a cable operator to certify the truth and correctness of all the information submitted, so that the reviewing community can rely on that information. In the absence of reliable data from Adelphia, the City was forced to set rates relying on the best information available. In Areas F, G, H, because the company had effectively left the City without a rate filing that could be used to support an increase, the best alternative was to go back to the rates previously in effect. But in Area C, even if one assumed the data provided by Adelphia were basically accurate, a significant rate reduction from the previous rate would be required. Thus, the City accepted the figure recalculated from Adelphia's data as the regulated Area C rate.

If a stay is granted, Adelphia will at most suffer only monetary loss, which is not irreparable harm (particularly given the protections of the Commission's true-up procedure and the City's provision in the rate order for recertification). Subscribers, however, will suffer irreparable injury because the Company will not be able to provide refunds to the subscribers

injured by the company's behavior. Moreover, a stay of the rate order would not be in the public interest: it would frustrate subscriber relief and reward the company for fraud.

Adelphia is unlikely to succeed on the merits. Adelphia offers a two-part defense, and neither part is valid under the Commission's rules. First, the company claims it had an indefinite period of time to file certified data underlying the proposed maximum permitted rates. The City agreed to one extension of the deadline, which Adelphia failed to meet. Adelphia could offer no assurances of a date by which the data could be certified. Second, Adelphia seeks to reverse the burden of proof established by the Commission's rules. Adelphia wants the City to prove the validity of the rates imposed in the Rate Order. But under the Commission's rules, Adelphia, not the City, must justify new rates. When Adelphia failed to make the necessary showing, the City established rates based on the best available information. It also permitted Adelphia to come back with new data at any time.

Adelphia makes only one substantive argument challenging the reasonableness of the City's ordered rates. Adelphia claims the City used incorrect channel counts. Adelphia ignores the fact that its own documents on channel counts were inconsistent among themselves. Adelphia presents no evidence that the City acted unreasonably in reconciling the company's conflicting channel count information.

Thus, Adelphia fails all four of the tests for a stay.

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The City of Los Angeles, by its attorneys, hereby opposes the Request For Emergency Stay of Local Rate Order (“Stay Request”) filed by Century-TCI California, L.P., d/b/a Adelphia Communications Corporation (“Adelphia”) on June 9, 2003, with respect to Ordinance No. 175231, Adopting a Rate Regulation Regarding Cable Television Rates for Basic Service and Equipment: Adelphia – Franchise Areas C, F, G, H, Pursuant to 2002 FCC Forms 1240 and 1205 (“Rate Order”), adopted by the City of Los Angeles (“City”) on May 30, 2003, which rate order is incorporated herein by reference.

In this proceeding Adelphia raises an extraordinary and unprecedented question. This is not an ordinary rate appeal in which a cable operator claims that a local franchising authority has misapplied the Commission’s rules. Rather, the petitioner has admitted to criminal fraud; concedes it has not complied with the Commission’s rules to certify the data submitted; and has submitted inconsistent data to the City. Moreover, it is a case in which the City has gone to

great lengths to make reasonable arrangements to protect the *status quo* until Adelphia can sort out its management and its records.

Despite this factual record, the petitioner asks the Commission to provide it equitable relief to defeat the very purpose and intent of the Commission's own rules. The boldness of Adelphia's request is stunning. A Commission grant of a stay in this case would ignore the Commission's fundamental rules and unjustly enrich Adelphia's unlawful behavior.

I. BACKGROUND

The City of Los Angeles has fourteen distinct franchise territories. Each franchise area is served by one of five separate incumbent cable operators. This proceeding addresses a Rate Order issued by the City to Adelphia, which serves four franchise areas in the City not subject to effective competition, reaching over 200,000 cable subscribers.¹ The Order addresses Adelphia's 2002 rate filings for Areas C, F, G, and H (the "Rate Filings"). Adelphia filed for new basic service rates for Area C on March 29, 2002, and for the other three areas on June 4, 2002.

The City timely reviewed the financial information submitted by Adelphia in the Rate Filings.² In the course of its review, however, the City took notice of a continuing series of public disclosures about Adelphia's management and practices, including the falsification of data provided to other entities. Adelphia Communications Corporation, the franchisee's parent

¹ Adelphia also serves a fifth franchise area, Area L, which has been held to be subject to effective competition. Hence, Adelphia does not submit rate filings for Area L.

² The City retained the firm of Ashpaugh & Sculco, CPAs, PLC ("A&S"), to assist in the financial review of the rate forms, and the law firm of Miller & Van Eaton, P.L.L.C. ("MVE"), to assist with respect to legal aspects of the rate proceeding.

company, filed for bankruptcy protection on or about June 25, 2002.³ On July 24, 2002, the SEC filed charges against Adelphia, members of the Rigas family, and other corporate executives for massive financial fraud – “one of the most extensive financial frauds ever to take place at a public company.”⁴ On January 10, 2003, Timothy A. Werth, Adelphia’s former accounting director, pleaded guilty to securities fraud and conspiracy in connection with Adelphia’s financial information.⁵ The City was thus forced to conduct its review of Adelphia’s Rate Filings under a cloud of increasing uncertainty as to whether the information provided by Adelphia was reliable.

The City sought to resolve this uncertainty by asking Adelphia to recertify the accuracy and reliability of the financial data presented in the Rate Filings. On February 27, 2003, the City sent Adelphia a letter requesting that the company’s current management attest to the accuracy of the data in the Rate Filings, or, if it could not do so, to give the City an estimated date by which the current management *would* be able to confirm the accuracy of the data on which the City was expected to rely.⁶ On March 11, Adelphia responded:

Unfortunately, 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

³ For convenience, the corporate parent of the franchisee, Adelphia Communications Corp., will be referred to as “Adelphia” in connection with the allegations and admissions discussed here.

⁴ Press Release, Securities and Exchange Commission, *SEC Charges Adelphia and Rigas Family with Massive Financial Fraud* (July 24, 2002), available at <http://www.sec.gov/news/press/2002-110.htm>.

⁵ See, e.g., *Ex-Adelphia Accountant Pleads Guilty to Fraud*, AP, Jan. 13, 2003, available at <http://www.smartpros.com/x36671.xml>.

⁶ Letter from Thera G. Bradshaw, Assistant General Manager, Information Technology Agency, City of Los Angeles, to Laurence Windsor, Government Affairs Manager, Adelphia (Feb. 27, 2003) (attached to the Stay Request as Exhibit B).

review these filings and the supporting data to make a determination, one way or another. As well, we are unable to predict with any certainty when Adelphia would be in a position to definitively respond to this request.⁷

In other words, not only did Adelphia refuse to certify the Rate Filings; it also disclaimed any knowledge of when in the future it might be able to do so.

Adelphia's refusal in effect negated the company's original signatures on the Rate Filings.⁸ Because the company was unwilling to stand behind the information it had submitted during the period of fraudulent behavior, it was clear the City could not rely on that information as it is normally expected to do in reviewing a rate filing. Thus, Adelphia's failure to reaffirm its certification in effect "decertified" the original Rate Filings, leaving the City in the same position as if Adelphia had never signed the filings at all.

At this point it was evident that Adelphia could not be relied upon to provide properly certified information according to the Commission's rules. It was thus necessary for the City to proceed along two tracks simultaneously: to determine what could be concluded from the company's submitted (but unreliable) data, and to determine what other surrogate information might provide the "best available information" under the unique conditions of this review.

