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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC,	)	CSR 7475-E
	)	
Petition for Determination of Effective	)	
Competition in Two Minnesota Franchise Areas	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2011 **Released: March 22, 2011**

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as "Comcast," has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Comcast is subject to effective competition in the two communities listed on Attachment A and hereinafter referred to as the "Communities." Comcast alleges that its cable system serving the 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 Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV"), and DISH Network ("DISH"). The Mayors of the franchise authorities in the Communities (the "Mayors") filed an opposition to the petition,[3] and Comcast filed a reply to the opposition.[4]

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 petition based on our finding that Comcast is subject to effective competition in the Communities listed on Attachment A.

[1] *See* 47 U.S.C. § 543(l)(1)(B).

[2] 47 C.F.R. § 76.905(b)(2).

[3] Letter from Mayor Elizabeth Kautz, City of Burnsville, and Mayor Mike Maguire, City of Eagan, to Steven A. Broeckaert, Esq., Senior Deputy Chief, Policy Division, FCC ("Opposition").

[4] Reply to Letter in Response to Petition for Special Relief, filed by Comcast.

[5] 47 C.F.R. § 76.906.

[6] *See* 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

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

II. DISCUSSION

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 part 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 Communities are "served by" both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Comcast 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 part 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] 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[12] and is supported in this petition with copies of channel lineups for both DIRECTV and DISH.[13] Also undisputed is Comcast's assertion that both DIRECTV and DISH offer service to at least "50 percent" of the households in the Communities because of their national satellite footprint.[14]

5. The second part of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Comcast asserts that it is the largest MVPD in the Communities.[15] Comcast sought to determine the competing provider penetration in the 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 Communities on a five-digit zip code basis.[16] Then, using Census 2000 household data,[17] Comcast calculated aggregate DBS subscriber penetration levels for each of the Communities. Those calculations, reflected in Attachment A, show that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in each of the Communities. The evidence described in this paragraph and the preceding one is not disputed by the Mayors. If that evidence is accepted and if there is no additional and

[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* Petition at 3.

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

[12] See 47 C.F.R. § 76.905(g). See also Petition at 4.

[13] See Petition at Exh. 1.

[14] See Petition at 2-3.

[15] See *id.* at 5.

[16] *Id.* at 4-5.

[17] *Id.* at Exh. 6.

contrary evidence, Comcast satisfies both parts of the competing provider test.

6. The Mayors raise essentially two objections to the petition. One is that it lacks a showing, which the Mayors argue is essential, that a grant of the petition would be in the public interest.[18] Second, the Mayors object that, if the public interest is fully considered, the petition should not be granted because of the lack of competition between cable service and DBS service and speculative harms to consumers that might flow from deregulation of Comcast's rates.[19] We have considered and rejected these same objections to effective competition petitions in several decisions, including ones involving Comcast in Minnesota.[20] We reject the Mayors' objections for the same reasons stated in those decisions. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that both parts of the competing provider test are satisfied and Comcast is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

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

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

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[21]

FEDERAL COMMUNICATIONS COMMISSION

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

[18] Opposition at 1-2, citing 47 C.F.R. § 76.7(a)(4).

[19] *Id.* at 2-3.

[20] *Comcast Cable Commun., LLC,* Memorandum Opinion Order DA 11-429 at ¶ 15 (rel. March 4, 2011), available at 2011 WL 765080; *Comcast Cable Commun., LLC,* Memorandum Opinion & Order DA 10-1787 at ¶¶ 12-14 (rel. Sept. 21, 2010), *Erratum on other grounds* (rel. Sept. 27, 2010), available at 2010 WL 3621218; *Comcast Cable Commun., LLC,* Memorandum Opinion & Order DA 10-1723 at ¶ 11 (rel. Sept. 10, 2010), available at 2010 WL 3547877; *see also CoxCom, Inc.*, 22 FCC Rcd 4522, 4524, ¶¶ 4-5 (2007).

[21] 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Burnsville City	MN0439	18.43%	23687	4365
Eagan City	MN0440	16.56%	23773	3937

*CPR = Percent of competitive DBS penetration rate.