

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

In the Matter of
Fifty-Five Unopposed Petitions for Determination
of Effective Competition

MEMORANDUM OPINION AND ORDER

Adopted: March 25, 2014

Released: March 26, 2014

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

I. INTRODUCTION AND BACKGROUND

1. By this Order, we grant fifty-five unopposed petitions for a finding of effective competition. The unopposed petitions set forth on Attachments A, B and C were filed by various cable companies (the "Petitioners") seeking determinations of effective competition in their local franchise areas pursuant to Sections 76.7, 76.905(b)(1), (2) and (4) and 76.907 of the Commission's rules. Most of the Petitioners allege that their cable systems are subject to effective competition in their local franchise areas (the "Attachment A Communities") pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended ("Communications Act") and Section 76.905(b)(2) of the Commission's rules, and are therefore exempt from cable rate regulation, principally because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc., and DISH Network. Some Petitioners claim to be exempt from cable rate regulation in their local franchise areas (the "Attachment B Communities") pursuant to Section 623(l)(1)(A) of the Communications Act and Section 76.905(b)(1) of the Commission's rules because those petitioners serve fewer than 30 percent of the households in their franchise areas. Finally, some Petitioners claim to be exempt from cable rate regulation in their franchise areas (the Attachment C Communities) pursuant to Section 623(l)(1)(D) of the Communications Act and Section 76.905(b)(4) of the Commission's rules because a local exchange carrier or its affiliate offers comparable video programming services directly to subscribers in the Petitioner's franchise area.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules. 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. For the reasons set forth below, we conclude that Petitioners have carried that burden. We grant these unopposed petitions based on our finding that Petitioners are subject to effective competition in the Communities listed on Attachments A, B and C.

1 47 C.F.R. §§ 76.7, 76.905(b)(1), (2), & (4), 76.907.

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

3 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(1).

4 47 U.S.C. § 543(l)(1)(D); 47 C.F.R. § 76.905(b)(4).

5 47 C.F.R. § 76.906.

6 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

7 47 C.F.R. §§ 76.906, 76.907(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 its 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.”⁸ This test is referred to as the “competing provider” test.

4. We have reviewed each of the Attachment A petitions in full. We find that each petition provides sufficient and reliable evidence to establish that both elements of the competing provider test for effective competition are satisfied consistent with the Communications Act, our implementing rules, and over 20 years of effective competition adjudicatory precedent. Specifically, we find that each of the Attachment A Communities is served by at least two unaffiliated MVPDs each of which offers comparable video programming to at least 50 percent of the households in the franchise area. We further find 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 Attachment A Communities. Each of the Petitioners has demonstrated the presence of effective competition in their respective franchise areas. In so doing, Petitioners have satisfied their burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise areas.

B. The Low Penetration Test

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.”⁹ This test is referred to as the “low penetration” test. Petitioners allege that they are subject to effective competition under the low penetration effective competition test because each serves fewer than 30 percent of the households in the Attachment B Communities.

6. We have reviewed each of the Attachment B petitions in full. We find that each petition provides sufficient and reliable evidence to establish that the low penetration test for effective competition is satisfied consistent with the Communications Act, our implementing rules, and over 20 years of effective competition adjudicatory precedent. Specifically, we find that each of the Petitioners serves fewer than 30 percent of the households in the Attachment B Communities. Each of the Petitioners has demonstrated the presence of effective competition in their respective franchise areas. In so doing, Petitioners have satisfied their burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise areas.

C. The Local Exchange Carrier Test

7. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition in franchise areas where “a local exchange carrier or its affiliate (or any [MVPD] using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided

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

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

by the unaffiliated cable operator in that area.”¹⁰ This test is referred to as the “local exchange carrier” test, or the “LEC” test. In implementing the LEC test, the Commission determined that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide comparable services that substantially overlap the incumbent operator's service in the franchise area.¹¹

8. We have reviewed each of the Attachment C petitions in full. We find that each petition provides sufficient and reliable evidence to establish that the LEC test for effective competition is satisfied consistent with the Communications Act, our implementing rules, and nearly 20 years of effective competition adjudicatory precedent. Specifically, we find that each of the Petitioners has demonstrated that the LEC competitor is technically and actually able to provide comparable services that substantially overlap the Petitioner's service in the Attachment C Communities. Each of the Petitioners has demonstrated the presence of effective competition in their respective franchise areas. In so doing, Petitioners have satisfied their burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise areas.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition set forth in Attachments A, B and C **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that any certification to regulate basic cable service rates granted to any of the Attachment A, B and C Communities **IS REVOKED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰ 47 U.S.C. § 543(l)(1)(D); 47 C.F.R. § 76.905(b)(4).

