

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

In the Matter of )
Comcast Cable Communications, LLC )
Petition for Determination of Effective Competition ) CSR 7120-E
in Braintree, MA (CUID MA0217) )

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 2010

Released: May 14, 2010

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 a petition pursuant to Sections 76.7 and 76.905(b)(3) 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 "Communities." Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(C) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by Braintree Electric Light Department ("BELD"), hereinafter referred to as "Competitor." The petition is unopposed.

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(1) 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 grant the Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

1 See 47 U.S.C. § 543(a)(1).

2 47 C.F.R. § 76.905(b)(3).

3 47 C.F.R. § 76.906.

4 See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

5 See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

3. Section 623(1)(1)(C) of the Communications Act provides that a cable operator is subject to effective competition if a multichannel video programming distributor (“MVPD”) operated by the franchising authority for that area offers video programming to at least 50 percent of the households in the franchise area.<sup>6</sup> This test is otherwise referred to as the “municipal provider” test.

4. The first prong of the municipal provider test requires that the franchise area be served by an MVPD that is operated by the franchising authority for that area. An MVPD is “a person such as, but not limited to, a cable operator . . . who makes available for purchase, by subscribers or customers, multiple channels of video programming.”<sup>7</sup> It is undisputed that the Competitor in this case is a public power system that operates as an MVPD offering various cable television packages and services.<sup>8</sup>

5. To satisfy the second prong of the test, the Petitioner must show that the Competitor offers service to more than 50% of the households in the franchise area. The Commission’s rules state that, for purposes of determining effective competition, an MVPD’s service will be deemed “offered” under the following circumstances: (1) when the MVPD is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) when no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the MVPD.<sup>9</sup> The Petitioner has demonstrated that the Competitor is physically able to deliver service to potential subscribers.<sup>10</sup> The Petitioner also has shown that there are no regulatory, technical or other impediments to prevent households from subscribing to the Competitor’s

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<sup>6</sup> See 47 U.S.C. § 543(1)(1)(C).

<sup>7</sup> 47 U.S.C. § 522(13); see also 47 C.F.R. § 76.905(d).

<sup>8</sup> Petition at 3. See also Braintree Electric Light Department website, <http://www.beld.com/Cable/Default.asp> (portions attached as Exhibit 2); BELD’s Cable Television License (portion attached as Exhibit 3); and, Letter to Steven J. Horvitz, Cole, Raywid & Braverman, L.L.P. from William G. Bottiggi, General Manager, BELD (November 7, 2006), confirming that BELD is an MVPD operated by the franchising authority for the franchise area. (Attached as Exhibit 1).

<sup>9</sup> 47 C.F.R. § 76.905(e).

<sup>10</sup> Petition at 4 and Exhibit 1 (November 7, 2006 Letter from BELD’s General Manager confirming that BELD offers video programming to more than 50 percent of the households in the franchise area). The Petitioner also asserts that BELD has had substantial success in serving the franchise area because the Cable Division of the Massachusetts Department of Telecommunications & Energy reports that BELD had 5,111 local cable subscribers as of July 25, 2006. *Id.* at Exhibit 4. According to the Petitioner, when compared to U.S. Census household figures for Braintree, MA, this number indicates a BELD subscriber rate of approximately 40 percent within the franchise area. *Id.* and Exhibit 5.

service.<sup>11</sup> Finally, Petitioner has demonstrated that potential subscribers are reasonably aware of the availability of the Competitor's cable television service in the franchise area.<sup>12</sup>

6. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the municipal provider test and is subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition in the captioned proceeding by Comcast Cable Communications, LLC **IS 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.<sup>13</sup>

FEDERAL COMMUNICATIONS COMMISSION

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<sup>11</sup> Petition at 4. The Petitioner states that BELD's Cable Television License specifically authorizes BELD to "[c]onstruct, upgrade, install, operate and maintain a Cable Television System within the corporate limits of the Town of Braintree." Exhibit 3 at 8. The Petitioner states that its Braintree, MA franchise area is also defined as "the corporate limits of the Town of Braintree." Petition at n.16 and Exhibit 6 (Cable Television Renewal License Issued to A-R Cable Investments, Inc. - Jan. 25, 1999).

<sup>12</sup> Petition at 5. The Petitioner notes that the Commission previously has looked to an MVPD's existing service to residents of a community as evidence that residents are reasonably aware of the availability of that MVPD's services in the franchise areas. *See, e.g., ACC Cable Communications FL-VA, LLC*, 18 FCC Rcd 7110, ¶ 7(2003) ("It is also well settled that because subscribers in the community have signed up for an MVPD's service, it must be assumed that other residents throughout the area are reasonably aware of that MVPD's service offerings."). Petition at n.17.

<sup>13</sup> 47 C.F.R. § 0.283.

**ATTACHMENT A**

**CSR 7120-E**

**COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC**

<b>Communities</b>	<b>CUIDs</b>
<b>Braintree</b>	<b>MA0217</b>