

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

In the Matter of:	)	
	)	
Marcus Cable Associates, d/b/a Charter Communications	)	
	)	
Petitions for Determination of Effective Competition in: Burlson, Texas (CUID No. TX1214); Keller, Texas (CUID No. TX0584); Mansfield, Texas (CUID No. TX0549); Edgecliff Village, Texas (CUID No. TX1215); Kennedale, Texas (CUID No. TX0711); Blue Mound (CUID No. TX0911); and North Richland Hills (CUID No. TX0632)	)	CSR 5704-E CSR 5705-E CSR 5706-E CSR 5707-E CSR 5708-E CSR 5709-E CSR 5710-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 19, 2001**

**Released: July 25, 2001**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Marcus Cable Associates, d/b/a Charter Communications (“Charter”), has filed seven separate petitions pursuant to Sections 76.905 of the Commission’s rules for determinations of effective competition in seven Texas communities. Charter alleges that its cable systems serving Burlson, Keller, Mansfield, Edgecliff Village, Kennedale, Blue Mound, and North Richland Hills (the “Communities”) are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation and related requirements. Charter claims the presence of effective competition in the Communities stems from the competing services provided by DirecTV and EchoStar, two satellite carriers providing video services to the above captioned Communities. Charter’s petitions are unopposed.

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.<sup>3</sup> One of the bases by which a cable system will be deemed subject to effective competition is where a franchise area is: (i) served by at least

<sup>1</sup> 47 U.S.C. § 543(l)(1)(B).

<sup>2</sup> 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.<sup>4</sup> In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined by Section 76.905 of the Commission's rules, is present within its franchise area.<sup>6</sup> Charter has met this burden.

## II. DISCUSSION

3. Charter has submitted reliable evidence demonstrating that the Communities are served by at least two unaffiliated multichannel video programming distributors ("MVPDs") offering comparable service to more than 50 percent of the households therein. Relying on Commission precedent, Charter notes that the services of DirecTV and Echostar satisfy this requirement.<sup>7</sup> Charter has also submitted sufficient evidence demonstrating that the number of households subscribing to MVPDs other than to Charter, the largest MVPD, exceeds 15 percent of the households in all of the franchise areas.<sup>8</sup> Relying on DBS subscribership reports obtained from SKYTrends, a media research reporting and consulting firm, Charter submits evidence that the aggregate subscribership to DBS service in the Communities exceeds 15 percent of the households in each franchise area.<sup>9</sup>

4. In addition, Charter submits evidence that: (1) it is not affiliated with either DirecTV or Echostar; (2) subscribers in its franchise areas are well aware of the competing satellite video services by virtue of the extensive nationwide and local advertising and marketing DirecTV and Echostar have undertaken; and (3) both DirecTV and Echostar offer over 100 channels of video programming each.<sup>10</sup> Taking this information into consideration with the pass and penetration figures submitted by the company, we find that Charter has submitted the requisite evidence to satisfy the competing provider test.

## III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petitions for special relief, requesting findings of

---

<sup>4</sup> 47 U.S.C. § 543(1)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>5</sup> 47 C.F.R. § 76.906.

<sup>6</sup> 47 C.F.R. § 76.907(b)(1).

<sup>7</sup> Petitions at 2, citing *Time Warner Entertainment – Advance/Newhouse Partnership d/b/a Time Warner Communications*, 15 FCC Rcd 8852, 8854 (CSB 2000); *Jones Intercable, Inc.*, 15 FCC Rcd 7257, 7258 (CSB 2000).

<sup>8</sup> We note that Charter has relied upon 1990 Census figures to determine the number of households in the given franchise areas. We will accept 1990 data for these petitions because the U.S. Census Bureau has not yet released household information for the state of Texas. However, we will require cable operators to use 2000 census figures, when available, as evidence in future cases and to supplement their petitions if such information becomes available while the petition is pending.

<sup>9</sup> See Attachment A (setting forth the DBS household penetration figures for each of the Communities).

<sup>10</sup> Petitions at 3.

effective competition in the Communities filed by Charter Communications **ARE GRANTED**.

6. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

---

<sup>11</sup>47 C.F.R. § 0.321.

## Attachment A

Percentage of Households in the CommunitiesSubscribing to MVPDs Other than the Largest MVPD

<u>Community</u>	<u>HHs in Franchise Area</u>	<u>Number of DBS HHs</u>	<u>% of DBS HHs</u>
1. Burleson	5557	1697	30.54
2. Keller	4487	2131	47.49
3. Mansfield	5130	2426	47.29
4. Edgecliff Village	976	171	17.52
5. Kennedale	1458	363	24.90
6. Blue Mound	668	116	17.4
7. N. Richland Hills	16,901	3508	20.76