

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

In the Matter of:	)	
	)	
Cable One, Inc.	)	
	)	CSR 5958-E
Petition for Determination of Effective	)	
Competition in Pocatello, Idaho	)	
(CUID ID0009)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 26, 2003**

**Released: July 7, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cable One, Inc. ("Cable One") 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)(2) of the Commission's rules for a determination of effective competition in the City of Pocatello, Idaho.<sup>1</sup> Cable One alleges that its cable system serving the City is subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") and a wireless cable provider, Teton Wireless Television, Inc. ("Teton"). The City of Pocatello filed an opposition to which Cable One replied.

**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> 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 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

<sup>1</sup>See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). Pocatello is certified to regulate basic cable service rates.

<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 and 907.

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 the news media serving the City.<sup>7</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We find that Cable One has demonstrated that Pocatello 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 also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the City, that there exists no regulatory, technical, or other impediments to households within the City taking the services of the DBS providers, and that potential subscribers in the City have been made reasonably aware of the MVPD services of DirecTV and DISH.<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 sought to determine the competing provider penetration in Pocatello by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers in Pocatello on a zip code plus four basis.<sup>10</sup> Pocatello's opposition alleges that Cable One has not met its burden of demonstrating that the number of households subscribing to DBS providers exceeds 15 percent of the households in Pocatello.<sup>11</sup> Pocatello initially questions the accuracy of the number of Cable One subscribers. Pocatello alleges that Cable One has given three different subscribership figures: 1) 14,800 subscribers in the effective competition petition; 2) 11,809 in a recent franchise fee report; and 3) 17,545 in a recent FCC Form 1240 filing.<sup>12</sup> Pocatello argues that that these figures represent an area larger than either the City or the franchise area and notes that Cable One serves several areas outside of the City. Thus, argues Pocatello, there are substantial doubts about the reliability of Cable One's subscribership figures.

6. Pocatello also questions the accuracy and validity of the DBS data submitted by Cable One because the subscribership numbers were not adjusted "downward" to reflect commercial or test accounts not associated with a household as they were in *Charter Communications*.<sup>13</sup> Pocatello alleges that "a substantial number of DBS subscribers, use a post office box rather than a street address to receive

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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 (CSB 1997).

<sup>7</sup>*See* Cable One Petition at 4 and Exhibits A, B, and C.

<sup>8</sup>*See* 47 C.F.R. § 76.905(g); *see also* Cable One Petition at 5-6 and Exhibits D, E, and F.

<sup>9</sup>Cable One Petition at 4-5.

<sup>10</sup>Cable One Petition at 7 and Exhibit H.

<sup>11</sup>Opposition at 2.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.* at 3, citing *Charter Communications Properties, Inc.*, 17 FCC Rcd 4617 (2002).

mail.”<sup>14</sup> Pocatello alleges that two of its zip codes are primarily for post office boxes and another zip code includes some post office boxes.<sup>15</sup> Thus, Pocatello claims that, without more detailed information on the zip codes and how they were treated by SkyTrends, Cable One may have included many households that are outside of the City, but use post office boxes within Pocatello. Pocatello also challenges the subscribership figure for Teton because it is unverified and did not specifically ask for data limited “within the City of Pocatello,” and could include information for surrounding communities. Finally, Pocatello questions the summary data provided by SkyTrends. Pocatello complains that the report fails to detail what zip codes were provided by Cable One, and contains insufficient information on boundaries.<sup>16</sup> The City therefore argues that it is possible that DBS and Teton subscribers accounted for in the Petition could actually reside outside the City, which could significantly affect the DBS subscribership figures and, if removed, could result in a penetration level of less than 15 percent.

