

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

In the Matter of )
Comcast Cable Communications, LLC ) CSR 7420-E, 7488-E, 7498-E, 7545-E
Petition for Determination of Effective )
Competition in various Michigan Communities )

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2008

Released: May 2, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as "Petitioner," has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for a determination 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 system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, and is 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"). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. 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, as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules. 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. 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) and 47 C.F.R. § 76.905(b)(1).

3Comcast additionally relies on the subscriber count of cable operator Wide Open West ("WOW") in the Berkley City, Ferndale, Pleasant Ridge, Rochester, and Rochester Hills Communities.

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

### A. The Competing Provider Test

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;<sup>7</sup> 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.<sup>8</sup>

5. Turning to the first prong of this test, it is undisputed that these Group B 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.<sup>9</sup> 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.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> 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 programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.<sup>14</sup> 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 the Group B Communities.<sup>15</sup> Petitioner sought to

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

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition at 3.

<sup>10</sup>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).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5.

<sup>13</sup>*See* Petition at 5.

<sup>14</sup>*See* Petition at 3.

<sup>15</sup>*Id.* at 5-6. In the Communities of Berkley City, Ferndale, Pleasant Ridge (CSR 7420-E), Brady, Mottville, Nottawa, Park, Pavilion, Porter, Vandalia (CSR 7488-E), Dayton, Garfield, Holton, Sheridan, Sherman (CSR 7498-E), Franklin, Liberty, and Sandstone (CSR 7545-E) both the Comcast penetration figure and the aggregate DBS

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determine the competing provider penetration in the Group B 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 Group B Communities on a zip code and zip code plus four basis where necessary.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> as reflected in Attachment B, 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 Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B 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 Group B Communities.

### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>18</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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penetration figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition at 6-7.

<sup>17</sup>Petition at 8.

<sup>18</sup>47 U.S.C. § 543(l)(1)(A).

**III. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **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**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

CSR(s) 7420-E, 7488-E, 7498-E, 7545-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
<u>CSR 7420-E</u>	
Auburn Hills	MI0833
Berkley City	MI0827
Ferndale	MI0829
Oakland	MI0831
Pleasant Ridge	MI0832
Rochester	MI0834
Rochester Hills	MI0826
<u>CSR 7488-E</u>	
Brady	MI1277
Calvin	MI1528
Centerville	MI1278
Constantine Village	MI0161
Constantine Township	MI1284
Fabius	MI1279
Flowerfield	MI1591
Lockport	MI1280
Marcellus	MI1894
Mendon	MI1281
Mottville	MI1285
Newberg	MI1529
Nottawa	MI1385
Park	MI1282
Pavillion	MI1283
Penn	MI1526
Porter	MI1525
	MI1002
Prairie Ronde	MI1939
Schoolcraft Village	MI0360
Schoolcraft Township	MI0361
Sherman	MI1386
Three Rivers	MI0246
Vandalia	MI1527
Vicksburg	MI0362
Volinia	MI1895
White Pigeon Township	MI0160
White Pigeon Village	MI1286
<u>CSR 7498-E</u>	
Brooks	MI1533
Cedar Creek	MI1260
Dalton	MI0511
Dayton	MI1491
Egelston	MI0506
Fremont	MI0510

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<b>Communities</b>	<b>CUID(S)</b>
<b>Fruitland</b>	<b>MI1261</b>
<b>Fruitport</b>	<b>MI0271</b>
<b>Garfield</b>	<b>MI1489</b>
<b>Holton</b>	<b>MI1488</b>
<b>Laketon</b>	<b>MI0270</b>
<b>Muskegon</b>	<b>MI0056</b>
<b>Muskegon Township</b>	<b>MI0025</b>
<b>Muskegon Heights</b>	<b>MI0158</b>
<b>North Muskegon</b>	<b>MI0057</b>
<b>Norton Shores</b>	<b>MI0193</b>
<b>Sheridan</b>	<b>MI0644</b>
<b>Sherman</b>	<b>MI1490</b>
<b>Spring Lake</b>	<b>MI1262</b>
<b>Sullivan</b>	<b>MI0775</b>

