

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

In the Matter of:	)	
	)	
Time Warner Entertainment-	)	
Advance/Newhouse Partnership	)	CSR 5461-E
d/b/a Time Warner Communications	)	
	)	
Petition for Determination of Effective Competition	)	
in Citrus County, Florida (CUID No. FL0843)	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 9, 2000**

**Released: May 12, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Communications ("Time Warner") has filed with the Commission a petition for a determination of effective competition, pursuant to Section 76.915(f) of the Commission's rules,<sup>1</sup> alleging that Time Warner is subject to effective competition from competing service providers in its Citrus County, Florida, franchise area (the "County"). Time Warner alleges that its cable system serving the County is subject to effective competition, pursuant to Section 623 of the Communications Act of 1934, as amended ("Communications Act"),<sup>2</sup> and the Commission's implementing rules.<sup>3</sup> Time Warner bases its allegations of the presence of effective competition in the County on the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc.<sup>4</sup> and DISH Network ("DISH"),<sup>5</sup> and by an unaffiliated cable operator serving the County, Telesat Acquisition Limited Partnership (herein "Adelphia"). No opposition to this petition was filed.

---

<sup>1</sup>Time Warner filed the petition pursuant to Section 76.915(f) of the Commission's rules, which was eliminated and is superseded by Section 76.7 of the Commission's rules. *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5313 (1999). We will treat Time Warner's petition as filed pursuant to Section 76.7. *See* 47 C.F.R. § 76.7.

<sup>2</sup>47 U.S.C. § 543.

<sup>3</sup>47 C.F.R. § 76.905(b)(2).

<sup>4</sup>DirectTV, Inc. has acquired PRIMESTAR and U.S Satellite Broadcasting., Inc. Time Warner Petition at 2, n. 4.

<sup>5</sup>DISH Network is the registered trademark of EchoStar Communications Corporation. Time Warner Petition at 2, n. 3.

2. 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 fifteen percent (15%) of the households in the franchise area.<sup>6</sup>

3. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>7</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>8</sup> 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. We find that Time Warner has met this burden, and is subject to effective competition in its Citrus County franchise area.

## II. DISCUSSION

4. With respect to the first prong of the competing provider test, we find that the programming of DBS providers, such as DirecTV and DISH, satisfy the Commission's programming comparability criterion. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>9</sup> Time Warner has provided evidence of the advertising of DBS service in the local media serving the franchise area.<sup>10</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>11</sup> We find that Time Warner has demonstrated that the County is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, 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. Time Warner provided 1990 Census data showing 36,241 households in the County.<sup>12</sup> Time Warner also provided information developed by the Bureau of Economic and Business Research at the University

---

<sup>6</sup>Communications Act, § 623(l)(1)(B), 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2).

<sup>7</sup>47 C.F.R. § 76.906.

<sup>8</sup>47 C.F.R. § 76.905.

<sup>9</sup>*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>10</sup>*See* Time Warner at 5 and Exhibit D.

<sup>11</sup>*See* 47 C.F.R. §76.905(g). *See also* Time Warner Petition at 6 and Exhibit D.

<sup>12</sup>Time Warner Petition at 9 and Exhibit J. 1990 Census data satisfies effective competition decision requirements. *See Cable Operators' Petitions for Reconsideration and Revocation of Franchising Authorities' Certifications to Regulate Cable Service Rates*, 9 FCC Rcd 3656 (1994).

of Florida, which estimated 43,897 households in the County based on April 1, 1998 data.<sup>13</sup> Time Warner also provided information showing that Adelphia provides service to approximately 7,300 households<sup>14</sup> and that the two DBS providers provide service to approximately 7,900 households,<sup>15</sup> totaling approximately 15,200 households, or approximately 42% of the 36,241 households in the County (using 1990 Census data) or 34.6% of the 43,897 households in the County (using the 1998 data).<sup>16</sup> Finally, Time Warner represents that it provides service to 26,721 subscribers in the County and therefore is the largest MVPD provider in the County.<sup>17</sup> Based on this record, we find that Time Warner has demonstrated that the number of households subscribing to programming services offered by MVPDs, the DBS providers and Adelphia, other than the largest MVPD, Time Warner, exceeds 15 percent of the households in the County. Time Warner also demonstrated on this record that Adelphia is physically able to offer MVPD service to subscribers in the County, that there exists no regulatory, technical, or other impediments to households within the County taking the services of Adelphia, and that potential subscribers in the County have been made reasonably aware of the MVPD services of Adelphia.<sup>18</sup> Therefore, the second prong of the competing provider test is also satisfied.

6. Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable system serving Citrus County, Florida, is subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Communications **IS GRANTED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

---

<sup>13</sup>Time Warner Petition at 9 and Exhibit K.

<sup>14</sup>*Id.* at 3 and Exhibit B.

<sup>15</sup> *Id.* at 8 and Exhibit I.

<sup>16</sup> *Id.* at 8-9. Where two MVPDs offer service to at least 50 percent of the households in a franchise area, the subscribership of all MVPDs, other than the largest MVPD, may be aggregated to satisfy the second prong of the competing provider test, regardless of whether they offer service to at least 50 percent of the households in the franchise area. *See Time Warner Entertainment Co., L.P., et al. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995).

<sup>17</sup>Time Warner Petition at 8.

<sup>18</sup>*Id.* at 3-5.

<sup>19</sup>47 C.F.R. §0.321.