

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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	CSR 8378-E
	)	
Petition for Determination of Effective	)	
Competition in Two Virginia Communities	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 18, 2016**

**Released: February 19, 2016**

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

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC (“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 the communities listed on Attachment A (the “Communities”). The Communities are the Town of Orange, Virginia (“Orange Town”) and Orange County, Virginia (“Orange County”).<sup>1</sup> Comcast 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>2</sup> and the Commission’s implementing rules,<sup>3</sup> and that it 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”). Orange County filed comments asking that the petition be denied.<sup>4</sup> Comcast did not file a reply to Orange County’s comments.

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 competition.<sup>5</sup> Accordingly, in the absence of a demonstration to the contrary, the Commission now

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<sup>1</sup> We note that the recent public notice listing all pending effective competition proceedings erroneously listed five communities as part of this proceeding, CSR 8378-E, which should have been listed instead as part of CoxCom’s pending unopposed effective competition petition, CSR 8567-E. Those communities are Hurlburt Field (FL0396), Freeport (FL0751), Eglin AFB (FL0932), Okaloosa County (FL1219), and Walton County (FL1220). *See Findings of Competing Provider Effective Competition Following December 8, 2015 Filing Deadline for Existing Franchise Authority Recertification*, MB Docket No. 15-53, Public Notice (Dec. 17, 2015) (“Public Notice”). By the *Public Notice*, the Media Bureau granted the listed pending unopposed effective competition petitions based on a finding of competing provider effective competition. We hereby clarify that these five communities were part of CSR 8567-E, a pending unopposed effective competition petition, and thus the Media Bureau has already deemed them subject to a finding of competing provider effective competition.

<sup>2</sup> *See* 47 U.S.C. § 543(l)(1)(B).

<sup>3</sup> 47 C.F.R. § 76.905(b)(2).

<sup>4</sup> Orange County Comments (“Comments”) at 1, filed April 12, 2011.

<sup>5</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*”).

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>6</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>7</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.<sup>8</sup>

### 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>9</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>10</sup> Orange County has not put forth any information to rebut the first part of the competing provider effective competition test. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast, we thus 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>11</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>12</sup> Orange County argues that Comcast has not satisfied the second part of the competing provider effective competition test because the data in the petition, especially the list of nine-digit zip codes that Comcast purchased from Media Business Corporation ("MBC"), is not based on "exact science."<sup>13</sup> This argument lacks merit because

<sup>6</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

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

<sup>8</sup> Orange County states it does not regulate Comcast's rates for basic service and, therefore asserts that Comcast's petition is unnecessary. We note that Comcast is seeking to prevent the regulation of its rates. We see no reason to deny a cable operator freedom from regulation after it has satisfied the statutory criteria for deregulation. Accordingly, we dismiss this objection to Comcast's petition. See, e.g., *Bresnan Communications, LLC*, 26 FCC Rcd 6122, ¶ 1 at n.3 (2011); *Comcast Cable Communications, LLC*, 26 FCC Rcd 3987, ¶ 1 at n.3 (2011).

<sup>9</sup> 47 C.F.R. § 76.905(b)(2)(i).

<sup>10</sup> *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

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

<sup>12</sup> *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

<sup>13</sup> Comments at 1.

Comcast's petition includes a statement describing MBC's methodology for determining which nine-digit zip codes lie within a community.<sup>14</sup> Orange County has shown no analytical flaw in MBC's methodology, nor has Orange County identified even a single zip code that MBC incorrectly considered to be within Orange County. For the above reasons, the arguments put forth by Orange County 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 Orange County, we thus find that the second prong of the test is satisfied.

### III. ORDERING CLAUSES

6. 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 Attachment A hereto.

7. **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 Attachment A **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

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Senior Deputy Chief, Policy Division, Media Bureau

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<sup>14</sup> See Petition for Special Relief at 6, filed December 10, 2010.

<sup>15</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 8378-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
Town of Orange	VA0067	18.86%	1,607	303
Orange County	VA0225	57.39%	7,920	4,545

\*CPR = Percent of competitive DBS penetration rate.