

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

In the Matter of)
Comcast Cable Communications, LLC) CSR 7514-E
Petition for Determination of Effective)
Competition in Six Michigan Communities)

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2011

Released: March 24, 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, 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"), and the Commission's implementing rules, and is therefore exempt from regulation of its rates for basic cable service in the Communities. The alleged grounds for deregulation is the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV"), and DISH Network ("DISH"), and, in three Communities, the competing service of Wide Open West ("WOW"). The franchise authority in one of the Communities, the City of Romulus (the "City"), filed an opposition to the petition, to which Comcast filed a reply.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules. 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. 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.

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 Romulus. The only competition alleged in Romulus is by the DBS providers.

4 Reply to Response ("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).

II. THE COMPETING PROVIDER TEST

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 referred to as the “competing provider” test.

A. The First Part

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 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

5. The City disputes only one element of Comcast’s showing under the first part of the competing provider test. Specifically, the City points out that the DBS providers’ service does not include “Public, Educational, and Government” (“PEG”) channels,¹⁵ and the City objects that therefore DBS programming is not “comparable” to Comcast’s.¹⁶ The City’s objection lacks merit. Section 76.905(g) of our rules defines comparable programming simply as “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.”¹⁷ The rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being “comparable” to cable operators’ for purposes of

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 Concerning PEG channels, *see Fact Sheet, Cable Television Fact Sheet (May 1998), Public, Educational, and Governmental Access Channels (“PEG Channels”)*, <http://www.fcc.gov/mb/facts/pegfacts.html> (visited Jan. 28, 2011).

¹⁶ Opposition at 2.

¹⁷ *See* 47 C.F.R. § 76.905(g).

determining effective competition.¹⁸ The City has given us no reason to depart from those rulings, and we affirm them.

B. The Second Part

6. 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.¹⁹ Therefore, the competing provider test required Comcast to calculate a ratio for each Community, the numerator of which is the number of DBS (and, where it offers service, WOW) subscribers, and the denominator of which is the number of households in the Community.

7. To calculate the numerator of the competing provider equation, Comcast first purchased a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers to the DBS providers in each five-digit zip code that lay wholly or partly within one of the Communities.²⁰ For each zip code that lay only partly in one or more of the Communities, Comcast obtained an allocation percentage from Media Business Corporation (“MBC”) to reflect how many DBS subscribers in each partial zip code lived in a Community and how many did not.²¹ For example, in Romulus, MBC’s allocation percent for zip code 48174 was 76.48 percent.²² Comcast then added the allocated DBS subscribers for each Community, all the DBS subscribers in the zip codes that were entirely within the Community, and any WOW subscribers for the Community. Their sum in each Community was Comcast’s estimate of the number of subscribers to MVPD services (other than the largest MVPD’s) there.

8. The City objects that Comcast has not demonstrated the validity of SBCA’s count of DBS subscribers for zip code 48174²³ or of MBC’s allocation figure for Romulus.²⁴ The City asks that we either deny Comcast’s petition or require the Company to better substantiate the numbers on which it relies.²⁵ We reject the City’s objection. We have relied on SBCA’s counts and MBC’s allocation percentages in hundreds of proceedings and have rejected vague requests for more substantiation.²⁶ These numbers sustained Comcast’s burden of persuasion. In the face of this showing, the City must do more

¹⁸ See, e.g., *Time Warner Cable Inc.*, 25 FCC Rcd 5457, 5466, n.69, ¶ 29 (2010), *application for review pending*; *Cablevision of Oakland Inc.*, 24 FCC Rcd 1801, 1803-04, ¶¶ 6-8 (2009), *application for review pending*; *Comcast Cable Commun., LLC*, 24 FCC Rcd 1780, 1790-91, ¶ 35 (2009), *application for review pending*; *Subsidiaries of Cablevision Systems Corp.* (“*Cablevision*”), 23 FCC Rcd 14141, 14154, ¶ 41, *stay denied*, 23 FCC Rcd at 17012, 17014, ¶ 6 (2008), *application for review pending*.

¹⁹ See Petition at 5.

²⁰ Petition, Exh. 4 at 1. Comcast obtained the number of WOW subscribers directly from WOW. *Id.* at 2-5.

²¹ Petition at 6, & Exh. 5, col. E.

²² Petition, Exh. 5, col. E, line 20.

