

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

In the Matter of	)	
	)	
Buckeye Cablevision, Inc.	)	CSR 8150-E
	)	
Petition for Determination of Effective	)	
Competition in various Ohio Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 11, 2010**

**Released: March 11, 2010**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Buckeye Cablevision, Inc., hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by AT&T, hereinafter referred to as “Competitor.” The City of Toledo, Ohio (“Toledo”) filed an opposition to Buckeye. Petitioner filed a reply.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>4</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>5</sup> For the reasons set forth below, we grant the Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

**II. DISCUSSION**

3. Section 623(1)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.<sup>6</sup> This test is otherwise referred to as the “LEC”

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

<sup>2</sup>47 C.F.R. § 76.905(b)(4).

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>5</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>6</sup>See 47 U.S.C. § 543(1)(1)(D).

test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.<sup>7</sup> It is undisputed that these Communities are served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. The "comparable programming" element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>8</sup> and is supported in this petition with copies of channel lineups for Competitor.<sup>9</sup> Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>10</sup> These showings, if unrebutted, would suffice to show that Petitioner is subject to LEC effective competition in the Communities.

5. The City of Toledo, however, challenges the sufficiency of Petitioner's showing of LEC effective competition. Toledo questions whether AT&T "offers" services to the extent required under the LEC test.<sup>11</sup> It argues that AT&T's services do not substantially overlap Buckeye's services in the Toledo franchise area.<sup>12</sup> Buckeye replies that it meets the LEC test because it has demonstrated that AT&T's video service area substantially overlaps Buckeye's service area in Toledo.<sup>13</sup> It asserts that AT&T's Video Service Authorization entitles AT&T to provide video service throughout Toledo and therefore AT&T is not limited or prevented from providing video service to all areas of Toledo.<sup>14</sup> Buckeye states that the Commission has determined that a LEC authorization to provide service throughout a community supported the assertion that the LEC and incumbent cable operator's service areas overlapped.<sup>15</sup> Also, Buckeye states that its showing of AT&T's coverage and construction obligations in the franchise area is sufficient to demonstrate effective competition.<sup>16</sup> Buckeye further asserts that it is operating in a competitive video marketplace because when former customers informed Buckeye of their intention to end service, most stated that they intended to switch to AT&T when disconnected.<sup>17</sup>

6. In adopting the LEC test, Congress believed that a LEC would be a formidable

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<sup>7</sup>See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-15 (1999) ("*Cable Reform Order*").

<sup>8</sup>See 47 C.F.R. § 76.905(g). See also Petition at 7-8.

<sup>9</sup>See Petition at 8 and Exhibit 12.

<sup>10</sup>See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-15. See also Petition at 6-7.

<sup>11</sup>Toledo Opposition at 4.

<sup>12</sup>*Id.* at 3-4.

<sup>13</sup>Buckeye Reply at 1.

<sup>14</sup>*Id.* at 3.

<sup>15</sup>*Id.* at 2 n.6. See *Comcast Cablevision of the South*, 13 FCC Rcd 1676 (1997).

<sup>16</sup>*Id.* at 3.

<sup>17</sup>*Id.* at 3-4.

competitor to an incumbent cable operator from its commencement of service in part of a community.<sup>18</sup> Therefore, we have consistently required that a petitioner show only that a LEC has actually begun to provide service in areas that substantially overlap petitioner's, that the LEC is marketing its services so that potential customers are aware of it, and that it intends to build out its cable system within a reasonable period of time if it has not already done so.<sup>19</sup> In order to establish that effective competition exists, a cable operator need not prove that a competing LEC is providing service throughout its service area.<sup>20</sup> Instead, if the LEC is franchised, a showing regarding the coverage and construction obligations in the franchise agreement normally is sufficient to satisfy the LEC test.<sup>21</sup> The facts relating to AT&T's operations in Toledo, including the Video Service Authorization Agreement, construction, and subscriber growth demonstrate that LEC effective competition is present in the Toledo franchise area. The fact that residents are subscribing to AT&T's services shows that its services are actually available and that subscribers are aware of its availability.

7. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

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<sup>18</sup>*Cable Reform Order*, 14 FCC Rcd at 5302, ¶ 9.

<sup>19</sup>*Id.* at 5303, ¶ 11.

<sup>20</sup>*Id.* at 5305, ¶ 14. *See Cablevision of Boston, Inc.*, 17 FCC Rcd 4772, 4776 (2002).

<sup>21</sup>*Cable Reform Order*, 14 FCC Rcd at 5305, ¶14.

**III. ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Buckeye Cablevision, Inc. **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>22</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

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## COMMUNITIES SERVED BY BUCKEYE CABLEVISION, INC.

<b>Communities</b>	<b>CUID(s)</b>
Holland	OH0814
Maumee	OH0290
Monclova Township	OH0418
Ottawa Hills	OH0298
Spencer Township	OH1814
Springfield Township	OH1635
Sylvania Township	OH0380
Toledo	OH0019
Middleton Township	OH2127
Perrysburg	OH0260
Perrysburg Township	OH0296
Rossford	OH0417