

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

In the Matter of:)	
)	
Mediacom Wisconsin LLC)	CSR 6599-E, 6831-E
)	
Two Petitions for Determination of Effective)	
Competition in Argyle, Wisconsin (WI0550) and)	
Blanchardville, WI (WI0465))	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2006

Released: January 30, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Wisconsin LLC (“Mediacom”) has filed two petitions with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Mediacom is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended (“Communications Act”)¹ and is therefore exempt from cable rate regulation in the Villages of Argyle and Blanchardville, Wisconsin (the “Communities”). No opposition to either petition was filed. Finding that Mediacom is subject to effective competition in the 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,² as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.³ 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.⁴

II. DISCUSSION

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

¹ 47 U.S.C. § 543(a)

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

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.⁵ Turning to the first prong of this test, 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.⁶ 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.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the Communities 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.⁸ We further find that Mediacom 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 areas. 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. To make the showing, Mediacom’s petitions furnished Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Reports. Each tracking report corresponds to a community, and identifies the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.⁹ Mediacom asserts that it is the largest MVPD in Argyle because its subscribership exceeds the aggregate DBS subscribership for the franchise area.¹⁰ Based upon the aggregate DBS subscriber penetration level of 43.3 percent in Argyle and 36.4 percent in Blanchardville, calculated using 2000 Census household data,¹¹ we find that Mediacom has 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 conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving the Communities are subject to effective competition.

⁵ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2793 (2005).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Mediacom Wisconsin Petition CSR 6599-E at 6-7; Mediacom Wisconsin Petition CSR 6831-E at 6-7.

¹⁰ *Id.* In the second Petition involving Blanchardville, Mediacom was not able to determine the largest MVPD because the DBS providers’ aggregated subscriber counts were larger than Mediacom’s subscriber count. In that instance, Mediacom was able to establish that the competing provider test was met because the penetration rate of both the DBS providers and Mediacom exceeded the 15 percent rate required by the competing provider test.

¹¹ *Id.* at 7 and Exhibits E and G (77 DBS subscribers ÷ 178 Argyle 2000 Census households = 43.3% and 126 DBS subscribers ÷ 346 Blanchardville 2000 Census households = 36.4%)

III. ORDERING CLAUSE

5. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom Wisconsin LLC for a determination of effective competition in the Villages of Argyle and Blanchardville, Wisconsin **ARE GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to in the Villages of Argyle and Blanchardville, Wisconsin **ARE REVOKED**.

7. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹²

FEDERAL COMMUNICATIONS COMMISSION

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¹² 47 C.F.R. § 0.283.