

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

In the Matter of )
Comcast Cable Communications, LLC ) CSR 7465-E, 7485-E, 7487-E
Petition for Determination of Effective )
Competition in various Michigan Communities )

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2008

Released: April 25, 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 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 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 Eastpointe, Saint Clair Shores, and Harrison 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;<sup>7</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>8</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>9</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>10</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>11</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>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.<sup>13</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>14</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 area. Petitioner asserts that it is the largest MVPD in the Group B Communities.<sup>15</sup> Petitioner sought to

<sup>7</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See* Petition at 3.

<sup>10</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>11</sup>47 C.F.R. § 76.905(e)(2).

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

<sup>13</sup>*See* Petition at 4-5.

<sup>14</sup>*See* Petition at 3.

<sup>15</sup>*Id.* at 5-6. In the Communities of Baroda Township, Baroda Village, Berrien, Lake, Casco, Columbus, Memphis, Richmond Township and St. Clair Township both the Comcast penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in

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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 zip code and zip code plus four basis where necessary.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</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>18</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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addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition at 6-7.

<sup>17</sup>Petition at 7-8.

<sup>18</sup>47 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.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR(s) 7465-E, 7485-E, 7487-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
<u>CSR 7465-E</u>	
Eastpointe	MI0433
Saint Clair Shores	MI0417
<u>CSR 7485-E</u>	
Bainbridge	MI1957
Baroda Village	MI0879
Baroda Township	MI0884
Benton	MI0200
Benton Harbor	MI0182
Berrien Township	MI1472
Berrien Springs	MI0657
Bridgman	MI0877
Chikaming	MI0883
Coloma Township	MI0195
Coloma	MI0197
Hagar	MI1290
Lake	MI0885
Lincoln	MI0660
New Buffalo	MI0876
New Buffalo Township	MI0881
Oronoko	MI0658
Royalton	MI0659
Shoreham	MI1471
Sodus	MI1473
St. Joseph City	MI0566
St. Joseph Township	MI0661
Stevensville	MI0880
Three Oaks Village	MI0878
Three Oaks Township	MI0882
Watervliet	MI0196
Watervliet Township	MI0243
Weesaw	MI0953
<u>CSR 7487-E</u>	
Algonac	MI0545
Armada Township	MI1054
Armada Village	MI1055
Bruce	MI0871
Burtchville	MI0105
Casco	MI1793
Chesterfield	MI0541
China	MI0870
Clay	MI0544
Clyde	MI0539
Columbus	MI1601
Cottrellville	MI0546

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<b>Communities</b>	<b>CUID(S)</b>
<b>East China</b>	<b>MI0548</b>
<b>Fort Gratiot</b>	<b>MI0062</b>
<b>Harrison</b>	<b>MI0540</b>
<b>Ira</b>	<b>MI0543</b>
<b>Kimball</b>	<b>MI0538</b>
<b>Lennox</b>	<b>MI1053</b>
<b>Marine City</b>	<b>MI0547</b>
<b>Marysville</b>	<b>MI0063</b>
<b>Memphis</b>	<b>MI0626</b>
<b>New Baltimore</b>	<b>MI0542</b>
<b>New Haven</b>	<b>MI0869</b>
<b>Port Huron City</b>	<b>MI0065</b>
<b>Port Huron Township</b>	<b>MI0064</b>
<b>Richmond City</b>	<b>MI0789</b>
<b>Richmond Township</b>	<b>MI1052</b>
<b>Romeo</b>	<b>MI0671</b>
<b>Saint Clair City</b>	<b>MI0549</b>
<b>Saint Clair Township</b>	<b>MI1109</b>
	<b>MI1600</b>
<b>Washington</b>	<b>MI0872</b>

## ATTACHMENT B

## CSR(s) 7465-E, 7485-E, 7487-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
<u>CSR 7465-E</u> Eastpointe	MI0433	44.10%	13,595	5,996*
Saint Clair Shores	MI0417	40.75%	27,434	11,180*
<u>CSR 7485-E</u> Baroda Township	MI0884	28.38%	1,117	317
Baroda Village	MI0879	43.37%	362	157
Benton	MI0200	22.07%	6,485	1,431
Benton Harbor	MI0182	22.05%	3,767	831
Berrien	MI1472	31.12%	1,664	518
Berrien Springs	MI0657	23.77%	732	174
Bridgman	MI0877	32.56%	998	325
Chikaming	MI0883	35.17%	1,646	579
Coloma	MI0197	31.62%	626	198
Coloma Township	MI0195	32.73%	2,111	691
Hagar	MI1290	28.92%	1,639	474
Lake	MI0885	34.75%	1,171	407
Lincoln	MI0660	23.48%	5,486	1,288
New Buffalo	MI0876	25.24%	947	239
New Buffalo Township	MI0881	20.59%	1,093	225
Oronoko	MI0658	18.33%	3,295	604
Royalton	MI0659	24.25%	1,299	315
Shoreham	MI1471	20.80%	423	88
Sodus	MI1473	35.18%	884	311

