

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

In the Matter of	)	
	)	
Mediacom Southeast LLC,	)	CSR-6868-E
On behalf of its subsidiaries and affiliates	)	
	)	
Petition For Determination of Effective	)	
Competition in:	)	
Lincoln, KY (KY1155)	)	
Rockcastle, KY (KY1157)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 20, 2007**

**Released: July 23, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers a petition for special relief that Mediacom Southeast, LLC (“Mediacom”) has filed with the Commission 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 pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in two Kentucky communities (“Franchise Areas”) as listed in Attachment A. Rockcastle filed an opposition.<sup>3</sup>

**II. BACKGROUND**

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(1) of the Communications Act

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> 47 C.F.R. § 76.905(b) (4).

<sup>3</sup> On February 23, 2007, the Commission sent letters to various cable operators, including Mediacom in the above-captioned matter (Mediacom Southeast, LLC, CSR-6868-E), informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association (“SBCA”) report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission’s letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petitions. No opposition to Mediacom’s filing has been received by the Commission.

<sup>4</sup> 47 C.F.R. § 76.906.

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> A finding of effective competition exempts a cable operator from rate regulation and certain other Commission cable regulations.<sup>7</sup>

3. Section 623(l) of the Act provides that a cable operator is subject to effective competition if any one of the four tests for effective competition set forth therein is met.<sup>8</sup> The “competing provider” test, set forth in Section 623(l)(1)(B) of the Communications Act, provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), 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>9</sup> The “low penetration” test for effective competition set forth in Section 623(l)(1)(A) of the Communications Act, provides that a cable operator is subject to effective competition if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.<sup>10</sup>

### III. DISCUSSION

#### A. Competing Provider Effective Competition

4. Mediacom alleges that it subject to “competing provider” effective competition in Lincoln, Kentucky. Under the first prong of the competing provider test, Mediacom must show that the franchise area is served by at least two unaffiliated MVPDs, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. The second prong of the competing provider test requires that households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.<sup>11</sup> Mediacom admits that it is not the largest MVPD in Lincoln and does not identify which of the DBS providers is the largest MVPD.<sup>12</sup> Because Mediacom does not identify which MVPD is the largest MVPD in Lincoln, we cannot with any certainty conclude that the aggregate subscribership of MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.<sup>13</sup> In Lincoln, the combined DBS penetration rate is 29.55 percent and Mediacom's

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

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> See 47 C.F.R. §76.905.

<sup>8</sup> See 47 U.S.C. § 543(l)(1)(A)-(D).

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

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

<sup>11</sup> 47 U.S.C. §76.905(e).

<sup>12</sup> See Petition at 6.

<sup>13</sup> See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (2002). In circumstances where the largest MVPD is unable to be identified, the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Mediacom is the largest MVPD provider in the Franchise Areas and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Franchise Areas and determine that Mediacom's subscribership is greater than 15 percent. When both determinations may be made, then the second prong of the competing provider test is met.

penetration rate is 1.04 percent.<sup>14</sup> Therefore, Mediacom has not established that Lincoln is subject to competing provider effective competition.<sup>15</sup> As noted below, however, Mediacom has met its burden with regard to the low penetration test for effective competition.

## **B. Low Penetration Effective Competition**

5. Mediacom argues that it is subject to effective competition in the Franchise Areas under the “low penetration” test because Mediacom serves less than 30 percent of the local households in these franchise areas.<sup>16</sup> Mediacom compared the number of subscribers to its cable system serving the Franchise Areas to the U.S. Census household figures for each community.<sup>17</sup> This comparison revealed that Mediacom subscribership in Lincoln is 1.04 percent, and in Rockcastle, 2.02 percent.<sup>18</sup> Based on this evidence, as summarized in revised Exhibit A, Mediacom is subject to effective competition in these communities under the low penetration test for effective competition.

6. In opposition, Rockcastle County argues that DBS subscribership data is irrelevant because “the system is exclusively on the land or residence of the landowner and does not affect other landowners or county property in any fashion.”<sup>19</sup> The meaning of “system” in this context is unclear. The term “system” may reference DBS service or the local cable system serving the cable communities. Under either interpretation, however, we do not find this argument relevant or persuasive. First, because we conclude that Mediacom is subject to low penetration effective competition, our analysis does not depend upon competitive comparisons with other providers. Second, even were such arguments presented in the competing provider context, the focus of our inquiry is whether DBS services offer a comparable and competitive service with the largest MVPD.<sup>20</sup>

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<sup>14</sup> See Petition at 7-8.

<sup>15</sup> See, e.g., *Mediacom Illinois LLC, et. al.*, 21 FCC Rcd at 1177-78.

<sup>16</sup> See Petition at 8.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See Response to Petition for Special Relief at 1.

<sup>20</sup> See Response, Attachment, at 5. Furthermore, Rockcastle County Ordinance Number 010, provided by Rockcastle County, expressly states that the community antenna television system (“CATV”) system serving Rockcastle may be built across public property.

**IV. ORDERING CLAUSES**

7. Accordingly, **IT IS ORDERED** that the Petition for Determination of Effective Competition in the Franchise Areas filed by Mediacom Southeast LLC, **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any local franchising authority in the Franchise Areas overseeing Mediacom Southeast LLC, **IS REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>21</sup> 47 C.F.R. § 0.283.

## Attachment A

## CSR-6868-E

**Cable Operator Subject to Low Penetration Effective Competition**

<b>Community</b>	<b>CUID</b>	<b>Mediacom Penetration</b>	<b>2000 Census Households+</b>	<b>Mediacom Subscribers</b>
Lincoln	KY1155	1.04%	9,206	96
Rockcastle	KY1157	2.02%	6,544	132

+ Household Data Figures, available at <http://factfinder.census.gov>.