

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

In the Matter of:)	
)	
MediaOne of Massachusetts, Inc.)	CSR-6021-E
)	
Petition for Determination of Effective)	
Competition in Dedham (MA0238) and Needham)	
(MA0199), Massachusetts)	

MEMORANDUM OPINION AND ORDER

Adopted: January 3, 2003

Released: January 9, 2003

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. MediaOne of Massachusetts, Inc. ("MediaOne") (providing service as "AT&T Broadband") has filed with the Commission a petition (the "Petition") pursuant to Sections 76.7 and 76.907 of the Commission's rules seeking a finding of effective competition in Dedham and Needham, Massachusetts ("the Communities"). 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"),¹ and the Commission's implementing rules,² and seeks revocation of the certification of the local franchising authorities in the Communities to regulate basic cable service rates. MediaOne claims the presence of effective competition in the Communities stems from the competing services provided by RCN-BecoCom, L.L.C. ("RCN"), a franchised cable operator that also provides local exchange carrier ("LEC") service in the Communities.³ 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,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist

¹ 47 U.S.C. § 543(a)(2).

² 47 C.F.R. § 76.905.

³ 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(4).

⁴ 47 C.F.R. § 76.906.

⁵ 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area.⁶ Based on the record in this proceeding, MediaOne has met this burden, insofar as the LEC effective competition test is concerned.

A. The LEC Test

3. 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.⁷

4. 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.⁸ 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.⁹

5. MediaOne operates a cable television system in the Communities for which it seeks a determination of effective competition. MediaOne has provided information demonstrating that RCN is a telephone company that provides local exchange and other telephone services within the Communities.¹⁰ Therefore, RCN qualifies as a LEC for purposes of the LEC effective competition test.¹¹

6. In addition to qualifying as a LEC, RCN was awarded franchises for the provision of cable service within the Communities.¹² MediaOne demonstrates that there are no regulatory, technical or other impediments to RCN's provision of cable service within the Communities.¹³ As to whether RCN provides cable service that substantially overlaps that of MediaOne, RCN's franchises contain requirements to provide community-wide cable service within eighteen months of the Needham franchise's effective date and within twenty four months of the Dedham franchise's effective date.¹⁴ The

⁶ See 47 C.F.R. §§ 76.906-907.

⁷ 47 U.S.C. § 543(l)(1)(D); see also 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test within Section 632(l) is referred to as the "LEC" effective competition test.

⁸ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

⁹ *Id.*

¹⁰ Petition at 4.

¹¹ See 47 U.S.C. § 543(l)(1)(D); 47 U.S.C § 153(a)(1).

¹² Petition at 6.

¹³ *Id.*

¹⁴ *Id.*

relevant requirements, combined with RCN's existing service to nearly 2,100 subscribers in Dedham and 1,500 subscribers in Needham, evinces its offering of service in the Communities.¹⁵ We find that MediaOne has demonstrated that RCN's operations in the Communities substantially overlap those of MediaOne.

7. RCN has widely distributed marketing materials throughout the greater Boston area, including the Communities, pointing out that residents need only call RCN for installation of its cable services.¹⁶ These marketing materials and RCN's website demonstrate that its cable service offers 80 channels of video programming that includes non-broadcast programming services such as ESPN, HBO, CNN, as well as a complement of local television broadcast stations, such as WHDH-TV (NBC), WCVB-TV (ABC), and WBZ-TV (CBS).¹⁷ Therefore, RCN provides comparable programming as required by the LEC effective competition test.

8. MediaOne has demonstrated that RCN has commenced providing cable service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.¹⁸ Based on the foregoing, we conclude that MediaOne has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to LEC effective competition.¹⁹

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by MediaOne of Massachusetts, Inc. for a determination of effective competition in Dedham and Needham, Massachusetts **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates of Dedham and Needham, Massachusetts **ARE REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

¹⁵ *Id.* at 6 and 7.

¹⁶ *Id.* at 7-8 and Exhibits E and J.

¹⁷ *Id.* at 9-10 and Exhibit U.

¹⁸ *See Cable Reform Order*, 14 FCC Rcd at 5305.

¹⁹ MediaOne has argued that it is also subject to effective competition in the Communities pursuant to the Act's competing provider effective competition test because of the availability of DBS service in the Communities from DirecTV and Echostar. We do not address that claim given our conclusion with regard to the LEC test. In any instance, it appears that MediaOne has not submitted evidence demonstrating that households in the Communities are reasonably aware that DBS service is available.

²⁰ 47 C.F.R. § 0.283.