

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

In the Matter of:)	
)	
Texas Cable Partners, L.P.)	CSR 5634-E
)	
Petition for Determination of Effective Competition in Certain Communities in Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 2001

Released: March 2, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Texas Cable Partners, L.P. ("Texas Cable") has filed with the Commission a petition¹ pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in the twenty eight Texas communities listed on Attachment A (the "Communities").² Texas Cable alleges that its cable systems serving these communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),³ and the Commission's implementing rules,⁴ and are therefore exempt from cable rate regulation. More particularly, Texas Cable claims the presence of effective competition in twenty of the twenty eight Communities stems from the competing services provided by two unaffiliated direct broadcast satellite ("DBS") providers, Direct TV and DISH Network. Texas Cable claims it is subject to effective competition in these twenty communities under the "competing provider" effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.⁵ Texas Cable further claims that it is subject to effective competition in the other eight Communities because fewer than 30 percent of the households in these communities subscribe to Texas Cable's cable services. Texas Cable asserts that it is thus subject to effective competition in these

¹See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 1294, dated December 11, 2000.

²Attachment A identifies 13 Communities not certified by the Commission to regulate basic tier cable service rates and six Counties which have not sought to exercise rate regulation authority. See Petition at 4, n. 1 and at 5, n. 2. The petition will be treated as a petition for determination of effective competition pursuant to Sections 76.7 and 76.907 with respect to Cable Partners' franchise areas within the Communities and unincorporated areas of Counties thus identified. The petition will be treated as a petition for revocation of certifications pursuant to Section 76.914 with respect to Cable Partners' franchise areas within the other Communities.

³47 U.S.C. § 543(1).

⁴47 C.F.R. § 76.905(b)(4).

⁵See 47 U.S.C. § 543(1)(1)(B), which sets forth the "competing provider" effective competition test.

eight communities under the “low penetration” effective competition test set forth in Section 623(1)(1)(A) of the Act.⁶ 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,⁷ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁸ 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.⁹ Section 623(1) of the Communications Act provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth therein is met.¹⁰ A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations¹¹

A. Application of The “Competing Provider” Effective Competition Test In Twenty Texas Communities

3. Section 623(1)(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 unaffiliated multi-channel video programming distributors (“MVPD”) 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.¹² Turning to the first prong of this test, we find that the programming of DBS providers, such as Direct TV and DISH Network, satisfy the Commission's programming comparability criterion. 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.¹³ Texas Cable has provided evidence of the advertising of DBS service in national media serving the franchise areas.¹⁴ 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.¹⁵ We find that Texas Cable has demonstrated that the twenty Texas Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers

⁶See 47 U.S.C. § 543(1)(1)(A), which sets forth the “low penetration” effective competition test.

⁷47 C.F.R. § 76.906.

⁸See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁹See 47 C.F.R. §§ 76.906 & 907.

¹⁰See 47 U.S.C. § 543(1)(1)(A)-(D).

¹¹See 47 C.F.R. §76.905.

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

¹³See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹⁴See Petition at 8 and Exhibit b.

¹⁵See 47 C.F.R. s76.905(g). *See also* Texas Cable Petition at 5-6 and Exhibit D. Exhibit D includes channel line ups for Texas Cable's cable systems serving these communities as well as those of Direct TV and DISH TV.

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. Texas Cable provided information showing that its residential subscribership in eighteen of the twenty Communities tested under the competing provider test exceeds the aggregate total subscribership of the DBS and other MVPD providers, thus establishing that it is the largest MVPD provider in these eighteen Communities.¹⁶ Texas Cable stated that available information precluded a determination of which is the largest MPVD provider in the other two of these twenty Communities.¹⁷

5. Texas Cable provided 1990 Census data and population growth estimates for each of the twenty Communities, from which estimated 1999 household numbers for each of the Counties were developed.¹⁸ Texas Cable also provided information showing that in the eighteen Communities where it is the largest MVPD, the DBS and other MPVD providers collectively have attained subscriber penetration levels that range from 15.12 percent in the City of Hilshire Village, Texas, to 33.47 percent in the City of Spring Valley, Texas.¹⁹ Based on this information we find that Texas Cable partners has satisfied the second prong of the competing provider test in these eighteen Communities.

