

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7478-E
)	
Petition for Determination of Effective)	
Competition in 12 Mississippi Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: March 24, 2011

Released: March 28, 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 the Company is subject to effective competition in those communities listed on Attachment A (the “Attachment A Communities”), all of which are in the Jackson, Mississippi, area. Comcast alleges that its cable system serving the Attachment A 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 Attachment A Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc., and DISH Network. Comcast also claims, pursuant to Section 623(l)(1)(A) of the Communications Act³ and Section 76.905(b)(1) of the Commission’s rules,⁴ to be exempt from cable rate regulation in the Community listed on Attachment B (the “Attachment B Community”) because Comcast serves fewer than 30 percent of the households in that franchise area. The only opposition was filed by the City of Jackson (the “City”),⁵ to which Comcast filed a reply.⁶

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁷ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁸ 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.⁹ 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 Attachments A and

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ See 47 U.S.C. § 543(l)(1)(A).

⁴ 47 C.F.R. § 76.905(b)(1).

⁵ The City of Jackson’s Opposition to Petition for Special Relief (“Opposition”).

⁶ Reply to Opposition (“Reply”).

⁷ 47 C.F.R. § 76.906.

⁸ See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

⁹ See 47 C.F.R. §§ 76.906-907(b).

B.

II. DISCUSSION

A. 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.¹⁰ This test is referred to as the “competing provider” test.

1. The First Part

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.¹¹ It is undisputed that the Attachment A 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.¹² 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.¹³ We further find that Comcast has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Attachment A Communities to support its assertion that potential customers in there are reasonably aware that they may purchase the service of these MVPD providers.¹⁴ 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 programming¹⁵ and is supported in this petition with copies of channel lineups for both DBS providers.¹⁶ Also undisputed is Comcast’s assertion that both DBS providers offer service to at least “50 percent” of the households in the Attachment A Communities because of their national satellite footprint.¹⁷ Accordingly, we find that the first part of the competing provider test is satisfied.

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

¹¹ 47 C.F.R. § 76.905(b)(2)(i).

¹² *See* Petition at 3.

¹³ *Mediacom Illinois LLC*, 21 FCC Red 1175, 1176, ¶ 3 (2006).

¹⁴ 47 C.F.R. § 76.905(e)(2).

¹⁵ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹⁶ *See* Petition at Exh. 2.

¹⁷ *See* Petition at 2-3.

2. The Second Part

5. The second part of the competing provider test 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 eight of the Attachment A Communities, and that in the other three it and the DBS providers combined each have a household share over 15 percent.¹⁸ The Commission has recognized that in those conditions, whichever MVPD is the largest, the remaining competitors have subscribership of over 15 percent.¹⁹

6. The competing provider test thus required Comcast to calculate a ratio the numerator of which was the number of DBS subscribers in each Attachment A Community and the denominator of which was the number of households there. Comcast obtained from the Satellite Broadcasting and Communications Association a subscriber tracking report that stated the number of DBS subscribers in each five-digit zip code that lay wholly or partly within one of the Attachment A Communities.²⁰ Some of those zip codes lay entirely within a Community, but most of them partly inside a Community and partly outside it. For the latter, so-called “partial,” zip codes, Comcast obtained from Media Business Corporation (“MBC”) an allocation percentage stating how many DBS subscribers were inside a Community and how many were outside it.²¹ Finally, the Company added all the DBS subscribers in zip codes lying entirely within each Community and the subscribers allocated to the parts of each partial zip code that lay within the Community. The sum of these numbers for each Attachment A Community is Comcast’s estimate of DBS subscribers there, the numerator of its ratio. For the denominator of its ratios, Comcast took the household number for each Attachment A Community from the 2000 Census.²² The resulting ratios, if accepted, show DBS subscribership in each Attachment A Community exceeding 15 percent and satisfying the second part of the competing provider test.

a. The City of Jackson’s Contentions

7. For Jackson, Mississippi, Comcast estimated 11,570 DBS subscribers. This, when placed over the 2000 Census count of 67,841 households there, yields a competing provider subscribership of 17.05 percent.²³ We have repeatedly held that such evidence sustains the cable operator’s initial burden of proof. We will accept this showing unless the local franchise authority disproves the cable operator’s numbers or makes its own showing that supports a contrary conclusion.²⁴

8. The City objects on several grounds to Comcast’s estimate of the number of DBS

¹⁸ See Petition at 5-6. The latter 3 Attachment A Communities are Bolton Town, Edwards Town, and Hinds County.

¹⁹ If Comcast is the largest MVPD, then MVPDs other than the largest one are the DBS providers, which have a combined share of over 15%. On the other hand, if one of the DBS providers is the largest MVPD, then Comcast (which alone has over 15%) and the other DBS provider combined have over 15%. See, e.g., *Time Warner Cable, Inc.*, Memorandum Opinion & Order DA 11-351 at ¶ 5 (rel. Feb. 28, 2011); *Time Warner-Advance/Newhouse Partnership*, 17 FCC Rcd 23587, 23589, ¶ 6 (2002).

²⁰ Petition at Exh. 5.

²¹ Petition at 6-7 & Exh. 6, col. H.

²² Petition at Exh. 7.

²³ Comcast states the subscribership as being higher, at 17.06%. This probably reflects a fractional DBS subscriber. We disregard such subscribers. See, e.g., *Time Warner Cable, Inc.*, *supra* note 19, at Att. A.