¹¹ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

¹² 47 C.F.R. § 0.283.

Attachment A
Subject to Competing Provider Test

Bright House Networks, LLC Proceedings and Communities	CUIDs
MB Docket 12-249, CSR-8702-E	
Citrus County	FL0843
MB Docket 12-285, CSR 8717-E	
Cedar Key	FL0261
MB Docket 12-337, CSR 8743-E	
New Port Ritchey	FL0126
San Antonio	FL1006
St. Leo	FL1007
Zephyrhills	FL0679
MB Docket 13-215, CSR 8817-E	
Chattahoochee	FL0167
MB Docket 13-217, CSR 8828-E	
Lake View	AL0825
MB Docket 13-218, CSR 8829-E	
Ariton	AL0499
Clio	AL0252
Louisville	AL0265
MB Docket 13-219, CSR 8830-E	
Butler County	AL0421
Fort Deposit	AL0413
Georgiana	AL0253
MB Docket 13-220, CSR 8831-E	
Blountstown	FL0169
MB Docket 13-221, CSR 8832-E	
Coosada	AL0144
Deatsville	AL0754
Elmore County	AL0146
Tallassee	AL0145
MB Docket 13-222, CSR 8833-E	
Eunola	AL0722
Geneva	AL0077
Hartford	AL0070

Samson	AL0055
Slocomb	AL0069
Chipley	FL0024
De Funiak Springs	FL0038
Graceville	FL0586
Paxton	FL0965

Charter Communications Proceedings and Communities	CUIDs
MB Docket 13-104, CSR 8780-E	
Mankato	MN0002

Comcast Proceedings and Communities	CUIDs
MB Docket 13-143, CSR 8801-E	
Mansfield	MA0186
North Attleboro	MA0144
MB Docket 13-144, CSR 8802-E	
Revere	MA0032
MB Docket 13-199, CSR 8822-E	
Banks	OR0325
Beaverton	OR0283
Columbia City	OR0405
Cornelius	OR0318
Durham	OR0326
Forest Grove	OR0289
Gaston	OR0442
Hillsboro	OR0290
King	OR0317
North Plains	OR0341
Rivergrove	OR0330
Scappoose	OR0267
Sherwood	OR0327
St. Helens	OR0404
Tigard	OR0288
Tualatin	OR0328
Wilsonville	OR0331
Wilsonville	OR0332
Washington County	OR0231
Washington County	OR0333
MB Docket 13-251, CSR 8840-E	
Peoria County	IL1021
Peoria Heights	IL0153

MB Docket 13-252, CSR 8841-E	
Champaign County	IL0541
Champaign County	IL0913
Indianola	IL1442
Oakwood	IL0547
Savoy	IL0540
MB Docket 13-253, CSR 8842-E	
Blandinsville	IL0737
McDonough	IL0164
MB Docket 13-254, CSR 8843-E	
Normal	IL0147
MB Docket 13-255, CSR 8844-E	
Bartlett	IL0555
MB Docket 13-256, CSR 8845-E	
DeKalb	IL0006
DeKalb County	IL1637
MB Docket 13-257, CSR 8846-E	
Alcorn County	MS0223
Corinth	MS0023
MB Docket 13-258, CSR 8847-E	
Dixon	IL0022
Hopkins	IL0095
Lee County	IL1182
Montmorency	IL0129
MB Docket 13-275, CSR 8850-E	
Walterboro	SC0155
MB Docket 13-276, CSR 8851-E	
Newberry	SC0012
MB Docket 13-285, CSR 8853-E	
Grays Harbor County	WA0171
Grays Harbor County	WA0173
Grays Harbor County	WA0174
Grays Harbor County	WA0475
Grays Harbor County	WA0828
Grays Harbor County	WA0845
Raymond	WA0156
MB Docket 13-315, CSR 8864-E	
Amherst County	VA0149
Amherst	VA0208

