

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7905-E
Petitions for Determination of Effective)	CSR 7906-E
Competition in various Franchise Areas in)	CSR 7908-E
Pennsylvania and Delaware)	CSR 7909-E
)	CSR 7910-E
)	CSR 7911-E
)	CSR 7913-E
)	CSR 7914-E
)	CSR 7916-E
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 13, 2008

Released: August 14, 2008

By the Associate Chief, 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 areas. 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

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.

finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

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.

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

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. .

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 1 (CSRs 7908-E, 7909-E, 7914-E and 7916-E) and Exhibit 2 (CSRs 7905-E, 7906-E, 7910-E, 7911-E and 7913-E).

¹³*See* Petitions at 2-3.

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 areas.

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 5-6. Comcast cannot determine the largest MVPD in the following Communities: (CSR 7905-E – East Hannover and Jackson); (CSR 7909-E - Madison); (CSR 7911-E – Granville); and, (CSR 7913-E - Hannover and South Annville). Comcast states that it is immaterial in these Communities which MVPD is the largest because both the DBS and the cable numbers surpass the 15 percent threshold. 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 addition, with regard to Comcast Petitions CSR 7905-E and CSR 7906-E, we note that the same 28 Communities are listed in both. Two petitions were filed because some of the Communities with different CUIDs numbers are on a separate Comcast cable system and required the filing of a separate filing fee. CSR 7906-E refers to South Annville Township and South Londonderry Township in PSID 005427. The remainder of the Pennsylvania communities associated with PSID 004523 are referred to in CSR 7905-E.

¹⁵Petitions at 5-6. *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 6-8.

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 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.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Nancy Murphy
Associate Chief, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7905-E, CSR 7906-E, CSR 7908-E, CSR7909-E, CSR 7910-E, CSR 7911-E, CSR 7913-E,
CSR 7914-E and CSR 7916-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7905-E

Communities	CUIDS
Annville Township	PA1104
Clay Township	PA3315
Cleona Borough	PA0349
Cornwall Borough	PA2132
East Hanover Township	PA2805
Elizabeth Township	PA3170
Heidelberg Township	PA1457
Jackson Township	PA2133
Jonestown Borough	PA1405
City of Lebanon	PA0350
Millcreek Township	PA1428
Mount Gretna Borough	PA2131
Myerstown Borough	PA1252
North Annville Township	PA2803
North Cornwall Township	PA1116
North Lebanon Township	PA0351
Rapho Township	PA3197
Richland Borough	PA1427
South Annville Township	PA1275
South Lebanon Township	PA1158

South Londonderry Township	PA2135	
Swatara Township	PA1431	
Union Township	PA2136	
West Cocalico Township	PA3214	
West Cornwall Township	PA2137	
West Lebanon Township	PA0829	CSR 7906-E
South Annville Township	PA0888	
South Londonderry Township	PA0887	CSR 7908-E
Porter Township	PA2897	CSR 7909-E
Madison Township	PA3159	CSR 7910-E
Bern Township	PA2811	
Centerport Borough	PA2594	
Centre Township	PA0305	
Greenwich Township	PA2809	
Hamburg Borough	PA0304	
Leesport Borough	PA1254	
Lenhartsville Borough	PA2808	
Ontelaunee Township	PA1836	
Perry Township	PA1835	
Shoemakersville Borough	PA0306	
Windsor Township	PA1551	

CSR 7911-E

Burnham Borough	PA0016
Derry Township	PA0017
Granville Township	PA0018
Juanita Terrace Borough	PA0019
Lewistown Borough	PA0020

CSR 7913-E

Conewago Township	PA2508
East Hanover Township	PA2279
Londonderry Township	PA2509
North Londonderry Township	PA0908
Palmyra Borough	PA0592
South Annville Township	PA0888
South Londonderry Township	PA0887

CSR 7914-E

Lower Mahanoy Township	PA1500
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CSR 7916-E

Town of Elsmere	DE0010
City of New Castle	DE0043
Town of Newport	DE0022

ATTACHMENT B

CSR 7905-E, CSR 7906-E, CSR 7908-E, CSR 7909-E, CSR 7910-E, CSR 7911-E, CSR 7913-E,
CSR 7914-E and CSR 7916-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