Under normal circumstances, the City would have been expected to act on the Area C Rate Filing by March 29, 2003. Adelphia, however, indicated that it would be receptive to

⁷ Letter from Thomas M. Wilson, Staff Attorney, Adelphia, to Thera Bradshaw, Assistant General Manager, Information Technology Agency, City of Los Angeles (March 11, 2003) (attached to the Stay Request as Exhibit C).

⁸ The signature block of Form 1240 requires the cable operator to "certify that the statements made in this form are true and correct to the best of my knowledge and belief, and are made in good faith."

petitioning the Commission to extend that deadline through June 1, 2003.⁹ In order to give Adelphia a further opportunity to substantiate and defend the soundness of the data in its Rate Filings, the City joined with Adelphia in obtaining that extension of time.¹⁰ The City, however, determined that in order to take the necessary steps to issue a rate order by June 1, it would need to obtain Adelphia's certification of the data filed with the City by April 15, 2003.¹¹ The City notified Adelphia of this deadline in writing on March 21, making clear that if the company could not certify the data, the City would proceed with a rate order based on the best available information.¹²

Adelphia again failed to certify its Rate Filing information by the April 15 deadline. To date, Adelphia has not certified any of that information. At most, in comments filed on May 22, eight days before the City needed to take final action, Adelphia was only willing to

⁹ Letter from Thomas M. Wilson to Thera Bradshaw of the City, *supra* note 7. This extension made the deadline for Area C approximately the same as those for Areas F, G, and H.

¹⁰ The Commission agreed to that extension in a letter from John B. Norton of the FCC to Marci L. Frischkorn of MVE, dated March 20, 2003, attached to the Stay Request at Exhibit D.

¹¹ The City anticipated the following procedural steps would have to be completed for timely action on a rate order by June 1, 2003: (1) completion of the staff analysis of any newly submitted Adelphia data; (2) approval and recommendation of a Rate Order by the City of Los Angeles Board of Information Technology Commissioners; (3) approval and recommendation of a Rate Order by the City Council Committee for Information, Technology and Government Services; (4) approval of the Rate Order by the full City Council. Steps 2, 3, and 4 each required adequate public notice prior to action by the respective entity.

¹² Letter from Liza M. Lowery, Chief Information Officer, Information Technology Agency, City of Los Angeles, to Thomas M. Wilson, Staff Attorney, Adelphia (March 21, 2003) (attached to this Opposition as Exhibit C).

say that it was “prepared to recertify” as to “channel counts and programming costs.”¹³ Once again, Adelphia made no suggestion as to when it might be prepared to recertify the bulk of the information contained in the Rate Filings.

This failure by Adelphia presented the City with unprecedented difficulties. The Commission’s rate forms require a cable operator to certify the truth and correctness of all the information submitted, so that the reviewing community can rely on that information. Given the admissions and allegations of fraud made with respect to Adelphia’s financial information, and the refusal of the current management to stand behind the data originally filed, it was impossible for the City to rely on the submitted information. Yet the only solution offered by Adelphia was to continue delaying action on these uncertified rates until some unspecified future date at which time Adelphia might be able to attest to reliable information.¹⁴ The City, however, could not stand idly by. Failure to act by June 1 would preclude subscriber rate refunds for improper rates, and Adelphia’s maximum permitted rates as filed the previous year would become effective.¹⁵ In other words, Adelphia’s subscribers would be overcharged into the indefinite future, and relief from past overcharges would be lost.

¹³ Letter from Andrew Elson, Vice President of Regulatory Accounting and Compliance, to Thera Bradshaw, Assistant General Manager, Information Technology Agency, City of Los Angeles 2-3 (May 22, 2003) (attached to the Stay Request as Exhibit J) (providing comments on the proposed Rate Order).

¹⁴ In fact, Adelphia informed the City in April that it would indefinitely delay the submission of its *next* rate filings. Letter from Terry Sergi, Rate Regulation Supervisor, to the City’s Information Technology Agency, dated April 7, 2003, attached to this Opposition as Exhibit D. This action by Adelphia cast further doubt on whether Adelphia would fully certify its 2002 Rate Filings within any reasonable time frame. The City is currently reviewing what steps it should take with respect to Adelphia’s ongoing failure to file for 2003 in accordance with the Commission’s rules.

¹⁵ 47 C.F.R. § 76.933(g)(2).

Accordingly, the City sought to set rates relying on the best information available, as the Commission's rules provide, and as the City had indicated to Adelphia on March 21.¹⁶ Given the wholesale unreliability of the information filed by Adelphia, this was no easy task. In the end, the City concluded that for Areas F, G, and H, the best way to approximate reasonable rates was to deny Adelphia's proposed increase and leave rates where they were at the end of the preceding rate year. This was not wholly satisfactory. In particular, the City is aware that the 2001 rate filings may also have incorporated faulty data: Adelphia has refused to certify its pre-2002 filings as well. The City has not been able to determine how far back in Adelphia's history the data may be contaminated by fraud. But because the company had effectively left the City without a rate filing that could be used to support an increase, the next best alternative in applying the Commission's rules was to go back to the rates previously in effect. Those rates had been chosen by Adelphia, and thus were presumptively compensatory. Absent reliable evidence supporting different rates, those rates provided the best available rates going forward.¹⁷

The situation in Area C, however, was different. There, the information in Adelphia's 2002 Rate Filing, once it had been analyzed and corrected by A&S, appeared to produce a basic service tier rate much *lower* than even the previous year's rate. Thus, even if one assumed the data provided by Adelphia were basically accurate, a rate reduction would have been required. Hence, for Area C, adopting the previous year's rate appeared to set the rate far too high. It would not have been appropriate for the City to leave such an unreasonable

¹⁶ 47 C.F.R. § 76.937(d). *See, e.g., Century New Mexico Cable Corporation: Appeal of Local Rate Order (Silver City, New Mexico)*, DA 95-1134, Memorandum Opinion and Order at ¶¶ 5, 8 (Cable Serv. Bureau May 23, 1995).

rate in place: the purpose of the Commission's rules, as directed by Congress, is to "ensure that the rates for the basic service tier are reasonable."¹⁸ Thus, in order to implement the Commission's rules as the Commission must have intended them to operate, the City accepted the figure recalculated by A&S from Adelphia's data as the regulated Area C rate.¹⁹ The City reached each of these conclusions subject to the possibility that further information might later allow for a better determination of what rates were reasonable according to the Commission's rules, carefully reserving its rights in that respect.²⁰

In setting Adelphia's basic rates under these extraordinary and trying circumstances, the City sought to ensure that Adelphia had every opportunity to show how more accurate regulated rates could be determined. First, the City expressly invited Adelphia to submit revised rate forms once the company was in a position to certify the necessary data. The City stated that as soon as Adelphia could certify its data, the City would review the resulting filings pursuant to applicable law.²¹ Moreover, in order to make doubly sure that Adelphia would not be unnecessarily disadvantaged by the Rate Order, the City offered an alternative mechanism by which Adelphia could justify its rates. The purpose of the Commission's rules is to set rates at a level approximating those that would be charged in a competitive marketplace. The City could therefore look to the rates Adelphia sets in areas where it is subject to *actual*

¹⁷ See Rate Order at §§ 2(b)-(j).

¹⁸ 47 U.S.C. § 543(b)(1).

