

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

In the Matters of:)	
)	
The Helicon Group, L.P. d/b/a Charter Communications	)	File Nos. CSR 6016-E
)	
Comcast Cablevision of Lompoc, LLC	)	File No. CSR 6247-E
)	
MCC Missouri, LLC and Mediacom Southeast, LLC	)	File No. CSR 6253-E
)	
Mediacom Minnesota, LLC	)	File Nos. CSR 6013-E & 6014-E
)	
Charter Communications VI, LLC d/b/a Charter	)	File Nos. CSR 6045-E & 6046-E
)	
CoxCom, Inc. d/b/a Cox Communications of West Texas	)	File No. CSR 6170-E
)	
MCC Iowa, LLC	)	File Nos. 6160-E, 6161-E, 6162-E, 6215-E, 6217-E, 6218-E & 6221-E
)	
Marcus Cable of Alabama, LLC	)	File No. CSR 6171-E
)	
Texas Cable Partners, LP d/b/a Time Warner Cable	)	File No. CSR 6102-E
)	
CC Michigan, LLC d/b/a Charter Communications	)	File No. CSR 6137-E
)	
CC VIII, LLC d/b/a Charter	)	File No. CSR 6099-E
)	
Nineteen Unopposed Petitions for Determination of Effective Competition in Forty Seven Local Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: April 2, 2004

Released: April 6, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers nineteen unopposed petitions which cable operators (the "Cable Operators") have filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that such cable operators are subject to effective competition

pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the "Communities"). No oppositions to the petitions were filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

II. DISCUSSION

A. The "Competing Provider" Effective Competition Test

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.⁵ 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 multichannel video programming distributors ("MVPDs"), 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

3. In each of the petitions, the Cable Operators claim that 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, and in some instances by another unaffiliated MVPD. Turning to the first prong of the competing provider test, we find that the programming of the DBS providers, DirecTV and EchoStar, and of the other MVPDs, satisfies the Commission's programming comparability criterion. 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 The Cable Operators provided evidence of the advertising of DBS service in local and national media serving the franchise areas.⁸ Moreover, the two DBS providers' subscriber growth reached approximately 20.4 million as of June 30, 2003, comprising approximately 20% of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar the fourth largest, MVPD provider as of June 2003.⁹ We therefore conclude that the population of the Communities is 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

¹47 U.S.C. §§ 543(a)(2) & (l)(i)-(iv).

²47 C.F.R. § 76.905(b)(2).

³47 C.F.R. § 76.906.

⁴47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

⁶ Section 623(l)(1)(B) of the Communications Act sets forth the "competing provider" test. See 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁷See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸See e.g., Comcast Petition at 4 & Exhibit 1; Mediacom Petition at 3-4 & Exhibit 1.

⁹ *Tenth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 04-5 at ¶¶ 65-67 (rel. Jan. 28, 2004).

programming of the competing MVPDs satisfies the Commission's program comparability criterion because each offer more than 12 channels of video programming, including more than one non-broadcast channel.¹⁰ We find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs each of which offers comparable video programming to at least 50 percent of the households in their franchise areas.¹¹ Accordingly, we conclude that 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. The Cable Operators provided SkyTrends Effective Competition Tracking Reports utilizing U.S. Postal Zip Code data. The SkyTrends reports provide the number of DBS subscribers within the Communities.¹² The number of DBS subscribers is compared with the number of 2000 Census households in the Communities to demonstrate that the DBS MVPDs collectively have attained MVPD subscriber penetration levels ranging from 16.01 percent in Berlin Township, Minnesota to 47.54 percent in the City of West Branch Minnesota as more fully set forth on Attachment A.

5. In some instances where Zip Codes encompassed areas beyond the cable operators' franchise area, SkyTrends utilized Zip Code+4 data. Zip Code+4 data permits SkyTrends to more accurately determine whether DBS customers are located within the franchise area at issue. Using this information, SkyTrends removed from each Zip Code identified by the Cable Operators those DBS subscribers not located within the franchise area boundaries. The number of DBS subscribers actually located within the Communities were then compared with the number of 2000 Census franchise area households. In each case, the information provided by the Cable Operators established a sufficient basis for finding that the second prong of the competing provider test is met in the Communities.

B. The "Low Penetration" Effective Competition Test

6. Another test by which a cable system will be deemed subject to effective competition is if fewer than 30 percent of the households in the systems' franchise area subscribe to the system's service.¹³ The two Cable Operators listed on Attachment A provided information showing that less than 30 percent of the households within their franchise areas subscribe to their cable services. The Cable Operators' household data were taken from the 2000 Census. Therefore, we find that the two Cable Operators listed on Attachment A are subject to effective competition pursuant to the "low penetration" effective competition test in their franchise areas.

7. Based on the foregoing, we conclude that nineteen Cable Operators listed on Attachment A have submitted sufficient evidence to demonstrate that their cable systems are subject to effective competition.

¹⁰47 C.F.R. § 76.905(g); *see e.g.*, Mediacom Petition at 4-5 & Exhibits 2 & 3; Comcast Petition at 4-5 & Exhibits B & D.

¹¹ Evidence with respect to the other MVPDs was comparable, in all essential respects to that provided with respect to the DBS providers.

¹²*See e.g.*, Comcast Petition at 5-7 & Exhibits 4, 5 & 6; Mediacom Petition at 6-8 & Exhibits G & F..

¹³*See* 47 U.S.C § 543(I)(I)(A) & 47 C.F.R. § 76.905(b)(1) (the "low penetration" effective competition test).

