

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

In the Matter of:	)	
	)	
MediaOne of Colorado, Inc.	)	CSR 5413-E
	)	
Petition for Determination of Effective	)	
Competition in Atlanta, Georgia and Nearby	)	
Communities	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 21, 2000**

**Released: July 28, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. MediaOne of Colorado, Inc. (MediaOne) has filed with the Commission a petition<sup>1</sup> pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in the City of Atlanta, Georgia, and certain surrounding cable service franchise areas (the "Communities").<sup>2</sup> MediaOne alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),<sup>3</sup> and the Commission's implementing rules,<sup>4</sup> and are therefore exempt from cable rate regulation. MediaOne claims the presence of effective competition in the Communities stems from the competing services provided by BellSouth Entertainment, Inc. ("BSE"), a multi-channel multi-point distribution service (MMDS) operator affiliated with a local exchange carrier ("LEC"). MediaOne also filed a Supplement to Petition for Relief. No opposition to the petition or supplement was filed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>6</sup> The

---

<sup>1</sup>See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 1237, dated July 13, 1999.

<sup>2</sup>The communities subject to this petition are listed on Appendix A.

<sup>3</sup>47 U.S.C. § 543(a)(2).

<sup>4</sup>47 C.F.R. § 76.905(b)(4).

<sup>5</sup>47 C.F.R. § 76.906.

<sup>6</sup>47 C.F.R. § 76.905.

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>7</sup> Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.<sup>8</sup>

3. The Commission has stated that an incumbent cable operator could satisfy the “LEC” effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.<sup>9</sup> The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.<sup>10</sup>

## II. DISCUSSION

4. MediaOne holds franchises issued by the Communities and is authorized to provide and provides cable services within the Communities’ territorial boundaries.<sup>11</sup> As such, MediaOne qualifies as the incumbent cable operator within the Communities for purposes of the “LEC” effective competition test at issue in this proceeding. On the other hand, BSE provides “wireless cable” service within the Communities by means of digital MMDS technology from four MMDS transmitter sites located in and around Atlanta.<sup>12</sup> BSE is a wholly-owned subsidiary of BellSouth Corporation, a holding company which wholly owns BellSouth Telecommunications, Inc., a provider of telecommunications services, systems and products. We have found previously that BSE is a wholly-owned subsidiary of BellSouth, and that BellSouth Telecommunications, Inc. is unquestionably a LEC.<sup>13</sup> We further find here that MediaOne is unaffiliated with BellSouth Corporation, BellSouth Telecommunications, Inc., or BSE. Therefore, BellSouth Telecommunications, Inc. qualifies as a “LEC,” and BSE qualifies as an affiliate of a “LEC” for purposes of the “LEC” effective competition test.<sup>14</sup>

---

<sup>7</sup>See 47 C.F.R. §§ 76.906 & 907.

<sup>8</sup>Communications Act, § 623(l)(1)(D), 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test within Section 632(l) may be referred to as the “LEC” effective competition test.

<sup>9</sup>See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”). No showing of meeting a penetration standard is required under the “LEC” effective competition test. *Id.* at 5303.

<sup>10</sup>*Id.* at 5305.

<sup>11</sup>Petition, Exhibit 2.

<sup>12</sup>Petition at 7-8 and Exhibit 5.

<sup>13</sup>*In the Matter of CoxCom, Inc.*, 14 FCC Rcd 7134 (CSB 1999).

<sup>14</sup>See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

5. MediaOne presented information establishing that a viewable signal from BSE's MMDS transmitters can be received in an area that overlaps MediaOne's franchised service area. This information consists of overlay maps depicting the 35 mile predicted service contours and shadow plot maps of BSE's four MMDS transmitter sites. These maps show that all 56 of MediaOne's franchise areas listed on Attachment A hereto lie within the interference-free contours of BSE's MMDS transmitters. Most importantly, these maps also show that there are no terrain or other obstacles to line of sight service and that BSE stations' signal strength is adequate throughout the area<sup>15</sup> BSE has distributed marketing materials within the Communities pointing out that Communities' residents need only call BSE for installation and commencement of services.<sup>16</sup> BSE's marketing materials show that its MMDS service offers 160 channels of digital video programming that includes non-broadcast programming services such as Fox Sports South, CNN, ESPN, Discovery, BET, and Turner South, as well as a complement of local television broadcast stations.<sup>17</sup> Therefore, BSE provides comparable programming as required by the "LEC" effective competition test. MediaOne's petition also provides substantial evidence that there are no regulatory, technical or other impediments to BSE's provision of service within the Communities. MediaOne has also shown that BSE has commenced providing service not only within the Communities but also within several other nearby communities within the greater Atlanta area,<sup>18</sup> is marketing its services in a manner that makes potential subscribers reasonably aware of those services, and otherwise satisfies the "LEC" effective competition test consistent with evidentiary requirements set forth in the *Cable Reform Order*.<sup>19</sup>