¹⁹ See Rate Order at § 2(g).

²⁰ See Rate Order at § 3(p).

²¹ See Rate Order at §§ 2(g), 3(c).

wireline competition in the Los Angeles area.²² The Rate Order thus invited Adelphia to submit evidence of such actual competitive rates as a rationale for setting the Area C, F, G, and H rates if it wished to avoid the results the City had otherwise arrived at in the Rate Order based on the best available information.²³

Had Adelphia been seriously moving toward a full recertification of the Rate Filings, it could have taken advantage of the City's offer and filed revised and certified forms. Instead, Adelphia submitted no new information and did not certify the data already provided. Nor did the company submit actual competitive rates as an alternative. Instead, Adelphia filed this motion, the Stay Request, in an attempt to avoid complying with the City's Rate Order and to further delay relief to subscribers.

II. ADELPHIA FAILS TO MEET THE STANDARDS FOR A STAY.

In the Stay Request, Adelphia asks the Commission to allow it to keep rates at a level that *by its own admission* the company cannot reliably justify under Commission regulations. Here, again, Adelphia's Stay Request is different from any normal request for stay of a rate order. Adelphia seeks a stay to leave in place rates the company cannot claim that it has adequately justified. Adelphia seeks a stay to protect it from the consequences of the company's refusal to stand behind its Rate Filings.

²² See, e.g., Comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, and the Miami Valley Cable Council, In the Matter of Revisions to Cable Television Rate Regulations, MB Docket No. 02-144 *et al.*, filed Nov. 4, 2002, at 20-23.

²³ See Rate Order at § 3(b).

The Stay Request refers to the traditional four-factor test for a stay. The Commission may exercise its discretion to grant a stay if the petitioner demonstrates 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.”²⁴

Adelphia’s Stay Request fails on all four factors.

A. Subscribers, Not Adelphia, Will Suffer Irreparable Harm and Injury.

The only injury Adelphia points to is the possibility of “substantial revenue loss.”²⁵ As a matter of law, monetary loss alone is not irreparable harm.²⁶ And Adelphia would be able to recover any such losses through later rate adjustments. Even Adelphia will not assert that such recovery is impossible. All it can allege is that recovery might be “unlikely.”²⁷

In making even that attenuated claim, Adelphia conveniently ignores the protections expressly designed by the Commission and by the City to hold Adelphia harmless from any improperly ordered losses in revenue. Most strikingly, the Form 1240 true-up process

²⁴ *TCI Cablevision of Dallas, Inc.: Request for Stay of Local Rate Order of the City of Dallas, TX, CUID TX0742*, DA 00-1240, Memorandum Opinion and Order, 15 FCC Rcd. 9535, ¶ 2 (Cable Serv. Bureau June 6, 2000), citing *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). The Stay Request misstates the Commission’s policy on stays. The grant of a stay is a matter of discretion. Adelphia is thus incorrect when it claims the Commission “*must* grant a stay” if the four criterion are met. Stay Request at 7.

²⁵ Stay Request at 14.

²⁶ See, e.g., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Order, FCC 97-216, 12 FCC Rcd. 10175, 10188-90, ¶¶ 29-33 (1997) (rejecting the type of argument raised by Adelphia here). See also *In re KSWB, Inc.*, CSR-5106-N, Memorandum Opinion and Order, DA 98-2217, 13 FCC Rcd. 21867, 21869, ¶ 6 (Cable Serv. Bureau 1998); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674-75 (D.C. Cir. 1985); *Virginia Petroleum Jobbers*, 259 F.2d at 925.

specifically allows Adelphia to recover “any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.”²⁸ This provision, by itself, is sufficient to defeat Adelphia’s claim that it might suffer financial harm. And Adelphia’s failure to allege any injury other than financial harm disqualifies Adelphia’s stay request.²⁹

In addition, however, the City’s readiness to reconsider Adelphia’s rates if and when the company can provide sound data constitutes a second layer of protection for the company. As noted above, the Rate Order itself contains a provision encouraging Adelphia to come forward with sound and reliable data, upon which the City will re-address Adelphia’s rates. Adelphia ignores this option when it asks the Commission for special relief. This is telling evidence that Adelphia has no intention of providing a full certification of its Rate Filing at any foreseeable date – and that the company’s goal in this Stay Request is *indefinite* delay.³⁰

²⁷ Stay Request at 14.

²⁸ 47 C.F.R. § 76.944(c).

²⁹ Realizing the inadequacy of its claim, Adelphia argues weakly that “[i]n an increasingly competitive marketplace, it is unlikely that Adelphia will be in a position to recover the lost revenue at a later juncture.” In other words, future competitive forces might prevent Adelphia from overcharging subscribers in the future to make up for alleged undercharges in the past, even if such a make-up charge were authorized under FCC rules. But there is no evidence that Adelphia’s monopoly pricing power over basic cable services is or will be restrained in the future. And there is conclusive evidence that this business risk, if it exists, is solely of Adelphia’s creation. By refusing to comply with the Commission’s rules and refusing to file certified data, Adelphia now must accept the consequences of its own actions. Adelphia ignores the fundamental Congressional purpose in basic cable rate regulation – protection of subscribers from monopoly pricing power. This problem of “loss of future monopoly pricing power” is not relevant to fair application of existing regulations restraining existing monopoly pricing behavior.

³⁰ Adelphia acknowledges at p. 9 n.18 that the City has provided this option, but makes no claim that it is willing to take advantage of the City’s offer.

The real irreparable injury threatened by Adelphia's Stay Request is to Los Angeles subscribers – the third leg of the Commission's test for granting a stay. If the Commission grants Adelphia's request, innocent third parties will be injured – and they will be left without recourse or remedy. Any delay in Adelphia's refunds for past and improper rates charged will mean that subscribers will lose refunds. The Commission's rules allow the operator to provide refunds only to current subscribers.³¹ As subscriber churn changes the subscriber lists, former subscribers will not get any refunds. And this injustice will grow as time goes on. Rate appeals have taken as long as *eight years* to resolve.³² To put it bluntly, after eight years, about three percent of the affected subscribers are likely to be dead, and well beyond the reach of restitution.³³ Many more will have moved away or ceased to be cable subscribers. Thus, the Commission cannot rely on a bankrupt company's breezy assumption that refunds will always be available to ensure that overcharged subscribers are made whole.³⁴

³¹ See, e.g., *In re Austin CableVision, Petition to Appeal Franchising Authority's Ordinance Regulating Basic Cable Rates in Austin, TX*, DA 95-2363, Memorandum and Order, 10 FCC Rcd. 13,059, ¶ 7 (Cable Serv. Bureau Nov. 29, 1995).

³² See, e.g., *In re TCI of Pennsylvania, Inc. Appeals of Local Rate Orders (Pittsburgh, Pennsylvania)*, DA 03-1151, Memorandum Opinion and Order, ¶ 1 (Media Bureau April 16, 2003) (remanding a local rate order that had been appealed on March 21, 1995).

³³ See *Report On The Health of Angelenos*, Los Angeles County Department of Health Services, Office of Health Assessment and Epidemiology (2000), available at <http://lapublichealth.org/ha/reports/angelenos/angelenos.htm>, for annual mortality rates.

