

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

In the Matter of:)	
)	
)	
MCC Iowa, LLC & Mediacom Iowa, LLC)	CSR 6896-E
)	
)	
Petition for Determination of Effective Competition)	
in various Local Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2006

Released: April 3, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Iowa LLC and MCC Iowa LLC (“Mediacom”) have 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 Iowa communities 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 implementing rules,² and are therefore exempt from cable rate regulation in those communities. No opposition to the petition was filed. Finding that Mediacom is subject to effective competition, we grant the petition.

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 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 Mediacom 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.

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 Communities by using a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Mediacom asserts that it is the largest MVPD in the Communities 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 the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on 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 *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).

B. Municipal Provider Effective Competition

5. Section 623(l)(1)(C) of the Communications Act provides that a cable operator is subject to effective competition under the “municipal provider” test if a multichannel video programming distributor (“MVPD”) operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.¹⁰ A MVPD’s service is deemed to be “offered” for purposes of effective competition tests (1) when the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) when no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise are reasonably aware that they may purchase the services of the multichannel video programming distributor.¹¹

6. Mediacom provided evidence demonstrating that its cable system serving the franchise area is subject to effective competition from the municipal MVPD provider operated by the municipality. Osage Municipal Utilities (“OMU”) is a municipally-operated MVPD.¹² More particularly, OMU obtained authority to provide MVPD services in the City of Osage, Iowa.¹³ Mediacom also demonstrated that OMU is technically and actually able to deliver service to subscribers by showing that OMU operates a MVPD system that substantially physically overlaps Mediacom’s service in the franchise area.¹⁴ Mediacom further demonstrated that potential subscribers in the franchise area may be deemed to be reasonably aware that they may purchase the MVPD service of the municipal MVPD, by providing copies of advertising materials distributed within the franchise area that describe competitive pricing material for a broad range of channels offered.¹⁵ According to those advertising materials, potential subscribers need only to contact OMU to obtain services.¹⁶

7. With regard to the requirement that the municipally-owned cable system offer service to at least 50 percent of the households in the franchise area, we find that this requirement has been met. As noted above, Mediacom has demonstrated that the municipal MVPD’s system extends throughout the franchise area and substantially overlaps Mediacom’s service in the franchise area.¹⁷ This evidence demonstrates that the municipal MVPD’s cable plant passes significantly more than 50 percent of the households in the franchise area. The extent of the municipal MVPD system plant in the community, together with the evidence discussed above, establishes that this municipal MVPD, OMU, offers service to at least 50 percent of the households in the franchise area. Based on the foregoing, we conclude that Mediacom submitted sufficient evidence demonstrating its cable system serving Osage, Iowa is subject to municipal provider effective competition.

¹⁰ 47 U.S.C. § 543(l)(1)(C); *see also* 47 C.F.R. § 76.905(b)(3).

¹¹ 47 C.F.R. § 76.905(e).

¹² Petition at 3.

¹³ *Id.* at 8.

¹⁴ *Id.*

¹⁵ *Id.* at 10 and Exhibit C.

¹⁶ *Id.*

¹⁷ *Id.* at 11.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom for a determination of effective competition in the Communities listed on Attachment A and for Osage, Iowa **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom **ARE REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition

MCC IOWA, LLC & MEDIACOM IOWA LLC: CSR 6896-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Cresco	IA0478	18.70%	1,652	309
Elma	IA0479	30.58%	242	74
Lime Springs	IA0480	22.73%	220	50

CPR= Percent DBS penetration

+ = See Cable Operator Petitions