

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

In the Matter of:)	
)	
Mediacom Illinois LLC	)	CSR-6827-E
	)	CSR-6843-E
MCC Illinois LLC	)	CSR-6845-E
	)	CSR-6850-E
Mediacom Indiana LLC	)	CSR-6854-E
	)	CSR-6859-E
Mediacom Southeast LLC	)	CSR-6863-E
	)	CSR-6864-E
Bright House Networks	)	CSR-6873-E
	)	CSR-6905-E
Charter Communications	)	CSR-6906-E
)	
Eleven Petitions for Determination of Effective)	
Competition in Twenty-Two Local Franchise)	
Areas in Illinois and Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 2006

Released: February 6, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eleven petitions filed with the Commission by Mediacom Illinois LLC, MCC Illinois, LLC, Mediacom Indiana LLC, Mediacom Southeast LLC, Bright House Networks and Charter Communications (collectively “the Petitioners,” unless otherwise specifically referred to by individual company name) pursuant to Sections 76.7, 76.905(b)(1)&(2) and 76.907 of the Commission’s rules for a determination that Petitioners’ cable systems serving twenty-two Illinois and Michigan communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Petitioners’ cable systems are subject to effective competition in the listed Communities.

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

¹ 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ 47 C.F.R. § 76.905.

within the relevant franchise area.⁴

II. DISCUSSION

A. Competing Provider Effective Competition

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.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 25 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH has become 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 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.⁸ We further find that the Petitioners' cable systems have 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.⁹ The Petitioners have also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁰ 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. The Petitioners 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.¹¹ Mediacom asserts that it is the largest MVPD in the majority of the

⁴See 47 C.F.R. §§ 76.906 & 907.

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

⁶See *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, 2792-2793 (2005).

⁸See 47 C.F.R. § 76.905(g).

⁹ Mediacom Petitions at 5 and Exhibits B & C; Bright House Petition at 6; Charter Petitions at 5 and Exhibit 2.

¹⁰ Mediacom Petitions at 3-4 and Exhibit A; Bright House Petition at 3-4; Charter Petitions at 2-4 and Exhibit 1.

¹¹ Mediacom Petitions at 6. Mediacom utilizes the zip code plus four methodology and the Commission has previously approved this methodology. *See, e.g., Marcus Cable Associates, LLC d/b/a Charter Communications*, (continued...)

Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² With respect to the Communities of Coulterville, Red Bud and Smithton, Illinois, Mediacom asserts that it cannot determine the largest MVPD in those Communities because the SBCA aggregates the number of subscribers for the DBS providers and this number is larger than the Mediacom subscribers in these Communities.¹³ With regard to the Communities of Shipman, Illinois and Mendon, Michigan, Mediacom contends that while it is not the largest MVPD in these franchise areas, it still has satisfied the second prong of the competing provider test for these Communities.¹⁴ Bright House Networks asserts that it is the largest MVPD in Redford Township.¹⁵ Charter also asserts that it is the largest MVPD in the Communities named in its Petitions because its own subscribership exceeds the aggregate DBS subscribership in those franchise areas.¹⁶

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Petitioners have 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 those noted Communities. With regard to the Community of Coulterville, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁷ In Coulterville, the combined DBS penetration rate is 20.01 percent and Mediacom's penetration rate is 29.18 percent.¹⁸ In Red Bud, the combined DBS penetration rate is 54.23 percent and Mediacom's penetration rate is 30.44 percent.¹⁹ In Smithton, the

(...continued from previous page)

Inc., 17 FCC Rcd 16652 (2002), *aff'd* 18 FCC Rcd 9649 (2003); *Vicksburg Video, Inc.*, 17 FCC Rcd 16659 (2002); *Kilgore Video, Inc.*, 17 FCC Rcd 16662 (2002). Charter and Bright House Networks use the five-digit zip code allocation formula previously approved by the Commission. Bright House Petition at 8 and Charter Petitions at 6. *See, e.g., In re Charter Communications Petition for Determination of Effective Competition in San Luis Obispo County, CA*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

¹² *Id.* at 6. Mediacom states that its subscriber numbers are an estimate derived from its billing system using addresses to which Mediacom provides service. *Id.* at n.19 (for CSRs 6827-E, 6845-E, 6854-E, 6864-E).

¹³ Mediacom Petition (CSR-6873-E) at 6.

¹⁴ Mediacom Petitions (CSR-6843) and (CSR-6863-E) at 7.

¹⁵ Bright House Petition at 8. Bright House Networks states that it compared its residential subscribers (12,831) for the Franchise Area against the aggregate total of the DBS providers' subscribers (3,710) and determined that it is the largest MVPD. *See* Declaration from Robert A. McCann, President for the Detroit Division of Bright House Networks (May 12, 2005).

¹⁶ Charter Petitions at 5; *See* Declaration from Denise Jones-Williams, Director of Regulatory Compliance (June 29, 2005).

¹⁷ *See Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁸ $108 \text{ DBS subscribers} \div 514 \text{ Coulterville 2000 Census Households} = 21.01\%$; $150 \text{ Mediacom subscribers} \div 514 \text{ Coulterville 2000 Census Households} = 29.18\%$.