³⁴ Adelphia even asks to be excused from the FCC's normal requirement, consistent with the rules of Fed. R. Civ. Pr. 62(d), that a party seeking a stay must post a bond or put the disputed money in escrow pending the appeal of the Rate Order. Stay Request at 14-15. Adelphia's uncertain financial and legal status emphasizes the wisdom of the Commission's following its normal procedures and requiring an escrow in the event of any stay. Adelphia's extraordinary request should not be granted. It is important that the disputed subscriber payments collected during any pending appeal not be commingled with the assets of the company. Only an escrow can ensure that money will be available to reimburse subscribers.

Adelphia claims that an “accounting mechanism” in the FCC’s rules at 47 C.F.R. § 76.933(c) takes care of this problem.³⁵ This FCC provision allows a franchising authority to order refunds after a cable operator puts its filed rates into effect, *if* the franchising authority orders an “accounting order” within the first 90- or 150-day period. But § 76.933(c) does not even apply to a Form 1240 filing such as Adelphia’s. § 76.933(c) pertains only to the quarterly rate filing method under Form 1210, which Adelphia does not use in Los Angeles. And reported Commission actions have never used that rule to mandate refunds to overcharged subscribers. Rather, the Commission has uniformly allowed operators to make refunds to their subscribers existing at time of compliance.³⁶ Adelphia’s offer to “continue to track *its revenue*”³⁷ so that it can make “appropriate” refunds later is not the same thing as tracking each *subscriber* who has been overcharged.

Adelphia’s bankruptcy status, which the company cites in the Stay Request, is not a reason for leniency in this regulatory proceeding.³⁸ While the Commission and the City should not discriminate against a company in bankruptcy, neither should a company in bankruptcy receive more favorable treatment than other companies subjected to the same regulatory regime.³⁹ The company’s failure to justify its maximum permitted rates in Los Angeles is the fault of Adelphia itself and its leaders’ malfeasance. Bankruptcy does not change the nature of

³⁵ Stay Request at 14.

³⁶ *See, e.g., Austin* at ¶ 7.

³⁷ Stay Request at 14 (emphasis added).

³⁸ Stay Request at 14, 15-16.

³⁹ *Cf. In re Rose*, 23 B.R. 662, 666 (Bankr. D. Conn. 1982) (noting that bankruptcy provision does not “relieve debtors from requirements applicable to all”).

the disallowed rates or make it appropriate for subscribers in Los Angeles to pay illegal and inflated rates – even temporarily. Illegal revenues are not the property of the company or the bankrupt estate, any more than the proceeds of a bank robbery belong to the felon.

B. A Stay Would Not Be In the Public Interest.

The public interest requires the Commission to do justice to subscribers, to the company, and to the Commission's own processes. A stay of the Rate Order would frustrate subscriber relief. It would reward the company for fraud. And it would implicate the Commission in protecting a company with an admitted history of fraud from the consequences of its own misdeeds, at the expense of consumers.

Moreover, granting Adelphia's Stay Request would ignore the Commission's own practices, procedures, and regulations. If Adelphia had maintained its books and records in accord with proper accounting practices, as the Commission's rules require,⁴⁰ the company, the City, and the Commission would not be in this position today. Indeed, Adelphia's position in the Stay Request – that the Commission should punish the City for not giving Adelphia more time for the company to straighten out its data – implicitly admits that Adelphia now finds its own filed information unreliable. If Adelphia had been prepared to recertify its data at once when the City asked it to, much of the trouble in this proceeding could have been avoided. Thus, what is at stake in this proceeding is not just the protection of consumers from Adelphia's market power; it is the integrity of the Commission's own rules. Under these circumstances, there is no reason for the Commission to extend special protection to Adelphia by allowing it to continue collecting rates that it has failed to justify in accordance with Commission rules.

Adelphia is asking the Commission to protect the company from the consequences of its fraudulent behavior, rather than taking affirmative steps to come into compliance with the Commission's rules. The public interest demands that the company reform its behavior and work with the City through the mechanisms specified in the Rate Order.

C. Adelphia Cannot Meet Its Burden Of Proof Required To Succeed On the Merits.

Under the Commission's first test for granting a stay, Adelphia must show that it is likely to succeed on the merits of its appeal of the City's action. Adelphia cannot make that showing.

Adelphia has the burden of justifying its rates.⁴¹ In ruling on a rate appeal, the Commission does not conduct a *de novo* review, but instead will sustain the franchising authority's decision if there is a reasonable basis for the City's action.⁴² "[T]he Commission will defer to the judgment of the local franchising authority provided that there is a rational basis for the decision."⁴³ This deferential standard of review applies particularly to factual issues, such as whether a cable operator has provided sufficient reliable information to carry its

⁴⁰ See, e.g., 47 C.F.R. § 76.924(b).

⁴¹ 47 C.F.R. § 76.937.

⁴² See, e.g., *Falcon Cable Systems, Petition for Review of Local Rate Order (Florence, OR)*, DA 98-360, Memorandum Opinion and Order, 13 FCC Rcd. 4425, 4426 (Cable Serv. Bureau February 25, 1998).

⁴³ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd. 5631, 5731-32, FCC 93-177, ¶ 149 (May 3, 1993). See also *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, MM Docket 92-266, *Third Order on Reconsideration*, 9 FCC Rcd. 4316, 4346, FCC 94-40, ¶ 81 (March 30, 1994); Public Notice 42927, Questions and Answers on Cable Television Rate Regulation at A18 (May 6, 1994); *Silver City* at ¶ 5.

burden of proof. The Commission reverses a franchising authority's decision only when it finds that the franchising authority acted unreasonably under the Commission's rules in rendering the rate order.⁴⁴ It is also well settled that the City can act on the best available information if Adelphia fails to provide sufficient and reliable data.⁴⁵ As a general matter, this principle is designed to provide a local franchising authority with the flexibility necessary to deal with an uncooperative cable operator.

These Commission precedents, taken together, mean that the City's actions to ensure Adelphia is charging basic cable subscribers reasonable rates must be given deference, and the City's action may be overturned only if it lacked any "rational basis", *i.e.*, was arbitrary or capricious.⁴⁶

D. The City Reasonably Required Adelphia's Certification In Light Of The Company's Fraud.

As noted above, under the Commission's rules a rate filing must be certified by the cable operator.⁴⁷ Adelphia has failed to certify its filings, because after admissions of financial

⁴⁴ See *Falcon Cable Systems, op. cit.*

⁴⁵ See, e.g., *Silver City* at ¶¶ 5, 8, 10; *In re SBC Media Ventures, Inc. Appeal of Local Rate Order (Montgomery County, Maryland)*, DA 94-1251, Consolidated Order, 9 FCC Rcd. 7175, ¶ 15 (Cable Serv. Bureau Nov. 22, 1994); *In re Novato Cable Company Appeal of Local Rate Order (Novato, California)*, DA 95-629, Order, 10 FCC Rcd. 5158, ¶ 7 (Cable Serv. Bureau March 28, 1995); *In re Falcon First Communications, L.P., Appeal of Local Rate Orders (Whitfield County, Georgia)*, DA 99-891, Memorandum Opinion and Order, 14 FCC Rcd. 7277, ¶ 12 (Cable Serv. Bureau May 13, 1999); *In re Comcast Cablevision of Detroit, Inc. Appeal of Local Rate Order (Detroit, Mich.)*, DA 00-2748, 15 FCC Rcd. 24,022, ¶ 3 (Cable Serv. Bureau Dec. 7, 2000).

