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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC	)	
	)	CSR 7697-E
Petition for Determination of Effective Competition in Mossyrock, Washington (CUID WA0327)	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2011 **Released: March 25, 2011**

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC ("Comcast" or the "Company"), 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 the Company is subject to effective competition in Mossyrock, Washington. Comcast alleges that its cable system serving Mossyrock 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 because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV"), and DISH Network ("DISH"). Lewis County, Washington (the "County"), the franchise authority for Mossyrock, filed an opposition that contested, in one document, Comcast's petition for Mossyrock and also other petitions that Comcast had filed for other communities.[3] Comcast filed a reply concerning Mossyrock[4] and simultaneously withdrew its petitions for the communities other than Mossyrock.[5]

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,[6] as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.[7] 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.[8] For the reasons set forth below, we grant the petition based on our finding that Comcast is subject to effective competition in Mossyrock.

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[1] *See* 47 U.S.C. § 543(l)(1)(B).

[2] 47 C.F.R. § 76.905(b)(2).

[3] Opposition to Comcast's Petition for Special Relief ("Opposition").

[4] Reply to Opposition to Comcast's Petition for Special Relief ("Reply").

[5] Motion to Withdraw Petition for Special Relief, filed by Comcast in CSRs 7698-E, 7699-E, and 7700-E; letter from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, to Steven J. Horvitz, Esq., Davis Wright Tremaine LLP, counsel for Comcast.

[6] 47 C.F.R. § 76.906.

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

[8] *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.[9] This test is referred to as the "competing provider" test.

A. Comcast's Evidence

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.[10] It is undisputed that Mossyrock is "served by" both DBS providers and that they 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.[11] 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.[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 this petition with copies of channel lineups for both DIRECTV and DISH.[14] Also undisputed is Comcast's assertion that both DIRECTV and DISH offer service to at least "50 percent" of the households in Mossyrock because of their national satellite footprint.[15] Accordingly, we find that the first part of the competing provider test is satisfied.

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 uncertain which is the largest MVPD in Mossyrock because both it and the DBS providers have a household share of over 15 percent.[16] The Commission has recognized that, in that event, it is clear that MVPDs other than the largest one have a combined household share in excess of 15 percent.[17]

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[9] 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

[10] 47 C.F.R. § 76.905(b)(2)(i).

[11] *See* Petition at 3.

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

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

[14] See Petition at Exh. 1.

[15] See Petition at 2-3.

[16] See Petition at 5 & Declaration of Peter H. Feinberg, Comcast Associate General Counsel ("Feinberg Declaration"), at ¶ 3.

[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 Commun., LLC,* 23 FCC Rcd 10939, 10941, ¶ 9 (2008).

6. Comcast sought to determine the competing provider penetration in Mossyrock 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 Mossyrock on a five-digit zip code basis.[18] The aggregate DBS subscriber penetration level that was calculated using Census 2000 household data,[19] as reflected in Attachment A, shows that the number of households subscribing to programming services offered by the DBS providers exceeds 15 percent of the households in Mossyrock. These numbers, if accepted and not outweighed by other evidence, show that the second part of the competing provider test is satisfied for Mossyrock.

B. The County's Objections

7. The County contends that Comcast does not provide cable service in Mossyrock and therefore cannot pass the "low penetration" effective competition test.[20] The County's only supporting evidence is a sworn declaration by a Civil Deputy Prosecuting Attorney for the County that, at three selected locations in Mossyrock, "Comcast Triple Play is not available."[21]

8. It appears that the County mistakenly included Mossyrock in its Opposition.[22] All the available evidence indicates that Comcast does provide cable service there.[23] Comcast claims to be subject to only competing provider effective competition, not low penetration effective competition, in Mossyrock. Whether Comcast's triple play is available in Mossyrock is immaterial in this proceeding, which concerns only cable service. Accordingly, we find that the County's contentions about conditions in Mossyrock lack merit. We also find that there is no need in this proceeding for discovery and an adjudicatory hearing before an Administrative Law Judge, which the County requested.[24]

C. Conclusions

9. 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 Mossyrock.

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[18] Petition at 4-5.

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

[20] Opposition at 1-3; 47 U.S.C. § 543(l)(1)(A) (low penetration effective competition exists when fewer than 30% of the households in a community subscribe to the cable service of a cable system); *see also* 47 C.F.R. § 76.905(b)(1).

[21] Declaration of Victoria S. Byerly, County Civil Deputy Prosecuting Attorney, items 11-13. The triple play is a bundle of voice, high-speed data, and MVPD service.

[22] Reply at 2.

[23] Feinberg Declaration at ¶ 3; Opposition, Declaration of David Muller, Manager for Lewis County Public Utility District No. 1, at ¶ 3 (stating that Comcast has "pole contacts and communication facilities" on the District's poles in Mossyrock).

[24] Opposition at 1, 3.

III. ORDERING CLAUSES

10. 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**.

11. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to the Community set forth on Attachment A **IS REVOKED**.

12. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[25]

FEDERAL COMMUNICATIONS COMMISSION

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

[25] 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7697-E

COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Community	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Mossyrock	WA0327	84.49%	187	158

*CPR = Percent of competitive DBS penetration rate.