¹⁹ $743 \text{ DBS subscribers} \div 1,370 \text{ Red Bud 2000 Census Households} = 54.23\%$. In Mediacom's pleading (CSR-6873-E), Mediacom lists 743 as the number of DBS subscribers in Hecker Village and makes no reference to DBS subscribers in Red Bud, yet Exhibit E to that same petition, referencing the SBCA Tracking Report, lists 743 DBS subscribers in Red Bud. We assume that a typographical error was made in the pleading and Mediacom meant to list 743 DBS subscribers in its pleading as those belonging to Red Bud. *See* Mediacom Petition (CSR-6873-E) at 7 and Exhibit E. As for Mediacom's penetration rate in Red Bud, $417 \text{ Mediacom subscribers} \div 1,370 \text{ Red Bud 2000 Census Households} = 30.44\%$.

combined DBS penetration rate is 56.61 percent and Mediacom's penetration rate is 42.88 percent.²⁰ Therefore, the second prong of the competing provider test for these Communities is satisfied. Mediacom alleges that it has satisfied the second prong of the competing provider test with regard to the Communities of Shipman, Illinois and Mendon, Michigan, but it has not met its burden for this portion of the test given our methodology for making this determination and the information available.²¹ Mediacom has demonstrated that the subscriber penetration for the aggregate DBS information in Shipman and Mendon exceeds 15 percent, but Mediacom has not demonstrated the subscriber penetration for Mediacom in these Communities exceeds 15 percent. In Shipman, the combined DBS penetration rate is 38.55 percent and Mediacom's penetration rate is 12.05 percent.²² In Mendon, the combined DBS penetration rate is 29.47 percent and Mediacom's penetration rate is 5.74 percent.²³ Mediacom has not established that either Shipman, Illinois or Mendon, Michigan is subject to competing provider effective competition. However, as noted below, Mediacom has established that it has met its burden with regard to the low penetration test for both Communities. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving those Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."²⁴ Mediacom asserts that it is subject to low penetration effective competition in Shipman, Irving, Hecher, and Tilden Illinois and Mendon, Michigan.²⁵ The information listed on Attachment A shows that Mediacom's penetration rate in Shipman is 12.05 percent; in Irving, its penetration rate is 17.20 percent; in Mendon, its penetration rate is 5.74 percent; in Hecker, the penetration rate is 28.72 percent; and, in Tilden, the penetration rate is 24.86 percent. Accordingly, we conclude that Mediacom has demonstrated the existence of low penetration effective competition in these Communities.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom Illinois LLC, MCC Illinois LLC, Mediacom Indiana LLC, Mediacom Southeast LLC, Bright House Networks and Charter Communications for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

²⁰ 445 DBS subscribers ÷ 786 Smithton 2000 Census Households = 56.61%; 337 Mediacom subscribers ÷ 786 Smithton 2000 Census Households = 42.88%.

²¹ See *supra* n. 17.

²² 96 DBS subscribers ÷ 249 Shipman 2000 Census Households = 38.55%; 30 Mediacom subscribers ÷ 249 Shipman 2000 Census Households = 12.05%.

²³ 313 DBS subscribers ÷ 1,062 Mendon 2000 Census Households = 29.47%; 61 Mediacom subscribers ÷ 1,062 Mendon 2000 Census Households = 5.74%. Mediacom incorrectly lists the number of 2000 Census occupied households in Mendon as 1,021. See Mediacom Petition (CSR-6853) at 7. We presume this to be a typographical error as Exhibit G to the Petition (Table DP-1. Profile of General Demographic Characteristics: 2000 for Mendon Township, St. Joseph County, Michigan) lists the number of occupied households in Mendon as 1,062.

²⁴ 47 U.S.C. § 543(1)(1)(A).

²⁵ Mediacom Petitions (CSR-6843-E at 7), (CSR-6859-E at 2), (CSR-6863-E at 7) and (CSR-6873-E at 8).

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Illinois LLC, MCC Illinois LLC, Mediacom Indiana LLC, Mediacom Southeast LLC, Bright House Networks and Charter Communications in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

²⁶ 47 C.F.R. § 0.283.

Attachment A

Mediacom Cable Systems Subject to Competing Provider Effective Competition

CSR-6827-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Industry Village	IL1063	16.35%	208	34

CSR-6845-E

Clay City, Village	IL0312	19.04%	436	83
--------------------	--------	--------	-----	----

CSR-6854-E

Elizabeth Village	IL0632	17.15%	309	53
-------------------	--------	--------	-----	----

CSR-6864-E

Earlville City	IL1094	27.43%	678	186
Elburn Village	IL1040	44.22%	1,038	459
Hinckley Village	IL1045	33.70%	730	246
Leland Village	IL1093	19.21%	354	68
Somonauk Village	IL1095	28.60%	500	143
Waterman Village	IL1044	22.15%	456	101

CSR-6873-E

Coulterville Village	IL0812	21.01%	514	108
Red Bud City	IL0818	54.23%	1,370	743
Smithton Village	IL0820	56.61%	786	445

Bright House Networks Cable Systems Subject to Competing Provider Effective Competition

CSR-6850-E

Redford Township	MI0423	18.38%	20,182	3,710
------------------	--------	--------	--------	-------

Charter Communications Cable Systems Subject to Competing Provider Effective Competition

CSR-6905-E and CSR-6906-E

Collinsville City	IL0498	21.30%	10,458	2,228
	IL0290			

Edwardsville City	IL0302	20.09%	7,975	1,602
Glen Carbon Village	IL0401	20.12%	4,011	807
Madison County	IL0580	22.13%	19,924	4,410
(unincorporated	IL0496			
county franchise)	IL0497			

Mediacom Systems Subject to Low Penetration Effective Competition

(CSR-6843-E) (CSR-6859-E) (CSR-6863-E) (CSR-6873-E)

Communities	CUIDS	Census Households	Cable Subs.	Percentage
Shipman, Town	IL0775	249	30	12.05%
Irving Village	IL0770	186	32	17.20%
Mendon Township	MI0991	1,062	61	5.74%
(St. Joseph County)				
Hecker Village	IL0819	188	54	28.72%
Tilden Village	IL0813	362	90	24.86%

CPR = Percent DBS penetration

+ = See Mediacom Petitions