

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

In the Matter of:)	
)	
Comcast Cablevision of Maryland, Inc.)	
(MD0178) (MD0351) (MD0263) (MD0033))	CSR-6040-E
(MD0196) (MD0278) (MD0267))	
)	
Petitions for Determination of Effective)	
Competition)	

MEMORANDUM OPINION AND ORDER

Adopted: April 22, 2004

Released: April 23, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Comcast Cablevision of Maryland, Inc. ("Comcast") has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Charles County, MD ("County").¹ Comcast alleges that its cable system serving the County 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 the County to regulate basic cable service rates.² Comcast claims the presence of effective competition in the County stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). The County filed an opposition to the petition, to which Comcast 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

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.

in this proceeding, Comcast has met this burden.

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 Comcast has provided evidence of the advertising of DBS service in news media serving the County.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 Comcast has demonstrated that the County 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. Comcast has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the County, that there exists no regulatory, technical, or other impediments to households within the County taking the services of the DBS providers, and that potential subscribers in the County 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. Comcast 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 County on a franchise-specific zip code plus four basis.¹⁰ In its opposition, the County states that unless and until the Commission investigates the data and methodologies used by SkyTrends and by Comcast and shows that they are correct, it cannot be assumed that the factual support offered is sufficient to meet Comcast's burden of proof.¹¹ The County additionally states that even if Comcast succeeded in showing that DBS penetration in the County exceeded fifteen percent, it is unclear that DBS penetration alone can suffice to constitute effective competition and curb Comcast's market power.¹² In reply, Comcast argues that the Commission has recognized that SkyTrends is an appropriate source of DBS subscriber data and that SkyTrends' methodology is a reliable means for cable operators to make an

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 1.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5 and Exhibits 2-3.

⁹ Petition at 2-5.

¹⁰ *Id.* at 6.

¹¹ Opposition at 3.

¹² *Id.* at 3-4.

effective competition showing.¹³

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.¹⁴ The Commission has accepted DBS subscriber reports from SkyTrends on behalf of the DBS providers in satisfaction of this requirement.¹⁵ Under the circumstances of the instant case, we believe that Comcast has satisfied its obligations under the Commission's rules regarding the provision of subscriber information for effective competition purposes.

7. To the extent that the County has expressed concerns regarding the accuracy of SkyTrends' data, we believe that the information provided in response by Comcast and SkyTrends addresses those concerns. As shown by Comcast, the zip code plus four mapping and allocation process used by SkyTrends eliminates from its DBS subscriber total any residents associated with zip code plus four extensions outside of the County, as well as any multiple receiver data and subscribers with general delivery and non-deliverable zip code plus four extensions.¹⁶ On this basis, we believe that Comcast has provided sufficient information to verify the accuracy of the SkyTrends mapping process.

8. Comcast asserts that it is the largest MVPD in the County because its subscribership exceeds the aggregate DBS subscribership for the franchise area.¹⁷ Based upon the 22.8 percent aggregate DBS subscriber penetration level, calculated using 2000 Census household data,¹⁸ we find that Comcast 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 County. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that its cable system serving the County is subject to effective competition.

¹³ Reply at 3.

¹⁴ See 47 C.F.R. § 76.907(c).

¹⁵ See, e.g., *Mountain Cable Company d/b/a Adelphia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

¹⁶ See Petition at Exhibits 5-7.

¹⁷ *Id.* at 7 and Exhibit 6.

¹⁸ See *id.* (8,715 DBS subscribers/38,223 households).

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Comcast Cablevision of Maryland, Inc. **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Charles County, Maryland **IS REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁹ 47 C.F.R. § 0.283.