Communities	CUIDS	CPR*	CSR 7905-E	
			2000 Census Household	Estimated DBS Subscribers
Annville Township	PA1104	23.14%	1,452	336
Cleona Borough	PA3315	22.30%	879	196
Cornwall Borough	PA2132	22.64%	1,210	274
East Hanover Township	PA2805	25.43%	1,034	263
Heidelberg Township	PA1457	22.51%	1,346	303
Jackson Township	PA2133	23.03%	2,397	552
Jonestown Borough	PA1405	43.28%	402	174
City of Lebanon	PA0350	24.42%	10,266	2,507
Millcreek Township	PA1428	18.90%	582	110
Mount Gretna Borough	PA2131	22.22%	117	26
Myerstown Borough	PA1252	23.56%	1,265	298
North Annville Township	PA2803	23.43%	828	194
North Cornwall Township	PA1116	22.58%	2,467	557
North Lebanon Township	PA0351	25.86%	4,072	1,053
Richland Borough	PA1427	18.90%	582	110
South Lebanon Township	PA1158	22.57%	2,920	659
Swatara Township	PA1431	35.89%	1,432	514
Union Township	PA2136	41.79%	1,017	425
West Cornwall Township	PA2137	21.55%	789	170

West Lebanon Township	PA0829	24.32%	333	81
			CSR 7906-E	
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
South Annville Township	PA0888	22.83%	1,095	250
South Londonderry Township	PA0887	18.57%	2,062	383
			CSR 7908-E	
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Porter Township	PA2879	21.50%	851	183
			CSR 7909-E	
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Madison Township	PA3159	37.08%	925	343
			CSR 7910-E	
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bern Township	PA2811	24.75%	1,903	471
Centerport Borough	PA2594	34.11%	129	44
Hamberg Borough	PA0304	30.98%	1,824	565
Leesport Borough	PA1254	26.33%	695	183
Lenhartsville Borough	PA2808	48.72%	78	38
Ontelaunee Township	PA1836	25.58%	516	132
Perry Township	PA1835	40.80%	973	397
Shoemakersville Borough	PA0306	26.32%	604	159

Windsor Township	PA1551	35.51%	842	299
CSR 7911-E				
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Burnham Borough	PA0016	32.97%	919	303
Derry Township	PA0017	30.58%	2,946	901
Granville Township	PA0018	30.39%	1,971	599
Juanita Terrace Borough	PA0019	29.60%	223	66
Lewistown Borough	PA0020	29.70%	4,023	1,195
CSR 7913-E				
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Conewago Township	PA2508	15.70%	1,019	160
East Hanover Township	PA2279	25.53%	1,034	264
Londonderry Township	PA2509	16.12%	2,004	323
North Londonderry Township	PA0908	18.67%	2,716	507
Palmyra Borough	PA0592	17.75%	3,200	568
South Annville Township	PA0888	22.83%	1,095	250
South Londonderry Township	PA0887	18.57%	2,062	383
CSR 7914-E				
Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Lower Mahanoy Township	PA1500	41.64%	634	264

CSR 7916-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Town of Elsmere	DE0010	18.66%	2,299	429
City of New Castle	DE0043	20.08%	2,012	404
Town of Newport	DE0022	17.98%	456	82

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7905-E, CSR 7909-E, CSR 7910-E, CSR 7911-E, CSR 7913-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7005-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Clay Township	PA3315	1,759	8	0.45%
East Hanover Township	PA2805	1,034	225	21.76%
Elizabeth Township	PA3170	1,303	63	4.83%
Jackson Township	PA2133	2,397	398	16.60%
Rapho Township	PA3197	3,075	10	0.33%
West Cocalico Township	PA3214	2,298	32	1.39%

CSR 7909-E

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Madison Township	PA3159	925	224	24.22%

CSR 7910-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Centre Township	PA0305	1,359	175	12.88%
Greenwich Township	PA2809	1,245	52	4.18%

CSR 7911-E

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Granville Township	PA0018	1,971	314	15.93%

CSR 7913-E

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
East Hanover Township	PA2279	1,034	187	18.09%
South Annville Township	PA0888	1,095	250	22.83%