

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

In the Matter of)	
)	CSR 6891-E
)	
Charter Communications Entertainment II, LLC)	
)	
)	
Petition for Determination of Effective)	
Competition in Buncombe County, North Carolina)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 2007

Released: March 7, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Charter Communications (“Charter”) filed a petition with the Commission for a determination of effective competition in Buncombe County, North Carolina (the “Franchise Area”)¹ pursuant to Section 623(a) of the Communications Act² and the Commission's implementing rules.³ Charter alleges that its cable systems serving the Franchise Area is subject to effective competition and, therefore, is exempt from cable rate regulation. Specifically, Charter claims that the effective competition present in the Franchise Area arises from the competing services provided by two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and EchoStar Communications Corporation. As a result, Charter asserts that it is subject to effective competition in the Franchise Area under the “competing provider” test set forth in Section 623(1)(1)(B) of the Communications Act. Charter’s petition was not opposed.

II. DISCUSSION

2. Pursuant to Section 623(1) of the Act and Section 76.905 of the Commission's rules,⁴ it is presumed that cable systems do not face effective competition absent a demonstration to the contrary.⁵

¹See *Charter Communications*, Petition for Special Relief, CSR No. 6891-E (June 8, 2005) (“Petition”) (requesting a determination that Charter faces effective competition in Biltmore Forest, North Carolina; Buncombe County, North Carolina; Weaverville, North Carolina; and Woodfin, North Carolina). Charter subsequently filed a motion to withdraw Biltmore Forest, Weaverville, and Woodfin from its Petition. See *Charter Communications*, Motion to Withdraw Biltmore Forest, Weaverville, and Woodfin, North Carolina From Petition For Special Relief, CSR No. 6891-E (“Motion to Withdraw”). We grant Charter’s Motion to Withdraw. Accordingly, we address the Petition only as it relates to Buncombe County, North Carolina.

²47 U.S.C. § 543(a).

³47 C.F.R. § 76.7; 47 C.F.R. § 76.905(b).

⁴See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵47 C.F.R. § 76.906.

Consequently, the cable operator bears the burden of rebutting the presumption that effective competition does not exist by producing evidence that shows effective competition is present within the relevant Franchise Area.⁶

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 offer comparable 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 15 percent of the households in the franchise area.⁷

4. Turning to the first prong of this test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ 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 EchoStar has become the third largest, MVPD provider.⁹ Because the two DBS providers have a nationwide footprint and serve well over 20 percent of all MVPD subscribers nationwide, we believe these statistics support the presumption that Charter’s Franchise Area is within their satellite footprint. Moreover, Charter has provided sufficient evidence of DBS advertising in local, regional, and national media that serves the Franchise Area.¹⁰ We conclude that the population of the Franchise Area may be deemed reasonably aware of the availability of DBS services for the purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the DBS providers’ programming satisfies the Commission’s program comparability criterion because DirecTV and EchoStar offer more than 12 channels of video programming, including more than one non-broadcast channel.¹¹

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area.¹² Charter asserted that it is the largest MVPD provider in the Franchise Area.¹³ This assertion was not disputed. Charter has provided a copy of the 2000 Census Report showing the number of households in the Franchise Area.¹⁴ Charter also purchased a Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Report for the Franchise Area reflecting the number of DBS subscribers within the zip code(s) associated with Buncombe County.¹⁵ To determine whether DBS subscribership exceeds the statutorily mandated 15 percent threshold in the Franchise Area, Charter compared the DBS subscribership to the U.S. Census household figures for Buncombe County.

⁶See 47 C.F.R. §§ 76.906 & 76.907.

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

⁸ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁹See *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, 21 FCC 2503 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

¹⁰See Petition at 4 and Exhibit 1.

¹¹See 47 C.F.R. § 76.905(g); *see also* Petition at 5 (providing that DirecTV and EchoStar offer “well over 100 video channels, most of which are nonbroadcast services”); Exhibit 3 attached to the Petition (the Channel Line-ups of DirecTV and EchoStar).

¹² See 47 U.S.C. § 543(l)(1)(B)(ii).

¹³ See Petition at 5-6 and attached Declaration of Denise Jones-Williams.

¹⁴ See Exhibit 5 attached to the Petition.

¹⁵ See Exhibit 3 attached to the Petition.

This comparison yielded a DBS penetration rate in Buncombe County of 22.2%.¹⁶

6. We accept the data provided by Charter as establishing a reasonable basis for finding that DBS penetration exceeds 15 percent in the Franchise Area. The methodology used in calculating DBS penetration has been approved by the Commission in previous cases with similar fact patterns to the ones described by Charter here. We therefore find that Charter has provided evidence sufficient to meet the second prong of the competing provider effective competition test.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Petition for Special Relief in the Buncombe County, North Carolina Franchise Area, as set forth in Attachment A, filed by Charter Communications on behalf of its affiliates **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any local franchising authority in the Buncombe County, North Carolina Franchise Area overseeing Charter Communications or any affiliate thereof **IS REVOKED**.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁶ See Exhibit 6 attached to the Petition.

ATTACHMENT A**File Number CSR 6891-E****FRANCHISE AREA SERVED BY
CHARTER COMMUNICATIONS on behalf of its Affiliates****Competing Provider Test**

Franchise Area	2000 Census Household¹⁷	DBS Subs Per SBCA Report	CPR: DBS Penetration Rate
Buncombe County	48,571	10,805	22.2%

¹⁷ See Household Data Figures, available at <http://factfinder.census.gov>; see also Exhibit 5 attached to the Petition.