

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

In the Matter of:)	
)	
Coxcom, Inc. d/b/a Cox Communications Phoenix)	
)	CSR-5981-E
Petition for Determination of Effective)	
Competition in Eleven Arizona Communities)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 1, 2002

Released: November 4, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Coxcom, Inc. d/b/a Cox Communications Phoenix (“Cox”) has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the eleven above-captioned communities in Arizona (the “Communities”).¹ Cox alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended (“Communications Act”), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the local franchising authorities in the Communities to regulate basic cable service rates.² Cox claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and EchoStar Communications Corporation (“EchoStar”), and a cable overbuilder, CableAmerica Corporation (“CableAmerica”). No opposition to the petition was filed.

II. DISCUSSION

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 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. Based on the record

¹ 47 C.F.R. § 76.7. The Communities are: Mesa, Avondale, Buckeye, Carefree, Casa Grande, El Mirage, Fountain Hills, Goodyear, Litchfield Park, Surprise and Tolleson.

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

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

in this proceeding, Cox has met this burden.

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 fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of the competing provider test, DBS service 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.⁶ Cox has provided evidence of the advertising of DBS service in news media serving the Communities.⁷ We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.⁸ Cox has 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 areas. Cox 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 the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and EchoStar.⁹ Therefore, the first prong of the competing provider test is satisfied.

5. 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. Cox sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a franchise-specific zip code plus four basis.¹⁰ Cox has also obtained subscriber numbers for CableAmerica, a cable overbuilder operating in Mesa.¹¹ Cox asserts that it is the largest MVPD in each of the Communities except Buckeye because Cox's subscribership exceeds the aggregate DBS subscribership for each franchise area and the CableAmerica subscribership in Mesa.¹² Based upon the aggregate competitive subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,¹³ we find that Cox has demonstrated that the number of households

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

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ Petition at 5 and Exhibit 5.

⁸ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5 and Exhibit 3. Exhibit 3 contains the nationwide channel lineups of DirecTV and EchoStar.

⁹ Petition at 4-6.

¹⁰ *Id.* at 7-8 and Exhibit 8.

¹¹ *Id.* at 8 and Exhibit 4.

¹² *Id.* at n.10.

¹³ *See id.* at Exhibit 2.

subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in ten of the eleven Communities. With respect to Buckeye, although Cox is unable to determine the largest MVPD in this Community, assuming that one of the DBS providers is the largest MVPD, Cox's own subscriber penetration would satisfy the 15 percent threshold.¹⁴ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Cox has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Coxcom, Inc. d/b/a Cox Communications Phoenix **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service in Mesa, Avondale, Buckeye, Carefree, Casa Grande, El Mirage, Fountain Hills, Goodyear, Litchfield Park, Surprise and Tolleson, Arizona **ARE REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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Deputy Chief, Policy Division, Media Bureau

¹⁴ *Id.* at n.10 and Exhibit 2 (601 Cox subscribers ÷ 2,158 Buckeye 2000 Census households = 0.278 or 27.8 %).

¹⁵ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR-5981-E

**COMMUNITIES SERVED BY
COXCOM, INC. D/B/A
COX COMMUNICATIONS PHOENIX**

Communities	CUIDS	CPR*	2000 Census Households⁺	Estimated Competitive Subscribers^{+‡}	Cox Subscribers⁺
Mesa	AZ0087	27.7	146,643,688	65,974	
Avondale	AZ0254	26.3	10,640	2,798	5,610
Buckeye	AZ0128	27.8	2,158	636	601
Carefree	AZ0189	53.5	1,389	743	1,011
Casa Grande	AZ0047	29.3	8,920	2,616	5,240
El Mirage	AZ0272	59.3	2,121	1,257	2,108
Fountain Hills	AZ0177	23.7	8,653	2,054	8,589
Goodyear	AZ0176	59.6	6,179	3,684	4,878
Litchfield Park	AZ0129	33.1	1,508	499	1,136
Surprise	AZ0170	33.4	12,484	4,174	13,021
Tolleson	AZ0210	24.7	1,432	353	429

*CPR = Percent of competitive penetration rate. In Buckeye, Cox's own subscriber penetration is used since it is unable to determine the largest MVPD in that franchise area.

⁺See Petition at n.10 and Exhibits 2, 4, 8.

[‡]Data for Mesa includes both DBS and CableAmerica subscribers; all other communities represent DBS subscribers only.