

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

	)	CSR 8456-E
	)	CSR 8457-E
	)	CSR 8458-E
	)	CSR 8459-E
In the Matter of	)	CSR 8460-E
	)	CSR 8461-E
Bresnan Communications, LLC	)	CSR 8462-E
	)	CSR 8463-E
Petition for Determination of Effective	)	CSR 8464-E
Competition in 28 Communities in Colorado	)	CSR 8465-E
	)	CSR 8466-E
	)	CSR 8467-E
	)	CSR 8468-E
	)	CSR 8469-E

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2011

Released: April 22, 2011

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

I. INTRODUCTION AND BACKGROUND

1. Bresnan Communications, LLC (“Bresnan” 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 and hereinafter referred to as the “Communities.” Bresnan 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”).³ The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ 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.⁶ For the reasons set forth below, we grant the petition based on our finding that Bresnan 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 Bresnan states that its rates are not regulated in any of the Communities and that it is seeking formal exemption from the beginning of regulation under current conditions. Petition at 3 n.6.

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁶ See 47 C.F.R. §§ 76.906-.907(b).

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.⁷ This test is referred to as 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.⁸ It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Bresnan 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.⁹ 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.¹⁰ We further find that Bresnan has provided sufficient evidence of DBS advertising in local and regional media that serve the Communities to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.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 Bresnan’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. Bresnan asserts that in some Communities it is the largest MVPD and in others one of the DBS providers is the largest and the combined household share of Bresnan and the other DBS provider exceeds 15 percent.¹⁵ The Commission has recognized that in those conditions, whichever MVPD is the largest, the remaining competitors have subscribership of over 15 percent.¹⁶ Bresnan sought to determine the

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

⁸ 47 C.F.R. § 76.905(b)(2)(i).

⁹ *See* Petition at 4.

¹⁰ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹¹ 47 C.F.R. § 76.905(e)(2).

¹² *See* 47 C.F.R. § 76.905(g). *See also* Petition at 7.

¹³ *See* Petition at Exh. 4.

¹⁴ *See* Petition at 4.

¹⁵ Petition at 8 & Exh. 1 (Declaration of Paul Jamieson, Managing Counsel, Legislative & Regulatory, Cablevision Systems Corp. (an affiliate of Bresnan), dated Feb. 8, 2011) at ¶ 3.

¹⁶ If Bresnan 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 Bresnan

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competing provider subscribership 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.¹⁷

6. Based upon the aggregate DBS subscriber subscribership levels that were calculated using Census 2000 household data,¹⁸ as reflected in Attachment A, we find that Bresnan 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 Bresnan has submitted sufficient evidence demonstrating that both parts of the competing provider test are satisfied and Bresnan is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

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

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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(which alone has over 15%) and the other DBS provider combined have over 15%. *See, e.g., Time Warner Cable Inc.*, 25 FCC Rcd 14422, 14424, ¶ 6 (2010); *Charter Commun.*, 21 FCC Rcd 1208, 1210, ¶ 5 (2006).

¹⁷ Petition at Exh. 7. 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.

¹⁸ Petition at Exh. 5.

¹⁹ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8456-E, 8457-E, 8458-E, 8459-E, 8460-E, 8461-E, 8462-E, 8463-E, 8464-E, 8465-E, 8466-E, 8467-E, 8468-E, 8469-E

COMMUNITIES SERVED BY BRESNAN COMMUNICATIONS, LCC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8456-E				
Alamosa	CO0005	32.07%	2974	954
Alamosa County	CO0090	53.53%	2445	1309
Monte Vista	CO0009	39.07%	1715	670
Rio Grande County	CO0099	67.12%	2047	1375
CSR 8457-E				
Delta	CO0007	40.13%	2569	1031
Montrose County	CO0114	49.22%	6711	3303
CSR 8458-E				
Brookside	CO0504	30.59%	85	26
Florence	CO0216	25.60%	1488	381
Fremont County	CO0121	40.96%	6980	2859
Williamsburg	CO0408	41.28%	235	97
CSR 8459-E				
La Junta	CO0079	20.59%	2977	613
Lamar	CO0019	25.18%	3324	837
Prowers County	CO0463	57.01%	1198	683
Rocky Ford	CO0292	22.36%	1655	370
CSR 8460-E				
Lake County	CO0100	53.48%	1724	922
Leadville	CO0008	34.96%	1253	438
CSR 8461-E				
Log Lane Village	CO0263	37.37%	289	108
Morgan County	CO0036, CO0344	58.82%	3169	1864
CSR 8462-E				
Chafee County	CO0081	84.41%	2900	2448
Salida	CO0010	26.76%	2504	670
CSR 8463-E				
Logan County	CO0035	55.94%	2442	1336
CSR 8464-E				
Mancos	CO0295	23.01%	478	110

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8465-E				
Meeker	CO0158	64.31%	919	591
CSR 8466-E				
Craig	CO0122	35.12%	3525	1238
Moffat County	CO0157	74.59%	1334	995
CSR 8467-E				
Otero County	CO0519	45.38%	2208	1002
CSR 8468-E				
Paonia	CO0300	33.67%	631	213
CSR 8469-E				
Fruita	CO0012	39.19%	2447	959

*CPR = Percent of competitive DBS subscribership rate.