

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

In the Matter of)	
)	
Charter Communications, on behalf of its subsidiaries and affiliates,)	CSR 8242-E
)	
Petition For Determination of Effective Competition in New Hanover County, North Carolina (CUIDs NC0152, NC0369))	

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 2010

Released: March 9, 2010

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

I. INTRODUCTION AND BACKGROUND

1. Charter Communications, on behalf of its subsidiaries and affiliates (“Charter” or the “Company”), filed with the Commission a petition for reconsideration of the grant of the recent request by the government of New Hanover County, North Carolina (the “County”), to be certificated to regulate Charter’s rates for basic cable service in Charter’s franchise area.¹ Previous litigation has defined that area as the part of unincorporated New Hanover County in which Charter has built a cable system and is offering cable service (“Charter’s actual service area”).² The issue in this litigation is whether, in Charter’s actual service area, it is subject to “competing provider” effective competition. Charter asserts that it is, and the County disputes that assertion. If Charter proves that it is subject to competing provider effective competition,³ it is exempt from the County’s rate regulation by operation of section 623(l)(1)(B) of the Communications Act of 1934, as amended.⁴ The County filed an opposition (“Opposition”) to Charter’s petition,⁵ to which Charter filed a reply (“Reply”).⁶

¹ Petition for Reconsideration of Rate Regulation Certification, dated Nov. 12, 2009. By way of background, 47 C.F.R. § 76.910 provides for the Commission to certificate the County to regulate Charter’s basic rates. The County filed a request for certification with the Commission, which was dated September 14, 2009. 47 C.F.R. § 76.910(e) provides for the automatic grant of the County’s request 30 days later, absent intervening circumstances. 47 C.F.R. § 76.911(b) provides that the filing of Charter’s petition was such an intervening circumstance and stayed the grant of the County’s request for certification, pending adjudication of the petition.

² *County of New Hanover, North Carolina*, Memorandum Opinion & Order DA 08-2344 (“*Charter IP*”) at ¶ 12 (rel. Oct. 24, 2008), available at 2008 WL 4693164. Other litigation between the present parties is resolved in *Charter Commn.*, 19 FCC Rcd 7003 (2004) and *County of New Hanover, North Carolina*, 24 FCC Rcd 10130 (2009) (“*Charter IIP*”).

³ Cable systems are presumed not to be subject to effective competition, and a cable operator bears the burden of rebutting that with evidence that effective competition is present within the relevant franchise area. See 47 C.F.R. §§ 76.906 & 907.

⁴ 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907.

⁵ Opposition to Petition for Reconsideration & Petition for Special Relief, dated Dec. 20, 2009.

⁶ Reply to Opposition to Petition for Reconsideration, dated Jan. 4, 2009.

A. The County's Additional Pleading

2. The County filed a Supplement to Opposition ("Supplement") and a Motion for Leave to File Supplement to Opposition ("Motion"),⁷ and Charter filed an Opposition to Motion for Leave to File Supplement ("Opposition to Motion").⁸ Pleadings in excess of those allowed by the pleading cycle, such as the County's Supplement, must be justified by a showing of "extraordinary circumstances."⁹ The County asserts that the extraordinary circumstances here are "Charter . . . misinforming the Commission by grossly misrepresenting the County's data, purpose and actions."¹⁰

3. Charter's alleged misconduct is detailed in the County's Supplement. What the Supplement details, however, is not misconduct, but merely actions and assertions by Charter with which the County disagrees. In addition, most of Charter's controversial actions and assertions occurred in or around the Company's petition and were (or could have been) addressed fully in the County's Opposition. For example, the County complains that Charter submitted lists of addresses of "homes passed" rather than a map of its actual service area.¹¹ Charter's reliance on those lists rather than a map was evident in the petition, however.¹² In addition, the County alleges that Charter's list of homes passed erroneously includes vacant lots, commercial establishments, and homes that the Company does not actually serve.¹³ Assuming this allegation is true, it, too, was discernable from the petition.¹⁴ The County's Supplement also includes a significant amount of repetitious argument¹⁵ and lacks clear and documented calculations of DBS subscribership and households, which would have been helpful in this unusually complex case.¹⁶ These parts of the County's Supplement do not satisfy the requirement for a supplemental pleading. Only a small part of the Supplement consists of useful responses by the County to factual allegations that Charter made for the first time in its Reply. To the extent set forth below, it is useful in this highly complicated case and we grant the Motion. We deny the County's Motion for the remainder of its Supplement, however.

