

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7390-E
)	
Petition for Determination of Effective)	
Competition in Five Illinois Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: March 3, 2011

Released: March 7, 2011

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC (“Comcast” or the “Company”), has filed with the Commission a petition pursuant to Sections 76.7 and 76.907 of the Commission’s rules for a determination that it is subject to effective competition in the five franchise areas north of Chicago, Illinois, that are listed on Attachment A (the “Communities”). Comcast alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(B) 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”). The franchise authority in one of the Communities, the City of Highland Park, Illinois (the “City”), filed a letter opposing Comcast’s petition.³ Comcast filed a letter in reply.⁴

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁶ 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.⁷ For the reasons set forth below, we grant the petition based on our finding that Comcast is subject to effective competition in the Communities, which are listed on Attachment A.

¹ See 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.905(b)(2).

³ Letter from Patrick Brennan, Assistant City Manager, City of Highland Park, Illinois, to Monica Desai, Media Bureau Chief (“Opposition”).

⁴ Letter from Frederick W. Giroux, Esq., Davis Wright Tremaine LLP, counsel for Comcast, to Ms. Desai (“Reply”).

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906 & 907.

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.⁸ This test is otherwise referred to as the “competing provider” test.

A. The First Part of the Competing Provider Test

4. The first part 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.⁹ Turning to the first part of this test, it is undisputed that these Communities are “served by” both DBS providers and that these two MVPD providers are unaffiliated with Comcast 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.¹⁰ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second part 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 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 programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and DISH.¹³ Also undisputed is Comcast’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.¹⁴ Accordingly, we find that the first part of the competing provider test is satisfied.

B. The Second Part of the Competing Provider Test

5. Section 623(l)(1)(B)(ii) of the Communications Act requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Comcast asserts that it is the largest MVPD in the Communities.¹⁵ We have no reason to doubt that assertion and we accept it. The statute thus calls for Comcast to calculate, for each Community, a ratio the numerator of which is the number of DBS subscribers there and the denominator of which is the number of households.

6. Comcast sought to determine the denominator – the number of DBS subscribers in each Community – by purchasing a subscriber tracking report from the Satellite Broadcasting and

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

⁹ 47 C.F.R. § 76.905(b)(2)(i).

¹⁰ *See* Petition at 3.

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

¹² *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹³ *See* Petition at 4 & Exh. 1.

¹⁴ *See id.* at 3.

¹⁵ *Id.* at 5.

Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within each five-digit zip code all or part of which lay within one of the Communities.¹⁶ Then Comcast obtained from Media Business Corporation (“MBC”) percentages by which to allocate the DBS subscribers in each five-digit zip code that lay partly within a Community between those who lived within the Community and those who lived outside it.¹⁷ The allocation figures allowed Comcast to estimate how many DBS subscribers were in each Community.

7. To calculate the denominator of the statutory ratio, Comcast obtained from the 2000 Census the number of households in each Community.¹⁸ The resulting ratios are displayed in Attachment A hereto and show that subscribership of the DBS providers (the MVPDs other than the largest one) exceeds 15 percent in each Community.¹⁹ This evidence, if accepted, establishes that Comcast has satisfied the second part of the competing provider test for the Communities.

8. The City challenges several aspects of Comcast’s evidence concerning Highland Park. Concerning the number of DBS subscribers, the City claims that SBCA’s count of DBS subscribers is exaggerated “due to double counting of two-receiver households and inclusion of test and commercial subscribers into the residential count.”²⁰ The City is incorrect. SBCA’s tracking reports specifically state that they count “single accounts with multiple receivers” only once, that “test accounts are not included,” that they count only “residential subscriber totals,” and that “commercial . . . accounts are not included.”²¹ The City has given us no reason to doubt these statements. Therefore, the City’s claims have no basis in fact. Accordingly, we accept Comcast’s calculation of the number of DBS subscribers in Highland Park, which is 1,826.²²

9. The City also claims that Comcast has given no source for its statement that the two zip codes parts of which cover Highland Park have 11,586 households in them.²³ This claim is not correct. Column D of Exhibit 5 to Comcast’s Petition states that MBC is the source of that statement.²⁴ We have long relied on such data from MBC.²⁵ MBC’s data are particularly reliable because they reflect changes in zip code boundaries that have occurred since the 2000 Census.²⁶

10. Concerning the denominator of the statutory ratio – the number of households in Highland Park – the City claims that the 2000 Census states that there are 11,826 households in the two zip codes parts of which cover Highland Park.²⁷ The City is incorrect. 11,826 is the 2000 Census number of housing units, occupied and unoccupied, in the two zip codes. Section 623(1)(1)(B) of the

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 7 & Exh. 6.

