

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

In the Matter of:)	
)	
Mediacom Southeast LLC)	
)	CSR-5994-E
Petition for Determination of Effective)	
Competition in Unincorporated Santa Rosa County,)	
Florida (FL0728, FL0519))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2003

Released: April 24, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Southeast LLC (“Mediacom”) has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in unincorporated Santa Rosa County, Florida (“Santa Rosa”).¹ Mediacom alleges that its cable system serving Santa Rosa is 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 authority in Santa Rosa to regulate basic cable service rates.² Mediacom claims the presence of effective competition in Santa Rosa stems from the competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. and EchoStar Communications Corporation (“EchoStar”). Santa Rosa filed an opposition to the petition, to which Mediacom filed a reply.³ Both parties also filed supplemental pleadings in connection with this proceeding.⁴

¹ 47 C.F.R. § 76.7. Mediacom’s petition identifies two community unit identifiers associated with its Santa Rosa franchise, FL0728 and FL0519. While FL0519 is referred to as “Gulf Breeze,” Mediacom explains in its reply that the community unit is associated with the portion of unincorporated Santa Rosa County adjacent to the City of Gulf Breeze, rather than the City itself. Reply at 1 n.2. As such, Mediacom clarifies that its petition only seeks revocation of the certification of the local franchising authority in Santa Rosa and not of that in Gulf Breeze. *Id.*

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

³ The opposition filed by Santa Rosa in this proceeding was also joined by the City of Gulf Breeze. Opposition at 1. In light of Mediacom’s clarification in its reply that it only seeks revocation of the local franchising authority in Santa Rosa, we will consider the arguments made in the opposition in so far as they apply to Santa Rosa. Reply at 1 n.2.

⁴ Following the regular pleading cycle in this proceeding, Santa Rosa filed a Motion to Strike and Compel the
(continued...)

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 76.905 of the Commission's rules.⁶ 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 in this proceeding, Mediacom 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.⁷

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.⁸ Mediacom has provided evidence of the advertising of DBS service in news media serving Santa Rosa.⁹ 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.¹⁰ Mediacom has demonstrated that Santa Rosa is 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. Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Santa Rosa, that there exists no regulatory, technical, or other impediments to households within Santa Rosa taking the services of the DBS providers, and that potential subscribers in Santa Rosa have been made reasonably aware of the MVPD services of DirecTV and EchoStar.¹¹ Therefore, the first prong of the competing provider test is

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Production of Documents ("Motion"), to which Mediacom filed a second reply ("Reply to Motion"). Santa Rosa also filed a Response to Mediacom's second reply ("Response"). Finally, Mediacom filed two letters with the Commission supplementing the record in this proceeding. See Letter from Bruce Gluckman, VP Legal & Regulatory Affairs, Mediacom to Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau, FCC (Jan. 8, 2003) ("*1/8/03 Letter*"); Letter from Bruce Gluckman, VP Legal & Regulatory Affairs, Mediacom to Marlene Dortch, Secretary, FCC (Jan. 14, 2003) ("*1/14/03 Letter*"). In the interest of having a complete record in this proceeding, and since both parties have had an opportunity to fully articulate their positions without prejudice, we will accept the supplemental filings made by both parties and deny Santa Rosa's motion to strike.

⁵ 47 C.F.R. § 76.906.

⁶ 47 C.F.R. § 76.905.

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

⁸ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁹ Petition at 4 and Exhibit A; *1/8/03 Letter* at Exhibit A.

¹⁰ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4-5 and Exhibits B-D. Exhibits B and C contain the nationwide channel lineups of EchoStar and DirecTV and Exhibit D includes the channel line-up for Mediacom's cable system serving Santa Rosa.

¹¹ Petition at 2-5.

