

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

In the Matter of )
Time Warner Cable, Inc., ) CSR 7393-E, 7397-E, 7398-E
Petition for Determination of Effective )
Competition in Various Communities in North )
and South Carolina )

MEMORANDUM OPINION AND ORDER

Adopted: May 12, 2008

Released: May 13, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc., hereinafter referred to as "Petitioner," has filed with the Commission several 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 Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its 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") and the Commission's implementing rules, 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"). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in these 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, as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules. 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. For the reasons set forth below, we grant the above captioned petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

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.

## 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;<sup>6</sup> 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.<sup>7</sup>

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 Petitioner 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.<sup>8</sup> 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.<sup>9</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>10</sup> 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 programming<sup>11</sup> and is supported in the petitions with reference to the channel lineups for both DIRECTV and Dish.<sup>12</sup> Also undisputed is Petitioner’s 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.<sup>13</sup> 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

---

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

<sup>7</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>8</sup>*See* Petition in CSR 7393-E at 3; Petition in CSR 7397-E at 3; Petition in CSR 7398-E at 3.

<sup>9</sup>*Mediacom 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).

<sup>10</sup>47 C.F.R. § 76.905(e)(2).

<sup>11</sup>*See* 47 C.F.R. § 76.905(g). *See also* Petition in CSR 7393-E at 5-6; Petition in CSR 7397-E at 5-6; Petition in CSR 7398-E at 5-6.

<sup>12</sup>*See* Petition in CSR 7393-E at 6; Petition in CSR 7397-E at 6; Petition in CSR 7398-E at 6. Petitioner states that programming offered by DirecTV and Dish Network, listings of which are available at [www.directv.com](http://www.directv.com) and [www.dishnetwork.com](http://www.dishnetwork.com), includes many of the same popular nonbroadcast and broadcast programming available on Petitioner’s cable systems serving the franchise areas. Petition in CSR 7393-E at 6; Petition in CSR 7397-E at 6; Petition in CSR 7398-E at 6.

<sup>13</sup>*See* Petition in CSR 7393-E at 6-7; Petition in CSR 7397-E at 6-7; Petition in CSR 7398-E at 6-7.

subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner is the largest MVPD in all but two of the Group B Communities.<sup>14</sup> Petitioner 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 zip code plus four basis.<sup>15</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>16</sup> as reflected in Attachment B, we find that Petitioner has 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 Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is 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.<sup>17</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Dillon County, Patrick, Chesterfield County, and Scotland County franchise areas.<sup>18</sup>

10. Based upon the subscriber penetration levels calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its 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 Time Warner Cable Inc. **ARE GRANTED**.

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

---

<sup>14</sup>See, e.g., Petition in CSR 7393-E at 7 (Rowland); Petition in CSR 7398-E at 7 (Society Hill). In circumstances where the largest MVPD is unable to be identified (see, e.g., ., Petition in CSR 7393-E at 7; Petition in CSR 7398-E at 7), the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Petitioner is the largest MVPD provider in the Community and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Community and determine that Petitioner’s subscribership is greater than 15 percent. When both determinations can be made, then the second prong of the competing provider test is met.

<sup>15</sup>Petition in CSR 7393-E at 8, n.25, and Ex. D; Petition in CSR 7397-E at 7, n.23, and Ex. D; Petition in CSR 7398-E at 9, n.26, and Ex. D.

<sup>16</sup>Petition in CSR 7393-E at 9, Ex. E; Petition in CSR 7397-E at 8, Ex. E; Petition in CSR 7398-E at 9, Ex. E.

<sup>17</sup>47 U.S.C. § 543(l)(1)(A).

<sup>18</sup> Petition in CSR 7393-E at 9, Ex. A; Petition in CSR 7398-E at 8, Ex. A.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>19</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 7393-E, 7397-E, AND 7398-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

<b>Communities</b>	<b>CUID(S)</b>
<b>7393-E</b>	
Dillon	SC0131 SC0620 SC0011
Latta	SC0134
Marion	SC0016
Mullins	SC0035
Rowland	NC0329
<b>7397-E</b>	
Lake View	SC0383
Nichols	SC0382
<b>7398-E</b>	
Cheraw	SC0006
Chesterfield County	SC0121
East Laurinburg	NC0019
Gibson	NC0714
Hartsville	SC0010
Laurinburg	NC0020
Maxton	NC0084
Patrick	SC0634
Scotland County	SC0117
Society Hill	SC0643

## ATTACHMENT B

## CSR 7393-E, 7397-E, AND 7398-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
<b>7393-E</b>				
Dillon	SC0011	31.29%	2,511	785.62
Latta	SC0134	39.26%	580	227.71
Marion	SC0016	32.23%	2,765	891.20
Mullins	SC0035	34.54%	2,001	691.16
Rowland	NC0329	47.15%	487	229.62
<b>7397-E</b>				
Lake View	SC0383	40.97%	332	136.02
Nichols	SC0382	39.57%	176	69.65
<b>7398-E</b>				
Cheraw	SC0006	33.93%	2,290	777.03
East Laurinburg	NC0019	24.61%	124	30.52
Gibson	NC0714	27.24%	213	58.02
Hartsville	SC0010	30.21%	3,044	919.72
Laurinburg	NC0020	24.61%	6,136	1510.13
Maxton	NC0084	45.87%	985	451.78
Society Hill	SC0643	43.46%	269	116.90

\*CPR = Percent of competitive DBS penetration rate.

## ATTACHMENT C

## CSR 7393-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

<b>Communities</b>	<b>CUID(S)</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
<b>7393-E</b>				
Dillon County	SC0131 SC0620	7,776	938	12.06%
<b>7398-E</b>				
Patrick	SC0634	153	20	13.07%
Chesterfield County	SC0121	11,752	1,110	9.45%
Scotland County	SC0117	6,619	1,683	25.43%