

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

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| In the Matter of: |) | |
| |) | |
| MCC Iowa LLC |) | |
| |) | CSR-5971-E |
| Petition for Determination of Effective |) | |
| Competition in Maquoketa, Iowa (IA0100) |) | |
| |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: November 29, 2002

Released: December 6, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Iowa LLC ("Mediacom") has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Maquoketa, Iowa ("Maquoketa").¹ Mediacom alleges that its cable system serving Maquoketa is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the local franchising authority in Maquoketa to regulate basic cable service rates.² Mediacom claims the presence of effective competition in Maquoketa stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). Maquoketa filed comments in response to the Petition, to which Mediacom filed a reply.

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, Mediacom has met this burden.

¹ 47 C.F.R. § 76.7.

² 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ 47 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 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 fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of the competing provider 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 Mediacom has provided evidence of the advertising of DBS service in news media serving Maquoketa.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 Mediacom has demonstrated that Maquoketa 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 areas. Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Maquoketa, that there exists no regulatory, technical, or other impediments to households within Maquoketa taking the services of the DBS providers, and that potential subscribers in Maquoketa 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. Mediacom sought to determine the competing provider penetration in its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within Maquoketa on a franchise-specific zip code plus four basis.¹⁰ In its comments, Maquoketa questions the reliability of the zip code plus four data supplied by Mediacom and asks that the operator provide it with the zip code plus four extensions allocated by SkyTrends to Maquoketa to ensure that the DBS subscriber totals for the community do not contain any residents living in surrounding areas.¹¹ In reply, Mediacom notes that the zip code plus four methodology and mapping software utilized by SkyTrends automatically eliminates any DBS subscriber records associated with zip code plus four extensions that fall outside the relevant cable franchise area.¹² Mediacom also submits documentation

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 4 and Exhibit A.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5 and Exhibits B-D. Exhibits B and C contains the nationwide channel lineups of DirecTV and EchoStar and Exhibit D includes the channel line-up for Mediacom's cable system serving Maquoketa.

⁹ Petition at 2-5.

¹⁰ *Id.* at 6 and Exhibit F.

¹¹ Letter from Brian Wagner, Maquoketa City Manager, to Bruce Gluckman, Mediacom Vice President, Legal and Regulatory Affairs (Sept. 10, 2002); *see also* Letter from Brian Wagner, Maquoketa City Manager, to W. Kenneth Ferree, Chief, Media Bureau, FCC (Oct. 3, 2002).

¹² Reply at 2-3.

reflecting that SkyTrends does not publicly release any zip code plus four data beyond its general methodology and the aggregate DBS subscriber total for the franchise area in question.¹³ As such, Mediacom contends that it cannot supply Maquoketa with the requested data.¹⁴

6. Pursuant to Section 76.907(c) of the Commission's rules, cable operators may request subscriber information from competitors for effective competition purposes, however, such subscriber information may be limited to numerical totals.¹⁵ The Commission has accepted DBS subscriber reports from SkyTrends on behalf of the DBS providers in satisfaction of this requirement.¹⁶ Under Section 76.7(a)(3) of the Commission's rules, Mediacom sent a service copy of its Petition, including the subscriber report and methodology it received from SkyTrends, to Maquoketa.¹⁷ Under the circumstances of the instant case, we believe that Mediacom has satisfied its obligations under the Commission's rules regarding the provision of subscriber information for effective competition purposes. According to Mediacom, the zip code plus four mapping and allocation process utilized by SkyTrends addresses the concerns expressed by Maquoketa by eliminating from its DBS subscriber total any residents associated with zip code plus four extensions outside of Maquoketa.¹⁸

7. Mediacom asserts that it is the largest MVPD in Maquoketa because Mediacom's subscribership exceeds the aggregate DBS subscribership for the franchise area.¹⁹ Based upon the 19.5 percent aggregate DBS subscriber penetration rate, calculated using 2000 Census household data,²⁰ we find that Mediacom 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 Maquoketa. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving Maquoketa is subject to effective competition.

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 3.

¹⁵ See 47 C.F.R. § 76.907(c).

¹⁶ See, e.g., *Mountain Cable Company d/b/a Adelphia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

¹⁷ See 47 C.F.R. § 76.7(a)(3).

¹⁸ Petition at Exhibit F-2.

¹⁹ *Id.* at 6 and Exhibit E.

²⁰ See *id.* at Exhibit G (510 DBS subscribers ÷ 2,614 Maquoketa 2000 Census Households = 0.195).

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by MCC Iowa LLC **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Maquoketa, Iowa **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

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²¹ 47 C.F.R. § 0.283.