⁴⁶ See, e.g., *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking, FCC 93-177, 8 FCC Rcd. 5631, ¶ 149 (1993).

⁴⁷ See note 8 *supra*.

fraud, Adelphia refused to restate its certification. Therefore, the City could not accept the Rate Filings at face value, but had to arrive at a reasonable rate in the complete absence of reliable data from Adelphia.

Adelphia misstates the difficulty the City faced in dealing with the company's fraud. For example, the Stay Request refers blandly to "Adelphia's management transition" as if this were merely a transient organizational shift, rather than an upheaval that called into question the accuracy of the Rate Filings.⁴⁸

Adelphia now claims that it "expressly committed" to providing "a recertification of the Company's underlying cost data."⁴⁹ Presumably Adelphia is referring to its partial, last-minute offer in its May 22 comments to recertify two sets of facts, without any specified date as to when this might be done.⁵⁰ If so, this "commitment" was vague, incomplete, and untimely. The City was not obliged to extend the normal one-year review period – and delay relief to subscribers – still further. Rather, the City acted reasonably in establishing new rates based on the best available information, and setting up a procedure by which Adelphia could apply for reconsideration of its rates whenever the company was in fact prepared to certify the set of rate data upon which the City was expected to rely.

Adelphia complains that it was deprived of an "opportunity to substantiate" its Rate Filings.⁵¹ The record shows, however, that the City did give Adelphia several such opportunities, both before issuing the Rate Order (including an extension of the one-year

⁴⁸ Stay Request at 9; *see also id.* at 16.

⁴⁹ Stay Request at 2.

⁵⁰ *See* note 13 *supra*.

review period for Area C) and afterwards (in expressly allowing Adelphia to resubmit the Rate Filings with certified data). Adelphia failed to take advantage of these opportunities.

In sum, the City took responsible and effective steps to carry out the congressional mandate to protect subscribers from unreasonable rates, under extraordinary and difficult circumstances. Rather than becoming embroiled in Adelphia's fraud issues, the Commission should reject the Stay Request and let Adelphia proceed to the certification it now claims it can make, under the terms of the City's Rate Order, which were specifically designed to provide for such a reapplication by Adelphia.

To prevail on the merits, as the stay criteria require, Adelphia would need to show that the Commission's rules provide clear direction showing how a community is to deal with Adelphia's extraordinary situation and the company's refusal, or inability, to provide reliable filings. Adelphia would then need to show that the Rate Order is inconsistent with such clear guidance from the Commission. Adelphia cannot do so. Thus, Adelphia has failed to show a likelihood of success on the merits.

III. ADELPHIA'S STAY REQUEST IS OTHERWISE INCONSISTENT WITH THE COMMISSION'S REGULATORY APPROACH.

A. Adelphia's Appeal Challenges the Commission's Principle of the Burden of Proof.

Adelphia devotes a great deal of argument to the notion that the City cannot reject a rate filing altogether and revert to the last previous rate. For example, Adelphia claims to be

⁵¹ Stay Request at 6.

outraged by “a flat rejection of the Company’s last rate increase.”⁵² This claim, however, goes to the whole basis of the Commission’s rules about justifying a rate increase. If Adelphia wholly fails to justify an increase, *there is no increase*.

Accepting Adelphia’s position would reverse the entire Commission rule about the burden of proof in a rate proceeding.⁵³ That rule is not arbitrary. The cable operator *must* have the burden, because it has the data. But if a company can in effect disavow its entire filing – as Adelphia has done – and then demand that the City devise a substitute rate, this would allow Adelphia to cast that burden entirely on the City: to require the City to come up with data *Adelphia itself could not confirm* to justify a new rate. In other words, Adelphia claims the City must do Adelphia’s job of setting rates and must consider various factors to establish a rate different from the rate previously in effect.⁵⁴ But the Commission’s rules do not place that burden on the City. The City can reject the rate filing in its entirety as wholly inadequate and unreliable.

Because the company bears the burden of proof, a wholly inadequate rate filing can be rejected *in toto*. Thus, the Commission itself has denied a rate increase where no rate form was available to support the increase.⁵⁵ That is Adelphia’s situation in Los Angeles. Adelphia’s Rate Filing was revealed as fundamentally flawed when the company failed to

⁵² Stay Request at 13.

⁵³ 47 C.F.R. § 76.937.

⁵⁴ *See* Stay Request at 13-14.

⁵⁵ *See, e.g., Falcon Community Cable, L.P.: Complaint Regarding Cable Programming Service Tier Rate Increase*, DA 96-1082, Order, 11 FCC Rcd. 8027, ¶ 9 (Cable Serv. Bureau July 5, 1996) *modified by* Order on Reconsideration, 16 FCC Rcd. 20,253, ¶ 4 (2001).

recertify the accuracy of the data. This is the same thing as submitting no form at all. More recently, the Commission has stated: “Insufficient or incomplete cable operator responses may result in our finding that the rate increase is unreasonable.”⁵⁶ Since it is possible to find a rate increase, as a whole, unreasonable on the basis of insufficient or incomplete *responses* to data requests, it is *a fortiori* proper to find a rate increase unreasonable on the basis of an entire filing which is insufficient and invalid. For this reason, leaving Adelphia’s rates set as they were for the previous year in Areas F, G, and H, since Adelphia has failed to justify an increase, is consistent with the Commission’s rules.⁵⁷

The City faced a different situation, however, in Area C, where it had evidence from Adelphia that even Adelphia’s previous year’s rates were too high. As noted above, the City was unable to ensure that the previous year’s rates were reliable. Adelphia’s admitted fraud extends several years back. In Areas F, G, and H, the previous rates seemed the “lesser of evils” in terms of the best available information. In Area C, however, the information in the Rate Filing indicated that the 2002 rates should have been *lower* than the previous year’s rates. For such a result to emerge from a filing designed to justify higher rates – even a filing of

⁵⁶ *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order*, FCC 99-57, 14 FCC Rcd 5296, ¶ 48 (1999).

⁵⁷ Adelphia claims to seek preservation of the *status quo* and “minimizing potentially unnecessary rate changes,” as well as avoiding “customer confusion.” Stay Request at 15. Yet Adelphia objects to the City’s preservation of the *status quo* in Areas F, G, and H as it existed prior to the unreliable 2002 Rate Filings. And changing an illegal rate is a necessary change. Further, there is no serious argument that customers will object to a rate change that saves them millions of dollars a year.

Adelphia makes a further claim, without citation or explanation, that the City is “of course” precluded from setting a rate below the previous maximum permitted rate. It is unclear what this means, or what basis Adelphia has to make the assertion. Stay Request at 13.

dubious reliability – cast additional doubt, in Area C’s case, on the reasonableness of the previous year’s rates. Thus, in Area C the City was forced to recalculate a rate, even on the meager “best available” information – once again as the lesser of evils. In these peculiar circumstances, the City concluded that the suspect Rate Filing information was nonetheless the best available. The City’s conclusion, in these extraordinary circumstances, represents a factual determination, with respect to which the Commission should “defer to the judgment of the local franchising authority.”⁵⁸

B. Adelpia’s Principal Argument Amounts To A Demand For Indefinite Delay.

To a remarkable degree, Adelpia rests its Stay Request on the notion that Adelpia was mistreated because the City did not accept Adelpia’s offer to apply to the Commission for a *second* extension of the normal one-year review period.⁵⁹ The fact that Adelpia relies on this claim illustrates the weakness of Adelpia’s case on the merits. The City had already agreed to one extension for Area C, giving Adelpia additional time to get its house in order. Yet Adelpia still offered no date certain by which it would certify the Rate Filings as a whole. The City reasonably concluded that there was no reason to think that additional time would help. Thus Adelpia’s demand for further delay amounts to a claim that the City is *obliged* to extend the Commission’s time period *indefinitely* – while subscribers continue to be overcharged.

