

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

In the Matter of	)	CSR 7863-E
	)	CSR 7878-E
Comcast Cable Communications, LLC	)	CSR 7879-E
	)	CSR 7880-E
Petitions for Determination of Effective	)	CSR 7881-E
Competition in various Pennsylvania	)	CSR 7882-E
Communities	)	CSR 7883-E
	)	CSR 7884-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 18, 2010**

**Released: May 19, 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 Attachment B Communities are subject to effective competition pursuant to Section 623(1) 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”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Attachment 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,<sup>3</sup> as that term is defined by Section 623(1) 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 Petitioner is subject to effective competition in the Communities listed on Attachment A.

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

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup>47 C.F.R. § 76.906.

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

<sup>5</sup>See 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;<sup>6</sup> 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.<sup>7</sup>

5. Turning to the first prong of this test, it is undisputed that the Attachment 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.<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 Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Attachment B Communities to support their 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 is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Attachment B 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. Petitioner asserts that it is the largest MVPD in the Attachment B Communities.<sup>14</sup> Petitioner sought

<sup>6</sup>47 U.S.C. § 543(1)(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 3. .

<sup>9</sup>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).

<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 4.

<sup>12</sup>*See* Petitions at 4 and Exhibit 1.

<sup>13</sup>*See* Petitions at 3.

<sup>14</sup>*Id.* at 5. With regard to CSR 7882-E and the community of Lehman, Comcast states that it was able to confirm that both the Comcast penetration figure and the aggregate DBS penetration figure exceed the 15% threshold. Therefore, Comcast asserts that it is immaterial which MVPD is the largest in the franchise area because both DBS  
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to determine the competing provider penetration in the Attachment 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 those Communities on a five digit zip code 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 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 Attachment B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment 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 Attachment 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.<sup>17</sup> 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 Attachment C Communities. Therefore, the low penetration test is also satisfied as to the Attachment C Communities.

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and cable pass that threshold. *Id.* and Declaration of Warren Fitting, Director of Rate Regulation for Comcast Communications, LLC. The Commission has recognized that where “the subscriber penetration rate 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.” *Charter Communications*, 21 FCC Rcd 1208, 1210 at ¶ 5 (2006).

<sup>15</sup>Petitions at 5-6. 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.* 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 area).

<sup>16</sup>Petitions at 6-7.

<sup>17</sup>47 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.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>18</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

CSR 7863-E, CSR 7878-E, CSR 7879-E, CSR 7880-E, CSR 7881-E, CSR 7882-E,

CSR 7883-E &amp; CSR 7884-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUID(s)</b>
<b>CSR 7863-E</b>	
Armagh	PA1520
Brown	PA1527
<b>CSR 7878-E</b>	
Bristol	PA0356
New Hope	PA0811
Solebury	PA2148
Tinicum	PA3244
<b>CSR 7879-E</b>	
Hopewell	PA1716
<b>CSR 7880-E</b>	
Hamilton	PA2835
Peters	PA2496
<b>CSR 7881-E</b>	
Coaldale	PA0414
<b>CSR 7882-E</b>	
Lehman	PA2845
<b>CSR 7883-E</b>	
Carroll	PA2256
<b>CSR 7884-E</b>	
Exeter	PA1029

## ATTACHMENT B

CSR 7863-E, CSR 7878-E, CSR 7879-E, CSR 7881-E, CSR 7882-E, &amp; CSR 7884-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUID(s)</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
<b>CSR 7863-E</b>				
Armagh	PA1520	39.75%	1532	609
Brown	PA1527	40.77%	1403	572
<b>CSR 7878-E</b>				
Bristol	PA0356	15.53%	19,733	3,065
New Hope	PA0811	15.00%	1160	174
<b>CSR 7879-E</b>				
Hopewell	PA1716	40.35%	746	301
<b>CSR 7881-E</b>				
Coaldale	PA0414	21.05%	57	12
<b>CSR 7882-E</b>				
Lehman	PA2845	39.64%	1226	486
<b>CSR 7884-E</b>				
Exeter	PA1029	25.24%	943	238

\*CPR = Percent of competitive DBS penetration rate.

## ATTACHMENT C

## CSR 7878-E, CSR 7880-E, CSR 7883-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUID(s)</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
<b>CSR 7878-E</b>				
Solebury	PA2148	3,053	305	9.99%
Tinicum	PA3244	1,674	60	3.58%
<b>CSR 7880-E</b>				
Hamilton	PA2835	3,476	81	2.33%
Peters	PA2496	1,622	104	6.41%
<b>CSR 7883-E</b>				
Carroll	PA2256	1,686	84	4.98%