

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

In the Matter of:)	
)	
)	
Mediacom Indiana LLC)	CSR 6702-E, 6706-E, 6736-E, 6741-E, 6742-
)	E, 6744-E, 6754-E, 6839-E, 6869-E
)	
)	
Charter Communications)	CSR 6808-E, 6809-E, 6810-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 Operators 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

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).

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. 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 INDIANA LLC: CSR 6702-E, 6706-E, 6736-E, 6741-E, 6742-E, 6744-E, 6754-E, 6839-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Culver	IN0389	18.47%	655	121
Knox	IN0388	22.37%	1,466	328
North Judson	IN0393	24.23%	648	157
Walkerton	IN0320	22.84%	810	185
Albion	IN0342	28.25%	846	239
Auburn	IN0130	16.76%	4,927	826
Churubusco	IN0383	36.77%	650	239
Columbia	IN0245	30.75%	3,018	928
Garrett	IN0141	18.40%	2,185	402
Ligonier	IN0158	40.07%	1,390	557
North Man.	IN0142	20.30%	2,192	445
South Whitley	IN0520	27.49%	742	204
St. Joe	IN0594	23.03%	165	38
Waterloo	IN0140	19.95%	832	166
Bluffton	IN0110	19.33%	3,922	758
Decatur	IN0109	20.61%	3,960	816
Vera Cruz	IN0862	29.17%	24	7
Kendallville	IN0112	15.93%	3,873	617
Rome City	IN0514	19.40%	629	122
Wolcottville	IN0515	18.86%	350	66
including	IN0516			

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Argos	IN0540	24.55%	615	151
Bourbon	IN0963	25.23%	646	163
Bremen	IN0199	28.60%	1,689	483
Nappanee	IN0160	24.71%	2,521	623
Pierceton	IN0526	29.62%	260	77
Syracuse	IN0376	19.82%	1,236	245
Lagrange	IN0287	20.63%	1,149	237
Angola	IN0024	17.88%	2,769	495
Butler	IN0731	20.04%	983	197
Steuben	IN0500	29.08%	12,738	3,704
Brook	IN0171	17.63%	397	70
Goodland	IN0135	17.97%	434	78
Kentland	IN0028	29.47%	733	216

CHARTER COMMUNICATIONS: CSR 6808-E, 6809-E, 6810-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Elberfeld	IN0410	45.2%	261	118
Loogootee	IN0213	36.9%	1226	453
Ferdinand	IN0351	52.7%	808	426
Santa Claus	IN0353	56.3%	732	412

Cable Operator Subject to Low Penetration Effective Competition**MEDIACOM INDIANA LLC: CSR 6702-E, 6706-E, 6736-E, 6742-E, 6839-E, 6869-E**

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Francesville	IN0825	357	89	24.93%
Medaryville	IN0826	225	58	25.77%
St. Joseph County	IN0655	26,835	86	0.32%
including	IN0422			
Starke Cnty including	IN0395	8,740	636	7.28%
Bass Lake &	IN0390			
Koontz Lake &	IN0391			
San Pierre	IN0861			
Allen County	IN0591	128,745	620	0.48%
including	IN1089			
& Leo-Cedarville	IN1067			
Dekalb	IN0592	15,134	704	4.65%
Wabash	IN0627	13,215	110	0.83%
Whitley Cnty including	IN0991	11,711	319	2.72%
Tri Lakes	IN0993			
Adams County	IN1100	11,818	644	5.45%
Wells County	IN1102	10,402	522	5.02%
Elkhart	IN0961	66,154	86	0.13%
Kosciusko County	IN0440	27,283	991	3.63%
including	IN0832			
& Dewart Lake	IN0960			
Marshall County	IN1106	16,519	132	0.80%
including	IN0973			

& Lake of the Woods	IN0962			
& Tippecanoe	IN0971			
Noble County	IN0626	16,696	472	2.83%
Newton County	IN1103	5,340	384	7.19%
Lagrange County	IN0831	11,255	221	1.97%
including Howe	IN0833			

CHARTER COMMUNICATIONS: CSR 6808-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Warrick County	IN0719	13,491	33	.2%

CPR= Percent DBS penetration

+ = See Cable Operator Petitions