⁵⁸ See note 43 *supra* and accompanying text.

⁵⁹ See Stay Request at 2, 5, 6, 8, 9, 10.

IV. ADELPHIA'S FACTUAL ASSERTIONS ARE INSUBSTANTIAL AND PERFUNCTORY.

Adelphia's specific objections to the Rate Order are brief and insubstantial. Adelphia makes a serious argument only on the question of correct channel counts.

The Commission's rate regulation rules use the channel count for the basic tier service as a basic datum for the rate calculations. This should be a simple and unambiguous fact. In practice, cable operators often claim ambiguity because this one factor is so significant to the ultimate rate. And a cable operator's internal records are often inconsistent on this basic fact.

Adelphia's Stay Request claims that Adelphia "demonstrated" in its May 22 Comments that the channel counts used in the City's recalculation of Area C rates were erroneous.⁶⁰ Apparently Adelphia believes that its uncertified May 22 characterization of the channel counts as "actual" means the City must accept the May 22 letter as correct. That is neither the fact nor the law. The City's financial consultant, A&S, reviewed the May 22 and May 16 information submitted by Adelphia to determine whether this late-filed information warranted any changes in the rate calculations made in support of the draft Rate Order. The A&S analysis was embodied in a letter from Garth T. Ashpaugh of A&S to Frederick E. Ellrod III of MVE dated May 29, 2003, attached to this Opposition as Exhibit E. Mr. Ashpaugh pointed out:

First, the cost support [submitted by Adelphia in May 2003] conflicts with other information provided by Adelphia and information developed by A&S in our original review and analysis of the 2002 filings. For example, the cost support identifies channels on the Basic Tier that are not included in other sources of channel line-up information. The cost support also appears to identify several digital channels on the Basic Tier. In addition, the costs per channel shown in this support are materially different from the programming costs Adelphia included with the filing. For example, the filing shows the 4th

⁶⁰ Stay Request at 6, 10-11.

quarter 2002 per subscriber cost per channel of: “Hallmark” to be \$0.0800 whereas the May 16 response indicates the cost is \$0.0053; “The Weather Channel” to be \$0.1036 as compared to \$0.0748; and, “USA” at \$0.4350 when the invoice cost purports to be \$0.3450.

As explained in our original report, we reviewed Adelphia’s costs and then changed these costs to amounts known by A&S to be reasonable and customary. Based on the new information provided by Adelphia, we conclude that the data we relied upon is the best available information for setting rates. Nonetheless, for purposes of this letter, we updated our costs in our original report to reflect the costs provided by Adelphia in the May 16 package, insofar as that can be done given the internal inconsistencies in the Adelphia data. Since A&S was using different costs than filed by Adelphia, contrary to the suggestions in Mr. Elson’s letter, updating our analysis had only a very small impact on our determined Maximum Permitted Rate – only about \$0.01. There continue to be discrepancies in the cost and channel line-up information and we see no reason to change our original report.

In dealing with conflicting information provided by the cable operator itself, the City was forced to make factual determinations as to which set of information was more reliable. Here, the City concluded that the original A&S calculations represented the best available information in terms of factual reliability. As Mr. Ashpaugh noted, the difference between the late-filed May 2003 information from Adelphia and the information *used in the A&S report* amounted to only about one cent in the actual rate – hardly the “dramatic impact” Adelphia claims in the Stay Request at 10. If the channel count controversy represents the most dramatic difference between the results Adelphia seeks and those arrived at by the City, one can only conclude that the drama Adelphia seeks to infuse into its Stay Request is more hype than reality.

Adelphia appears to believe that the failure to refer specifically to Adelphia’s filed comments in the City’s Rate Order is a defect in the Rate Order.⁶¹ As indicated above,

⁶¹ See Stay Request at 5, 10 (noting that “the City chose the politically attractive, but legally unacceptable, solution of simply ignoring the Comments”).

however, the City's financial experts did in fact review Adelphia's comments and recommended against any changes in the Rate Order based on the late, uncertified submission. The City appropriately concluded that no significant changes needed to be made. The mere omission of a specific reference to the late-filed comments in the Rate Order does not call into question the validity or reasonableness of the Rate Order.⁶²

V. CONCLUSION

The Commission has a four-part test for considering whether to issue a stay of the City's Rate Order. Adelphia has failed to meet any of the four conditions for obtaining a stay. In particular, Adelphia has not shown that the Commission is likely to uphold the company's position on the merits. The City acted reasonably throughout and in full compliance with the Commission's rules and regulations. Any stay in the Rate Order will injure subscribers. And full implementation of the Rate Order does not threaten any irreparable harm to Adelphia.

⁶² Adelphia makes one-sentence references to two other objections in a footnote, Stay Request 11 n.22. It does not appear that these side remarks require detailed refutation here. If the Commission wishes to have such additional issues briefed, the City will be happy to provide a detailed discussion.

For the reasons indicated above, in light of the extraordinary circumstances surrounding Adelpia's failure to certify the Rate Filings, the Commission should reject Adelpia's motion for stay.

Respectfully submitted,



Rockard J. Delgadillo
City Attorney
Joshua Perttula
Special Assistant City Attorney
Philip Lam
Deputy City Attorney
200 North Main Street, Suite 800
Los Angeles, CA 90012

Nicholas P. Miller
Frederick E. Ellrod III
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, N.W. #1000
Washington, D.C. 20036-4306
202-785-0600

Counsel for the City of Los Angeles, CA

June 16, 2003

Certificate of Service

I hereby certify that I have caused to be mailed this 16th day of June, 2003, copies of the foregoing Opposition of the City of Los Angeles, California, to Request For Emergency Stay of Local Rate Order, by first-class mail, postage prepaid, or as otherwise indicated, to the following persons:

Steven J. Horvitz (overnight delivery)
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

Andrew Elson (overnight delivery)
Vice President of Regulatory Accounting
And Compliance
Adelphia Communications Corporation
5619 DTC Parkway
Greenwood Village, CO 80111

John Norton, Deputy Division Chief
Media Bureau-Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554



Frederick E. Ellrod III

Washington, D.C.
June 16, 2003

EXHIBIT A

Declaration of Patrick Collins

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Century-TCI California, L.P.

Order Setting Basic Service Rates

Los Angeles, CA (CA0253, CA1194)

File No. _____

**DECLARATION OF PATRICK COLLINS
IN SUPPORT OF
OPPOSITION OF THE CITY OF LOS ANGELES, CALIFORNIA
TO REQUEST FOR EMERGENCY STAY OF LOCAL RATE ORDER**

I, Patrick Collins, declare as follows:

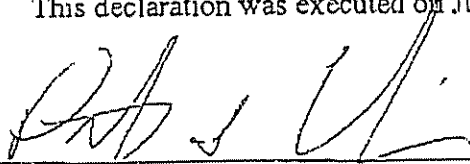
1. I submit this declaration in support of the Opposition ("Opposition") submitted by the City of Los Angeles (the "City") in the above-captioned matter. I am fully competent to testify to the facts set forth herein, and if called as a witness, I would testify to them.

