

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

In the Matter of	)	
	)	MB Docket No. 12-9 CSR 8571-E
Comcast Cable Communications, LLC, on behalf	)	MB Docket No. 12-10 CSR 8572-E
of its subsidiaries and affiliates	)	MB Docket No. 12-11 CSR 8573-E
	)	MB Docket No. 12-12 CSR 8574-E
Petitions for Determination of Effective	)	
Competition in 19 Communities in Illinois	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 27, 2013**

**Released: June 28, 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 a petition 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 systems serving the Attachment A Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and are 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. (“DIRECTV”), and DISH Network (“DISH”), and AT&T (collectively, the “Competing Providers”). Petitioner additionally claims to be exempt from cable rate regulation in the community listed on Attachment B and hereinafter referred to as Attachment B Community, pursuant to Section 623(l)(1)(A) of the Communications Act<sup>3</sup> and Section 76.905(b)(1) of the Commission’s rules,<sup>4</sup> because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.<sup>5</sup>

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>6</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>7</sup> The cable operator bears the burden of rebutting the

<sup>1</sup> See 47 U.S.C. § 543(l)(1)(B).

<sup>2</sup> 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> See 47 U.S.C. § 543(l)(1)(A).

<sup>4</sup> 47 C.F.R. § 76.905(b)(1).

<sup>5</sup> A franchise authority for one of the Attachment A Communities in MB Docket No. 12-11, the Village of Mettawa, Illinois, requested an extension of time in which to consider filing an opposition. Ultimately, the Village decided not to file anything. E-Mail from Gregory T. Smith, Esq., Klein, Thorpe & Jenkins, Ltd., to John W. Berresford, Esq., Media Bureau, March 8, 2012, 2:49 PM.

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>8</sup> 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.

## 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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,<sup>14</sup> and is supported in the petitions with copies of channel lineups for both DIRECTV and DISH.<sup>15</sup> 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.<sup>16</sup> 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, exceed 15 percent of the households in a

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<sup>8</sup> See 47 C.F.R. §§ 76.906-.907(b).

<sup>9</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> 47 C.F.R. § 76.905(b)(2)(i).

<sup>11</sup> See, e.g., Petition in CSR 8571-E at 3.

<sup>12</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

<sup>13</sup> 47 C.F.R. § 76.905(e)(2).

<sup>14</sup> See 47 C.F.R. § 76.905(g); see also, e.g., Petition in CSR 8572-E at 5.

<sup>15</sup> See, e.g., Petition in CSR 8574-E at Ex. 2.

<sup>16</sup> See, e.g., Petition in CSR 8571-E at 3.

franchise area. Petitioner asserts that it is the largest MVPD in the Attachment A Communities.<sup>17</sup> Petitioner sought to determine the competing provider penetration there 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 Communities on a zip code plus four basis.<sup>18</sup> Petitioner obtained subscriber numbers for AT&T directly from that company. AT&T requested that its subscriber numbers be kept confidential. We will accede to that request in this proceeding by combining subscribership figures for AT&T and DBS providers. In providing the aggregate number of competing provider subscribers, we are thereby safeguarding AT&T's request for confidentiality.<sup>19</sup>

6. Based upon the aggregate Competing Provider subscriber penetration levels that Petitioner calculated, 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.<sup>20</sup> Petitioner 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.

8. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner 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.

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<sup>17</sup> See, e.g., Petition in CSR 8572-E at 8.

<sup>18</sup> See, e.g., Petition in CSR 8573-E at Ex. 6.

<sup>19</sup> We reserve the right to exercise our discretion to require more disclosure in future decisions.

<sup>20</sup> 47 U.S.C. § 543(l)(1)(A).

**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.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>21</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

MB Docket No. 12-9, CSR 8571-E  
 MB Docket No. 12-10, CSR 8572-E  
 MB Docket No. 12-11, CSR 8573-E  
 MB Docket No. 12-12, CSR 8574-E

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

Communities	CUIDs	CPR	2010 Census Households	Estimated Competing Provider Subscribers
<b><u>CSR 8571-E</u></b>				
Golf	IL1089	37.18	156	58
<b><u>CSR 8572-E</u></b>				
Lisle	IL0538	22.76	9,304	2,118
Saint Charles	IL1053	18.76	18,101	3,395
Wheaton	IL1050	17.86	19,191	3,428
<b><u>CSR 8573-E</u></b>				
Lake Bluff	IL1387	28.27	2,055	581
Mettawa	IL1827	47.52	202	96
<b><u>CSR 8574-E</u></b>				
Clarendon Hills	IL1132	31.74	3,132	994
Downers Grove	IL0402	23.76	19,187	4,559
Elmhurst	IL0395	32.81	15,765	5,173
Evanston	IL0601	18.75	30,047	5,634
Forest Park	IL0363	25.63	7,159	1,835
Hinsdale (Cook)	IL1134	30.50	5,488	1,674
	IL1135			
Northfield	IL1360	27.99	2,190	613
Oak Park	IL0311	23.67	22,670	5,366
River Forest	IL0456	27.85	3,961	1,103
Westmont	IL0904	27.66	10,357	2,865
Willowbrook	IL1142	25.40	4,032	1,024
Wilmette	IL0423	23.66	9,742	2,305

## ATTACHMENT B

MB Docket No. 12-10, CSR 8572-E

COMMUNITY SERVED BY SUBSIDIARY OR AFFILIATE  
OF COMCAST CABLE COMMUNICATIONS, LLC

<b>Community</b>	<b>CUID</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
Elgin	111301	33,084	3,691	11.16