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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	CSR 7453-E, 7454-E, 7455-E
	)	
Petition for Determination of Effective	)	
Competition in DuPage County, Illinois	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 27, 2008 **Released: March 28, 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) 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)(1)(B) of the Communications Act of 1934, as amended ("Communications Act")[1] and the Commission's implementing rules,[2] 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"). 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(l) 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.

II. DISCUSSION

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

[1] *See* 47 U.S.C. § 543(a)(1).

[2] 47 C.F.R. § 76.905(b)(2).

[3] 47 C.F.R. § 76.906.

[4] *See* 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

[5] *See* 47 C.F.R. §§ 76.906 & 907.

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 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 Communities to support their assertion that potential customers in the 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 programming[11] and is supported in this petition 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 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 area. Petitioner asserts that it is the largest MVPD in the Communities.[14] 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 and zip code plus four basis where necessary.[15]

---

[6] 47 U.S.C. § 543(1)(1)(B); *see* also 47 C.F.R. § 76.905(b)(2).

[7] 47 C.F.R. § 76.905(b)(2)(i).

[8] *See* Petition at 3.

[9] 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).

[10] 47 C.F.R. § 76.905(e)(2).

[11] *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

[12] *See* Petition at 4.

[13] *See* Petition at 2-3.

[14] *Id.* at 5.

[15] Petition at 5-6. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,[16] 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.

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 petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE 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.[17]

FEDERAL COMMUNICATIONS COMMISSION

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

[16] Petition at 6-7.

[17] 47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7453-E, 7454-E, 7455-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
CSR 7453-E				
DuPage County	IL0829	16.67%	37,575	6,263
	IL0905			
	IL0926			
	IL1679			
CSR 7454-E				
DuPage County	IL0839			
	IL0938			
	IL1015			
	IL1051			
	IL1151			
	IL1528			
CSR 7455-E				
DuPage County	IL1691			
	IL1803			

*CPR = Percent of competitive DBS penetration rate.
.•• The CUIDS listed for DuPage County, Illinois represent one large franchise area. The penetration information indicated is for the entire franchise area