**CSR 7545-E**

<b>Blackman</b>	<b>MI0037</b>
<b>Brooklyn</b>	<b>MI0694</b>
<b>Cambridge</b>	<b>MI1391</b>
<b>Cement City</b>	<b>MI1390</b>
<b>Columbia</b>	<b>MI0695</b>
<b>Franklin</b>	<b>MI1388</b>
<b>Jackson</b>	<b>MI0038</b>
<b>Leoni</b>	<b>MI0068</b>
<b>Liberty</b>	<b>MI1468</b>
<b>Napoleon</b>	<b>MI0563</b>
<b>Norvell</b>	<b>MI1138</b>
<b>Onsted</b>	<b>MI1389</b>
<b>Rives</b>	<b>MI1978</b>
<b>Sandstone</b>	<b>MI1552</b>
<b>Somerset</b>	<b>MI1392</b>
<b>Spring Arbor</b>	<b>MI0240</b>
<b>Summit</b>	<b>MI0069</b>

## ATTACHMENT B

## CSR(s) 7420-E, 7488-E, 7498-E, 7545-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
<u>CSR 7420-E</u>				
Auburn Hills	MI0833	18.47%	8,064	1,490
Berkley City	MI0827	48.65%	6,678	3,249*
Ferndale	MI0829	44.47%	9,872	4,390*
Oakland	MI0831	25.73%	4,341	1,117
Pleasant Ridge	MI0832	47.66%	1,110	529*
Rochester City	MI0834	41.00%	4,667	1,913*
Rochester Hills	MI0826	42.58%	26,315	11,206*
<u>CSR 7488-E</u>				
Brady	MI1277	36.94%	1,554	574
Centerville Village	MI1278	44.89%	490	220
Constantine Village	MI0161	41.02%	763	313
Fabius	MI1279	35.04%	1,304	457
Lockport	MI1280	35.21%	1,451	511
Mottville	MI1285	41.23%	570	235
Nottawa	MI1385	27.55%	1,325	365
Park	MI1282	36.74%	996	366
Pavilion	MI1283	40.50%	2,114	856
Porter	MI1525 MI1002	41.76%	1,523	636
Schoolcraft Township	MI0361	23.05%	2,781	641
Schoolcraft Village	MI0360	51.86%	615	319
Three Rivers City	MI0246	34.84%	2,910	1,014
Vandalia	MI1527	36.22%	127	46

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
Vicksburg	MI0362	44.20%	908	401
White Pigeon Township	MI0160	23.98%	1,505	361
White Pigeon Village	MI1286	42.03%	602	253
<u>CSR 7498-E</u> Cedar Creek	MI1260	40.76%	1,180	481
Dalton	MI0511	29.12%	2,871	836
Dayton	MI1491	39.01%	687	268
Egelston	MI0506	18.91%	3,458	654
Fremont	MI0510	38.37%	1,788	686
Fruitland	MI1261	26.30%	1,859	489
Fruitport	MI0271	18.33%	4,446	815
Garfield	MI1489	45.37%	844	383
Holton	MI1488	48.50%	903	438
Laketon	MI0270	24.90%	2,682	668
Muskegon	MI0056	15.60%	14,569	2,273
Muskegon Heights	MI0158	16.26%	4,507	733
Muskegon Township	MI0025	20.30%	6,581	1,336
North Muskegon	MI0057	25.03%	1,610	403
Norton Shores	MI0193	15.05%	8,996	1,354
Sheridan	MI0644	38.36%	842	323
Sherman	MI1490	43.00%	749	322
Sullivan	MI0775	36.30%	887	322
<u>CSR 7545-E</u> Blackman	MI0037	20.72%	6,658	1,380
Brooklyn	MI0694	37.86%	507	192
Cambridge	MI1391	40.50%	1,996	808
Cement City	MI1390	32.71%	162	53