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions filed by the Cable Operators listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE HEREBY GRANTED**.

9. **IT IS FURTHER ORDERED** that any certification to regulate basic cable services granted to any of the franchising authorities overseeing the Cable Operators **IS HEREBY REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

¹⁴47 C.F.R. § 0.283.

ATTACHMENT A

Cable Operators Subject to “Competing Carrier” Effective Competition

Franchise Areas	DBS Subscribers	Households	DBS Penetration Levels
Comcast Cablevision of Lompoc, LLC; CSR 6247-E			
Lompoc, CA	2,474	13,059	18.94%
Buellton, CA	308	1,433	21.49%
Santa Maria, CA	4,829	22,146	21.81%
Solvang, CA	353	2,185	16.16%
MCC Missouri LLC and Mediacom Southeast LLC; CSR 6253-E			
Battlefield, MO	286	857	33.37%
Strafford, MO	222	683	32.50%
Walnut Grove, MO	50	264	18.94%
Willard, MO	396	1,154	34.32%
Greene County, MO*	7,870	25,492	30.87%
*Unincorporated portion of county.			
Mediacom Minnesota LLC; CSR 6013-E			
Cloquet, MN	1,079	4,636	23.27%
The Helicon Group, LP d/b/a Charter Communications; CSR 6016-E			
Haverhill/Woodsville, NH ¹⁵	657	2,212	29.7%
Charter Communications VI, LLC d/b/a Charter CSR 6045-E			
Jennings, LA	1,419	6,838	20.75%
CoxCom, Inc. d/b/a Cox Communications of West Texas; CSR 6170-E¹⁶			
Midland, TX	6,041	35,674	16.93%
Mediacom Minnesota LLC; CSR 6014-E			
Savage, MN	1,624	6,807	23.86%
Marcus Cable of Alabama, LLC; CSR 6171-E			
Selma, AL	1,586	8,196	19.35%

¹⁵ The franchise area consists of both Haverhill and Woodsville, NH. See Supplement to Petition at 1-7.

¹⁶ Because we find that CoxCom is subject to competing provider effective competition in its Midland, TX franchise area, we need not address its arguments related to “LEC” effective competition.

ATTACHMENT A (Cont'D)
Cable Operators Subject to “Competing Carrier” Effective Competition

Franchise Areas	DBS Subscribers	Households	DBS Penetration Levels
MCC Iowa LLC			
CSR 6160-E; CSR 6161-E; CSR 6162-E; CSR 6215-E; CSR 6217-E; CSR 6218-E; & CSR 6221-E			
Ankeny, Iowa	1,828	10,339	17.68%
Belmond, Iowa ¹⁷	327	1,119	29.22%
Clarion, Iowa	323	1,255	25.74%
Dyersville, Iowa	356	1,578	22.56%
Monticello, Iowa	441	1,538	28.67%
Story City, Iowa ¹⁸	244	1,321	18.47%
Sumner, Iowa	183	888	20.61%
Texas Cable Partners, L.P. d/b/a Time Warner Cable; CSR 6102-E			
Cureo, TX	1,181	4,295	27.50%
Kerrville, TX	3,262	14,921	21.86%

¹⁷ The city of Belmond filed a letter simply opposing the petition, but provided no argument to support denial of MCC Iowa’s petition.

¹⁸ Story City filed a letter simply opposing the petition, but provided no argument to support denial of MCC Iowa’s petition.

ATTACHMENT A (Cont'd)

Cable Operators Subject to "Competing Carrier" Effective Competition

Application of ZIP CODE+4 Data

Franchise Areas	DBS Subscribers ¹⁹	Households	DBS Penetration Levels
CC Michigan, LLC d/b/a Charter Communications: CSR 6137-E			
Berlin Township, MI	402	2,511	16.01%
Village of Byron, MI	92	218	42.20%
Village of Caro, MI	512	1,738	29.46%
Cass City, MI	307	1,100	27.91%
Village of Colon, MI	128	521	24.57%
City of Durand, MI	361	1,481	24.38%
City of Gladwin, MI	339	1,234	27.47%
Grayling Township, MI	670	2,420	27.69%
Huron Township, MI	788	4,745	16.61%
City of Lapeer, MI	847	3,443	24.60%
Mayfield Township, MI	661	2,685	24.62%
Mills Township, MI	395	1,705	23.17%
City of Sturgis, MI	802	4,293	18.68%
Sturgis Township, MI	157	841	18.67%
City of West Branch, MI	396	833	47.54%
CC VIII, LLC d/b/a Charter; CSR 6099-E			
Chippewa Falls, WI	1,027	5,638	18.22%
Eagle Point, WI	178	978	18.20%
Hallie, WI	307	1,690	18.17%
Seymour, WI	301	1,108	27.17%
Tilden, WI	72	399	18.05%
Charter Communications VI, LLC d/b/a Charter; CSR 6046-E			
Oakdale, LA	387	2,246	17.23%

¹⁹ As determined using Zip Code+4 data.

ATTACHMENT A (Cont'd)

Cable Operators Subject to "Low Penetration" Effective Competition

Franchise Areas	Franchise Area Households	Cable Subscribers	Penetration Level
Charter Communications VI, LLC d/b/a Charter; CSR 6045-E			
Livingston Parish, LA	32,639	5,033	15.42%
Charter Communications VI, LLC d/b/a Charter; CSR 6046-E			
Cameron Parish, LA	3,592	822	22.88%