⁷ The County's Supplement and Motion are dated January 25, 2010.

⁸ Charter's Opposition to Motion is dated February 1, 2010.

⁹ 47 C.F.R. § 76.7(d); *see also Charter Commun.*, Memorandum Opinion & Order DA 09-2515 at ¶ 11 (rel. Dec. 1, 2009).

¹⁰ Motion at 1.

¹¹ Supplement at 2-3, 8.

¹² Petition at 4, 10-11; *id.*, Exh. 7.

¹³ Supplement at 1-4.

¹⁴ On the merits of the County's allegation, to the extent that Charter overstates only the number of its homes passed, it inflates the denominator of the statutory ratio and lowers relative DBS subscribership, thus hurting its case here. The County is not injured by any such errors. *See* Opposition to Motion at 3.

Other matters raised in the County's Supplement that were, or could have been, raised before are the exclusion of seasonal and unoccupied homes from calculations herein and Charter's failure to state its number of subscribers. Supplement at 5-9. These matters are addressed in the Discussion.

¹⁵ Supplement at 1, 7-9.

¹⁶ *Id.* at 3-5.

II. DISCUSSION

A. The “Competing Provider” Test for Effective Competition

4. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to competing provider effective competition if its 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.¹⁷

B. Part One

5. The first part of the competing provider 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.¹⁸ The competing providers whom Charter claims satisfy these elements are two direct broadcast satellite (“DBS”) providers, DIRECTV and DISH Network. There is no dispute that the DBS providers are unaffiliated with each other and with Charter. Charter alleges that the DBS providers serve its franchise area, offering service to at least 50 percent of the households there.¹⁹ A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area.²⁰ DBS service is presumed to be technically available due to its nationwide satellite footprint,²¹ and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.²² A petitioner may use evidence of penetration rates in the franchise area (the second part of the competing provider test, discussed below) coupled with the known ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.²³ Consumers’ general awareness of the DBS providers’ service is also shown by the fact that approximately 30 percent of American households – twice the number needed to show competing provider effective competition – subscribe to that service.²⁴ These presumptions and evidence, if un rebutted, show that Charter’s franchise area is served by two unaffiliated MVPDs who offer service to at least 50 percent of the households there.

¹⁷ 47 U.S.C. § 543(1)(1)(B); 47 C.F.R. § 76.905(b)(2).

¹⁸ 47 U.S.C. § 543(1)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

¹⁹ Petition at 8.

²⁰ *Implementation of Section of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5654-57, ¶¶ 27-29 (1993) (“Rate Order”), on reconsideration, 9 FCC Rcd 4316 (1994), reversed in part on other grounds, *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995), cert. denied, 516 U.S. 1112 (1996).

²¹ See, e.g., *Mediacom Southeast LLC*, 24 FCC Rcd 2398, 2399, ¶ 5 (2009) (“Mediacom”); *Comcast Cable Commun., LLC*, 24 FCC Rcd 2237, 2238, ¶ 5 (2009) (“Comcast I”); *Comcast Cable Commun., LLC*, 24 FCC Rcd 1780, 1781, ¶ 7 (2009), application for review pending.

²² *Rate Order*, 8 FCC Rcd at 5656, ¶ 29.

²³ *Mediacom*, 24 FCC Rcd at 2399, ¶ 5; *Comcast I*, 24 FCC Rcd at 2238, ¶ 5; *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

²⁴ *Compare Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 542, 684 (2009) (“Thirteenth Cable Competition Report”) (Table B-1, showing DBS providers with 27.97 million TV households, or 29.2% of the total, as of June 2006) with Yinka Adegoke, *DirecTV profit beats, to buy back \$3.5 bln shares*, AFX ASIA FOCUS (Feb. 18, 2010, 16:29:00) (the DBS providers had 32.6 million subscribers at the end of 2009).

6. The County seeks to cast doubt on the presumptions and evidence that Charter relies on. The County states that DBS signals are often not available “in geographic areas dense with trees or multiple dwelling units [“MDUs”] which have no southern facings or porches from which the DBS dishes can collect the satellite signals.”²⁵ The County does not, however, allege that Charter’s actual service area has these characteristics. Nor does the County offer any evidence that the DBS providers do not reach at least 50 percent of the households in that area. We have previously dismissed franchise authorities’ general claims that some areas are forested or have many north-facing MDUs.²⁶ The County’s generalized allegations fail for the same reason, namely that they are unsupported by any evidence showing that the DBS providers do not offer MVPD service to at least 50 percent of the households in Charter’s actual service area. The County could have presented specific data about conditions in the area it governs, but failed to do so.

