

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

In the Matter of: )  
 )  
Mediacom Minnesota LLC )  
 ) CSR-6009-E  
Petition for Determination of Effective )  
Competition in Le Sueur, Minnesota (MN0535) )

MEMORANDUM OPINION AND ORDER

Adopted: March 2, 2004

Released: March 4, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Minnesota LLC ("Mediacom") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"), and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules for a determination of effective competition in the City of Le Sueur, Minnesota ("Le Sueur").<sup>1</sup> Mediacom alleges that its cable system serving the City is subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). 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,<sup>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</sup> 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>4</sup> Based on the record in this proceeding, Mediacom 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

<sup>1</sup> See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). Le Sueur is certified to regulate basic cable service rates.

<sup>2</sup> 47 C.F.R. § 76.906.

<sup>3</sup> 47 C.F.R. § 76.905.

<sup>4</sup> See 47 C.F.R. §§ 76.906 and 907.

households in the franchise area.<sup>5</sup>

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.<sup>6</sup> Mediacom has provided evidence of the advertising of DBS service in the news media serving the City.<sup>7</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We find that Mediacom has demonstrated that Le Sueur 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. Mediacom also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the City, that there exists no regulatory, technical, or other impediments to households within the City taking the services of the DBS providers, and that potential subscribers in the City have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>9</sup> Accordingly, 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 Le Sueur by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers in Le Sueur on a zip code plus four basis.<sup>10</sup> Mediacom asserts that it is the largest MVPD because its subscribership exceeds the aggregate DBS subscribership in Le Sueur.<sup>11</sup> Based on the aggregate 496 DBS subscribers in Le Sueur, we calculate that the competing provider penetration rate in Le Sueur is 32.10 percent.<sup>12</sup> We find that Mediacom has demonstrated that the number of households subscribing to programming services offered by providers, other than the largest MVPD, exceeds 15 percent of the households in Le Sueur. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we concluded that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the City of Le Sueur is subject to effective competition.

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<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> Petition at 4 and Exhibit A; 5/20/03 *Letter* from Bruce J. Gluckman, Mediacom to Steven A. Broecker, F.C.C.

<sup>8</sup> *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5 and Exhibits B, C, and D. Exhibits B and C contain the nationwide channel lineups of DISH and DirecTV, respectively, and Exhibit D includes the channel line-up for Mediacom's cable system serving Le Sueur.

<sup>9</sup> Petition at 2-5.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* and Exhibit E.

<sup>12</sup> *See id.* at Exhibits F-G (496 DBS subscribers ÷ 1,545 Le Sueur 2000 Census Households = 32.10%).

**III. ORDERING CLAUSES**

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Mediacom Minnesota LLC **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification of Le Sueur, Minnesota to regulate basic cable service rates **IS REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>13</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>13</sup> 47 C.F.R. § 0.283.