

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

In the Matter of:)	
)	
Time Warner Entertainment Advance/Newhouse Partnership d/b/a Time Warner Cable)	CSR 6568-E, 6569-E
)	
)	
Adelphia Cable Communications)	CSR 6522-E, 6523-E, 6538-E, 6539-E, 6540-E, 6541-E
)	
)	
Bright House Networks, LLC)	CSR 6530, 6531-E
)	
)	
Ten Petitions for Determination of Effective Competition in various Local Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2006

Released: March 31, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers ten petitions which cable operators (the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that such operators are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

competition is present within the relevant franchise area.⁵

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its 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 of the households in the franchise area.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") 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.⁷ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. 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 substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that the Cable Operators have demonstrated that the Communities are 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.

4. 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. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. The Cable Operators assert that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

⁵ See 47 C.F.R. §§ 76.906 & 907.

⁶ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁷ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

⁹ See 47 C.F.R. § 76.905(g).

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petitions filed by the Cable Operators listed on Attachment A for a determination of effective competition in the Communities listed thereon **ARE GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁰47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition**TIME WARNER ENTERTAINMENT ADVANCE/NEWHOUSE PARTNERSHIP: CSR 6568, 6569-E**

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Auburn	NE0027	18.86%	1,479	279
Columbus	NE0002	22.95%	8,302	1,905
Crete	NE0028	30.12%	2,078	626
David City	NE0029	27.63%	1,082	299
Denton	NE0502	51.94	77	40
Fairbury	NE0030	26.33%	1,884	496
Falls City	NE0003	18.98%	2,008	381
Fremont	NE0061	19.50%	10,171	1,983
Humboldt	NE0031	36.06	427	154
Nebraska City	NE0033	24.26%	2,898	703
Pawnee City	NE0034	21.94%	474	104
Seward	NE0035	19.83%	2,281	452
Table Rock	NE0037	28.47%	144	41
Tecumseh	NE0038	25.24%	729	184
York	NE0039	15.51%	3,304	512
Superior	NE0036	24.49%	980	240

ADELPHIA CABLE COMMUNICATIONS: CSR 6522-E, 6523-E, 6538-E, 6539-E, 6540-E, 6541-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Hanover	IN0223	22.47%	1,068	240
Jefferson County	IN0819	30.78%	5,818	1,791

Madison	IN0040	24.02%	5,092	1,223
Warrick	IN0124	17.14%	13,491	2,312
Carey	OH0511	24.56%	1,543	379
Deerfield	OH2278	16.71%	9,224	1,541
Greenfield	OH0121	22.25%	1,955	435
Hinckley	OH1601	17.17%	2,330	400

BRIGHT HOUSE NETWORKS, LLC: CSR 6530, 6531-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Avon	IN1120	20.10%	2,127	427.49
Boone County	IN0620	25.51%	17,081	4,356.88
	IN0745			
Fortville	IN0614	21.64%	1,394	301.66
Hamilton County	IN0095	20.60%	65,933	13,582.04
	IN0618			
	IN0621			
Hancock County	IN0616	25.39%	20,718	5,259.36
Hendricks County	IN0234	24.20%	37,275	9,022.01
Ingalls	IN0615	16.06%	422	67.78
Lizton	IN0743	36.89%	161	59.39
Madison County	IN0617	19.28%	53,052	10,229.68
McCordsville	IN1119	24.09%	381	91.77
Pittsboro	IN0411	28.79%	621	178.78
Zionsville	IN0619	19.09%	3,063	584.79
Grant County	IN0107	21.41%	28,319	6,064.04

Jonesboro	IN0031	24.86%	768	190.90
Marion	IN0032	17.37%	12,462	2,164.19

CPR= Percent DBS penetration

+ = See Cable Operator Petitions