²⁴ See, e.g., *Cox Commun. Kansas, LLC*, Memorandum Opinion & Order DA 11-350 at ¶ 12 (rel. Feb. 24, 2011), available at 2011 WL 682266; *Time Warner Cable Inc.*, 25 FCC Rcd 5457, 5464, ¶ 21 (2010), application for review pending; *Comcast Cable Commun., LLC*, 24 FCC Rcd 1780, 1783-84, ¶ 13 (2009), application for review pending.

subscribers there. First, it objects that Comcast did not subject itself to extensive discovery.²⁵ This objection lacks merit, for ordinarily there is no discovery in effective competition proceedings.²⁶ Second, the City objects to the DBS subscriber number including courtesy and complimentary accounts. This objection also lacks merit, because we have consistently allowed them to be counted. The existence of free DBS service shows a cable operator that is subject to intense competition to serve such households.²⁷ The City's third objection, to the possible inclusion of C-Band users among DBS subscribers, is also one we have repeatedly rejected.²⁸

9. The City's most complex objection to Comcast's estimate of DBS subscribers in Jackson concerns the allocation percentage that Comcast used for Jackson's four partial zip codes. The City faults MBC's allocation formula for assuming that DBS subscribership in Jackson and surrounding areas is "uniform."²⁹ This assumption, the City argues, is belied by the relatively high DBS subscribership that Comcast claims in Hinds County (58.4 percent) and the low DBS subscribership Comcast claims in the seven zip codes that lie entirely within Jackson (14.35 percent).³⁰ The City also claims that the allocation percentage for one partial zip code (39209) should reflect the higher income (and, the City opines, therefore the higher MVPD subscription) in the part of the zip code that lies outside Jackson and in the fast-growing City of Clinton.³¹

10. The City's analysis falls short in several ways. First, three of Jackson's four partial zip codes are 92, 94, and 98 percent within Jackson, and the fourth is less than 2 percent within Jackson. Only a dramatic reduction in the Jackson-allocated DBS subscribers in the first three and the total elimination of the fourth would lower DBS subscribership in Jackson to 15 percent or less. For example, a reduction of 25% in the DBS subscribers in the first three partial zip codes and the complete elimination of the fourth one would still leave DBS subscribership in Jackson at 15.14%. The City provides no support for such a reduction.³² Second, there is no evidence in the record that MVPD subscribership rises with income, much less enough to make the minuscule part of zip code 39209 that lies within Clinton (less than 1 percent) contain an anomalously large number of DBS subscribers. The City's objections do not credibly or significantly reduce Comcast's estimate of DBS subscribership in Jackson.

b. Conclusions

11. 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 Attachment A Communities. Therefore, the second part of the competing provider test is satisfied for each of the Attachment A Communities and Comcast has sustained its burden of proof that it is subject to effective competition in the Communities listed on Attachment A.

²⁵ Opposition at 7.

²⁶ *Cablevision of Rockland/Ramapo, Inc.*, 22 FCC Rcd 11487, 11496-97, ¶ 24 (2007); *Charter Commun. Entertainment II, LLC*, 22 FCC Rcd 703, 705, ¶ 5 (2007); *Time Warner Entertainment-Advance/Newhouse Partnership*, 20 FCC Rcd 15709, 15711, ¶ 5 (2005).

²⁷ *Comcast Cable Commun., LLC*, 25 FCC Rcd 4967, 4972, ¶ 17 (2010); *Bright House Networks, LLC*, 22 FCC Rcd 4390, 4394, ¶ 11 (2007); *Adelphia Cable Commun.*, 20 FCC Rcd 20536, 20540, ¶ 13 (2005).

²⁸ *See, e.g., Comcast Cable Commun., LLC*, 22 FCC Rcd 1691, 1697, ¶ 15 (2007); *Century-TCI California, L.P.*, 18 FCC Rcd 7049, 7052, ¶ 8 (2003).

²⁹ Opposition at 4.

³⁰ *Id.*.

³¹ *Id.* at 5-6.

³² Reply at 2.

B. The Low Penetration Test

12. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if Comcast serves fewer than 30 percent of the households in the franchise area. This test is referred to as the “low penetration” test.³³ Comcast alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Attachment B Community.³⁴

13. Based upon the subscriber penetration level calculated by Comcast, as reflected in Attachment B, we find that Comcast has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Attachment B Community. Therefore, the low penetration test is satisfied as to the Attachment B Community.

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 Attachments A and B **IS REVOKED**.

16. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.³⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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³³ 47 U.S.C. § 543(l)(1)(A).

³⁴ Comcast also claims to be subject to low penetration effective competition in 3 Attachment A Communities, Bolton Town, Edwards Town, and Hinds County. Petition at 2. We need not rule on these claims because we have found that Comcast is subject to competing provider effective competition in them.

³⁵ 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
Bolton Town	MS0256	67.26%	246	165
Clinton City	MS0128	29.04%	8328	2418
Edwards Town	MS0177	63.86%	461	294
Florence	MS0146	55.45%	931	516
Hinds County	MS0112	58.40%	13063	7628
Jackson City	MS0080	17.05%	67841	11570
Madison City	MS0119	42.86%	5189	2224
Madison County	MS0124	48.65%	8093	3937
Raymond City	MS0243	57.30%	469	269
Richland City	MS0147	32.35%	2303	745
Ridgeland City	MS0120	23.22%	9267	2152

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

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COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Community	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Rankin County	MS0148	21161	576	2.72%