

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

In the Matter of:	)	
	)	CSR-6790-E
MCC Iowa LLC	)	CSR-6793-E
	)	CSR-6794-E
MCC Illinois LLC	)	CSR-6795-E
	)	CSR-6805-E
Mediacom Illinois LLC	)	CSR-6811-E
	)	CSR-6813-E
Mediacom Indiana LLC	)	CSR-6814-E
	)	CSR-6817-E
Twelve Petitions for Determination of Effective	)	CSR-6821-E
Competition in Twenty-Three Local Franchise	)	CSR-6823-E
Areas in Iowa, Illinois and Michigan	)	CSR-6824-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 27, 2005**

**Released: December 28, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers twelve petitions filed with the Commission by MCC Iowa LLC, MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC (“Mediacom”) pursuant to Sections 76.7, 76.905(b)(1)&(2) and 76.907 of the Commission’s rules for a determination that Mediacom’s cable systems serving twenty-three Illinois and Michigan communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.<sup>1</sup> The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Mediacom cable systems are subject to effective competition in the listed Communities.

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 623(1) of the Communications Act, and 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>

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

<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 & 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.<sup>5</sup> Turning to the first prong of this test, 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.<sup>6</sup> 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 has become the fourth largest, MVPD provider.<sup>7</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in 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.<sup>8</sup> We further find that the Mediacom cable systems 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.<sup>9</sup> Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>10</sup> 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. Mediacom sought to determine the competing provider penetration in the Communities by using a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.<sup>11</sup> Mediacom asserts that it is the largest MVPD in the majority of the Communities

<sup>5</sup> 47 U.S.C. § 543(l)(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> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

<sup>8</sup> *See* 47 C.F.R. § 76.905(g).

<sup>9</sup> Mediacom Petitions at 5 and Exhibits B & C.

<sup>10</sup> *Id.* at 3-4 and Exhibit A.

<sup>11</sup> *Id.* at 6. The Commission has previously approved the zip code plus four methodology. *See, e.g., Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, 17 FCC Rcd 16652 (2002), *aff'd* 18 FCC Rcd 9649 (2003); *Vicksburg Video, Inc.*, 17 FCC Rcd 16659 (2002); *Kilgore Video, Inc.*, 17 FCC Rcd 16662 (2002).

because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>12</sup> With respect to the Communities of Coffeen, Illinois and Marcellus, Michigan, Mediacom asserts that it cannot determine the largest MVPD in those Communities because the SBCA aggregates the number of subscribers for the DBS providers and this number is larger than the Mediacom subscribers in these Communities.<sup>13</sup>

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, 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 those noted Communities. With regard to the Community of Marcellus, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.<sup>14</sup> In Marcellus, the combined DBS penetration rate is 29.09 percent and Mediacom's penetration rate is 23.02 percent.<sup>15</sup> Therefore, the second prong of the competing provider test for this Community is satisfied. With regard to the Community of Coffeen, Mediacom has not satisfied this test. Mediacom has demonstrated that the subscriber penetration for the aggregate DBS information in this Community exceeds 15 percent, but Mediacom has not demonstrated the subscriber penetration for Mediacom exceeds 15 percent in Coffeen. In Coffeen, the combined DBS penetration rate is 39.38 percent and Mediacom's penetration rate is 13.01 percent.<sup>16</sup> Mediacom has not established that Coffeen is subject to competing provider effective competition. However, as noted below, Mediacom has established that it has met its burden with regard to the low penetration test for Coffeen. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving those Communities set forth on Attachment A are subject to competing provider effective competition.

## **B. Low Penetration Effective Competition**

6. Section 623(1)(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."<sup>17</sup> Mediacom asserts that it is subject to low penetration effective competition in Coffeen, Burlington and Wilsonville, Illinois and Marcellus, Michigan.<sup>18</sup> The information listed on Attachment A shows that Mediacom's penetration rate in Coffeen is 13.01 percent; in Burlington, its penetration rate is 14.03 percent; in Wilsonville, its penetration rate is 15.66 percent; and in Marcellus, the penetration rate is 23.02 percent. Accordingly, we conclude that Mediacom has demonstrated the existence of low penetration effective competition in these Communities.

