

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

In the Matter of:)	
)	
)	
Mediacom Minnesota LLC)	CSR 6721-E, 6724-E, 6737-E, 6739-E, 6758-E
)	
MCC Iowa LLC)	CSR 6887-E
)	
Mediacom Iowa LLC)	CSR 6709-E, 6728-E, 6748-E, 6800-E, 6803-E, 6888-E
)	
)	
Twelve Petitions for Determination of Effective Competition in various Local Franchise Areas)	

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 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

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.

competition is present within the relevant franchise area.⁵

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

⁵ See 47 C.F.R. §§ 76.906 & 907.

⁶ 47 U.S.C. § 543(1)(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).

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.

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 Operators listed on Attachment A provided information showing that less than 30 percent of the households within the franchise areas subscribe to their cable services. Accordingly, we conclude that the Cable Operators have 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. Broecker
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 MINNESOTA LLC: CSR 6721-E, 6724-E, 6737-E, 6739-E, 6758-E**

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Olivia	MN0252	18.14%	1,075	195
Dawson	MN0101	21.86%	677	148
Madison	MN0099	21.17%	789	167
Wheaton	MN0148	24.50%	747	183
Hamburg	MN0493	15.05%	206	31
Maple Plain	MN0665	17.53%	770	135
Mound	MN0325	18.46%	3,982	735
Norwood/ Young America	MN0415 MN0471	20.07%	1,171	235
Waconia	MN0666	29.75%	2,568	764
Dakota	MN0779	16.92%	130	22
Peterson	MN0177	21.43%	98	21
Spring Grove	MN0426	15.49%	581	90
Carlton	MN0213	15.36%	306	47
Hermantown	MN0548	37.31%	2,726	1,017
Proctor	MN0250	20.23%	1,196	242
Silver Bay	MN0184	21.56%	844	182
Two Harbors	MN0216	25.54%	1,523	389

MEDIACOM IOWA LLC: CSR 6709-E, 6728-E, 6748-E, 6800-E, 6803-E, 6888-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Tipton	IA0187	30.28%	1,334	404
Colfax	IA0180	23.18%	837	194
Grinnell	IA0144	17.52%	3,498	613
Lambs Grove	IA0506	21.25%	80	17
Mitchellville	IA0483	25.85%	650	168
Pella	IA0488	27.51%	3,497	962
Prairie City	IA0486	20.61%	553	114
Sully	IA0319	29.31%	348	102
Elgin	IA0176	20.49%	327	67
Fredericksburg	IA0275	24.08%	407	98
New Hampton	IA0396	31.07%	1,545	480
Ossian	IA0292	15.45%	330	51
Sumner	IA0210	23.42%	888	208
West Union	IA0175	20.05%	1,107	222
Estherville	IA0007	16.16%	2,729	441
Keokuk	IA0019	15.59%	4,773	744
Montrose	IA0234	20.05%	374	75
Dysart	IA0357	22.87%	529	121
Traer	IA0365	29.74%	686	204
La Porte City	IA0190	37.07%	936	347

Cable Operator Subject to Low Penetration Effective Competition**MEDIACOM MINNESOTA LLC: CSR 6758-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Midway	495	19	3.84%
Thomson	64	11	17.19%

MCC IOWA, LLC: CSR 6887-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Independence	2,432	141	5.80%

MEDIACOM IOWA LLC: CSR 6888-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Reinbeck	730	177	24.25%

CPR= Percent DBS penetration

+ = See Cable Operator Petitions