

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

In the Matter of)	
)	CSR 8024-E
Comcast Cable Communications, LLC)	CSR 8025-E
)	CSR 8040-E
Petitions for Determination of Effective)	CSR 8045-E
Competition in various Pennsylvania Franchise)	CSR 8055-E
Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 2010

Released: May 12, 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 those 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 (“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;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 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.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 this petition 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. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

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.

⁹*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).*

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4-5.

¹²*See* Petitions at 5 and Exhibit 1 (CSR 8045-E), Exhibit 2 (CSR 8040-E and CSR 8055-E), Exhibit 3 (CSR 8024-E and CSR 8025-E).

¹³*See* Petitions at 3.

¹⁴*Id.* at 6. In those Communities where Comcast is not the largest MVPD, Comcast asserts that it is nonetheless subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied

(continued....)

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.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ 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.¹⁷ 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 some of the franchise areas.

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.

(...continued from previous page)

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.

¹⁵Petitions at 5-8. . 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.* at 7. *See, e.g.,* Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (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).

¹⁶Petitions at 8.

¹⁷47 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.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8024-E, CSR 8025-E, CSR 8040-E, CSR 8045-E & CSR 8055-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8024-E

Communities	CUIDS
Chanceford	PA2678
Dallastown	PA0782
Dover	PA1312*
East Manchester	PA1197
Germany	PA3271*
Hamilton	PA3127
Jackson	PA1536
Lower Windsor	PA1626
Manchester	PA1198
McSherrystown	PA0421
Mt. Pleasant	PA3269
Newberry	PA2893
North York	PA0783
Paradise	PA2368
Red Lion	PA0900
Spring Garden	PA0781
West York	PA0785
Windsor	PA0902
Yoe	PA0910
York	PA0119
York Haven	PA1195
Yorkana	PA2547

CSR 8025-E**Dover PA2452*****Germany PA2769*****(*Comcast operates in this community under a single franchise).****CSR 8040-E****Carlisle PA0543****Carroll PA2324****Dickinson PA2356****Lower Frankford PA3174****Middlesex PA2090****Monroe PA1793****Mt. Holly Springs PA0544****North Middleton PA1328****Penn PA2889****Silver Spring PA2066****Spring PA3434****West Pennsboro PA2211****CSR 8045-E****Kennett Square PA1940****Upper Oxford PA2930****West Grove PA1938****CSR 8055-E****Brady PA1863****Catharine PA1861****Coalmont PA1951****Henderson PA1864****Juniata PA2727****Kistler PA1588**

Logan	PA1497
Miller	PA1496
Morris	PA3490
Newton Hamilton	PA0401
Porter	PA1481
Saxton	PA0071
Shirley	PA1589
Shirleysburg	PA1002
Union	PA3395
Wayne	PA1590
Wells	PA1949
Wood	PA1950
Woodbury	PA1862

ATTACHMENT B

CSR 8024-E, CSR 8025-E, CSR 8040-E, CSR 8045-E & CSR 8055-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	CPR*	CSR 8024-E	
			2000 Census Household	Estimated DBS Subscribers
Chanceford	PA2678	44.41%	2,155	957
Dallastown	PA0782	21.52%	1,622	349
Dover	PA1312	33.25%	6,999	2,327
Germany	PA3271	40.10%	773	310
Jackson	PA1536	32.18%	2,281	734
Lower Windsor	PA1626	24.86%	2,791	694
Manchester	PA1198	24.58%	1,009	248
McSherrystown	PA0421	19.66%	1,175	231
North York	PA0783	26.21%	725	190
Paradise	PA2368	44.25%	1,313	581
Red Lion	PA0900	27.75%	2,575	710
Spring Garden	PA0781	18.40%	4,180	769
West York	PA0785	27.36%	1,897	519
Windsor	PA0902	28.30%	484	137
Yoe	PA0910	21.51%	437	94
York	PA0119	19.64%	16,137	3,169
York Haven	PA1195	26.62%	278	74
Yorkana	PA2547	22.10%	95	21

CSR 8025-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Dover	PA2452	33.25%	6,999	2,327
Germany	PA2769	40.10%	773	310

CSR 8040-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Carlisle	PA0543	20.98%	7,426	1,558
Carroll	PA2324	31.36%	1,897	595
Dickinson	PA2356	27.54%	1,721	474
Lower Frankford	PA3174	20.35%	683	139
Middlesex	PA2090	20.19%	2,298	464
Monroe	PA1793	16.69%	2,073	346
Mount Holly Springs	PA0544	22.96%	836	192
North Middleton	PA1328	22.99%	4,039	848
West Pennsboro	PA2211	30.08%	1,938	583

CSR 8045-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Kennett Square	PA1940	23.39%	1,868	437
West Grove	PA1938	32.99%	864	285

CSR 8055-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Brady	PA1863	51.33%	376	193
Catharine	PA1861	40.14%	294	118

Coalmont	PA1951	26.00%	50	13
Henderson	PA1864	38.48%	395	152
Kistler	PA1588	35.51%	138	49
Newton Hamilton	PA0401	29.29%	99	29
Porter	PA1481	44.79%	768	344
Saxton	PA0071	28.29%	357	101
Shirley	PA1589	48.48%	988	479
Shirleysburg	PA1002	24.59%	61	15
Wayne	PA1590	39.19%	944	370
Woodbury	PA1862	41.93%	570	239

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8024-E, CSR 8040-E, CSR 8045-E, & CSR 8055-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8024-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Chanceford	PA2678	2,155	618	28.68%
East Manchester	PA1197	1,926	253	13.14%
Hamilton	PA3127	740	50	6.76%
Mount Pleasant	PA3269	1,616	52	3.22%
Newberry	PA2893	5,399	700	12.96%

CSR 8040-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Lower Frankford	PA3174	683	125	18.30%
Monroe	PA1793	2,073	612	29.52%
Penn	PA2889	974	45	4.62%
Silver Spring	PA2066	4,061	299	7.36%
Spring	PA3434	746	87	11.66%

CSR 8045-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Upper Oxford	PA2930	725	105	14.48%

CSR 8055-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Juniata	PA2727	395	64	16.20%
Logan	PA1497	273	35	12.82%
Miller	PA1496	199	5	2.51%
Morris	PA3490	138	19	13.77%
Union	PA3395	398	59	14.82%
Wells	PA1949	221	9	4.07%
Wood	PA1950	277	5	1.80%
Woodbury	PA1862	570	160	28.07%