

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

In the Matter of )
Comcast Cable Communications, LLC, on behalf )
of its subsidiaries and affiliates ) CSR 8081-E
Petitions for Determination of Effective )
Competition in Communities in Minnesota )

MEMORANDUM OPINION AND ORDER

Adopted: February 17, 2016

Released: February 18, 2016

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications ("Comcast" or the "Company") 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 the Company is subject to effective competition in Fridley, Minnesota, the community listed on Attachment A (the "Attachment A Community"). Comcast alleges that its cable system serving the Attachment A Community 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 that it is therefore exempt from cable rate regulation in the Attachment A Community because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV") and DISH Network ("DISH"). Comcast additionally claims that it is exempt from cable rate regulation in the communities listed on Attachment B (the "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 Comcast serves fewer than 30 percent of the households in those franchise areas. Fridley filed an opposition and Comcast filed a reply. Comcast also filed a Supplement "to update the record with new data" that the Company asserts demonstrates that the competing provider test remains satisfied in Fridley. Fridley did not file a response to the Supplement. Comcast's petition also included Bloomington, Minnesota but Comcast subsequently filed a motion to withdraw Bloomington from the petition. We grant Comcast's request to withdraw Bloomington.

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as competing provider effective

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 Opposition to Petition for Special Relief by the City of Fridley, Minnesota, filed December 1, 2008 ("Opposition"); Reply to Opposition of the City of Fridley, Minnesota, filed December 18, 2008 ("Reply").

6 See Supplement of Comcast Cable Communications, LLC at 1, filed October 9, 2012 ("Supplement").

7 Motion to Withdraw Bloomington, Minnesota, from Petition for Special Relief, filed December 18, 2008.

competition.<sup>8</sup> Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.<sup>9</sup> For the reasons set forth below, we grant Comcast's petition.

## II. 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 multichannel 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>10</sup> This test is referred to as the "competing provider" test. Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.

### A. The First Part

4. The first part 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>11</sup> As explained in the *Effective Competition Order*, "we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH, presumptively satisfies the" first part of the test for competing provider effective competition, absent evidence to the contrary.<sup>12</sup> Fridley "accepts (without conceding)" that Comcast has satisfied the first part of the competing provider test.<sup>13</sup> Accordingly, we find that the first part of the test is satisfied.

### B. The Second Part

5. The second part 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.<sup>14</sup> As explained in the *Effective Competition Order*, "[w]ith regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD."<sup>15</sup> Fridley argues that Comcast has not satisfied the second part of the competing provider effective competition test for several reasons. First, Fridley argues that the 2000 Census data used by Comcast is out of date and inaccurate.<sup>16</sup> This argument is now irrelevant because the Supplement contains data from the 2010 Census.<sup>17</sup> Second,

<sup>8</sup> See *Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) ("*Effective Competition Order*").

<sup>9</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

<sup>10</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

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

<sup>12</sup> *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

<sup>13</sup> Opposition at 4.

<sup>14</sup> 47 C.F.R. § 76.905(b)(2)(ii).

<sup>15</sup> *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

<sup>16</sup> Opposition at 4.

<sup>17</sup> Supplement at 2.

Fridley asserts that the subscriber tracking report relied upon in the petition is outdated and based on inaccurate five digit zip codes.<sup>18</sup> The Supplement contains an updated subscriber tracking report, based on more accurate nine-digit zip code data.<sup>19</sup> Third, Fridley argues that the DBS subscriber data failed to reflect subscribers that may return to Comcast because of its “triple play” bundled options, and it may include C-Band residential subscribers that do not satisfy the first prong of the competing provider test.<sup>20</sup> Comcast responds that C-Band subscribers do satisfy the first prong of the competing provider test, and in any event there are only 12 such subscribers, yielding a *de minimis* impact on the subscriber totals.<sup>21</sup> We note in addition that any concern about subscribers potentially returning to Comcast is speculative. Fourth, Fridley contends that Comcast has failed to demonstrate that a finding of effective competition would be in the public interest.<sup>22</sup> We find that there is no “public interest” prong in the statutory test for competing provider effective competition. For the above reasons, the arguments put forth by Fridley fail to rebut the presumption of competing provider effective competition. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast and Fridley, we thus find that the second prong of the test is satisfied.

### III. THE LOW PENETRATION TEST

6. Finally, Comcast seeks a finding of low penetration effective competition for the Attachment B Communities. No oppositions were filed. Pursuant to the *Effective Competition Order*, we now presume that Comcast is subject to competing provider effective competition in the Attachment B Communities. Even if any party attempted to rebut that presumption, which has not occurred, the Company still would have satisfied the low penetration effective competition test based upon the subscriber penetration level calculated by Comcast, as reflected in Attachment B. We find that Comcast 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, as required by the low penetration test.

### IV. 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 **IS GRANTED** as to the Communities listed on Attachments A and B hereto.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachments A and B **ARE REVOKED**.

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<sup>18</sup> Opposition at 5.

<sup>19</sup> Supplement at 2. We note, however, that we do not require cable operators to use nine-digit zip code-based DBS subscriber numbers in effective competition petitions. See *Comcast Cable Commc'ns, LLC*, Memorandum Opinion and Order, DA 11-496, 26 FCC Rcd 3850, 3854, ¶ 18 (MB 2011); *Commission Clarifies Standards for Evidence of Competing Provider Effective Competition for Cable Service*, Public Notice, DA 09-1361, 24 FCC Rcd 8198 (MB 2009); *Comcast Cable Commc'ns, LLC*, Memorandum Opinion and Order, DA 07-160, 22 FCC Rcd 694, 699, ¶ 12 (MB 2007).

<sup>20</sup> Opposition at 7-8.

<sup>21</sup> Reply at 7.

<sup>22</sup> Opposition at 9-12.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>23</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

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## COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUIDs</b>	<b>CPR*</b>	<b>2010 Census Households</b>	<b>Estimated DBS Subscribers</b>
Fridley	MN0077	23.48%	11110	2609

\*CPR = Percent of competitive DBS subscribership rate.

## ATTACHMENT B

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## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUIDs</b>	<b>Franchise Area Households</b>	<b>Comcast Subscribers</b>	<b>Penetration Percentage</b>
Helena	MN1226	548	24	4.38%
Landsburgh	MN1225	682	36	5.28%
Sand Creek	MN1224	554	51	9.21%