

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

In the Matter of:)	
)	
Constel Communications, L.P.)	
)	CSR-5592-E
Petition for Determination of Effective)	
Competition in Pasco County, Florida)	
(CUID Nos. FL1175, FL1243))	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 2, 2001

Released: February 8, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Constel Communications, L.P. (“Constel”) has filed 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, seeking a determination of effective competition regarding unincorporated areas of Pasco County, Florida (the “Community Units”).¹ Constel argues that its cable systems are subject to effective competition for all purposes, including but not limited to, exemption from the cable/SMATV cross-ownership prohibition as set forth in Section 613(a)(3) of the Communications Act and Section 76.501(f) of the Commission’s rules.² Constel claims that there is effective competition in the Pasco County Community Units because fewer than thirty percent of the households in the Community Units subscribe to the cable services of Constel’s cable systems serving the Community Units. No opposition to the petition was filed.

¹ 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1), 76.905(b)(1).

² In pertinent part, Section 613(a)(3) states: It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator’s cable system. The Commission --

(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(1). 47 U.S.C. § 533(a)(3); *see also* 47 C.F.R. § 76.501(f).

II. BACKGROUND

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.³ The cable operator bears the burden of rebutting the presumption that effective competition as defined by Section 76.905 of the Commission's rules,⁴ is present within the relevant franchise area.⁵ Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to low penetration effective competition if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system."⁶ The low penetration effective competition test requires cable operators to prove the existence of effective competition using the most recent household and subscriber data for the authorized area in the franchise.⁷ With respect to household data, the Commission has stated that cable operators may rely upon data from the 1990 Census and, if they so choose, may submit more recent household data.⁸

III. DISCUSSION

3. Constel submitted evidence regarding household and subscriber data that shows that its cable systems serve less than 30 percent of households in the Community Units at issue. Constel provided occupied household data based on 1990 Census data from the unincorporated portions of Pasco County, which it then used to calculate subscriber-to-occupied household penetration ratios. Constel provided data showing that it had a total of 774 subscribers in Community Unit FL1175 where there were 108,384 occupied households, thus yielding a penetration ratio of 0.7%.⁹ Constel also provided data showing that it had a total of 29 subscribers in Community Unit FL1243 where there were 108,384 occupied households, thus yielding a penetration ratio of 0.03%.¹⁰ 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, therefore, grant its petition.¹¹

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ 47 C.F.R. § 76.907(b).

⁶ 47 U.S.C. § 543(1)(1)(A); 47 C.F.R. § 76.905(b)(1).

⁷ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, First Report on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1180 (1993).

⁸ See *Cable Operators' Petitions for Reconsideration of Franchising Authorities' Certifications to Regulate Basic Cable Rates*, 9 FCC Rcd 3656 (1994).

⁹ Petition at 4.

¹⁰ *Id.* Even if we were to aggregate Constel's total subscribership for Pasco County (803 subscribers), Constel's penetration rate would still fall below the 30 percent threshold of the low penetration test (0.740%).

¹¹ Despite the fact that Constel's 1990 Census date is over a decade old, we nonetheless believe that any intervening population changes have not rendered our effective competition determination incorrect, considering that intervening household increases would only serve to lower Constel's penetration levels.

IV. ORDERING CLAUSES

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

5. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.¹²

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹² 47 C.F.R. § 0.321.