7. 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.²⁷ Charter filed copies of channel lineups for each of the DBS providers,²⁸ and they both satisfy this final element of the first part of the competing provider test. Accordingly, we conclude that Charter’s petition satisfies the first part of the competing provider test.

C. Part Two

8. Introduction. The second part 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 Charter’s actual service area.²⁹ Charter asserts that it is the largest MVPD there.³⁰ The County notes Charter’s lack of documentation for this assertion,³¹ but does not dispute it and gives us no reason to doubt it. Charter’s identical allegation in the previous round of this litigation was supported by a sworn affidavit of a Charter employee,³² and we find that reliable. We conclude that Charter is the largest MVPD in its actual service area.

9. Charter points to the DBS providers as its “competing providers.” Therefore, the second part of the competing provider test requires Charter to show a ratio, the numerator of which is the number of DBS subscribers in its actual service area and the denominator of which is the number of households in that area. To prevail, Charter must show that the ratio is in excess of 15 percent.

10. Charter states that, following the County’s urging,³³ it made a study of the “homes

²⁵ Opposition at 5 n.13 (bracketed letters added).

²⁶ See, e.g., *Cablevision Systems East Hampton Corp.*, 24 FCC Rcd 10846, 10847, ¶ 6 (2009); *Cablevision Systems Westchester Corp.*, 24 FCC Rcd 872, 876, ¶ 15 (2009); *Comcast Cable Commun., LLC*, 22 FCC Rcd 694, 697-98, ¶ 9 (2007); *Adelphia Cable Commun.*, 20 FCC Rcd 20536, 20538, ¶¶ 5-7 (2005), *application for review pending*; *Adelphia Cable Commun.*, 20 FCC Rcd 4979, 4980-81, ¶ 4 (2005); *Cablevision of Paterson*, 17 FCC Rcd 17239, 17242, ¶ 6, n.22 (2002).

²⁷ See 47 C.F.R. § 76.905(g).

²⁸ See Petition at Exh. 3.

²⁹ *Charter II*, *supra* n.2, at ¶ 12.

³⁰ Petition at 12 n.40.

³¹ Opposition at 3 n.4.

³² Charter’s Petition for Special Relief in CSR 8096-E, Declaration of Denise Williams, Charter’s Director of Regulatory Compliance, at ¶ 3 (Nov. 24, 2008).

³³ *Charter III*, 24 FCC Rcd 10135, ¶ 17.

passed” by its cable system in unincorporated New Hanover County.³⁴ “Homes passed” are homes capable of receiving cable television service.³⁵ Charter’s study included many inputs. Some of its inputs have long been accepted in our decisions, such numbers sorted by nine-digit Zip Codes and numbers of DBS subscribers in each such Zip Code as determined by the Satellite Broadcasting and Communications Association (“SBCA”). Charter also used several novel inputs,³⁶ which we find reliable for present purposes. SBCA reported to Charter that there were 1,856 DBS subscribers in the Company’s actual service area, and Charter claimed that there were 8,056 “housing units” there.³⁷ Those numbers, if used to measure DBS subscribership in Charter’s actual service area, would show that subscribership at 23.04 percent, well above the statutory minimum of 15 percent.

11. The County suggests several adjustments to Charter’s numbers. Also, we make one on our own initiative. These are discussed in the following paragraphs.

12. Adjustments to the Numerator – the Number of DBS Subscribers. The first adjustments we will consider are subtractions proposed by the County to the numerator in the statutory equation, Charter’s asserted number of DBS subscribers in its actual service area. The County proposes several adjustments based on a map of Charter’s actual service area that was made by a Charter employee in 2002.³⁸ Relying on that map, the County alleges that Charter erroneously included 122 DBS subscribers who actually live outside the Company’s actual service area.³⁹ Charter answers that the County’s map is not accurate, that the 122 DBS subscribers’ homes are on its list of homes passed, and that a review of its billing records and a physical inspection of many streets shows that the 122 homes are indeed served or servable by Charter. Therefore, Charter answers, the 122 homes are properly included in the count of DBS subscribers.⁴⁰ The County’s Supplement contains no clear and detailed refutation of Charter’s answers.

