

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

In the Matter of:)	
)	
MCC IOWA LLC,)	CSR-6375-E
)	CSR-6376-E
MEDIACOM MINNESOTA LLC,)	CSR-6377-E
)	CSR-6378-E
and)	CSR-6379-E
)	
ZYLSTRA COMMUNICATIONS CORP.)	
)	
Petition for Determinations of Effective)	
Competition and Revocation of Certifications)	
in various Iowa, Minnesota, and South Dakota)	
franchise areas)	

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2005

Released: March 14, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. MCC Iowa LLC, Mediacom Minnesota LLC, and Zylstra Communications Corporation (collectively “Mediacom”)¹ have filed with the Commission a petition pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules seeking a finding of effective competition in the Cities of Storm Lake and Lakeside, Iowa; the Cities of Luverne, Pipestone, Slayton and Worthington, Minnesota; the Cities of Colman, Flandreau, and Yankton, South Dakota and the Town of Gayville, South Dakota (collectively “the Communities”).² Mediacom alleges that its cable systems serving the Communities are subject to local exchange carrier (“LEC”) effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(D) of the Communications Act of 1934, as amended, (“Communications Act”), and the Commission's implementing rules, and are therefore exempt from cable rate regulation.³ Mediacom also seeks the revocation of the certifications of the City of Storm Lake, Iowa, the City of Slayton, Minnesota, and the City of Flandreau, South Dakota to regulate basic cable rates.⁴ Mediacom claims the presence of effective competition in the Communities stems from the competing services

¹ Mediacom states that Mediacom Communications Corporation purchased the stock of Zylstra Communications Corporation and Zylstra is now a wholly-owned subsidiary of Mediacom. Petition at n.1.

² 47 C.F.R. §§ 76.7, 76.905(b)(4) & 76.907.

³ 47 U.S.C. §§ 543(a)(2) & 543(1)(1)(D); 47 C.F.R. 76.905.

⁴ Storm Lake, Slayton and Flandreau Petitions at n.2.

provided by PrairieWave Communications Inc. (“PrairieWave”), a LEC that also provides franchised cable service in the Communities.⁵ No opposition to the petition 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,⁶ as that term is defined by Section 76.905 of the Commission's rules.⁷ 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.⁸ Based on the record in this proceeding, Mediacom has met this burden.

3. Section 623(l)(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 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.⁹ 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.¹⁰ 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.¹¹

4. Mediacom operates cable television systems in each of the Communities for which it seeks a determination of effective competition and qualifies as the incumbent cable operator within those Communities for purposes of the “LEC” effective competition test.¹² Mediacom provided information showing that the States of Iowa, Minnesota and South Dakota have granted certificates for the provision of telephone exchange and local exchange access services by PrairieWave.¹³ Therefore, PrairieWave qualifies as a LEC for purposes of the LEC effective competition test.¹⁴

⁵ Petitions at 2.

⁶ 47 C.F.R. § 76.906.

⁷ 47 C.F.R. § 76.905.

⁸ See 47 C.F.R. §§ 76.906 & 907(b).

⁹ 47 U.S.C. § 543(1)(1)(D); see also 47 C.F.R. § 76.905(b)(4).

¹⁰ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

¹¹ *Id.*

¹² Petitions at 3 and Exhibit C.

¹³ *Id.* at 2 & Exhibit A.

¹⁴ See 47 U.S.C. § 543(1)(1)(D).

5. PrairieWave received local cable franchises from the Communities authorizing it to provide cable programming services throughout the respective Communities.¹⁵ Mediacom demonstrated that the franchise areas of PrairieWave in the Communities are essentially the same as its own franchise areas, the LEC's cable plants cover most of their respective franchise areas, and their cable plants substantially overlap Mediacom's service areas.¹⁶ In addition to holding franchises for the provision of cable service within the Communities, the LECs have distributed press releases, local advertising, and marketing materials within the Communities so that potential cable subscribers in the Communities are broadly aware of the availability of its cable services and need only to contact PrairieWave to obtain service.¹⁷

6. The marketing materials of PrairieWave show that the cable systems offer more than 90 channels of video programming that includes non-broadcast programming services such as MSNBC, CNN and ESPN, as well as a complement of local television broadcast stations.¹⁸ Based on this record, we find that PrairieWave's complement of programming services compares with the programming available on Mediacom's systems¹⁹ and are sufficient to satisfy this aspect of the LEC effective competition test.²⁰ Mediacom also provided evidence that there are no regulatory, technical or other impediments to the provision of service by PrairieWave within the Communities, and that the LEC is able to provide cable service that substantially overlaps Mediacom's service.²¹ Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems serving the Communities are subject to effective competition.

¹⁵Petitions at 5 & Exhibit F.

¹⁶*Id.* at 4 & Exhibits C & D. Exhibits C & D contain Declarations from various Mediacom employees in the Communities, along with Mediacom service area maps as well as service area maps for PrairieWave. In Exhibit C, Mediacom's representatives attest to the fact that the attached maps identifying Mediacom's service area within the boundaries of the Communities are based on data derived from Mediacom's cable plant maps. In Exhibit D, Mediacom's representatives attest to the fact that the attached maps identifying PrairieWave's cable service area within the boundaries of the Communities are based on information derived from a variety of means. For the Iowa Communities, Mediacom's employee states that the LEC's service area maps are based on a physical drive-out of PrairieWave's cable plant. For the South Dakota Communities, Mediacom's employee states that the LEC's service area maps are based on either the LEC's pedestal locations or based on the experience of the employee as a competing service provider within those Communities. Finally, for the Minnesota Communities, the Mediacom employee states that the LEC's service area maps are based on review of the system boundaries. By reviewing Mediacom's system boundaries and the maps of the Communities, the employee states that the LEC's service area boundaries were then identified and the maps drawn.

¹⁷*Id.* at 5 & Exhibit E.

¹⁸*Id.* at 7 & Exhibit G.

¹⁹*Id.* & Exhibit H.

²⁰*See* 47 C.F.R. § 76.905(g).

²¹Petitions at 5 & Exhibit F.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom for determinations of effective competition in Storm Lake and Lakeside, Iowa; Luverne, Pipestone, Slayton and Worthington, Minnesota; and, Colman, Flandreau, Gayville and Yankton, South Dakota **IS HEREBY GRANTED** and the certifications of Storm Lake, Iowa, Slayton, Minnesota and Flandreau, South Dakota to regulate basic cable rates **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

²² 47 C.F.R. § 0.283.