

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

In the Matter of)
)
)
Mediacom Minnesota LLC) CSR-6774-E
)
)
Petition for Determination of Effective)
Competition in the Following Minnesota)
Franchise Areas: Credit River (CUID MN0443);)
Prior Lake (CUID MN0441); Spring Lake (CUID)
MN0442); Webster (CUID MN0734))

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 2007

Released: July 11, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Minnesota ("Mediacom") has filed with the Commission, pursuant to Section 76.7 and 76.905 of the Commission's rules, petitions for a determination of effective competition in the following Minnesota communities: Credit River, Prior Lake, Spring Lake, and Webster. Mediacom claims that its cable systems serving those 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, and is therefore exempt from cable rate regulation. Mediacom alleges that it qualifies for effective competition because two unaffiliated direct broadcast satellite ("DBS") providers, DirecTV Inc. ("DirecTV") and DISH Network ("Dish"), offer and provide service to residents in those communities. As such, Mediacom argues that it qualifies for a determination of effective competition based on the "competing provider" test set forth in Section 623(1)(1)(B) of the Communications Act.² Alternatively, Mediacom contends that, given its cable systems' low penetration in Credit River, Spring Lake and Webster, its systems in those communities also qualify for effective competition under the "low penetration test."³ No oppositions to the petition were filed.⁴

¹ 47 U.S.C. § 543 (l).

² See id. at § 543 (l)(1)(B).

³ See id. at § 543 (1)(1)(A).

⁴ On February 23, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petition, informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association ("SBCA") report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an

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2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as the term is defined by Section 623(l) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁶ 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.⁷

II. DISCUSSION

A. Low Penetration Effective Competition

3. 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 a cable system."⁸ For Credit River, Spring Lake, and Webster, Mediacom provided information showing that less than 30 percent of the households within those franchise areas subscribe to its cable service.⁹ Accordingly, we conclude that the Mediacom has demonstrated the existence of low penetration effective competition under our rules in those communities.

B. Competing Provider Effective Competition

4. Given our finding above that Credit River, Spring Lake and Webster fulfilled the elements of the low penetration effective competition test, we need only consider whether Prior Lake meets the requirements of the competing provider test. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the cable operator demonstrates that 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 the programming services offered by the MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.¹⁰

5. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available because of 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.¹¹ Mediacom has provided evidence of DirecTV and Dish's extensive national advertising efforts.¹² As of June 2005, DirecTV and Dish provided service to approximately 26.1 million people, comprising approximately 27.7 percent of all MVPD subscribers nationwide. DirecTV was the second largest MVPD provider, and Dish

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opposition based on supplemental data within 50 days from the date of the Commission's letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petitions. No opposition to Mediacom's filing has been received by the Commission.

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543 (l); 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906 & 907.

⁸ 47 U.S.C § 543(l)(1)(A).

⁹ See Attachment A; see also Petition at 8.

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

¹¹ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹² Mediacom Petition at 4.

the third largest provider during that period.¹³ Considering the growth of DBS, and the data discussed below showing that more than 15 percent of the households in Prior Lake are DBS subscribers, we conclude that the population of Prior Lake may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With regard to 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.¹⁴ Mediacom has demonstrated that at least two unaffiliated MVPDs, namely DirecTV and Dish, offer comparable video programming to at least 50 percent of the households in the franchise area. Mediacom also demonstrated that the two DBS firms are physically able to offer MVPD service to subscribers in Prior Lake; that there exists no regulatory, technical or other impediments to households within the franchise area taking the services of the DBS providers; and that potential subscribers in the franchise area have been made reasonably aware of the MVPD services of DirecTV and Dish.¹⁵

6. The second prong of the competing provider test requires that the number of households subscribing to the MVPDs, not including the largest MVPD, exceed 15 percent of the households in a franchise area. The information provided by Mediacom illustrates that its subscribership in Prior Lake exceeds the aggregate total subscribership of the DBS and other MVPD providers, thus establishing it as the largest MVPD provider in Prior Lake.¹⁶

7. In an effort to prove the second prong of the competing provider test, which requires MVPDs other than the largest MVPD to penetrate at least 15 percent of the households in the franchise area, Mediacom purchased a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SCBA"). This report identified the number of subscribers attributable to the DBS providers within the franchise area on a zip+4 basis. Dividing those figures by the number of 2000 U.S. Census households, Mediacom calculated a DBS penetration rate of 39.63 percent in Prior Lake.¹⁷

8. Mediacom has satisfied the second prong of the competing provider test by establishing that the DBS providers serve at least 15 percent of the population of Prior Lake. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving Prior Lake is subject to "competing provider" effective competition.

¹³ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (2006).

¹⁴ See 47 C.F.R. § 76.905 (g); see also Mediacom Petition at 4.

¹⁵ Mediacom Petition at 3-4.

¹⁶ Mediacom Petition at 6.

¹⁷ Mediacom Petition at 7, Exh.G, Erratum at Exh. B (2,237 subscribers divided by 5,645 U.S. Census Households = 39.64%).

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom Minnesota LLC for a determination of effective competition in Credit River, Prior Lake, Spring Lake and Webster, Minnesota **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates in the communities listed above **ARE REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸ 47 C.F.R. § 0.283.

Attachment A

Mediacom Minnesota LLC

Low Penetration Effective Competition

CUIDS	Communities	Cable Subscribership	2000 Census Households	Cable Subscribers
MN0443	Credit River	16.02%	1,242 ¹⁹	199 ²⁰
MN0442	Spring Lake	4.44%	1,217 ²¹	54 ²²
MN0734	Webster	1.34%	599 ²³	8 ²⁴

¹⁹ Petition at Exh. G.

²⁰ Petition at 8.

²¹ Petition at Exh. G.

²² Petition at 8.

²³ Petition at Exh. G.

²⁴ Petition at 8.