

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7701-E
)	CSR 7702-E
Petitions for Determination of Effective)	
Competition in 28 Delaware Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: February 19, 2009

Released: February 23, 2009

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). The petitions are unopposed.

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 623(l) of the Communications Act and 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.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(1)(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 programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

households in the franchise area.⁶ This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. 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. Petitioner asserts that it is the largest MVPD in the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a five digit zip code basis.¹⁵

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3. The two petitions at issue in this proceeding (CSR 7701-E and CSR 7702-E) were filed by Comcast because even though the same Communities are listed in both, some of the Communities with different CUID numbers are on a separate Comcast cable system and required the filing of a separate petition with a separate filing fee.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4.

¹²*See* Petitions at 4 and Exhibit 2.

¹³*See* Petitions at 2.

¹⁴*Id.* at 5 and Declaration of Peter H. Feinberg, Associate General Counsel for Comcast Cable Communications, LLC.

¹⁵Petitions at 5-7. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of

(continued....)

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment A, we find that Petitioner 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 the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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households in the franchise area over the number of households in the zip area). *Id. See, e.g.,* Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of a cable operator's use of a Media Business Corporation "allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City," to determine DBS subscribership for that franchise area).

¹⁶Petitions at 7-8 and Exhibit 6.

¹⁷47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7701-E and CSR 7702-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7701-E

Communities	CUIDs	CPR*	2000 Census Household	Estimated DBS Subscribers
Bowers	DE0064	26.92%	78	21
Camden	DE0001	29.70%	835	248
Cheswold	DE0071	23.28%	116	27
Clayton	DE0077	45.69%	499	228
Dover	DE0002	20.73%	12,340	2,558
Farmington	DE0066	54.84%	31	17
Felton	DE0041	42.09%	297	125
Frederica	DE0042	29.67%	246	73
Harrington	DE0027	45.38%	1,223	555
Hartly	DE0082	40.00%	25	10
Houston	DE0061	27.82%	151	42
Kenton	DE0081	55.42%	83	46
Magnolia	DE0058	43.02%	86	37
Smyrna	DE0003	52.27%	2,114	1,105
Viola	DE0056	33.87%	62	21
Woodside	DE0080	25.71%	70	18
Wyoming	DE0021	39.06%	448	175

CSR 7702-E

Communities	CUIDs	CPR*	2000 Census Household	Estimated DBS Subscribers
Bethel	DE0085	26.92%	78	21
Blades	DE0035	22.95%	353	81
Bridgeville	DE0040	51.75%	570	295
Ellendale	DE0049	39.82%	113	45
Georgetown	DE0015	42.44%	632	1,489
Greenwood	DE0050	59.10%	335	198
Laurel	DE0016	40.32%	1,389	560
Milford	DE0018	24.95%	2,665	665
Milton	DE0039	29.71%	700	208
Seaford	DE0020	51.81%	1,362	2,629
Slaughter Beach	DE0084	39.81%	108	43

*CPR = Percent of competitive DBS penetration rate.