

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7570-E
Petitions for Determination of Effective)	CSR 7571-E
Competition in 25 Pennsylvania Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 2008

Released: June 3, 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 the petitions 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.

⁶47 U.S.C. § 543(1)(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. Two petitions (CSR 7570-E and CSR 7571-E) were filed by Comcast because even though the same Communities are listed in both, some of the Communities with different CUID numbers are on a separate Comcast cable system and required the filing of a separate petition with a separate filing fee. However, Comcast reports a common set of numbers for those Communities with multiple CUIDs indicating that the two systems operate pursuant to one franchise.

⁹Mediacom 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 4-5.

¹²*See* Petitions at 4-5 and Exhibit 2.

¹³*See* Petitions 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 Group B Communities.¹⁴ Petitioner sought to 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.

¹⁴*Id.* at 6. Comcast asserts that it is the largest MVPD in seven of the 20 Communities subject to the competing provider test. In the remaining 13 Communities that qualify under the competing provider test, Comcast asserts that both the Comcast penetration figure and the aggregate DBS penetration figure exceed 15 percent. *Id.* and Exhibit 6 and Declaration of Peter H. Feinberg, Associate General Counsel for Comcast Cable Communications, LLC. 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.

¹⁵Petitions at 6-8. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ration (the number of households in the franchise area over the number of households in the zip area). *Id.* See, e.g., Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of 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 7-8 and Exhibit 6.

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. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT

CSR 7570-E and CSR 7571-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

CSR 7570-E

Communities	CUIDS
Armstrong	PA2863
Mahoning	PA3331
Manor	PA1979
North Buffalo	PA3223
Valley	PA2974
Young	PA2970

CSR 7571-E

Armstrong	PA2319 PA3345
Bethel	PA2831
Boggs	PA2883
Burrell	PA3066
Cowanshannock	PA2403
Dayton	PA1794
East Franklin	PA2885
Elderton	PA2320
Gilpin	PA3251
Madison	PA3248
Mahoning	PA2413
Manor	PA2828
North Buffalo	PA3068
Parks	PA2827
Pine	PA2312

Plumcreek	PA2321
Plumville	PA2401
Rayburn	PA2887
Rural Valley	PA1821
Shelocta	PA2318
South Buffalo	PA3067
Sugarcreek	PA2886
Valley	PA2888
Washington	PA2884
Young	PA3344

ATTACHMENT B

CSR 7570-E and CSR 7571-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Armstrong	PA2863 PA2319 PA3345	35.52%	1160	412
Bethel	PA2831	26.95%	501	135
Boggs	PA2883	38.51%	348	134
Cowanshannock	PA2403	39.70%	1121	445
Dayton	PA1794	62.44%	229	143
Elderton	PA2320	44.14%	145	64
Gilpin	PA3251	24.95%	1034	258
Madison	PA3248	71.55%	362	259
Mahoning	PA3331 PA2413	49.59%	607	301
Manor	PA1979 PA2828	28.71%	1752	503
North Buffalo	PA3223 PA3068	32.93%	1151	379
Parks	PA2827	18.86%	1108	209
Pine	PA2312	76.24%	202	154
Plumville	PA2401	41.46%	123	51
Rural Valley	PA1821	34.03%	382	130
Shelocta	PA2318	41.51%	53	22
South Buffalo	PA3067	26.55%	1013	269
Valley	PA2974 PA2888	34.35%	262	90
Washington	PA2884	59.64%	389	232

Young	PA2970	43.99%	741	326
	PA3344			

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7570-E and CSR 7571-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7570-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Armstrong	PA2863	1160	203	17.50%
Valley	PA2974	262	63	24.05%
Young	PA2970	741	205	27.67%

CSR 7571-E

Armstrong	PA2319 PA3345	1160	203	17.50%
Boggs	PA2883	348	88	25.29%
Burrell	PA3066	299	36	12.04%
East Franklin	PA2885	1546	162	10.48%
Madison	PA3248	362	97	26.80%
Plumcreek	PA2321	877	96	10.95%
Rayburn	PA2887	694	78	11.24%
South Buffalo	PA3067	1013	249	24.58%
Sugarcreek	PA2886	523	71	13.58%
Valley	PA262	262	63	24.05%
Young	PA3344	741	205	27.67%