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
St. Joseph City	MI0566	24.30%	4,117	1,000
St. Joseph Township	MI0661	20.79%	4,094	851
Stevensville	MI0880	26.81%	522	140
Three Oaks Village	MI0878	34.82%	741	258
Watervliet	MI0196	34.63%	719	249
Watervliet Township	MI0243	36.13%	1,348	487
<u>CSR 7487-E</u> Algonac	MI0545	22.40%	1,871	419
Armada Village	MI1055	61.11%	540	330
Bruce	MI0871	21.95%	2,806	616
Burtchville	MI0105	28.52%	1,616	461
Casco	MI1793	32.61%	1,634	533
Chesterfield	MI0541	22.87%	13,347	3,052
China	MI0870	34.27%	1,106	379
Clay	MI0544	22.82%	3,934	898
Clyde	MI0539	42.72%	1,931	825
Columbus	MI1601	47.55%	1,533	729
Cottrellville	MI0546	28.83%	1,384	399
East China	MI0548	33.87%	1,467	497
Fort Gratiot	MI0062	27.35%	4,076	1,115
Harrison	MI0540	33.78%	10,720	3,621*
Ira	MI0543	22.15%	2,677	593
Kimball	MI0538	32.50%	3,120	1,014
Lenox	MI1053	25.14%	2,510	631
Marine City	MI0547	29.51%	1,860	549
Marysville	MI0063	19.58%	4,025	788
Memphis	MI0626	65.42%	457	299



<b>Communities</b>	<b>CUID(S)</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS &amp; Other MVPD Subscribers</b>
<b>New Baltimore</b>	<b>MI0542</b>	<b>21.51%</b>	<b>2,942</b>	<b>633</b>
<b>New Haven</b>	<b>MI0869</b>	<b>38.53%</b>	<b>1,064</b>	<b>410</b>
<b>Port Huron City</b>	<b>MI0065</b>	<b>16.80%</b>	<b>12,961</b>	<b>2,177</b>
<b>Port Huron Township</b>	<b>MI0064</b>	<b>16.86%</b>	<b>3,310</b>	<b>558</b>
<b>Richmond City</b>	<b>MI0789</b>	<b>32.11%</b>	<b>1,977</b>	<b>635</b>
<b>Richmond Township</b>	<b>MI1052</b>	<b>32.74%</b>	<b>1,020</b>	<b>334</b>
<b>Romeo</b>	<b>MI0671</b>	<b>29.06%</b>	<b>1,528</b>	<b>444</b>
<b>Saint Clair City</b>	<b>MI0549</b>	<b>34.06%</b>	<b>2,322</b>	<b>791</b>
<b>Saint Clair Township</b>	<b>MI1109 MI1600</b>	<b>34.00%</b>	<b>2,266</b>	<b>770</b>
<b>Washington</b>	<b>MI0872</b>	<b>24.57%</b>	<b>6,991</b>	<b>1,718</b>

\*CPR = Percent of competitive DBS penetration rate.

\*Eastpointe- includes 1,333 DBS subscribers and 4,633 WOW subscribers.

\*Saint Clair Shores- includes 1,767 DBS subscribers and 9,413 WOW subscribers.

\*Harrison- includes 899 DBS subscribers and 2,722 WOW subscribers.

## ATTACHMENT C

## CSR(s) 7485-E and 7487-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7485-E</u> Bainbridge	MI1957	1,142	6	0.53%
Baroda Township	MI0884	1,117	194	17.37%
Berrien Township	MI1472	1,664	428	25.72%
Oronoko	MI0658	3,295	716	21.73%
Three Oaks Township	MI0882	1,181	74	6.27%
Weesaw	MI0953	798	91	11.40%
<u>CSR 7487-E</u> Armada Township	MI1054	1,715	62	3.62%