

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

In the Matter of)
Comcast Cable Communications, LLC, on behalf)
of its subsidiaries and affiliates) CSR 7970-E, CSR 7971-E, CSR 7972-E,
) CSR 7973-E, CSR 7974-E, CSR 7975-E,
) CSR 7976-E & CSR 7977-E
Petition for Determination of Effective)
Competition in Nashville, Tennessee)

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 2010

Released: May 17, 2010

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, 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 is 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 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 alternatively claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in these 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 Attachments A and B.

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 the 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 Communities to support its assertion that potential customers in the 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 Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition CSR 7970-E at 3-4; Petition CSR 7971-E at 3-4; Petition CSR 7972-E at 3-4; Petition CSR 7973-E at 3-4; Petition CSR 7974-E at 3-4; Petition CSR 7975-E at 3-4; Petition CSR 7976-E at 3-4; Petition CSR 7977-E at 3-4.

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* Petition CSR 7970-E at 5; Petition CSR 7971-E at 5; Petition CSR 7972-E at 5; Petition CSR 7973-E at 5; Petition CSR 7974-E at 5; Petition CSR 7975-E at 5; Petition CSR 7976-E at 5; Petition CSR 7977-E at 5.

¹²*See* Petition at Petition CSR 7970-E at 5 and Exhibits 2 and 3; Petition CSR 7971-E at 5 and Exhibits 2 and 3; Petition CSR 7972-E at 5 and Exhibits 2 and 3; Petition CSR 7973-E at 5 and Exhibits 2 and 3; Petition CSR 7974-E at 5 and Exhibits 2 and 3; Petition CSR 7975-E at 5 and Exhibits 2 and 3; Petition CSR 7976-E at 5 and Exhibits 2 and 3; Petition CSR 7977-E at 5 and Exhibits 2 and 3.

¹³*See* Petition CSR 7970-E at 3; Petition CSR 7971-E at 3; Petition CSR 7972-E at 3; Petition CSR 7973-E at 3; Petition CSR 7974-E at 3; Petition CSR 7975-E at 3; Petition CSR 7976-E at 3; Petition CSR 7977-E at 3..

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 most of the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the 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 Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment A, 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 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 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 Communities listed on Attachment A.

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 the franchise areas listed on Attachment B.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, 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 Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to the Communities listed on A and B.

¹⁴*Id.* at 6. Comcast is the largest MVPD in 32 of the 49 franchise areas, but in the remaining franchise areas of Adams, Cedar Hill, Charlotte, Cross Plains, DeKalb County, Dickson, Dickson County, Franklin County, Harstville, Lafayette, Orlinda, Robertson County, Slayden, Vanleer, Westmoreland, Wilson County, and Woodbury, both the Comcast penetration figure and the aggregate DBS figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in 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.

¹⁵Petition CSR 7970-E at 7-8; Petition CSR 7971-E at 7-8; Petition CSR 7972-E at 7-8; Petition CSR 7973-E at 7-8; Petition CSR 7974-E at 7-8; Petition CSR 7975-E at 7-8; Petition CSR 7976-E at 7-8; Petition CSR 7977-E at 7-8.

¹⁶Petition CSR 7970-E at 8; Petition CSR 7971-E at 8; Petition CSR 7972-E at 8; Petition CSR 7973-E at 8; Petition CSR 7974-E at 8; Petition CSR 7975-E at 8; Petition CSR 7976-E at 8; Petition CSR 7977-E 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, on behalf of its subsidiaries and affiliates **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 Attachments A and B **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

CSRs 7970-E, CSR 7971-E, CSR 7972-E, CSR 7973-E, CSR 7974-E, CSR 7975-E, CSR 7976-E & CSR 7977-E

**COMMUNITIES SERVED BY COMCAST COMMUNICATIONS, LLC, ON BEHALF OF ITS
SUBSIDIARIES AND AFFILIATES**

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Adams	TN0652	71.92%	203	146
Burns	TN0321	52.46%	549	288
Carthage	TN0322	46.01%	952	438
Cedar Hill	TN0653	82.65%	98	81
Charlotte	TN0322	65.32%	395	258
Cowan	TN0113	33.65%	746	251
Cross Plains	TN0424	62.50%	504	315
Decherd	TN0027	57.39%	960	551
Dekalb County	TN0345	44.58%	4666	2080
Dickson City	TN0288	38.79%	4934	1914
Dickson County	TN0289	53.45%	9511	5084
Estill Springs	TN0498	44.26%	827	366
Fairview	TN0385	44.13%	2105	929
Franklin City	TN0139	27.85%	16128	4492
Franklin County	TN0389	36.70%	8722	3201
Gallatin	TN0188	30.79%	8963	2760
Goodlettsville	TN0643	25.82%	5601	1446
Greenbrier	TN0378	40.28%	1837	740
Hartsville	TN0192	59.70%	938	560

Hendersonville	TN0162	23.82%	15823	3769
Kingston Springs	TN0343	35.93%	983	353
La Vergne	TN0180	48.29%	6536	3156
Lafayette	TN0253	41.15%	1718	707
Millersville	TN0428	24.62%	1990	490
Mount Juliet	TN0215	39.12%	4341	1698
Murfreesboro	TN0082	22.75%	35842	8154
Nashville	TN0148	15.69%	238691	37461
Nolensville	TN0413	44.72%	995	445
Orlinda	TN0676	50.64%	235	119
Pegram	TN0330	45.92%	773	355
Portland City	TN0342	54.89%	3226	1771
Ridgetop	TN0379	27.79%	385	107
Robertson County	TN0380	36.30%	8683	3152
Rutherford County	TN0234	28.17%	23601	6648
Slayden	TN0656	70.89%	79	56
Smithville	TN0185	52.41%	1675	878
Smyrna	TN0179	32.87%	9608	3158
South Carthage	TN0344	45.49%	554	252
Springfield	TN0138	43.08%	5453	2349
Sumner County	TN0231 TN0309 TN0391 TN0671	33.67%	15152	5101
Vanleer	TN0655	73.39%	124	91
Waverly	TN0147	57.93%	1716	994
Westmoreland	TN0256	51.49%	804	414
White Bluff	TN0320	57.55%	881	507

White House	TN0230	47.18%	2497	1178
Williamson County	TN0141 TN0460	28.33%	15668	4439
Wilson County	TN0216	41.84%	19928	8337
Winchester	TN0028	50.23%	2992	1503
Woodbury	TN0221	64.26%	1052	676

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSRs 7970-E, CSR 7971-E, CSR 7972-E, CSR 7973-E, CSR 7974-E, CSR 7975-E, CSR 7976-E & CSR 7977-E

**COMMUNITIES SERVED BY COMCAST COMMUNICATIONS, LLC, ON BEHALF OF ITS
SUBSIDIARIES AND AFFILIATES**

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Ashland City	TN0669	1416	65	4.59%
Cannon County	TN0222	3844	112	2.91%
Cheatham County	TN0331	8701	952	10.94%
Dekalb County	TN0345	4666	819	17.55%
Franklin County	TN0389	8722	1578	18.09%
Goodlettsville	TN0643	5601	1383	24.69%
Hickman County	TN0567	6518	410	6.29%
Lafayette	TN0253	1718	513	29.86%
Lynchburg (Moore County)	TN0105	2211	156	7.06%
Macon County	TN0627	5794	83	1.43%
Robertson County	TN0380	8683	1968	22.66%
Smith County	TN0507	4926	476	9.66%
Westmoreland	TN0256	804	199	24.75%