

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

In the Matter of)	
)	MB Docket No. 12-148, CSR 8645-E
Comcast Cable Communications, LLC)	MB Docket No. 12-149, CSR 8646-E
)	MB Docket No. 12-185, CSR 8673-E
Petitions for Determination of Effective)	MB Docket No. 12-209, CSR 8687-E
Competition in 41 Communities in Pennsylvania)	MB Docket No. 12-210, CSR 8688-E
)	MB Docket No. 12-211, CSR 8689-E
)	MB Docket No. 12-224, CSR 8696-E

MEMORANDUM OPINION AND ORDER

Adopted: March 29, 2013

Released: March 29, 2013

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 several petitions¹ 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 and hereinafter referred to as the “Communities.” Petitioner 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”),² and the Commission’s implementing rules,³ 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 petitions are unopposed.

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 623(l) of the Communications Act and 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.⁶ 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 Attachment A.

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

¹ When necessary to distinguish between the six petitions, they will be referenced herein according to the first community listed.

² See 47 U.S.C. § 543(l)(1)(B).

³ 47 C.F.R. § 76.905(b)(2).

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁶ See 47 C.F.R. §§ 76.906-.907(b).

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.⁷ 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.⁸ It is undisputed that the 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.⁹ 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.¹⁰ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.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 the petitions with copies of channel lineups for both DIRECTV and DISH.¹³ Also undisputed is Petitioner’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 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, exceeds 15 percent of the households in a franchise area. Further, as Petitioner asserts, the Commission’s rules provide that once the first prong of the competing provider test is satisfied, as it is with the DBS offerings in this case, the subscribers of all qualifying MVPDs count toward the 15 percent penetration figure necessary for a determination of effective competition, even if they are not available themselves to more than 50 percent of households.¹⁵ Therefore, Petitioner notes that the competing provider penetration figures for the Communities of Baldwin Borough, Baldwin Township, Bethel Park Borough, Brentwood Borough, Caln Township, Castle Shannon Borough, Churchill Borough, Derry Township, Dormont Borough, Downingtown Borough, Dublin Borough, East Brandywine Township, East Fallowfield Township, Edgmont Township, Fox Chapel Borough, Kennett Township, McCandless Township, Mount Lebanon Township, New Garden Township, New London Township, Peters Township, Pittsburgh City, Ross Township, Salford Township, Sellersville Borough, Silverdale Borough, Upper Salford Township, Upper St. Clair

⁷ 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

⁸ 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

⁹ See Petitions at 3-4.

¹⁰ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹¹ 47 C.F.R. § 76.905(e)(2).

¹² See 47 C.F.R. § 76.905(g); see also Petitions at 5.

¹³ See Baldwin, Bedminster and Caln Petitions at Exhibit 2; Bethel Park, Churchill, Derry and Whitmarsh Petitions at Exhibit 1.

¹⁴ See Petitions at 3.

¹⁵ See Petitions at 5-6; see also 47 C.F.R. § 76.905(f); *Time Warner Entertainment Co., LP et al. v. FCC*, 56 F.3d 151, 189 (D.C. Cir. 1995).

Township, Uwchlan Township, Valley Township, West Caln Township, Whitehall Borough, Whitemarsh Township and Wilkins Township, include subscribers from Verizon Communications Inc. (“Verizon”) as well as from the two DBS providers.¹⁶ Petitioner sought to determine the competing provider DBS 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 zip code plus four basis.¹⁷ With respect to the communities of Baldwin Borough, Bedminster Township, Bethel Park, Brentwood, Castle Shannon, Derry, Dormont, Downingtown, Dublin, East Fallowfield, East Hanover Township, Edgmont, Elizabeth Township, Fox Chapel, Franklin, London Britain Township, McCandless, New Garden, New London, Peters, Pittsburgh, Ross, Salford, Sellersville, Silverdale, Upper Salford, Valley, West Caln, West Nantmeal Township, Whitehall and Wilkins, Petitioner asserts that it is the largest MVPD in those franchise areas.¹⁸ With respect to the communities of Baldwin Township, Caln, Churchill, East Brandywine, Kennett, Mount Lebanon, Upper St. Clair, Uwchian and Whitemarsh, Petitioner asserts that it serves in excess of 15 percent of the households in those communities, while competing providers serve an aggregate of more than 54 percent,¹⁹ 52 percent,²⁰ 57 percent,²¹ 58 percent,²² 53 percent,²³ 47 percent,²⁴ 55 percent²⁵, 54 percent²⁶ and 37 percent,²⁷ respectively, of the communities.