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. Mediacom sought to determine the competing provider penetration in its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within Santa Rosa on a franchise-specific zip code plus four basis.¹² In its opposition, Santa Rosa questions the reliability of the DBS subscriber data supplied by Mediacom and asks that the operator identify the zip codes provided by Mediacom to SkyTrends so that Santa Rosa can verify that the DBS subscriber totals for the community do not contain any residents living in surrounding areas.¹³ In reply, Mediacom notes that the zip code plus four methodology and mapping software utilized by SkyTrends automatically eliminates any DBS subscriber records associated with zip code plus four extensions that fall outside the relevant cable franchise area.¹⁴ Mediacom also submits documentation reflecting that SkyTrends does not normally release any zip code plus four data beyond its general methodology and the aggregate DBS subscriber total for the franchise area in question.¹⁵ In an effort to satisfy Santa Rosa's concerns regarding the accuracy of SkyTrends' data, however, Mediacom requested from SkyTrends a list of the zip code plus four extensions mapped within Santa Rosa County without the associated DBS subscriber totals for each extension.¹⁶ Mediacom submits that it has supplied Santa Rosa with sufficient data to verify the reliability of SkyTrends' subscriber totals.¹⁷

6. Pursuant to Section 76.907(c) of the Commission's rules, cable operators may request subscriber information from competitors for effective competition purposes, however, such subscriber information may be limited to numerical totals.¹⁸ The Commission has accepted DBS subscriber reports from SkyTrends on behalf of the DBS providers in satisfaction of this requirement.¹⁹ Pursuant to Section 76.7(a)(3) of the Commission's rules, Mediacom sent a service copy of its Petition, including the subscriber report and methodology it received from SkyTrends, to Santa Rosa.²⁰ Under the circumstances of the instant case, we believe that Mediacom has satisfied its obligations under the Commission's rules regarding the provision of subscriber information for effective competition purposes.

¹² *Id.* at 6.

¹³ Opposition at 7-11.

¹⁴ Reply at 4; see also *1/8/03 Letter* at Exhibit C.

¹⁵ Reply at Exhibit 1. In its Opposition, Santa Rosa questions the applicability of the SkyTrends methodology provided by Mediacom since the methodology does not detail how subscriber data was specifically obtained for Mediacom franchises in the state of Florida. Opposition at 1, 5. According to SkyTrends, the failure to identify Mediacom's Florida franchises in the methodology was a clerical error which has since been corrected. Reply at 10, n.36 and Exhibit 4.

¹⁶ Reply to Motion at 6.

¹⁷ *Id.*

¹⁸ See 47 C.F.R. § 76.907(c).

¹⁹ See, e.g., *Mountain Cable Company d/b/a Adelpia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

²⁰ See 47 C.F.R. § 76.7(a)(3).

7. To the extent that Santa Rosa has expressed concerns regarding the accuracy of SkyTrends' data,²¹ we believe that the information provided in response by Mediacom and SkyTrends addresses those concerns. As reflected in documentation provided to Mediacom by SkyTrends, the zip code plus four mapping and allocation process utilized by SkyTrends eliminates from its DBS subscriber total any residents associated with zip code plus four extensions outside of Santa Rosa, as well as any multiple receiver data and subscribers with general delivery and non-deliverable zip code plus four extensions.²² In addition, Mediacom has provided to Santa Rosa SkyTrends' list of the zip code plus four extensions mapped to Mediacom's franchise area. On this basis, we believe that Mediacom has provided Santa Rosa with sufficient information to verify the accuracy of the SkyTrends mapping process and deny Santa Rosa's motion to compel the production of documents.²³

8. Mediacom asserts that it is the largest MVPD in Santa Rosa because Mediacom's subscribership exceeds the aggregate DBS subscribership for the franchise area.²⁴ Based upon the 29.7 percent aggregate DBS subscriber penetration level, calculated using 2000 Census household data,²⁵ 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 Santa Rosa. 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 its cable system serving Santa Rosa is subject to effective competition.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Mediacom Southeast LLC **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in unincorporated Santa Rosa County, Florida **IS REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

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

²¹ Opposition at 5-11; Motion at 3-4; Response at 1-2.

²² Reply to Motion at 4-6 and Exhibit B; *see also* Reply at 3-5, 8-11.

²³ 1/14/03 Letter at 1.

²⁴ Petition at 6 and Exhibit E.

²⁵ *See id.* at Exhibits F-G (11,424 DBS subscribers ÷ 38,512 Santa Rosa 2000 Census Households = 0.2966).

²⁶ 47 C.F.R. § 0.283.