

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

In the Matter of:)
Bright House Networks) CSR 7060-E
Comcast Cable Communications, LLC) CSR 7062-E, 7068-E, 7125-E
Petitions for Determination of Effective)
Competition in various Alabama, Arkansas and)
Illinois Communities)

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 2007

Released: June 1, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers several petitions which Comcast Cable Communications, LLC and Bright House Networks, LLC (collectively "the Petitioners" or "operators") 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 Petitioners are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),1 and the Commission's implementing rules,2 and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the "Communities"). No opposition to any petition was filed. Finding that Petitioners are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,3 as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.4 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.5

1 47 U.S.C. § 543(1).

2 47 C.F.R. § 76.905(b)(4).

3 47 C.F.R. § 76.906.

4 See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

5 See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. 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.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during the period.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A relating to the competing provider test are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that the operators have demonstrated that these communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the "competing provider" test is satisfied.

4. 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. The Petitioners sought to determine 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 basis. Bright House asserts that it is the largest MVPD serving the Eufaula franchise area.¹⁰ Comcast asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹¹ With respect to the communities of Alexander, Bryant, and Pulaski County, Arkansas, Comcast asserts that it cannot determine the largest MVPD in these communities because the SBCA aggregates the number of subscribers for the DBS subscribers and this number is larger than the Comcast subscribers in these

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

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ Bright House Petition at 7-8.

¹¹ Comcast Petitions at 5-6 (for CSRs 7062-E, 7068-E, 7125-E).

communities.¹² With regard to these communities, we are able to conclude that this portion of the test is met by analyzing the data submitted. The aggregate penetration rate for DBS, as well as the penetration rate for Comcast, exceeds 15 percent in each of these franchise areas and Comcast's penetration rate exceeds 24 percent in each of these three franchise areas.¹³

5. With regard to the communities of Channahon, Minooka, Plainfield, Romeoville, and Wadsworth, Comcast contends that while it is not the largest MVPD in these franchise areas, it still has satisfied the second prong of the competing provider test for them.¹⁴ Comcast claims to be subject to competing provider competition in these communities because DBS penetration exceeds 15 percent of occupied households, and because the number of Comcast subscribers also exceeds 15 percent of the occupied households, as reported by the 2000 Census.¹⁵ Comcast determined the competing provider penetration levels in the franchise areas by applying a five-digit zip code allocation method.¹⁶ To calculate the DBS firms' subscribership in each franchise area, Comcast purchased an Effective Competition Tracking Report ("ECTR") from the SBCA. The SBCA reports the total DBS and DTH subscribers for the relevant zip codes in Comcast's franchise area.¹⁷ To account for differences between the zip code boundaries used in the ECTR and the specific boundaries of the franchise areas, Comcast multiplied the SBCA zip code data by derived allocation percentages to estimate the number of DBS and DTH subscribers within the franchise areas.

6. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Petitioners have 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. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Petitioners Comcast and Bright House have submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to effective competition under the competing provider analysis.

B. Low Penetration Effective Competition

7. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁸ Comcast provided information showing that less than 30 percent of the households within the Grundy County franchise area subscribe to its cable services. Accordingly, we conclude that Comcast has demonstrated the existence of "low penetration" effective competition in Grundy County pursuant to our rules.

¹² Comcast Petition (CSR 7062-E) at 5-6.

¹³ *Id.* See Declaration of Peter Feinberg, dated November 13, 2006.

¹⁴ Comcast Petitions(CSR 7068-E) at 6 and (CSR 7125-E) at 5.

¹⁵ *Id.*

¹⁶ Comcast Petitions (CSR 7062-E, 7068-E, and 7125-E) at 6.

¹⁷ Comcast Petitions (CSR 7062-E, 7068-E and 7125-E) at 7.

¹⁸ 47 U.S.C § 543(l)(1)(A).

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions filed by Comcast Cable Communications, LLC and Bright House Networks, LLC for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the local franchising authorities overseeing Comcast Cable Communications, LLC and Bright House Networks, LLC **ARE REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁹47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition

BRIGHT HOUSE NETWORKS: 7060-E

Communities	CUIDS	CPR*	DBS Subscribers⁺	2000 Census Household
Eufaula	AL0074	19.82	1079.45	5447

COMCAST CABLE COMMUNICATIONS, LLC: 7062-E, 7068-E, 7125-E

Communities	CUIDS	CPR*	DBS Subscribers⁺	2000 Census Household
<u>CSR 7062-E</u>				
Alexander	AR0686	48.91%	135	276
Bryant	AR0271	51.50%	1,854	3,601
Jacksonville	AR0063	22.84%	2,487	10,890
Little Rock	AR0191	18.35%	14,193	77,352
North Little Rock	AR0069	19.08%	4,874	25,542
Pulaski County	AR0202 AR0147	34.15%	7,027	20,575
Sherwood	AR0070 AR0348	29.34%	2,581	8,798
<u>CSR 7068-E</u>				
Bolingbrook	IL0209	34.35%	5,982	17,416
Braidwood	IL0186	42.09%	776	1,843
Channahon	IL0317 IL0629	60.98%	1,390	2,279
Coal City	IL0187	46.18%	864	1,871
Crest Hill	IL0272	19.63%	879	4,478

Diamond	IL0283	45.73%	252	551
Joliet	IL0039	27.75%	10,042	36,182
Frankfort	IL1026	38.30%	1,309	3,418
Lemont	IL0573	27.50%	1,216	4,420
Lockport	IL0845	33.71%	1,888	5,599
Minooka	IL0316	85.50%	1,124	1,315
Mokena	IL0450	27.84%	1,309	4,703
Morris	IL0050	36.41%	1,759	4,831
New Lenox	IL1027	30.05%	1,759	5,853
Plainfield	IL1232	69.29%	2,990	4,315
Rockdale	IL1233	20.47%	156	762
Romeoville	IL0197	55.07%	3,725	6,764
Shorewood	IL0932	30.83%	791	2,565
Wilmington	IL0185	44.45%	885	1,991
<u>CSR 7125-E</u>				
Waukegan	IL0001	43.56%	12,104	27,787
Highwood	IL0430	21.99%	342	1,555
Park City	IL0469	18.96%	493	2,600
Libertyville	IL0525	21.03%	1,535	7,298
Mundelein	IL0526	24.91%	2,456	9,858
Wauconda	IL0527	33.00%	1,192	3,611
Grayslake	IL0528	29.02%	1,887	6,503
Deerfield	IL0613 IL1221	19.83%	1,273	6,420
Gurnee	IL0679	24.37%	2,590	10,629
Winthrop Harbor	IL1097	27.43%	650	2,370
Zion	IL1098	24.51%	1,851	7,552

Wadsworth	IL1111	62.26%	645	1,036
Third Lake	IL1196	30.37%	130	428
Green Oaks	IL1197	20.38%	220	1,079
Bannockburn	IL1318	20.00%	50	250
Lake Forest	IL1386	19.59%	1,310	6,687
Kenilworth	IL1400	19.31%	153	792
Riverwoods	IL1537	19.67%	248	1,261
Beach Park	IL1658	24.59%	894	3,636

Cable Operator Subject to Low Penetration Effective Competition

COMCAST CABLE COMMUNICATIONS, LLC: CSR 7068-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Grundy County	IL1181 IL1433 IL1828	3,950	633	16.03%

*CPR = Percentage of DBS penetration

+ = See Cable Operator Petitions