

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

In the Matter of)
Comcast Cable Communications, LLC) MB Docket No. 12-199, CSR-8684-E
Petitions for Determination of Effective) MB Docket No. 12-248, CSR-8700-E
Competition in 24 Communities in Ohio)

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2013

Released: April 29, 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 two 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"), and the Commission's implementing rules, 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 and Section 76.905(b)(1) of the Commission's rules, 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, as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules. 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. 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.

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)(1); 47 C.F.R. § 76.905(b).

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 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 the Attachment A 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 sought to determine the competing provider DBS 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 Communities on a zip code plus four basis.¹⁶ Petitioner asserts that it is the largest MVPD in

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 Petitions at 3-5.

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 Petitions at 5.

¹⁴ See Petitions at Exhibit 2.

¹⁵ See Petitions at 3.

¹⁶ Petitions 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.

the Columbiana, East Liverpool, East Palestine, Leetonia, Liverpool, New Waterford, St. Clair, and Wellsville franchise areas.¹⁷ With respect to the communities of Madison, Middleton, Springfield, Short Creek, Smith, and Yellowcreek, Petitioner asserts that it serves in excess of 15 percent of the households in those franchise areas, while competing providers serve an aggregate of more than 15 percent of the communities.¹⁸

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 household data,¹⁹ 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 Columbiana, East Liverpool, East Palestine, Leetonia, Liverpool, New Waterford, St. Clair, and Wellsville. With regard to the communities of Madison, Middleton, Springfield, Short Creek, Smith, and Yellowcreek, we are able to conclude that this portion of the test is met by analyzing the data submitted for both the Petitioner and its MVPD competitors. If the subscriber penetration for both the Petitioner and the aggregate competing MVPD information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.²⁰ In Madison, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 56.21 percent, while in Middleton, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 51.78 percent.²¹ In Springfield, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 29.29 percent,²² while in Short Creek, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 30.5 percent.²³ Finally, in Smith, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 48.39 percent,²⁴ while in Yellowcreek, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 43.58 percent.²⁵ 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 Communities listed on Attachment A.

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.²⁶ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of

¹⁷ See CSR-8684-E Petition at 7.

¹⁸ CSR-8684-E and CSR-8700-E Petitions at 7.

¹⁹ Petition at Exhibits 5-6.

²⁰ *Charter Communications*, 21 FCC Rcd 1208, 1210 (MB 2006); *Time Warner Entertainment Advance/Newhouse Partnership*, 17 FCC Rcd 23587, 23589 (MB 2002).

²¹ CSR-8684-E Petition at 7.

²² *Id.*

²³ CSR-8700-E Petition at 7.

²⁴ *Id.*

²⁵ CSR-8684-E Petition at 7.

²⁶ 47 U.S.C. § 543(l)(1)(A).

the households in the Attachment B Communities.²⁷

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 **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.²⁸

FEDERAL COMMUNICATIONS COMMISSION

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

²⁷ See Petitions at Exhibit 8.

²⁸ 47 C.F.R. § 0.283.

ATTACHMENT A

MB Docket No. 12-199, CSR-8684-E
 MB Docket No. 12-248, CSR-8700-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS LLC

Communities	CUID	CPR*	2010 Census Households	DBS Subscribers
Columbiana	OH0817	22.09%	2,852	630
East Liverpool	OH0023	16.47%	4,601	758
East Palestine	OH0245	22.55%	1,898	428
Leetonia	OH0186	38.24%	748	286
Liverpool	OH2236	18.41%	1,744	321
Madison	OH1695	56.21%	1,272	715
Middleton	OH0435	51.78%	1,375	712
New Waterford	OH0280	24.56%	513	126
Short Creek	OH1693	30.50%	459	140
Smith	OH2266	48.39%	622	301
Springfield	OH1092	29.29%	2,694	789
St. Clair	OH1054	23.82%	3,325	792
Wellsville	OH0024	20.88%	1,475	308
Yellowcreek	OH1696	43.58%	872	380

*CPR = Percent of competitive penetration rate of DBS

ATTACHMENT B

MB Docket No. 12-199, CSR-8684-E

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS LLC

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Fairfield	OH0226	4,122	516	12.52%
Goshen	OH2432	1,292	4	0.31%
Mead	OH2265	2,613	53	2.03%
Mount Pleasant	OH1406	1,010	154	15.25%
Pease	OH0018 OH2734	6,267	351	5.60%
Pultney	OH2264 OH2605	3,718	348	9.36%
Richland	OH0153 OH2267	5,247	1,554	29.62%
Smithfield	OH0581	1,448	16	1.10%
Unity	OH0594 OH2232	3,942	473	12.00%
Warren	OH0596	2,439	136	5.58%