

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

In the Matter of:)
)
Constel Communications, L.P.)
)
Petition for Determination of Effective)
Competition in Orange County (CUID Nos.)
FL1053, FL1054 & FL1056) and Hernando)
County (CUID No. FL 1055), Florida)

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2000

Released: December 20, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. 1. Constel Communications, L.P. (“Constel”) has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and Sections 76.7(a)(1) and 76.905(b)(1) of the Commission’s rules for a determination of effective competition in unincorporated portions of Orange County and Hernando County, Florida (the “Communities”). Constel alleges that its cable systems serving the Communities are subject to effective competition and are therefore exempt from cable rate regulation. Constel claims the presence of effective competition in the Communities because fewer than thirty percent of the households in the Communities subscribe to the cable services of its cable systems serving the Communities. 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,¹ as that term is defined by Section 76.905 of the Commission’s rules.² 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.³ Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”⁴ For these purposes, the Commission accepts 1990

¹47 C.F.R. § 76.906.

²47 C.F.R. § 76.905.

³See 47 C.F.R. §§ 76.906 & 907.

⁴47 U.S.C § 543(l)(1)(A).

census data as an appropriate measure of households and defines households as occupied housing units.⁵ The Commission has stated:

The first statutory test for effective competition is fulfilled when fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system. The measurement of subscribership under this test will be based on the subscribership of the particular cable system in question, and not on the aggregation of the subscriberships of all cable systems and competitors in the franchise area.⁶

3. Constel submitted evidence regarding household and subscriber data which show that its cable systems serve less than 30 percent of households in the cable communities at issue. Constel provided occupied household data based on 1990 Census data from each community in the franchise area, which it then used to calculate subscriber-to-occupied household penetration ratios. Constel provided data showing that it had a total of 524 subscribers in Orange County where there were 159,000 occupied households, and 984 subscribers in Hernando County where there were 39,063 occupied households. This data shows a total penetration level of 0.3% in Orange County and of 2.5% in Hernando County.⁷ Based on this record, we conclude that Constel has demonstrated that its cable systems meet the requirements of low penetration effective competition under our rules, and we grant its petition.

III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Constel of Communications, L.P. **IS GRANTED**.

5. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Service Bureau

⁵See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Third Order on Reconsideration*, 9 FCC Rcd 4316, 4325-26 (1994).

⁶See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 (1993) and 47 C.F.R § 76.915(a).

⁷Despite the fact that Constel's 1990 Census data is nearly a decade old, we have no concern that any intervening population changes have rendered our effective competition determination incorrect, considering that intervening household increases would only serve to lower Constel's penetration levels.

⁸47 C.F.R. §0.321.