

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of	)	CSR-8635-E	
)		
	)	PSID Nos. 006106	
Time Warner Cable Inc.)		
For Determination of	)	Warsaw, City of	KY0539
Effective Competition	)	Erlanger, City of	KY0675
	)	Kenton Vale, City of	KY0681
	)	Lakeside Park, City of	KY0682
	)	Union, City of	KY0692
	)	Walton, City of	KY0710
	)	Fairview, City of	KY0747
	)	Falmouth, City of	KY0857
	)	Crittenden, City of	KY0870
	)	Grant County (Uninc.)	KY0868
	)	Gallatin County (Uninc.)	KY1237
	)	Pendleton County (Uninc.)	KY1110

To: Chief, Media Bureau

OPPOSITION TO TIME WARNER CABLE'S PETITION FOR SPECIAL RELIEF

The Telecommunications Board of Northern Kentucky ("TBNK") by and through its attorneys, and pursuant to Section 76.7 of the Commission's rules¹, hereby opposes the petition of Time Warner Cable Inc. ("Time Warner Cable") for a finding of effective competition in the Franchise Area comprising the City of Kenton Vale, Kentucky (the "Petition"). TBNK does not oppose the finding of effective competition in the City of Lakeside Park, Kentucky as of the date of this opposition for the reasons set forth below.

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

BACKGROUND

TBNK is a government agency formed pursuant to the provisions of the Interlocal Cooperation Act of Kentucky² by multiple cities and counties located in Northern Kentucky, including the Cities of Kenton Vale and Lakeside Park, Kentucky (the named cities are collectively referred to as “**TBNK Local Governments**”). Pursuant to the terms and conditions of that certain Interlocal Cooperation Agreement, dated March 12, 1996, among TBNK Local Governments and other local governments who are signatories thereto (the “**Interlocal Agreement**”), TBNK is charged with the responsibility for and administration of all cable television and rate regulation matters for TBNK Local Governments.³ TBNK has been certified by the Federal Communications Commission to regulate basic service tier rates for the TBNK Local Governments.

Time Warner Cable has filed with the Commission a Petition pursuant to Sections 76.7, 76.905(b) and 76.907 of the Commission’s rules for a determination that it is subject to effective competition in the jurisdictional boundaries or “Franchise Area” of the aforementioned TBNK Local Governments. Time Warner alleges that its cable system serving the TBNK Local Governments is subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (the “**Communications Act**”), and the Commission’s implementing rules, is therefore exempt from cable rate regulation in these cities because of

² KRS § 65.210 *et seq.* The provisions of this law provide that any powers, privileges or authority exercised or capable of exercise by a public agency of the State of Kentucky (“State”) may be exercised and enjoyed jointly with any other public agency of the State. This law further provides that any agency of the State government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred thereby.

³ As required by the Interlocal Act, the Interlocal Agreement, as amended, was approved by the Attorney General of the State of Kentucky on March 12, 1996 and filed with the Secretary of State on March 21, 1996.

competing service provided by two direct broadcast satellite providers, DirecTV⁴ and DISH Network⁵ (collectively, the “DBS Providers”).

DISCUSSION

In Time Warner Cable’s Petition, Time Warner Cable accurately cites to 47 U.S.C. § 543 and Section 76.905(b)(2) of the Commission’s rules with respect to the “Competing Provider Test” to determine if a cable system is subject to effective competition. The test finds effective competition to exist when the franchise area⁶ is:

- (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
- (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.⁷

TBNK does not dispute Time Warner Cable’s claim that effective competition exists in the Franchise Area of Lakeside Park because competing multichannel video programming distributors or DBS Providers, are available to more than 50 percent of the households, and, based upon the methodology employed by Time Warner Cable,⁸ the subscriber base for the DBS Providers exceed 15 percent of the households within the Franchise Area of Lakeside Park. However, TBNK does dispute Time Warner Cable’s claim that effective competition exists

⁴ DirecTV is a registered trademark of DirecTV, Inc.

⁵ DISH Network is a registered trademark of EchoStar Communications Corporation.

⁶ Each of the TBNK Local Governments entered into and issued separate franchise agreements to Time Warner Cable’s predecessor in interest, Insight Communications Company, Inc. or one of its subsidiaries, and each of the franchise agreements define the “Franchise Area” as the incorporated area of the city and such additional areas as may be included in the corporate limits of each city during the term of the franchise agreement. Accordingly, each TBNK Local Government or city has a separate and distinct Franchise Area.