13. Charter’s evidence, especially its billing records and physical inspection, are more precise and convincing than the 2002 map presented by the County. We also find the County’s advocacy of the map unconvincing in light of its previous urging that Charter use a list of homes passed,⁴¹ which is

³⁴ Petition at 10-11; *id.*, Exhs. 5 (Declaration of Corey Walker, President of Frontier Geotek, Inc.) & 6 (Declaration of Denise Walker, Charter Director of Regulatory Compliance).

³⁵ See *Thirteenth Cable Competition Report*, 24 FCC Rcd at 553, ¶ 27 n.54.

³⁶ The novel inputs are maps of Charter’s plant and service node boundaries, addresses in its billing system, its automated “serviceability” program, electronic mapping tools, visual inspections by the Company’s local field representatives, the County’s filings in prior rounds of this litigation and, from the County’s web site, maps and address data. Petition at i, 4, 10-11; *id.*, Exhs. 5-6, *supra* n.34. Charter’s list of homes passed is Exhibit 7 to its Petition.

³⁷ Petition at 11-12; *id.*, Exhs. 7-8. It appears that all Charter’s data date from late 2009 (*see, e.g.*, Reply at Exhs. A (Declaration of Deborah White, Charter’s IS Manager, dated Dec. 30, 2009, ¶ 3) & B (Declaration of Jack E. Foushee, Charter’s Technical Operations Supervisor I, dated Dec. 30, 2009 (“*Foushee Declaration*”), ¶ 3), thus removing any issue of the timeliness, accuracy, or contents of 2000 Census data. See *Charter III*, 24 FCC Rcd at 10136, ¶ 19.

³⁸ Opposition at 2; County Petition for Recertification in CSR 6411-R, dated Oct. 22, 2004, at 5-6 & Exh. 3 (map and Declarations of Lorraine Furr, Charter Customer Service Representative, & Patti Severt, Charter General Manager). The 2002 map appears largely the same, reproduced professionally, as the map at pages 7 and 10 of the Opposition. Charter disputes the accuracy of the map, calls it “a County-created map,” and describes its authors as its “former employees.” Reply at 3.

³⁹ Opposition at 7 & Exh. 1.

⁴⁰ Reply at 3-5; *id.*, Exhs. A-C.

⁴¹ See, e.g., the County’s Opposition to Petition for Special Relief in CSR 8096-E & CSR 6411, dated April 15, 2009, at 3 (“if only Charter would provide the addresses of the homes passed by its cable system”); *id.*, Exh. 1

(continued....)

precisely what the Company did in the present petition. We reject the County's proposed subtraction and conclude that the 122 DBS subscribers are in Charter's actual service area and are properly included in the statutory numerator.

14. Second, both parties note that SBCA's numbers of DBS customers in Charter's actual service area include 122 subscribers in four nine-digit Zip Codes whose last four digits are 0000.⁴² These subscribers cannot be located with certainty in Charter's franchise area (or outside of it).⁴³ Charter proposes to subtract only half of that number from the number of DBS subscribers⁴⁴ and the County proposes to subtract them all.⁴⁵ Giving every benefit of the doubt to the County in this instance and recalling that Charter has the burden of proof,⁴⁶ we will subtract all 122 from the number of DBS subscribers in Charter's actual service area.⁴⁷ That subtraction reduces that number to 1,734.

15. Third, as noted by Charter in its Reply,⁴⁸ its number of DBS subscribers, based on homes passed, appears to include DBS subscribers in seasonal homes. Seasonal homes, however, are not counted in effective competition decisions.⁴⁹ We subtract DBS subscribers in seasonal homes, using the 6.11 percent asserted by the County as the percent of seasonal homes in New Hanover County.⁵⁰ This subtraction⁵¹ reduces the number of DBS subscribers in Charter's actual service area to 1,628.

16. Adjustments to the Denominator – the Number of Households. We also make several adjustments to the denominator in the statutory equation for competing provider effective competition, the number of households in Charter's actual service area. Charter claims a total of 8,056 "housing units" in that area.

17. The County, consistent with its above-mentioned claim that Charter mistakenly included 122 DBS subscribers who live outside its actual service area, alleges that Charter mistakenly included 520 "homes" outside its actual service area.⁵² We reject the County's claim about these homes for the same

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(Letter from Robert Sepe, Action Audits, LLC, Cable Consultant to the County, to Fred Giroux, Esq., Davis Wright Tremaine, L.L.P., counsel to Charter), dated March 16, 2009, at 2 ("We kindly ask that Charter simply provide us the addresses of all the homes passed by Charter plant"); the County's Supplement to Opposition in the same proceeding, dated June 17, 2009, at 3 ("the simplest, most accurate and exacting way for Charter to prove this test should have been for Charter to take the homes passed by its cable system").