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 household data,²⁸ 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 communities Baldwin Borough, Bedminster, Bethel

¹⁶ See Petitions at 6. Petitioner has requested that we treat as confidential certain data that was supplied by its competitor Verizon and that shows Verizon activity in some of the Communities. Baldwin, Bedminster and Caln Petitions at 6 n.24, Exh. 5; Bethel Park, Churchill, Derry and Whitemarsh Petitions at 6 n.23, Exh. 4. Businesses typically protect such data from disclosure, and no one has objected to confidential treatment. Accordingly, we grant the Petitioner's request. We believe that by combining Verizon's subscriber figures in the relevant Communities with the direct broadcast satellite figures provided by the Satellite Broadcasting and Communications Association, we will sufficiently protect the confidentiality of Verizon's subscriber figures. See, e.g., *CoxCom, Inc.*, 22 FCC Rcd 4384 (MB 2007). We reserve the right, if another party requests access to the confidential data, to engage in a more formal process for their evaluation, protection, and limited disclosure. See, e.g., *Adelphia Commun. Corp.*, 20 FCC Rcd 20073 (MB 2005); *Sprint Petition for Pricing Flexibility for Special Access & Dedicated Transport Services, Protective Order*, 20 FCC Rcd 19882 (WCB 2005).

¹⁷ Petitions at 6-8. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁸ See Baldwin, Bedminster, Bethel Park, Caln and Derry Petitions at 8; Churchill Petition at 7-8.

¹⁹ Baldwin Petition at 8, Exhibit 9.

²⁰ Caln Petition at 8, Exhibit 9.

²¹ Churchill Petition at 8.

²² Caln Petition at 8, Exhibit 9.

²³ *Id.*

²⁴ Bethel Park Petition at 8.

²⁵ *Id.*

²⁶ Caln Petition at 8, Exhibit 9.

²⁷ Whitemarsh Petition at 8.

²⁸ Baldwin, Bedminster and Caln Petitions at Exhibits 8-9; Bethel Park, Churchill, Derry and Whitemarsh Petitions at Exhibits 7-8.

Park, Brentwood, Castle Shannon, Derry, Dormont, Downingtown, Dublin, East Fallowfield, East Hanover, Edgmont, Elizabeth, Fox Chapel, Franklin, London Britain, McCandless, New Garden, New London, Peters, Pittsburgh, Ross, Salford, Sellersville, Silverdale, Upper Salford, Valley, West Caln, West Nantmeal, Whitehall and Wilkins. With regard to the communities of Baldwin Township, Churchill, Mount Lebanon, Upper St. Clair and Whitemarsh, we are able to conclude that this portion of the test is met by analyzing the data submitted for both the Petitioner and its MVPD competitors. If the subscriber penetration for both the Petitioner and the aggregate competing MVPD information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.²⁹ In Baldwin Township, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 54 percent,³⁰ while in Caln, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 52.04 percent.³¹ In Churchill, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 57 percent,³² while in East Brandywine, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 58.25 percent.³³ In Kennett, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 53.85 percent,³⁴ while in Mount Lebanon, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 47.95 percent,³⁵ In Upper St. Clair, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 55.13 percent,³⁶ while in Uwchlan, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 54.28 percent.³⁷ Finally, in Whitemarsh, the Petitioner's penetration rate is in excess of 15 percent and the combined competing MVPD provider penetration rate is 37 percent.³⁸ Therefore, the second prong of the competing provider test is satisfied for each of the 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.