<b>Communities</b>	<b>CUID(S)</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS &amp; Other MVPD Subscribers</b>
<b>Columbia</b>	<b>MI0695</b>	<b>34.24%</b>	<b>2,894</b>	<b>991</b>
<b>Franklin</b>	<b>MI1388</b>	<b>51.91%</b>	<b>1,071</b>	<b>556</b>
<b>Jackson</b>	<b>MI0038</b>	<b>16.96%</b>	<b>14,210</b>	<b>2,411</b>
<b>Leoni</b>	<b>MI0068</b>	<b>26.03%</b>	<b>5,240</b>	<b>1,364</b>
<b>Liberty</b>	<b>MI1468</b>	<b>42.96%</b>	<b>1,073</b>	<b>461</b>
<b>Napoleon</b>	<b>MI0563</b>	<b>28.82%</b>	<b>2,592</b>	<b>747</b>
<b>Norvell</b>	<b>MI1138</b>	<b>43.08%</b>	<b>1,135</b>	<b>489</b>
<b>Onsted</b>	<b>MI1389</b>	<b>46.10%</b>	<b>321</b>	<b>148</b>
<b>Sandstone</b>	<b>MI1552</b>	<b>34.44%</b>	<b>1,321</b>	<b>455</b>
<b>Somerset</b>	<b>MI1392</b>	<b>41.55%</b>	<b>1,687</b>	<b>701</b>
<b>Spring Arbor</b>	<b>MI0240</b>	<b>30.62%</b>	<b>2,570</b>	<b>787</b>
<b>Summit</b>	<b>MI0069</b>	<b>17.03%</b>	<b>8,690</b>	<b>1,480</b>

\*CPR = Percent of competitive DBS penetration rate.

\*Berkley City- includes 497 DBS subscribers and 2,752 WOW subscribers.

\*Ferndale- includes 853 DBS subscribers and 3,537 WOW subscribers.

\*Pleasant Ridge- includes 75 DBS subscribers and 454 WOW subscribers.

\*Rochester- includes 616 DBS subscribers and 1,297 WOW subscribers.

\*Rochester Hills- includes 3,896 DBS subscribers and 7,310 subscribers.

## ATTACHMENT C

## CSR(s) 7488-E, 7498-E, 7545-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7488-E</u>				
Brady	MI1277	1,554	456	29.34%
Calvin	MI1528	784	23	2.93%
Constantine Township	MI1284	1,560	141	9.04
Flowerfield	MI1591	571	58	10.16%
Marcellus	MI1894	1,021	28	2.74
Mendon	MI1281	1,062	132	12.43%
Mottville	MI1285	570	137	24.04%
Newberg	MI1529	648	65	10.03%
Nottawa	MI1385	1,325	218	16.45%
Pavillion	MI1283	2,114	486	22.99%
Penn	MI1526	747	161	21.55%
Prairie Ronde	MI1939	707	55	7.78%
Schoolcraft Township	MI0361	2,781	692	24.88%
Sherman	MI1386	1,175	109	9.28%
Vandalia	MI1527	127	36	28.35%
Volinia	MI1895	426	36	8.45%
White Pigeon	MI1286	1,505	164	10.90%
<u>CSR 7498-E</u>				
Brooks	MI1533	1,441	26	1.80%
Dayton	MI1491	687	168	24.45%
Fruitland	MI1261	1,859	522	28.08%
Garfield	MI1489	844	167	19.79%
Sheridan	MI0644	842	220	26.13%

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<b>Communities</b>	<b>CUID(S)</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
Sherman	MI1490	749	197	26.30%
Spring Lake	MI1262	5,237	27	0.52%
<u>CSR 7545-E</u>				
Liberty	MI1468	1,073	312	29.08%
Rives	MI1978	1,677	82	4.89%
Sandstone	MI1552	1,321	226	17.11%