

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

In the Matter of:)	
)	
Mediacom Iowa LLC)	CSR 6330-E & CSR 6331-E
)	
Petitions for Determination of Effective)	
Competition in Buffalo Center (IA0083), Huxley)	
(IA0370), and Slater (IA0373), Iowa)	
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MEMORANDUM OPINION AND ORDER

Adopted: February 28, 2005

Released: March 7, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Mediacom Iowa LLC (“Mediacom”) has filed with the Commission two petitions pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Buffalo Center, Huxley, and Slater, Iowa (“the Franchise Areas”) Mediacom alleges that its cable systems serving the Franchise Areas are subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(4) of the Communications Act¹ and the Commission's implementing rules,² and therefore are exempt from cable rate regulation. Mediacom claims the presence of effective competition in the Franchise Areas stems from the competing cable services provided by Winnebago Cooperative Telephone Association in Buffalo Center, and Huxley Communications Cooperative in Huxley and Slater. Mediacom further asserts that each of the Cooperatives is a local exchange carrier that provides local exchange access services in the respective Franchise Areas. No opposition to the petitions 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,³ as that term is defined by 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

¹ 47 U.S.C. § 543(a)(4) & 543(1)(1)(4).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area.⁵ Section 623(1)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier (“LEC”) or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁶

3. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁷ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.⁸

III. DISCUSSION

4. Mediacom operates cable television systems in Buffalo Center, Huxley and Slater (the Franchise Areas”) for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) numbers shown in the caption, qualifies as the incumbent cable operator within those Franchise Areas for purposes of the “LEC” effective competition test at issue in this proceeding. Mediacom provided information showing that the State of Iowa has granted certificates for the provision of telephone exchange and local exchange access services by Winnebago Cooperative Telephone Association in Buffalo Center, and by Huxley Communications Cooperative in Huxley and Slater.⁹ Therefore, each of the Cooperatives qualifies as a LEC for purposes of the LEC effective competition test.¹⁰

5. The Cooperatives have received local cable franchises from each of the Franchise Areas during 1996, 1997 and 2002 authorizing them to provide cable programming services throughout the respective Franchise Areas.¹¹ Mediacom demonstrated that the Cooperatives’ franchise areas are essentially the same as those of its own, the Cooperatives’ cable plant covers most of their respective franchise areas, and that their cable plant substantially overlaps Mediacom’s service areas.¹² In addition to holding franchises for the provision of cable service within the Franchise Areas, the Cooperatives have

⁵ See 47 C.F.R. §§ 76.906 & 907.

⁶ 47 U.S.C. § 543(1)(1)(D); see also 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the “LEC” effective competition test.

⁷ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

⁸ *Id.*

⁹ Petitions at 2 & Exhibits A.

¹⁰ See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹¹ Petitions at 4 & Exhibits F; *id.* at n. 14.

¹² *Id.* at 3 & Exhibits C & D.

distributed press releases, local advertising, and marketing materials within the Franchise Areas so that potential cable subscribers in the Franchise Areas are broadly aware of the availability of its cable services and need only contact the Cooperatives to obtain service.¹³

6. The Cooperatives' marketing materials show that their cable systems offer over 60 channels of video programming that includes non-broadcast programming services such as MSNBC, CNN, and ESPN, as well as a complement of several local television broadcast stations.¹⁴ Based on this record, we find that the Cooperatives' complement of programming services compares with the programming available on Mediacom's systems¹⁵ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁶ Mediacom also provided evidence that there are no regulatory, technical or other impediments to the Cooperatives' provision of service within the Franchise Areas, and that the Cooperatives are able to provide cable service that substantially overlaps Mediacom's service.¹⁷ Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems serving the Franchise Areas are subject to effective competition.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for determinations of effective competition in Buffalo Center, Huxley and Slater, Iowa filed by Mediacom Iowa **ARE HEREBY GRANTED**.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

¹³*Id.* at 3-4 & Exhibits E.

¹⁴*Id.* at 6 & Exhibits G.

¹⁵*Id.* at 6 & Exhibits H.

¹⁶*See* 47 C.F.R. § 76.905(g).

¹⁷Petitions at 3 & Exhibits C & D.

¹⁸ 47 C.F.R. § 0.283.