

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

In the Matter of:)	
)	
MCC Iowa LLC)	
)	CSR-5987-E
Petition for Determination of Effective)	
Competition in Le Mars, IA IA0102)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2003

Released: April 23, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Iowa 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 Le Mars, Iowa ("Le Mars").¹ Mediacom alleges that its cable system serving Le Mars 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 Le Mars to regulate basic cable service rates.² Mediacom claims the presence of effective competition in Le Mars stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). An opposition was filed by Le Mars.³

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵ 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.

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

³ Le Mars' Opposition asks that the Commission deny Mediacom's Petition, but does not substantively address the merits of the Petition. Opposition at 1.

⁴ 47 C.F.R. § 76.906.

⁵ 47 C.F.R. § 76.905.

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.⁶

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.⁷ Mediacom has provided evidence of the advertising of DBS service in news media serving Le Mars.⁸ 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.⁹ Mediacom has demonstrated that Le Mars 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 Le Mars, that there exists no regulatory, technical, or other impediments to households within Le Mars taking the services of the DBS providers, and that potential subscribers in Le Mars have been made reasonably aware of the MVPD services of DirecTV and EchoStar.¹⁰ 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. 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 Le Mars on a franchise-specific zip code plus four basis.¹¹ Mediacom asserts that it is the largest MVPD in Le Mars because Mediacom's subscribership exceeds the aggregate DBS subscribership for the franchise area.¹² Based upon the 29.3 percent aggregate DBS subscriber penetration level, calculated using 2000 Census household data,¹³ 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 Le Mars. Therefore, the second

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 Petition at 4 and Exhibit A; *see also* Letter from Bruce Gluckman, Vice President of Legal & Regulatory Affairs, Mediacom, to Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau, FCC at Exhibit A (Jan. 31, 2003).

⁹ *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 DirectTV and Exhibit D includes the channel line-up for Mediacom's cable system serving Le Mars.

¹⁰ Petition at 2-5.

¹¹ *Id.* at 6.

¹² *Id.* at 6 and Exhibit E.

¹³ *See id.* at Exhibits F-G (1065 DBS subscribers ÷ 3640 Le Mars 2000 Census Households = 0.2925).

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 Le Mars is subject to effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by MCC Iowa LLC **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Le Mars, Iowa **IS REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ 47 C.F.R. § 0.283.