

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

In the Matter of)	
)	CSR 8179-E
Comcast Cable Communications, LLC)	CSR 8180-E
)	CSR 8181-E
Petitions for Determination of Effective)	CSR 8182-E
Competition in various Pennsylvania Franchise)	CSR 8183-E
Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 2010

Released: June 4, 2010

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 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 listed on Attachment B and hereinafter referred to as Group B 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 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 areas. 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 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).

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 (“MVPDs”) 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 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.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 to support its assertion that potential customers in the Group B 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 the petitions 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 Group B 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.¹⁴ Petitioner asserts that it is the largest MVPD in most of the Group B Communities.¹⁵ Petitioner

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹Mediacom 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* Petitions at 4.

¹²*See* Petitions at Exhibit 2 (CSRs 8179-E, 8180-E and 8181-E) and Exhibit 1 (CSRs 8182-E and 8183-E).

¹³*See* Petitions at 2 (CSRs 8182-E and 8183-E) and 3 (CSRs 8179-E, 8180-E and 8181-E).

¹⁴With regard to CSR 8182-E and CSR 8183-E, we note that the same franchise area reflecting the same DBS penetration rate is listed in both petitions. Two petitions were filed, however, because the North Huntingdon Franchise Area is served by two headends: PSID No. 004921 (PA2522) and PSID No. 008625 (PA0643). In this situation, the filing of two separate petitions and two separate filing fees is required.

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 that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁶

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. 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.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 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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¹⁵Petitions at 6-7. In those franchise areas where Comcast cannot determine which MVPD is the largest, Comcast asserts that the second prong of the competing provider test is still satisfied because both the DBS and Comcast figures exceed the 15 percent threshold. *See Charter Communications – Seven Local Franchise Areas in Missouri*, 21 FCC Rcd 1208, ¶ 5 (2006) (The Commission has recognized that where “the subscriber penetration for both [the cable operator] and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.”).

¹⁶Petitions at 5-7 (CSRs 8179-E, 8181-E and 8182-E) and at 4-7 (CSRs 8182-E and 8183-E).

¹⁷*Id.* at 7, Exhibit 7 (CSRs 8179-E and 8180-E), Exhibit 6 (CSR 8181-E) and at 6, Exhibit 6 (CSRs 8182-E and 8183-E).

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, **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE 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. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁹47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8179-E, CSR 8180-E, CSR 8181-E, CSR 8182-E & CSR 8183-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8179-E

Communities	CUIDs
Dover	PA1311
East Berlin	PA3270
Hanover	PA0420
Heidelberg	PA2391
Hellam	PA1310
Manheim	PA3129
Springfield	PA1535

CSR 8180-E

Mount Oliver	PA1245
Mount Pleasant	PA2113
Nottingham	PA3002
	PA3039
Robinson	PA1525
	PA2510
Rostraver	PA0715
	PA2209
Sewickley	PA0647
	PA2210
Smith	PA3218
South Huntingdon	PA1357
	PA2198
Suterville	PA1355
West Homestead	PA0667
West Mifflin	PA0666
West Newton	PA1356
Whitaker	PA0668

CSR 8181-E

Cass	PA1906
East Norwegian	PA2936
New Castle	PA3239
Pine Grove	PA1975
South Manheim	PA1911
Wayne	PA1913
West Brunswick	PA3172

CSR 8182-E

North Huntingdon	PA0643
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CSR 8183-E

North Huntingdon	PA2522
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ATTACHMENT B

CSR 8179-E, CSR 8180-E, CSR 8181-E, CSR 8182-E & CSR 8183-E
COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8179-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Dover	PA1311	22.21%	770	171
Hanover	PA0420	16.59%	6,605	1,096
Heidelberg	PA2391	28.93%	1,082	313
Hellam	PA1310	25.97%	2,395	622
Springfield	PA1535	41.20%	1,444	595

CSR 8180-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Mount Oliver	PA1245	16.78%	1,681	282
Mount Pleasant	PA2113	40.19%	1,279	514
Nottingham	PA3002 PA3039	29.96%	968	290
Robinson	PA1525 PA2510	34.84%	841	293
Rostraver	PA0715 PA2209	16.60%	4,590	762
Sewickley	PA0647 PA2210	19.57%	2,519	493
South Huntingdon	PA1357 PA2198	21.86%	2,461	538
Suterville	PA1355	16.48%	267	44
West Homestead	PA0667	16.63%	956	159
West Miflin	PA0666	22.07%	9,202	2,031
West Newton	PA1356	23.07%	1,318	304

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Whitaker	PA0668	19.11%	560	107

CSR 8181-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
East Norwegian	PA2936	16.12%	366	59
Pine Grove	PA1975	20.13%	1,570	316
Wayne	PA1913	33.55%	1,827	613

CSR 8182-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
North Huntingdon	PA0643	15.79%	11,656	1,841

CSR 8183-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
North Huntingdon	PA2522	15.79%	11,656	1,841

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8179-E, CSR 8180-E & CSR 8181-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8179-E

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
East Berlin	PA3270	557	47	8.44%
Manheim	PA3129	1,084	40	3.69%

CSR 8180-E

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Smith	PA3218	1,813	5	.28%

CSR 8181-E

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Cass	PA1906	779	32	4.11%
New Castle	PA3239	180	4	2.22%
South Manheim	PA1911	796	66	8.29%
West Brunswick	PA3172	1,323	46	3.48%