

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

In the Matter of:)	
)	
Time Warner Entertainment Co., L.P. and Time Warner Entertainment -Advance/Newhouse Partnership, collectively d/b/a Time Warner Communications.)	CSR 5455-E
)	
)	
Petition for Determination of Effective Competition in Seminole County, Florida, and Certain Communities therein)	

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 2000

Released: October 27, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Time Warner Entertainment Co., L.P. and Time Warner Entertainment - Advance/Newhouse Partnership, collectively d/b/a Time Warner Communications ("Time Warner") have filed with the Commission a petition pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in Seminole County, Florida and certain communities within Seminole County (collectively, the "Communities").¹ Time Warner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),² and the Commission's implementing rules,³ and are therefore exempt from cable rate regulation. Time Warner claims the presence of effective competition in the Communities stems from the competing services provided by BellSouth Wireless Cable, Inc. ("BSW"), a wireless cable system operator affiliated with a local exchange carrier ("LEC"). No opposition to the petition or supplement was filed.

¹See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 1237, dated July 13, 1999. In addition to Seminole County (CUID Nos. FL0322, FL1015, FL0686, FL0858, and FL0405), the communities are Altamonte Springs (CUID FL0462, Casselberry (CUID FL0191), Lake Mary (CUID FL0599), Longwood (CUID FL0308), Oviedo (CUID FL0687), Sanford (CUID FL0188), and Winter Springs (CUID FL0190), Florida.

²47 U.S.C. § 543(a)(2).

³47 C.F.R. § 76.905(b)(4).

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 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 Section 623(1)(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.⁷

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.⁸ 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.⁹

II. DISCUSSION

4. Time Warner has met its burden of rebutting the presumption that effective competition does not exist by presenting evidence that effective competition is present within the relevant Communities. Time Warner provides cable services within the Communities' territorial boundaries.¹⁰ As such, Time Warner qualifies as the incumbent cable operator within the Communities for purposes of the "LEC" effective competition test. We previously found Time Warner to be subject to "LEC" effective competition from BSW in Orlando and 56 other central Florida communities in *Time Warner Cable (Orlando, FL)*.¹¹ Those findings are largely, if not entirely, conclusive of the issue of whether Time Warner is subject to "LEC" effective competition from BSW in the Communities at issue here. In *Time Warner*, we found that BSW provides "wireless cable" service by means of digital MMDS technology from a transmitter site

⁴47 C.F.R. § 76.906.

⁵47 C.F.R. § 76.905.

⁶See 47 C.F.R. §§ 76.906 & 907.

⁷Communications Act, § 623(1)(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(1) may be referred to as the "LEC" effective competition test.

⁸See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("*Cable Reform Order*"). No showing of meeting a penetration standard is required under the "LEC" effective competition test. *Id.* at 5303.

⁹*Id.* at 5305.

¹⁰Petition at 2 & Exhibit 1.

¹¹14 FCC Rcd 13495 (CSB 1999) ("*Time Warner*").

located in downtown Orlando, Florida.¹² We also found that Orlando and the 56 central Florida communities lie within the BSW transmitter's line of sight, with no geological barriers inhibiting reception, which established the availability of BSW's signal in those communities.¹³ Time Warner has presented information for this record further showing that the Communities at issue here also lie within the BSW transmitter's line of sight, with no geological barriers inhibiting reception, thus showing the availability of BSW's signal in these Communities.¹⁴

5. In *Time Warner*, we further found BSW to be a wholly owned subsidiary of BellSouth Corporation, which was found unquestionably to be a LEC. The *Time Warner* concluded that BSW qualifies as an affiliate of a "LEC" for purposes of the "LEC" effective competition test, and that Time Warner is unaffiliated with BellSouth Corporation or BSW.¹⁵

6. In *Time Warner*, the cable operator demonstrated BSW to be authorized by the Commission to serve any community within its interference-free contour. Time Warner has also shown that the Communities at issue here lie within the interference-free contours of BSW's transmitters.¹⁶ The *Time Warner* decision also found that BSW provides comparable programming as required by the "LEC" effective competition test, and that BSW offers 100 channels of video programming that includes non-broadcast programming and a complement of local television broadcast stations.¹⁷ That programming is also made available in the Communities at issue here by means of BSW's Orlando transmitters considered in *Time Warner*.¹⁸ In view of the availability of the BSW programming being presented in the Communities at issue here, we find that Time Warner has shown that BSW has commenced providing service within the Communities in a manner that makes potential subscribers reasonably aware of those services, and otherwise satisfies the "LEC" effective competition test consistent with evidentiary requirements set forth in the *Cable Reform Order*.

7. Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable systems serving in the Communities at issue here are subject to effective competition.

¹²*Id.*

¹³*Id.*

¹⁴ Petition at 5-6 and Exhibit 1.

¹⁵*Time Warner*, 14 FCC Rcd at 13500. See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹⁶Petition at 5-6 and Exhibit 1.

¹⁷*Time Warner*, 14 FCC Rcd at 13500.

¹⁸Time Warner Petition at 5-6 & Exhibit 1.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the captioned petition for a determination of effective competition filed by Time Warner Entertainment Co., L.P. and Time Warner Entertainment - Advance/Newhouse Partnership **IS GRANTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁹47 C.F.R. §0.321.