

**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: April 5, 2001**

**Released: April 6, 2001**

By the Deputy Chief, Cable Services Bureau:

1. Cable USA, Inc. (“Cable USA”) filed a Petition for Special Relief<sup>1</sup> requesting a finding of effective competition in various Nebraska communities (the “Communities”)<sup>2</sup> in conjunction with its showing of compliance with Section 21.912 of the Commission’s rules.<sup>3</sup> 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.<sup>4</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 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>5</sup> In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.<sup>6</sup>

<sup>1</sup>See 47 C.F.R. § 76.7; Application of Antilles Wireless, L.L.C. to Transfer Control of MMDS Station Licenses to Cable USA, Inc.; Application of Russell G. Hilliard II to Transfer Control of MMDS Station Licenses to Cable USA, Inc.

<sup>2</sup>The Communities are: Amhearst, Axtell, Bertrand, Boelus, Cairo, Cozad, Dannebrog, Elm Creek, Hildreth, Juniata, Kenesaw, Litchfield, Loomis, Minden, Overton, Ravenna, Riverdale, Saint Libory, Sumner, and Wilcox, Nebraska.

<sup>3</sup>47 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).

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

<sup>5</sup>47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.906(b)(2).

<sup>6</sup>47 C.F.R. § 76.906.

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>7</sup> Cable USA has met this burden.

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.<sup>8</sup> In addition Cable USA asserts that its own cable facilities serving the Communities pass nearly 100% of the households therein.<sup>9</sup> 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 Cable USA, exceeds 15% of the households in all 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.<sup>10</sup> 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.

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.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>7</sup>47 C.F.R. § 76.911(b)(1).

<sup>8</sup>Petition at 3-4, 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>9</sup>*Id.* at 3.

<sup>10</sup>*Id.* at 4-5. The precise DBS penetration rate for each franchise area is set forth on Attachment A.

<sup>11</sup>47 C.F.R. § 0.321.

## Attachment A

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

<b><u>Community</u></b>	<b><u>% of Households</u></b>
1. Amhearst	32.05%
2. Axtell	31.33%
3. Bertrand	21.54%
4. Boelus	46.03%
5. Cairo	30.83%
6. Cozad	23.50%
7. Dannebrog	48.16%
8. Elm Creek	16.83%
9. Hildreth	27.87%
10. Juniata	34.86%
11. Kenesaw	26.36%
12. Litchfield	36.61%
13. Loomis	22.14%
14. Minden	22.76%
15. Overton	23.80%
16. Ravenna	24.92%
17. Riverdale	22.22%
18. St. Libory	45.30%
19. Sumner	37.22%
20. Wilcox	29.89%