

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

In the Matter of:)	
)	
Kilgore Video, Inc.)	
d/b/a WEHCO Video, Inc.)	
)	CSR-5936-E
Petition for Determination of Effective)	
Competition in Kilgore, TX (TX0350))	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 5, 2002

Released: September 6, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Kilgore Video, Inc. d/b/a WEHCO Video, Inc. ("WEHCO") has filed with the Commission a petition alleging that WEHCO is subject to effective competition from competing service providers in Kilgore, Texas ("Kilgore"). WEHCO alleges that its cable system serving Kilgore is subject to effective competition, pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the local franchising authority in Kilgore to regulate basic service rates.²

WEHCO bases its allegation of effective competition on the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and EchoStar Communications Corporation ("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,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ 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, WEHCO has met this burden.

¹47 U.S.C. § 543.

²47 C.F.R. § 76.905(b)(2).

³47 C.F.R. § 76.906.

⁴47 C.F.R. § 76.905.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its 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 programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of this 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.⁶ WEHCO has provided evidence of the advertising of DBS service in news media serving Kilgore.⁷ 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.⁸ WEHCO has demonstrated that Kilgore 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. WEHCO has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Kilgore, that there exists no regulatory, technical, or other impediments to households within Kilgore taking the services of the DBS providers, and that potential subscribers in Kilgore have been made reasonably aware of the MVPD services of DirecTV and EchoStar.⁹ 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. WEHCO has purchased a report from SkyTrends that identifies the number of subscribers attributable to the DBS providers in Kilgore on a franchise-specific zip code plus four basis.¹⁰ WEHCO asserts that it is the largest MVPD in Kilgore because WEHCO's subscribership exceeds the aggregate subscribership for the DBS providers.¹¹ Based upon the DBS providers' aggregate 38.72 percent subscriber penetration level, calculated using 2000 Census household data,¹² we find that WEHCO 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 Kilgore. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that WEHCO has submitted sufficient evidence demonstrating that its cable system serving Kilgore is subject to effective competition.

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

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ Petition at 3 and Exhibit 1.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 3-4 and Exhibits 2-3. Exhibit 2 includes the channel lineup for WEHCO's cable system serving Kilgore and Exhibit 3 contains the nationwide channel lineups of DirecTV and EchoStar.

⁹ Petition at 2-4.

¹⁰ *Id.* at 4-5 and Exhibit 5.

¹¹ *Id.* at 4 and Exhibit 4.

¹² *See id.* at Exhibit 6 (1,705 DBS subscribers ÷ 4,403 Kilgore 2000 Census households = 38.72%).

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Kilgore Video, Inc. d/b/a WEHCO Video, Inc. **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Kilgore, Texas **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

¹³47 C.F.R. §0.283.