²⁹ *Charter Communications*, 21 FCC Rcd 1208, 1210 (MB 2006); *Time Warner Entertainment Advance/Newhouse Partnership*, 17 FCC Rcd 23587, 23589 (MB 2002).

³⁰ Baldwin Petition at 8, Exhibit 9.

³¹ Caln Petition at 8, Exhibit 9.

³² Churchill Petition at 8.

³³ Caln Petition at 8, Exhibit 9.

³⁴ *Id.*

³⁵ Bethel Park Petition at 8.

³⁶ *Id.*

³⁷ Caln Petition at 8, Exhibit 9.

³⁸ Whitemarsh Petition at 8.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceedings by Comcast Cable Communications, LLC **ARE 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.³⁹

FEDERAL COMMUNICATIONS COMMISSION

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

³⁹ 47 C.F.R. § 0.283.

ATTACHMENT A

**MB Docket No. 12-148, CSR 8645-E; MB Docket No. 12-149, CSR 8646-E;
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COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS LLC

Communities	CUID	CPR*	2010 Census Households	Estimated Non-Comcast MVPD Subscribers
Baldwin Borough	PA0693	17.60%	8,669	1,526
Baldwin Township	PA1105	54.18%	849	460
Bedminster Township	PA2712	17.10%	2,403	411**
Bethel Park Borough	PA1231	30.88%	13,659	4,218
Brentwood Borough	PA1215	43.75%	4,379	1,916
Caln Township	PA0179	52.04%	5,259	2,737
Castle Shannon Borough	PA0698	34.26%	3,902	1,337
Churchill Borough	PA0580	57.67%	1,363	786
Derry Township	PA0582	36.29%	9,637	3,497
Dormont Borough	PA1106	40.66%	4,051	1,647
Downingtown Borough	PA1045	41.27%	3,286	1,356
Dublin Borough	PA2711	45.23%	902	408
Edgmont Township	PA2518	31.48%	1,655	521
East Brandywine Township	PA1907	58.25%	2,369	1,380
East Fallowfield Township	PA1384	53.45%	2,640	1,411
East Hanover Township (Dauphin County)	PA2279	27.81%	2,226	619**
East Hanover Township (Lebanon County)	PA2275	29.27%	1,025	300**
Elizabeth Township	PA0525	16.64%	5,578	928**
Fox Chapel Borough	PA1228	33.69%	2,063	695
Franklin Township	PA2929	26.17%	1,433	375**
Kennett Township	PA1941	53.85%	2,986	1,608
London Britain Township	PA2931	24.91%	1,092	272**
McCandless Township	PA0709	36.51%	11,659	4,257
Mount Lebanon Township	PA1344	47.95%	14,196	6,807
New Garden Township	PA1939	46.26%	3,694	1,709
New London Township	PA2928	40.77%	1,739	709
Peters Township	PA1519	51.39%	7,292	3,747
Pittsburgh City	PA1855	24.15%	136,217	32,890
Ross Township	PA0714	35.99%	14,125	5,084
Salford Township	PA2387	47.97%	888	426

Sellersville Borough	PA1383	40.27%	1,721	693
Silverdale Borough	PA2710	43.75%	320	140
Upper Salford Township	PA2388	45.58%	1,154	526
Upper St. Clair Township	PA1459	55.13%	6,976	3,846
Uwchlan Township	PA1582	54.28%	6,610	3,588
Valley Township	PA0182	50.53%	2,656	1,342
West Caln Township	PA2494	41.01%	3,260	1,337
West Nantmeal Township	PA3058	21.10%	820	173**
Whitehall Borough	PA0889	37.96%	6,156	2,337
Whitemarsh Township	PA1990	37.10%	6,744	2,502
Wilkins Township	PA0598	51.84%	3,148	1,632

*CPR = Percent of competitive penetration rate of both DBS and, where applicable, Verizon.

** = only includes DBS subscribers