

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

In the Matter of:
Charter Communications
Five Petitions for Determination of Effective
Competition in Twenty Nine Local Franchise
Areas in Missouri
CSR 6902-E
CSR 6903-E
CSR 6904-E
CSR 6907-E
CSR 6908-E

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 2006

Released: February 7, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers five petitions filed with the Commission by Charter Communications, on behalf of its affiliates, ("Charter") pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission's rules for a determination that Charter's cable systems serving twenty nine Missouri 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.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules. 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.

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

2 The St. Charles County Government's Answer requests that the Commission deny the petition relative to the communities of St. Charles (MO0157), St. Peters (MO0158) and St. Charles County (MO0163, MO0491). The County Government states that it is "without knowledge or information sufficient to form a belief as to the truth" of Charter's substantive arguments in this matter, and accordingly denies each of Charter's contentions and requests that the Commission dismiss the petition. The Answer contains no substantive arguments, and as such, requires no further analysis.

3 47 C.F.R. § 76.906.

4 47 C.F.R. § 76.905.

5 See 47 C.F.R. §§ 76.906 & 907.

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.⁶ 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.⁷ 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.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 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 the Charter 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.¹⁰ Charter has 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.¹¹ 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. Charter sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SCBA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹² Charter asserts that it is the largest MVPD in the Communities because its

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 *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ Charter Petitions at 5 and Exhibit 2.

¹¹ *Id.* at 4 and Exhibit 1.

¹² *Id.* at 6-7. Charter acknowledges that a standard five-digit zip code in certain cases may not coincide precisely with the boundaries of a cable operator's franchise area. To overcome this potential problem, Charter has applied a competitive penetration methodology. The Commission has approved this methodology for determining DBS subscribership. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County*,

(continued...)

subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹³

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Charter 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 those noted Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that their cable systems serving the 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.”¹⁴ Charter asserts that it is subject to effective competition in the Normandy Franchise Area under the low penetration effective competition test.¹⁵ Charter submitted information listed on Attachment A showing that its penetration rate in the Normandy Franchise Area is 28.4 percent. Accordingly, we conclude that that Charter has demonstrated the existence of low penetration effective competition under our rules in the Normandy Franchise Area.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Charter Communications for a determination of effective competition in Normandy, Missouri and the Communities listed on Attachment A **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing 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.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

(...continued from previous page)

California, 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).

¹³ Charter Petitions at 5-7. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (June 29, 2005).

¹⁴ 47 U.S.C. § 543(1)(1)(A).

¹⁵ Charter Petition (CSR-6904-E) at 8. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (June 29, 2005).

¹⁶ 47 C.F.R. § 0.283.

Attachment A

Charter Cable Systems Subject to Competing Provider Effective Competition

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
CSR-6902-E				
Bridgeton	MO0222	15.4%	6,251	963
Crestwood	MO0224	17.3%	5,111	884
Oakland	MO0223	19.6%	448	88
St. John	MO0244	24.1%	2,774	669
Sunset Hills	MO0242	21.4%	3,217	689
CSR-6903-E				
Hazelwood	MO1033	24.3%	10,954	2,662
CSR-6904-E				
Bel-Ridge	MO0298	21.9%	1,180	258
Beverly Hills	MO0365	20.7%	256	53
Cool Valley	MO0301	20.9%	402	84
Dellwood	MO0302	23.6%	1,906	450
Ferguson	MO0303	22.9%	8,612	1,972
Glen Echo Park	MO0304	20.6%	63	13
Greendale	MO0305	20.5%	331	68
Hazelwood	MO0080 et.al	24.3%	10,954	2,662
Hillsdale	MO0306	20.8%	529	110
Normandy	MO0307	22.2%	2,166	480
Overland	MO0371	20.0%	7,012	1,404
Pasadena Hills	MO0310	21.1%	460	97
Pasadena Park	MO0311	20.8%	226	47

St. Ann	MO0338	21.3%	6,190	1,318
Uplands Park	MO0312	20.5%	166	34
Velda Village Hills	MO0314	20.8%	428	89
Velda	MO0313	21.1%	610	129
Vinita Terrace	MO0315	22.2%	117	26

CSR-6907-E

St. Charles County	MO0491	35.8%	31,974	11,433
--------------------	--------	-------	--------	--------

CSR-6908-E

St. Charles	MO0157	27.3%	24,210	6,612
St. Peters	MO0179	33.4%	18,435	6,166
St. Charles County	MO0163	35.8%	31,974	11,433

CPR = Percent DBS penetration

+ = See Charter Petitions