

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

In the Matter of:	)	
	)	
United Cable Television Corporation d/b/a TCI	)	CSR 5306-E
Cablevision of Treasure Valley.	)	
	)	
Petition for Determination of Effective	)	
Competition in Ada County (CUID ID0097),	)	
Canyon County (CUID ID0098) and Meridian	)	
(CUID ID0064), Idaho	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 19, 2000**

**Released: October 25, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. United Cable Television Corporation d/b/a TCI Cablevision of Treasure Valley ("TCI") has filed with the Commission a petition pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in Meridian and the unincorporated portions of Ada and Canyon Counties, Idaho. TCI alleges that its cable systems serving these communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation. More particularly, TCI claims the presence of effective competition in Meridian and the unincorporated portion of Ada County stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc.<sup>3</sup> and Dish Network,<sup>4</sup> and by an unaffiliated wireless cable operator serving these two communities, Wireless Broadcasting Systems ("WBS"). TCI claims it is subject to effective competition in these communities under the "competing provider" effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.<sup>5</sup> TCI further claims that it is subject to effective competition in the unincorporated portion of Canyon County because fewer than 30 percent of the households in this community subscribe to TCI's cable services. TCI asserts that it is thus subject to

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<sup>1</sup>47 U.S.C. § 543(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(4).

<sup>3</sup>DirecTV, Inc. has acquired PRIMESTAR and U.S Satellite Broadcasting., Inc.

<sup>4</sup>DISH Network is the registered trademark of EchoStar Communications Corporation.

<sup>5</sup>See 47 U.S.C. § 543(1)(1)(B), which sets forth the "competing provider" effective competition test.

effective competition in this community under the “low penetration” effective competition test set forth in Section 623(1)(1)(A) of that act.<sup>6</sup> 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,<sup>7</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>8</sup> 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.<sup>9</sup> Section 623(1) of the Communications Act provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth therein is met.<sup>10</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations<sup>11</sup>

### A. Application of The “Competing Provider” Effective Competition Test In Ada County and Meridian, Idaho

3. Section 623(1)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its 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 programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15%) of the households in the franchise area.<sup>12</sup> Turning to the first prong of this test, we find that the programming of DBS providers, such as DirecTV and Dish Network, satisfy the Commission's programming comparability criterion. 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.<sup>13</sup> TCI has provided evidence of the advertising of DBS service in national media serving the franchise areas.<sup>14</sup> 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.<sup>15</sup> We find that TCI has demonstrated that Meridian and the unincorporated portion of Ada County are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which

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<sup>6</sup>See 47 U.S.C. § 543(1)(1)(A), which sets forth the “low penetration” effective competition test.

<sup>7</sup>47 C.F.R. § 76.906.

<sup>8</sup>See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>9</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>10</sup>See 47 U.S.C. § 543(1)(1)(A)-(D).

<sup>11</sup>See 47 C.F.R. §76.905.

<sup>12</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>13</sup>See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>14</sup>See TCI Petition at 5 and Exhibit C.

<sup>15</sup>See 47 C.F.R. s76.905(g). *See also* TCI Petition at 5-6 and Exhibit D. Exhibit D includes channel line ups for TCI's cable systems serving these communities as well as those of Direct TV, Dish TV and WBS.

offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. 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. TCI provided 1990 Census data showing 18,614 households in the unincorporated portions of Ada County and 3,612 households in Meridian.<sup>16</sup> TCI also provided information showing that the MVPDs other than TCI, the largest MVPD (WBS, DBS and C-Band providers) provide service to 12,266 households in unincorporated Ada County (or 66% of the 18,614 Ada County households), and to 603 households in Meridian (or 16.7% of the 3,612 Meridian households).<sup>17</sup> Based on this record, we find that TCI has demonstrated that the number of households subscribing to programming services offered by WBS, other than the largest MVPD (TCI), exceeds 15 percent of the households in the unincorporated portions of Ada County and in Meridian. TCI also demonstrated on this record that WBS is physically able to offer MVPD service to subscribers in these two communities, that there exists no regulatory, technical, or other impediments to households within these communities taking the services of WBS, and that potential subscribers in these communities have been made reasonably aware of the MVPD services of WBS.<sup>18</sup> Therefore, the second prong of the competing provider test is also satisfied. Based on the foregoing, we conclude that TCI has submitted sufficient evidence demonstrating that its cable systems serving Meridian and the unincorporated portions of Ada County, Idaho, are subject to effective competition under the “competing provider” test.

**B. Application of the “Low Penetration” Effective Competition Test in Canyon County, Idaho**

5. Another test 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 subscribes to the system's service.<sup>19</sup> TCI has provided information showing that only 1,081, or 8.8% of the 12,314 households in its Canyon County franchise area subscribe to its cable services.<sup>20</sup> Therefore, we find that TCI's cable system is subject to low penetration effective competition in this franchise area.

6. Based on the foregoing, we conclude that TCI has submitted sufficient evidence demonstrating that its cable systems serving Meridian and the unincorporated portions of Ada and Canyon County, Idaho are subject to effective competition.

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<sup>16</sup>TCI Petition at 7-9 and Exhibits A & B. 1990 Census data satisfies effective competition decision requirements. *See Cable Operators' Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Cable Service Rates*, 9 FCC Rcd 3656 (1994).

<sup>17</sup>The numbers of subscribers in Ada County are: WBS, 399; DBS and C-Band, 204; TCI, 4,598. The numbers of subscribers in Meridian are: WBS, 6260; DBS and C-Band, 6,006; TCI, 7,881. Petition at 7-9 and Exhibits A, B, G & H.

<sup>18</sup>TCI Petition at 8-9 and Exhibits G & H.

<sup>19</sup>The “low penetration” effective competition test.

<sup>20</sup>Petition at 9-10 and Exhibits A, B & G.

**III. ORDERING CLAUSES**

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by United Cable Television Corporation d/b/a TCI Cablevision of Treasure Valley **IS GRANTED**.

8. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>21</sup>47 C.F.R. §0.321.