

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

In the Matter of:	)	
	)	
Cable One, Inc.	)	CSR 6337-E
	)	
Petition for Determination of Effective	)	
Competition in Rio Rancho, New Mexico	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 28, 2005**

**Released: March 7, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cable One, Inc. has filed with the Commission a petition pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in Rio Rancho, New Mexico. Cable One alleges that its cable systems serving this community is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934 ("Communications Act"),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation. More particularly, Cable One claims the presence of effective competition in Rio Rancho stems from the competing services provided by two unaffiliated direct broadcast satellite ("DBS") providers, Direct TV and DISH Network. Cable One claims it is subject to effective competition in these Communities under the "competing provider" effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Section 623(1) of the Communications Act

<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> See 47 U.S.C. § 543(1)(1)(B).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

provides that a cable operator is subject to effective competition, if either one of four tests for effective competition set forth therein is met.<sup>7</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations<sup>8</sup>

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 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 of the households in the franchise area.<sup>9</sup> Turning to the first prong of this test, we find that 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.<sup>10</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar the fourth largest, MVPD provider.<sup>11</sup> In view of this DBS growth data, and the data discussed below showing that nearly 33 percent of Rio Rancho households are DBS subscribers, we conclude that the population of Rio Rancho may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. 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 substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>12</sup> We find that Cable One has demonstrated that Rio Rancho is 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 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. Cable One provided information showing that its residential subscribership 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.<sup>13</sup>

5. Cable One provided 2000 Census data for Rio Rancho, from which estimated 2000 household numbers for the community were taken.<sup>14</sup> Cable One also provided a study by SkyTRENDS, which compared the 2000 Census households for Rio Rancho with the households in the U.S. Postal Zip

---

<sup>7</sup> See 47 U.S.C. § 543(l)(1)(A)-(D).

<sup>8</sup> See 47 C.F.R. § 76.905.

<sup>9</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>11</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

<sup>12</sup> See 47 C.F.R. § 76.905(g). See also Cable One Petition at 6-7 and Exhibits A & B.

<sup>13</sup> Petition at 7.

<sup>14</sup> *Id* and Exhibit B. 2000 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).

Code areas encompassing that community, and allocated that proportion of the DBS subscribers within each such Zip Code to that community.<sup>15</sup> The resulting numbers of DBS subscribers were then compared to the household numbers for that community to demonstrate that in Rio Rancho the DBS providers collectively have attained a subscriber penetration level of 37.79 percent.<sup>16</sup> Based on this information we find that Cable One has satisfied the second prong of the competing provider test in Rio Rancho, New Mexico and submitted sufficient evidence demonstrating that its cable system serving Rio Rancho is subject to effective competition.

### III. ORDERING CLAUSES

6. Accordingly, **IT IS HEREBY ORDERED** that the captioned petition of Cable One, Inc. for a determination of effective competition in Rio Rancho, New Mexico **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the Commission's certification of the City of Rio Rancho, New Mexico to regulate basic cable rates **IS HEREBY REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.238 of the Commission's rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>15</sup> Petition at 7-9 and Exhibit C.

<sup>16</sup> Petition at 7 and Exhibit E.

<sup>17</sup> 47 C.F.R. §0.238.