¹⁹ *Id.* at Exh. 5, col. K.

²⁰ Opposition at 1.

²¹ Petition at Exh. 4; Reply at 3-4.

²² Petition at Exh. 5, col. I.

²³ Opposition at 1.

²⁴ Reply at 1.

²⁵ See, e.g., *Cablevision of Litchfield, Inc.*, 23 FCC Rcd 16614, 16616, ¶ 6 (2008); *Marcus Cable Assocs, LLC*, 22 FCC Rcd 11484, 11485, ¶ 4 (2007); *Bright House Networks, LLC*, 22 FCC Rcd 4398, 4401, ¶ 10 (2007).

²⁶ Reply at 2 & Att. A (Declaration of K. Pinna Galant, MBC Senior Vice President for Product Marketing) at ¶ 2.

²⁷ Opposition at 1.

Communications Act calls on us to measure “households,”²⁸ which are only occupied housing units.²⁹

11. The City makes the same mistake when it next argues that we should use 11,934 as the number of households in Highland Park.³⁰ 11,934, however, is the 2000 Census number of housing units, occupied and unoccupied, in Highland Park.³¹ Only households (occupied housing units) are relevant here. We accept Comcast’s proposal that we use the 2000 Census’s number of households for Highland Park, which is 11,521.³²

12. In sum, we accept Comcast’s proposed numbers of 1,826 DBS subscribers and 11,521 households in Highland Park. This produces a ratio, or DBS subscribership, of 15.85 percent. This establishes that the number of households in Highland Park that subscribe to programming services offered by MVPDs other than the largest one exceeds 15 percent of the households there. We note that, even if we used the numbers most favorable to the City – 1,826 DBS subscribers over 11,934 households – the resulting ratio would be 15.30 percent, above the statutory minimum. We also accept Comcast’s proposed numbers for the other Communities, which establish that DBS subscribership is in excess of 15 percent there. Therefore, the second part of the competing provider test is satisfied for each of the Communities.

C. Conclusion

13. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that both parts of the competing provider test are satisfied and the Company is subject to effective competition in the Communities as shown on Attachment A.

²⁸ 47 U.S.C. § 543(1)(1)(B)(ii).

²⁹ See U.S. Census Bureau, Decennial Management Division Glossary, Abbreviations & Acronyms, Glossary, <http://www.census.gov/dmd/www/glossary.html> (defining “household” as “[a] person or group of people who occupy a housing unit as their usual place of residence. The number of households equals the number of occupied housing units in a census”); *Implementation of Sections of the Cable Television Consumer Protection & Competition Act: Rate Regulation Buy-Through Prohibition*, 9 FCC Rcd 4316, 4324, ¶ 17 (1994) (“As used in the Cable Act, we presume that Congress did not intend ‘households’ to have a different meaning than in the 1990 Census that would include vacant units or even partial-year vacant units”), *reversed in part on other grounds*, *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1112 (1996); *Marcus Cable Associates, LLC*, 17 FCC Rcd 16652, 16654 n.19, ¶ 7 (2002).

³⁰ Opposition at 1.

³¹ Reply at Att. C.

³² Petition at Exh. 6 at 3.

III. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **IS GRANTED**.

15. **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**.

16. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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³³ 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Glencoe	IL1220	17.25%	3072	530
Highland Park	IL0614	15.85%	11521	1826
Lincolnshire	IL1262	16.49%	2134	352
North Chicago	IL0468	17.62%	7661	1350
Winnetka	IL1243	15.16%	4162	631

*CPR = Percent of competitive DBS penetration rate.