---

<sup>12</sup> *Id.* at 6. Mediacom states that its subscriber numbers are an estimate derived from its billing system using addresses to which Mediacom provides service. *Id.* at n.19 (for CSRs 6790-E, 6793-E, 6794-E, 6795-E, 6805-E, 6911-E, 6813-E and 6814-E) and *Id.* at n.20 (for CSRs 6817-E, 6776-E and 6821-E).

<sup>13</sup> Mediacom Petitions (CSR-6817-E: Coffeen, Illinois) and (CSR 6821-E: Marcellus, Michigan) at 6.

<sup>14</sup> See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

<sup>15</sup> 297 DBS subscribers ÷ 1,021 Marcellus 2000 Census Households = 29.09%; 235 Mediacom subscribers ÷ 1,021 Marcellus 2000 Census Households = 23.02%.

<sup>16</sup> 115 DBS subscribers ÷ 292 Coffeen 2000 Census Households = 39.38%; 38 Mediacom subscribers ÷ 292 Coffeen 2000 Census Households = 13.01%.

<sup>17</sup> 47 U.S.C. § 543(1)(1)(A).

<sup>18</sup> Mediacom Petitions (CSR-6817-E at 7), (CSR-6823-E at 2), (CSR-6824-E at 2) and (CSR-6821-E at 8).

**III. ORDERING CLAUSES**

7. Accordingly, **IT IS ORDERED** that the petitions filed by MCC Iowa LLC, MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC for a determination of effective competition in the Communities listed on Attachment A **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 MCC Iowa LLC, MCC Illinois LLC, Mediacom Illinois LLC and Mediacom Indiana LLC in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

---

<sup>19</sup> 47 C.F.R. § 0.283.

## Attachment A

## Mediacom Cable Systems Subject to Competing Provider Effective Competition

Communities	CUIDS	CPR*	2000	
			Census Households+	DBS Subscribers+
<b>CSR-6790-E</b>				
Carthage City	IL0056	20.69%	1,184	245
<b>CSR-6793-E</b>				
Galva City	IL0506	17.10%	1,164	199
<b>CSR-6794-E</b>				
Atlanta City	IL0778	27.23%	694	189
Heyworth Village	IL0434	16.26%	898	146
<b>CSR-6795-E</b>				
Downs Village	IL0789	18.66%	284	53
LeRoy City	IL0589	23.85%	1,300	310
<b>CSR-6805-E</b>				
Hamilton City	IL0005	19.38%	1,223	237
Warsaw City	IL0982	18.04%	726	131
<b>CSR-6811-E</b>				
Cantrall Village	IL1216	20.75%	53	11
Green Valley Village	IL0793	16.79%	262	44
Greenview Village	IL0929	18.85%	366	69
<b>CSR-6813-E</b>				
German Valley Village	IL1242	27.37%	179	49
Ridott Village	IL1524	19.35%	62	12
<b>CSR-6814-E</b>				
Durand Village	IL0696	20.41%	441	90
Orangeville Village	IL1245	20.54%	297	61
Pearl City, village	IL1206	26.96%	293	79

Pecatonica Village	IL0705	18.71%	791	148
Winnebago Village	IL0703	29.932%	1,009	302
Winslow Village	IL1244	20.15%	134	27

**CSR-6821-E**

Marcellus Township (Cass County)	MI10993	29.09%	1,021	297
-------------------------------------	---------	--------	-------	-----

**Mediacom Systems Subject to Low Penetration Effective Competition**

**(CSR-6817-E) (CSR-6821-E) (CSR-6823-E) (CSR-6824-E)**

<b>Communities</b>	<b>CUIDS</b>	<b>Census Households</b>	<b>Cable Subs.</b>	<b>Percentage</b>
Coffeen City	IL0768	292	38	13.01%
Marcellus Township	MI0993	1,021	235	23.02%
Wilsonville Village	IL0776	249	39	15.66%
Burlington Village	IL1397	171	24	14.03%

CPR = Percent DBS penetration

+ = See Mediacom Petitions