

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

In the Matters of:)	
)	
MCC Iowa LLC)	CSR 6357-E
)	
Petition for Determination of Effective Competition in Spencer, Iowa (CUID IA0023))	
)	
MCC Georgia LLC)	CSR 6353-E; CSR 6372-E & CSR 6385-E
)	
Petitions for Determination of Effective Competition in Cairo, Moultrie, Thomasville, and Tifton, Georgia (CUID GA0005, CUID GA0035, CUID GA0010, & CUID GA0044) and for Revocation of Certifications)	

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2005

Released: March 7, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Iowa LLC and MCC Georgia LLC (collectively “MCC”) have filed with the Commission four petitions pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in Spencer, Iowa, and in Cairo, Moultrie, Thomasville, and Tifton, Georgia (the “Communities”).¹ MCC alleges that their cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(C) of the Communications Act² and the Commission's implementing rules,³ and therefore are exempt from cable rate regulation. MCC claims the presence of effective competition stems from the competing cable services provided in the Communities by MPVD providers operated by those municipal entities.⁴ No opposition to the petitions was filed.

¹ See 47 C.F.R. §§ 76.7 & 76.907.

² 47 U.S.C. § 543(1)(1)(C).

³ 47 C.F.R. § 76.905(b)(3).

⁴ In Spencer by Spencer Municipal Utilities; in Tifton by the City of Tifton d/b/a CityNet; and in Cairo, Moultrie and Thomasville by South Georgia Business and Development Authority d/b/a Community Network Services (“municipal MVPDs”). Mediacom of Georgia also requests revocation of the certifications issued by the Commission for the City of Tifton and the South Georgia Business and Development Authority to regulate basic cable rates in Cairo, Moultrie, Tifton, and Thomasville.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 76.905 of the Commission's rules.⁶ 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.⁷ Section 623(l)(1)(C) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a multi-channel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in the franchise area.⁸ A MPVD's service is deemed to be "offered" for purposes of effective competition tests set forth in Section 623(l)(1)

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service: and (2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise are reasonably aware that they may purchase the services of the multichannel video programming distributor.⁹

3. MCC has provided evidence that its cable systems serving each of the Communities are subject to effective competition from municipal MPVD providers operated by those respective municipalities. More particularly, Spencer Municipal Utilities obtained authority to provide MPVD services in Spencer, Iowa, by city referendum certified on July 23, 1997;¹⁰ and the City of Tifton, d/b/a CityNet, was granted authority to provide MPVD services in Tifton pursuant to Ordinance passed on May 28, 1998.¹¹ The Cities of Moultrie¹² and Thomasville¹³ authorized the South Georgia Business and Development Authority d/b/a Community Network Services ("CNS") to provide MPVD services in Moultrie and Thomasville. CNS also provides MPVD services in Cairo, although no franchise has been issued by the City of Cairo.¹⁴ MCC also demonstrated that these municipal MPVD's are technically and actually able to deliver service to subscribers by showing that they operate MVPD systems that physically overlap MCC's cable systems.¹⁵ MCC further demonstrated that potential subscribers in the Communities may be deemed to be reasonably aware that they may purchase the MPVD services of the municipal

⁵ 47 C.F.R. § 76.906.

⁶ 47 C.F.R. § 76.905.

⁷ 47 C.F.R. §§ 76.906 & 907.

⁸ 47 U.S.C. §543(l)(1)(C).

⁹ 47 C.F.R. § 76.905(e).

¹⁰ Mediacom Iowa Petition at 3 and Exhibit D.

¹¹ MCC Georgia (Tifton) Petition at 3 and Exhibit D.

¹² By Resolution on December 7, 1998. MCC Georgia (Moultrie) Petition at 2 and Exhibit D.

¹³ By Ordinances effective September 13, 1999 and November 30, 2000. MCC Georgia (Thomasville) Petition at 2 and Exhibit D.

¹⁴ *Id.*; See 47 U.S.C. § 541(f).

¹⁵ Petitions at 3 and Exhibits A & B.

MVPDs, by providing copies of advertising materials distributed within the Communities that describe competitive pricings for a broad range of channels offered.¹⁶ According to those advertising materials, potential subscribers need only to contact the municipalities to obtain services.¹⁷

4. With regard to the requirement that the municipally-owned cable system offer service to at least 50 percent of the households in the franchise area, we find that this requirement has been met. As noted above, MCC has demonstrated that the municipal MVPDs' systems extend throughout each of the respective Communities and substantially overlap MCC's cable systems. This evidence demonstrates that the municipal MVPDs' cable plant passes significantly more than 50 percent of the households in each community's franchise area. This demonstrated extent of the municipal MVPD system plant throughout each community, together with the evidence discussed above, establishes that the municipal MVPDs offer service to at least 50 percent of the households in those franchise areas.

5. Based on the foregoing, we conclude that MCC has submitted sufficient evidence to demonstrate that its cable systems serving Spencer, Iowa, and Cairo, Moultrie, Tifton and Thomasville, Georgia, are subject to effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to authority delegated by Section 0.283 of the Commission's rules,¹⁸ that the petitions of MCC Iowa LLC and MCC Georgia LLC. for determination of effective competition in Spencer, Iowa, and Cairo, Moultrie, Tifton and Thomasville, Georgia, **ARE HEREBY GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications issued by the Commission for the City of Tifton and the South Georgia Business and Development Authority to regulate basic cable rates in Cairo, Moultrie, Tifton, and Thomasville, Georgia, **ARE HEREBY REVOKED**.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁶ *Id.* at 3 and Exhibits C.

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 0.283.