Lynchburg	VA0106
MB Docket 13-316, CSR 8865-E	
Culpeper	VA0068
Culpeper County	VA0224
Culpeper County	VA0562
MB Docket 14-10, CSR 8867-E	
Elmhurst	IL1855
Harwood Heights	IL0876
MB Docket 14-11, CSR 8868-E	
Bridgewater	VA0032
Broadway	VA0033
Dayton	VA0034
Elkton	VA0144
Harrisonburg	VA0035
Shenandoah	VA0145
Timberville	VA0037

Cox Communications, Inc. Proceedings and Communities	CUIDs
MB Docket 13-233, CSR 8835-E	
Bellevue	NE0064
La Vista	NE0065
Offutt AFB	NE0110
Omaha	NE0111
Omaha	NE0155
Omaha	NE0239
Gretna	NE0512
Valley	NE0531
Waterloo	NE0530
Council Bluffs	IA0092
Carter Lake	IA0214
MB Docket 13-234, CSR 8836-E	
Bellevue	ID0083

Time Warner Cable Inc. Proceedings and Communities	CUIDs
MB Docket 12-293, CSR 8725-E	
Bloom	OH1512
Genoa	OH1515
Jefferson	OH1510
Lockbourne	OH1236
Madison (Franklin County)	OH1953

New Albany	OH1519
Pataskala	OH3173
Plain	OH1521
MB Docket 13-60, CSR 8766-E	
Covington	KY0667
Fort Mitchell	KY0677
Fort Wright	KY0679
Kenton Vale	KY0681
Ludlow	KY0685
Park Hills	KY0687
Uninc. Kenton County	KY0541
MB Docket 13-61, CSR 8767-E	
Bellevue	KY0663
Southgate	KY0690
Wilder	KY0694
Uninc. Campbell County	KY0540
MB Docket 13-66, CSR 8770-E	
Crescent Springs	KY0669
Florence	KY0676
Fort Thomas	KY0678
Uninc. Boone County	KY0542, KY0867
Uninc. Warren County	KY0468
MB Docket 13-69, CSR 8773-E	
Hillsboro	OH0182
Jefferson (Clinton County)	OH2450
Leesburg	OH0638
Lynchburg	OH0637
Midland	OH1494
Owensville	OH1314
West Harrison	IN0384
MB Docket 13-108, CSR 8783-E	
Portsmouth	OH0100
MB Docket 13-109, CSR 8784-E	
Baldwinsville	NY0781
Camillus	NY0333
Cicero	NY0372
Clay	NY0373
DeRuyter	NY1440
E. Syracuse	NY0329
Fayetteville	NY0332
Geddes	NY0327

Granby	NY0937
Hannibal	NY1170
Liverpool	NY0326
Lysander	NY0782
New Haven	NY1626
North Syracuse	NY0546
Port Byron	NY0981
Salina	NY0346
Schroepfel	NY1460
Solvay	NY0671
Van Buren	NY0715
Volney	NY1144
MB Docket 13-118, CSR 8785-E	
Orchard Park	NY0874
MB Docket 13-124, CSR 8792-E	
Boonville	NY0476
Cape Vincent	NY1420
Chaumont	NY1344
Clayton, Town of	NY1345
Clayton, Village of	NY1346
Dexter	NY1347
Glen Park	NY0631
Harrisville	NY1371
Henderson	NY1700
Hounsfield	NY1401
Orleans	NY1495
Pamelia	NY0144
Rutland	NY0562
Theresa	NY1363
Watertown	NY0146
Brasher	NY0529
Burke	NY0302
Chateaugay	NY0301
Colton	NY0813
Gouverneur	NY0101
Morristown	NY0931
Norfolk	NY0323
Rouses Point	NY1029
Russell	NY1621
Waddington	NY0811
Waverly	NY1853
MB Docket 13-141, CSR 8799-E	
Milwaukee	WI0438

