

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

|  |   |                                  |
|--|---|----------------------------------|
| In the Matter of                         | ) | MB Docket No. 12-111, CSR 8621-E |
|  | ) | MB Docket No. 12-112, CSR 8622-E |
| Comcast Cable Communications, LLC        | ) | MB Docket No. 12-124, CSR 8627-E |
|  | ) | MB Docket No. 12-125, CSR 8628-E |
| Petitions for Determination of Effective | ) | MB Docket No. 12-127, CSR 8629-E |
| Competition in 39 California Communities | ) | MB Docket No. 12-128, CSR 8630-E |

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 13, 2013**

**Released: December 17, 2013**

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

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, hereinafter referred to as “Petitioner,” 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 Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Attachment A Communities.” Petitioner alleges that its cable systems serving the Attachment A Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in those Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”), and, in 29 Attachment A Communities, AT&T.<sup>3</sup> (The DBS providers and AT&T will be collectively referred to as the “Competing Providers.”) Petitioner additionally claims to be exempt from cable rate regulation in the community listed on Attachment B and hereinafter referred to as the “Attachment B Community,” pursuant to Section 623(l)(1)(A) of the Communications Act<sup>4</sup> and Section 76.905(b)(1) of the Commission’s rules,<sup>5</sup> because the Petitioner serves fewer than 30 percent of the households in the franchise area. 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,<sup>6</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>7</sup> 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.<sup>8</sup> For the reasons set forth below, we grant the petitions based on our

<sup>1</sup> See 47 U.S.C. § 543(l)(1)(B).

<sup>2</sup> 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> The Attachment A Communities in which AT&T is a competing provider are all the Communities in CSRs 8621-E, 8627-E, and 8729-E; in CSR 8622-E, Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, and Windsor; and, in 8630-E, Del Ray Oaks, Marina, Monterey, Pacific Grove, Salinas, and Seaside.

<sup>4</sup> See 47 U.S.C. § 543(l)(1)(A).

<sup>5</sup> 47 C.F.R. § 76.905(b)(1).

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

<sup>8</sup> See 47 C.F.R. §§ 76.906-907(b).

finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in those Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>13</sup> 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,<sup>14</sup> and is supported in these petitions with copies of channel lineups for both DIRECTV and DISH.<sup>15</sup> 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.<sup>16</sup> 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. Petitioner asserts that it is the largest MVPD in most of the Attachment A Communities;<sup>17</sup> in four other Attachment A Communities, Petitioner asserts that it is uncertain which is the largest MVPD because

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<sup>9</sup> 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

<sup>11</sup> *See, e.g.*, Petition in CSR 8621-E at 3.

<sup>12</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

<sup>13</sup> 47 C.F.R. § 76.905(e)(2).

<sup>14</sup> *See* 47 C.F.R. § 76.905(g); *see also, e.g.*, Petition in CSR 8622-E at 5.

<sup>15</sup> *See, e.g.*, Petition in CSR 8627-E at Ex. 2.

<sup>16</sup> *See, e.g.*, Petition in CSR 8628-E at 3.

<sup>17</sup> *See, e.g.*, Petition in CSR 8629-E at 8.

both it and the Competing Providers have a household share of over 15 percent.<sup>18</sup> 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.<sup>19</sup> Petitioner sought to determine the DBS provider penetration there 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.<sup>20</sup> Petitioner obtained AT&T subscriber numbers directly from that company.<sup>21</sup> AT&T requested that its subscriber numbers be kept confidential.<sup>22</sup> We will accede to that request in this proceeding by combining subscribership figures for AT&T and the DBS providers. In providing the aggregate number of competing provider subscribers, we are thereby safeguarding AT&T's request for confidentiality.<sup>23</sup>

6. Based upon the aggregate subscriber penetration levels that were calculated using Census 2010 household data,<sup>24</sup> 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 Attachment A Communities.

#### **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.<sup>25</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Attachment B Community.

8. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated that the percentage of households subscribing to its cable service is less than 30 percent of the households in the Attachment B Community. Therefore, the low penetration test is satisfied as to the Attachment B Community.

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<sup>18</sup> Petition in CSR 8627-E at 8; Petition in CSR 8628-E at 7. The Communities in which Petitioner is unsure which MVPD is the largest are, in CSR 8627-E, Galt; and, in CSR 8628-E, Coming, Gridley, and Orland.

<sup>19</sup> If Petitioner is the largest MVPD, then MVPDs other than the largest one are the Competing Provider providers, which have a combined share of over 15%. On the other hand, if one of the Competing Providers is the largest MVPD, then Petitioner (which alone has over 15%) and the other Competing Providers combined have over 15%. See, e.g., *Comcast Cable Commc'ns, LLC*, 26 FCC Red 10967, 10968-69, ¶ 5 (2011); *Comcast Cable Commc'ns, LLC*, 26 FCC Red 4901, 4903, ¶ 5 (2011); *Time Warner Cable Inc.*, 25 FCC Red 14422, 14424, ¶ 6 (2010).

<sup>20</sup> See, e.g., Petition in CSR 8630-E at 7-8.

<sup>21</sup> See, e.g., Petition in CSR 8621-E at 6 n.24.

<sup>22</sup> See, e.g., Petition in CSR 8622-E at Ex. 5.

<sup>23</sup> We reserve the right to exercise our discretion to require more disclosure in future decisions.

<sup>24</sup> See, e.g., Petition in CSR 8627-E at Ex. 8.

<sup>25</sup> 47 U.S.C. § 543(l)(1)(A).

