

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

In the Matter of:	)	
	)	
The Helicon Group, L.P. d/b/a Charter Communications	)	CSR 5800-E
	)	
Petition for Determination of Effective Competition Various Vermont Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 22, 2002**

**Released: January 24, 2002**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. The Helicon Group, L.P. d/b/a Charter Communications (“Charter”) has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and Sections 76.7(a)(1) and 76.905(b)(1) of the Commission's rules for a determination of effective competition in the cities of Cabot, Calais, East Montpelier, Marshfield, Plainfield, Woodbury, and Worcester, Vermont (the “Franchise Area”).<sup>1</sup> Charter alleges that its cable systems serving the Franchise Area are subject to effective competition and therefore exempt from cable rate regulation. Charter claims the presence of effective competition in the Franchise Area because fewer than thirty percent of the households subscribe to the cable services of its cable system. 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>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</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>4</sup> 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.”<sup>5</sup> For these purposes, the Commission accepts census

<sup>1</sup>Charter provides cable service within the franchise area pursuant to a state-issued Certificate of Public Good, which authorizes the provision of cable service to multiple geographic areas. Petition at 1-2.

<sup>2</sup>47 C.F.R. § 76.906.

<sup>3</sup>47 C.F.R. § 76.905.

<sup>4</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>5</sup>47 U.S.C § 543(l)(1)(A).

data as an appropriate measure of households and defines households as occupied housing units.<sup>6</sup> The Commission has stated:

The first statutory test for effective competition is fulfilled when fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system. The measurement of subscribership under this test will be based on the subscribership of the particular cable system in question, and not on the aggregation of the subscriberships of all cable systems and competitors in the franchise area.<sup>7</sup>

3. Charter submits sufficient evidence regarding household and subscriber data, which demonstrate that its cable system serves less than 30 percent of households in the Franchise Area. Charter provided 2000 Census Bureau household data that indicates that there are 3,812 households in its Franchise Area.<sup>8</sup> Charter also provides the count of actual subscribers in the Franchise Area, which it used to calculate a subscriber-to-household penetration ratio for the Franchise Area. The data establishes that Charter has a total of 306 subscribers in its Franchise Area of 3,812 households resulting in a penetration ratio of 8.03 percent.<sup>9</sup> Based on this record, we conclude that Charter has demonstrated that its cable system meets the requirements of low penetration effective competition under our rules, and we grant its petition.

### III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by The Helicon Group, L.P. d/b/a Charter Communications, **IS GRANTED**.

5. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>10</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>6</sup>See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 4316, 4325-26 (1994).

<sup>7</sup>See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 5631 (1993); 47 C.F.R. § 76.915(a).

<sup>8</sup>The 2000 Census identifies the following number of households for each city: Cabot – 452; Calais – 616; East Montpelier – 1,007; Marshfield – 575; Plainfield – 487; Woodbury – 329; and Worcester – 346.

<sup>9</sup>Petition at 3 and Exhibits 1 and 2. Charter's petition listed the following number of subscribers for each city: Cabot – 0; Calais – 0; East Montpelier – 0; Marshfield – 63; Plainfield – 243; Woodbury – 0; and Worcester – 0.

<sup>10</sup>47 C.F.R. § 0.321.