

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

In the Matter of:)	
)	
Mediacom Southeast LLC)	CSR 6700-E, 6701-E, 6703-E, 6704-E, 6730-
)	E, 6853-E, 6602-E, 6625-E
)	
Eight Petitions for Determination of Effective)	
Competition in Seventeen Local Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: January 12, 2006

Released: January 13, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eight petitions which Mediacom Southeast 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 it is 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 is therefore exempt from cable rate regulation in the franchise areas listed in Attachments A and B (the “Franchise Areas”). 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) and 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, we find that the direct broadcast satellite ("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 MVPD, and DISH the fourth largest MVPD.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 Because Mediacom has demonstrated that the Franchise Areas 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, 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 Franchise Areas listed in Attachment A by purchasing subscriber tracking reports that identified the number of subscribers attributable to the DBS providers within those franchise areas on a zip code basis. Mediacom asserts that it is the largest MVPD in those franchise areas 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 those franchise areas. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom submitted sufficient evidence to demonstrate that its cable systems serving the Franchise Areas set forth in 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 *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2793 (2005).

⁹ *See* 47 C.F.R. § 76.905(g).

B. Low Penetration Effective Competition

5. Section 623(l)(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.”¹⁰ Mediacom provided information showing that less than 30 percent of the households within the franchise areas specified in Attachment B subscribe to its cable services. Accordingly, we conclude that Mediacom has demonstrated the existence of low penetration effective competition for those franchise areas under our rules.

6. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems are subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom for a determination of effective competition in the Franchise Areas listed in Attachments A and B **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 Mediacom in the Franchise Areas **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰47 U.S.C § 543(l)(1)(A).

¹¹47 C.F.R. § 0.283.

Attachment A

Franchise Areas Subject to Competing Provider Effective Competition

Franchise Area	CUIDS	CPR*	2000 Census Households ⁺	DBS Subscribers ⁺
CSR-6602-E				
Burlington	KS0422	19.88%	1,122	223
Osage City	KS0149	16.23%	1,232	200
CSR-6625-E				
Oswego	KS0197	26.80%	776	208
CSR-6700-E				
Albany	KY0187	15.42%	1,018	157
CSR-6701-E				
Galena	KS0208	20.70%	1,290	267
Airport Drive	MO0642	27.82%	248	69
Carl Junction	MO0410	33.24%	1,871	622
Duquesne	MO0450	26.19%	672	176
Stark	MO1118	23.73%	59	14
CSR-6703-E				
Cadiz	KY0317	25.17%	1,009	254
CSR-6704-E				
Caneyville	KY1120	19.93%	281	56
CSR-6730-E				
Baldwin City	KS0222	22.19%	1,077	239
Edgerton	KS0220	48.10%	474	228
Wellsville	KS0214	34.12%	636	217

CSR-6853-E

Eureka	KS0027	33.80%	1,278	432
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Attachment B

Franchise Areas Subject to Low Penetration Effective Competition

Franchise Area	CUID	Franchise Area Households	Cable Subscribers	Penetration Level
		CSR-6703-E		
Trigg	KY0608	4,206	1,159	27.56%
		CSR-6704-E		
Grayson	KY1119	6,477	325	5.02%

CPR= Percent DBS penetration

+ = See Cable Operator Petitions