

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

In the Matter of

TELE-MEDIA COMPANY OF
SOUTHEAST FLORIDA, INC.

Petition for Reconsideration

of the Certification of
City of Miramar, FL
to Regulate Basic Cable Service Rates
(FL1143)

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 1994; Released: December 20, 1994

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On December 6, 1993, Tele-Media Company of Southeast Florida, Inc. ("Tele-Media") filed a timely petition for reconsideration challenging the certification of the City of Miramar, Florida ("the City") to regulate rates for basic cable service and associated equipment.¹ The City did not file an opposition.

2. Section 623(a)(4) of the Communications Act of 1934, as amended, allows franchising authorities to become certified to regulate basic cable service rates of cable operators that are not subject to effective competition.² For purposes of the initial request for certification, local franchising authorities may rely on a presumption that cable operators within their jurisdiction are not subject to effective com-

petition, unless they have actual knowledge to the contrary.³ Certification becomes effective 30 days from the date of filing unless the Commission finds that the franchising authority does not meet the statutory certification requirements.⁴ Cable operators may file petitions for reconsideration of the franchising authority's certification within 30 days from the date such certification becomes effective.⁵ Rate regulation is automatically stayed pending review of a timely-filed petition for reconsideration alleging the presence of effective competition.⁶

II. DISCUSSION

3. Tele-Media argues that its cable system is subject to effective competition because it serves fewer than 30 percent of the households in the City of Miramar, its franchise area.⁷ Specifically, Tele-Media states that it serves 267 of the 1,250 "households" within the City or 21.4 percent of the total number of "households" within the franchise area. Tele-Media asserts that it derived its household data from local census information and marketing data, but does not provide copies of the documentation relied upon or a citation to a verifiable reference source. Moreover, Tele-Media does not indicate how it is using the word "households." Pursuant to our rules, households refers to occupied housing units.⁸ As supporting documentation, Tele-Media submits a declaration under penalty of perjury from a responsible official certifying the accuracy of the data in the petition. However, such a declaration with regard to information not within the personal knowledge or purview of the declaring party is not, standing alone, sufficient.

4. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.⁹ 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 the franchise area.¹⁰ Tele-Media has failed to meet this burden. Tele-Media did not support its effective competition claim with adequate documentation. Our rules require the use of data reflecting the number of households (*i.e.*, occupied housing units) in the franchise area. Although

¹ Miramar filed its "Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition" ("FCC Form 328") on October 7, 1993. The certification became effective on November 6, 1993.

² Communications Act of 1934 § 623(a)(4); 47 U.S.C. § 543(a)(4).

³ 47 C.F.R. §§ 76.906, 76.910(b)(4).

⁴ 47 C.F.R. § 76.910(e). Certification becomes effective unless the Commission determines that: (1) the franchising authority will not adopt or administer rate regulations that are consistent with the Commission's regulations; (2) the franchising authority lacks the legal authority to adopt, or the personnel to administer, rate regulations; (3) procedural laws and regulations applicable to rate regulation proceedings by the franchising authority do not provide a reasonable opportunity for consideration of the views of interested parties; or (4) the cable system in question is subject to effective competition. 47 C.F.R. § 76.910(b). See also Communications Act of 1934 § 623(a)(4), 47 U.S.C. § 543(a)(4).

⁵ 47 C.F.R. §§ 1.106, 76.911; *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, 8 FCC Rcd 5631, 5693 (1993).

⁶ 47 C.F.R. § 76.911(c).

⁷ The 1992 Cable Act (Communications Act of 1934 § 623(a)(2); 47 U.S.C. § 543(a)(2)) and the Commission's rules (47 C.F.R. § 76.905(a)) provide that only the rates of cable systems that are not subject to effective competition may be regulated. One of the bases on which a cable system is deemed subject to effective competition is if fewer than 30 per cent of the households in the system's franchise area subscribe to the system's service. Communications Act of 1934 § 623(l)(1)(A); 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(1).

⁸ See *Third Order on Reconsideration*, MM Docket Nos. 92-266 and 92-262, 9 FCC Rcd 4316, 4324 (1994) ("*Third Recon. Order*"). As the Commission stated in the *Third Recon. Order*, "[a]s used in the Cable Act, we presume that Congress did not intend households to have a different meaning than in the 1990 Census that would include vacant units or even partial year vacant units." *Third Recon. Order, supra*. The term "household" is defined for purposes of the 1990 Census data as "all the persons who occupy a housing unit." Bureau of the Census, U.S. Dept. of Commerce, 1990 Census of Population, CP-1-1B, Appendix B at B-8. Thus, the term "households" reflects only occupied housing units.

⁹ 47 C.F.R. § 76.906.

¹⁰ 47 C.F.R. § 76.911(b)(1).

Tele-Media's petition makes an assertion concerning the number of households in the franchise area, it does not submit sufficient information upon which to determine that its effective competition claim is based on the appropriate factual information required by our rules. Accordingly, Tele-Media's petition is denied.¹¹

III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Tele-Media of Southeast Florida, Inc. challenging the certification of the City of Miramar, FL to regulate basic cable rates IS DENIED.

6. IT IS FURTHER ORDERED that the automatic stay imposed by Section 76.911(c) of the Commission's Rules, as amended, 47 C.F.R. § 76.911(c) IS TERMINATED.

7. IT IS FURTHER ORDERED that Tele-Media of Southeast Florida, Inc. SHALL FILE the required rate justifications on the applicable forms with the City of Miramar, FL within thirty (30) days of the release date of this *Memorandum Opinion and Order* or within thirty (30) days of receipt of notice from the City of Miramar that it is regulating Tele-Media's rates, whichever is later.

8. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

¹¹ Should Tele-Media wish to submit more specific information sufficient to demonstrate the presence of effective competition, it may submit such information by filing a petition for revocation pursuant to Section 76.914 of the Commission's rules. See 47 C.F.R. § 76.914(d).