

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7422-E
)	
Petitions for Determination of Effective)	
Competition in Two Communities in Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: March 8, 2011

Released: March 11, 2011

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC (“Comcast”), has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Comcast is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Comcast alleges that its cable system serving the Communities is 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 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”), and by Wide Open West (“WOW”). The franchise authority in one of the Communities, the City of Warren (the “City”), filed an opposition,³ and Comcast filed a 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 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

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ Response to Petition for Special Relief (“Opposition”), filed by the City of Warren.

⁴ Reply to Response to Petition for Special Relief (“Reply”), filed by Comcast.

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁷ See 47 C.F.R. §§ 76.906-.907(b).

programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁸ This test is referred to as the “competing provider” test.

A. Comcast’s Evidence

4. The first part of the competing provider 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 It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, 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 subscribership 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.

5. The second part 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. Comcast asserts that it is the largest MVPD in the Communities.¹⁵ The competing provider test therefore required Comcast to calculate a ratio, the numerator of which is number of DBS and WOW subscribers in each Community and the denominator of which is the number of households in each Community.

6. Comcast sought to determine part of the numerator – the DBS subscribership in the 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 the Communities on a five-digit zip code basis.¹⁶ Comcast obtained WOW’s subscriber numbers directly from that company.¹⁷ With this data, Comcast estimated the number of subscribers to MVPD services (other than its own) in each of the Communities.¹⁸ To estimate the denominator of the

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 Exh. 1.

¹⁴ *See* Petition at 3.

¹⁵ *See id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.*, Exh. 4 at 2-3.

¹⁸ *Id.* at Exh. 5, col. I.

competing provider test's ratio – numbers of households – Comcast took the household count for each Community from the 2000 Census.¹⁹ The resulting ratios show that the subscribership to DBS and WOW is more than twice the statutory minimum in each Community.²⁰ This evidence, if accepted, satisfies the second part of the competing provider test for the Communities.

B. The City of Warren's Objections

7. The City makes essentially three objections to Comcast's petition. First, the City attacks the numerator of Comcast's statutory ratio, DBS and WOW subscriber numbers, for containing non-residential subscribers and for being speculative.²¹ This objection lacks merit. The SBCA report states that it "reflects . . . residential subscriber totals" and that "commercial . . . accounts are not included."²² Comcast, when it asked WOW for subscriber numbers, used exclusively residential terms such as "household" and "multiple dwelling units."²³ There is no indication that WOW disregarded Comcast's wishes.

8. Second, the City mentions several estimates of growth in households, housing units, and population in Warren since 2000 (the date of the Census household count that is the denominator of Comcast's statutory ratio).²⁴ It does not appear (and the City does not claim), however, that this growth is sufficient to lower competing provider subscribership below the statutory minimum.²⁵ Moreover, we have often held that the pertinent data for the denominator of the statutory ratio is the Census Bureau's most recent statement of the number of households in a community, using the Census' definition of "household."²⁶ That is what Comcast presented in its petition. Although we will accept more recent numbers of households that are at least as reliable as the Census,²⁷ none of the City's other proffered numbers have the reliability of the Census' actual count of households. Accordingly, we accept Comcast's proposed number of households in the City of Warren and reject the alternative numbers presented by the City.

9. Third, the City objects that its regulation of Comcast's rates is modest and helpful to the

¹⁹ *Id.* at Exh. 6.

²⁰ *Id.* at Exh. 5, col. K.

²¹ Opposition at 1-2, 5-6.

²² Petition, Exh. 4 at 1.

²³ Reply, Exh. A at 2.

²⁴ Opposition at 3-4.

²⁵ For example, the City cites an estimate by the Southeast Michigan Council of Governments ("SMCG") that households in Warren grew to 57,585 between 2000 and 2007. Opposition at 4. Even if that becomes the denominator in the statutory ratio (22,311 subscribers over 57,585 households), competing provider subscribership in Warren is 38.74%, still more than twice the statutory minimum. In addition, SMCG's number is an estimate, not an actual count; and it is not clear that SMCG applied the Census Bureau's definition of household.

²⁶ See, e.g., *Time Warner Cable Inc.*, 25 FCC Rcd 5457, 5460, ¶ 12, 5463-64, ¶ 21 (2010); *Comcast Cable Commun., LLC*, 24 FCC Rcd 1780, 1783-84, ¶ 13 (2009); *Subsidiaries of Cablevision Systems Corp.*, 23 FCC Rcd 14141, 14144, ¶ 11 (2008). The Census Bureau's detailed definition of "household" is at U.S. Census Bureau, State & County QuickFacts, http://quickfacts.census.gov/qfd/meta/long_HSD010200.htm (defining a household as, among other things, an occupied private housing unit that is a private living quarters) (visited Jan. 26, 2011); see also 47 C.F.R. § 76.905(c) ("household" does "not include those dwellings that are used solely for seasonal, occasional, or recreational use").

²⁷ *Time Warner Cable Inc.*, 25 FCC Rcd at 5463, ¶ 21 (2010); *Comcast Cable Commun., LLC*, 24 FCC Rcd at 1784, ¶ 13; *Time Warner Cable Inc.*, 23 FCC Rcd 12210, 12214, ¶ 15 (2008).

Community.²⁸ This objection is immaterial under Section 623(l)(1)(B)(ii) of the Communications Act, which asks only whether the subscribership of MVPDs other than the largest one is over 15 percent of the households in the community in question.²⁹ We have consistently rejected requests to broaden the scope of effective competition proceedings to include extraneous issues such as the City raises.³⁰ Accordingly, we reject the City's third objection to Comcast's petition.

C. Conclusion

10. Based upon the subscribership levels that are reflected in Attachment A, we find that Comcast 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 part of the competing provider test is satisfied for each of the Communities. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that both parts of the competing provider test are satisfied and Comcast is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

11. 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**.

12. **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**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³¹

FEDERAL COMMUNICATIONS COMMISSION

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²⁸ Opposition at 2-3, 6.

²⁹ See 47 U.S.C. § 543(l)(1)(B)(ii).

³⁰ See, e.g., *Comcast Cable Commun., LLC*, Memorandum Opinion & Order DA 10-1787 at ¶¶ 12-13 (rel. Sept. 21, 2010) available at 2010 WL 3641218 (with Erratum); *Cablevision Systems East Hampton Corp.*, 24 FCC Rcd 10846, 10849, ¶ 12 (2009); *Cablevision Systems Westchester Corp.*, 24 FCC Rcd 872, 873-74, ¶¶ 6-7 (2009).

³¹ 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 Competing MVPD Subscribers
Center Line	MI0571	35.46%	3821	1355
Warren	MI0465	40.16%	55551	22311

*CPR = Percent of competing provider subscribership.