

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

In the Matter of)
Comcast Cable Communications, LLC) CSR 7731-E, 7734-E, 7759-E
Petition for Determination of Effective)
Competition in various Washington Communities)

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2008

Released: August 8, 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 Community listed on Attachment C and hereinafter referred to as Group C Community 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 MVPD operator Click! Network ("Click!") in the Fife, Fircrest, Pierce County, Tacoma, and University Place Communities (CSR 7731-E).

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;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 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.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 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.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 Group B 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 the Group B Communities.¹⁵ Petitioner sought to

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

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition at 3.

¹⁰Mediacom 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 at 4.

¹³*See* Petition at 4-5.

¹⁴*See* Petition at 3.

¹⁵*Id.* at 5. In the Community of Winlock (CSR 7734-E), both the Comcast penetration figure and the aggregate DBS 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

(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 zip code and zip code plus four basis where necessary.¹⁶

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ 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.¹⁸ 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.¹⁹ 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 Community. Therefore, the low penetration test is also satisfied as to the Group C Community.

(...continued from previous page)

15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁶Petition at 5-6.

¹⁷Petition at 7.

¹⁸Comcast’s data combines subscriber count information for DBS providers and MVPD operator Click!

¹⁹47 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.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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

²⁰47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7731-E, 7734-E, 7759-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
<u>CSR 7731-E</u>	
Bonney Lake	WA0308 WA0552
Buckley	WA0056
Carbonado	WA0423
DuPont	WA0403
Eatonville	WA0258
Fife	WA0040
Fircrest	WA0041
Orting	WA0060
Pierce County	WA0180 WA0062 WA0420
Roy	WA0406
South Prairie	WA0408
Sumner	WA0050
Tacoma	WA0187 WA0262
University Place	WA0573
Wilkeson	WA0383
<u>CSR 7734-E</u>	
Winlock	WA0179
<u>CSR7759-E</u>	
Bremerton	WA0003

ATTACHMENT B

CSR(s) 7731-E, 7734-E, 7759-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
<u>CSR 7731-E</u>				
Bonney Lake	WA0308 WA0552	18.03%	3,266	589
Buckley	WA0056	30.66%	1,396	428
Carbonado	WA0423	46.50%	200	93
DuPont	WA0403	30.66%	936	287
Fife	WA0040	24.20%	2,111	511*
Fircrest	WA0041	24.47%	2,505	613*
Orting	WA0060	49.19%	1,318	648
Pierce County	WA0180 WA0062 WA0420	23.72%	108,093	25,640*
Roy	WA0406	78.43%	102	80
South Prairie	WA0408	30.44%	125	38
Sumner	WA0050	29.97%	3,517	1,054
Tacoma	WA0187	34.92%	76,152	26,593*
University Place	WA0573	19.28%	12,149	2,342*
Wilkeson	WA0383	25.71%	140	36
<u>CSR 7734-E</u>				
Winlock	WA0179	76.19%	420	320
<u>CSR 7759-E</u>				
Bremerton	WA0003	16.51%	15,096	2,492

*CPR = Percent of competitive DBS penetration rate.

*Fife - includes 390 DBS subscribers and 121 Click! subscribers.

- *Fircrest - includes 101 DBS subscribers and 512 Click! subscribers.
- *Pierce County - includes 25,468 DBS subscribers and 172 Click! subscribers.
- *Tacoma - includes 5,026 DBS subscribers and 21,567 Click! subscribers.
- *University Place - includes 549 DBS subscribers and 1,793 Click! subscribers.

ATTACHMENT C

CSR 7731-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7731-E</u> Eatonville	WA0258	748	106	14.17%