

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

In the Matter of:)	
)	
Comcast Cable Communications, LLC)	CSR 6596-E, 6597-E
)	
)	
Two 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. Comcast Cable Communications, LLC, (“Comcast”) has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that its cable systems serving various Colorado 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”),¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation. In addition, pursuant to Section 76.911(a)(1) of the Commission’s rules,³ Comcast is seeking reconsideration of the certification with respect to nine specific franchise areas to regulate basic cable rates based upon the presence of effective competition. Specifically, Comcast argues that the communities of Arapahoe County, Brighton, Broomfield, Centennial, Erie, Federal Heights, Greenwood Village, Lone Tree, and Louisville, Colorado are subject to competing provider effective competition. These franchise areas became certified to regulate rates for the first time on February 6, 2005. The other communities listed in Attachment A have been certified for several years. The Greater Metro Telecommunications Consortium⁴ filed an opposition to Comcast’s petition, but subsequently withdrew its opposition. Finding that Comcast is subject to effective competition in the Communities listed in Attachment A, we grant the petition.

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F. R. § 76.911(a)(1).

⁴ The Greater Metro Telecommunications Consortium filed its opposition on behalf of Arvada, Aurora, Brighton, Centennial, Commerce City, Federal Heights, Greenwood Village, Lafayette, Lakewood, Littleton, Lone Tree, Louisville, Northglenn, Sheridan, Thornton, Westminster, Castle Rock, Erie, Parker, Adams, Arapahoe, Douglas, Jefferson, and Broomfield, Colorado.

2. Section 623(a)(4) of the Communications Act, as amended, permits local franchising authorities to become certified to regulate the basic cable service and associated equipment rates of cable operators within their jurisdictions who are not subject to effective competition.⁵ Certification becomes effective 30 days from the date of filing, unless the Commission finds that the franchising authority does not meet the statutory certification requirements.⁶ A cable operator may file a petition for reconsideration of the franchising authority's certification within 30 days from the date such certification becomes effective.⁷ Rate regulation is automatically stayed pending review of a timely-filed petition for reconsideration alleging effective competition.⁸

3. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁹ 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.¹⁰ 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.¹¹

II. DISCUSSION

4. 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.¹² 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.¹³ 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

⁵ Communications Act § 623(a)(4), 47 U.S.C. § 543(a)(4).

⁶ 47 C.F.R. § 76.910(e). Certification becomes effective unless the Commission determines that: (1) the franchising authority will not adopt and administer rate regulations that are consistent with the Commission's regulations; (2) the franchising authority lacks the legal authority to adopt, and the personnel to administer, rate regulation; (3) procedural laws and regulations, applicable to rate regulation proceedings by the franchising authority do not provide a reasonable opportunity for the consideration of the views of interested parties; or (4) the cable system in question is subject to effective competition. 47 C.F.R. § 910(b). *See also Communications Act* § 623(a)(4), 47 C.F.R. § 543(a)(4).

⁷ 47 C.F.R. §§ 1.106, 76.911; *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5693 (1993) ("Rate Order").

⁸ 47 C.F.R. § 76.911(b).

⁹ 47 C.F.R. § 76.906.

¹⁰ *See* 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

¹¹ *See* 47 C.F.R. §§ 76.906 & 907.

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

¹³ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

provider.¹⁴ 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.¹⁵ We further find that Comcast has 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.

5. 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. Comcast 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. Comcast asserts 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 Comcast 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 Comcast has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

¹⁴ *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).

¹⁵ See 47 C.F.R. § 76.905(g).

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions filed by Comcast Cable Communications, LLC for a determination of effective competition in the Communities listed in Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the petition for reconsideration filed by Comcast Cable Communications, LLC challenging the certification to regulate basic cable rates **IS GRANTED** with respect to Comcast's cable systems serving the communities of Arapahoe County, Brighton, Broomfield, Centennial, Erie, Federal Heights, Greenwood Village, Lone Tree and Louisville, Colorado.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Comcast Cable Communications, LLC **ARE REVOKED**

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁶47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Competing Provider Effective Competition

COMCAST CABLE COMMUNICATIONS, LLC: CSR 6596-E, 6597-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Adams County	CO0488	36.93%	26,939	9,949
	CO0489			
	CO0136			
	CO0359			
Arapahoe County	CO0135	31.95%	18,453	5,897
	CO0250			
	CO0475			
	CO0478			
Arvada	CO0493			
	CO0473	22.50%	39,019	8,779
Aurora	CO0051			
	CO0142	20.30%	105,625	21,445
Brighton	CO0143			
	CO0151	46.30%	6,718	3,111
Broomfield	CO0155	32.74%	13,842	4,531
Castle Rock	CO0210	66.72%	7,226	4,821
Centennial	CO0517	29.69%	36,200	10,747
Commerce	CO0147	30.95%	6,668	2,064
Douglas County	CO0134	44.32%	43,801	19,413
	CO0183			
	CO0199			
	CO0203			

	CO0204			
	CO0207			
	CO0208			
	CO0209			
	CO0356			
	CO0399			
	CO0459			
Erie	CO0420	62.29%	2,199	1,370
Federal Heights	CO0148	21.07%	5,125	1,080
Golden City	CO0161	32.00%	6,877	2,201
Greenwood Village	CO0139	27.71%	3,997	1,107
Jefferson County	CO0141	35.34%	66,734	23,584
	CO0150			
	CO0162			
	CO0455			
	CO0495			
	CO0154			
	CO0403			
Lafayette	CO0280	21.03%	9,961	2,094
Lakewood	CO0077	20.76%	60,531	12,567
Littleton	CO0159	19.50%	17,313	3,377
Lone Tree	CO0501	34.70%	1,848	641
Louisville	CO0190	19.97%	7,216	1,441
Northglenn	CO0264	29.87%	11,610	3,468
Parker Town	CO0482	53.35%	7,929	4,230
	CO0205			
Sheridan	CO0140	26.73%	2,236	598

Thornton	CO0479	30.34%	28,882	8,762
	CO0215			
Westminster	CO0474	21.45%	38,343	8,225
	CO0146			

CPR= Percent DBS penetration

+ = See Cable Operator Petition