

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

In the Matter of	)	
	)	
Mediacom Illinois LLC	)	CSR-6818-E
	)	
Mediacom California LLC	)	CSR-6452-E
	)	
Petitions for Determination of	)	
Effective Competition in Ten Local	)	
Franchise Areas in Illinois	)	
and in Ridgecrest, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 2007

Released: July 19, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Illinois LLC and Mediacom California LLC (“Mediacom”) have filed two petitions with the Commission pursuant to 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that its cable television systems serving ten Illinois communities and Ridgecrest, California (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”), and are therefore exempt from rate regulation.<sup>1</sup> No oppositions to the petitions were filed. We grant the petitions finding that Mediacom is subject to effective competition in all of the Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

<sup>2</sup> 47 C.F.R. § 76.906.

<sup>3</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>4</sup> See 47 C.F.R. §§ 76.906 & 907.

## 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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 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.<sup>8</sup> We find further 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 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 by utilizing a Satellite Broadcasting and Communications Association ("SBCA") subscriber tracking report that identified the number of subscribers attributable to the DBS subscribers within the Communities on a Zip+4 zip code basis.<sup>9</sup> Mediacom asserts that it is the largest MVPD in Abingdon, Elmwood,

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<sup>5</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶¶ 6, 13, 72-73 (2006).

<sup>8</sup> *See* 47 C.F.R. § 76.905(g).

<sup>9</sup> Mediacom Illinois Petition at 7, Exhibits E and F; Mediacom California Petition at 6, Exhibits E and F. In the exhibits provided by Mediacom Illinois and Mediacom California, Mediacom did not provide the list of zip codes associated with the SBCA reports. On February 23 and 28 2007, the Media Bureau requested additional information from Mediacom regarding its SBCA submissions. *See* Letters to Bruce J. Gluckman, Mediacom Communications Corporation, from Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau (February 23 and 28, 2007). On March 15, 2007, Mediacom Illinois submitted an erratum to its petition with the list of zip codes used by SBCA in preparing its subscriber report for Mediacom Illinois. *See* Erratum and Exhibits submitted by James McKnight, Mediacom Illinois (March 15, 2007). On March 19, 2007, Mediacom California submitted a similar erratum to its petition. *See* Erratum and Exhibit submitted by James McKnight, Mediacom California (March 19, 2007). The Communities did not oppose, or otherwise respond, to Mediacom's erratums.

Farmington, Hanna City, Yates City and Ridgecrest because it has compared its residential subscriber totals for the Communities against the aggregate totals of the DBS providers' subscribers.<sup>10</sup> Mediacom states that it cannot determine the largest MVPD in Astoria because the SBCA aggregates the number of subscribers that the DBS providers have, but it can be determined that the total for two MVPDs other than the largest exceeds 15 percent of the households in Astoria.<sup>11</sup>

5. Based upon the aggregate DBS subscriber penetration levels, 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, exceeds 15 percent of the households in Abingdon, Elmwood, Farmington, Hanna City, Yates City and Ridgecrest.<sup>12</sup> With regard to the community of Astoria, we are able to conclude that this portion of the test is met by analyzing data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.<sup>13</sup> In Astoria, the combined DBS penetration rate is 33.33 percent and Mediacom's penetration rate is 29.94 percent.<sup>14</sup> Therefore, the second prong of the competing provider test is satisfied with respect to all of the Communities noted above. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to competing provider effective competition.

#### **B. Low Penetration Effective Competition**

6. Section 623(1)(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>15</sup> Mediacom Illinois provided information showing that less than 30 percent of the households within Ipava, and areas of unincorporated Peoria County known as Smithville, St. Augustine, and Vermont, subscribe to their cable

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<sup>10</sup> Mediacom Illinois Petition at 6 and Mediacom California Petition at 6. For purposes of the Mediacom Illinois petition, Mediacom states that its subscriber number is an estimate derived from Mediacom's billing system using addresses to which Mediacom provides service. Mediacom Illinois Petition at n.20. For purposes of the Mediacom California Petition, Mediacom states that it estimated its total residential subscribers in a similar fashion to SBCA's Zip+4 methodology. Mediacom states that it totaled those subscribers reported as residing in areas that were identified, through geocoding and mapping of individual Zip+4 Code segments' centroids (center points), as falling within the franchise area. Mediacom California Petition at n.20.

<sup>11</sup> Mediacom Illinois Petition at 6.

<sup>12</sup> Abingdon (303 DBS subscribers ÷ 1,422 Abingdon households = 21.31%); Elmwood (196 DBS subscribers ÷ 772 Elmwood households = 25.39%); Farmington (300 DBS subscribers ÷ 1,035 Farmington households = 28.98%); Hanna City (92 DBS subscribers ÷ 398 Hanna City households = 23.11%); Yates City (82 DBS subscribers ÷ 299 Yates City households = 27.42%); Ridgecrest (4266 DBS subscribers ÷ 9,826 Ridgecrest households = 43.41%).

<sup>13</sup> See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

<sup>14</sup> 167 DBS subscribers ÷ 501 Astoria households = 33.33%; 150 Mediacom subscribers ÷ 501 Astoria households = 29.95%.

<sup>15</sup> 47b U.S.C. § 543(1)(1)(A).

services.<sup>16</sup> Accordingly, we find that Mediacom Illinois has demonstrated the existence of “low penetration” effective competition in the above-noted Communities.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed by Mediacom Illinois LLC and Mediacom California LLC in the above-named Communities **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic service rates granted to any of the local franchising authorities overseeing Mediacom Illinois and Mediacom California in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority under Section 0.283 of the Commission’s rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>16</sup> Mediacom Illinois Petition at 8. Ipava (56 Mediacom subscribers ÷ 222 Ipava households = 25.22%); unincorporated Peoria (21 Mediacom subscribers ÷ 72,733 unincorporated Peoria subscribers = 0.03%); St. Augustine (12 Mediacom subscribers ÷ 68 St. Augustine subscribers = 17.65%); Vermont (78 Mediacom subscribers ÷ 312 Vermont subscribers = 25.00%). Mediacom states that for purposes of its petition, the Mediacom subscriber numbers are estimates from Mediacom’s billing system using addresses to which Mediacom provides service. Mediacom Illinois Petition at n.27.

<sup>17</sup> 47 C.F.R. § 0.283.