2. I am a Financial Analyst for the City's Information Technology Agency. Among other duties, I conduct the staff review and analysis of all cable rate filings for the City.

3. I have reviewed the City's Opposition and am familiar with the contents thereof and the matters referred to therein insofar as they relate to the City's review of Adelphia's 2002 Rate Filings.

4. I declare under penalty of perjury that the facts contained within the Opposition insofar as they relate to the City's review of Adelphia's 2002 Rate Filings, and the facts stated herein, are true and correct to the best of my knowledge and belief.

This declaration was executed on June 16, 2003, at Los Angeles, California.



Patrick Collins

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EXHIBIT B

Declaration of Garth T. Ashpaugh

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Century-TCI California, L.P.

Order Setting Basic Service Rates

Los Angeles, CA (CA0253, CA1194)

File No. _____

**DECLARATION OF GARTH T. ASHPAUGH
IN SUPPORT OF
OPPOSITION OF THE CITY OF LOS ANGELES, CALIFORNIA
TO REQUEST FOR EMERGENCY STAY OF LOCAL RATE ORDER**

I, Garth T. Ashpaugh, declare as follows:

1. I submit this declaration in support of the Opposition ("Opposition") submitted by the City of Los Angeles (the "City") in the above-captioned matter. I am fully competent to testify to the facts set forth herein and, if called as a witness, I would testify to them.

2. I have served as President and Member of Ashpaugh & Sculco, CPAs, PLC, ("A&S") since December 1999. I am licensed as a Certified Public Accountant in the States of Florida and Missouri. I previously served as an Audit Supervisor for the Missouri Public Service Commission. I earned my Bachelor of Science in Business Administration from the University of Missouri in 1977.

3. I have over twenty years of experience in cable and utility rate regulation matters. Since 1992, I have worked with over 200 cities and counties in cable-related matters. I have performed financial analyses and audits of cable operator rate and equipment filings, renewal

proposals, and transfer applications in Arizona, California, Florida, Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Wisconsin and Wyoming. I have also assisted clients in evaluating mergers and purchases including Kansas City Power and Light and UtiliCorp, Baltimore Gas and Electric Company and Potomac Electric Power Company, SBC Media and Prime Communications, Prime Communications and Comcast, AT&T Communications and Tele-Communications Inc., and AT&T Broadband and Comcast Communications.

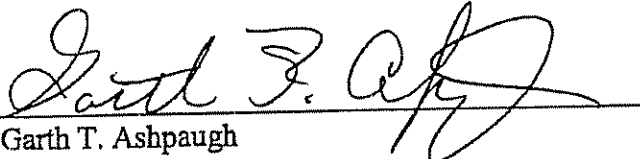
4. In addition to the City, I have performed reviews of cable programming rate and equipment filings for numerous communities since 1993, including Detroit, Michigan; Tallahassee, Florida; Arlington County, Virginia; Salisbury, Maryland; Montgomery County, Maryland; Albuquerque, New Mexico and numerous cable and telecommunications commissions in Minnesota.

5. I have reviewed the City's Opposition and am familiar with the contents thereof and the matters referred to therein insofar as they relate to the analysis carried out and reports produced by A&S.

6. I am not aware of any facts that would require a change in the results arrived at in the A&S analysis of Adelphia's 2002 Rate Filings with the City, as those results are set forth in the documents referred to in the Opposition.

7. I declare under penalty of perjury that the facts contained within the Opposition insofar as they relate to the analysis carried out and reports produced by A&S, and the facts stated herein, are true and correct to the best of my knowledge and belief.

This declaration was executed on June 13, 2003, at Winter Park, Florida.


Garth T. Ashpaugh

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EXHIBIT C

**Letter from Liza M. Lowery of the City to Thomas M. Wilson of Adelpia
Dated March 21, 2003**

CITY OF LOS ANGELES
CALIFORNIA

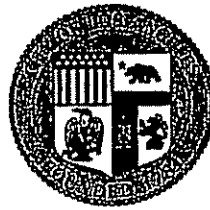
**INFORMATION TECHNOLOGY
AGENCY**

LIZA M. LOWERY
CHIEF INFORMATION OFFICER

JAMES G. GASTON
EXECUTIVE OFFICER

ASSISTANT GENERAL MANAGERS

THERA G. BRADSHAW
CLIFFORD ENG
DENNIS E. FRADY
KANTON JOE
MARY KAY KOTZMAN



JAMES K. HAHN
MAYOR

ROOM 1400, CITY HALL EAST
200 NORTH MAIN STREET
LOS ANGELES, CA 90012
(213) 485-2892
FAX (213) 847-3512

WWW.LACITY.ORG/ITA

March 21, 2003

REF: OPP-182-03

Mr. Thomas M. Wilson
Staff Attorney
Adelphia Communications
1 North Main Street
Coudersport, PA 16915-1141

Re: AREA C (EAST SAN FERNANDO VALLEY) / 2002 FORM 1240 AND 1205

Dear Mr. Wilson:

This letter is in response to the failure of Adelphia Communications (Adelphia) to provide timely certified information regarding the rate increase in Area C. The City must respond within one year to challenge a rate increase, in this case by March 29, 2003 for Area C. Although Information Technology Agency (ITA), with assistance from the City Attorney's Office and outside consultants, has worked diligently to review the rate increase, we will be unable to respond by March 29, 2003 since Adelphia has not provided the necessary financial information in a certified form as required by law.

In a letter dated February 27, 2003, ITA specifically requested that Adelphia swear to the accuracy and reliability of the information used to complete forms 1240 and 1205, as well as the accuracy and reliability of the information contained in the forms. Adelphia's response, dated March 11, 2003, stated that:

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 another. As well, we are unable to predict with any certainty when Adelphia would be in a position to definitively respond to this request.

This extraordinary response, more than 11 months after filing the requested rates with the City, means that the City can not rely on the accuracy or the integrity of Adelphia's financial filings. This lack of certified information, if it persists, will force the City to look to other information to determine the appropriateness of the proposed rates.

Mr. Thomas M. Wilson
March 21, 2003
Page 2

Accordingly, the City contacted the Federal Communications Commission (FCC) to seek its approval of the new date by which to complete its review of Adelphia's rate increase. The City is now in receipt of the FCC order of March 20, 2003, permitting the City to review Adelphia's rate filing, including the ordering of any rate refunds, until June 1, 2003. As you are aware, the City sought such an order from the FCC due to Adelphia's failure to provide the City with the certified financial information required by federal and local law. The City has taken such action to avoid placing Adelphia's subscribers in the City at risk. The FCC's approval of the June 1, 2003 date for final City action will assure that the City can order appropriate rate refunds back to March 29, 2002, the actual date Adelphia first filed the requested rate approval.

This letter is to alert Adelphia that the City will not tolerate further delays. If Adelphia has not provided the City with the required financial data and certified its accuracy by April 15, 2003 as promised, the City will issue a rate order on June 1, 2003 based on the best available information.