MB Docket 13-162, CSR 8808-E	
Anchorage	KY0493
Audubon	KY0378
Bancroft	KY0514
Barbourmeade	KY0582
Beechwood	KY0496
Bellemeade	KY0437
Brownsboro Farm	KY0584
Brownsboro Village	KY0441
Crossgate	KY0456
Douglass Hills	KY0502
Glenview Hills	KY0510
Glenview Manor	KY0488
Graymoor-Devondale	KY1321
Green Springs	KY0660
Hurstbourne	KY1183
Indian Hills	KY0500
Jeffersontown	KY0458
Lyndon	KY0452
Meadowview Estates	KY0445
Murray Hill	KY1195
Northfield	KY0517
Norwood	KY0518
Parkway	KY0384
Rolling Fields	KY0400
Seneca Gardens	KY0380
Shively	KY0436
Spring Valley	KY1196
St. Matthews	KY0451
St. Regis Park	KY0501
West Buechel	KY0521
Wildwood	KY0513
Windy Hills	KY0432
MB Docket 13-171, CSR 8813-E	
Louisville/Jefferson County Metro Government	KY0169
MB Docket 13-196, CSR 8819-E	
Carlisle	OH3185
Centerville	OH0497
Clifton	OH1819, OH1820
Gratis	OH3183
Isreal	OH3184
Kettering	OH0496
Oakwood	OH0498
Washington	OH0610
Rockport	IN0210

Riley	IN0613
Vevay	IN0222
MB Docket 13-200, CSR 8823-E	
Canal Winchester	OH0748, OH0749
Lithopolis	OH1518
Pickerington	OH0747
Reynoldsburg	OH0519, OH3176, OH3174
Whitehall	OH0818
MB Docket 13-232, CSR 8834-E	
Brady Lake	OH0964
Chippewa Lake	OH1089, OH1505
Craig Beach	OH0843
Creston	OH3188
Cuyahoga Falls	OH0218
Howland	OH0213
Jackson	OH1981
Kent	OH0353
Lafayette	OH1502
Magnolia	OH3190
Malvern	OH0326
Mansfield	OH0083
Niles	OH0210
North Canton	OH0106
Oxford	OH2634
Rittman	OH0293
Spencer	OH3251
Stone Creek	OH2745
Stow	OH0243
Sugar Creek	OH3260
Tiro	OH1716
Warren	OH0270
Westfield Center	OH1087
MB Docket 13-273, CSR 8848-E	
Bellewood	KY0450
Blue Ridge Manor	KY0617
Brandenburg	KY0953
Houston Acres	KY0443
LaGrange	KY0575
Maryhill Estates	KY0448
Moorland	KY0586
Muldraugh	KY0607
River Bluff	KY0659
Strathmoor Manor	KY0382
Woodland Hills	KY0512

Worthville	KY1076
MB Docket 13-274, CSR 8849-E	
Bromley	KY0664
Butler	KY1049
Crestview Hills	KY0670
Dry Ridge	KY0869
Fairview	KY0747
MB Docket 13-288, CSR 8856-E	
City of Lexington/Fayette Urban County	KY0469
MB Docket 13-289, CSR 8857-E	
Avon lake	OH0988
Bay Village	OH0739
Beachwood	OH0201
Brecksville	OH1274
Cleveland Heights	OH0695
Cuyahoga Falls	OH1271
Gates Mills	OH1944
Highland Heights	OH0986
Independence	OH0993
Lyndhurst	OH0663
Marblehead	OH1393
Mayfield Heights	OH0777
Mayfield	OH0862
Mentor	OH0740
Mentor on the Lake	OH0896
North Kingsville	OH0282
North Olmsted	OH0800
University Heights	OH0662
Valley View	OH1195
Wickliffe	OH0802
Willoughby Hills	OH0801
Woodmere	OH0775
MB Docket 13-290, CSR 8858-E	
Crothersville	IN0387
Jeffersonville	IN0086
MB Docket 13-314, CSR 8863-E	
Cathedral City	CA0994
Indian Wells	CA0057
Indio	CA0056
La Quinta	CA1166
Palm Desert	CA0058
Rancho Mirage	CA0740

