

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

In the Matter of)	
)	
MCC Iowa LLC)	CSR 8297-E
Mediacom Iowa LLC)	CSR 8329-E
)	CSR 8315-E
Petitions for Determination of Effective)	
Competition in Various Iowa Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2011

Released: January 7, 2011

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

I. INTRODUCTION AND BACKGROUND

1. MCC Iowa LLC and Mediacom Iowa LLC, hereinafter referred to as “Petitioners,” have 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 Petitioners are subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Petitioners allege that their 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”),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”). 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(l) 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 the Petitioners are subject to effective competition in the Communities listed on Attachment A.

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

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁵ See 47 C.F.R. §§ 76.906 & -907(b).

households in the franchise area.⁶ 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.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 the Petitioners 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 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 the petitions with website citations to the channel lineups for both DIRECTV and DISH.¹² Also undisputed are Petitioners’ assertions 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 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, exceeds 15 percent of the households in a franchise area. Each Petitioner asserts that it is the largest MVPD in its Community or Communities.¹⁴ Petitioners 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 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 Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the

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

⁷ 47 C.F.R. § 76.905(b)(2)(i).

⁸ *See* Petitions at CSR 8297-E at 4-5, CSR 8329-E at 4-5 and CSR 8315-E at 4-5.

⁹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹⁰ 47 C.F.R. § 76.905(e)(2).

¹¹ *See* 47 C.F.R. § 76.905(g). *See also* Petitions at CSR 8297-E at 5-6, CSR 8329-E at 5-6, and CSR 8315-E at 5-6.

¹² *See* Petitions at CSR 8297-E at 6, CSR 8329-E at 6 and CSR 8315-E at 6.

¹³ *See* Petitions at CSR 8297-E at 6-7, CSR 8329-E at 6-7, and CSR 8315-E at 6-7.

¹⁴ *See* Petitions at CSR 8297-E at 7-8, CSR 8329-E at 7-8, and CSR 8315-E at 7-8.

¹⁵ Petitions at CSR 8297-E at 8, CSR 8329-E at 8, and CSR 8315-E at 7-8. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁶ Petitions at CSR 8297-E at 8 and Exhibit C, CSR 8329-E at 8 and Exhibit C, and CSR 8315-E at 8 and Exhibit C.

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 the Petitioners have submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and the Petitioner are subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by MCC Iowa LLC and Mediacom Iowa LLC **ARE GRANTED**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
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¹⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8297-E & CSR 8329-E

COMMUNITIES SERVED BY MCC IOWA LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Creston	IA0086	22.05	3346	738
Mount Ayr	IA0028	22.56	780	176
Decorah	IA0018	15.96	2819	450

CSR 8315-E

COMMUNITY SERVED BY MEDIACOM IOWA

Community	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Emmetsburg	IA0012	18.33	1620	297

*CPR = Percent of competitive DBS penetration rate.