

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

In the Matter of:	)	
	)	
Time Warner Entertainment-Advance/Newhouse Partnership	)	CSR 5728-E
	)	
	)	
Petitions for Determination of Effective Competition in St. John the Baptist, Parish, Louisiana (CUID No. LA0151)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 29, 2002**

**Released: April 11, 2002**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Time Warner Entertainment-Advance/Newhouse Partnership ("Time Warner") has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in St. John the Baptist Parish, Louisiana ("The Parish").<sup>1</sup> Time Warner alleges that its cable system serving The Parish is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),<sup>2</sup> and the Commission's implementing rules,<sup>3</sup> and is therefore exempt from cable rate regulation. Time Warner claims the presence of effective competition in The Parish stems from the competing services provided by Reserve Long Distance Company, Inc. d/b/a Reserve Telecommunications ("RTC"), a franchised cable operator that also provides local exchange carrier ("LEC") service in The Parish. 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,<sup>4</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist

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<sup>1</sup> See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 0011, dated August 24, 2001.

<sup>2</sup> 47 U.S.C. § 543(1)(l)(2).

<sup>3</sup> 47 C.F.R. § 76.905(b)(4).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

## II. DISCUSSION

4. Time Warner operates a cable television system in The Parish for which it seeks a determination of effective competition. Time Warner operates a cable system that passes all serviceable households in The Parish and qualifies as the incumbent cable operator within The Parish for purposes of the “LEC” effective competition test.<sup>10</sup> Time Warner provided information showing that RTC holds a Certificate of Authority to Operate granted by the Louisiana Public Service Commission authorizing it to “provide Resale of Long Distance Telecommunications Services without operator services to include Competitive Local Exchange Carrier services within the state of Louisiana.”<sup>11</sup> RTC marketing materials also show that since 1935 it has provided local telephone service in the Parish and expanded those services into a full service telecommunications provider that now includes cable television.<sup>12</sup> Therefore, RTC qualifies as a “LEC” for purposes of the “LEC effective competition” test.<sup>13</sup>

5. In addition to qualifying as a LEC, RTC was awarded a 50-year non-exclusive and unrestricted franchise for the provision of cable service within The Parish.<sup>14</sup> Time Warner submits evidence that RTC’s cable system passes approximately 40 percent of the households in The Parish,<sup>15</sup> and

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<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> Communications 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 may be referred to as the “LEC” effective competition test.

<sup>8</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

<sup>9</sup> *Id.*

<sup>10</sup> Time Warner Petition at 4.

<sup>11</sup> *Id.* at 2-3 & Exhibit B.

<sup>12</sup> *Id.* at 406 & Exhibit A.

<sup>13</sup> See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(26).

<sup>14</sup> Time Warner Petition at 3-5 and Exhibit C.

<sup>15</sup> *Id.* at 2-4 and Exhibits A & C.

that Time Warner has lost approximately 1,000 subscribers to RTC.<sup>16</sup> RTC has also distributed marketing materials within The Parish pointing out that, where available, residents of The Parish need only call RTC for installation of its cable services.<sup>17</sup>

6. RTC's marketing materials show that its cable service offers over 60 channels of video programming that includes non-broadcast programming services such as ESPN, HBO CNN, as well as a complement of local television broadcast stations, such as WDSU-TV (NBC), WGNO-TV (ABC), WAFB-TV (CBS) and WYES (PBS).<sup>18</sup> This complement of programming services compares closely with the programming available on Time Warner's system.<sup>19</sup> Therefore, RTC provides comparable programming as required by the "LEC" effective competition test. Time Warner's petition also provides substantial evidence that there are no regulatory, technical or other impediments to RTC's provision of cable service within The Parish, and that RTC is able to provide cable service that overlaps Time Warner's service.<sup>20</sup>

7. Time Warner has shown that RTC has commenced providing cable service within The Parish, 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*.<sup>21</sup> Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable system serving The Parish is subject to effective competition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition in St. John the Baptist Parish, Louisiana, filed by Time Warner Entertainment-Advance/Newhouse Partnership **IS GRANTED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>16</sup> *Id.* at 2-4 and Exhibit A.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 7 and Exhibit D.

<sup>20</sup> *Id.* at 4-6 and Exhibit A.

<sup>21</sup> 14 FCC Red at 5305.

<sup>22</sup> 47 C.F.R. § 0.321.