**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, on behalf of its subsidiaries and affiliates, **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.<sup>26</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>26</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

**MB Docket No. 12-111, CSR 8621-E**  
**MB Docket No. 12-112, CSR 8622-E**  
**MB Docket No. 12-124, CSR 8627-E**  
**MB Docket No. 12-125, CSR 8628-E**  
**MB Docket No. 12-127, CSR 8629-E**  
**MB Docket No. 12-128, CSR 8630-E**

**COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF  
 COMCAST CABLE COMMUNICATIONS, LLC**

| Communities                             | CUIDs            | CPR*  | 2010 Census Households | Estimated Competing Provider Subscribers |
|---|------------------|-------|------------------------|--|
| <b>MB Docket No. 12-111, CSR 8621-E</b> |                  |       |                        |  |
| Clayton                                 | CA0061           | 29.08 | 4,006                  | 1,165                                    |
| Concord                                 | CA0063           | 24.56 | 44,278                 | 10,876                                   |
| Danville                                | CA0288           | 41.67 | 15,420                 | 6,425                                    |
| Lafayette                               | CA0239           | 20.78 | 9,223                  | 1,917                                    |
| Martinez                                | CA0241           | 32.48 | 14,287                 | 4,640                                    |
| Moraga                                  | CA0292           | 17.50 | 5,570                  | 975                                      |
| Pleasant Hill                           | CA0244           | 26.40 | 13,708                 | 3,619                                    |
| <b>MB Docket No. 12-112, CSR 8622-E</b> |                  |       |                        |  |
| Cloverdale                              | CA0110           | 33.06 | 3,182                  | 1,052                                    |
| Cotati                                  | CA0306           | 26.60 | 2,978                  | 792                                      |
| Healdsburg                              | CA0111           | 22.02 | 4,378                  | 964                                      |
| Petaluma                                | CA0358           | 28.02 | 21,737                 | 6,091                                    |
| Rohnert Park                            | CA0318           | 29.19 | 15,808                 | 4,614                                    |
| Santa Rosa                              | CA0255<br>CA1612 | 35.94 | 63,590                 | 22,855                                   |
| Sebastopol                              | CA0324           | 22.86 | 3,276                  | 749                                      |
| Windsor                                 | CA1513           | 36.34 | 8,970                  | 3,260                                    |
| <b>MB Docket No. 12-124, CSR 8627-E</b> |                  |       |                        |  |
| Citrus Heights                          | CA1551           | 31.95 | 32,686                 | 10,442                                   |
| Davis                                   | CA1058           | 21.22 | 24,873                 | 5,279                                    |
| Folsom                                  | CA1092           | 47.32 | 24,951                 | 11,807                                   |
| Galt                                    | CA1087           | 48.66 | 7,262                  | 3,534                                    |
| Roseville                               | CA0163           | 29.99 | 45,059                 | 13,512                                   |
| <b>MB Docket No. 12-125, CSR 8628-E</b> |                  |       |                        |  |
| Chico                                   | CA0234           | 25.90 | 34,805                 | 9,015                                    |
| Corning                                 | CA0266           | 47.57 | 2,630                  | 1,251                                    |
| Gridley                                 | CA0718           | 49.06 | 2,183                  | 1,071                                    |
| Orland                                  | CA0269           | 53.12 | 2,515                  | 1,336                                    |
| Oroville                                | CA0196           | 29.70 | 5,646                  | 1,677                                    |
| Paradise                                | CA0512           | 26.90 | 11,893                 | 3,199                                    |

| <b>Communities</b>                      | <b>CUIDs</b> | <b>CPR*</b> | <b>2010 Census Households</b> | <b>Estimated Competing Provider Subscribers</b> |
|---|--------------|-------------|-------------------------------|---|
| <b>MB Docket No. 12-127, CSR 8629-E</b> |              |             |                               |   |
| Benicia                                 | CA0015       | 35.68       | 10,686                        | 3,813   |
| Fairfield                               | CA0459       | 30.95       | 34,484                        | 10,673  |
| Suisun City                             | CA0479       | 33.11       | 8,918                         | 2,953   |
| Vacaville                               | CA0349       | 37.98       | 31,092                        | 11,809  |
| Vallejo                                 | CA0388       | 34.92       | 40,559                        | 14,163  |
| <b>MB Docket No. 12-128, CSR 8630-E</b> |              |             |                               |   |
| Del Rey Oaks                            | CA0029       | 29.10       | 701                           | 204   |
| Marina                                  | CA0033       | 36.67       | 6,845                         | 2,510   |
| Monterey                                | CA0174       | 22.25       | 12,184                        | 2,711   |
| Pacific Grove                           | CA0036       | 26.18       | 7,020                         | 1,838   |
| Salinas                                 | CA0039       | 41.13       | 40,387                        | 16,611  |
| Sand City                               | CA1195       | 17.97       | 128                           | 23  |
| Seaside                                 | CA0042       | 39.43       | 10,093                        | 3,980   |

\*CPR = Percent of competitive penetration rate.

## ATTACHMENT B

MB Docket No. 12-125, CSR 8628-E

COMMUNITY SERVED BY A SUBSIDIARY OR AFFILIATE OF  
COMCAST CABLE COMMUNICATIONS, LLC

| <b>Community</b> | <b>CUID</b> | <b>Franchise Area<br/>Households</b> | <b>Cable<br/>Subscribers</b> | <b>Penetration<br/>Percentage</b> |
|------------------|-------------|--------------------------------------|------------------------------|-----------------------------------|
| Willows          | CA0046      | 2,173                                | 87                           | 4.0                               |