

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

In the Matter of:	)	
	)	
Cable One, Inc.	)	CSR 6351-E; CSR 6359-E; CSR 6360-E &
	)	CSR 6361-E
Petition for Determination of Effective	)	
Competition in Twenty Two Texas Communities	)	
and Texarkana, Arkansas	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 1, 2005**

**Released: March 7, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cable One, Inc. has filed with the Commission four petitions for a determination of effective competition in the twenty two Texas, and one Arkansas, communities listed in Attachment A (the "Communities") pursuant to Section 623(a) of the Communications Act of 1934,<sup>1</sup> and the Commission's implementing rules.<sup>2</sup> Cable One alleges that its cable systems serving those Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act,<sup>3</sup> and the Commission's implementing rules,<sup>4</sup> and are therefore exempt from cable rate regulation. More particularly, Cable One claims that the presence of effective competition in the Communities 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. Cable One also asks for a revocation of any certificate to regulate basic cable services issued by the Commission to any of the Communities. The petitions are unopposed.

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<sup>1</sup>47 U.S.C. § 543(a).

<sup>2</sup>47 C.F.R. § 76.905(b).

<sup>3</sup>47 U.S.C. § 543(a).

<sup>4</sup>47 C.F.R. § 76.905(b).

## II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.<sup>6</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>7</sup> Section 623(l) 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.<sup>8</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other of the Commission's cable regulations.<sup>9</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>10</sup> Turning to the first prong of this 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.<sup>11</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>12</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of communities at issue here 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>13</sup> We further find that Cable One 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 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

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<sup>5</sup>47 C.F.R. § 76.906.

<sup>6</sup>See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>7</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>8</sup>See 47 U.S.C. § 543(l)(1)(A)-(D).

<sup>9</sup>See 47 C.F.R. § 76.905.

<sup>10</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>11</sup>See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>12</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>13</sup>See 47 C.F.R. § 76.905(g). *See also* Cable One Petitions at 6-7 and Exhibits A & B.

area.<sup>14</sup> Cable One provided 2000 Census data showing the number of households for each of the twenty three Communities.<sup>15</sup> Cable One also provided a report by SkyTRENDS, which compared the 2000 Census households for each of the Communities with the households in each of the U.S. Postal Zip Code areas encompassing each Community, and allocated that proportion of the DBS subscribers within each such Zip Code to each Community.<sup>16</sup> The resulting numbers of DBS subscribers were then compared to the household numbers for each Community to demonstrate that in each Community the DBS providers collectively have attained subscriber penetration levels ranging from 16 percent in Texarkana, Arkansas, and in Borger, Denison, and Texarkana, Texas, to 53 percent in Ravenna, Texas, or in excess of 15% in each of the Communities.<sup>17</sup> Based on this information, we find that Cable One has satisfied the second prong of the competing provider test in these twenty three Communities, and conclude that Cable One has submitted sufficient evidence demonstrating that its cable systems serving the twenty three Communities set forth on Attachment A are subject to effective competition.

### III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that Cable One, Inc.'s petitions for a determination of effective competition in the twenty three Communities listed on Attachment A **ARE GRANTED**.

6. **IT IS FURTHER ORDERED** that all certifications to regulate basic cable rates issued by the Commission to any of these twenty three Communities **ARE HEREBY REVOKED**.

7. This action is taken pursuant to delegated authority pursuant to Section 0.238 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>14</sup> Based on the DBS penetration data shown on Attachment A, we find that Cable One is the largest MVPD provider in each of these Communities.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 8-11 and Exhibit E. The penetration rate for each Community is set forth on Attachment A.

<sup>18</sup> 47 C.F.R. § 0.238.

## ATTACHMENT A

File Nos. CSR 6351-E; CSR 6359-E; CSR 6360-E &amp; CSR 6361-E

ARKANSAS & TEXAS COMMUNITIES SERVED BY CABLE ONE, Inc.  
Competing Provider Test

Communities	2000 Census Households**	Zip Code Households	Alloc	DBS Subs*** Per Zip Code	DBS Subs Allocated	DPR*
Texarkana, Arkansas	10,384	14,15873%	2,310	1,694	16 %	
Bells, Texas	484	1,25938%	454	174	36%	
Bonham, Texas	2,884	5,18356%	1,204	670	23%	
Borger, Texas	5,591	6,18390%	1,019	922	16%	
Denison, Texas	9,185	13,647	67%	2,195	1,447	16%
Dumas, Texas	4,755	5,919	80%	1,537	1,210	25%
Fritch, Texas	886	2,324	38%	803	300	34%
Howe, Texas	924	1,981	47%	563	257	27%
Knollwood, Texas****	143				31	22%
Mc Lean, Texas	343	666 52%	231	108	31%	
Pampa, Texas	7,387	7,950	93%	1,460	1,329	18%
Pan Handle, Texas	945	1,280	74%	422	305	32%
Ravenna, Texas	86	592	15%	322	46	53%
Savoy, Texas	305	833	37 %	320	115	38%
Sherman, Texas	13,739	17,497	79%	3,036	2,336	17%
Stinnett, Texas	765	1,009	76%	337	250	33%
Sunray, Texas	688	819	84%	216	178	26%
Texarkana, Texas	13,569	23,013	59%	3,770	2,178	16%
Tom Bean, Texas	357	10,120	4%	2,242	77	22%
Van Alstyne	935	2,650	35%	934	323	35%
Wake Village, Texas	2,042	13,682	15%	2,432	356	17%
White Deer, Texas	425	530	80%	136	107	25%
Whitewright, Texas	650	1,786	36%	564	201	31%

\*DBS penetration rates.

\*\*See Cable One Petitions at Exhibits 4, 5, &amp; 6.

\*\*\*These data reduced by 2% to allow for commercial users.

\*\*\*\*The household and penetration data are based on physical counting. See Petition (File No. CSR 6360-E) at 11.