

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

In the Matter of:)	
)	
Mediacom Minnesota, LLC)	CSR 6855-E
)	
MCC Iowa, LLC & Mediacom Iowa, LLC)	CSR 6894-E
)	
Mediacom Iowa, LLC)	CSR 6567-E, 6833-E
)	
Mediacom Southeast LLC)	CSR 6832-E
)	
Mediacom Indiana LLC)	CSR 6856-E
)	
Falcon Cable Systems Company II LP d/b/a Charter Communications)	CSR 6940-E
)	
Time Warner Entertainment Company LP d/b/a Time Warner Cable)	CSR 6650-E
)	
Eight Petitions for Determination of Effective Competition in various Local Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2006

Released: March 31, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eight petitions which cable operators (the "Cable Operators") have 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

¹ 47 U.S.C. § 543(1).

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 the Cable Operators are 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

II. DISCUSSION

A. Competing Provider Effective Competition

3. 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.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 the Cable Operators 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. Therefore, the first prong of the competing provider test is satisfied.

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.

⁶ 47 U.S.C. § 543(1)(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).

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 Cable Operators 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. The Cable Operators assert that they are 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 the Cable Operator's 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 the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have 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

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 The Cable Operator listed on Attachment A provided information showing that less than 30 percent of the households within the franchise areas subscribe to its cable services. Accordingly, we conclude that the Cable Operator has demonstrated the existence of low penetration effective competition under our rules.

6. Based on the foregoing, we conclude that the Cable Operators listed on Attachment A have submitted sufficient evidence to demonstrate that their cable systems are subject to effective competition.

III. ORDERING CLAUSES

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

¹⁰47 U.S.C § 543(l)(1)(A).

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

¹¹47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition**MEDIACOM MINNESOTA, LLC: CSR 6855-E**

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Aurora	MN0130	17.61%	812	143
Chisholm	MN0137	16.71%	2,178	364
Hoyt Lakes	MN0131	17.69%	916	162
Virginia	MN0035	16.34%	4,333	708

MCC IOWA, LLC & MEDIACOM IOWA LLC: CSR 6894-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Eldora	IA0195	23.64%	1,193	282
Garwin	IA0389	24.78%	230	57
Toledo	IA0157	17.72%	982	174

MEDIACOM IOWA LLC: CSR 6567-E, 6833-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Clayton	IA0497	40.63%	32	13
Guttenberg	IA0015	18.04%	837	151
Waukon	IA0225	27.99%	1,790	501
Anamosa	IA0149	20.40%	1,750	357

MEDIACOM SOUTHEAST LLC: CSR 6832-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Pitcher	OK0277	24.80%	621	154

MEDIACOM INDIANA LLC: CSR 6856-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Hicksville	OH0870	30.62%	1,476	452

FALCON CABLE SYSTEMS COMPANY II LP d/b/a CHARTER COMMUNICATIONS: CSR 6940-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Medford	OR0117	16.9%	25,093	4,251

TIME WARNER ENTERTAINMENT COMPANY LP d/b/a TIME WARNER CABLE: CSR 6650-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Covington	OH0555	22.42%	1,011	227
Sidney	OH0051	17.03%	7,981	1,359
Urbana	OH0607	22.42%	4,859	1,089
West Milton	OH0808	16.27%	1,875	305

Cable Operator Subject to Low Penetration Effective Competition**MCC IOWA, LLC and MEDIACOM IOWA, LLC: CSR 6894-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Grundy Center	1,103	209	18.95%

CPR= Percent DBS penetration

+ = See Cable Operator Petitions