

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

	)	CSR 7164-E
In the Matter of	)	7165-E
	)	7166-E
Comcast Cable Communications, LLC, on behalf	)	7167-E
of its Subsidiaries and Affiliates	)	7168-E
	)	7169-E
Petition for Determination of Effective	)	7170-E
Competition in Communities in California	)	7188-E
	)	7189-E
	)	7190-E

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2008

Released: April 16, 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 ten petitions 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 systems serving the 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 the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner alternatively claims to be exempt from cable rate regulation in the Communities listed on Attachment B 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,³ as that term is defined by Section 623(1) 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 and B).

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).

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.

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;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 programming¹¹ 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 all but six of the Communities.¹⁴ Petitioner sought

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* Petition in CSR 7164-E at 3; Petition in CSR 7165-E 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).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition in CSR 7166-E at 4; Petition in CSR 7167-E at 4.

¹²*See* Petition in CSR 7168-E at Exh. 1; Petition in CSR 7169-E at Exh. 1.

¹³*See* Petition in CSR 7170-E at 2-3; Petition in CSR 7188-E at 3.

¹⁴*See, e.g.*, Petition in CSR 7165-E at 6. In circumstances where the largest MVPD is unable to be identified (*see, e.g.*, Petition in CSR 7188-E at 6), 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

(continued....)

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.¹⁷ 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.¹⁸ 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 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 the Communities.

(...continued from previous page)

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.

¹⁵*See, e.g.*, Petition in CSR 7189-E at 5.

¹⁶*See, e.g.*, Petition in CSR 7190-E at 6-7.

¹⁷ As indicated from the data in Attachment A, we measure penetration by franchise area, which may include several areas each of which has its own Community Unit Identification (CUID) number.

¹⁸47 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, on behalf of its Subsidiaries and Affiliates **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.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁹47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7164-E, 7165-E, 7166-E, 7167-E, 7168-E, 7169-E, 7170-E, 7188-E, 7189-E, 7190-E

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

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
CSR 7164-E				
Fremont	CA0100	20.67%	68237	14106
Newark	CA0496	29.54%	12992	3838
CSR 7165-E				
Coalinga	CA0737	39.41%	3515	1385
CSR 7166-E				
Dublin	CA0353 CA1560	26.50%	9325	2471**
Livermore	CA0356	24.23%	26123	6329
Pleasanton	CA0360 CA1559	18.48%	23311	4308
San Ramon	CA1115	27.55%	16944	4669
CSR 7167-E				
Sunnyvale	CA0208	18.95%	52539	9955
CSR 7168-E				
Contra Costa County	CA0070 CA0075 CA0576 CA0747 CA0924 CA1533	24.32%	55244	13437**
Hercules	CA0769	24.13%	6423	1550

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
CSR 7168-E (continued)				
Richmond	CA0487 CA1373	22.61%	34625	7827**
San Pablo	CA0021	24.29%	9051	2199
CSR 7169-E				
Emeryville	CA0852	25.46%	3975	1012
CSR 7170-E				
Campbell	CA0386	20.43%	15920	3253
San Jose	CA0213	25.92%	276589	71707
Santa Clara County	CA0212 CA0379	31.93%	30920	9873**
CSR 7188-E and 7189-E				
Atwater	CA0344	43.59%	7247	3159
Chowchilla	CA0935	56.36%	2562	1444
Clovis	CA0442	32.54%	24347	7923
Corcoran	CA0820	24.61%	2769	681
Dinuba	CA0997	31.85%	4493	1431
Dos Palos	CA1094	43.33%	1424	617
Firebaugh	CA1095	28.35%	1418	402
Fowler	CA1000	38.75%	1242	481
Fresno	CA0686	20.09%	140079	28147
Fresno County	CA0702 CA1338 CA1158 CA1505	36.23%	53796	19490**
Hanford	CA0506	35.95%	13931	5008
Kerman	CA1096	43.57%	2389	1041
Kings County	CA0507 CA1122	32.02%	9340	2991**

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
CSR 7188-E and 7189-E (continued)				
Kingsburg	CA0996	41.16%	3226	1328
Lemoore	CA0816	38.61%	6450	2491
Los Banos	CA0462	45.18%	7721	3488
Madera	CA0441	31.40%	11978	3761
Mendota	CA1097	20.03%	1825	366
Merced	CA0347	32.05%	20435	6549
Merced County	CA0345	40.57%	22915	9297
Parlier	CA1275	22.71%	2446	556
Reedley	CA0995	31.39%	5761	1808
San Joaquin	CA1098	22.99%	702	161
Sanger	CA0999	40.43%	5220	2111
Selma	CA0998	32.54%	5596	1821
Tulare	CA0546	37.96%	13543	5141
Visalia	CA0544	37.53%	30883	11590
CSR 7190-E				
Half Moon Bay	CA0077	32.15%	4004	1287

*CPR = Percent of competitive DBS penetration rate.

** Numbers are for all CUIDs combined.

ATTACHMENT B

CSR 7165-E, 7188-E, 7189-E

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

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 7165-E				
Huron	CA1524	1378	326	23.66%
CSR 7188-E				
Fresno County	CA0702 CA1338 CA1158 CA1505	53796	12605	23.43%**
Kings County	CA0507 CA1122	8031	2306	28.71%**
Madera County	CA1295 CA1319 CA1534	21615	3100	14.34%**
Merced County***	CA0345	22915	3975	17.35%**
San Joaquin	CA1098	702	154	21.94%
Tulare County	CA0545	39936	1790	4.48%
CSR 7189-E				
Merced County***	CA1542	22915	3975	17.35%**

** Numbers are for all CUIDs combined.

*** Comcast operates two cable systems in Merced County California and therefore each has its own CSR number herein, 7188-E and 7189-E. The two systems operate pursuant to one franchise, however, and therefore Comcast reports a common set of numbers for both of them.