

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

In the Matter of	)	
	)	CSR 8351-E
Comcast Cable Communications, LLC, on behalf	)	CSR 8352-E
of its subsidiaries and affiliates	)	CSR 8353-E
	)	CSR 8354-E
Six Petitions for Determination of Effective	)	CSR 8355-E
Competition in New Jersey Communities	)	CSR 8356-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 11, 2016**

**Released: March 14, 2016**

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 petitions 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 the communities listed on Attachment A (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”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and that it 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 New Jersey Division of Rate Counsel (the “DRC”) filed oppositions to the petitions.<sup>3</sup> Comcast filed replies.<sup>4</sup>

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as competing provider effective competition.<sup>5</sup> Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>6</sup>

<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> See Comments of the New Jersey Division of Rate Counsel in Opposition to Comcast’s Petition for Effective Competition (“DRC Comments”) in CSR Nos. 8351-E through 8356-E. In CSR 8355-E, a letter supporting the DRC was filed by outside counsel for the Town of Hackettstown. See Letter from Thomas K. Thorp, Esq., Thorp & Thorp, to Marlene Dortch, Commission Secretary, dated Aug. 16, 2010. Comcast did not respond to this letter.

<sup>4</sup> See Reply to Opposition in CSR Nos. 8351-E through 8356-E (“Comcast Replies”). As the Reply in CSR 8352-E makes clear (at 1 n.1), Comcast neglected to serve its petition on the community of Hillside. After the DRC noted this omission in its Comments (see DRC Comments in CSR 8352-E), Comcast served counsel for Hillside.

<sup>5</sup> See *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) (“*Effective Competition Order*”).

<sup>6</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

For the reasons set forth below, we grant Comcast's petitions.

## II. 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 multichannel 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>7</sup> This test is referred to as the "competing provider" test. Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.

### A. The First Part

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.<sup>8</sup> As explained in the *Effective Competition Order*, "we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH, presumptively satisfies the" first part of the test for competing provider effective competition, absent evidence to the contrary.<sup>9</sup> The DRC has not put forth any information to rebut the first part of the competing provider effective competition test. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast, we thus find that the first part of the test is satisfied.

### B. The Second Part

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.<sup>10</sup> As explained in the *Effective Competition Order*, "[w]ith regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD."<sup>11</sup> The DRC argues that Comcast has not satisfied the second part of the competing provider effective competition test for several reasons. First, the DRC argues that Comcast should have used household and satellite penetration data that is reasonably contemporaneous to the date that the petitions were filed.<sup>12</sup> Comcast responds, and we agree, that the DRC did not provide any updated or alternative data that it found to be more reliable, and, therefore, Comcast's use of census household figures for each community was proper and fully consistent with Commission precedent.<sup>13</sup> Second, the DRC argues that the subscriber tracking reports from the Satellite Broadcasting and Communications Association ("SBCA") referenced in Comcast's petitions do

<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> 47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup> *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

<sup>10</sup> 47 C.F.R. § 76.905(b)(2)(ii).

<sup>11</sup> *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

<sup>12</sup> DRC Comments at 4-6. The DRC proposes that a reasonably contemporaneous data standard is a matter that should be addressed by the Commission. Concerning the need for referral to the Commission, we note that we have concluded that issues that can be resolved under existing precedents and guidelines need not be referred to the Commission. *See Time Warner Cable Inc.*, 25 FCC Rcd 5457, 5466-67, ¶ 31 (2010).

<sup>13</sup> Comcast Replies at 2-3. *See Comcast Cable Communications, LLC*, 24 FCC Rcd 1780, 1783, ¶ 13 (2009). (2005).

not take into account any cancellations that occurred between the time the reports were purchased and the date Comcast's petitions were filed.<sup>14</sup> Comcast responds, and we agree, that the DRC provides no evidence that any cancellations actually occurred or were significant enough in number to undermine the DBS penetration figures provided in the petitions.<sup>15</sup> Third, the DRC also asserts that Comcast failed to submit the analysis and work papers that underlie and support its calculation of satellite penetration, and instead only provided the zip codes used and the results generated by the SBCA.<sup>16</sup> Comcast responds, and we agree, that the DRC has shown no analytical flaw in the methodology, nor has the DRC identified even a single zip code that Media Business Corporation ("MBC") incorrectly considered to be within a particular community.<sup>17</sup> For the above reasons, the arguments put forth by the DRC fail to rebut the presumption of competing provider effective competition. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast and the DRC, we thus find that the second prong of the test is satisfied.

### III. ORDERING CLAUSES

6. 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** as to the Communities listed on Attachment A hereto.

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

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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<sup>14</sup> DRC Comments at 6.

<sup>15</sup> Comcast Replies at 4.

<sup>16</sup> DRC Comments at 6-7. DRC argues that without an overlay mapping to know whether the franchise boundaries are properly associated with the township boundaries by zip code, Comcast's reported data is not verifiable and hence is unreliable.

<sup>17</sup> Comcast Replies at 4. Comcast states that it obtained a list of relevant zip plus four codes for the respective franchise areas from MBC, and then submitted this zip plus four list to the SBCA. The SBCA in turn provided a report detailing the number of DBS subscribers associated with the individual zip plus four codes, as well as a summary of the total number of DBS subscribers in each of the franchise areas. Comcast notes that all of this information was included in exhibits to its petitions, which were provided to the DRC. *See also Comcast Cable Communications, LLC*, 24 FCC Rcd at 1786, ¶ 19.

<sup>18</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

CSR 8351-E, CSR 8352-E, CSR 8353-E, CSR 8354-E, CSR 8355-E, CSR 8356-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Proceedings & Communities	CUIDs	CPR	2000 Census Households	Estimated DBS Subscribers
<b>CSR 8351-E</b>				
Franklin Township	NJ0591	38.68	1091	422
Montgomery Township*	NJ0576	18.94	7180	1360
Raritan Township*	NJ0507	22.87	8028	1836
<b>CSR 8352-E</b>				
Harrison Town	NJ0189	32.63	5136	1676
Hillside Township*	NJ0223	28.22	7393	2086
Linden*	NJ0250	25.83	14862	3839
<b>CSR 8353-E</b>				
Kearny*	NJ0299	25.45	13023	3315
<b>CSR 8354-E</b>				
South Brunswick Township*	NJ0441	18.16	14622	2656
<b>CSR 8355-E</b>				
Glen Gardner	NJ0039	23.85	805	192
Hackettstown	NJ0009	22.35	4134	924
<b>CSR 8356-E</b>				
Beverly	NJ0445	17.19	960	165
Burlington	NJ0112	19.65	3898	766
Burlington Township*	NJ0108	22.31	7674	1712
Edgewater Park Township	NJ0071	19.32	3152	609

CPR = Percent of competitive DBS penetration rate.

\* = Updated U.S. Census estimates as reported by 2006-2008 American Community Survey were utilized for this community.