

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

In the Matter of)		
)		
Comcast of Greater Florida/Georgia, Inc.)	Weston	FL0591
)		FL1246
Petition for Reconsideration of the Certification)		
of the City of Weston, Florida)		
To Regulate Basic Cable Rates)		

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 2007

Released: March 7, 2007

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Comcast of Greater Florida/Georgia, Inc., ("Comcast"), pursuant to Section 76.911 of the Commission's rules,¹ has filed this petition with the Commission for reconsideration of the certification of the City of Weston, Florida (the "City") to regulate basic cable rates. Specifically, Comcast argues that it is subject to low penetration effective competition in the City because fewer than 30 percent of the households in the franchise area subscribe to its cable service. The City did not file an opposition. As discussed below, we find that Comcast's service area is a separate franchise territory for purposes of this decision. Accordingly, we make no finding about effective competition in the City and dismiss Comcast's petition without prejudice.

II. BACKGROUND

2. Section 623(a)(4) of the Communications Act 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.² For purposes of the initial request for certification, franchising authorities may rely on the presumption that cable operators are not subject to effective competition, unless the franchising authority has actual knowledge to the contrary.³ 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.⁴ Cable operators may challenge the

¹47 C.F.R. § 76.911.

²Communications Act § 623(a)(4), 47 U.S.C. § 543(a)(4).

³47 C.F.R. § 76.910(b).

⁴47 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

certification of a local franchising authority by filing a petition for reconsideration.⁵ Rate regulation is automatically stayed pending review of a petition for reconsideration alleging effective competition.⁶ Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.⁷ Cable operators bear the burden of proving the existence of effective competition and such demonstrations must be made using household and subscriber data for the authorized area in the franchise.⁸

III. DISCUSSION

3. Comcast states that the City filed with the Commission its "Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Effective Competition" on FCC Form 328 to become certified to regulate the cable rates in its Franchising Area. Pursuant to Section 76.910(e) of the Commission's rules,⁹ certification became effective 30 days from filing. Comcast filed a "Petition for Reconsideration of the Rate Regulation Certification," maintaining that it meets the requirements of the low penetration effective competition test because fewer than 30 percent of the households in the franchise area subscribe to its cable system.

4. In its petition, Comcast relied upon Census data to show that in 2000 there were a total of 16,576 households in the City of Weston.¹⁰ Comcast states that it provides service to 4,416 residential subscribers in the City.¹¹ The number of subscribers was then compared to the household numbers for the City to demonstrate that Comcast's penetration level was 26.6 percent in Weston.

5. Despite Comcast's showing, we do not find that Comcast has met the low penetration effective competition test. All but a few of our effective competition decisions measure effective competition franchise area by franchise area, not by smaller or larger areas. This follows Section 623(l)(1) of the Communications Act, which provides in pertinent part that low penetration "effective competition" means that . . . fewer than 30 percent of the households in the *franchise area* subscribe to the cable service of a cable system."¹² Although the statute does mention "a cable system,"¹³ its primary focus is on a single

C.F.R. § 543(a)(4).

⁵47 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").

⁶47 C.F.R. § 76.911(c)(1).

⁷Communications Act of 1935, as amended, §623(l)(1)(A), 47 U.S.C. §543(1)(A); *see also* 47 C.F.R. §76.905(b)(1).

⁸*See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, First reports on reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, 9 FCC Rcd 1164, 1180 (1993); 47 C.F.R. §76.915(a).

⁹47 C.F.R. §76.910(e) (certification becomes effective 30 days after the date of filing).

¹⁰*See* Petition at Exhibit 2, U.S. Census for Florida, "Occupied Housing Characteristics: 2000."

¹¹Petition at 2.

