

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

In the Matter of)	
)	
Time Warner Cable Inc.)	CSR7522-E
)	CSR 7524-E
Petitions for Determination of Effective)	CSR 7526-E
Competition in various Franchise Areas in Maine)	CSR 7527-E
)	CSR 7529-E
)	CSR 7530-E
)	CSR 7531-E
)	CSR 7532-E
)	CSR 7533-E

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2008

Released: May 2, 2008

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), 76.905(b)(1) 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 “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities are subject to effective competition pursuant to Section 623(1) 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 Community listed on Attachment C and hereinafter referred to as Group C Community 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,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ 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.⁵ For the reasons set forth below, we grant the petitions based on our

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

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 (“MVPD”) 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;⁶ this test is otherwise 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.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B 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.⁸ 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.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.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 programming¹¹ and this is supported by the petitions.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. 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

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 5.

¹²*See* Petitions at 6. Time Warner does not provide channel line-ups for DIRECTV and Dish, but notes that these channel line-ups can be found at www.directv.com and www.dishnetwork.com and that these websites demonstrate the availability of the requisite programming.

¹³*See* Petitions at 6.

area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, 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 Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. 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 Group B Communities.

B. The Low Penetration Test

9. 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 otherwise referred to as the “low penetration” test.¹⁷ 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 franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, 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 Group C Community. Therefore, the low penetration test is also satisfied as to the Group C Community

¹⁴*Id.* at 7. Time Warner states that it cannot determine the largest MVPD in the following Communities: (CSR 7522-E – Anson, Avon, Embden, New Portland, New Vineyard, Norridgewock, Phillips, Solon, and Strong); (CSR 7526-E – Weld); (CSR 7527-E – Baldwin, Denmark, Greenwood, Hiram, Parsonsfield, Porter, West Paris and Woodstock); (CSR 7530-E – Addison, Columbia Falls, and Harrington); (CSR 7531-E – Greenbush). The Petitioner states that this is because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS subscriber. With the exception of the Time Warner Community of New Portland (CSR-7522-E) which qualifies under the low penetration test, the Petitioner argues that it is subject to effective competition in the above-noted Communities because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Petitioner’s subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied. In the Community of New Portland, Time Warner’s subscribership is less than 15 percent.

¹⁵Petitions at 7-9. The Petitioner states that the Commission has previously approved the five digit zip code allocation formula to calculate the DBS providers’ subscribership. *See, e.g.*, Comcast of Dallas, L.P., 20 FCC Red 17968, 17969-70 (MB 2005) (approving a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁶Petitions at 7-9 and Exhibit D (CSR 7524-E, CSR 7526-E, CSR 7529-E, CSR 7531-E and CSR 7533-E) and Exhibits E and F (CSR 7522-E, CSR 7527-E, CSR 7530-E, and CSR 7532-E).

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. 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**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7522-E, CSR 7524-E, CSR 7526-E, CSR 7527-E, CSR 7529-E, CSR 7530-E, CSR 7531-E,
CSR 7532-E, CSR 7533-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

CSR-7522-E

Communities	CUIDS
Anson	ME0088
Avon	ME0084
Carrabassett Valley	ME0226
Coplin	ME0228
Embden	ME0089
Eustis	ME0085
Kingfield	ME0086
New Portland	ME0091
New Vineyard	ME0312
Norridgewock	ME0087
Phillips	ME0092
Smithfield	ME0255
Solon	ME0090
Strong	ME0205
Wyman	ME0227

CSR 7524-E

Communities	CUID
Lincoln	ME0031

CSR 7526-E

Communities	CUID
Weld	ME0271

CSR 7527-E

Communities	CUIDS
Baldwin	ME0220
Bethel	ME0195
Bridgton	ME0186
Cornish	ME0221
Denmark	ME0355
Greenwood	ME0194
Harrison	ME0265
Hiram	ME0219
Hollis	ME0150
Limerick	ME0222
Limington	ME0206
Naples	ME0211
Newry	ME0191
Norway	ME0011
Paris	ME0012
Parsonsfield	ME0218
Porter	ME0217
Sebago	ME0354
Standish	ME0207
Waterboro	ME0151
Waterford	ME0329
West Paris	ME0192
Windham	ME0178
Windham	ME0190
Woodstock	ME0193

