

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

In the Matter of:	)	
	)	
Cable One, Inc.	)	
	)	CSR-5968-E
Petition for Determination of Effective	)	
Competition in Sioux City, IA	)	
(CUID No. IA0084)	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 21, 2003**

**Released: April 24, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cable One, Inc., (“Cable One”), has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the above-captioned community in Iowa (the “Community”).<sup>1</sup> Cable One alleges that its cable system serving the Community is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended (“Communications Act”), and Section 76.905(b)(2) of the Commission's rules.<sup>2</sup> Cable One claims the presence of effective competition in the Community stems from the competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and EchoStar Communications Corporation’s DISH Network (“EchoStar”). 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>3</sup> as that term is defined by 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. Based on the record in this proceeding, Cable One has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video

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<sup>1</sup> 47 C.F.R. § 76.7.

<sup>2</sup> 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

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>5</sup>

4. Turning to the first prong of the competing provider 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>6</sup> Cable One has provided evidence of the advertising of DBS service in news media serving the Community.<sup>7</sup> We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>8</sup> Cable One has demonstrated that the Community is 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. Cable One has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Community, that there exists no regulatory, technical, or other impediments to households within the Community taking the services of the DBS providers, and that potential subscribers in the Community have been made reasonably aware of the MVPD services of DirecTV and EchoStar.<sup>9</sup> Therefore, the first prong of the competing provider test is satisfied.

5. 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 area. Cable One has obtained subscriber numbers for DirecTV and EchoStar, DBS providers operating in the Community.<sup>10</sup> Cable One sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Community on a franchise-specific zip code plus four basis.<sup>11</sup>

6. Cable One asserts that it is the largest MVPD in the Community because Cable One's subscribership exceeds the aggregate DBS subscribership for the franchise area.<sup>12</sup> Based upon the aggregate DBS subscriber penetration levels calculated using 2000 Census household data,<sup>13</sup> we find that Cable One has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Community.<sup>14</sup>

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<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> Petition at 3-5 and Exhibits A and B.

<sup>8</sup> *See* 47 C.F.R. § 76.905(g). *See also* Petition at 5 and Exhibits C, D and E. Exhibit C contains the nationwide channel lineup of DirecTV, Exhibit D contains the channel lineup of EchoStar, and Exhibit E includes the channel line-up for Cable One's cable system serving the Community.

<sup>9</sup> Petition at 3-5.

<sup>10</sup> *Id.* at 6-7 and Exhibits F and G.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> Petition at 6 and Exhibit F.

<sup>13</sup> *See id.* at Exhibit G.

<sup>14</sup> The number of households subscribing to programming services offered by MVPDs is approximately 18 percent  
(continued...)

Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Cable One has submitted sufficient evidence demonstrating that its cable system serving the Community is subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Cable One, Inc., **IS GRANTED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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of the households in the Community. This figure is obtained by dividing the 5,753 DBS subscribers by 32,054, the number of households in Sioux City.

<sup>15</sup> 47 C.F.R. § 0.283.