¹² 47 U.S.C. § 543(l)(1)(A) (*italics added*).

franchise area. When we first construed the term “franchise area” in the context of effective competition, we used its plain meaning: “[t]he term ‘franchise area’ is used for a variety of purposes within the statute and our rules and has a commonly understood meaning in the industry and in regulatory parlance. A franchise area is the area a system operator is granted authority to serve in its franchise.”¹⁴

6. In one special circumstance, our decisions measure effective competition in an area smaller than a franchise area. Where the cable operator has made an affirmative decision, confirmed by its own conduct, to serve less than the whole area specified in its franchise, we will measure effective competition in the lesser area.¹⁵ Comcast’s showing relies upon census data for the entire Weston franchise area.¹⁶ Yet, by Comcast’s own admission, it does not, nor does it intend to, provide service to the entire Weston franchise area.¹⁷ Accordingly, for purposes of measuring low penetration effective competition in the franchise area, we consider the area it serves to be a separate “franchise area” within the terms of Section 623(l)(1)(A) of the Communications Act. Because Comcast’s petition provides information for the

¹³ 47 U.S.C. § 543(a)(2).

¹⁴ *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation (“First Reconsideration”)*, 9 FCC Rcd 1164, 1180 (1993) ¶ 24, *reconsidering* 8 FCC Rcd 5631, 5673 (1993) ¶ 49 (“The effective competition determination will be made on a franchise-area basis for cable programming service complaints as well as basic service regulation.”).

¹⁵ *First Reconsideration*, 9 FCC Rcd at 1181 ¶ 25;

“[T]here may be some limited situations (such as, for example, where a system operator has county-wide operating rights but has determined to serve only a specific named community within that area) where use of a more restricted ‘franchise area’ definition may be both appropriate and consistent with the statutory language. An affirmative decision by a system operator to restrict service logically redefines its franchise area in terms of the objectives of this provision. Accordingly, we will permit franchise authorities to demonstrate the boundaries of such a redefined franchise area. Such a showing, however, will be limited to situations in which a system operator has itself, through its own conduct, self-defined the areas to be served to such an extent that this redefined area accurately portrays the operator’s ‘franchise area.’ The fact that a franchise area has not as yet been filled out by construction of a system would not by itself be taken as redefining the service area.”

See, e.g., Cablevision of Paterson, 17 FCC Rcd 17239, 17240-41 (2002) ¶¶ 2-4 (at ¶ 2, “We have, however, acknowledged that in some limited circumstances a cable operator may voluntarily redefine its franchise area through its own conduct.”) (footnote omitted); *Century Cable of Northern California, Inc.*, 14 FCC Rcd 18604, 18606-08 (1999) ¶¶ 4, 6-7 (at ¶ 7, “This record establishes more than merely that Century has not yet filled out its service area, it provides substantial evidence that Century has no intention to expand its system into the portions of San Buenaventura not now served and has thus redefined its service area”); *Cecilton CATV, Inc.*, 10 FCC Rcd 2937, 2939 (1995) ¶ 11 (“The record in this case demonstrates that Cecilton has made an affirmative decision to limit its franchise area.”).

¹⁶ Petition at 2, Exhibit 2.

¹⁷ *See City of Weston, Florida’s Opposition to Advocate Communications, Inc.’s Petition for Special Relief*, CSR-6548-E at 9, Exhibit F (Letter from Klayton Fennell, Vice President, Government & Community Affairs, Comcast Cable – South Florida Region, to Gary Resnick, Weiss Serota Helfman Pastoriza & Guedes, PA (November 10, 2004) (stating that “Comcast has not currently over-built Advanced’s cable plant in Weston, FL. Furthermore, I am not aware of any business plans for Comcast to overbuild Advanced Cable’s cable plant in Weston, FL.”)) (filed March 24, 2005).

franchise area granted by Weston, rather than its redefined franchise area, we cannot make an appropriate determination of effective competition based on the record in this proceeding. Our denial is without prejudice to refiling should Comcast later choose to provide information related to its service area, or information relating to a change in Comcast's plan to serve the Weston franchise area.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Comcast for reconsideration of the certification of the City of Weston to regulate basic cable rates with regard to the City **IS DENIED**.

8. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules, 47 C.F.R. 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Deputy Chief, Media Bureau