

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

In the Matter of:)	
)	
MCC IOWA LLC)	
)	CSR-7045-E
Two Petitions for Determination of Effective)	CSR-7047-E
Competition in two Local Franchise Areas)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2006

Released: September 29, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers two petitions which MCC Iowa LLC (“Mediacom”) has 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 Mediacom is 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 competition is present within the relevant franchise area.⁵

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); 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

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 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 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third 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 Mediacom has 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. Mediacom 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. Mediacom asserts that it is 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 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 set forth on Attachment A are subject to competing provider effective competition.

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

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

⁹ *See* 47 C.F.R. § 76.905(g).

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to Windsor Heights and Burlington, Iowa **ARE REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

¹⁰47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Competing Provider Effective Competition

MCC IOWA LLC: CSR-7045-E, CSR-7047-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Windsor Heights	IA0037	15.77	2163	341
Burlington	IA0109	15.74	11102	1747

CPR= Percent DBS penetration

+ = See Cable Operator Petition