

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

In the Matter of)	
)	
Time Warner Cable Inc.)	MB Docket No. 12-27, CSR 8581-E
)	MB Docket No. 12-28, CSR 8582-E
Petitions for Determination of Effective)	MB Docket No. 12-29, CSR 8583-E
Competition in 18 Communities in Kentucky and)	
Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2013

Released: June 10, 2013

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 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 those Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”), and, in one Attachment A Community, AT&T. 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)(A) of the Communications Act³ 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 areas. The petitions are unopposed.⁵

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 Time Warner filed two letters requesting that the following communities be deleted from consideration in this proceeding: the Village of Centerville (OH3047), the City of Waverly (OH0128), Groton Township (OH2981), and Webster Township (OH3033). Time Warner states that these communities have already been determined to be subject to effective competition in DA 11-491. See Time Warner Cable Inc., 26 FCC Rcd 3816 (2011). Time Warner also notes that the Media Bureau’s Order improperly listed Centerville as a township when it is in fact a village, the City of Waverly as a township when it is in fact a city, and the City of Waverly’s CUID as OH0192 when it is actually “OH0182.” See Letter from Craig A. Gilley, Attorney for Time Warner to Marlene H. Dortch, Secretary, Federal Communications Commission, re: CSR 8581-E, MB Docket No. 12-27 (April 1, 2013). Because of an inconsistency reflected in the City of Waverly’s CUID in the previously noted letter, Time Warner filed another letter verifying that the City of Waverly’s CUID is OH0128. See Letter from Craig A. Gilley, Attorney for Time Warner to Marlene H. Dortch, Secretary, Federal Communications Commission, re: CSR 8581-E, MB Docket No. 12-27 and CSR 8582-E, MB Docket No. 12-28 (May 29, 2013). Time Warner also notes that Groton Township’s CUID number was incorrectly listed as OH2891 instead of OH2981 and Webster Township’s CUID

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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.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.

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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in those Communities are reasonably aware that they may purchase the service of these MVPD providers.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 the petition with citations to the channel lineups for both DIRECTV and DISH.¹⁴ Also undisputed is

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number was incorrectly listed as OH3034 instead of OH3033. *See* Letter from Craig A. Gilley, Attorney for Time Warner to Marlene H. Dortch, Secretary, Federal Communications Commission, re: CSR 8582-E, MB Docket No. 12-28 (May 24, 2013). We acknowledge Time Warner's letters requesting the deletions of the above-noted communities from this proceeding and note the corrections regarding those communities.

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

⁹ 47 C.F.R. § 76.905(b)(2)(i).

¹⁰ *See, e.g.*, Petition in CSR 8581-E at 2-3.

¹¹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹² 47 C.F.R. § 76.905(e)(2).

¹³ *See* 47 C.F.R. § 76.905(g); *see also, e.g.*, Petition in CSR 8582-E at 5.

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 in the Attachment A Communities by purchasing subscriber tracking reports from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Attachment A Communities on a zip code plus four basis.¹⁷ Petitioner obtained AT&T's subscriber number in Findlay City directly from that competing provider.¹⁸

6. Based upon the aggregate competing provider subscriber penetration levels that were calculated using Census 2010 household data,¹⁹ 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.²⁰ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Attachment B Communities.

8. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Attachment B Communities. Therefore, the low penetration test is satisfied as to the Attachment B Communities.

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¹⁴ See, e.g., Petition in CSR 8583-E at 4 n.12; *id.* at 5.

¹⁵ See, e.g., Petition in CSR 8581-E at 6.

¹⁶ See, e.g., Petition in CSR 8582-E at 6-7.

¹⁷ See, e.g., Petition in CSR 8583-E at Ex. C.

¹⁸ Petition in CSR 8582-E at 7 and Ex. D. Time Warner combines AT&T's subscriber count with the DBS Providers count to arrive at the Estimated Competing Provider Subscriber number reflected in Attachment A for the City of Findlay.

¹⁹ See, e.g., Petition in CSR 8581-E at Ex. B.

²⁰ 47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

9. 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**.

10. **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**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

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

²¹ 47 C.F.R. § 0.283.

ATTACHMENT A

MB Docket No. 12-27, CSR 8581-E

MB Docket No. 12-28, CSR 8582-E

MB Docket No. 12-29, CSR 8583-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	CPR*	2010 Census Households	Estimated Competing Provider Subscribers
MB Docket No. 12-27, CSR 8581-E				
Deerfield Township	OH2779	27.05	403	109
Jeffersonville Township	OH0990	26.69	502	134
Sabina Village	OH0591	24.32	1032	251
South Shore City	KY0137	26.42	492	130
MB Docket No. 12-28, CSR 8582-E				
Arcadia Village	OH1246	29.49	217	64
Findlay City	OH0033	19.23	17,354	3,338
Mount Blanchard Village	OH2020	16.39	183	30
Sycamore Village	OH1257	15.92	358	57
Van Buren Village	OH1034	18.49	119	22
MB Docket No. 12-29, CSR 8583-E				
Cumberland Village	OH2894	41.67	132	55
Granville Village	OH0702	20.06	1441	289
Granville Township	OH0655	16.08	2996	477
Hanover Village	OH0600	34.06	323	110
Newark City	OH0224	20.59	19840	4086
Newark Township	OH0654	30.36	840	255

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

MB Docket No. 12-28, CSR 8582-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
MB Docket No. 12-28, CSR 8582-E				
Gorham Township	OH3046	900	3	0.33
Marseilles Township	OH2991	177	1	0.56
Milton Township	OH3031	384	2	0.52