

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

In the Matter of)	CSR 7458-E
Comcast Cable Communications, LLC)	CSR 7481-E
and)	CSR 7482-E
)	CSR 7484-E
Time Warner Entertainment-Advance/Newhouse)	
Partnership)	CSR 7544-E
)	
Petitions for Determination of Effective)	
Competition in various Franchise Areas in)	
Pennsylvania)	

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2008

Released: May 2, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC and Time Warner Entertainment-Advance/Newhouse Partnership, hereinafter referred to as “Petitioners,” have filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioners are subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioners allege that their cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities 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 because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioners additionally claim to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because Petitioners serve fewer than 30 percent of the households in the franchise areas. The petitions are unopposed.

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 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 competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

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

⁵See 47 C.F.R. §§ 76.906 & 907.

finding that Petitioners are subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the 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 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioners or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioners have provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and this is supported by the petitions.¹² Also undisputed is Petitioners’ assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households

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

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Comcast Petitions (CSR 7458-E et al.) at 3; Time Warner Petition (CSR 7544-E) at 3.

⁹Mediacom Illinois LLC et al., *Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Comcast Petitions (CSR 7458-E et al.) at 4-5; Time Warner Petition (CSR 7544-E) at 5.

¹²*See* Comcast Petitions (CSR 7458-E et al.) at 4-5 and Exhibit 1 and Time Warner Petition (CSR 7544-E) at 5-6. As support, Comcast provides copies of channel line-ups for both DIRECTV and Dish. Time Warner does not provide channel line-ups, but notes that these channel line-ups can be found at www.directv.com and www.dishnetwork.com and that these websites demonstrate the availability of the requisite programming.

¹³*See* Comcast Petitions (CSR 7458-E et al.) at 2-3; Time Warner Petition (CSR 7544-E at 2).

subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners assert that they are the largest MVPDs in the Group B Communities.¹⁴ Petitioners sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioners 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 Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioners have submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioners are subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioners allege that they are subject to effective competition under the low penetration effective competition test because they serve less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioners, as reflected in

¹⁴ Comcast Petitions (CSR 7458-E et al.) at 5-6; Time Warner Petition (CSR 7544-E) at 7-8. Comcast in CSR 7481-E states that it cannot determine that it is the largest MVPD in Eldred and Union, but asserts that it is immaterial in these Franchise Areas which MVPD is the largest because both DBS and cable pass the 15% threshold. With regard to Comcast Petitions CSR 7481-E and CSR 7482-E, we note that the same six Communities are listed in both. Two petitions were filed because some of the Communities with different CUID numbers are on a separate Comcast cable system and required the filing of a separate petition with a separate filing fee. CSR 7481-E pertains to Brookville, Corsica, Eldred, Pine Creek (PA2419), Rose (PA2417), and Union. CSR 7582-E pertains to Pine Creek (PA3168) and Rose (PA3037). In CSR 7484-E, Comcast states that it cannot determine that it is the largest MVPD in Dean, Irvona, and White but again asserts that it is immaterial because both the DBS and cable numbers pass the 15% threshold. In CSR 7544-E, Time Warner states that it cannot determine the largest MVPD in Bridgewater, Choconut, Dimock, Franklin, Liberty, and Springville because the number of Time Warner subscribers in these Communities does not exceed the aggregate number of DBS subscribers. Time Warner states that SBCA does not release the DBS subscriber counts except as an aggregate. With the exception of Franklin which qualifies under the low penetration test, Time Warner argues that both DBS and cable pass the 15% threshold in the other Communities listed. In Franklin, Time Warner’s subscribership is less than 15 percent. In cases where both DBS and cable penetration exceed 15 percent of the occupied households, the Commission has recognized that the second prong of the competing provider test is satisfied.

¹⁵Comcast Petitions (CSR 7458-E et al.) at 5-7; Time Warner Petition (CSR 7544-E) at 8. Both Comcast and Time Warner state that the Commission has previously approved the five digit zip code allocation formula to calculate the DBS providers’ subscribership. *See, e.g.,* Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (MB 2005) (approving a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁶Comcast Petitions (CSR 7458-E et al.) at 7-8 and Exhibits 5 and 6; Time Warner Petition at 7 and Exhibits E and F.

¹⁷47 U.S.C. § 543(l)(1)(A).

Attachment C, we find that Petitioners have demonstrated the percentage of households subscribing to their cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC and Time Warner Entertainment-Advance/Newhouse Partnership **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7458-E, CSR 7481-E, CSR 7482-E & CSR 7484-E_ & CSR 7544-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7458-E

Communities	CUIDS
Bridgewater Borough Beaver County	PA0670
East Rochester	PA0671
Freedom	PA0672
Monaca	PA0673
Rochester Borough Rochester Township	PA0674 PA0675
Vanport	PA0676

CSR 7481-E

Brookville	PA0402
Corsica	PA1371
Eldred	PA2421
Pine Creek	PA2419
Rose	PA2417
Union	PA2418

CSR 7482-E

Pine Creek	PA3168
Rose	PA3037

CSR 7484-E

Beccaria	PA0907
Clearfield	PA2523
Coalport Dean	PA0905 PA2524

Irvona	PA0906
Reade	PA2002
White	PA2001

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP

Bridgewater Township Susquehanna County	PA2614
Choconut	PA3353
Dimock	PA2681
Franklin	PA3687
Liberty	PA3355
Montrose	PA2303
Silver Lake	PA3354
Springville	PA2682

ATTACHMENT B

CSR 7458-E, CSR 7481-E, CSR 7482-E, CSR 7484-E & CSR 7544-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7458-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bridgewater Borough Beaver County	PA0670	17.91%	335	60
East Rochester	PA0671	24.74%	283	70
Freedom	PA0672	15.28%	687	105
Monaca	PA0673	19.38%	2709	525
Rochester Borough	PA0674	24.13%	1732	418
Rochester Township	PA0675	23.66%	1213	287
Vanport	PA0676	16.52%	775	128

CSR 7481-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Brookville	PA0402	32.23%	1849	596
Corsica	PA1371	34.48%	145	50
Eldred	PA2421	43.91%	501	220
Pine Creek	PA2419	32.31%	424	137
Rose	PA2417	33.12%	474	157
Union	PA2418	38.39%	323	124

CSR 7482-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Pine Creek	PA3168	32.31%	424	137
Rose	PA3037	33.12%	474	157

CSR 7484-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Beccaria	PA0907	34.67%	747	259
Coalport	PA0905	34.53%	223	77
Dean	PA2524	54.55%	165	90
Irvona	PA0906	51.87%	241	125
Reade	PA2002	33.71%	623	210
White	PA2001	55.31%	311	172

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bridgewater Township Susquehanna County	PA2614	43.10%	1,058	456
Choconut	PA3353	43.99%	316	139
Dimock	PA2681	44.81%	520	233
Liberty	PA3355	31.44%	474	149
Montrose	PA2303	44.14%	734	324
Silver Lake	PA3354	43.77%	626	274
Springville	PA2682	48.77%	570	278

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7481-E, CSR 7484-E & CSR 7544-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7481-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Eldred	PA2421 E	501	108	21.56%

CSR 7484-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Clearfield	PA2523	571	50	8.76%

COMMUNITIES SERVED BY TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Franklin	PA3687	362	22	6.08%