

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

In the Matter of)
Comcast Cable Communications, LLC) CSR 7424-E
Petition for Determination of Effective)
Competition in various Michigan Communities)

MEMORANDUM OPINION AND ORDER

Adopted: June 19, 2008

Released: June 20, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as "Petitioner," has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, and 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"). Petitioner alternatively claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules. 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. For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments (A and B).

1See 47 U.S.C. § 543(a)(1).

247 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

3Comcast additionally relies on the subscriber count of cable operator Wide Open West ("WOW") in the Allen Park, Grosse Ile, Melvindale, Riverview, Taylor, Trenton, and Woodhaven Communities.

447 C.F.R. § 76.906.

5See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

6See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. 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 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;⁷ this test is otherwise referred to as the “competing provider” test.

4. The first prong 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.⁸

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹¹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹³ Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹⁴ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.¹⁵ Petitioner sought to determine

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

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition at 3.

¹⁰Mediacom Illinois LLC et al., *Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹¹47 C.F.R. § 76.905(e)(2).

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5.

¹³*See* Petition at 5 and Exhibit 2.

¹⁴*See* Petition at 3.

¹⁵*Id.* at 6. In the Community of Augusta both the Comcast penetration figure and the aggregate DBS figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration

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the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code and zip code plus four basis where necessary.¹⁶

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities.¹⁸ Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁹ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to the Communities.

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exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁶Petition at 6-7.

¹⁷Petition at 8.

¹⁸Comcast’s data combines subscriber count information for DBS providers and cable operator WOW.

¹⁹47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. 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**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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

²⁰47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS & Other MVPD Subscribers
Allen Park	MI0411	44.01%	11,974	5,270*
Augusta	MI1199	41.26%	1,728	713
Berlin	MI1038	22.94%	2,511	576
Brownstown	MI0408	17.04%	8,322	1,418
Exeter	MI1937	38.11%	1,262	481
Flat Rock	MI0997	26.78%	3,181	852
Frenchtown	MI1239	20.17%	7,733	1,560
Gibraltar	MI0447	21.70%	1,728	375
Grosse Ile	MI1037	34.86%	4,122	1,437*
Inkster	MI0672	15.90%	11,169	1,775
London	MI1590	46.18%	1,009	466
Melvindale	MI0414	37.76%	4,499	1,699*
Raisinville	MI2011	19.00%	1,691	321
Riverview	MI0639	34.86%	5,352	1,866*
Rockwood	MI0413	22.45%	1,318	296
South Rockwood	MI0998	31.77%	450	143
Sumpter	MI1198	28.73%	4,110	1,181
Taylor	MI0434	35.54%	24,776	8,805*
Trenton	MI0638	42.37%	8,137	3,448*
Woodhaven	MI0448	36.17%	4,708	1,703*
York	MI1587	36.50%	1,901	694

*CPR = Percent of competitive DBS penetration rate.

*Allen Park- includes 916 DBS subscribers and 4,354 WOW subscribers.

- *Grosse Ile- includes 353 DBS subscribers and 1,084 WOW subscribers.
- *Melvindale- includes 463 DBS subscribers and 1,236 WOW subscribers.
- *Riverview- includes 382 DBS subscribers and 1,484 WOW subscribers.
- *Taylor- includes 2,165 DBS subscribers and 6,640 WOW subscribers.
- *Trenton- includes 851 DBS subscribers and 2,597 WOW subscribers.
- *Woodhaven- includes 492 DBS subscribers and 1,211 WOW subscribers.

*The DBS penetration rate for Allen Park, Grosse Ile, Melvindale, Riverview, Taylor, Trenton, and Woodhaven combines subscriber base information of the two DBS providers and cable operator WOW.

ATTACHMENT B

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Berlin	MI1038	2,511	220	8.76%
Exeter	MI1937	1,262	3	0.24%
Frenchtown	MI1239	7,733	502	6.49%
London	MI1590	1,009	35	3.47%
Raisinville	MI2011	1,691	65	3.84%