

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

In the Matter of)	
)	CSR 8271-E
MCC Iowa LLC)	CSR 8287-E
)	CSR 8289-E
Petitions for Determination of Effective)	CSR 8290-E
Competition in various Iowa Communities)	CSR 8293-E
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2011

Released: May 25, 2011

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

I. INTRODUCTION AND BACKGROUND

1. MCC Iowa LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in the communities listed on Attachment A and hereinafter referred to as the “Communities.” Petitioner alleges that its cable systems serving the Communities are 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 are 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 petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ 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.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner 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 programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁵ See 47 C.F.R. §§ 76.906-.907(b).

households in the franchise area.⁶ This test is referred to as the “competing provider” test.

4. The first prong 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.⁷ It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioner 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.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong 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.⁹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ 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 programming¹¹ and is supported in these petitions with website citations to the channel lineups for both DIRECTV and DISH.¹² Also undisputed is Petitioner’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.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong 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. Petitioner asserts that it is the largest MVPD in the Communities.¹⁴ Petitioner sought to determine the competing provider penetration 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.¹⁵

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census household data,¹⁶ as reflected in Attachment A, we find that Petitioner 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 prong of the competing provider test is satisfied for the Communities. Based on the foregoing, we conclude that

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

⁷ 47 C.F.R. § 76.905(b)(2)(i).

⁸ *See e.g.*, Petition in CSR 8271-E at 3-4.

⁹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹⁰ 47 C.F.R. § 76.905(e)(2).

¹¹ *See* 47 C.F.R. § 76.905(g). *See, e.g.*, Petition in CSR 8271-E at 4-5.

¹² *See, e.g.*, Petition in CSR 8287-E at 6.

¹³ *See, e.g.*, Petition in CSR 8289-E at 6-7.

¹⁴ *See, e.g.*, Petition in CSR 8290-E at 7.

¹⁵ *See, e.g.*, Petition in CSR 8293-E at 7-8. 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.

¹⁶ *See, e.g.*, Petition in CSR 8271-E at 7.

Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by MCC Iowa LLC **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the Communities set forth on Attachment A **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8271-E, 8287-E, 8289-E, 8290-E, 8293-E

COMMUNITIES SERVED BY MCC IOWA LLC

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
<u>CSR 8271-E</u>				
Mason City	IA0074	17.23%	12,368	2,131
<u>CSR 8287-E</u>				
Riverside	IA0543	19.31%	378	73
Wellman	IA0310	18.03%	549	99
<u>CSR 8289-E</u>				
Clinton	IA0033	20.28%	11,427	2,317
Morrison	IA0329	23.34%	1,787	417
Fulton	IA0250	17.51%	1,582	277
Savanna	IA0330	20.80%	1,558	324
Albany	IA0331	17.19%	349	60
Thomson	IA0882	19.23%	234	45
<u>CSR 8290-E</u>				
West Burlington	IA0110	16.95%	1,434	243
Danville	IA0295	23.58%	352	83
<u>CSR 8293-E</u>				
New London	IA0297	28.59%	794	227
West Point	IA0205	17.84%	426	76
Westwood	IA0856	36.96%	46	17

*CPR = Percent of competitive DBS penetration rate.