

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

In the Matter of:	)	
	)	
Mediacom Minnesota LLC	)	CSR 6320-E; CSR 6321-E & CSR 6322-E
	)	
Petitions for Determination of Effective	)	
Competition in St. Peter (MN0060), Sleepy Eye	)	
(MN0068), Redwood Falls (MN0225) and	)	
Springfield (MN0134), Minnesota	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 30, 2004**

**Released: July 2, 2004**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Mediacom Minnesota LLC (“Mediacom”) has filed with the Commission three petitions pursuant to Section 76.7 of the Commission’s rules for a determination of effective competition in St. Peter, Sleepy Eye, Redwood Falls, and Springfield, Minnesota (“the Cities”)<sup>1</sup> Mediacom alleges that its cable systems serving the Cities are subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(4) of the Communications Act<sup>2</sup> and the Commission’s implementing rules,<sup>3</sup> and therefore are exempt from cable rate regulation. Mediacom claims the presence of effective competition in the Cities stems from the competing services provided by Crystal Communications, Inc. d/b/a Hickory Tech in St. Peter; Sleepy Eye Telephone Co. d/b/a SE Digital TV in Sleepy Eye; New Ulm Telecom, Inc. (the “New Cable Operators” or “NCOs”) in Redwood Falls and Springfield. Mediacom further asserts that each of the NCOs is a local exchange carrier that provides local exchange access services, or is an affiliate of a local exchange carrier (“LEC”) that provides LEC services, in the respective Cities. No opposition to the petitions 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,<sup>4</sup> as that term is defined by Section 76.905 of the Commission’s rules.<sup>5</sup>

<sup>1</sup> See Public Notice; Special Relief and Show Cause Petitions, Report No. 0103, dated May 7, 2004.

<sup>2</sup> 47 U.S.C. § 543(a)(4) & 543(1)(1)(4).

<sup>3</sup> 47 C.F.R. § 76.905(b)(4).

<sup>4</sup> 47 C.F.R. § 76.906.

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.<sup>6</sup> Section 623(1)(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.<sup>7</sup>

3. 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.<sup>8</sup> 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.<sup>9</sup>

### III. DISCUSSION

4. Mediacom operates cable television systems in each of the Cities for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) numbers shown in the caption, qualifies as the incumbent cable operator within those Cities for purposes of the "LEC" effective competition test at issue in this proceeding.<sup>10</sup> Mediacom provided information showing that the State of Minnesota has granted certificates for the provision of telephone exchange and local exchange access services by Hickory Tech in St. Peter, by SE Digital TV in Sleepy Eye, and by New Ulm Telecom in Redwood Falls and Springfield.<sup>11</sup> Therefore, each of the NCOs qualifies as LECs for purposes of the LEC effective competition test.<sup>12</sup>

5. The NCOs have received local cable franchises from each of the Cities on various dates during 2000, 2001, and 2003 authorizing them to provide cable programming services throughout the respective Cities.<sup>13</sup> Mediacom demonstrated that the NCOs' franchise area in the Cities is essentially the same as that of its own, the NCOs' cable plant covers most of their respective franchise areas, and that

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<sup>5</sup> 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> 47 U.S.C. § 543(1)(1)(D); see also 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

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

<sup>9</sup> *Id.*

<sup>10</sup> Petitions at 3 & Exhibits C.

<sup>11</sup> *Id.* at 2 & Exhibits A.

<sup>12</sup> See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

<sup>13</sup> Petitions at 4 & Exhibits F.

their cable plant substantially overlaps Mediacom's service areas.<sup>14</sup> In addition to holding franchises for the provision of cable service within the Cities, the NCOs have distributed press releases, local advertising, and marketing materials within the Cities so that potential cable subscribers in the Cities are broadly aware of the availability of its cable services and need only to contact the NCO to obtain service.<sup>15</sup>

6. The NCOs' marketing materials show that their cable systems offer over 50 channels of video programming that includes non-broadcast programming services such as ESPN, A&E, CNN, Discovery Channel, HBO and Showtime, as well as a complement of several local television broadcast stations.<sup>16</sup> Based on this record, we find that the NCOs' complement of programming services compares with the programming available on Mediacom's systems<sup>17</sup> and is sufficient to satisfy this aspect of the LEC effective competition test.<sup>18</sup> Mediacom also provided evidence that there are no regulatory, technical or other impediments to the NCOs' provision of service within the Cities, and that the NCOs are able to provide cable service that substantially overlaps Mediacom's service.<sup>19</sup> Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems serving the Cities are subject to effective competition.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to authority delegated by Section 0.283 of the Commission's rules,<sup>20</sup> that the petitions for determinations of effective competition in St. Peter, Sleepy Eye, Redwood Falls, and Springfield, Minnesota filed by Mediacom **ARE HEREBY GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>14</sup>*Id.* at 3 & Exhibits C & D.

<sup>15</sup>*Id.* at 3 & Exhibits E.

<sup>16</sup>*Id.* at 6 & Exhibits G.

<sup>17</sup>*Id.* at 10 & Exhibits H.

<sup>18</sup>*See* 47 C.F.R. § 76.905(g).

<sup>19</sup>Petitions at 6 & Exhibits G & H.

<sup>20</sup> 47 C.F.R. § 0.238.