

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

In the Matter of:	)	
	)	
MEDIACOM MINNESOTA LLC	)	CSR 6895-E
	)	
Petition for Determination of Effective	)	
Competition in various Minnesota Franchise Areas	)	
	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 12, 2006**

**Released: October 17, 2006**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom Minnesota LLC (“Mediacom”) has filed a petition with the Commission pursuant to Section 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that its cable systems serving various Minnesota franchise areas listed in Attachment A (the “Communities”) are subject to effective competition pursuant to Section 623(l) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in those communities. No opposition to the petition was filed. Finding that Mediacom is subject to effective competition in the listed Communities, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. Local Exchange Carrier Effective Competition

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 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.<sup>6</sup>

4. 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.<sup>7</sup> 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.<sup>8</sup>

5. Mediacom claims the presence of effective competition with respect to its cable system serving Waseca, Minnesota due to the presence of Crystal Communications, Inc., d/b/a Hickory Tech (“Hickory Tech”). Mediacom asserts that Hickory Tech is a local exchange carrier that provides local exchange access services in the Waseca franchise area. Mediacom operates a cable television system in Waseca, Minnesota for which it seeks a determination of effective competition and, having been assigned a Community Unit Identification (CUID) number, qualifies as the incumbent cable operator within the franchise area for purposes of the “LEC” effective competition test. Mediacom provided information showing that the State of Minnesota has granted a certificate for the provision of telephone exchange and local exchange access service to Hickory Tech.<sup>9</sup> Therefore, Hickory Tech qualifies as a LEC for purposes of the LEC effective competition test.<sup>10</sup>

6. Hickory Tech received a local cable franchise from Waseca in 2004 authorizing it to provide cable programming services throughout the Waseca franchise area.<sup>11</sup> Mediacom demonstrated that the franchise area is essentially the same as that of its own, Hickory Tech’s cable plant covers most of the franchise area, and that the cable plant substantially overlaps Mediacom’s service in Waseca.<sup>12</sup> In addition to holding a franchise for the provision of cable service within the franchise area, Hickory Tech has distributed press releases, local advertising, and marketing materials within the franchise area so that

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<sup>6</sup> 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.

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

<sup>8</sup> *Id.*

<sup>9</sup> Petition at 8 & Exhibit C.

<sup>10</sup> *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

<sup>11</sup> Petition at 10 & Exhibit F.

<sup>12</sup> Petition at 9.

potential cable subscribers in the franchise area are broadly aware of the availability of its cable service and need only to contact Hickory Tech to obtain service.<sup>13</sup>

7. The Hickory Tech marketing materials show that its cable system offers 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.<sup>14</sup> Based on this record, we find that Hickory Tech's complement of programming services compares with the programming available on Mediacom's system<sup>15</sup> and is sufficient to satisfy this aspect of the LEC effective competition test.<sup>16</sup> Mediacom also provided evidence that there are no regulatory, technical or other impediments to Hickory Tech's provision of service within the franchise area, and that Hickory Tech is able to provide cable service that substantially overlaps Mediacom's service.<sup>17</sup> Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable system serving the Waseca franchise area is subject to LEC effective competition.

### **B. Competing Provider Effective Competition**

8. Section 623(1)(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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> We further find that Mediacom has demonstrated that the Communities are served by at least two unaffiliated MVPDs,

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<sup>13</sup> *Id.* at 10-11 & Exhibit E.

<sup>14</sup> *Id.* at 12 & Exhibit G.

<sup>15</sup> *Id.* at 12 & Exhibit H.

<sup>16</sup> *See* 47 C.F.R. § 76.905(g).

<sup>17</sup> Petition at 10 & Exhibit C & D.

<sup>18</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>19</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>20</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

<sup>21</sup> *See* 47 C.F.R. § 76.905(g).

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.

9. 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 using a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) 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 its 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 its cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

### III. ORDERING CLAUSES

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

11. **IT IS FURTHER ORDERED** that the petition filed by Mediacom Minnesota LLC for a determination of effective competition in Waseca, Minnesota **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Minnesota LLC **ARE REVOKED**.

13. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>22</sup> 47 C.F.R. § 0.283.

## Attachment A

Cable Operator Subject to Competing Provider Effective Competition

## MEDIACOM MINNESOTA LLC: CSR 6895-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households<sup>+</sup></b>	<b>DBS Subscribers<sup>+</sup></b>
Belle Plaine	MN0550	40.26%	1,396	562
Cleveland	MN0544	15.87%	252	40
Henderson	MN0534	18.18%	352	64
Janesville	MN0539	18.50%	816	151
Lafayette	MN0560	15.35%	202	31
Lonsdale	MN0417	23.75%	560	133
Montgomery	MN0733	19.37%	1,105	214
Mountain Lake	MN0076	19.83%	817	162
Wells	MN0112	23.35%	1,032	241
Winnebago	MN0094	17.63%	641	113

CPR= Percent DBS penetration

+ = See Cable Operator Petitions