

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

In the Matter of:)	
)	
Cam-Tel Company and Resort Television Cable Company, Inc., d/b/a WEHCO Video, Inc.)	CSR-5926-E
)	
Petition for Determination of Effective Competition in Camden and Hot Springs, AR (CUID Nos. AR0005 & AR0030))	

MEMORANDUM OPINION AND ORDER

Adopted: October 11, 2002

Released: October 15, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Cam-Tel Company and Resort Television Cable Company, Inc., d/b/a WEHCO Video, Inc. ("WEHCO"), have filed with the Federal Communications Commission ("Commission") a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the two above-captioned communities in Arkansas (the "Communities").¹ WEHCO alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules.² WEHCO claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). 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,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ 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. Based on the record in this proceeding, WEHCO has met this burden.

¹ 47 C.F.R. § 76.7.

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

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the 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.⁵

4. Turning to the first prong of the competing provider test, 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.⁶ WEHCO has provided evidence of the advertising of DBS service in news media serving the Communities.⁷ We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.⁸ WEHCO has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas. WEHCO has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and EchoStar.⁹ Therefore, the first prong of the competing provider test is satisfied.

5. 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. WEHCO has obtained subscriber numbers for DirecTV and EchoStar, DBS providers operating in the Communities.¹⁰ WEHCO sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a franchise-specific zip code plus four basis.¹¹

6. WEHCO asserts that it is the largest MVPD in the Communities because WEHCO's subscribership exceeds the aggregate DBS subscribership for each franchise area.¹² Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,¹³ we find that WEHCO has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the

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

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ Petition at 3 and Exhibit 1.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 3-4 and Exhibits 2 and 3. Exhibit 3 contains the nationwide channel lineups of DirecTV and EchoStar and Exhibit 2 includes the channel line-ups for WEHCO's cable systems serving the Communities.

⁹ Petition at 3-5.

¹⁰ *Id.* at 5 and Exhibits 4 and 6.

¹¹ *Id.* at 5.

¹² Petition at 4-5 and Exhibit 4.

¹³ *See id.* at Exhibit 5.

households in each of the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that WEHCO has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Cam-Tel Company and Resort Television Cable Company, Inc., d/b/a/ WEHCO Video, Inc., **IS GRANTED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁴ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR-5926-E

COMMUNITIES SERVED BY

Cam-Tel Company and Resort Television Cable Company, Inc. d/b/a WEHCO Video, Inc.

Communities	CUIDS	CPR*	2000 Census Households ⁺	Estimated DBS Subscribers ⁺	WEHCO Subscribers ⁺
Camden, AR	AR0005	22.69%	5,421	1,230	5,277
Hot Springs, AR	AR0030	15.53%	16,096	2,499	24,127

*CPR = Percent of DBS penetration rate.

⁺See Petition at Exhibits 4 - 6.