⁷ 47 U.S.C. § 543.

⁸ The methodology employed by Time Warner includes the use of the ZIP+4 methodology to calculate the DBS Providers’ subscribership in the Franchise Areas. The ZIP+4 codes were identified for each Franchise Area by Media Business Corp. (“MBC”) using mapping software on data derived from the U.S. Census Bureau and the U. S. Postal Service, as set forth in Exhibits A and B (Household Census Population) to the Petition. Time Warner Cable also uses data generated by the Satellite Broadcasting Communications Association (“SBCA”) which provides combined subscriber counts for each Franchise Area and each of the identified ZIP+4 codes.

within the City of Kenton Vale, as the subscriber base for the DBS Providers does not exceed 15 percent of the households in Kenton Vale.

Using the same methodology employed by Time Warner Cable with respect to the DBS Providers' subscriber base, the second prong of the 50/15 effective competition test is not met. The subscriber penetration level of DBS Providers in Kenton Vale is actually 13.333%. Attached as Exhibit A is a report from SBCA, the same organization used by Time Warner Cable in determining subscriber counts in Kenton Vale, that sets the DBS Provider subscribership at 6 as opposed to the 9 subscribers set forth in the Petition at page 8. The difference in the two subscriber numbers is due to the dates of the SBCA report used by Time Warner Cable and TBNK. The SBCA report used by Time Warner Cable (see Exhibit C to the Petition) is dated April 19, 2012 and it is for data through March 31, 2012. The SBCA report used by TBNK is dated June 20, 2012 and it is for data through May 31, 2012.

CONCLUSION

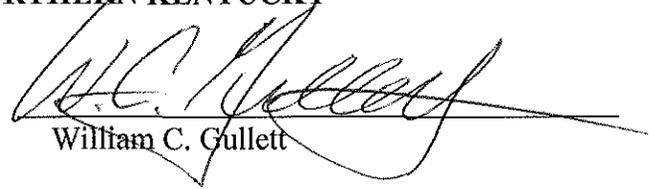
Time Warner Cable has failed to meet its burden that the DBS Providers collectively serve 15 percent or more of the households in the Franchise Area of the City of Kenton Vale. Time Warner Cable used outdated information and it would only be fair to the subscribers if the Commission accepted the data provided by TBNK (see Exhibit A to this opposition), which is certainly more current than the data provided by Time Warner Cable.

Accordingly, TBNK submits that Time Warner Cable has failed to meet its burden under the Competing Provider Test and has not demonstrated that DBS subscribership within the Franchise Area exceeds the 15 percent threshold required under 47 U.S.C. § 543(1)(1)(B) of the Communications Act. TBNK respectfully requests that the Media Services Bureau reject Time Warner Cable's Petition for Special Relief with respect to the City of Kenton Vale, Kentucky.

Respectfully submitted,

**TELECOMMUNICATIONS BOARD OF
NORTHERN KENTUCKY**

By:


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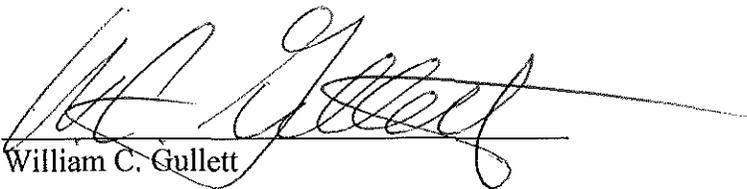
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via United Parcel Service as of this 20th day of June, 2012, to:

Time Warner Cable Inc.
c/o Craig A. Gilley
Edwards Wildman Palmer LLP
1255 23rd St., N.W., 8th Fl
Washington, D.C. 20037

City of Lakeside Park
Mayor David Jansing
P.O. Box 17127
9 Buttermilk Pike
Lakeside Park, KY 41017

City of Kenton Vale
Mayor Mike Pendery
464 Kuhrs Lane
Kenton Vale, KY 41015


William C. Gullett

ECTR – Effective Competition Tracking Report

Provided by
Satellite Broadcasting and Communications Association

Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated June 15, 2012 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: June 20, 2012

ZIP Codes	DTH Count
Requested total for City of Kenton Vale, KY	6

Data is current through 5/31/2012

Report Prepared by:
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Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV and DISH Network residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members' subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

; oldest data from 2012-05-31

410151009	0
410151022	0
410151023	2
410151039	2
410151044	1
410151047	0
410151048	1
410151070	0
410151089	0
410151090	0
410151097	0
Total	6