CSR 7529-E

Communities CUID
Vinalhaven ME0223

CSR 7530-E

Communities CUIDS
Addison ME0232
Columbia Falls ME0235
Harrington ME0233

CSR 7531-E

Communities CUID
Greenbush ME0269

CSR 7532-E

Communities CUIDS
Allagash ME0236
Eagle Lake ME0126
Fort Kent ME0040
Frenchville ME0095
Grand Isle ME0243
Madawaska ME0001
St. Agatha ME0148
St. Francis ME0234
St. John ME0231
Van Buren ME0039
Wallagrass ME0242

CSR 7533-E

Communities CUID
Dixfield ME0009

ATTACHMENT B

CSR 7522-E, CSR 7524-E, CSR 7526-E, CSR 7527-E, CSR 7529-E, CSR 7530-E, CSR 7531-E,
CSR 7532-E, CSR 7533-E,

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

CSR 7522-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Anson	ME0088	37.43%	1,031	386
Avon	ME0084	47.52%	202	96
Carrabassett Valley	ME0226	16.76%	179	30
Coplin	ME0228	22.41%	58	13
Embden	ME0089	41.92%	365	153
Eustis	ME0085	29.80%	302	90
Kingfield	ME0086	16.946	454	77
New Vineyard	ME0312	49.46%	279	138
Norridgewock	ME0087	42.57%	1,285	547
Phillips	ME0092	47.42%	407	193
Smithfield	ME0255	30.65%	372	114
Solon	ME0090	39.45%	398	157
Strong	ME0205	43.37%	498	216
Wyman	ME0227	17.14%	35	6

CSR 7524-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Lincoln	ME0031	38.38%	2,108	809

CSR 7526-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Weld	ME0271	46.59%	176	82

CSR 7527-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Baldwin	ME0220	32.86%	493	162
Bethel	ME0195	48.16%	1,034	498
Bridgton	ME0186	27.91%	1,924	537
Cornish	ME0221	31.67%	521	165
Denmark	ME0355	52.04%	417	217
Greenwood	ME0194	54.69%	320	175
Harrison	ME0265	41.85%	920	385
Hiram	ME0219	44.38%	534	237
Hollis	ME0150	26.34%	1,507	397
Limerick	ME0222	26.18%	850	222
Limington	ME0206	30.59%	1,141	349
Naples	ME0211	26.91%	1,297	349
Newry	ME0191	54.23%	142	77
Norway	ME0011	23.70%	1,972	468
Paris	ME0012	26.23%	1,975	518
Parsonsfield	ME0218	37.22%	634	236
Porter	ME0217	51.60%	562	290
Sebago	ME0354	25.00%	584	146
Standish	ME0207	22.15%	3,205	710
Waterboro	ME0151	23.07%	2,211	510

Waterford	ME0329	31.86%	590	188
West Paris	ME0192	38.85%	646	251
Windham	ME0178 ME0190	22.29%	5,522	1,231
Woodstock	ME0193	45.14%	525	237

CSR 7529-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Vinalhaven	ME0223	29.64%	550	163

CSR-7530-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Addison	ME0232	46.42%	489	227
Columbia Falls	ME0235	58.57%	251	147
Harrington	ME0233	38.46%	364	140

CSR-7531-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Greenbush	ME0269	43.10%	522	225

CSR-7532-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Allagash	ME0236	37.14%	140	52
Eagle Lake	ME0126	37.45%	330	124
Fort Kent	ME0040	37.58%	1,735	650
Frenchville	ME0095	29.71%	478	142

Grand Isle	ME0243	26.15%	218	57
Madawaska	ME0001	25.09%	1,993	500
St. Agatha	ME0148	28.00%	350	98
St. Francis	ME0234	36.86%	236	87
St. John	ME0231	37.27%	110	41
Van Buren	ME0039	20.64%	1,095	226
Wallagrass	ME0242	37.33%	217	81

CSR-7533-E

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Dixfield	ME0009	39.07%	1,011	395

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7522-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
New Portland	ME0091	9.42%	329	31