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

In the Matter of	)	CSR 8472-E
	)	CSR 8474-E
Comcast Cable Communications, LLC	)	CSR 8475-E
	)	CSR 8481-E
Petitions for Determination of Effective	)	CSR 8482-E
Competition in Communities in Virginia	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 28, 2011 **Released: August 4, 2011**

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 petitions pursuant to Sections 76.7, 76.905(b)(2), 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 (the "Attachment A Communities"). Petitioner alleges that its cable system serving the Attachment A Communities is subject to effective competition pursuant to Section 623(l)(1)(B) 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 Attachment A Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV"), and DISH Network ("DISH"). Petitioner also claims, pursuant to Section 623(l)(1)(A) of the Communications Act[3] and Section 76.905(b)(1) of the Commission's rules,[4] to be exempt from cable rate regulation in the Communities listed on Attachment B (the "Attachment B Communities") because the Petitioner serves fewer than 30 percent of the households in those franchise areas. The petitions are unopposed.

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 623(l) of the Communications Act and 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.[7] For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.

[1] *See* 47 U.S.C. § 543(l)(1)(B).

[2] 47 C.F.R. § 76.905(b)(2).

[3] *See* 47 U.S.C. § 543(l)(1)(A).

[4] 47 C.F.R. § 76.905(b)(1).

[5] 47 C.F.R. § 76.906.

[6] *See* 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

[7] *See* 47 C.F.R. §§ 76.906-.907(b).

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 ("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 15 percent of the households in the franchise area.[8] This test is 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.[9] It is undisputed that the Attachment A 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.[10] 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.[11] We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in there are reasonably aware that they may purchase the service of these MVPD providers.[12] 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 programming,[13] and is supported in these petitions with copies of channel lineups for both DIRECTV and DISH.[14] Also undisputed is Petitioner's assertion that both DIRECTV and DISH offer service to at least "50 percent" of the households in the Attachment A Communities because of their national satellite footprint.[15] Accordingly, we find that 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. Comcast asserts that it is the largest MVPD in most of the Attachment A Communities, and that in the remainder of them it and the DBS providers combined each have a household share over 15 percent.[16] The Commission has recognized that in those conditions, whichever MVPD is the largest, the remaining

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[8] 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

[9] 47 C.F.R. § 76.905(b)(2)(i).

[10] *See, e.g.,* Petition in CSR 8472-E at 3-4.

[11] *Mediacom Illinois LLC,* 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

[12] 47 C.F.R. § 76.905(e)(2).

[13] *See* 47 C.F.R. § 76.905(g); *see also, e.g.*, Petition in CSR 8474-E at 5.

[14] *See, e.g.*, Petition in CSR 8475-E at Exh. 1.

[15] *See, e.g.*, Petition in CSR 8481-E at 3-4.

[16] *See, e.g.*, Petition in CSR 8482-E at 7; *id.*, Declaration of Warren Fitting, Senior Director of Regulatory Accounting for Petitioner, at ¶ 3 (April 11, 2011). The latter Attachment A Communities are: in CSR 8472-E, Greene County; in CSR 8475-E, Dinwiddie County, McKenney Town, and Prince George County; in CSR 8481-E, Clarke County, Frederick County, and Warren County; and, in CSR 8482-E, Goochland County and Powhatan County.

competitors have subscribership of over 15 percent.[17] Petitioner sought to determine the competing provider penetration in those Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Attachment A Communities on a zip code plus four basis.[18]

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 household data,[19] as reflected in Attachment A, 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 Attachment A Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment A Communities. 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 Communities listed on Attachment A.

B. The Low Penetration Test

7. 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 referred to as the "low penetration" test.[20] Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less that 30 percent of the households in the Attachment B Communities.[21]

8. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, 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 Attachment B Communities. Therefore, the low penetration test is satisfied as to the Attachment B Communities.

[17] If Comcast is the largest MVPD, then MVPDs other than the largest one are the DBS providers, which have a combined share of over 15%. On the other hand, if one of the DBS providers is the largest MVPD, then Comcast (which alone has over 15%) and the other DBS provider combined have over 15%. *See, e.g., Comcast Cable Commc'ns, LLC*, 26 FC Rcd 4901, 4903, ¶ 5 (2011); *Comcast Cable Commc'ns, LLC*, 26 FC Rcd 2471, 2473, ¶ 6 (2011); *Time Warner Cable, Inc*., 26 FCC Rcd 2095, 2096-97, ¶ 5 (2011).

[18] *See, e.g.*, Petition in CSR 8472-E at 7; *id.* at Exh. 4.

[19] *See, e.g.*, Petition in CSR 8474-E at 7 n.24; *id.* at Exh. 5.

[20] 47 U.S.C. § 543(l)(1)(A).

[21] The preceding section of this Memorandum Opinion and Order finds Petitioner subject to competing provider effective competition in several Communities in which Petitioner also claims to be subject to low penetration effective competition. Because of our previous findings, we need not address claims of low penetration effective competition. The Communities in question are: in CSR 8472-E, Greene County and Mineral Town; and, in CSR 8481-E, Clarke County.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachments A and B **IS REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[22]

FEDERAL COMMUNICATIONS COMMISSION

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

[22] 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8472-E, 8474-E, 8475-E, 8481-E, 8482-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
CSR 8472-E				
Greene County	VA0343	51.71	6,624	3,425
Louisa Town	VA0473	35.20	642	226
Mineral Town	VA0474	16.18	173	28
CSR 8474-E				
Craigsville Town	VA0408	21.91	397	87
Grottoes Town	VA0218	24.07	1,076	259
CSR 8475-E				
Colonial Heights City	VA0052	28.34	7,275	2,062
Dinwiddie County	VA0402	60.72	10,318	6,265
McKenney Town	VA0480	43.01	186	80
Petersburg City	VA0054	20.24	13,634	2,759
Prince George County	VA0096 VA0233 VA0572	51.61	11,451	5,910
CSR 8481-E				
Berryville Town	VA0347	28.55	1,653	472
Boyce Town	VA0530	33.33	216	72
Clarke County	VA0348	68.52	3,640	2,494
Frederick County	VA0121	45.79	27,613	12,643
Front Royal Town	VA0050	27.94	5,561	1,554
Luray Town	VA0041	43.45	2,055	893
Middletown Town	VA0376	21.85	508	111
Stanley Town	VA0124	33.24	695	231
Stephens City Town	VA0285	24.90	743	185
Warren County	VA0174	51.13	8,524	4,358
Winchester City	VA0065	20.61	10,607	2,188
CSR 8482-E				
Ashland	VA0268	18.43	2,670	492
Goochland County	VA0317	48.62	7,998	3,889
Hanover County	VA0328	34.48	33,919	11,694
Powhatan County	VA0517	51.67	9,494	4,906

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSRs 8472-E, 8481-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8472-E				
Louisa County	VA0475	12,129	657	5.42
CSR 8481-E				
Rappahannock County	VA0552 VA0556	3,006	432	14.37