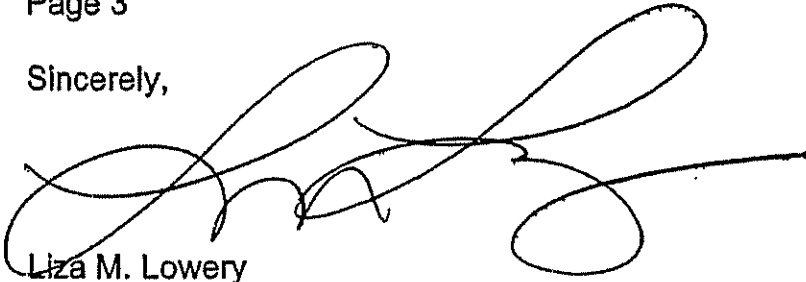
ITA staff is available when Adelphia provides the necessary information. In addition, ITA staff is sending a separate letter detailing to you again what is required to have complete information from Adelphia upon which ITA can base a final rate order. Please be advised that ITA must have this certified financial information no later than April 15, 2003 to allow time to evaluate the information and for the City to act on a rate order by June 1, 2003. Additionally, in a phone conversation with ITA staff on Monday, March 17, 2003, Adelphia agreed to meet with ITA and arrange to provide necessary data prior to April 15, 2003. Please immediately advise ITA of the dates Adelphia representatives are available to meet with my staff to coordinate the receipt of the certified data.

ITA is disappointed in the amount of time Adelphia has taken to respond to our numerous requests for certified information to justify the rate filings of last year. ITA will not wait any longer than April 15, 2003 for the information Adelphia is required by law to provide the City. It is Adelphia's financial improprieties and inability to certify the truthfulness and accuracy of the financial records relied upon in preparation of 2002 forms 1240 and 1205 for Franchise Areas C that has created the delay for final City action and the need for the order of the FCC referred to above.

I trust that you will meet the deadlines outlined above, as promised.

Mr. Thomas M. Wilson
March 21, 2003
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read 'Liza M. Lowery', with a long horizontal stroke extending to the right.

Liza M. Lowery
Chief Information Officer

cc: Board of Information Technology Commissioners
Randy Fisher, Adelpia
Laurence Windsor, Adelpia
Joshua Perttula, Office of the City Attorney
Edward Perez, Office of the City Attorney
Nick Miller, Miller & Van Eaton
Thera Bradshaw, ITA
Dennis Frady, ITA

EXHIBIT D

**Letter from Terry Sergi to the City's Information Technology Agency
Dated April 7, 2003**

Adelphia

LFA NOTICE FOR FILING DELAY

TELECOMMUNICATIONS
2003 APR 11 PM 12:15

RAW # 7275

April 7, 2003

Information Technology Agency
City of Los Angeles
120 South San Pedro Street
Los Angeles, CA 90012

Dear Sir or Madam:

As you may know, on March 4, 2003 the U.S. Bankruptcy Court approved the appointment of a new management team for Adelphia. The new management team is currently reviewing all of the Company's product offerings. Since basic service, equipment and installation prices represent a material component of this analysis, Adelphia will be delaying its 2003 FCC Forms 1240 and 1205 until further notice.

We will continue to keep you informed of any new developments and will provide you with reasonable advance notice prior to submitting the 2003 filings.

Please feel free to contact me at (814) 274-6248 if you have any questions regarding this matter.

Sincerely,



Terry Sergi
Rate Regulation Supervisor

1 North Main Street
Coudersport PA 16915
Phone (814) 274-9830

EXHIBIT E

**Letter from Garth T. Ashpaugh of A&S to Frederick E. Ellrod III of MVE
Dated May 29, 2003**



May 29, 2003

AS1015-09

Frederick E. Ellrod III, Esquire
Miller & Van Eaton, PLLC
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036-4320

Subject: **Review of Adelphia's Additional Information**

Dear Rick:

The City of Los Angeles Information Technology Agency ("ITA") provided Ashpaugh & Sculco, CPAs, PLC ("A&S") a copy of the additional information that Adelphia provided by letter dated May 16, 2003 and date stamped by ITA May 20, 2003. This additional information provided some cost support for programming expenses included in Adelphia's 2002 filed FCC Forms 1240 for Franchise Areas C, F, G and H. In addition, A&S reviewed a May 22 letter from Andrew Elson to Thera Bradshaw which contained several specific criticisms of the A&S analysis. We have reviewed the cost support and the criticisms and provide the following comments.

First, the cost support conflicts with other information provided by Adelphia and information developed by A&S in our original review and analysis of the 2002 filings. For example, the cost support identifies channels on the Basic Tier that are not included in other sources of channel line-up information. The cost support also appears to identify several digital channels on the Basic Tier. In addition, the costs per channel shown in this support are materially different from the programming costs Adelphia included with the filing. For example, the filing shows the 4th quarter 2002 per subscriber cost per channel of: "Hallmark" to be \$0.0800 whereas the May 16 response indicates the cost is \$0.0053; "The Weather Channel" to be \$0.1036 as compared to \$0.0748; and, "USA" at \$0.4350 when the invoice cost purports to be \$0.3450.

As explained in our original report, we reviewed Adelphia's costs and then changed these costs to amounts known by A&S to be reasonable and customary. Based on the new information provided by Adelphia, we conclude that the data we relied upon is the best available information for setting rates. Nonetheless, for purposes of this letter, we updated our costs in our original report to reflect the costs provided by Adelphia in the May 16 package, insofar as that can be done given the internal inconsistencies in the Adelphia data. Since A&S was using different costs than filed by Adelphia, contrary to the suggestions in Mr. Elson's letter, updating our analysis had only a very small impact on our determined Maximum Permitted Rate – only about \$0.01. There continue to be discrepancies in the cost and channel line-up information and we see no reason to change our original report.

Adelphia has also raised issues regarding the channel counts used in the A&S report. As indicated above, Adelphia's latest information continues to conflict with other sources of information on the Basic Tier channel line-up for the periods involved in the 2001 and 2002 FCC Forms 1240 filed with the City of Los Angeles. The City's initial request for additional information and support for the 2002 filing specifically requested information from Adelphia's head-end engineers regarding the channel line-up for the Basic Tier. This information still has not been provided. It has been our experience that when such discrepancies in the channel line-up occur, the head-end engineer information usually provides a reasonable basis to sort out the problems.

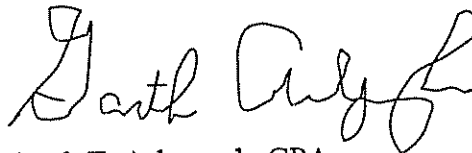
Again, A&S is not persuaded that our original report should be changed based upon the latest Adelphia response. There continues to be discrepancies between Adelphia's own documents on the Basic Tier channel line-up. A&S based our original report on the best available information and does not believe any information has been provided that alters our original analysis.

Finally, the May 22 letter seems to suggest that there is no relationship between the company's rate filings and its ongoing examination of the accuracy of its books and records. That is not correct. The City asked the company to certify the data in the company's rate filings; if there was no connection between the company's misstated books and records and the rate filings, this is something that the company should have been able to do quite easily. Indeed, the FCC forms *require* certification in order to be valid filings. The company could not certify the filings. Public reports of errors in Adelphia's books and records suggest that there could be several changes that would affect data entered on FCC rate forms.

After taking the new data and the May 22 arguments into account, we stand by our report. Please let us know if you need any further assistance in this matter. If you have any questions, please call me at (407) 645-2020.

Sincerely,

ASHPAUGH & SCULCO, CPAs, PLC



Garth T. Ashpaugh, CPA
President and Member