

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

In the Matter of)
Comcast Cable Communications, LLC) CSR 7061-E, 7213-E, 7541-E
Petition for Determination of Effective)
Competition in various Illinois Communities)

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2008

Released: April 11, 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), 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 system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, 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"). Petitioner additionally claims to be exempt from cable rate regulation in the community listed on Attachment C and hereinafter referred to as the Group C Community because the Petitioner serves fewer than 30 percent of the households in the franchise area. 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, as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules. 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. 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.

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).

3Comcast additionally relies on the subscriber count of cable operator Wide Open West ("WOW") in the Schaumburg, Streamwood, and Glen Ellyn Communities.

447 C.F.R. § 76.906.

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

6See 47 C.F.R. §§ 76.906 & 907.

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;⁷ 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.⁸

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.⁹ 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.¹⁰ 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.¹¹ 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 programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹³ 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.¹⁴ 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 Group B Communities.¹⁵ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber

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

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition at 3.

¹⁰Mediacom 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).

¹¹47 C.F.R. § 76.905(e)(2).

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹³*See* Petition at 4-5.

¹⁴*See* Petition at 3.

¹⁵*Id.* at 5.

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 zip code and zip code plus four basis where necessary.¹⁶ Petitioner’s data also included WOW subscribers in the Communities of Schaumburg, Streamwood, and Glen Ellyn. The DBS subscriber count combined with the subscriber count of cable operator WOW in these Communities exceeds the 15 percent threshold required.

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ 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.¹⁸ 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.¹⁹ 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 area.

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 Community. Therefore, the low penetration test is also satisfied as to the Group C Community.

¹⁶Petition at 6-7.

¹⁷Petition at 7.

¹⁸Comcast’s data combines subscriber count information for DBS providers and cable operator WOW. Petition in CSR 7061-E and 7541-E.

¹⁹47 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.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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

²⁰47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7061-E, 7213-E, 7541-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
<u>CSR 7061-E</u>	
Hanover Park	IL0557 IL1700
Schaumburg	IL0561
Streamwood	IL0562
<u>CSR 7213-E</u>	
Creston	IL0602
Hillcrest	IL0247
Ogle County	IL1640
Rochelle	IL0019
<u>CSR 7541-E</u>	
Aurora	IL0094
Batavia	IL0537
Geneva	IL1052
Glen Ellyn	IL0618
Lily Lake	IL1605
Montgomery	IL0414
Naperville	IL1056
North Aurora	IL0458
Oswego	IL0501
Plano	IL0299
Sandwich	IL0413
St. Charles	IL1053
Warrenville	IL0690
West Chicago	IL0691
Winfield	IL0546
Yorkville	IL0499

ATTACHMENT B

CSR(s) 7061-E, 7213-E, 7541-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
<u>CSR 7061-E</u> Hanover Park	IL0557 IL1700	28.01%	11,105	3,111
Schaumburg	IL0561	25.64%	31,799	8,154*
Streamwood	IL0562	44.75%	12,095	5,412*
<u>CSR 7213-E</u> Creston	IL0602	26.15%	195	51
Hillcrest	IL0247	25.73%	342	88
Rochelle	IL0019	26.19%	3,688	966
<u>CSR 7541-E</u> Aurora	IL0094	31.28%	46,489	14,540
Batavia	IL0537	20.40%	8,494	1,733
Geneva	IL1052	35.57%	6,718	2,390
Glen Ellyn	IL0618	40.66%	10,207	4,150*
Lily Lake	IL1605	48.02%	252	121
Montgomery	IL0414	50.18%	2,164	1,086
Naperville	IL1056	17.33%	43,751	7,584
North Aurora	IL0458	37.60%	4,019	1,511
Oswego	IL0501	52.52%	4,476	2,351
Plano	IL0299	57.65%	1,901	1,096
Sandwich	IL0413	41.88%	2,402	1,006
St. Charles	IL1053	19.78%	10,351	2,048

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
Warrenville	IL0690	16.71%	4,931	824
West Chicago	IL0691	25.40%	6,379	1,620
Winfield	IL0546	17.08%	2,975	508
Yorkville	IL0499	65.36%	2,220	1,451

*CPR = Percent of competitive DBS penetration rate.

*Schaumburg- includes 3,959 DBS subscribers and 4,195 WOW subscribers.

*Streamwood- includes 3,042 DBS subscribers and 2,370 WOW subscribers.

*Glen Ellyn- includes 1,160 DBS subscribers and 2,990 WOW subscribers.

*The DBS penetration rate for Schaumburg, Streamwood, and Glen Ellyn combines subscriber base information of the two DBS providers and cable operator Wide Open West.

ATTACHMENT C

CSR 7213-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7213-E</u> Ogle County	IL1640	8,583	520	6.06%