

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

In the Matter of:)	
)	
Texas Cable Partners, L.P.)	CSR 5619-E
)	
Petition for Determination of)	
Effective Competition in Houston, Texas)	
(CUIDs TX0676, TX0736, TX0755, and)	
TX0919))	

MEMORANDUM OPINION AND ORDER

Adopted: February 6, 2001

Released: February 8, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. In the above-captioned proceeding, Texas Cable Partners, L.P. ("TCP") filed a petition for a determination of effective competition in its Houston, Texas franchise area. TCP alleges that its cable systems serving the city are subject to effective competition as defined by Section 623(l) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation. TCP claims it is subject to effective competition in the city under the "competing provider" effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.³ More particularly, TCP claims the presence of effective competition in Houston stems from the competing services provided by various direct broadcast satellite ("DBS") providers, DirecTV, Inc.⁴ and Dish Network,⁵ and by various competitive wireline multichannel video programming distributors ("MVPDs").⁶ TCP seeks revocation of the certification of the City of Houston to regulate TCP's basic cable rates.⁷ No opposition to the petition was filed.⁸

¹47 U.S.C. § 543(1).

²47 C.F.R. § 76.905(b)(4).

³See 47 U.S.C. § 543(1)(1)(B).

⁴DirecTV, Inc. has acquired PRIMESTAR and U.S. Satellite Broadcasting., Inc.

⁵DISH Network is the registered trademark of EchoStar Communications Corporation.

⁶TCP asserts the following MVPDs offer service to multiple dwelling units within the franchise area: OpTel, Phonoscope, Southwestern Bell Video Services and People's Choice TV. TCP Petition at 2 n.2.

⁷On Oct. 20, 1993, the City of Houston filed an FCC Form 328 to become certified to regulate the basic cable service rates in its franchise area. The City's certification became effective Nov. 19, 1993.

⁸TCP's petition was placed on public notice on Nov. 14, 2000. See *Cable Services Bureau Registrations; Special* (continued...)

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁹ as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.¹⁰ 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.¹¹ Section 623(l) of the Communications Act provides that a cable operator is subject to effective competition, if any one of four tests for effective competition set forth therein is met.¹² A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations.¹³

3. Section 623(l)(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 MVPDs, 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.¹⁴ Turning to the first prong of this test, we find that the programming of DBS providers, such as DirecTV and Dish Network, offers video programming to at least 50 percent of the households in the franchise area. 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.¹⁵ TCP has provided evidence of the advertising of DBS service in national media serving the franchise area.¹⁶ 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.¹⁷ We find that TCP has demonstrated that its franchise area is served by at least two unaffiliated MVPDs, each of which 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. TCP submits data demonstrating that, at the time its Petition was filed, there were approximately 695,579 households in its franchise area, the City of Houston.¹⁸ TCP also provided information showing

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Relief and Show Cause Petitions, Report No. 1290 (Nov. 14, 2000).

⁹47 C.F.R. § 76.906.

¹⁰See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

¹¹See 47 C.F.R. §§ 76.906 & 907.

¹²See 47 U.S.C. § 543(l)(1)(A)-(D).

¹³See 47 C.F.R. § 76.905.

¹⁴47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

¹⁵See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹⁶See TCP Petition at 3 and Exhibit A.

¹⁷See 47 C.F.R. § 76.905(g); *see also* TCP Petition at 5 and Exhibits B - D.

¹⁸TCP's household figure is based upon U.S. Census data updated using a percentage growth factor for Houston
(continued...)

that MVPDs other than TCP, the largest MVPD in the franchise area, provide service to 135,323 households in TCP's franchise area.¹⁹ Based on this record, we find that TCP has demonstrated that the number of households subscribing to MVPDs, other than the largest equals 19.5 percent and therefore exceeds the 15 percent threshold of the second prong of the competing provider test. Based on the foregoing, we conclude that TCP has submitted sufficient evidence demonstrating that its cable systems serving the City of Houston, Texas are subject to effective competition under the "competing provider" test.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Texas Cable Partners **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certification granted to the City of Houston, Texas to regulate basic cable service rates **IS REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

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published by the Texas State Data Center. TCP Petition at 6 and Exhibit H. 1990 U.S. 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).

¹⁹The numbers of non TCP MVPD subscribers in Houston are: DBS and C-Band 77,181; other competitive wireline MVPDs 58,142 (Phonoscope 3,763, Optel 46,319, Peoples Choice 5,014, Southwestern Bell Video 3,046). Petition at 6 - 7 and Exhibits F - G.

²⁰47 C.F.R. § 0.321.