

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

In the Matter of)	
)	
Comcast Cable Communications, LLC, on behalf)	CSR 7503-E & CSR 7505-E
of its subsidiaries and affiliates)	
)	CSR 7502-E, CSR 7504-E, CSR 7506-E &
Petition for Determination of Effective)	CSR 7507-E ¹
Competition in Various Communities in Arkansas,)	
Mississippi and Tennessee)	

MEMORANDUM OPINION AND ORDER

Adopted: May 28, 2008

Released: May 28, 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 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 is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)² and the Commission’s implementing rules,³ 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”).⁴ Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in the franchise area. One of the petitions (CSR 7505-E) is opposed by the City of West Memphis, Arkansas (“City” or “West Memphis”).

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present

¹Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, filed a letter supplement dated April 18, 2008 to its petitions, correcting the community unit identification numbers (“CUID”) associated with various CSRs. As a result of this letter, the corrected CUIDS for specific communities associated with CSRs 7502-E, 7504-E, 7506-E and 7507-E will be considered in petition CSR 7505-E. We will therefore dismiss petitions CSRs 7502-E, 7504-E, 7506-E, and 7507-E as moot.

²See 47 U.S.C. § 543(a)(1).

³47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

⁴Dish is a registered trademark of EchoStar Communications Corporation.

⁵47 C.F.R. § 76.906.

⁶See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

within the relevant franchise area.⁷ 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 Attachments (A and B).

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;⁸ 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.⁹

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.¹⁰ 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.¹¹ 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.¹² 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 programming¹³ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹⁴ 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.¹⁵ Accordingly, we find that the first prong of the competing provider test is satisfied.

⁷See 47 C.F.R. §§ 76.906 & 907.

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

⁹47 C.F.R. § 76.905(b)(2)(i).

¹⁰See Petition CSR 7503-E at 3-4; Petition CSR 7505-E at 3-4.

¹¹Mediacom 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).

¹²47 C.F.R. § 76.905(e)(2).

¹³See 47 C.F.R. § 76.905(g). *See also* Petition CSR 7503 at 4-5; Petition CSR 7505-E at 4-5.

¹⁴See Petition CSR 7503-E at 4-5 and Exhibits 2 and 3; Petition CSR 7505-E at 4-5 and Exhibits 2 and 3.

¹⁵See Petition CSR 7503-E at 3; Petition CSR 7505-E at 3.

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 Communities.¹⁶ Petitioner sought to determine the competing provider penetration 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 plus four basis.¹⁷

7. In opposition, the City argues that Comcast has not satisfied its burden of proof that the City is subject to effective competition because the evidence is conflicting.¹⁸ Initially, the City argues that there is no correlation between the zip codes used by the U.S. Postal Service that Comcast relies upon and the U.S. Census Bureau geography.¹⁹ The City contends that the Census Bureau created the Zip Code Tabulation Area (“ZCTA”) for the 2000 Census and compiled the ZCTA data for specific places such as West Memphis, which provides more reliable data than the inexact methodology used by Comcast and Media Business Corporation.²⁰ Thus, based upon the Census Bureau ZCTA for 2000, there are 11,022 households within the City rather than the 10,051 alleged by Comcast.²¹ Moreover, the 11,022 households within the franchise area are actually only 11,005 when adjusted for a rate of occupancy using the same rate used by Comcast in its petition.²² In addition, the City argues that Comcast’s DBS subscribership figure of 1,671, which has no supporting documentation, should be reduced by two percent, which would result in a DBS subscribership figure of 1,637 within the franchise area.²³ Thus, Comcast’s penetration percentage is only 14.87 percent, less than the required 15 percent.²⁴ Finally, the City argues that because the Census Bureau ZCTA data is available and more reliable than the numbers used by Comcast’s methodology, it should be used, and this information clearly shows a DBS penetration figure of less than 15 percent.²⁵ The City asserts that Comcast has therefore failed to establish that it is subject to effective competition in West Memphis, Arkansas.

8. In reply, Comcast argues that the City is erroneously using the total housing unit figure of 11,022 from the 2000 Census rather than the total number of occupied households (10,051), which is the correct figure on which to rely in determining effective competition.²⁶ Thus, there is no basis for the City to recalculate the 2000 Census occupied households since the number has been provided in the Census

¹⁶Petition CSR 7503-E at 6; Petition CSR 7505-E at 6. Comcast is unable to determine which MVPD is the largest in the Communities of Coldwater, MS, Como, MS, Crittenden County, AR, DeSoto County, MS, Fayette County, TN, Gallaway, TN, La Grange, TN, Lakeland, TN, Oakland, TN, Saulsbury, TN, Sledge, MS, Stanton, TN, Sunset, AR, Tunica County, MS, Whiteville, TN, and Williston, TN, because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, 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.

¹⁷Petition CSR 7503-E at 5-8; Petition CSR 7505-E at 5-8.

¹⁸Opposition at 2-3.

¹⁹*Id.* at 3.

²⁰*Id.* at 4.

²¹*Id.*

²²*Id.* at 5.

²³*Id.*

²⁴*Id.* at 6.

²⁵*Id.* at 6-7.

