

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

In the Matter of:)	
)	
Mediacom Southeast LLC)	CSR-6705-E
)	
Mediacom Illinois LLC)	CSR-6731-E, 6732-E, 6733-E,
)	6735-E & 6746-E
Six Petitions for Determination of Effective)	
Competition in Twenty-Seven Local Franchise)	
Areas in Illinois)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2005

Released: September 28, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers six petitions filed with the Commission by Mediacom Southeast LLC and Mediacom Illinois LLC (“Mediacom”) pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Mediacom’s cable systems serving twenty-seven Illinois communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A.² No opposition to any petition was filed. We grant the petitions finding that the Mediacom cable systems are subject to effective competition in the listed Communities.

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, 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 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² Mediacom Illinois LCC filed an amendment on June 24, 2005 stating that it inadvertently included the City of Marseilles, Illinois in its effective competition petition (CSR-6731-E). Mediacom Illinois LLC states that the Commission previously determined that effective competition exists in Marseilles pursuant to a Memorandum Opinion and Order issued June 30, 2004 in conjunction with another petition Mediacom filed and identified as CSR-6239-E.

³ 47 C.F.R. § 76.906.

⁴ 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 fifteen percent of the households in the franchise area.⁶ Turning to the first prong of this test, 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 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH has become the fourth largest, MVPD provider.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 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 Mediacom cable systems have demonstrated that the 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.¹⁰ Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹¹ 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. Mediacom sought to determine the competing provider penetration in the Communities by using 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.¹² Mediacom asserts that it is the largest MVPD in the majority of the Communities

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 *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁹ *See* 47 C.F.R. § 76.905(g).

¹⁰ Mediacom Petitions at 5 and Exhibits B & C.

¹¹ *Id.* at 3-4 and Exhibit A.

¹² *Id.* at 6. The Commission has previously approved the zip code plus four methodology. *See, e.g., Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, 17 FCC Rcd 16652 (2002), *aff'd* 18 FCC Rcd 9649 (2003); *Vicksburg Video, Inc.*, 17 FCC Rcd 16659 (2002); *Kilgore Video, Inc.*, 17 FCC Rcd 16662 (2002).

because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹³ With respect to the Community of Godley, Mediacom asserts that it cannot determine the largest MVPD in that Community because the SBCA aggregates the number of subscribers for the DBS providers (76) and this number is larger than the Mediacom subscribers (52) in Godley.¹⁴

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom 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 those noted Communities. With regard to the Community of Godley, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁵ In Godley, the combined DBS penetration rate is 38 percent and Mediacom's penetration rate is 26 percent.¹⁶ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom Southeast LLC and Mediacom Illinois LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Southeast LLC and Mediacom Illinois LLC in the affected Communities **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹³ *Id.* at 6. Mediacom states that its subscriber numbers are an estimate derived from its billing system using addresses to which Mediacom provides service. *Id.* at n.20.

¹⁴ Mediacom Petition (CSR-6735-E) at 6.

¹⁵ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁶ 76 DBS subscribers ÷ 200 Godley 2000 Census Households = 38%; 52 Mediacom subscribers ÷ 200 Godley 2000 Census Households = 26%.

¹⁷ 47 C.F.R. § 0.283.

Attachment A

Mediacom Cable Systems Subject to Competing Provider Effective Competition

Communities	CUIDS	CPR*	CSR-6705-E	
			2000 Census Households+	DBS Subscribers+
Bush, Village	IL0658	23.64%	110	26
Cobden, Village	IL0815	26.13%	421	110
Elkville, Village	IL0646	19.50%	400	78
Mound City, City	IL0642	32.62%	279	91
Mounds City	IL0641	20.39%	407	83
Royalton, Village	IL0648	16.86%	516	87
Zeigler, City	IL0649	24.02%	712	171
CSR-6731-E				
Dayton, Township	IL1572	32.27%	629	203
Naplate, Village	IL0053	18.45%	233	43
Ottawa, City	IL0054	24.26%	7,510	1,822
CSR-6732-E				
Stewardson, Village	IL1171	20.98%	305	64
Windsor, City	IL0828	22.32%	466	104
CSR-6733-E				
Kangley, Village	IL0953	17.39%	115	20
Reading, Township	IL0076	15.62%	960	150
Streator, City	IL0077	16.97%	5,746	975
CSR-6735-E				
Dwight, Village	IL0023	16.44%	1,667	274
Essex, Village	IL1277	25.63%	199	51
Godley, Village	IL1279	38.00%	200	76
Odell, Village	IL0801	15.93%	408	65

CSR-6746-E

El Paso, City	IL0654	20.71%	980	203
Germantown Hills	IL0731	17.82%	696	124
Goodfield, Village	IL0792	15.72%	229	36
Hudson, Village	IL0796	26.43%	507	134
Lacon, City	IL0588	21.33%	797	170
Lexington, City	IL0797	20.26%	760	154
Minonk, City	IL0157	17.95%	841	151
Varna, Village	IL0949	22.60%	177	40

CPR = Percent DBS penetration

+ = See Mediacom Petitions