

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

In the Matter of )  
 )  
Comcast Cable Communications, LLC ) MB Docket No. 12-103, CSR 8620-E  
 )  
Petition for Determination of Effective )  
Competition in Five California Communities )

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 29, 2013**

**Released: May 1, 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 “Communities.” Petitioner alleges that its cable system serving the Communities is 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 is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers (DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”)) and, in three Communities, AT&T.<sup>3</sup> 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,<sup>4</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>5</sup> 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.<sup>6</sup> 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 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 programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of 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> The three Communities are American Canyon (CA1339), Napa (CA0407), and Sonoma (CA0325).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

<sup>6</sup> See 47 C.F.R. §§ 76.906-907(b).

households in the franchise area.<sup>7</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>8</sup> 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.<sup>9</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>10</sup> We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</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>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and DISH.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.<sup>14</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, exceeds 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.<sup>15</sup> Petitioner sought to determine the competing provider penetration in the Communities in part 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.<sup>16</sup> Petitioner obtained AT&T subscriber numbers directly from that company.<sup>17</sup> AT&T requested that its subscriber numbers be kept confidential.<sup>18</sup> 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

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<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup> See Petition at 3.

<sup>10</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

<sup>11</sup> 47 C.F.R. § 76.905(e)(2).

<sup>12</sup> See 47 C.F.R. § 76.905(g); see also Petition at 5.

<sup>13</sup> See Petition at Ex. 2.

<sup>14</sup> See Petition at 3.

<sup>15</sup> See *id.* at 8; *id.*, Declaration of Warren Fitting, Petitioner’s Director of Rate Regulation, at ¶ 3 (April 3, 2012).

<sup>16</sup> Petition at 6-8. 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.

<sup>17</sup> See Petition at Ex. 5.

<sup>18</sup> See Petition at 6 n.24; *id.* at Ex. 5.

competing provider subscribers, we are thereby safeguarding AT&T's request for confidentiality.<sup>19</sup>

6. Based upon the aggregate subscriber penetration levels that were calculated using Census 2010 household data,<sup>20</sup> 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 Communities. Therefore, the second prong of the competing provider test is satisfied for each of the 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.

### III. ORDERING CLAUSES

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

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

9. 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>19</sup> We reserve the right to exercise our discretion to require more disclosure in future decisions. AT&T requested confidentiality for the American Canyon, Napa, and Sonoma franchise areas. The competing provider subscriber totals in Calistoga and St. Helena rely solely on DBS data.

<sup>20</sup> Petition at Ex. 8.

<sup>21</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

MB Docket No. 12-103, CSR 8620-E

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

<b>Communities</b>	<b>CUIDs</b>	<b>CPR*</b>	<b>2010 Census Households</b>	<b>Estimated Competing Provider Subscribers</b>
American Canyon	CA1339	37.65	5,657	2130
Calistoga	CA0305	37.00	2,019	747
Napa	CA0407	34.26	28,166	9650
Sonoma	CA0325	20.71	4,955	1026
St. Helena	CA0319	25.70	2,401	617

\*CPR = Percent of competitive penetration rate.