

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

In the Matter of)	
)	
Comcast Cable Communications, LLC, on behalf)	CSR-8159-E
of its subsidiaries and affiliates)	CSR-8165-E
)	CSR-8169-E
Petitions for Determination of Effective)	
Competition in New Jersey Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: March 21, 2016

Released: March 21, 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 petitions 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”). 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”),¹ and the Commission’s implementing rules,² 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”).³ The New Jersey Division of Rate Counsel (the “DRC”) filed oppositions to the petitions.⁴ Comcast filed replies.⁵

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ Comcast’s petition in CSR 8159-E also alleged low penetration effective competition (47 U.S.C. § 543(l)(1)(A)) in its Bedminster, New Jersey franchise area (NJ0572), and its petition in CSR 8169-E alleged low penetration effective competition in its Hammonton and Washington, New Jersey franchise areas (NJ0103 and NJ0446, respectively) and competing provider effective competition in its Mannington, New Jersey franchise area (NJ0612). On July 30, 2009, Comcast filed a Motion to Withdraw Bedminster, New Jersey from Petition for Special Relief, and on September 8, 2009, Comcast filed a Motion to Withdraw Hammonton, Mannington, and Washington, New Jersey from Petition for Special Relief. The Motions seek to withdraw those communities without prejudice. No opposition was filed to either Motion. We grant the Motions. In addition, we note that the Township of Mannington indicated an interest in filing a response to Comcast’s Petition in CSR 8169-E. See Consent Motion for Extension of Time filed by the Township of Mannington (Aug. 3, 2009). After Comcast withdrew its Petition for Mannington, the Township advised Media Bureau staff that it no longer wished to file a response.

⁴ See Comments of the New Jersey Division of Rate Counsel in Opposition to Comcast’s Petition for Effective Competition in CSR Nos. 8159-E, 8165-E, and 8169-E (“DRC Comments”). The DRC also filed Supplemental Comments for CSR Nos. 8159-E and 8169-E (“DRC Supplemental Comments”). Comcast filed no response to the DRC Supplemental Comments.

⁵ See Reply to Opposition in CSR Nos. 8159-E, 8165-E, and 8169-E (“Comcast Replies”).

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.⁶ 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.⁷ For the reasons set forth below, we grant Comcast's petitions.

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.⁸ 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.⁹ 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.¹⁰ The DRC 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.¹¹ 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."¹² The DRC argues that Comcast has not satisfied the second part of the competing provider effective competition test for several reasons. First, the DRC argues that Comcast should have used household and satellite penetration data that is reasonably contemporaneous to the date the petitions were filed.¹³ Comcast responds, and we

⁶ 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*").

⁷ See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

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

⁹ 47 C.F.R. § 76.905(b)(2)(i).

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

¹¹ 47 C.F.R. § 76.905(b)(2)(ii).

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

¹³ DRC Comments at 4-6.

agree, that the DRC did not provide any updated or alternative data that it found to be more reliable, and therefore Comcast's use of census household figures for each community was proper and fully consistent with Commission precedent.¹⁴ Second, the DRC argues that the subscriber tracking reports from the Satellite Broadcasting and Communications Association ("SBCA") referenced in Comcast's petitions do not take into account any cancellations that occurred between the time the reports were purchased and the date Comcast's petitions were filed.¹⁵ Comcast responds, and we agree, that the DRC provides no evidence that any cancellations actually occurred or were significant enough in number to undermine the DBS penetration figures provided in the petitions.¹⁶ Third, the DRC also asserts that Comcast failed to submit the analysis and work papers that underlie and support its calculation of satellite penetration, and instead only provided the zip codes used and the results generated by the SBCA.¹⁷ Comcast responds, and we agree, that the DRC has shown no analytical flaw in the methodology, nor has the DRC identified even a single zip code that Media Business Corporation ("MBC") incorrectly considered to be within a particular community.¹⁸

6. Finally, in its Supplemental Comments the DRC argues that Comcast failed to submit evidence to substantiate that it provides service to the entirety of each franchise area.¹⁹ The case that the DRC cites to support this claim does not, in fact, require cable operators seeking a finding of effective competition to establish that they serve the entirety of each franchise area.²⁰ For the above reasons, the arguments put forth by the DRC 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 the DRC, we thus find that the second prong of the test is satisfied.

