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

In the Matter of	)	
	)	
Time Warner Cable Inc.	)	
	)	CSR 8374-E
Petitions for Determination of Effective	)	
Competition in 34 Communities in North Carolina	)	
and South Carolina	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 8, 2011 **Released: June 10, 2011**

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

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc., hereinafter referred to as "Petitioner," filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(1-2), and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in 34 North Carolina and South Carolina communities. The petition alleged that Petitioner's cable system serving most of those communities is 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 is therefore exempt from cable rate regulation because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc., and DISH Network. Later, Petitioner requested that three of these communities be withdrawn from consideration.[3] We grant this request. The remaining communities in which Petitioner claims to be subject to "competing provider" effective competition are listed on Attachment A and will be referred to as "the Attachment A Communities." Petitioner also claims to be exempt from cable rate regulation in the Communities listed on Attachment B ("the Attachment B Communities") because Petitioner serves fewer than 30 percent of the households in those franchise areas. 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,[4] as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.[5] 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.[6] 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.

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[1] *See* 47 U.S.C. § 543(l)(1)(B).

[2] 47 C.F.R. § 76.905(b)(2).

[3] Letter from Craig A. Gilley, Esq., Edwards Angell Palmer & Dodge LLP, counsel for Petitioner, to Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau (dated May 25, 2011) ("May 25 Letter"). The three communicates are Mr. Gilead (NC0530), Red Cross (NC1066), and Stallings (NC0500).

[4] 47 C.F.R. § 76.906.

[5] *See* 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

[6] *See* 47 C.F.R. §§ 76.906, -.907(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.[7] 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.[8] It is undisputed that the Attachment A Communities are "served by" both DBS service providers 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.[9] 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.[10] 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[11] and is supported in this petition with citations to the channel lineups for both DBS service providers.[12] Also undisputed is Petitioner's assertion that both DBS service providers offer service to at least "50 percent" of the households in the Attachment A Communities because of their national satellite footprint.[13] Accordingly, we find that the first prong of the competing provider test is satisfied for each of those Communities.

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. The second prong thus required Petitioner to calculate a ratio for each Attachment A Community the numerator of which was the number of DBS subscribers and the denominator of which is the number of households there. For its numerator, Petitioner purchased a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within each Attachment A Community on a zip code plus four basis.[14] For its denominator, Petitioner included household numbers for each Attachment A Community from the 2000 Census.[15] Later, at the

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[7] 47 U.S.C. § 543(l)(1)(B); *see* also 47 C.F.R. § 76.905(b)(2).

[8] 47 C.F.R. § 76.905(b)(2)(i).

[9] *See* Petition at 4-6.

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

[11] *See* 47 C.F.R. § 76.905(g). *See also* Petition at 6.

[12] *See* Petition at 5 n.12; *id.* at 6.

[13] *See id*. at 7.

[14] *Id.* at 9.

[15] *Id.* at 10.

Commission's request,[16] it refreshed the record by submitting household numbers from the 2010 Census.[17] Consistent with our longstanding policy of using household numbers from the most recent decennial Census,[18] we use the 2010 household numbers.

6. Based upon the aggregate DBS subscribership levels 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. 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.

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.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc., **IS 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.[20]

FEDERAL COMMUNICATIONS COMMISSION

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

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[16] Letter from Mr. Gilley to Mr. Broeckaert, January 20, 2011.

[17] May 25 Letter.

[18] *See, e.g., Charter Commun. Entertainment I LLC*, Memorandum Opinion & Order DA 11-697 at ¶ 17 (rel. April 18, 2011), available at 2011 WL 1483759; *Time Warner Entertainment-Advance/Newhouse Partnership*, Memorandum Opinion & Order DA 11-494 at ¶ 21 (rel. March 16, 2011), available at 2011 WL 901296; *Cablevision of Raritan Valley, Inc*., 19 FCC Rcd 6966, 6968, ¶ 6 (2004).

[19] 47 U.S.C. § 543(l)(1)(A).

[20] 47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
Unincorporated Caburrus County	NC0174	41.85	25578	10705
Town of Cleveland	NC0754	46.34	328	152
Unincorporated Davidson County	NC0112	32.71	29578	9676
Town of Faith	NC0676	25.53	329	84
Town of Granite Quarry	NC0407	26.72	1149	307
Town of Harrisburg	NC0287	26.28	4003	1052
Town of Hemby Bridge	NC1132	15.66	562	88
Village of Lake Park	NC1079	37.29	1196	446
Town of Lawndale	NC0523	24.49	245	60
Town of Marshville	NC0499	48.95	809	396
Village of Marvin	NC1080	15.52	1553	241
Town of McAdenville	NC0309	23.81	252	60
Town of Mineral Springs	NC1133	27.89	950	265
Town of Mint Hill	NC0504	20.78	8528	1772
Village of Misenheimer	NC1067	35.14	111	39
Town of Mt. Pleasant	NC0455	25.04	619	155
Town of New London	NC0507	18.03	233	42
Town of Norwood	NC0519	26.67	960	256
Town of Oakboro	NC0517	36.10	712	257
Town of Richfield	NC00508	25.99	227	59
Town of Rockwell	NC0677	25.83	848	219
Town of Troutman	NC0947	34.88	903	315
Town of Wadesboro	NC0156	37.30	2303	859
Town of Waxhaw	NC0502	17.37	3242	563
Village of Wesley Chapel	NC1083	19.46%	2282	444

*CPR = Percent of competitive DBS penetration rate. Some CPRs may be not exactly correct because of fractional DBS subscribers used in Time Warner's calculations but not reproduced above.

ATTACHMENT B

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Unincorporated Anson County	NC1074	6121	707	11.55
Town of Fort Mill	SC0665	4198	16	0.38
Town of Indian Trail	NC0501	11121	751	6.75
Unincorporated Montgomery County	NC1081	7746	371	4.79
Town of Mooresville	NC0367	12374	1334	10.78
Town of Weddington	NC0720	3129	455	14.54