

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

In the Matter of)	CSR 7772-E
)	7774-E
Comcast Cable Communications, LLC, on behalf)	7807-E
of its subsidiaries and affiliates)	7808-E
)	7810-E
Petition for Determination of Effective)	7811-E
Competition in Various California Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: April 30, 2008

Released: May 1, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, hereinafter referred to as "Petitioner," has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for determinations that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) 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 because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and Dish Network ("Dish") and, in some Communities, other providers.³ The petitions are unopposed.

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(l) of the Communications Act 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 For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

³The other providers are, in CSR 7772-E and 7774-E, Astound Broadband, LLC; and, in CSR 7810-E and 7811-E, Alameda Power & Telecom. See, e.g., Petition in CSR 7772-E at 2 n.7, 7, & Exhs. 5-6; Petition in CSR 7810-E at 2 n.6, 7, & Exhs. 4-5.

⁴47 C.F.R. § 76.906.

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

⁶See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the 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 This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁸

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹¹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹³ Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹⁴ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. 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. Petitioner asserts that it is the largest MVPD in all but one of the Communities.¹⁵ Petitioner sought

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

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition in CSR 7772-E at 3.

¹⁰*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹¹47 C.F.R. § 76.905(e)(2).

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition in CSR 7774-E at 4.

¹³*See* Petition in CSR 7807-E at Exh. 1.

¹⁴*See* Petition in CSR 7808-E at 2-3.

¹⁵In circumstances where the largest MVPD is unable to be identified (Petition in CSR 7808-E at 5), the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Petitioner is the largest MVPD provider in the Community and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Community and

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to determine the penetration of DIRECTV and Dish in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code and zip code plus four basis where necessary.¹⁶

7. Based upon the aggregate DBS and other competitor subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ as reflected in Attachment A, we find that Petitioner 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 the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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determine that Petitioner’s subscribership is greater than 15 percent. When both determinations can be made, then the second prong of the competing provider test is met. *See* Attachment A.

¹⁶Petition in CSR 7810-E at 5-6. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁷Petition in CSR 7811-E at 7.

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7772-E, 7774-E, 7807-E, 7808-E, 7810-E, 7811-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF
COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)	CPR*	2000 Census Household	Estimated Competitors Subscribers
CSR 7772-E				
Brisbane	CA0440	16.23%	1620	263
Broadmoor	CA0575	15.67%	1275	200
Dale City	CA0280 CA1337	20.37%	30075	6269
Pacifica	CA0197	19.17%	13994	2683
South San Francisco	CA0282	27.73%	19677	5456
CSR 7774-E				
Belmont	CA0007 CA1370	16.26%	10418	1694
Millbrae	CA0578	16.47%	7956	1310
Redwood City	CA0205 CA1569	26.56%	28060	7452
San Carlos	CA0207 CA1470	20.08%	11455	2300
San Mateo City	CA0206 CA1374	26.59%	37338	9926
San Mateo County	CA0074 CA0925 CA0967 CA1501 CA0573	26.17%	20562	5381
CSR 7807-E				
Gustine	CA0624	49.89%	1683	840

Communities	CUID(s)	CPR*	2000 Census Household	Estimated Competitors Subscribers
CSR 7808-E				
Newman	CA0657 CA1655	74.90%	2079	1557
CSR 7810-E and 7811-E				
Alameda	CA1616 CA1684	42.29%	30226	12782**

*CPR = Percent of competitors' penetration rate.

** Comcast operates two cable systems in Alameda County California and therefore each has its own CSR number herein, 7810-E and 7811-E. The two systems operate pursuant to one franchise, however, and therefore Comcast reports a common set of numbers for both of them.