

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

In the Matter of:)	
)	
Time Warner Entertainment-Advance/Newhouse)	
Partnership, d/b/a Time Warner Company)	CSR 5541-E
)	
Petition for Determination of Effective)	
Competition in Conway, South Carolina)	
(CUID No. SC0023))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2000

Released: June 7, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Time Warner Entertainment-Advance/Newhouse Partnership, d/b/a Time Warner Company ("Time Warner") has filed with the Commission a petition¹ pursuant to Sections 76.7, 76.907 and 76.905(b)(4) of the Commission's rules for a revocation of the certification of the City of Conway, South Carolina (the "City"),² to regulate cable rates due to the presence of effective competition. Time Warner alleges that its cable system serving the City is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),³ and the Commission's implementing rules,⁴ and is therefore exempt from cable rate regulation. Time Warner claims the presence of effective competition in the City stems from the competing services provided by HTC Cablevision, Inc. ("HTC"), a franchised cable operator affiliated with a local exchange carrier ("LEC"). No opposition to this petition was filed.

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 76.905 of the Commission's rules.⁶ The

¹See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 1273, dated April 28, 2000, at p. 2.

²See City of Conway FCC Form 328, Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition, filed October 14, 1993.

³47 U.S.C. § 543(a)(2).

⁴47 C.F.R. § 76.905(b)(4).

⁵47 C.F.R. § 76.906.

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 Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁸

3. The Commission has stated that an incumbent cable operator could satisfy the “LEC” effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁹ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.¹⁰

II. DISCUSSION

4. Time Warner holds a franchise issued by the City to provide cable services within the City’s territorial boundaries, and its cable system plant currently passes virtually all of the approximately 5260 homes in the City.¹¹ On April 12, 1999, the City adopted Ordinance No. 99-04-12-(E) awarding HTC a franchise to provide cable services throughout the territory of the City.¹² HTC has commenced providing cable service within the City and served at least 425 subscribers throughout the City at the time Time Warner’s petition was submitted to the Commission.¹³ On this record, Time Warner qualifies as the incumbent cable operator within the City for purposes of the “LEC” effective competition test at issue in this proceeding. HTC on the other hand is a wholly-owned subsidiary of Horry Telephone Cooperative, Inc., an independent telephone cooperative that has provided local exchange and other telephone services within the City since the 1950s.¹⁴ Therefore, Horry Telephone Cooperative, Inc. qualifies as a “LEC,” and its wholly-owned subsidiary HTC qualifies as an affiliate of a “LEC” for purposes of the “LEC” effective

⁶47 C.F.R. § 76.905.

⁷See 47 C.F.R. §§ 76.906 & 907.

⁸Communications Act, § 623(l)(1)(D), 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test within Section 632(l) may be referred to as the “LEC” effective competition test.

⁹See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

¹⁰*Id.*

¹¹Time Warner Petition at 4-5.

¹²*Id.* at 6-8 & Exhibit .

¹³*Id.* at 4-6

¹⁴*Id.* at 4-6 & Exhibits A and B.

competition test.¹⁵

5. In addition to holding an unrestricted franchise for the provision of cable service within the City, HTC has distributed marketing materials within the City pointing out that City residents “need only contact HTC to activate services.”¹⁶ HTC’s marketing materials show that its cable service offers 51 channels of video programming that includes non-broadcast programming services such as Home & Garden, The History Channel, Lifetime, ESPN, The Golf Channel, The Disney Channel and The Discovery Channel as well as local television broadcast stations.¹⁷ Therefore, HTC provides comparable programming as required by the “LEC” effective competition test. Time Warner’s petition provides substantial evidence that there are no regulatory, technical or other impediments to HTC’s provision of service within the City. Time Warner has also shown that HTC has commenced providing cable service within the City, is able to provide cable service that overlaps Time Warner’s service, is marketing its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfies the “LEC” effective competition test consistent with evidentiary requirements set forth in the *Cable Reform Order*.¹⁸

6. Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable system serving Conway, South Carolina, 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 Company **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification of the City of Conway, South Carolina to regulate basic service cable rates of Time Warner in the City of Conway, South Carolina **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission’s rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁵See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹⁶Time Warner Petition at 8 and Exhibit D.

¹⁷*Id.* at 7-9 and Exhibits D, E, and F.

¹⁸14 FCC Rcd at 5305. The Commission found Time Warner to be subject to effective competition from HTC in the unincorporated portions of Horry County, South Carolina, under the “LEC” effective competition test in *Time Warner Entertainment-Advance/Newhouse Partnership, d/b/a Time Warner Company*, 12 FCC Rcd 18166 (CSB 1997).

¹⁹47 C.F.R. §0.321.