

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

In the Matter of	)	
	)	CSR 8304-E
Mediacom Wisconsin LLC	)	CSR 8305-E
	)	CSR 8311-E
Petitions for Determination of Effective	)	
Competition in Five Wisconsin Franchise Areas	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 7, 2011**

**Released: January 10, 2011**

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

**I. INTRODUCTION AND BACKGROUND**

1. Mediacom Wisconsin LLC, hereinafter referred to as “Petitioner,” 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.” 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”),<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”). 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(l) 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.

**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.<sup>6</sup> This test is referred to as the “competing provider” test.

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

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

<sup>3</sup> 47 C.F.R. § 76.906.

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

<sup>5</sup> See 47 C.F.R. §§ 76.906 & -907(b).

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

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 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 to support its assertion that potential customers in the 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 citations to the 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 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, exceeds 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.<sup>14</sup> 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 attributable to the DBS providers within the Communities on a zip code plus four 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 A, we find that Petitioner has demonstrated that

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<sup>7</sup> 47 C.F.R. § 76.905(b)(2)(i).

<sup>8</sup> See Petitions at 3-4.

<sup>9</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (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 5-6.

<sup>12</sup> See Petitions at 6. Petitioner cites program listings available on [www.directv.com](http://www.directv.com) and [www.dishnetwork.com](http://www.dishnetwork.com).

<sup>13</sup> See Petitions at 6-7.

<sup>14</sup> See Petitions at 7, n.21 and attached Declaration of Edward Pardini, Mediacom Divisional Senior Vice President (CSR 8304-E and CSR 8311-E). In CSR 8305-E, Mediacom states that it is not clear if Mediacom is the largest MVPD in Cuba City. However, Mediacom asserts that for this franchise area, both DBS and cable penetration exceed 15% of the occupied households. In such cases, the Commission has recognized that the second prong of the competing provider test is satisfied. See, e.g., *Charter Communications – Seven Local Franchise Areas in Missouri*, 21 FCC Rcd 1208, 1210 at ¶ 5 (2006).

<sup>15</sup> Petitions 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.

<sup>16</sup> Petitions at 8.

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.

### III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Mediacom Wisconsin 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**.

This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>17</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 8304-E, CSR 8305-E &amp; CSR 8311-E

## COMMUNITIES SERVED BY MEDIACOM WISCONSIN LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Prairie du Chien, City	WI0026	23.99%	2,376	570
Prairie du Chien, Town	WI0155	16.59%	434	72
Cuba City	WI0207 WI0206	53.31%	861	459
Mauston	WI0071	32.24%	1585	511
New Lisbon	WI0090	15.24%	617	94

\*CPR = Percent of competitive DBS penetration rate.