7. In reply, Cable One argues that subscribership totals cited by Pocatello, ranging from 11,809 to 17,545, vary because they represent filings made at different times for different purposes. In any event, argues Cable One, even assuming that the lowest subscribership number (11,809) is correct, Cable One is still the largest MVPD in the franchise area for purposes of the competing provider test.<sup>17</sup> Cable One also argues that Pocatello does not understand the SkyTrends’ ZIP+4 process and explains that it is expressly designed to determine DBS subscribers located within a particular franchise area.<sup>18</sup> Cable One provides an explanation of the SkyTrends’ ZIP+4 process, states that the Commission has endorsed it as a more accurate and reliable methodology than five digit zip code SkyTrends reports, and has accepted it in numerous proceedings for purposes of demonstrating effective competition.<sup>19</sup> Cable One states that, despite the fact that seven zip codes are associated with Pocatello, it provided SkyTrends DBS subscriber data for only the three franchise area zip codes in which Cable One has subscribers.<sup>20</sup> Cable One argues as irrelevant Pocatello’s concern about the one zip code in the report that includes some post office boxes because the City did not present any evidence to suggest that the number involved was significant.<sup>21</sup> Cable One also asserts that the City’s unfamiliarity with SkyTrends ZIP+4 is indicated by its argument that the *Charter Communications* case requires subscribership numbers to be adjusted “downward” to reflect commercial or test accounts.<sup>22</sup> Cable One argues that it submitted a ZIP+4 report, which is more accurate than the five digit zip code information contained in the SkyTrends report in the *Charter Communications* case, and therefore, its subscribership numbers do not need to be adjusted downward. Cable One also indicated that the SkyTrends report specifically states that it is limited to the City boundaries and not outlying areas.<sup>23</sup> Finally, Cable One obtained revised subscribership numbers from Teton that include only subscribers within the City limits.<sup>24</sup>

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<sup>14</sup>*Id.* at 4.

<sup>15</sup>*Id.* at 4 and Exhibit C.

<sup>16</sup>*Id.* at 6.

<sup>17</sup>Cable One Reply at 8.

<sup>18</sup>*Id.* at 2-4.

<sup>19</sup>*Id.* at 2.

<sup>20</sup>*Id.* at 4.

<sup>21</sup>*Id.* at 4-5.

<sup>22</sup>*Id.* at 3-4.

<sup>23</sup>*Id.* at 5.

<sup>24</sup>*Id.* at 8-10.

8. As Cable One notes, we have repeatedly accepted SkyTrends' subscriber reports in satisfaction of Section 76.907(c) of the Commission's rules.<sup>25</sup> Cable One provided Pocatello with the relevant portion of the SkyTrends report identifying the total number of DBS subscribers allocated to the City, as well as a copy of the methodology detailing how SkyTrends reached this result.<sup>26</sup> Pocatello presents no evidence to call into question the validity of the SkyTrends' report submitted by Cable One. Moreover, as Cable One accurately asserts, the SkyTrends' ZIP+4 subscribership numbers do not have to be adjusted downward to reflect commercial or test accounts as was done in the *Charter Communications* case, which involved five digit zip codes. We have accepted the ZIP+4 as a "reasonable and sufficiently reliable for purposes of determining the presence of effective competition."<sup>27</sup> Accordingly, we will accept the number of Pocatello DBS subscribers indicated in Cable One's petition.

9. Turning to the competitive penetration level in Pocatello, Cable One asserts that it is the largest MVPD because its subscribership exceeds the aggregate DBS subscribership and Teton subscribership in Pocatello.<sup>28</sup> Cable One submitted Census 2000 data indicating that there are 19,334 households in Pocatello.<sup>29</sup> Based on the aggregate 3,533 DBS subscribers in Pocatello, we calculate that the competing provider penetration rate in Pocatello with regard solely to DBS subscribers is 18.27 percent.<sup>30</sup> If Teton's subscribership is included, the penetration rate is 21.97 percent.<sup>31</sup> We find that Cable One has demonstrated that the number of households subscribing to programming services offered by providers, other than the largest MVPD, exceeds 15 percent of the households in Pocatello. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we concluded that Cable One has submitted sufficient evidence demonstrating that its cable system serving the City of Pocatello is subject to effective competition.

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<sup>25</sup>See 47 C.F.R. § 76.907(c); see, e.g., *Cablevision of Paterson*, 17 FCC Rcd 17239 (2002); *Mountain Cable Company d/b/a Adelpia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

<sup>26</sup>Cable One Petition at H.

<sup>27</sup>See *Falcon Cable Systems Company II, a California Limited Partnership, d/b/a Charter Communications*, 17 FCC Rcd 4648 (2002).

<sup>28</sup>Cable One Petition at 7.

<sup>29</sup>*Id.* and Exhibit I.

<sup>30</sup>*Id.* (3,533 DBS subscribers ÷ 19,334 Pocatello households = 18.27%).

<sup>31</sup>Reply at 8-9 (3,533 DBS subscribers + 715 Teton subscribers = 4,248 ÷ 19,334 = 21.97%).

**III. ORDERING CLAUSES**

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

11. **IT IS FURTHER ORDERED** that the certification of Pocatello, Idaho to regulate basic cable service rates **IS REVOKED**.

12. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>32</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>32</sup>47 C.F.R. § 0.283.