

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

In the Matter of	)	
	)	
Mediacom Southeast LLC	)	CSR 8295-E, CSR 8300-E, CSR 8309-E, CSR
	)	8310-E, CSR 8313-E, CSR 8321-E & CSR
	)	8312-E
Time Warner Cable Inc.	)	
	)	CSR 8339-E
Petitions for Determination of Effective	)	
Competition in Various Communities in	)	
Mississippi and North Carolina	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 6, 2010

Released: October 6, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Mediacom Southeast LLC and Time Warner Cable Inc., hereinafter referred to as “Petitioners,” have filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioners are subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioners allege that their cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> 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”). 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,<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 petitions based on our finding that Petitioners are subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

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

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

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

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 76.907.

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 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 the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioners 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 Petitioners Mediacom and Time Warner Cable Inc. have provided sufficient citations and references to the DBS providers’ web pages and other media available in the Communities to support its assertion that potential customers in those 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 the petitions with copies of channel lineups for both DIRECTV and DISH.<sup>12</sup> Also undisputed are Petitioners’ 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.<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 area. Petitioners assert that they are the largest MVPDs in the Communities.<sup>14</sup> Petitioners sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of

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<sup>6</sup> 47 U.S.C. § 543(l)(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* Petitions at CSR 8295-E at 4-5; CSR 8300-E at 4-5; CSR 8309-E at 4-5; CSR 8310-E at 4-5; CSR 8312-E at 4-5; CSR 8313-E at 4-5; CSR 8321-E at 4-5; CSR 8339-E at 4-5.

<sup>9</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (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* Petitions at CSR 8295-E at 6-7; CSR 8300-E at 5-6; CSR 8309-E at 5-6; CSR 8310-E at 5-6; CSR 8312-E at 6-7; CSR 8313-E at 5-6; CSR 8321-E at 6-7; CSR 8339-E at 5-6.

<sup>12</sup> *See* Petitions at CSR 8295-E at 5-6; CSR 8300-E at 5-6; CSR 8309-E at 5-6; CSR 8310-E at 4-5; CSR 8312-E at 5-6; CSR 8313-E at 5-6; CSR 8321-E at 4-5; CSR 8339-E at 4-5.

<sup>13</sup> *See* Petitions at CSR 8295-E at 2; CSR 8300-E at 2; CSR 8309-E at 2; CSR 8310-E at 2; CSR 8312-E at 2; CSR 8313-E at 2; CSR 8321-E at 2; CSR 8339-E at 2-3.

<sup>14</sup> *See* Petitions at CSR 8295-E at 7; CSR 8300-E at 7; CSR 8309-E at 7; CSR 8310-E at 7; CSR 8312-E at 7; CSR 8313-E at 7; CSR 8321-E at 7; CSR 8339-E at 7.

subscribers attributable to the DBS providers within the Communities on a zip code plus four 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 A, we find that Petitioners have 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. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioners have submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioners are subject to effective competition in the Communities listed on Attachment A.

### III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Mediacom Southeast LLC and Time Warner Cable Inc. **ARE GRANTED**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>15</sup> Petitions at CSR 8295-E at 7-8; CSR 8300-E at 7-8; CSR 8309-E at 7-8; CSR 8310-E at 7-8; CSR 8312-E at 7-8; CSR 8313-E at 7-8; CSR 8321-E at 7-8; CSR 8339-E at 7-8. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

<sup>16</sup> Petitions at CSR 8295-E at 8 and Exhibit C; CSR 8300-E at 8 and Exhibit C; CSR 8309-E at 8 and C; CSR 8310-E at 8 and C; CSR 8312-E at 8 and Exhibit C; CSR 8313-E at 7 and Exhibit C; CSR 8321-E at 7 and Exhibit C; CSR 8339-E at 7 and Exhibit B.

<sup>17</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

CSRs 8295-E, CSR 8300-E, CSR 8309-E, CSR 8310-E, CSR 8313-E, CSR 8321-E, CSR 8312-E & CSR 8339-E

**COMMUNITIES SERVED BY MEDIACOM SOUTHEAST LLC AND TIME WARNER CABLE INC.**

**MEDIACOM SOUTHEAST LLC**

<b>Communities</b>	<b>CUIDs</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
Louisville	MS0066	24.88	2641	657
Wiggins	MS0155	19.86	1380	274
Bay St. Louis	MS0133	24.73	3271	809
Creswell Town	NC0610	16.95	118	20
Plymouth Town	NC0086	23.35	1623	379
Windsor Town	NC0059	29.42	938	276
Edenton Town	NC0289	19.16	1983	380
Hertford Town	NC0290	20.30	877	178
Thomasville	AL0059	23.86	1794	428
Linden	AL0058	20.90	938	196
Newton City	MS0094	22.39	1420	318
Union Town	MS0093	25.77	780	201

**TIME WARNER CABLE INC.**

<b>Communities</b>	<b>CUIDs</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
Town of Boonville	NC0591	26.68	476	127
Village of Clemmons	NC0275	24.93	5291	1319
Town of Denton	NC0671	19.16	595	114
Town of Gibsonville	NC0209 NC0210	24.25	1707	414
Town of Jamestown	NC0242	21.32	1229	262
Town of Jonesville	NC0055	29.19	668	195
Town of Kernersville	NC0211	21.92	7286	1597
Town of Lewisville	NC0957	18.86	3341	630
Town of Madison	NC0216	32.20	972	313
City of Mebane	NC0375	34.06	2936	1000
Town of Oak Ridge	NC1045	46.60	1382	644
Town of Pilot	NC0510	40.85	585	239
Town of Summerfield	NC1049	38.00	2518	957
Town of Walnut Cove	NC0587	23.76	585	139

Town of Whitsett	NC1070	33.69	279	94
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\*CPR = Percent of competitive DBS penetration rate.