

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

In the Matter of:)	
)	
Time Warner Entertainment)	
Company, L.P.)	CSR-5954-E
)	
Petition for Determination of Effective)	
Competition in Wadsworth, Ohio (OH1003))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 2002

Released: November 25, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment Company, L.P. ("Time Warner") filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in Wadsworth, Ohio ("Wadsworth" or the "City").¹ Time Warner alleges that its cable system serving Wadsworth is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(3) of the Commission's rules and seeks revocation of the certification of the local franchising authority in Wadsworth to regulate basic cable service rates.² Time Warner claims the presence of effective competition in Wadsworth stems from the competing service provided by Wadsworth Communications Network ("WCN"), a cable system operated by the City serving the residents of Wadsworth.³ No opposition to the petition was filed.

II. DISCUSSION

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

¹ 47 C.F.R. § 76.7.

² 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(3).

³ Time Warner asserts that WCN is a Department of the City government. See Exhibit 1, WCN Promotional Material and Channel Lineup. Time Warner notes that some of the materials also refer to the provider as "City of Wadsworth Cable," "Wadsworth Cable TV," and "Wadsworth Electric and Communications Services."

⁴ 47 C.F.R. § 76.906.

⁵ 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Time Warner has met this burden.

3. Section 623(l)(1)(C) of the Communications Act provides that a cable operator is subject to effective competition under the “municipal provider” test if a multichannel video programming distributor (“MVPD”) operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.⁶

4. Time Warner provided evidence demonstrating that WCN is a municipally-operated MVPD.⁷ Time Warner submitted a Settlement Agreement entered into between Time Warner and the City that stipulates that the City was constructing a municipally-owned cable system and that, upon completion, Time Warner would face effective competition.⁸ Time Warner also provides a section of the Codified Ordinances of Wadsworth that authorizes the Director of Public Service to make available cable service as part of the service provided to residential customers of the city-owned electric utility.⁹ Finally, Time Warner submitted WCN’s channel lineup that indicates that WCN is an MVPD that offers 68 channels of programming.¹⁰ Therefore, we find that Time Warner submitted sufficient evidence demonstrating that WCN qualifies as a municipally-operated MVPD for purposes of the municipal provider test.

5. Time Warner also demonstrated that WCN offers video programming to at least 50 percent of the households in Wadsworth. Time Warner asserts that, because WCN’s enabling legislation requires it to offer cable service to all residential electric consumers located within the City and there are no competing providers for electric service in the City, WCN will offer service to 100 percent of the City’s households.¹¹ Time Warner further states that its engineering personnel have observed WCN construction crews in the process of constructing cable facilities in Wadsworth. Based on these observations, Time Warner asserts that, at the time of its petition, WCN had built out its system to provide service to over 90 percent of the City.¹² As proof that there are no regulatory, technical or other impediments to Wadsworth households taking WCN’s service, Time Warner asserts that WCN was created by City Ordinance and no franchise is necessary from the City in order for it to operate.¹³ In addition, Time Warner asserts that WCN’s own marketing materials demonstrate that Wadsworth

⁶ 47 U.S.C. § 543(l)(1)(C); *see also* 47 C.F.R. § 76.905(b)(3).

⁷ Petition at 2 and Exhibit 1.

⁸ *Id.* at 3 and Exhibit 2.

⁹ *Id.* and Exhibit 3. Time Warner also submits the City’s Internet homepage that indicates that cable television is among the services provided by the City. *Id.* and Exhibit 4.

¹⁰ *Id.* at 2 and Exhibit 1. Time Warner also states that WCN registered its cable operations with the Commission and its community unit identification number is OH2525.

¹¹ *Id.* at 5 and Exhibit 3 (Section 929.011 of the Codified Ordinances of Wadsworth). Time Warner notes that the Public Service Committee of the Wadsworth City Council considered, but has not yet adopted, a proposal to allow the City’s residents to have a choice of electric suppliers. *See id.* n.20 and Exhibit E (Excerpts from the Minutes of the Public Service Committee of the Wadsworth City Council addressing the deregulation of the electricity market in the City (February 7, 2001 and March 7, 2001)).

¹² *Id.* at 4 and attached Declaration of Stephen R. Fry, Division President of Time Warner’s cable system in Wadsworth.

¹³ *See* 47 U.S.C. § 541(f).

residents need only contact WCN to activate service.¹⁴ Moreover, Time Warner asserts that potential subscribers in Wadsworth are reasonably aware that they may purchase WCN's service because of advertising used by WCN to promote its services, including articles distributed door to door within the City.¹⁵ Time Warner also asserts that the numerous subscribers to WCN's service in Wadsworth demonstrate that City residents are aware of their ability to obtain service from their municipal provider.¹⁶

Based on the foregoing, we conclude that Time Warner submitted sufficient evidence demonstrating that WCN offers video programming to at least 50 percent of the households in Wadsworth and that its cable system is subject to municipal provider effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Time Warner Entertainment Company, L.P. **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service in Wadsworth, Ohio **IS REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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¹⁴ Petition at 4-5 and Exhibit 1. Time Warner states that WCN's Internet homepage also provides customers with contact information to sign up for WCN services.

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ 47 C.F.R. § 0.283.