

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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	CSR- 7486-E
	)	
Petition for Determination of Effective	)	
Competition in various Pennsylvania	)	
Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 16, 2008**

**Released: April 17, 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”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> 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 communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. 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,<sup>3</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>4</sup> 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.<sup>5</sup> 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.

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>5</sup>See 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;<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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<sup>11</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>12</sup> 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.<sup>13</sup> 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

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<sup>6</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>8</sup>*See* Petition at 3-4.

<sup>9</sup>*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).

<sup>10</sup>47 C.F.R. § 76.905(e)(2).

<sup>11</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5.

<sup>12</sup>*See* Petition at 5 and Exhibit 2.

<sup>13</sup>*See* Petition at 3.

area. Petitioner asserts that it is the largest MVPD in the Group B Communities.<sup>14</sup> Petitioner sought to determine the competing provider penetration in the Group B 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 Group B Communities on a five digit zip code basis.<sup>15</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>16</sup> 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. 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.<sup>17</sup> 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 Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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<sup>14</sup>*Id.* at 6. Comcast is the largest MVPD in the Communities of Bedford (Borough), Bedford (Township), Berlin, Boswell, Central City, Everett, Hooversville, Hyndman, Indian Lake, Jenner, Jennerstown, Manns Choice, New Paris, Pleasantville, Rainsburg, Rockwood, Schellsburg, Shade, Snake Spring, Somerset (Borough), Somerset (Township), and Stoystown. However, Comcast is unable to determine which MVPD is the largest in the Communities of Brothersvalley, Casselman, Colerain, East Providence, East St. Clair, Harrison, Hopewell, Milford, Napier, Stonycreek, and West Providence because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>15</sup>Petition at 7. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of households in the franchise area over the number of households in the zip area). *Id.* See, e.g., Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

<sup>16</sup>Petition at 6-8 and Exhibit 6.

<sup>17</sup>47 U.S.C. § 543(l)(1)(A).

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **IS 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.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>18</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

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## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUIDS</b>
<b>Allegheny</b>	<b>PA3390</b>
<b>Bedford Borough</b>	<b>PA1451</b>
<b>Bedford Township</b>	<b>PA1637</b>
<b>Berlin</b>	<b>PA1684</b>
<b>Black</b>	<b>PA3110</b>
<b>Boswell</b>	<b>PA2105</b>
<b>Brothersvalley</b>	<b>PA2109</b>
<b>Casselman</b>	<b>PA2761</b>
<b>Central City</b>	<b>PA1301</b>
<b>Colerain</b>	<b>PA1638</b>
<b>East Providence</b>	<b>PA1717</b>
<b>East St. Clair</b>	<b>PA1639</b>
<b>Everett</b>	<b>PA0281</b>
<b>Harrison</b>	<b>PA2609</b>
<b>Hooversville</b>	<b>PA1302</b>
<b>Hopewell</b>	<b>PA1716</b>
<b>Hyndman</b>	<b>PA1317</b>
<b>Indian Lake</b>	<b>PA2238</b>
<b>Jenner</b>	<b>PA2106</b>
<b>Jennerstown</b>	<b>PA2107</b>
<b>Lincoln</b> <b>(Bedford Township)</b>	<b>PA3143</b>
<b>Lincoln</b> <b>(Somerset Township)</b>	<b>PA2231</b>
<b>Londonderry</b>	<b>PA2434</b>

<b>Manns Choice</b>	<b>PA2610</b>
<b>Milford</b>	<b>PA2233</b> <b>PA3111</b>
<b>Napier</b>	<b>PA1640</b>
<b>New Paris</b>	<b>PA2101</b>
<b>Pleasantville</b>	<b>PA2098</b>
<b>Quemahoning</b>	<b>PA2232</b>
<b>Rainsburg</b>	<b>PA2415</b>
<b>Rockwood</b>	<b>PA1801</b>
<b>Schellsburg</b>	<b>PA2102</b>
<b>Shade</b>	<b>PA1304</b>
<b>Snake Spring</b>	<b>PA1641</b>
<b>Somerset Borough</b>	<b>PA0348</b>
<b>Somerset Township</b>	<b>PA2280</b>
<b>Stonycreek</b>	<b>PA2240</b>
<b>Stoystown</b>	<b>PA1303</b>
<b>Upper Turkey Foot</b>	<b>PA3272</b>
<b>West Providence</b>	<b>PA1715</b>

## ATTACHMENT B

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## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bedford Borough	PA1451	38.00%	1,536	583
Bedford Township	PA1637	37.60%	2,144	806
Berlin	PA1684	37.70%	881	332
Boswell	PA2105	30.92%	608	188
Brothersvalley	PA2109	39.20%	862	338
Casselman	PA2761	50.00%	40	20
Central City	PA1301	32.50%	538	175
Colerain	PA1638	38.40%	435	167
East Providence	PA1717	65.40%	742	485
East St. Clair	PA1639	44.90%	1,198	538
Everett	PA0281	47.70%	876	418
Harrison	PA2609	52.70%	385	203
Hooversville	PA1302	42.40%	335	142
Hopewell	PA1716	38.60%	746	288
Hyndman	PA1317	47.22%	413	195
Indian Lake	PA2238	45.10%	206	93
Jenner	PA2106	31.20%	1,598	499
Jennerstown	PA2107	31.50%	302	95
Manns Choice	PA2610	32.80%	116	38
Milford	PA2233 PA3111	38.20%	602	230
Napier	PA1640	54.40%	843	459
New Paris	PA2101	45.60%	79	36

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Pleasantville	PA2098	49.40%	83	41
Rainsburg	PA2415	38.60%	57	22
Rockwood	PA1801	49.50%	406	201
Schellsburg	PA2102	51.90%	129	67
Shade	PA1304	37.32%	1,171	437
Snake Spring	PA1641	46.99%	552	254
Somerset Borough	PA0348	28.50%	3,035	865
Somerset Township	PA2280	54.90%	552	254
Stonycreek	PA2240	31.70%	820	260
Stoystown	PA1303	36.40%	184	67
West Providence	PA1715	50.50%	1,339	676

\*CPR = Percent of competitive DBS penetration rate.



## ATTACHMENT C

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## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Allegheny	PA3390	250	9	3.6%
Black	PA3110	364	22	6.04%
Lincoln (Bedford Township)	PA3143	142	21	14.8%
Lincoln (Somerset Township)	PA2231	642	89	13.9%
Londonberry	PA2434	685	77	11.2%
Quemahoning	PA2232	827	119	14.4%
Upper Turkeyfoot	PA3272	450	31	6.9%