

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

In the Matter of:
Mediacom Southeast, LLC
Four Petitions for Determination of Effective
Competition in Twenty-One Local Franchise Areas
CSR 6723-E, 6725-E, 6727-E, 6755-E

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2006

Released: April 4, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers four 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 Mediacom is subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules and is therefore exempt from cable rate regulation in the communities listed in Attachment A and in the communities listed in Attachment B (the "Communities").

II. DISCUSSION

A. Competing Provider Effective Competition

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 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. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the 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

1 The Communities include unincorporated areas in Ashe County, NC (Beaver Creek, NC; Bristol, NC; East Jefferson, NC; Lansing, NC; Smithport, NC; and Warrensville, NC); unincorporated areas in Chowan County, NC (Arrowhead Beach, NC; Chowan, NC; and Chowan Beach, NC); unincorporated areas in Jackson County, NC; unincorporated areas in Macon County, NC (Macon, NC and Otto, NC); unincorporated areas in Martin County, NC; unincorporated areas in Perquimans County, NC; unincorporated areas in Washington County, NC; the Town of Franklin, NC; the Town of Jefferson, NC; the Town of Sylva, NC; the Town of Webster, NC; and the Town of West Jefferson, NC.

2 47 C.F.R. § 76.906.

3 47 C.F.R. § 76.905.

4 See 47 C.F.R. §§ 76.906 & 907.

offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.

3. In each of the four petitions, Mediacom claims the presence of effective competition stems from the competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and the DISH Network. Turning to the first prong of the competing provider test, DBS service 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.<sup>5</sup> Mediacom has provided evidence of the national advertising of DBS service in media serving the Communities for which a competing provider determination is requested.<sup>6</sup> Moreover, 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.<sup>7</sup> 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 at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We 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 Communities. Mediacom 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 the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>9</sup> Therefore, the first prong of the competing provider test is satisfied for each of the Communities.

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. To make that showing, Mediacom furnished Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Reports.<sup>10</sup> Based upon the 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.<sup>11</sup> 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.

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<sup>5</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>6</sup> See e.g., Franklin Petition at 4-5 and Exhibit A; Martin Petition at 4-5 and Exhibit A.

<sup>7</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>8</sup> See 47 C.F.R. §76.905(g). See also, e.g., Franklin Petition at 5 and Exhibits B, C & D; Martin Petition at 5 and Exhibits B, C & D.

<sup>9</sup> See e.g., Franklin Petition at 3-5 and Exhibit A; Martin Petition at 3-5 and Exhibit A.

<sup>10</sup> See e.g., Franklin Petition at 6-7 and Exhibits E, F & G; Martin Petition at 6-7 and Exhibits E, F & G.

<sup>11</sup> See e.g., Franklin Petition at 7 and Exhibits E, F & G; Franklin Erratum at 1-2; Martin Petition at 6-7 and Exhibits E, F & G; Martin Petition at 1-2. See also, *Time Warner Entertainment Co., L.P., et. al., v. FCC*, 56 F.3d 151 (D.C. Cir. 1995) (subscriber totals from all competing MVPDs, other than the largest provider, may be aggregated to show 15 percent penetration).

**B. The Low Penetration Effective Competition Test**

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.”<sup>12</sup> For the Communities listed on Attachment B, Mediacom provided information showing that less than 30 percent of the households within the franchise areas subscribe to its cable services. Based on this record, we conclude that Mediacom has demonstrated the existence of low penetration effective competition under our rules.

6. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable system is subject to effective competition in the Communities listed in Attachment B.

**III. ORDERING CLAUSES**

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

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 Communities listed on Attachment A and Attachment B **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>13</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>12</sup> 47 U.S.C § 543(l)(1)(A).

<sup>13</sup> 47 C.F.R. § 0.283.

## Attachment A

Communities Subject to Competing Provider Effective Competition

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
<b>CSR-6725-E</b>				
Jefferson, NC	NC0003	37.11%	582	216
West Jefferson, NC	NC0004	29.41%	527	155
<b>CSR-6727-E</b>				
Martin, NC	NC1006	29.79%	6,164	1,836
Washington, NC	NC0613	22.43%	3,388	760
<b>CSR-6755-E</b>				
Franklin, NC	NC0620	32.70%	1,627	532
Sylva, NC	NC0223 NC0445	23.92%	1,137	272
Webster, NC	NC0446	15.50%	200	31

\* CPR = Percent DBS Penetration

+ See Mediacom Petitions

Attachment B

**Communities Subject to Low Penetration Effective Competition**

<b>Communities</b>	<b>CUIDS</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
<b>CSR-6723-E</b>				
Chowan County, NC	NC0291 NC0688 NC0715	3,597	1,031	28.66%
Perquimans County, NC	NC0292	3,534	973	27.53%
<b>CSR-6725-E</b>				
Ashe County, NC	NC0124 NC0125 NC0126 NC0127 NC0160 NC0161	9,249	1,088	11.76%
<b>CSR-6755-E</b>				
Jackson County, NC	NC0579	11,943	1,702	14.25%
Macon County, NC	NC0621 NC0622	10,756	2,144	19.93%