

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

In the Matter of)
CoxCom, Inc., d/b/a/ Cox Communications New)
England) CSR 7495-E
Petition for Determination of Effective)
Competition in Seven Franchise Areas in Rhode)
Island)

MEMORANDUM OPINION AND ORDER

Adopted: April 10, 2008

Released: April 10, 2008

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

I. INTRODUCTION AND BACKGROUND

1. CoxCom, Inc., d/b/a/ Cox Communications New England, hereinafter referred to as "Petitioner," has filed with the Commission a petition pursuant to Sections 76.7 and 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 the Communities are subject to effective competition pursuant to Section 623(1)(1)(D) 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 Verizon, hereinafter referred to as "Competitor." 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,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 Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(1)(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

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(4).

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.

provided by the competing unaffiliated cable operator.⁶ This test is otherwise referred to as the “LEC” test.

4. 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.⁷ It is undisputed that these Communities 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 programming⁸ and is supported in this petition with copies of channel lineups for Competitor.⁹ Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities, 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*.¹⁰

5. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

III. REQUEST FOR LEAVE TO FILE SUPPLEMENTS

6. The franchise authority in the State of Rhode Island, the Rhode Island Division of Public Utilities and Carriers (“DPUC”), has divided the State of Rhode Island into nine areas for purposes of granting franchises to cable operators.¹¹ The DPUC designated the Franchise Areas involved in this case as “Area 6.” Petitioner is the incumbent franchised cable operator not only in Area 6, but also in Areas 2, 3, and 8. Petitioner requests that we excuse it from filing petitions for special relief for Areas 2, 3, and 8, and allow it instead to file “supplements to this Petition that will incorporate the additional Verizon Rhode Island areas as Verizon commences service there.”¹² These supplements presumably will be brief versions of the Petition herein. In support of this request, Petitioner states that it wants to conserve Commission resources and to spare the filing of more petitions that are “identical” to the present one “for all practical purposes.”¹³

7. We deny Cox’s request. In general, we wish to avoid unnecessary regulatory filings. Section 623 of the Communications Act, however, shows that Congress intends the Commission to give each request for a finding of effective competition individual attention. Although no opposition has been

⁶See 47 U.S.C. § 543(l)(D).

⁷See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”).

⁸See 47 C.F.R. § 76.905(g). See also Petition at 13-14.

⁹See Petition at Exh. 6.

¹⁰See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16. See also Petition at 7-13.

¹¹Petition at Exh. 1 (map of the 9 Areas of Rhode Island).

¹²*Id.* at 2; see also *id.* at 13 n.60.

¹³*Id.* at 2.

filed against the present Petition, it is possible that one might be filed against a later petition. If we foreclosed or diminished such a filing, we would be disregarding Congress's intent.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by CoxCom, Inc., d/b/a/ Cox Communications New England **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the Rhode Island Division of Public Utilities and Carriers for the Communities set forth on Attachment A **IS REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7495-E

**COMMUNITIES SERVED BY COXCOM, INC.,
D.B.A. COX COMMUNICATIONS NEW ENGLAND**

Communities	CUID(S)
Coventry	RI0006
East Greenwich	RI0007
Warwick	RI0008
West Warwick	RI0009
North Kingstown	RI0022
Exeter	RI0039
West Greenwich	RI0040