¹⁴ Comcast Replies at 2-3. *See also Comcast Cable Communications, LLC*, 24 FCC Rcd 1780, 1783, ¶ 13 (2009).

¹⁵ DRC Comments at 6.

¹⁶ Comcast Replies at 3-4.

¹⁷ DRC Comments at 6-7. DRC argues that without an overlay mapping to know whether the franchise boundaries are properly associated with the township boundaries by zip code, Comcast's reported data is not verifiable and hence is unreliable.

¹⁸ Comcast Replies at 4-5. Comcast states that it obtained a list of relevant zip plus four codes for the respective franchise areas from MBC, and then submitted this zip plus four list to the SBCA. The SBCA in turn provided a report detailing the number of DBS subscribers associated with the individual zip plus four codes, as well as a summary of the total number of DBS subscribers in each of the franchise areas. Comcast notes that all of this information was included in exhibits to its petitions, which were provided to the DRC. *See also Comcast Cable Communications, LLC*, 24 FCC Rcd at 1786, ¶ 19.

¹⁹ DRC Supplemental Comments at 1-2, citing *County of New Hanover, North Carolina Petition for Recertification to Regulate the Basic Cable Service Rates of Charter Communications, Inc., d/b/a Falcon Cable Media*, 24 FCC Rcd 10130, 10135, ¶ 19 (2009) ("*New Hanover*").

²⁰ *See New Hanover*, 24 FCC Rcd at 10135, ¶ 20 ("The Company's inability to establish the dimensions of its actual service area leaves uncertain the number of DBS subscribers and households in that service area and whether the ratio of those numbers satisfies the statutory test."). The *New Hanover* decision has no relevance to this proceeding. In contrast to *New Hanover*, there is no argument that Comcast "redefined" its franchise area or uncertainty regarding the extent of Comcast's franchise area in any of the communities relevant to the DRC Supplemental Comments.

III. ORDERING CLAUSES

7. 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** as to the Communities listed on Attachment A 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 Attachment A **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
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²¹ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR-8159-E, CSR-8165-E, and CSR-8169-E

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

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR-8159-E				
Bernardsville Borough	NJ0505	15.57	2723	424
Bethlehem Township	NJ0602	32.23	1266	408
Branchburg Township	NJ0504	21.13	5272	1114
Clinton Town	NJ0492	18.54	1068	198
East Amwell Township	NJ0586	23.59	1581	373
Far Hills Borough	NJ0616	20.11	368	74
Franklin Somerset Township*	NJ0510	24.58	21957	5396
Hillsborough Township*	NJ0463	15.60	12639	1972
CSR-8165-E				
Riverside Township	NJ0107	23.57	2978	702
Westampton Township	NJ0073	25.54	2525	645
Willingboro Township*	NJ0074	29.82	11105	3311
CSR-8169-E				
Alloway Township	NJ0603	36.50	948	346
Bridgeton City*	NJ0102	23.53	6146	1446
Chesilhurst Borough	NJ0581	15.62	493	77
Commercial Township	NJ0518	15.38	1873	288
Deerfield Township	NJ0599	19.35	1013	196
Downe Township	NJ0519	22.95	658	151
Elk Township	NJ0521	18.92	1263	239
Elmer Borough	NJ0522	18.51	524	97
Elsinboro Township	NJ0604	19.02	468	89
Fairfield Township	NJ0598	17.12	2296	393
Hopewell Township	NJ0070	26.54	1628	432
Lr Alloways Creek Township	NJ0620	32.47	693	225
Oldmans Township	NJ0514	27.52	654	180
Penns Grove Township	NJ0517	20.47	1827	374
Quinton Township	NJ0605	23.65	1074	254
Upper Pittsgrove Township	NJ0525	37.61	1207	454
Winslow Township*	NJ0452	17.69	13276	2348

CPR = Percent of competitive DBS penetration rate.

* = Updated U.S. Census estimates as reported by 2005-2007 American Community Survey were available and utilized for this community.