²⁶Reply to Opposition at 2.

report.²⁷ Furthermore, Comcast argues that the City mistakenly assumed that the zip code allocator was related to the 2000 Census household figure, when in fact, it reflected the portion of five digit postal zip codes within the franchise area for DBS subscribers, which Comcast used to determine the number of DBS subscribers in the actual franchise area.²⁸ Finally, Comcast argues that Satellite Broadcasting and Communications Association (“SBCA”) data, unlike previous data from SkyTrends, does not require any adjustments and therefore percentage reductions for DBS subscribership figures have been eliminated.²⁹ Consequently, Comcast argues that it has satisfied its burden of proof that it is subject to the competing provider test for effective competition in the West Memphis franchise area.

9. We find that the City’s arguments lack merit. We reject the City’s argument that Comcast did not use the correct 2000 Census data. Comcast correctly used occupied household data from the 2000 Census while the City attempted to use total housing units. For purposes of satisfying the effective competition test, the appropriate household figure is occupied households rather than total households.³⁰ Thus, Comcast used the most reliable household data available. With regard to the DBS subscribership data, Comcast provided the City with a copy of the SBCA Report identifying the total number of DBS subscribers located within the franchise area, as well as a copy of the methodology detailing how SBCA calculated this result.³¹ If the City believed that other data would provide more accurate DBS subscriber counts, the burden to present such evidence for the record was the City’s. Finally, while adjustments for DBS subscribership figures were made in the past, those were based upon the recommendation of SkyTrends.³² Currently, the SBCA does not recommend reductions to its DBS subscribership figures. Accordingly, we will accept the number of West Memphis DBS subscribers indicated in Comcast’s petition.

10. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,³³ 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.

11. 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.

B. The Low Penetration Test

12. 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.³⁴ 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.

²⁷*Id.* at 2-3.

²⁸*Id.* at 2-3..

²⁹*Id.* at 4-5.

³⁰*CoxCom, Inc. d/b/a Cox Communications Tuson*, 22 FCC Rcd 4663, 4665 (2007).

³¹Petition at 5-8 and Exhibit 4.

³²*Adelphia Cable Communications*, 20 FCC Rcd 20487, 20491 (2005).

³³Petition CSR 7503-E at 8 and Exhibit 7; Petition CSR 7505-E at 8 and Exhibit 7.

³⁴47 U.S.C. § 543(l)(1)(A).

13. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, 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 Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to the Communities.

III. ORDERING CLAUSES

14. 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**.

15. **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**.

16. **IT IS FURTHER ORDERED** that petitions CSR 7502-E, CSR 7504-E, CSR 7506-E, and CSR 7507-E are **DISMISSED**.

17. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³⁵

FEDERAL COMMUNICATIONS COMMISSION

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

³⁵47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 7503-E & 7505-E

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

CSR 7503-E

Communities	CUIDs	CPR*	2000 Census Household	Estimated DBS Subscribers
Earle City	AR0262	26.26%	1074	282
Parkin City	AR0263	24.88%	603	150

CSR 7505-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Arlington	TN0556	76.07%	794	604
Bartlett	TN0339	36.60%	13773	5041
Byhalia	MS0252	62.55%	275	172
Coldwater	MS0233	69.06%	598	413
Collierville	TN0340	41.63%	10368	4316
Como	MS0189	61.61%	461	284
Crenshaw	MS0246	32.15%	339	109
Hernando	MS0186	70.55%	2482	1751
Horn Lake	MS0164	53.73%	4934	2651
Crittenden County	AR0267	40.50%	2805	1136
DeSoto County	MS0486	56.03%	12796	7170
Fayette County	TN0557	58.91%	6856	4039
Gallaway	TN0559	77.02%	235	181
Germantown	TN0237	24.87%	13220	3288

Grand Junction	TN0549	47.20%	125	59
LaGrange	TN0632	64.41%	59	38
Lakeland	TN0445	76.67%	2748	2107
Marion	AR0265	30.70%	3254	999
Mason	TN0560	48.57%	210	102
Memphis	TN0063 TN0064	20.25%	250721	50770
Memphis Village	MS0545	70.37%	27	19
Middleton	TN0418	61.00%	259	158
Moscow	TN0552	52.91%	172	91
Oakland	TN0554	79.22%	510	404
Olive Branch	MS0255	50.78%	7546	3832
Piperton	TN0553	40.54%	259	105
Rossville	TN0551	48.17%	164	79
Saulsberry	TN0633	62.80%	43	27
Senatobia	MS0165	50.30%	2137	1075
Shelby County	TN0444	41.04%	43109	17690
Sledge	MS0267	43.53%	170	74
Somerville	TN0272	49.11%	1006	494
Southhaven	MS0163	49.90%	11007	5488
Stanton	TN0550	47.24%	254	120
Sunset	AR0266	40.74%	135	55
Tunica Town	MS0227	60.06%	2296	1379
Tunica County	MS0228	39.11%	537	210
Walnut	MS0274	46.08%	319	147
West Memphis	AR0148	16.63%	10051	1671
Whiteville	TN0290	53.17%	457	243

Williston	TN0555	103%	122	126
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*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSR 7505-E

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

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Alcorn County	MS0504	6998	9	0.13%
Braden	TN0558	104	8	7.69%
Crittenden County	AR0267	2805	577	20.57%
Gallaway	TN0559	235	59	25.11%
Hardeman County	TN0548	6050	110	1.82%
Haywood County	TN0584	3199	19	0.59%
Marshall County	MS0430	9286	499	5.37%
Sunset	AR0266	135	27	20.00%
Tate County	MS0234	6115	374	6.12%
Tippah County	MS0405	5108	198	3.88%
Tipton County	TN0634	10862	17	0.16%