

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

In the Matter of:)	
)	
Mediacom Wisconsin LLC)	CSR 6729-E, 6840-E, 6841-E, 6847-E, 6851-
)	E, 6852-E, 6862-E, 6867-E
)	
MCC Iowa)	CSR 6710-E, 6756-E, 6768-E, 6770-E, 6773-
)	E, 6775-E, 6788-E, 6797-E, 6798-E, 6799-E
)	
Eighteen Petitions for Determination of Effective)	
Competition in Thirty-three Local Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2005

Released: September 28, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eighteen petitions which cable operators (the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that such operators are subject to effective competition pursuant to Section 623(1) 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 listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

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(1) of the Communications Act of 1934, as amended, 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

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its 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.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") 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.⁷ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. 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 substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that the Cable Operators have demonstrated that the Communities are 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. Therefore, the first prong of the competing provider test is satisfied.

4. 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. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. The Cable Operators assert that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have 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. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

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

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2793 (2005).

⁹ *See* 47 C.F.R. § 76.905(g).

B. Low Penetration Effective Competition

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹⁰ The Cable Operator listed on Attachment A provided information showing that less than 30 percent of the households within the franchise areas subscribe to its cable services. Accordingly, we conclude that the Cable Operator has demonstrated the existence of low penetration effective competition under our rules.

6. Based on the foregoing, we conclude that the Cable Operators listed on Attachment A have submitted sufficient evidence to demonstrate that their cable systems are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by the Cable Operators listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰47 U.S.C § 543(l)(1)(A).

¹¹47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition

MEDIACOM WISCONSIN LLC: CSR 6729-E, 6840-E, 6841-E, 6847-E, 6851-E, 6852-E, 6862-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Belmont	WI0222	20.16%	377	76
Cuba City	WI0206	32.40%	861	279
	WI0207			
Darlington	WI0208	26.40%	985	260
Potosi	WI0209	25.17%	302	76
Shullsburg	WI0214	22.96%	527	121
Tennyson	WI0210	24.46%	139	34
Orfordville	WI0451	42.64%	455	194
Monticello	WI0468	35.54%	498	177
Fremont	WI0551	37.75%	302	114
Browntown	WI0701	28.00%	100	28
Iola	WI0466	25.22%	567	143
Scandinavia	WI0552	31.39%	137	43
Albany Village	WI0456	30.56%	468	143

MCC IOWA LLC: CSR 6710-E, 6756-E, 6768-E, 6770-E, 6773-E, 6775-E, 6788-E, 6797-E, 6798-E, 6799-E

Communities	CUIDS	CPR*	2000	DBS
			Census	Subscribers⁺
			Households⁺	Subscribers⁺
Marshalltown	IA0046	21.27%	10,175	2,164
Oskaloosa	IA0078	15.01%	4,603	691
Bussey	IA0491	17.93%	184	33
Hamilton	IA0490	15.09%	53	8
Pleasantville	IA0171	17.89	615	110
Lucas	IA0794	21.05%	95	20
Woodburn	IA0793	17.98%	89	16
Bertram	IA0885	18.37%	98	18
Ackley	IA0464	19.75%	734	145
Iowa Falls	IA0129	18.96%	2,215	420
Cherokee	IA0042	15.50%	2,362	366
Remsen	IA0404	18.78%	671	126
Belle Plaine	IA0366	21.29%	1,212	258
Marengo	IA0371	28.19%	1,057	298
Albia	IA0009	23.51%	1,531	360
Centerville	IA0004	16.96%	2,583	438

Cable Operator Subject to Low Penetration Effective Competition

MEDIACOM WISCONSIN LLC: CSR 6862-E, 6867-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Albany Township	279	16	5.73%
Lafayette	595	2	0.34%
Lagrange	923	8	0.87%
Sugar Creek	1,197	193	16.12%

CPR= Percent DBS penetration

+ = See Cable Operator Petitions