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April 1, 2013

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Memorandum Opinion and Order in Time Warner Cable Inc.
DA 11-1331 (rel. August 2, 2011), CSR-8415-E

Dear Ms. Dortch:

On behalf of Time Warner Cable Inc. and in reference to the above-captioned Memorandum Opinion and Order granting effective competition status for various Ohio communities, we request that the record be clarified as follows. The Attachment to DA 11-1331 (attached) improperly lists the Village of Sabina, Ohio as the Township of Sabrina. We respectfully request that the Media Bureau change any relevant records or databases to properly reflect the proper village name. We also request that the Bureau issue a clarification letter to such effect, as proper community identification is relevant for state franchising purposes.

Should there be any questions regarding this matter, please contact the undersigned.

Sincerely,

Craig A. Gilley
Attorney for Time Warner Cable Inc.

cc: Steve Broeckaert, Esq., Media Bureau

AM 19019611.1

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

In the Matter of	)	
	)	CSR 8415-E
Time Warner Cable Inc.	)	CSR 8416-E
	)	CSR 8417-E
Petitions for Determination of Effective Competition in Communities in Ohio	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 29, 2011 **Released: August 2, 2011**

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

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable, Inc., hereinafter referred to as "Petitioner," has filed with the Commission three petitions pursuant to Sections 76.7, 76.905(b)(2), 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 the "Attachment A Communities." Petitioner alleges that its cable systems serving the Attachment A Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended ("Communications Act")[1] and the Commission's implementing rules,[2] and are 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"). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment B and hereinafter referred to as Attachment B Communities, pursuant to Section 623(l)(1)(B) of the Communications Act[3] and Section 76.905(b)(1) of the Commission's rules,[4] because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,[5] as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.[6] 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.[7] For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.[8]

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[1] *See* 47 U.S.C. § 543(l)(1)(B).

[2] 47 C.F.R. § 76.905(b)(2).

[3] *See* 47 U.S.C. § 543(l)(1)(A).

[4] 47 C.F.R. § 76.905(b)(1).

[5] 47 C.F.R. § 76.906.

[6] *See* 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

[7] *See* 47 C.F.R. §§ 76.906-.907(b).

[8] Petitioner indicates that the Census Bureau recently released updated 2010 household figures. Consequently, Petitioner filed updated household figures. In addition, Petitioner updated DBS penetration calculations and Time

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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 the franchise area is (a) served by at least two unaffiliated multi-channel 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.[9] This test is referred to as the "competing provider" test.

4. The first prong 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.[10] It is undisputed that the Attachment A Communities are "served by" both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered "served by" an MVPD if that MVPD's service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service's availability.[11] The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.[12] The "comparable programming" element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming[13] and is supported in these petitions with website citations to the channel lineups for both DIRECTV and DISH.[14] Also undisputed is Petitioner's assertion that both DIRECTV and DISH offer service to at least "50 percent" of the households in the Attachment A Communities because of their national satellite footprint.[15] Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Attachment A Communities.[16] Petitioner sought to determine the competing provider penetration there by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers

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Warner subscriber penetrations for the communities involved in these proceedings. *See* Letter from Craig A. Gilley, Esq., Edwards Angell Palmer & Dodge LLP, to Steven Broeckaert, Senior Deputy Division Chief, Policy Division, Media Bureau, dated April 29, 2011 ("Time Warner Census 2010 Supplement").

[9] 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

[10] 47 C.F.R. § 76.905(b)(2)(i).

[11] *See, e.g.,* Petition in CSR 8415-E at 3-5.

[12] *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

[13] *See* 47 C.F.R. § 76.905(g). *See, e.g.,* Petition in CSR 8415-E at 5-6.

[14] *See, e.g.,* Petition in CSR 8416-E at 5-6.

[15] *See, e.g.,* Petition in CSR 8417-E at 6-7.

[16] *See, e.g.,* Petition in CSR 8415-E at 7.

attributable to the DBS providers within the Attachment A Communities on a zip code plus four basis.[17]

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2010 household data,[18] as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Attachment A Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment A Communities. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Attachment A Communities.

B. The Low Penetration Test

7. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area. This test is referred to as the "low penetration" test.[19] Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less that 30 percent of the households in the Attachment B Communities.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc., **ARE GRANTED.**

9. **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 Attachments A and B **IS REVOKED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[20]

FEDERAL COMMUNICATIONS COMMISSION

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

[17] *See, e.g.,* Petition in CSR 8416-E at 7-8.

[18] *See* Time Warner Census 2010 Supplement.

[19] 47 U.S.C. § 543(l)(1)(A).

[20] 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8415-E, 8416-E, 8417-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
CSR 8415-E				
Bloomingburg Village	OH2009	25.86%	321	83
Concord Township	OH3044	38.37%	344	132
Madison Township	OH2898	40.09%	444	178
Sabrina Township	OH0591	28.21%	1,028	290
Union Township	OH0390	33.97%	1,469	499
CSR 8416-E				
Noble Township	OH2899	26.32%	832	219
Tuscarawas Township	OH3043	21.04%	770	162
CSR 8417-E				
Delta Village	OH0422	35.83%	1,203	431

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSRs 8415-E, 8416-E, 8417-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8415-E				
Jasper Township	OH2668	299	14	4.68%
Jefferson Township	OH1908	1,055	92	8.72%
Marion Township	OH3045	296	20	6.76%
Midway Village	OH2024	116	34	29.32%
Milledgeville Village	OH1742	50	6	12.00%
Octa Village	OH1743	30	4	13.33%
Paint Township Highland Co.	OH1129	1,754	12	0.68%
Paint Township Fayette Co.	OH1909	694	16	2.31%
Paint Township Madison Co.	OH 3058	212	34	16.04%
Paxton Township	OH1997	831	1	0.12%
Range Township	OH2023	370	23	6.22%
Richland Township	OH 2781	1,422	86	6.05%
Twin Township	OH0424	1,280	202	15.78%
Wayne Township	OH3038	265	28	10.57%
CSR 8416-E				
Bethlehem Township	OH3039	455	1	0.22%
Fallsbury Township	OH2897	372	1	0.27%
Franklin Township	OH2979	760	27	3.55%
Jackson Township	OH3040	785	12	1.53%
Keene Township	OH3041	678	2	0.29%
Nellie Village	OH3042	49	7	14.29%
Perry Township	OH3056	576	32	5.56%
CSR 8417-E				
Amboy Township	OH1629	670	11	1.64%
Auglaize Township	OH3062	567	80	14.11%
Clinton Township	OH2896	3,634	27	0.74%
Harrison Township	OH2613	516	12	2.33%
Perrysburg Township	OH1134	8,246	974	11.81%
Royalton Township	OH1630	578	1	0.17%
Spencer Township	OH1360	647	102	15.77%
Washington Township	OH3050	715	164	22.94%