

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

In the Matter of)	
)	
Mediacom Southeast LLC)	CSR 6726-E, 6738-E, 6750-E, 6751-E, 6816-E
)	
Mediacom Minnesota LLC)	CSR 6769-E
)	
Petitions for Determination of Effective)	
Competition in various Kentucky, Minnesota and)	
North Carolina Communities)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 2007

Released: July 12, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers several petitions which Mediacom Southeast LLC "Mediacom" and Mediacom Minnesota LLC "Mediacom" (collectively the "Petitioners" or "operators") 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 Petitioners 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 the communities listed in Attachment A and B (the "Communities"). No opposition to any petition was filed.³ Finding that Petitioners are subject to effective competition in the listed Communities, we grant the petitions.

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ On February 23, 2007 and February 28, 2007, the Commission sent letters to various cable operators, including the above-captioned Mediacom petitions, 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 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 each of the above-captioned petitions. No oppositions to Mediacom's filing have been received by the Commission.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ 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.⁵ 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.⁶

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 15 percent of the households in the franchise area.⁷ 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.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 was the second largest, and DISH the third largest, MVPD provider during that period.⁹ 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 relating to the competing provider test 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.¹⁰ We further find that the operators have demonstrated that the Communities listed on Attachment A 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 listed on Attachment A by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SBCA") that identified the number of subscribers attributable to the DBS

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁶ See 47 C.F.R. §§ 76.906 & 907.

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

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

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

¹⁰ See 47 C.F.R. § 76.905(g).

providers within the Communities on a zip code basis. Mediacom asserts that it is the largest MVPD in the Communities listed on Attachment A because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹¹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A relating to the competing provider test, 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 these 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 effective competition under the competing provider analysis.

B. Low Penetration Effective Competition

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."¹² Mediacom provided information showing that less than 30 percent of the households within the Butler County, Edmonson County, Calloway County, Caldwell County, and Crittenden County franchise areas subscribe to its cable services.¹³ Accordingly, we conclude that Mediacom has demonstrated the existence of "low penetration" effective competition in these franchise areas pursuant to our rules.

III. ORDERING CLAUSES

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

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Mediacom Southeast LLC and Mediacom Minnesota LLC **ARE REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

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

¹¹ Mediacom Petitions at 6.

¹² 47 U.S.C. § 543(l)(1)(A).

¹³ The specific penetration rate for each of these franchise areas is set forth on Attachment B.

¹⁴ 47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition

MEDIACOM SOUTHEAST LLC: CSR 6726-E, 6738-E, 6750-E, 6751-E, 6816-E

Communities	CUIDS	CPR*	DBS Subscribers⁺	2000 Census Household
<u>CSR 6726-E</u>				
Morgantown	KY0651	19.03%	200	1,051
<u>CSR 6738-E</u>				
Crofton	KY0651	20.68%	73	353
Nortonville	KY0650	19.24%	101	525
<u>CSR 6750-E</u>				
Hardin	KY0708	15.56%	40	257
Marshall	KY0707 KY0858	26.90%	3,339	12,412
<u>CSR 6751-E</u>				
Fredonia	KY0827	19.21%	34	177
Princeton	KY0071	21.78%	612	2,810
<u>CSR 6816-E</u>				
Camden Shiloh South Mills	NC0606 NC0717 NC0713	38.35%	1,021	2,662
Currituck Southern Currituck Northern	NC0664 NC0605	44.58%	3,077	6,902

MEDIACOM MINNESOTA LLC: CSR 6769-E

Communities	CUIDS	CPR*	DBS Subscribers⁺	2000 Census Household
<u>CSR 6769-E</u>				
Starbuck	MN0183	15.22%	86	565

Attachment B

Cable Operator Subject to Low Penetration Effective Competition

MEDIACOM SOUTHEAST LLC: CSR 6726-E, 6750-E, 6751-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
<u>CSR 6726-E</u>				
Butler County	KY1152	5,059	80	1.58%
Edmonson County	KY0758	4,648	274	5.90%
<u>CSR 6750-E</u>				
Calloway County	KY 0837	13,862	1,592	11.48%
<u>CSR 6751-E</u>				
Caldwell County	KY0884	5,431	35	0.64%
Crittenden County	KY0889	3,829	155	4.05%

CPR*= Percentage of DBS penetration

+ = See Cable Operator Petitions