⁴² It appears a coincidence that the first and second proposed adjustments involve the same number, 122.

⁴³ Petition at 11-12; Opposition at 9.

⁴⁴ Petition at 11-12.

⁴⁵ Opposition at 8.

⁴⁶ 47 C.F.R. §§ 76.906 & 907.

⁴⁷ The County claims (Opposition at 8 n.20) that removal of all 122 subscribers is required by our Public Notice DA 08-2030, which required nine-digit Zip Code data for certain showings of competing provider effective competition. *Commission Revises & Suspends Pending OMB Approval Pending New Standards for Showings of Effective Competition for Cable Service*, 23 FCC Rcd 13252 (2008). That Public Notice, however, was rescinded by a later Public Notice, DA 09-1361, *Commission Clarifies Standards for Evidence of Competing Provider Effective Competition for Cable Service*, 24 FCC Rcd 8198 (2009).

⁴⁸ Reply at 1-2.

⁴⁹ 47 C.F.R. § 76.905(c).

⁵⁰ Opposition at 6 n.17 (citing 2008 data from the web page of the U.S. Census Bureau).

⁵¹ 1,734 DBS subscribers times 93.89% (100% - 6.11%) equals 1,628 DBS subscribers.

⁵² Opposition at 7 & Exh. 1.

reason we rejected its claim about the first 122 DBS subscribers – namely, that Charter’s billing records and its physical inspection of many streets are more substantial evidence than the County offered and the County gave no clear and detailed refutation of it. We do not subtract the 520 homes from the statutory denominator.

18. Second, the County alleges that Charter has mistakenly excluded 2,610 “homes” from its service area.⁵³ The County asks that these be added to the denominator of the statutory ratio.

19. Charter answers that time did not permit it to test whether all of those 2,610 homes are in its actual service area. Charter answers that it did compare its own list of homes passed (filed with the petition) and the County’s list of allegedly excluded homes, however, and claims that 588 of them were, in fact, included in Charter’s original filing⁵⁴ and therefore should not be added to the denominator of the statutory ratio. The County’s Supplement contains no clear and detailed refutation of Charter’s answers. From our own review of the parties’ filings, Charter’s claim about the 588 homes appears correct, and this casts doubt on the County’s allegation about not only the 588 homes but also the remaining 2,022 of the total 2,610.

20. Charter further answers the County’s proposed addition of 2,610 homes by claiming that 836 (in addition to the 588 just discussed) are not passed by Charter because either they are passed by the other incumbent cable operator in New Hanover County (Time Warner) or are vacant lots.⁵⁵ Charter’s answers are based on review of its billing records and a physical field inspection,⁵⁶ and the County’s Supplement contains no clear and detailed refutation of Charter’s answers. Therefore, Charter concludes, these 836 “homes” either are not in Charter’s actual service area or are not homes, and none of them should be added to the statutory denominator. Charter’s answers about the additional 836 are better documented than the County’s claims, and so we find Charter’s answers more persuasive. We will not add any of the 2,610 homes to the denominator of the statutory ratio.⁵⁷

21. Third, we note on our own motion that Charter’s asserted number of 8,056 “housing units” appears to include both unoccupied housing units and seasonal homes. Effective competition decisions are made based on “households,”⁵⁸ which are occupied, full-time housing units.⁵⁹ This excludes

⁵³ *Id.* at 9-10 (page 10 being a map showing these housing units, the units apparently having been identified by the County’s Geographic Information System staff from “the County’s homes-passed address list” and a map other than the one the County is primarily relying on herein).

⁵⁴ Reply at 7-8; *id.*, Exh. D.

⁵⁵ *Id.* at 8-11.

⁵⁶ *Foushee Declaration, supra* n.37, at ¶ 5.

⁵⁷ It appears that even if we added the County’s 2,610 homes, effective competition would still exist. If we added the County’s alleged 2,610 homes to the statutory *denominator*, we would also add the number of DBS subscribers in them to the statutory *numerator* in order to produce a valid statutory ratio. Charter, based on additional numbers from SBCA, alleges a minimum of 247 DBS subscribers in the Reply at 11 n.28 & Exh. F. Accepting all these numbers *arguendo*, we would have 1,628 + 247 DBS subscribers, or 1,875 DBS subscribers. We would have 8,056 + 2,610 homes, or 10,666 homes. To account for unoccupied and seasonal homes (*see* nn.50 *supra* & 59 *infra*), we would reduce 10,666 by 14.11%, to 9,161. 1,875 is 20.47% of 9,161, still well in excess of 15%.