6. Based on the foregoing, we conclude that MediaOne has submitted sufficient evidence demonstrating that its cable systems serving Atlanta, Georgia and the communities listed in Appendix A are subject to effective competition.

---

<sup>15</sup>Petition at 8-9 and Exhibits 6 & 7. See *Cable Reform Order* at 5305-06. See also Supplement to Petition at 2 & Attachment 1.

<sup>16</sup>Petition 10 and Exhibits 13, 14, & 15. See also Supplement to Petition at 2 & Attachment 3

<sup>17</sup>*Id.* at 7-9 and Exhibit 17. See also Supplement to Petition at 2 & Attachment 2.

<sup>18</sup>MediaOne presented data showing that as of February 1999 BES provided service to approximately 18500 subscribers within Chamblee, Duluth, Lawrenceville, and Woodstock, Georgia, and in unincorporated portions of Cherokee, DeKalb, Gwinnett and Cobb Counties of Georgia. See Supplement to Petition at 2 & Attachment 1. See also *Time Warner Cable (Atlanta, GA)*, DA 00-1347 (Cable Serv. Bur., released June 20, 2000) (2000 WL 780337 (FCC)).

<sup>19</sup>14 FCC Rcd at 5305. The Commission found Time Warner to be subject to effective competition from HTC in the unincorporated portions of Horry County, South Carolina, under the "LEC" effective competition test in *Time Warner Entertainment-Advance/Newhouse Partnership, d/b/a Time Warner Company*, 12 FCC Rcd 18166 (CSB 1997).

**III. ORDERING CLAUSES**

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

8. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Service Bureau

---

<sup>20</sup>47 C.F.R. §0.321.

## APPENDIX A

## MediaOne Atlanta Area Cable Communities

<b>Communities</b>	<b>CUID Nos.</b>	<b>Communities</b>	<b>CUID Nos.</b>
Acworth	GA0280	Fayetteville	GA0470
Apphretta	GA0411	Forest Park	GA0238
Atlanta	GA0018	Ft. Gillem	GA0567
Austell	GA0128	Ft. McPherson	GA0556
Avondale Estates	GA0081	Fulton County (N)	GA0819, GA0700
Bartow County	GA0475	Fulton County (S)	GA0633
Berkeley Lake	GA0262	Fulton County (W)	GA0889
Brooks	GA0842	Grayson	GA0260
Clarkston	GA0080	Gwinnett County	GA0222
Clayton County	GA0143	Hapeville	GA0356
Cobb County	GA0169, GA0236, GA0246	Henry County	GA0534
College Park	GA0349	Jonesboro	GA0259
Conyers	GA0269	Kennesaw	GA0235
Coweta County	GA0731	Lake City	GA0258
Decatur	GA0079	Lilburn	GA0227
DeKalb County	GA0078	Lithia Springs	GA0965
Dobbins AFB	GA0530	Lithonia	GA0440
Douglas County	GA0781, GA0121, GA0386	Loganville	GA0960
Douglasville	GA0168	Lovejoy	GA0259
Duluth	GA0920	Marietta	GA0156
East Point	GA0350	Morrow	GA0248
Fairfield Plantation	GA0780	Newtown	GA0309
Fayette County	GA0389	Norcross	GA0261

## APPENDIX A (Cont'd)

## MediaOne Atlanta Area Cable Communities (Cont'd)

<b>Communities</b>	<b>CUID Nos.</b>	<b>Communities</b>	<b>CUID Nos.</b>
Peachtree City	GA0847	Roswell	GA0919
Pine Lake	GA0106	Snellsville	GA0221
Powder Springs	GA0655	Stone Mountain	GA0077
Riverdale	GA0247	Tyrone	GA0388
Rockdale	GA0308	Woolsey	GA0841