

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

In the Matter of:)
)
Cable USA, Inc.)
)
Petition for Special Relief Requesting a Finding)
Of Effective Competition in Various Nebraska)
Communities)

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2001

Released: August 16, 2001

By the Deputy Chief, Cable Services Bureau:

1. Cable USA, Inc. (“Cable USA”) filed a Petition for Special Relief¹ requesting a finding of effective competition in various Nebraska communities (the “Communities”)² in conjunction with its showing of compliance with Section 21.912 of the Commission’s rules.³ Cable USA’s petition is 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.⁴ 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 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.⁵ In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist

¹See 47 C.F.R. § 76.7; Application of Cable USA, Inc. to Transfer Control of MMDS Station Licenses to CC VIII Operating, LLC.

²The Communities are: Alda, Gibbon, Grand Island (including Hall County), Hastings, Lexington, Shelton, St. Paul, and Wood River, Nebraska.

³47 C.F.R. § 21.912. Petitioners must file for special relief pursuant to Section 76.7 when demonstrating compliance with Section 21.912 based on the effective competition exception to Section 21.912. See *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).

⁴47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

⁵47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.906(b)(2).

⁶47 C.F.R. § 76.906.

with evidence that effective competition, as defined by Section 76.905 of the Commission's rules, is present within its franchise area.⁷ Cable USA has met this burden.⁸

3. Cable USA has submitted reliable evidence demonstrating that the Communities are served by at least two unaffiliated MVPDs offering comparable service to more than 50% of the households therein. Cable USA asserts that the service of direct broadcast satellite providers such as DIRECTV and EchoStar satisfy this requirement.⁹ In addition Cable USA asserts that the facilities of CC VII Operating, LLC ("Charter") serving the Communities pass nearly 100% of the households therein.¹⁰ Cable USA also provides evidence that the programming of DIRECTV and EchoStar satisfies the Commission's comparable programming requirements.¹¹ We therefore find that Cable USA has submitted sufficient evidence to satisfy the first prong of the competing provider test.

4. Cable USA has also submitted sufficient evidence demonstrating that the number of households subscribing to MVPDs other than the largest MVPD, in this case Charter, exceeds 15% of the households in each of the franchise areas. Relying on DBS subscribership reports obtained from SKYTrends, a media research reporting and consulting firm, Cable USA submits evidence that the aggregate subscribership to DBS service in the Communities exceeds 15% of the households in each franchise area.¹² We find that Cable USA has submitted sufficient evidence to satisfy the second prong of the competing provider test, thereby establishing the presence of effective competition in the Communities.

⁷47 C.F.R. § 76.911(b)(1).

⁸Cable USA states that certain additional communities are involved in its transfer application but that an effective competition demonstration is unnecessary because Cable USA has previously demonstrated to the Commission that these communities are subject to competing provider effective competition. *See Cable USA, Inc.*, DA 01-882 (CSB rel. April 6, 2001). We agree with Cable USA that reliance on the Commission's prior determination is sufficient.

⁹Petition at 4-5, *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).

¹⁰*Id.* at 4-5.

¹¹*Id.* at 4; *see* 47 C.F.R. § 76.905(g).

¹²*Id.* at 5-6. Cable USA combines DBS subscribership with MMDS subscribership in the communities of Grand Island and Hastings. The precise DBS penetration rate for each franchise area is set forth on Attachment A.

5. Accordingly, **IT IS ORDERED** that the petition for special relief requesting a finding of effective competition in the Communities filed by Cable USA, Inc. **IS GRANTED**.

6. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹³47 C.F.R. § 0.321.

Attachment A

**Percentage of Households in the Communities
Subscribing to MVPDs Other than the Largest MVPD**

| <u>Community</u> | <u>% of Households</u> |
|-------------------------|-------------------------------|
| 1. Alda | 20.28% |
| 2. Gibbon | 38.43% |
| 3. Grand Island | 15.27% |
| 4. Hastings | 15.82% |
| 5. Lexington | 18.33% |
| 6. Shelton | 27.22% |
| 7. St. Paul | 27.88% |
| 8. Wood River | 33.04% |