

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

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In the Matter of)
)
American Cablesystems of California, Inc. and)
American Cablesystems of South Central Los)
Angeles, Inc.)
)
Application for Review)

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 2008

Released: January 17, 2008

By the Commission:

I. INTRODUCTION

1. American Cablesystems of California, Inc. and American Cablesystems of South Central Los Angeles, Inc. (collectively, “American”) filed the instant Application for Review of an order issued by the former Cable Services Bureau, now the Media Bureau (the “Bureau”).¹ For the reasons set forth below, we affirm the Bureau’s *Order on Reconsideration*.

II. DISCUSSION

2. At issue in this proceeding is whether the Bureau correctly excluded data filed by American as part of its effective competition demonstration that included both vacant housing units and commercial establishments. American argues that both types of information should be included for purposes of determining low penetration effective competition in a franchise area.² American argues that the definitions of the terms “subscriber” and “households” adopted by the Commission in implementing the statutory tests for effective competition are overly restrictive.³

3. We disagree. With regard to American’s inclusion of vacant housing units in its calculation of low penetration effective competition in its franchise area, we affirm the Bureau’s determination. The Bureau’s analysis on this issue is fully consistent with the Commission’s determination that “[a]s used in the [1992] 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

¹ *American Cablesystems of California, Inc. and American Cablesystems of South Central Los Angeles, Inc.*, 10 FCC Rcd 1692 (CSB 1995) (“*Order on Reconsideration*”).

² American Application for Review at 7-13. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.” 47 U.S.C § 543(l)(1)(A).

³ American Application for Review at 7-13.

partial-year vacant units.”⁴ American’s inclusion of vacant housing units in its effective competition calculation was in error and the Bureau was correct to exclude such units. With regard to the issue of whether commercial entities should be included in the number of subscribers and households for purposes of determining low penetration effective competition, we agree with the Bureau’s analysis that:

[American] should not have counted commercial entities, including hotels and motels, when it calculated its penetration level. The 1990 Census defined the term “household” as “all of the persons who occupy a housing unit.” Thus, commercial establishments, including hotels and motels, are not “households” for purposes of determining effective competition, and [American] should not include them in its subscriber and household totals.⁵

We agree with the Bureau that interpreting the term “households” to include commercial establishments would be inconsistent with the Commission’s implementation of the effective competition tests. The Bureau’s *Order on Reconsideration* is therefore affirmed in all respects.

III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that the Application for Review filed in the captioned proceeding by American Cablesystems of California, Inc. and American Cablesystems of South Central Los Angeles, Inc. **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ See *Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation – Buy-Through Prohibition*, 9 FCC Rcd 4316, 4324 (1994) (*Third Order on Reconsideration*).

⁵ *Order on Reconsideration*, 10 FCC Rcd at 1694-95, quoting *Third Order on Reconsideration*, 9 FCC Rcd at 4324.