

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7577-E
)	
Petition for Determination of Effective)	
Competition in 48 Pennsylvania Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: February 19, 2009

Released: February 23, 2009

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 listed on Attachment B and hereinafter referred to as Group B Communities is 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 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 additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities 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,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 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 Attachment A.

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).

³47 C.F.R. § 76.906.

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

⁵See 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;⁶ 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.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B 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.⁸ 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.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ 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 programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ 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

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 3-4.

⁹Mediacom 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).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5.

¹²*See* Petition at 5 and Exhibit 2.

¹³*See* Petition at 3.

area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B 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 Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, 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 Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B 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 Group B Communities.

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.¹⁷ 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 C, 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 Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

¹⁴*Id.* at 6. Comcast cannot determine the largest MVPD in the following Communities: Amwell, Buffalo, Darlington Township and Somerset. Comcast states that it is immaterial in these Communities which MVPD is the largest because both the DBS and the cable numbers surpass the 15 percent threshold. In cases where both DBS and cable penetration exceed 15 percent of the occupied households, the Commission has recognized that the second prong of the competing provider test is satisfied. With regard to these Communities, Buffalo and Somerset also satisfy the low penetration test in addition to the competing provider test. Additionally, in the Communities of Parks and South Huntingdon where Comcast is the largest MVPD, the low penetration test is also satisfied.

¹⁵Petition at 7-8. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of households in the franchise area over the number of households in the zip area). *Id.* See, e.g., Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁶Petition at 7-8 and Exhibit 6.

¹⁷47 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.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

Communities	CUIDS
Allegheny	PA0295 PA2997
Amwell	PA1230
Apollo	PA0296
Arnold	PA0612
Avonmore	PA2186
Big Beaver	PA2022
Brackenridge	PA0613
Brighton	PA2019
Buffalo	PA2776
Canton	PA0606
Cheswick	PA0615
Clinton	PA3361
Darlington Township	PA2017
Darlington Borough	PA2020
East Washington	PA0607
Enon Valley	PA2023
Fawn	PA1804
Findlay	PA1971
Franklin	PA1695
Frazer	PA1805
Gilpin	PA0731
Greene Township	PA3482
Hanover Township (Beaver County)	PA3480

Harmar	PA0727
Harrison	PA0619
Hopewell	PA0151
Leechburg	PA0299
Lower Burrell	PA0621
McDonald	PA0708
New Beaver	PA2643
New Galilee	PA2021
New Kensington	PA0624
New Sewickley	PA2223
North Franklin	PA0608
Oklahoma	PA0301
Parks	PA0729
Somerset	PA3040
South Beaver	PA2018 PA3348
South Franklin	PA2647
South Huntingdon	PA2198
South Strabane	PA0609
Springdale	PA0726
Tarentum	PA0630
Vandergrift	PA0302
Washington City	PA0610
Washington Township	PA0728
Waynesburg	PA0345
West Leechburg	PA1523

ATTACHMENT B

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Allegheny	PA0295 PA2997	22.80%	3053	696
Amwell	PA1230	31.30%	1492	467
Apollo	PA0296	23.75%	762	181
Arnold	PA0612	18.77%	2589	486
Avonmore	PA2186	29.65%	344	102
Big Beaver	PA2022	22.44%	869	195
Brackenridge	PA0613	22.49%	1507	339
Brighton	PA2019	16.42%	2783	457
Buffalo	PA2776	39.97%	763	305
Canton	PA0606	20.37%	3579	729
Cheswick	PA0615	19.93%	853	170
Darlington Borough	PA2020	40.98%	122	50
Darlington Township	PA2017	44.76%	782	350
East Washington	PA0607	20.60%	903	186
Enon Valley	PA2023	60.14%	138	83
Fawn	PA1804	20.20%	985	199
Findlay	PA1971	16.66%	2028	338
Franklin	PA1695	40.52%	2157	874
Frazer	PA1805	22.39%	527	118
Gilpin	PA0731	24.95%	1034	258
Harmar	PA0727	18.20%	1522	277

Harrison	PA0619	19.47%	4796	934
Hopewell	PA0151	15.74%	5446	857
Leechburg	PA0299	25.25%	1109	280
Lower Burrell	PA0621	18.68%	5133	959
McDonald	PA0708	28.01%	1021	286
New Galilee	PA2021	43.68%	174	76
New Kensington	PA0624	18.64%	6519	1215
New Sewickley	PA2223	16.30%	2736	446
North Franklin	PA0608	20.47%	1964	402
Oklahoma	PA0301	23.20%	375	87
Parks	PA0729	18.86%	1108	209
Somerset	PA3040	27.59%	1051	290
South Beaver	PA2018 PA3348	24.31%	1090	265
South Franklin	PA2647	26.40%	1360	359
South Huntingdon	PA2198	25.80%	2461	635
South Strabane	PA0609	20.54%	3320	682
Springdale	PA0726	20.33%	797	162
Tarentum	PA0630	20.51%	2170	445
Vandergrift	PA0302	18.60%	2414	449
Washington City	PA0610	20.50%	6259	1283
Washington Township	PA0728	23.57%	2809	662
Waynesburg	PA0345	40.52%	1619	656
West Leechburg	PA1523	25.28%	542	137

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Buffalo	PA2776	763	136	17.82%
Clinton	PA3361	1,043	148	14.19%
Greene Township	PA3482	947	10	1.06%
Hanover Township Beaver County	PA3480	1288	141	10.95%
New Beaver	PA2643	652	40	6.13%
Parks	PA0729	1,108	316	28.52%
Somerset	PA3040	1,051	185	17.60%
South Huntingdon	PA2198	2461	712	28.93%