

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	MB Docket No. 12-13, CSR 8576-E
)	
Petition for Determination of Effective)	
Competition in 14 Pennsylvania Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2013

Released: April 25, 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 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 community listed on Attachment B and hereinafter referred to as Attachment B Community, pursuant to Section 623(l)(1)(A) of the Communications Act³ 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 petition is 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 petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.

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 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 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, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in all of the Attachment A Communities, with the exception of Lykens Township, Mifflin Township, and Upper Mahantongo Township.¹⁶ Petitioner sought

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

⁹ 47 C.F.R. § 76.905(b)(2)(i).

¹⁰ *See* Petition at 3.

¹¹ *Mediacom Illinois LLC*, 21 FCC Red 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 2.

¹⁵ *See id.* at 3.

¹⁶ *See id.* at 7 and attached Declaration of Warren Fitting, Senior Director of Regulatory Accounting for Comcast Cable Communications, LLC (November 7, 2011) and Exhibit 7. Comcast asserts that in the Lykens Township, Mifflin Township, and Upper Mahantongo Township franchise areas, Comcast serves in excess of 15% of the households, while DBS Providers serve in excess of 41%, 37%, and 50% of the households, respectively. *Id.* The Commission has recognized that where “the subscriber penetration rate for both [the cable operator] and the aggregate DBS information

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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 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 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.

III. ORDERING CLAUSES

9. 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**.

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

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each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.” See *Charter Communications – Seven Local Franchise Areas in Missouri*, 21 FCC Rcd 1208, 1210 at ¶ 5 (2006).

¹⁷ Petition at 7-8.

¹⁸ *Id.* at 8 and Exhibit 7.

¹⁹ 47 U.S.C. § 543(l)(1)(A).

²⁰ 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
Berrysburg Borough	PA1837	40.13%	152	61
Elizabethville Borough	PA0359	23.51%	638	150
Hegins Township	PA0361	32.69%	1,493	488
Hublely Township	PA0362	22.67%	344	78
Lykens Borough	PA0363	31.78%	774	246
Lykens Township	PA1274	41.87%	504	211
Mifflin Township	PA1838	37.14%	245	91
Porter Township	PA1727	21.68%	927	201
Tower City Borough	PA1726	18.20%	566	103
Upper Mahantongo Township	PA1285	50.57%	265	134
Washington Township	PA0365	29.58%	889	263
Williams Township	PA0368	29.72%	461	137
Williamstown Borough	PA0367	33.16%	567	188

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

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COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Community	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Upper Paxton Township	PA1286	1,607	70	4.35%