Attachment B
Subject to Low Penetration Test

Bright House Networks, LLC Proceedings and Communities	CUIDs
MB Docket 13-216, CSR 8827-E	
Escambia	FL0905
MB Docket 13-217, CSR 8828-E	
Helena	AL0820
MB Docket 13-219, CSR 8830-E	
Greenville	AL0026
MB Docket 13-220, CSR 8831-E	
Calhoun County	FL0966
Liberty County	FL0969
MB Docket 13-221, CSR 8832-E	
Tallapoosa County	FL0244
MB Docket 13-222, CSR 8833-E	
Walton County	FL0970
Washington County	FL0971

Comcast Proceedings and Communities	CUIDs
MB Docket 13-251, CSR 8840-E	
Fulton County	IL1172
Knox County	IL1636
MB Docket 13-253, CSR 8842-E	
La Harpe	IL0738
MB Docket 13-254, CSR 8843-E	
McLean County	IL0241
MB Docket 13-258, CSR 8847-E	
Coloma	IL0058
Ogle County	IL0240
Sterling	IL0061
MB Docket 13-315, CSR 8864-E	
Bedford County	VA0185

Time Warner Cable Inc. Proceedings and Communities	CUIDs
MB Docket 12-275, CSR-8711-E	
Anderson County (Uninc.)	KY1140
Bath County (Uninc.)	KY1035
Bourbon County (Uninc.)	KY1039
Boyle County (Uninc.)	KY1139
Carter County (Uninc.)	KY0933
Clark County (Uninc.)	KY0207
Fleming County (Uninc.)	KY0939
Franklin County (Uninc.)	KY1168
Garrard County (Uninc.)	KY1038
Harrison County (Uninc.)	KY1040
Jessamine County (Uninc.)	KY1030
Lincoln County (Uninc.)	KY1138
Madison County (Uninc.)	KY0622
Marion County (Uninc.)	KY1037
Mercer County (Uninc.)	KY1141
Montgomery County (Uninc.)	KY1021
Nelson County (Uninc.)	KY1089
Nicholas County (Uninc.)	KY1029
Rowan County (Uninc.)	KY0064, KY0065
Scott County (Uninc.)	KY1033
MB Docket 12-293, CSR 8725-E	
Brown	OH2138
Jersey	OH1903
Madison (Pickaway County)	OH1906
Truro	OH2305
Westerville	OH3175
MB Docket 13-61, CSR 8767-E	
California	KY1225
MB Docket 13-109, CSR 8784-E	
Wolcott	NY1126, NY1988
MB Docket 13-200, CSR 8823-E	
Brice	OH1513
Violet	OH0750
MB Docket 13-232, CSR 8834-E	
Clark	OH3187
Greenwich	OH3248
Killbuck	OH3277
Milton	OH3191

Nelson	OH1592
Norwalk	OH0461
Prairie	OH3278
MB Docket 13-289, CSR 8857-E	
Monroe	OH3247

Attachment C
Subject to Local Exchange Carrier Test

Time Warner Cable Inc. Proceedings and Communities	CUIDs
CSR 8563-E	
Waianae	HI0001
Hawaii Kai	HI0003
Oahu Central	HI0004
Honolulu	HI0005, HI0006
Kailua	HI0007
Kalihi	HI0008
Kaneohe	HI0009
Palolo	HI0010
North Shore	HI0012
Ewa District	HI0041
Ahuimanu	HI0057, HI0058
Enchanted Hills	HI0059
Hauula	HI0060
Iwilei	HI0061
Laie	HI0062
Kaaawa	HI0063
Kaimuki	HI0064
Kahaluu	HI0065
Kapahulu	HI0067
Maunawili	HI0068
Moanalua	HI0069
Pearl Harbor	HI0070
Salt Lake	HI0071
Waimanalo	HI0072
MB Docket 13-108, CSR-8783-E	
Bainbridge	OH0304
Chillicothe	OH0025
Frankfort	OH0978