

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

In the Matter of	)	
	)	
Cablevision of Litchfield, Inc.	)	CSR 8021-E
	)	
Petition for Determination of Effective	)	
Competition in Eight Connecticut Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 13, 2008**

**Released: November 13, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Cablevision of Litchfield, Inc., hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in the eight Connecticut communities of Litchfield, Watertown, Cornwall, Goshen, Torrington, Thomaston, Warren, and Morris (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”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> 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 EchoStar’s Dish Network (“Dish”). Petitioner alternatively claims that its cable system serving the Communities listed on Attachment B is subject to effective competition because of the competing service provided by Southern New England Telephone Company d/b/a AT&T Connecticut, hereinafter referred to as “Competitor.”<sup>3</sup> The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>5</sup> 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.<sup>6</sup> For the reasons set forth below, we grant the petition based on our

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<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> We will not address Petitioner’s alternative “LEC” effective competition argument because Competitor apparently serves only two of the eight communities that comprise Petitioner’s Litchfield System Franchise Area. *See infra* note 7. Without more information, we cannot reasonably conclude that Petitioner has satisfied the evidentiary requirements of the LEC effective competition test as set forth in the *Cable Reform Order* in its entire Litchfield System Franchise Area. *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”); *see also* Petition at 11-15, Exhibit 3.

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>6</sup>See 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;<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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 programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</sup> 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

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<sup>7</sup>47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2). We note that the “franchise area” is the geographic unit to which the Commission must apply the effective competition criteria, and is understood to mean the area a system operator is granted to serve in its franchise. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1993, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, FCC Rcd. 1164, 1180 (1994). The fact that Connecticut awards franchises covering several municipalities instead of awarding a franchise covering each locality, by itself, does not warrant a change in the “franchise area” definition. *See In the Matter of: Cablevisions Systems of Connecticut*, 14 FCC Rcd. 15253, 15261 (1999); *see also* Petition at 1, Exhibit 2 (declaring that the eight-town Litchfield System Franchise Area is comprised of the towns of Litchfield, Watertown, Torrington, Thomaston, Warren, Goshen, Cornwall, and Morris).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition at 4-6.

<sup>10</sup>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).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 7.

<sup>13</sup>*See* Petition at 7, Exhibits 6, 7.

of their national satellite footprint.<sup>14</sup> 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 Communities.<sup>15</sup> 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”) and Media Business Corp. (“MBC”) that identified the number of subscribers attributable to the DBS providers within the Communities using MBC’s ZIP code mapping process.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> 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.<sup>18</sup> Therefore, the second prong of the competing provider test is satisfied for the Communities listed on Attachment A.

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 Communities listed on Attachment A.

### III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Cablevision of Litchfield, Inc. **IS GRANTED**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>14</sup>See Petition at 4.

<sup>15</sup>*Id.* at 8, Exhibit 1.

<sup>16</sup>Petition at 8-9, Exhibits 8, 10.

<sup>17</sup>Petition at 8, Exhibits 9, 10.

<sup>18</sup> Petition at 9, Exhibit 10.

<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 8021-E

**COMMUNITIES COMPRISING THE LITCHFIELD SYSTEM FRANCHISE AREA  
SERVED BY CABLEVISION OF LITCHFIELD, INC.**

<b>Communities</b>	<b>CUID(S)</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
Litchfield	CT0022		3,310	376
Goshen	CT0188		1,066	230
Cornwall	CT0189		615	137
Watertown	CT0023		8,046	1,511
Thomaston	CT0024		2,916	541
Torrington	CT0021		14,743	2,222
Warren	CT0180		497	105
Morris	CT0173		912	136
<b>FRANCHISE AREA TOTAL:</b>		<b>16.38%</b>	<b>32,105</b>	<b>5,258</b>

\* CPR = Percent of competitive DBS penetration rate.