

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	MB Docket No. 12-279, CSR-8715-E
)	
Petition for Determination of Effective)	
Competition in Danville, VA)	

MEMORANDUM OPINION AND ORDER

Adopted: November 15, 2013

Released: November 15, 2013

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, 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 the community listed on Attachment A and hereinafter referred to as the “Community.” Petitioner alleges that its cable system serving the Community 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 Community because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”). An Opposition to the petition was filed by the City of Danville (the “City”)³ to which Petitioner filed a Reply.⁴

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 petition based on our finding that Petitioner is subject to effective competition in the Community 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

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ Opposition to Petition For Determination of Effective Competition (“Opposition”), dated October 17, 2012.

⁴ Reply to Opposition (“Reply”), dated October 31, 2012.

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁷ See 47 C.F.R. §§ 76.906-.907(b).

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 Community is “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 the Community 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 this petition 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 Community 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 sought to determine the competing provider penetration in the Community 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 Community on a zip code plus four basis.¹⁶ Petitioner asserts that it is the largest MVPD in the Community.¹⁷

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 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

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 Petition at 3-5.

¹¹ See, e.g., *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 Petition at 5.

¹⁴ See Petition at Exhibit 1.

¹⁵ See Petition at 3-5.

¹⁶ Petition at 6-7. 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.

¹⁷ See Petition at 7.

¹⁸ Petition at Exhibits 5-6.

prong of the competing provider test is satisfied for each of the Communities.

7. The City makes three objections in its Opposition, none of which merit denial of the Petition. First, the City claims that Petitioner has not provided sufficient evidence that the DBS providers provide “comparable programming” to the Petitioner. The City complains that the channel lineups provided in the Petition do not reflect the actual lineups available to subscribers in the Community, and in any event, the DBS providers’ programming cannot be comparable to that of the Petitioner because the DBS providers do not provide Public, Educational, and Government Access (“PEG”) programming as Petitioner is required to do pursuant to its Franchise Agreement with the City.¹⁹ The City misunderstands our standard for what constitutes comparable programming for purposes of effective competition. 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 non-broadcast service programming,²⁰ and is supported in this petition with citations to the channel lineups to DIRECTV and DISH.²¹ There is no doubt that the Petition satisfies that standard. We have repeatedly held that determining whether competing service is comparable for effective competition purposes does not depend on whether it includes PEG channels.²²

8. Second, the City claims Comcast “may not have met its burden of demonstrating that the number of DBS subscribers within the City limits of Danville exceeds 15 percent of the households in the Comcast franchise area for the City.”²³ The City fails to present any evidence to substantiate this claim and we dismiss it accordingly. As discussed above, Petitioner has submitted evidence demonstrating that more than 15 percent of households in Danville subscribe to DBS providers.

9. Finally, the City claims that Petitioner has presented no evidence to support its assertion that it is the largest MVPD in the Community. We disagree. Petitioner has submitted a declaration under penalty of perjury, which states that “Comcast is the largest multichannel video program provider in the Danville Franchise Area.”²⁴ The City presents no evidence to suggest this statement is inaccurate and thus we accept Petitioner’s statement that it is the largest MVPD in the Community.

10. 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 Community listed on Attachment A.

¹⁹ Opposition at 2.

²⁰ 47 C.F.R. § 76.905(g).

²¹ See Petition Exhibit 1; see also Reply at Attachment 1 (providing channel lineups that include specific references to the local programming offered in Danville, VA).

²² See, e.g., *Comcast Cable Communications, LLC*, 24 FCC Rcd 1780 at ¶35 n.83 (MB 2009) (citing *CoxCom, Inc.*, 14 FCC Rcd 7134, ¶ 19 (1999) (“PEG programming is not one of the factors the Commission has indicated is germane in determining whether comparable programming is being offered by a competitor.”)); see also *Comcast Cable Communications Petition for Determination of Effective Competition in Six Michigan Communities*, 26 FCC Rcd 3993, ¶ 5 (MB 2011) (“The rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being ‘comparable to cable operators’ for purposes of determining effective completion.”).

²³ Opposition at 3.

²⁴ Petition at attached Declaration of Warren Fitting, Senior Director of Regulatory Accounting for Comcast Cable Communications, LLC (August 20, 2012).

III. ORDERING CLAUSES

11. 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**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Community set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

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

²⁵ 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Community	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
Danville, VA	VA0029	21.71%	18,831	4,089

*CPR = Percent of competitive DBS penetration rate.