

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

In the Matter of)	
)	CSR 7063-E
Comcast Cable Communications, LLC, on behalf)	7067-E
of its Subsidiaries and Affiliates)	7073-E
)	7102-E
Petitions for Determination of Effective)	7103-E
Competition in Maryland and Virginia)	7122-E
Communities)	7678-E

MEMORANDUM OPINION AND ORDER

Adopted: April 1, 2008

Released: April 2, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, on behalf of its Subsidiaries and Affiliates, hereinafter referred to as "Petitioner," has filed with the Commission seven petitions pursuant to Sections 76.7, 76.905(b)(1), 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 those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable systems serving those 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 those Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and Dish Network ("Dish"). Petitioner also claims to be exempt from cable rate regulation in the Communities listed on Attachment B because of the Petitioner serves fewer than 30 percent of the households in the franchise area. Petitioner finally claims that it is exempt from cable rate regulation in the Communities listed on Attachment C because of the competing service provided by Verizon, hereinafter referred to as "Competitor." 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 Attachments A, B,

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

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.

and C.

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 (“MVPDs”) 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 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 its assertion that potential customers in the Communities listed in Attachment A 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 these 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 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, e.g.*, Petition in CSR 7102-E 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, e.g.*, Petition in CSR 7073-E at 4-5.

¹²*See, e.g.*, Petition in CSR 7063-E at Exh. 2.

¹³*See, e.g.*, Petition in CSR 7102-E at 2-3.

area. Petitioner asserts that it is the largest MVPD in all but five of the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing subscriber tracking reports 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

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.

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 listed in Attachment B.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, 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 Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to those Communities.

C. The LEC Test

11. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator¹⁸; this test is otherwise referred to as the “LEC” test.

¹⁴Petition in CSR 7063-E at 5; Petition in CSR 7073-E at 6; Petition in CSR 7102-E at 5; Petition in CSR 7103-E at 5-6. In circumstances where the largest MVPD is unable to be identified, the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Petitioner is the largest MVPD provider in the Community and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Community and determine that Petitioner’s subscribership is greater than 15 percent. When both determinations can be made, then the second prong of the competing provider test is met. See Attachment A.

¹⁵See, e.g., Petition in CSR 7122-E at 5-8.

¹⁶See, e.g., Petition in CSR 7103-E at 8.

¹⁷47 U.S.C. § 543(l)(1)(A).

¹⁸See 47 U.S.C. § 543(l)(1)(D).

12. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.¹⁹ It is undisputed that the Communities on Attachment C are served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. 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 programming²⁰ and is supported in the Petitions with copies of channel lineups for Competitor.²¹ Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities on Attachment C, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.²²

13. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable systems serving the Communities on Attachment C have met the LEC test and are subject to effective competition.

III. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **ARE GRANTED**.

15. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachments A, B, and C **ARE REVOKED**.

16. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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¹⁹See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) ("*Cable Reform Order*").

²⁰See 47 C.F.R. § 76.905(g). See also Petition in CSR 7678-E at 10.

²¹See Petition in CSR 7067-E at Exh. 13.

²²See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16. See also Petition in CSR 7067-E at 4-10.

²³47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7102-E, CSR 7103-E, CSR 7063-E, CSR 7073-E, CSR 7122-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ITS
SIBSIDIARIES AND AFFILIATES

Communities	CUID(S)	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 7063-E				
Indian Head	MD0177	38.04%	1,222	465
La Plata	MD0176	38.30%	2,223	851
CSR 7073-E				
Dumfries	VA0280	41.89%	1,573	659
Manassas	VA0362 VA0398	38.58%	11,757	4,536
Manassas Park	VA0315	47.03%	3,254	1,530
Occoquan	VA0377	28.91%	418	121
Remainder of Prince William County	VA0019 VA0241 VA0287 VA0316 VA0329 VA0432 VA0595 VA0596 VA0597 VA0616 VA0617	37.29%	90,574	33,778
CSR 7102-E				
Bowie	MD0200	36.66%	18,188	6,668
Brentwood	MD0220	31.05%	905	281
Capitol Heights	MD0183	28.80%	1,441	415
Cheverly	MD0174	24.27%	2,558	548

Communities	CUID(S)	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 7102-E (continued)				
Colmar Manor	MD0221	34.37%	384	132
Cottage City	MD0144	34.41%	465	160
District Heights	MD0165	27.49%	2,070	569
Fairmount Heights	MD0182	28.92%	498	144
Forest Heights	MD0185	20.96%	897	188
Glenarden	MD0146	28.25%	2,078	587
Landover Hills	MD0147	32.88%	514	169
Laurel	MD0201	24.84%	8,931	2,218
New Carrollton	MD0171	31.17%	4,568	1,424
North Brentwood	MD0149	36.08%	158	57
Prince George's County	MD1063			
	MD0172	32.38%	206,931	66,997
Riverdale Park	MD0150	24.54%	2,172	533
Seat Pleasant	MD0181	28.93%	1,697	491
Upper Marlboro	MD0167	53.77%	292	157
CSR 7103-E				
Cambridge	MD0053	21.67	4,629	1,003
Denton	MD0131	35.83%	1,140	409
Federalsburg	MD0132	38.93%	1,045	407
Goldsboro	MD0302	58.98%	77	45
Greensboro	MD0130	41.52%	616	256
Henderson	MD0326	60.61%	42	25
Hurlock	MD0187	35.31%	710	251
Marydel	MD0305	71.84%	47	34
Preston	MD0188	39.98%	225	90
Queen Anne	MD0323	53.74%	67	36

Communities	CUID(S)	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 7103-E (continued)				
Ridgely	MD0193	43.03%	513	221
CSR 7122-E				
Calvert County	MD0250	29.70%	23,428	6,959

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSR 7103-E, CSR 7122-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ITS
SIBSIDIARIES AND AFFILIATES

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 7103-E				
Henderson	MD0326	42	11	26.19%
Secretary	MD0312	197	51	25.89%
CSR 7122-E				
St. Mary's County	MD0279	30,044	1,280	4.26%

ATTACHMENT C**CSR 7067-E, CSR 7678-E****COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ITS
SIBSIDIARIES AND AFFILIATES**

Communities	CUID(S)
Annapolis MD	MD0054
Howard County MD	MD0077, MD0156, MD0157, MD0299, MD0300, MD0301