

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

In the Matter of:)	
)	
BellSouth Wireless Cable, Inc. and)	CSR 5521-E
BellSouth Interactive Media Services, Inc.)	
)	Unincorporated Dade Co., FL
Petition for Special Relief)	
Requesting a Finding of Effective Competition)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 2000

Released: May 15, 2000

By the Deputy Chief, Cable Services Bureau:

1. BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (collectively "BellSouth") filed a Petition for Special Relief¹ requesting a finding of effective competition for BellSouth's planned cable franchise planned for the unincorporated areas of Dade County, Florida in conjunction with its showing of compliance with Section 21.912 and 74.931(h) of the Commission's rules regarding cable/wireless cable cross-ownership and cross-affiliation restrictions.² Adelphia Cable Partners, L.P. ("Adelphia") filed an opposition, to which BellSouth replied.

2. The Communications Act and the Commission's rules provide that only the rates of cable systems that are not subject to effective competition may be regulated.³ One of the bases by which a cable system will be deemed subject to effective competition is if fewer than 30 percent of the households in the system's franchise area subscribe to the cable system's service.⁴ In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that

¹ In 1998, the Mass Media Bureau informed BellSouth Corporation that it must observe the Cable Services Bureau's special relief Rule 76.7 when BellSouth submits showings that its wireless cable systems comply with Rule 21.912 based upon the "effective competition" exception to Section 21.912. *Letter dated January 21, 1998, from Roy J. Stewart, Chief, Mass Media Bureau to Charles G. Cline, Kenneth W. Garrard, BellSouth Wireless Cable, Inc. and BellSouth Corporation* (File Nos. 50849-CM-AL(1)-97 and 50851-CM-AL(2)-97). The scope of this Order is limited to addressing BellSouth's claims regarding effective competition and its cable franchises.

² 47 C.F.R. §§ 21.912, 74.931(h).

³ Communications Act § 623(a)(2), 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

⁴ Communications Act § 623(l)(1)(A), 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(1).

⁵ 47 C.F.R. § 76.906.

effective competition as defined by Section 76.905 of the Commission's rules, is present within its franchise area.⁶

3. In its petition, BellSouth submitted data indicating the total number of occupied households in BellSouth's franchise area, and the number of subscribers BellSouth would have to serve to be within the 30 percent service limit.⁷ BellSouth contends that once its system is constructed, and it begins service, effective competition will exist for the foreseeable future because it will initially have a low number of subscribers.⁸ BellSouth maintains that it filed its petition prior to completion of the construction of its cable system because it was ordered twice by the Commission to make waiver requests and effective competition showings for the purposes of cross-ownership restrictions before construction progressed to the point at which its unbuilt cable interests became cable systems.⁹ In opposition, Adelphia argues that BellSouth should not seek a finding of effective competition until it has completed construction of its cable system.¹⁰

4. We find that BellSouth submitted reliable data regarding the number of households in unincorporated Dade County. Given that there are over 390,000 occupied households, and the substantial barriers to entry for competitive alternatives to incumbent cable operators,¹¹ we believe it is reasonable to conclude that once the BellSouth's cable system begins operation, its percentage of subscribers will be less than 30 percent. Therefore, we find that BellSouth's systems serving unincorporated Dade County will be subject to low penetration effective competition once the system is built and service commences. We disagree with Adelphia that BellSouth's petition is not ripe for consideration. BellSouth asks for a ruling that its system will be subject to effective competition in order to avoid violation of Section 21.912, the Commission's cable/wireless cable cross-interest restriction.¹² Under the circumstances of this case, without a ruling prior to completion of construction, BellSouth potentially would have to violate Section 21.912 before it could seek a waiver, or alternatively, forego building its cable system. By issuing a prospective ruling, we extract BellSouth from its procedural dilemma. Adelphia's contention that "BellSouth can deprive Adelphia" of its own basis to obtain a local exchange carrier ("LEC") effective competition finding is true regardless of the ruling in this case.¹³ Under the LEC effective competition test, an incumbent cable operator can prove effective competition based upon a LEC offering video programming to subscribers in its franchise area.¹⁴ Thus, the incumbent cable operator must always wait for the LEC to construct and operate its system before it can prove LEC effective competition. Our prospective ruling on BellSouth system does not change this requirement.

⁶ 47 C.F.R. § 76.905(b)(1).

⁷ BellSouth claims that there are 393,640 occupied households in unincorporated Dade County, of which it would have to serve 118,092 to be above the 30% threshold. Petition at 5.

⁸ *Id.*

⁹ BellSouth Reply at 3.

¹⁰ Adelphia Opposition at 2.

¹¹ *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Sixth Annual Report, 15 FCC Rcd 978, 1044(2000).

¹² 47 C.F.R. §21.912.

¹³ Adelphia Opposition at 3.

¹⁴ 47 C.F.R. § 76.905(b)(4).

5. Accordingly, **IT IS ORDERED** that the portion of the petition for special relief requesting a finding of effective competition filed by BellSouth **IS GRANTED**.

6. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁵ 47 C.F.R. § 0.321.