

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7460-E
)	CSR 7461-E
Petitions for Determination of Effective)	CSR 7469-E
Competition in various Franchise Areas in)	CSR 7472-E
Pennsylvania)	CSR 7473-E
)	CSR 7474-E
)	CSR 7476-E
)	CSR 7513-E

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 2008

Released: May 9, 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 petitions 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 systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities 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 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,³ as that term is defined by Section 623(1) of the Communications Act 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 competition is present within the relevant franchise area.⁵ 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).

³47 C.F.R. § 76.906.

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

⁵See 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;⁶ 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.⁷

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.⁸ 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.⁹ 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.¹⁰ 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 programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² 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.¹³ 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.¹⁴ Petitioner sought to

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*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).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4.

¹²*See* Petitions at 4-5 and Exhibit 1.

¹³*See* Petitions at 2-3.

¹⁴*Id.* at 5-6. Comcast states that it cannot determine the largest MVPD in the following Communities: (CSR 7460-E – North Beaver); (CSR 7469-E – Oakland and Sugar creek); (CSR 7472-E – Hamlin and Mount Jewett); (CSR 7473-E – Eldred, Foster, Keating, Otto and Smethport); (CSR 7474-E – Clarion and Monroe); (CSR 7476-E – Summit); (continued...)

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 five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ 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.¹⁷ 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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(CSR 7513-E – Henry Clay, Lower Turkeyfoot, Markleysburg and Ohio pyle). With the exception of the Communities of Oakland, Sugarcreek, Eldred and Foster which qualify under the low penetration test, Comcast asserts that in the remaining Communities both the Comcast and DBS penetration figures exceed 15 percent. In cases where both DBS and cable penetration exceed 15 percent of the occupied households, the Commission has recognized that the second prong of the competing provider test is satisfied. In the Communities of Oakland, Sugarcreek, Eldred and Foster that qualify under the low penetration test, Comcast’s subscribership is less than 15 percent. While the Communities of North Beaver, Henry Clay and Lower Turkeyfoot also qualify under the low penetration test, these Communities additionally qualify under the competing provider test because Comcast subscribership in those Communities exceeds 15 percent.

¹⁵Petitions at 6-8. Comcast states that the Commission has previously approved the five digit zip code allocation formula to calculate the DBS providers’ subscribership. *See, e.g.*, Comcast of Dallas L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area.

¹⁶Petitions at 6-8 and Exhibit 5.

¹⁷47 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 certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7460-E, CSR 7461-E, CSR 7469-E, CSR 7472-E, CSR 7473-E, CSR 7474-E, CSR 7476-E,
and CSR 7513-E _____

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

CSR 7460-E

Communities	CUIDS
Bessemer	PA2250
Mahoning	PA2251
North Beaver	PA2252

CSR 7461-E

Communities	CUIDS
Braddock	PA0614
East McKeesport	PA0616
Monroeville	PA1775
North Braddock	PA0511
North Versailles	PA0591
Rankin	PA0625

CSR 7469-E

Communities	CUIDS
Cornplanter	PA0410
Cranberry	PA0411
Oakland	PA1000
Oil City	PA0412
Rouseville	PA1445
Sugarcreek	PA1507

CSR 7472-E

Communities	CUIDS
Hamlin	PA1763
Kane	PA0152
Mount Jewett	PA1762
Wetmore	PA0175

CSR 7473-E

Communities	CUIDS
Eldred	PA2116
Foster	PA2724
Keating	PA1768
Otto	PA1769
Smethport	PA1707

CSR 7474-E

Communities	CUIDS
Clarion Borough	PA0138
Clarion Township	PA0140
Monroe	PA2635
Strattanville	PA2268

CSR 7476-E

Communities	CUIDS
Garrett	PA0342
Meyersdale	PA0343
Salisbury	PA1661
Summit	PA2631

CSR 7513-E

Confluence	PA1297
Henry Clay	PA1316
Lower Turkeyfoot	PA1296
Markleysburg	PA1618
Ohiopyle	PA3350
Ursina	PA1298

ATTACHMENT B

CSR 7460-E, CSR 7461-E, CSR 7469-E, CSR 7472-E, CSR 7473-E, CSR 7474-E, CSR 7476-E,
and 7513-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7460-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bessemer	PA2250	24.37%	480	117
Mahoning	PA2251	26.15%	1373	359
North Beaver	PA2252	34.15%	1502	513

CSR 7461-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Braddock	PA0614	15.85%	1161	184
East McKeesport	PA0616	16.88%	1078	182
Monroeville	PA1775	17.32%	12376	2,143
North Braddock	PA0511	15.58%	2631	410
North Versailles	PA0691	15.57%	4933	768
Rankin	PA0625	15.77%	1002	158

CSR 7469-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Cornplanter	PA0410	19.92%	1034	206
Cranberry	PA0411	34.72%	2843	987
Oil City	PA0412	20.10%	4762	957
Rouseville	PA1445	20.10%	204	41

CSR 7472-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Hamlin	PA1763	53.58%	349	187
Kane	PA0152	29.56%	1766	522
Mount Jewett	PA1762	57.88%	444	257
Wetmore	PA0175	31.03%	709	220

CSR 7473-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Keating	PA1768	57.57%	1110	639
Otto	PA1769	57.23%	678	388
Smethport	PA1707	52.62%	686	361

CSR 7474-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Clarion Borough	PA0138	31.75%	2000	635
Clarion Township	PA0140	41.12%	1386	570
Monroe	PA2635	41.01%	595	244
Strattanville	PA2268	67.08%	243	163

CSR 7476-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Garrett	PA0342	55.36%	168	93
Meyersdale	PA0343	40.23%	1019	410
Salisbury	PA1661	29.14%	350	102
Summit	PA2631	43.87%	864	379

CSR 7513-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Confluence	PA1297	40.69%	349	142
Henry Clay	PA1316	45.96%	742	341
Lower Turkeyfoot	PA1296	39.00%	259	101
Markleysburg	PA1618	45.55%	90	41
Ohioplyle	PA3350	85.29%	29	34
Ursina	PA1298	41.07%	112	46

CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7460-E, CSR 7469-E, CSR 7473-E, CSR7513-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7460-E

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
North Beaver	PA2252	1,502	418	27.83%

CSR 7469-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Oakland	PA1000	575	40	6.96%
Sugarcreek	PA1507	2,093	68	3.25%

CSR 7473-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Eldred	PA2116	686	58	8.45%
Foster	PA2724	1,829	43	2.35%

CSR 7513-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Henry Clay	PA1316	742	215	28.98%
Lower Turkeyfoot	PA1296	259	66	25.48%