⁵⁸ 47 U.S.C. § 543(1)(1)(B); 47 C.F.R. § 76.905(b)(2).

⁵⁹ *Comcast Cable Commun., LLC*, 23 FCC Rcd 8564, 8567, ¶ 10 (2008); *Bright House Networks, LLC*, 22 FCC Rcd 4161, 4165, ¶ 11 (2007); *MCC Iowa LLC*, 20 FCC Rcd 15267, 15270, ¶ 7 (2005); *Mediacom Minnesota LLC*, 18 FCC Rcd 12768, 12770-71 ¶ 8 (2003); *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation: Buy-Through Prohibition*, 9 FCC Rcd 4316, 4324, ¶ 17 (1994); U.S. Census Bureau, *State & County QuickFacts* (“A household includes all the persons who occupy a housing unit”) <http://quickfacts.census.gov/qfd/states/00000.html> (visited Dec. 30, 2009).

unoccupied housing units and, as noted above, seasonal homes.⁶⁰ We subtract both kinds of housing units, using the 8 percent⁶¹ and 6.11 percent asserted, respectively, by the County.⁶² This subtraction⁶³ reduces the number of households in Charter's franchise area to 6,919.

D. Conclusion

22. The foregoing calculations show that there are 1,628 DBS subscribers and 6,919 households in Charter's actual service area, the former being 23.53 percent of the latter. We find that Charter 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 Company's actual service area. Therefore, the second part of the competing provider test is satisfied for that area.

23. The evidence that Charter submitted in its petition was imperfect, but we have made the necessary corrections above. The data needing correction are far fewer than they were in the previous rounds of this litigation. Also, unlike the previous round, Charter has not failed at the first step of establishing the limits of its franchise area.⁶⁴ The Company produced a reliable list of its homes passed, following the County's suggestion. After all the County's plausible proposed corrections have been made (as well as corrections we made on our own initiative), DBS subscribership in Charter's actual service area is significantly above the statutory minimum. Therefore, although this case is highly complex and Charter's initial filing was imperfect, we are confident in concluding that all the requirements of the competing provider effective competition test are satisfied. Accordingly, we conclude that Charter is subject to effective competition in its actual service area in unincorporated New Hanover County, North Carolina.

⁶⁰ See Reply at 2.

⁶¹ The County's Opposition to Petition for Special Relief in CSR 8096-E (dated April 15, 2009) states, in footnote 18 at page 7, that there is a "Vacancy rate of 8% (See Exhibit 4)." Exhibit 4 contains no mention of a vacancy rate or a citation to any source for the 8% figure. Because the County asserted it and Charter did not object to it, however, we will accept it for present purposes.

⁶² We make no subtraction from DBS subscribers for unoccupied housing units because we assume that no unoccupied house subscribes to DBS, there being no subscriber to pay for the service.

⁶³ 8,056 housing units times 85.89% (100% - 14.11%, the latter being sum of 8% and 6.11%) equals 6,919 households.

⁶⁴ *Charter III*, 24 FCC Rcd at 10135-36, ¶¶ 19-20.

III. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that the petition for reconsideration filed in the captioned proceeding by Charter Communications, on behalf of its subsidiaries and affiliates, **IS GRANTED**.

25. **IT IS FURTHER ORDERED** that the “Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition,” filed with the Commission on September 24, 2009, by the County of New Hanover, North Carolina, **IS REJECTED**.

26. **IT IS FURTHER ORDERED** that the government of the County of New Hanover, North Carolina, **IS WITHOUT AUTHORITY** to regulate the basic cable service rates of Charter Communications or any of its subsidiaries and affiliates in Charter’s actual service area in unincorporated New Hanover County, North Carolina.

27. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.⁶⁵

FEDERAL COMMUNICATIONS COMMISSION

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

⁶⁵ 47 C.F.R. § 0.283.

**ATTACHMENT A
CSR 8242-E****AREA SERVED BY CHARTER COMMUNICATIONS
OR ITS SUBSIDIARIES AND AFFILIATES**

Communities	CUID(s)	CPR*	Households	DBS Subscribers
New Hanover County, North Carolina	NC0152 NC0369	23.53%	6,919	1,628

*CPR = Percent of competitive DBS penetration rate.