

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

In the Matter of)	
)	
WaveDivision VI, LLC)	CSR-6505-E
)	
Mediacom California LLC)	CSR-6678-E
)	
Mediacom Illinois LLC)	CSR-6792-E
)	
Petitions for Determination of)	CSR-6826-E
Effective Competition in various)	
California and Illinois Communities)	CSR-6829-E

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2007

Released: July 19, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. WaveDivision VI, LLC (“WaveDivision”),¹ Mediacom California LLC, and Mediacom Illinois LLC (“Mediacom”) have filed 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 various communities in California and Illinois (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.² No oppositions to the petitions were filed. We grant the petitions, finding that WaveDivision and Mediacom are subject to effective competition in the Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ 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.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective

¹ The original petitioner was Boulder Ridge Cable TV d/b/a Starstream Communications. On March 12, 2007, the Commission was informed that the current operator of the cable system is WaveDivision VI, LLC. See Letter to Marlene H. Dortch, Secretary, from Steven J. Horvitz, Esq. (March 12, 2007).

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

³ 47 C.F.R. § 76.906.

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

competition is present within the relevant franchise area.⁵

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.⁶ 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.⁷ 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.⁸ 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 of Clearlake, Lakeport, and Auburn, California; and Princeville, Marshall, Lanark, Scales Mound, Shannon, and Stockton, Illinois (the "Competing Provider Communities") are DBS subscribers, we conclude that the population of the Competing Provider 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.⁹ We find further that WaveDivision and Mediacom have demonstrated that the Competing Provider 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. WaveDivision and Mediacom seek to demonstrate the competing provider penetration in the Communities by submitting in support of their petitions Satellite Broadcasting and Communications Association ("SBCA") subscriber tracking reports that identify the number of subscribers attributable to the DBS subscribers within the Communities based on zip code+4 extension areas.¹⁰ WaveDivision

⁵ See 47 C.F.R. §§ 76.906 & 907.

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

⁷ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *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).

⁹ See 47 C.F.R. § 76.905(g).

¹⁰ WaveDivision Petition at 6, Exhibit 4; Mediacom California Petition at 6, Exhibits E and F; and, Mediacom Illinois Petitions at 6-7, Exhibits E and F. In the exhibits provided by WaveDivision and Mediacom California and Illinois, petitioners did not provide the list of zip codes associated with the SBCA reports. On February 23 and 28,

(continued...)

asserts that it is the largest MVPD in Auburn, but reports that the aggregated DBS subscriber count (2,768) slightly exceeds WaveDivision's subscriber total (2,424). WaveDivision argues, however, that it is likely that WaveDivision's subscribership exceeds that of individual DBS competitors in Auburn.¹¹ Mediacom California asserts that it is the largest MVPD in Clearlake and Lakeport because it has compared its residential subscriber totals for these Communities against the aggregate totals of the DBS providers' subscribers.¹² Mediacom California withdraws its request for a finding of effective competition in the remainder of the Competing Provider Communities listed in that petition.¹³ Mediacom Illinois also asserts that it is the largest MVPD in Princeville, Marshall, Lanark, Scales Mound, Shannon, and Stockton.¹⁴

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 Clearlake and Lakeport, California, as well as Princeville, Marshall, Lanark, Scales Mound, Shannon, and Stockton Illinois.¹⁵ With regard to the community of Auburn, California, we are able to conclude that this portion of the test is met by analyzing data submitted for both WaveDivision and the

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2007, the Media Bureau requested additional information from Mediacom regarding their SBCA submissions. *See* Letter to Bruce J. Gluckman, Mediacom Communications Corporation, et al., from Steven A. Broeckaert, Deputy Chief, Policy Division, Media Bureau (February 23 and 28, 2007). On March 6, 7 and 14 2007, Mediacom Illinois submitted erratums to its petitions with the required list of zip codes needed to make the appropriate determinations in this case. *See* Erratums and Exhibits submitted by James McKnight, Mediacom Illinois (March 6, 7 and 14 2007). On March 20, 2007, Mediacom California submitted an erratum to its petition with the list of zip codes used by SBCA in preparing its subscriber reports for the Mediacom California petition at issue. *See* Erratum and Exhibits submitted by James McKnight, Mediacom California (March 20, 2007). The Media Bureau requested similar information from WaveDivision. *See* Letter to Steven J. Horvitz, Esq. *et al.* from Steven A. Broeckaert, Deputy Chief, Policy Division, Media Bureau (February 28, 2007). On March 12, 2007, WaveDivision submitted the list of zip codes used by SBCA in preparing its subscriber report for Boulder Ridge Cable TV. Counsel for WaveDivision states that the Bureau's letter mistakenly identified the petitioner in this matter as Adelpia Cable Communications and the correct petitioner was Boulder Ridge Cable TV. The current cable operator of the system is WaveDivision VI, LLC. *See* Letter to Marlene H. Dortch, Secretary, FCC from Steven, J. Horvitz, Esq. (March 12, 2007). The Communities did not oppose, or otherwise respond, to Mediacom's erratums.