6. With respect to the other two Communities where the largest MPVD provider could not be determined,²⁰ Texas Cable points out that, if all of the DBS subscribers in each of these franchise areas were attributed to one DBS provider, making that the largest MPVD provider, then Texas Cables' own penetration levels of 32.3 percent in the City of Brookside Village and 16.8 percent in Galveston County would exceed the 15 percent threshold.²¹ Conversely, if Texas Cable were assumed to be the largest MPVD provider, then the DBS penetration levels of 35.1 percent in the City of Brookside Village and 27.2 percent in Galveston County would also satisfy the 15 percent threshold.²² Based on this information we find that Texas Cable partners has satisfied the second prong of the competing provider test in these two Communities.

B. Application of the "Low Penetration" Effective Competition Test in Eight Texas Communities

7. Another test by which a cable system will be deemed subject to effective competition is if fewer than 30 percent of the households in the systems' franchise area subscribes to the system's service.²³

¹⁶Petition at 11 and Exhibits F, G, & H.

¹⁷*Id.*

¹⁸Petition at 10-12 and Exhibits F & I. 1990 Census data and well grounded updated estimates based on those data satisfy 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).

¹⁹Petition at 11-12 and Exhibits F & I. The precise penetration rate for each franchise area is set forth on Attachment A.

²⁰SkyTRENDS makes DBS satellite subscriber information data publicly available, but not separately for each DBS provider. Petition at 13 and Exhibit J, SkyTRENDS letter dated September 12, 2000.

²¹Petition at 13, n. 25 and Exhibits F & I.

²²Petition at 13, n. 26 and Exhibits G & I.

²³The "low penetration" effective competition test.

Texas Cable has provided information showing that in the eight Communities tested under the low penetration test portion of households subscribing to its cable services range from the highest of 26 percent in the City of Rosenberg, Texas, to 0.24 percent in Montgomery County, Texas.²⁴ Therefore, we find that Texas Cable's cable system is subject to low penetration effective competition in these franchise areas.

8. Based on the foregoing, we conclude that Texas Cable has submitted sufficient evidence demonstrating that its cable systems serving the twenty eight Texas Communities listed on Attachment A are subject to effective competition.

III. ORDERING CLAUSES

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

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in cities of Missouri, Stafford, Bunker Hill Village, Hilshire Village, Hunters Creek Village, Katy, Piney Point Village, Spring Village, and Rosenberg, Texas, **ARE HEREBY REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²⁴Petition at 6-7 and Exhibit A. The precise penetration rate for each franchise area is set forth on Attachment A.

²⁵47 C.F.R. §0.321.

ATTACHMENT A

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TWENTY-EIGHT TEXAS COMMUNITIES SERVED BY TEXAS CABLE PARTNERS, L.P.

Twenty Communities Tested Under Competing Provider Test

Communities	CUIDS	CPR*
City of Brookside Village**	TX1252	35%
City of Hillcrest Village **	TX1251	19%
City of Pearland**	TX0746	26%
Missouri City	TX0613 TX0614	19%
City of Stafford	TX0616	21%
Village of Bayou Vista**	TX1352	27%
Galveston County***	TX0836 TX0837 TX0898	27%
City of Kemah**	TX0510	31%
Village of Tiki Island**	TX2134	68%
City of Bunker Hill Village	TX0399	16%
Harris County***	TX0393, TX0623 TX0666, TX0673 TX0722, TX0737 TX0748, TX0754 TX0753, TX0785 TX0865, TX0866 TX0867, TX1322 TX1584	19%
City of Hilshire Village	TX0401	15%
City of Hunters Creek Village	TX0415	18%
City of Katy	TX0539	25%

*CPR = Competitive penetration rate;
TWP = Time Warner's penetration rate

Twenty Communities Tested Under Competing Provider Test (Cont'd)

Communities	CUIDS	CPR*
City of LaPorte**	TX0808	17%
City of Magnolia**	TX1157	29%
City of Piney Point Village	TX0459	24%
City of Shoreacres**	TX0810	18%
City of Spring Valley	TX0400	33%
City of Tomball**	TX0835	28%

Eight Communities Tested Under low Penetration Test

Communities	CUIDS	TWP*
Brazoria County ***	TX0280 TX0982 TX1320	0.10%
Chambers County***	TX1469	0.08%
Fort Bend County***	TX0665, TX0776 TX0798 TX1137 TX1946	0.19%
City of Needville**	TX0701	0.29%
City of Richmond**	TX0797	0.23%
City of Rosenberg	TX0674	0.26%
Montgomery County***	TX1323	.002%
City of Shenandoah**	TX1377	0.10%

**Non-certified Communities

***County rate regulation not exercised

