

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

In the Matter of)	
)	
CoxCom, Inc. d/b/a Cox Communications Orange)	CSR 8485-E
County and Cox Communications Santa Barbara)	CSR 8486-E
)	
Petitions for Determination of Effective)	
Competition in Laguna Beach and Carpinteria, CA)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2011

Released: June 21, 2011

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

I. INTRODUCTION AND BACKGROUND

1. CoxCom, Inc., d/b/a Cox Communications Orange County and Cox Communications Santa Barbara, hereinafter referred to as “Petitioner” or “CoxCom,” has 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 Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.”¹ Petitioner alleges that its 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”),² and the Commission’s implementing rules,³ 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,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ 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.⁶ 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.

¹ We note that both petitions in this case are identical. Two petitions were filed, however, because each Community is located in a different physical system (“PSID”) and therefore required the filing of a separate petition with a separate filing fee. Laguna Beach (CA0311) is located on PSID #003755 and Carpinteria (CA0017) is located on PSID# 004399.

² See 47 U.S.C. § 543(l)(1)(B).

³ 47 C.F.R. § 76.905(b)(2).

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁶ See 47 C.F.R. §§ 76.906-.907(b).

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 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.⁷ 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹² 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,¹³ and is supported in the petitions with copies of channel lineups for both DirecTV and Dish.¹⁴ 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.¹⁵ Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.¹⁶ Petitioner 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 subscribers

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

⁸ 47 C.F.R. § 76.905(b)(2)(i).

⁹ Cox asserts that the Communities “are served by several multichannel programming distributors (‘MVPDS’) in addition to Cox, including but not limited to Direct Broadcast Satellite (‘DBS’) providers such as DirecTV and Dish Network.” Petition at 2. However, aside from the DBS providers, Cox does not specifically name other competitive MVPDs serving the Communities.

¹⁰ *See* Petitions at 4-5.

¹¹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹² 47 C.F.R. § 76.905(e)(2).

¹³ *See* 47 C.F.R. § 76.905(g); *see also* Petitions at 4.

¹⁴ *See* Petitions at Exhibit 2.

¹⁵ *See id.* at 3.

¹⁶ *See* Petitions at 7; *see also* attached Declaration of James M. Leach, Vice President, Government Affairs, CoxCom, Inc. d/b/a Cox Communications Orange County and Cox Communications Santa Barbara.

attributable to the DBS providers within the Communities on a five digit zip code basis.¹⁷

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁸ 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. 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.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by CoxCom, Inc., d/b/a Cox Communications Orange County and Cox Communications Santa Barbara, **ARE GRANTED**.

8. **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**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ Petitions at 8. CoxCom states that it has used the five-digit zip code allocation formula previously used by the Commission in numerous decisions to calculate the DBS providers' subscribership in various Communities. See, e.g., *Alert Cable TV of South Carolina, Inc.*, 21 FCC Rcd 269, 272 (2006); *Amzak*, 19 FCC Rcd 6208, 6210 (2004); *CC VIII*, 19 FCC Rcd 6204, 6205-06 (2004); *Texas Cable Partners, L.P.*, 19 FCC Rcd 6213, 6215 (2004).

¹⁸ Petitions at 8-9. 2010 Census household data has recently become available for communities, but it appears that 2010 Census household data for five digit zip codes has not yet been released. Cox needed the latter to allocate DBS subscribers from the zip code level to the franchise level. Because the latter was unavailable, CoxCom used 2000 household data in its allocation formula for the franchise areas in question, and also for the number of households in each Community. In this case, the use of 2000 Census data for both purposes is acceptable.

¹⁹ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8485-E and CSR 8486-E

**COMMUNITIES SERVED BY COXCOM, INC., d/b/a COX COMMUNICATIONS ORANGE
COUNTY AND COX COMMUNICATIONS SANTA BARBARA**

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Carpinteria	CA0017	17.74%	4,989	884.89
Laguna Beach	CA0311	15.06%	11,511	1,733.89

*CPR = Percent of competitive DBS penetration rate.