

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

In the Matter of	)	
	)	
Comcast of Potomac, LLC	)	CSR 8188-E
Petition for Determination of Effective	)	
Competition in 13 Franchise Areas in	)	
Montgomery County, Maryland	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 6, 2009**

**Released: October 8, 2009**

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

**I. INTRODUCTION AND BACKGROUND**

1. Comcast of Potomac, LLC (“Comcast”), has filed with the Commission a petition pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that it is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” The Communities are franchise authorities in some, but not all, of Montgomery County, Maryland (the “County”). Comcast alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by Verizon Maryland Inc. (“Verizon”).

2. The County, on its own behalf and apparently on behalf of the individual Communities in the County,<sup>3</sup> was granted two extensions of time in which to file oppositions to Comcast’s petition.<sup>4</sup> At the conclusion of the second extension, counsel for the County and those municipalities advised the Commission that they would not file any opposition.<sup>5</sup> No other filing has been made by any other franchise authority in the Communities. Accordingly, the petition is unopposed.

3. 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(1) 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

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

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> The complex relationship between the County and the Communities for purposes of franchising cable systems is described in *Comcast of Potomac, LLC*, Memorandum Opinion & Order DA 09-1489 (rel. June 30, 2009).

<sup>4</sup> See Letters from Matthew C. Ames, Esq., Miller & Van Eaton, P.L.L.C., counsel for the County, to Steven A. Broecker, Senior Deputy Chief, Policy Bureau, dated Aug. 5 & 27, 2009.

<sup>5</sup> E-Mail from Mr. Ames to John W. Berresford, Commission Attorney, dated Oct. 5, 2009, 10:49 A.M.; e-mail from David R. Podolsky, Esq., Stein, Sperling, Bennett, De Jong, Driscoll & Greenfieg, P.C., counsel for the municipal Communities, dated Oct. 5, 2009, 11:18 A.M.

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

within the relevant franchise area.<sup>8</sup> For the reasons set forth below, we grant the petition based on our finding that Comcast is subject to effective competition in the Communities listed on Attachment A.

## II. DISCUSSION

4. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), 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 offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.<sup>9</sup> This test is otherwise referred to as the “LEC” test.

5. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.<sup>10</sup> It is undisputed that these Communities are served by both Comcast and Verizon, a local exchange carrier, and that these two MVPD providers are unaffiliated.<sup>11</sup>

6. The “comparable programming” element is met if Verizon offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.<sup>12</sup> The petition includes a copy of Verizon’s channel lineup, which shows its service including far more than the required numbers of channels.<sup>13</sup>

7. Finally, Comcast has demonstrated that the Verizon has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>14</sup>

8. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

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<sup>8</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>9</sup> See 47 U.S.C. § 543(l)(1)(D).

<sup>10</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-15 (1999) (“*Cable Reform Order*”).

<sup>11</sup> Petition at 5-15.

<sup>12</sup> See 47 C.F.R. § 76.905(g).

<sup>13</sup> See Petition at Exh. 21.

<sup>14</sup> See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-15. See also Petition at 6-15 & Exhs. 10-20.

**III. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Comcast of Potomac, LLC, **IS GRANTED**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>15</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 8188-E

## COMMUNITIES SERVED BY COMCAST OF POTOMAC, LLC

<b>Communities</b>	<b>CUID(s)</b>
Brookville	MD0230
Chevy Chase Town	MD0223, MD0275
Chevy Chase View	MD0466
Chevy Chase Village Section 5	MD0276
Garrett Park	MD0231
Glen Echo	MD0233
Kensington	MD0234
Martin's Additions	MD0476
North Chevy Chase	MD0465
Rockville	MD0222
Somerset	MD0227
Takoma Park	MD0226
Unincorporated Montgomery County	MD0236
including Bethesda	MD0328
Boys	MD0343
Burtonsville	MD0341
Cabin John	MD0347
Derwood	MD0345
Germantown	MD0340
Olney	MD0346
Potomac	MD0342
Silver Spring	MD0224
West Bethesda	MD0349
Wheaton	MD0344

The Petition at 3 describes the 11 last-listed, indented areas as “*unincorporated places, that are not self-governing, and are part of the single ‘Unincorporated Montgomery County’ Franchise Area.*”