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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	MB Docket No. 12-85, CSR 8606-E
	)	MB Docket No. 12-86, CSR 8607-E
Petitions for Determination of Effective	)	
Competition in 22 Pennsylvania Communities	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2013 **Released: June 12, 2013**

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, 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 those communities listed on Attachment A and hereinafter referred to as the "Attachment A Communities." Petitioner 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 those Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV"), and DISH Network ("DISH"). Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment B and hereinafter referred to as Attachment B Communities, pursuant to Section 623(l)(1)(A) of the Communications Act[3] and Section 76.905(b)(1) of the Commission's rules,[4] because the Petitioner serves fewer than 30 percent of the households in the franchise area. 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,[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 petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.

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[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] 47 C.F.R. § 76.906.

[6] *See* 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

[7] *See* 47 C.F.R. §§ 76.906-.907(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.[8] 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.[9] It is undisputed that the Attachment A 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.[10] 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.[11] We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in those Communities are reasonably aware that they may purchase the service of these MVPD providers.[12] 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 programming,[13] and is supported in the petitions with copies of channel lineups for both DIRECTV and DISH.[14] Also undisputed is Petitioner's assertion that both DIRECTV and DISH offer service to at least "50 percent" of the households in the Attachment A Communities because of their national satellite footprint.[15] 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 all of the Attachment A Communities.[16] Petitioner sought to determine the competing provider penetration in the Attachment A 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 Attachment A

[8] 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

[9] 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

[10] *See, e.g.*, Petition in CSR 8606-E at 3-4.

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

[12] 47 C.F.R. § 76.905(e)(2).

[13] *See* 47 C.F.R. § 76.905(g); *see also, e.g.*, Petition in CSR 8607-E at 5.

[14] *See, e.g.*, Petition in CSR 8606-E at Ex. 2.

[15] *See, e.g.*, Petition in CSR 8607-E at 3.

[16] *See, e.g.*, Petition in CSR 8606-E at 7.

Communities on a zip code plus four basis.[17]

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using 2010 Census household data,[18] 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 Attachment A Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment A Communities. Based on the foregoing, we conclude that 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 Attachment A Communities.

B. The Low Penetration Test

7. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area. This test is referred to as the "low penetration" test.[19] Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less that 30 percent of the households in the Attachment B Communities.

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

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates **ARE GRANTED**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[20]

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

[17] *See, e.g.*, Petition in CSR 8607-E at 5-7.

[18] *See, e.g.*, Petition in CSR 8606-E at Ex. 6.

[19] 47 U.S.C. § 543(l)(1)(A).

[20] 47 C.F.R. § 0.283.

ATTACHMENT A
MB Docket No. 12-85, CSR 8606-E
MB Docket No. 12-86, CSR 8607-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
MB Docket No. 12-85, CSR 8606-E				
Clarks Green Borough	PA1123	19.60	597	117
Clarks Summit Borough	PA0826	20.13	2,216	446
Dallas Borough	PA0882	30.87	1,137	351
Dalton Borough	PA1124	26.10	502	131
Exeter Borough	PA0684	25.90	2,463	638
Factoryville Borough	PA1095	23.75	341	81
Hughestown Borough	PA1127	39.31	608	239
Kingston Township	PA0885	36.34	2,815	1,023
Laflin Borough	PA1149	29.28	625	183
Moosic Borough	PA1187	24.04	2,363	568
Moscow Borough	PA1508	30.09	751	226
Old Forge Borough	PA1190	30.18	3,734	1,127
Pittston Township	PA1152	27.89	1,341	374
South Abington Township	PA1121	23.19	3,346	780
MB Docket No. 12-86, CSR 8607-E				
Benner Township	PA0135	21.96	1,612	354
Halfmoon Township	PA2758	26.83	913	245
Howard Township	PA1474	33.24	370	123
Osceola Mills Township	PA0395	31.02	461	143
Port Matilda Borough	PA1729	17.94	262	47
Tyrone Borough	PA0031	22.33	2,275	508

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

MB Docket No. 12-85, CSR 8606-E
MB Docket No. 12-86, CSR 8607-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
MB Docket No. 12-85, CSR 8606-E				
Clinton Township	PA2010	902	127	14.08
MB Docket No. 12-86, CSR 8607-E				
Beccaria Township	PA2093	732	59	8.06