

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

In the Matter of)	
)	
Mediacom Minnesota LLC)	CSR 8333-E
)	
Petition for Determination of Effective)	
Competition in Granite Falls, Minnesota)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 25, 2016

Released: February 26, 2016

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

I. INTRODUCTION AND BACKGROUND

1. Mediacom Minnesota LLC, hereinafter referred to as “Petitioner” or “Mediacom,” 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 Mediacom is subject to effective competition in the community listed on Attachment A (the “Community”). Petitioner alleges that its cable system serving the Community 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 that it is therefore exempt from cable rate regulation in the Community because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”) and DISH Network (“DISH”). The Community’s local government, the City of Granite Falls, Minnesota (the “City” or “Granite Falls”), filed an opposition. Mediacom filed a reply.

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.³ 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.⁴ For the reasons set forth below, we grant Mediacom’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

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ 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*”).

⁴ See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

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.⁵ 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.⁶ 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.⁷ Granite Falls 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 Mediacom, 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.⁸ 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.”⁹ The City argues that Mediacom has not satisfied the second part of the competing provider effective competition test for several reasons. First, the City asserts that Mediacom has failed to satisfy its burden of demonstrating that the number of households subscribing to multichannel video programming distributors other than the largest MVPD exceeds 15 percent of the households in the franchise area because the data relied upon by Mediacom is not sufficiently precise.¹⁰ In its Reply, Mediacom filed detailed zip code plus four identification data for Granite Falls.¹¹ Mediacom asserts, and we agree, that it sufficiently demonstrated that DBS subscribership exceeds more than 15 percent in Granite Falls, and that the data filed sufficiently allows the City to verify which zip code plus four codes are located within the boundaries of Granite Falls.¹² Second, Granite Falls asserts that Mediacom failed to address how it would serve the public interest requirement in Section 76.7(a)(4) of the Commission’s rules.¹³ Mediacom responds that a separate public interest showing is not required. We agree. The Commission recognized that the effective competition

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

⁶ 47 C.F.R. § 76.905(b)(2)(i).

⁷ *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

⁸ 47 C.F.R. § 76.905(b)(2)(ii).

⁹ *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

¹⁰ Granite Falls Comments at 4-7, filed March 6, 2010. Granite Falls questions the accuracy and reliability of the Media Business Corporation (“MBC”) and Satellite Broadcasting and Communications Association (“SBCA”) data regarding the jurisdictional boundaries of the City, Mediacom’s franchise area, and number of DBS subscribers in Granite Falls.

¹¹ Mediacom Reply at 3-4, filed May 4, 2010.

¹² *Id.* at 4.

¹³ Granite Falls Comments at 7.

provisions of the Communications Act “contains a clear and explicit preference for [competition].”¹⁴ Petitioner’s satisfaction of the effective competition test demonstrates that the public interest will be met through Congress’s preference for competition. Third, the City asserts that DBS competition does not restrain cable prices and the elimination of local rate regulation is not in the public interest.¹⁵ Mediacom argues, and we agree, that this argument lacks merit as the statutory effective competition test does not permit a determination of whether one form of video competition is more effective than another in keeping rates reasonable for the public.¹⁶ Where we determine the existence of effective competition as defined by Congress, our inquiry is at an end. For the above reasons, the arguments put forth by Granite Falls 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 Mediacom and Granite Falls, 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 Mediacom Minnesota LLC, **IS GRANTED** as to the Community 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.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5636 at ¶ 2 (1993); see H.R. Rep. No. 102-628, at 30 (1992) (Congress “strongly prefers competition and the development of a competitive marketplace to [rate] regulation.”).

¹⁵ Granite Falls Comments at 8-10.

¹⁶ Mediacom Reply at 4. See also *Coxcom, Inc. D/B/A/ Cox Communications Orange County*, 22 FCC Rcd 4522, 4524 ¶ 5 (2007).

¹⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8333-E

COMMUNITIES SERVED BY MEDIACOM MINNESOTA LLC

Community	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Granite Falls	MN0546, MN0547	18.68%	1,344	251

*CPR = Percent of competitive DBS penetration rate.