²³ Opposition at 2.

²⁴ *Id.* at 1.

²⁵ *Id.* at 1-3.

²⁶ *Marcus Cable Assoc's, LLC*, 25 FCC Rcd 4369, 4373, ¶ 10 (2010), *denying review to* 18 FCC Rcd 9649 (2003) & 17 FCC Rcd 16652 (2002); *Cablevision*, 23 FCC Rcd at 14146-47, ¶¶ 19-20 (2008) (at ¶ 20, “Requiring a more detailed description would add complexity and delay to these proceedings without any likelihood on the present record that an error would be revealed or a sounder result would occur.”); *Time Warner Cable Inc.*, 23 FCC Rcd 12210, 12215, ¶ 16 (2008).

than produce vague doubts and ask for more information.²⁷ The petition contains explanations of how SBCA and MBC derive their numbers;²⁸ the City points to no flaw in them. We have entertained many specific claims of error in numbers presented by cable operators,²⁹ but the City makes no such claim here despite its undoubted familiarity with conditions in Romulus. The City's objection to Comcast's numbers lacks substance and therefore we cannot give it credence.

9. To calculate the denominator of the competing provider ratio, the number of households in each Community, Comcast took household numbers from the 2000 Census.³⁰ Comcast's calculations and the resulting ratios are reflected in Attachment A. In each Community, significantly more than 15 percent of households subscribe to programming services offered by MVPDs other than the largest MVPD. Therefore, the second part of the competing provider test is satisfied for each of the Communities.

C. The City's Procedural and Policy Objections

10. The City objects that Comcast, by lumping Romulus together with other Communities in one petition and putting the word "Dearborn" at the top of two exhibits, has produced a filing that is "very confusing."³¹ The City asks that Comcast be required to file a new petition solely for Romulus.³² This objection by the City lacks merit. The City's detailed objections show that it understood Comcast's filing and exhibits, so no significant confusion resulted from the Company's filing. A stand-alone petition for Romulus would contain exactly the same numbers as the petition that Comcast filed herein.³³ The City has given us no grounds to find Comcast's filing inadequate.

11. Finally, the City objects that if Comcast's rates for basic cable service are deregulated, some Romulus residents may be forced to cancel their service and will be unable to watch PEG channels.³⁴ This objection, too, is without merit. First, it is speculative. Second, the issues in a competing provider effective competition case are the ones set forth in Section 623(l)(1)(B) and in paragraph 3 above; we have repeatedly rejected requests to allow additional and extraneous matters to be considered.³⁵ PEG channels, laudable as they may be, were not factored by Congress into effective competition determinations.

²⁷ See *Time Warner Cable Inc.*, 25 FCC Rcd at 5460, ¶ 11; *Comcast Cable Commun., LLC*, 24 FCC Rcd at 1783-86, ¶¶ 13, 16-19; *Comcast Cable Commun., LLC*, 23 FCC Rcd 8564, 8566, ¶ 9 (2008); *Time Warner-Advance/Newhouse Partnership*, 20 FCC Rcd 5225, 5228, ¶ 11 (2005).

²⁸ Petition at 6-7, Exh. 3, & Exh. 4 at 1.

²⁹ *Charter Commun.*, 25 FCC Rcd 2289, 2293-96, ¶¶ 12-21 (2010); *Comcast Cable Commun., LLC*, 24 FCC Rcd at 1786-87, ¶¶ 20-22; *Cablevision*, 23 FCC Rcd at 14148-51, ¶¶ 24-33.

³⁰ Petition at Exh. 6.

³¹ Opposition at 2.

³² *Id.* at 2-3.

³³ Reply at 3.

³⁴ Opposition at 3.

³⁵ 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).

III. CONCLUSION

12. 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.

IV. ORDERING CLAUSES

13. 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**.

14. **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**.

15. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³⁶

FEDERAL COMMUNICATIONS COMMISSION

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³⁶ 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 Provider Subscribers
Belleville	MI0516	29.53%	1842	544
Dearborn	MI0515	41.35%	36770	15205
Dearborn Heights	MI0806	42.64%	23276	9926
Romulus	MI0938	23.84%	8439	2012
Van Buren	MI1143	28.36%	9867	2798
Westland	Mi0910	33.61%	36533	12278

* CPR = Percent of competitive DBS penetration rate.