¹¹ WaveDivision Petition at 6 and n.15; *see also* Declaration of Bill Weaver, Executive Vice President for Boulder Ridge Cable TV d/b/a StarStream Communications.

¹² Mediacom California Petition at 6.

¹³ *See* Letter to Steven Broeckaert, Deputy Chief, Policy Division, Media Bureau from James McKnight, Mediacom (August 26, 2005) and Erratum submitted by James McKnight, Mediacom California (March 15, 2007). The Petition was withdrawn regarding the following Communities: Clearlake Oaks, Clearlake Park, Clearlake Riviera, Cobb, Glenhaven, Hidden Valley, Kelseyville, Lower Lake, Lucerne, Middletown, Nice, North Lakeport and Upper Lake, California.

¹⁴ Mediacom Illinois Petitions at 6.

¹⁵ Clearlake (998 DBS subscribers ÷ 5,532 Clearlake city households = 18.04 percent); Lakeport (492 DBS subscribers ÷ 1,967 Lakeport city households = 25.01 percent); Princeville (119 DBS subscribers ÷ 659 Princeville households = 18.06 percent); Marshall (307 DBS subscribers ÷ 1,655 Marshall households = 18.55 percent); Lanark (140 DBS subscribers ÷ 644 Lanark households = 21.74 percent); Scales Mound (29 DBS subscribers ÷ 164 Scales Mound households = 17.68 percent); Shannon (64 DBS subscribers ÷ 337 Shannon households = 18.99 percent); Stockton (178 DBS subscribers ÷ 831 Stockton households = 21.42 percent).

DBS providers. If the subscriber penetration for both WaveDivision and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁶ In this case, WaveDivision submits that the combined DBS penetration rate is 52.21 percent, and given the information in the record regarding WaveDivision's subscribers, we can conclude that WaveDivision's penetration rate is 45.72 percent.¹⁷ Therefore, the second prong of the competing provider test is satisfied with respect to all of the Competing Provider Communities noted above. Based on the foregoing, we conclude that Mediacom and WaveDivision have submitted sufficient evidence demonstrating that their cable systems serving the Competing Provider 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."¹⁸ Mediacom Illinois provided information showing that less than 30 percent of the households within Peoria County, Clark County, and Carroll County subscribe to their cable services.¹⁹ Accordingly, we find that Mediacom Illinois has demonstrated the existence of "low penetration" effective competition in the above-noted franchise areas.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by WaveDivision VI, LLC, Mediacom California LLC and Mediacom Illinois LLC for a determination of effective competition 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 WaveDivision LLC, Mediacom California LLC and Mediacom Illinois in the affected Communities **ARE REVOKED**.

¹⁶ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁷ WaveDivision Petition at 6, n.15. Auburn (2,768 DBS subscribers ÷ 5,302 Auburn households = 52.21 percent); (2,424 WaveDivision subscribers ÷ 5,302 Auburn households = 45.72 percent%).

¹⁸ 47b U.S.C. § 543(1)(1)(A).

¹⁹ Mediacom Illinois Petitions at 7. Peoria County (860 Mediacom subscribers ÷ 72,733 Peoria County households = 01.18 percent); Clark County (174 Mediacom subscribers ÷ 6,971 Clark County subscribers = 02.50 percent); Carroll County (317 Mediacom subscribers ÷ 6,794 Carroll County subscribers = 04.66 percent).

9. **IT IS FURTHER ORDERED** that Mediacom California's request to withdraw its petition seeking a finding of effective competition in the California communities of Clearlake Oaks, Clearlake Park, Clearlake Riviera, Cobb, Glenhaven, Hidden Valley, Kelseyville, Lower Lake, Lucerne, Middletown, Nice, North Lakeport and Upper Lake IS **GRANTED**.

10. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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

²⁰ 47 C.F.R. § 0.283.