

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

In the Matter of:)
)
Jones Intercable, Inc.)
)
Petition for Determination of Effective Competition in)
Oro Valley, Arizona (CUID Nos. AZ0137 & AZ0158))

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2000

Released: April 17, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Jones Intercable, Inc. ("Jones") has filed with the Commission a petition for a determination of effective competition, pursuant to Section 76.915(f) of the Commission's rules,¹ alleging that Jones is subject to effective competition from competing service providers in its Oro Valley, Arizona, franchise area (the "Valley"). Jones alleges that its cable system serving the Valley is subject to effective competition, pursuant to Section 623 of the Communications Act of 1934, as amended, ("Communications Act")² and the Commission's implementing rules.³ Jones bases its allegation of the presence of effective competition in the Valley on the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and Echostar Communications Corporation ("EchoStar"), and by a wireless provider, People's Choice TV Corp. No opposition to this petition was filed.

II. BACKGROUND

2. 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

¹Jones filed the petition pursuant to Section 76.915(f) of the Commission's rules, which was eliminated and is superceded by Section 76.7 of the Commission's rules. *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5313 (1999). We will treat Jones' petition as filed pursuant to Section 76.7. *See* 47 C.F.R. § 76.7.

²47 U.S.C. § 543.

³47 C.F.R. § 76.905(b)(2).

households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15%) of the households in the franchise area.⁴

3. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 76.905 of the Commission's rules.⁶ 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. We find that Jones has met this burden, and is subject to effective competition in the Valley.

III. DISCUSSION

4. With respect to the first prong of the competing provider test, we find that the programming of DBS providers, such as DirecTV and Echostar, satisfy the Commission's programming comparability criterion. 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.⁷ Jones has provided evidence of the advertising of DBS service in the local media serving each of the franchise areas.⁸ With respect to the issue of program comparability, we find that the programming of DBS providers is comparable. We note that these providers satisfy the Commission's program comparability criterion because they offer at least 12 channels of video programming, including at least one non-broadcast channel.⁹ We find that Jones has demonstrated that the Valley 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. 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. Jones provided 1990 Census data showing that there are 2,851 households in Oro Valley.¹⁰ Jones also provided information showing that People's Choice TV Corp., a wireless MPVD in the Valley, provides service to approximately 281 households and that the two DBS providers provide service to approximately 855 households, for total of 1,136

⁴Communications Act, § 623(1)(1)(B), 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

⁵47 C.F.R. § 76.906.

⁶47 C.F.R. § 76.905.

⁷*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸*See e.g.*, Jones Petition at Exhibit 2.

⁹*See* 47 C.F.R. §76.905(g). *See also* Jones Petition at Exhibit 2.

¹⁰Jones Petition at Exhibit 3. 1990 Census data satisfies effective competition decision requirements. *See Cable Operators' Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Cable Service Rates*, 9 FCC Rcd 3656 (1994).

households, or 39.8% of the 2,851 households in the Valley.¹¹ Finally, Jones represents that it is the largest MVPD provider in the Valley. Based on this record, we find that Jones has demonstrated that the number of households subscribing to programming services offered by MVPDs, the DBS providers and People's Choice TV Corp., other than the largest MVPD, Jones, exceeds 15 percent of the households in the Valley area.¹² Therefore, the second prong of the competing provider test is also satisfied.

6. Based on the foregoing, we conclude that Jones has submitted sufficient evidence demonstrating that its cable system serving Oro Valley, Arizona, is subject to effective competition.

IV. ORDERING CLAUSES

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

8. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹¹Jones Petition at Exhibits 5-8. Where two MVPDs offer service to at least 50 percent of the households in a franchise area, the subscribership of all MVPDs, other than the largest MVPD, may be aggregated to satisfy the second prong of the competing provider test, regardless of whether they offer service to at least 50 percent of the households in the franchise area. See *Time Warner Entertainment Co., L.P., et al. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995).

¹²Despite the fact that Jones' 1990 Census data is nearly a decade old, we are not concerned that the intervening population increases have rendered our effective competition determination incorrect. Even if the number of households in the Valley have doubled since 1990, the number of households served by MVPDs other than the largest MVPD equals approximately 20%, well above the 15% threshold established by Section 632(l)(1)(B)(ii).

¹³47 C.F.R. §0.321.