

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

In the Matter of
Time Warner Cable Inc.
Petition for Determination of Effective
Competition in Various Franchise Areas in Ohio
CSR-7725-E

MEMORANDUM OPINION AND ORDER

Adopted: June 12, 2008

Released: June 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 a petition 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 system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is 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 is 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 the franchise area. The petition is 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.

3. For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A. However, Petitioner included the communities Auburn (CUID OH2113), Washington, (CUID OH0473) and Rowesburg (OH2193) in the caption of its petition, but provided no information to support a determination that effective competition exists for these communities. Petitioner also requested a determination of effective

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.

competition for the townships of Ripley and Russell under the low penetration effective competition test, but because these communities were not listed in the caption of the petition and because Petitioner did not provide CUIDs for these communities, some ambiguity exists as to whether these communities were provided adequate notice of the petition. Finally, Petitioner requested a determination of effective competition for Springfield township under both the low penetration and the competing provider tests, but created ambiguity as to whether this is one township or two separate entities by providing only one CUID, but different 2000 household census data for Springfield township in Exhibits A and E. Accordingly, the petition is denied as to the communities specifically named in this paragraph without prejudice (for Springfield township we deny the petition for a determination of effective competition only under the low penetration test); Petitioner may file a petition including the necessary information for these communities.

## II. DISCUSSION

### A. The Competing Provider Test

4. 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.

5. 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>

6. 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 their 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

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<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 at 3-5.

<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 at 5-6.

this petition with copies of 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.

7. 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. Petitioner asserts that it is the largest MVPD in 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>

8. 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.

9. 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**

10. 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 franchise area.

11. Based upon the subscriber penetration level 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.

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<sup>12</sup>See Petition at 6.

<sup>13</sup>See Petition at 6.

<sup>14</sup>*Id.* at 7-8. In the townships of Berlin, Center, Clarksfield, Hanover, Jefferson, Knox, Monroe, Oxford, Paris, Sandy, and Westfield, as well as Tuscarawas Village, both Time Warner Cable Inc.'s penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Petitioner argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Time Warner Cable Inc.'s subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>15</sup>Petition at 8.

<sup>16</sup>Petition at 8, n.25.

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

**III. ORDERING CLAUSES**

12. Accordingly, **IT IS ORDERED** that, consistent with the terms of this Order, the petition for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. **IS GRANTED IN PART AND DENIED IN PART.**

13. **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.**

14. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>18</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR-7725-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

<b>Communities</b>	<b>CUID(S)</b>
Alliance	OH0763
Atwater	OH1845
Bailey Lakes	OH1503
Barberton	OH0217
Barberton	OH2143
Barnhill	OH0196
Bazetta	OH1094
Beach City	OH0256
Bellville	OH0088
Beloit	OH0393
Berlin	OH2049
Bethlehem	OH1200
Bolivar	OH0627
Boston	OH2694
Braceville	OH1674
Braceville	OH1977
Bristol	OH1608
Brookfield	OH0400
Brookfield	OH2063
Brown	OH0573
Brown	OH2320
Burbank	OH1500
Butler	OH0089
Butler	OH0561
Butler	OH1946
Canton	OH0579
Carrollton	OH0148
Cass	OH2009
Center	OH0617
Champion	OH0216
Charlestown	OH2077
Chatam	OH2140
Clarksfield	OH2472
Clinton	OH1097
Coitsville	OH2148
Congress	OH1395
Copley	OH2716
Coventry	OH0950
Creston	OH0205
Deerfield	OH1847
Dellroy	OH1126
Dennison	OH0117
Dover	OH0118
Dover	OH2793
East Canton	OH0351
East Sparta	OH0347
Edinburg	OH1846
Fairfield	OH1254

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Farmington	OH1980
Fitchville	OH2693
Franklin	OH0469
Franklin	OH0565
Franklin	OH0951
Fredericksburg	OH1554
Girard	OH0395
Glenmont	OH0060
Gnadenhutten	OH0120
Goshen	OH0562
Goshen	OH1936
Green	OH0952
Green	OH1947
Greenfield	OH2057
Greenwich	OH1251
Guillford	OH1507
Hanover	OH1948
Hanoverton	OH1949
Harrison	OH2706
Hartford	OH2145
Hartland	OH2005
Hartville	OH0788
Holmesville	OH1555
Hubbard	OH0310
Hubbard	OH0598
Hubbard	OH1439
Jefferson	OH2122
Jeromesville	OH1083
Johnston	OH1610
Killbuck	OH0078
Knox	OH0560
Lake	OH1096
Lake	OH1308
Lakemore	OH0529
Lawrence	OH2245
Lexington	OH0467
Lexington	OH0789
Limaville	OH2271
Lisbon	OH0070
Lodi	OH0071
Louisville	OH0063
Lowellville	OH1498
Lucas	OH0605
Malvern	OH0326
Malvern	OH0348
Marlboro	OH1622
Midvale	OH0299
Mifflin	OH0471
Mifflin	OH2101
Mifflin	OH2187
Milan	OH0191
Milan	OH0872
Millersburg	OH0079
Milton	OH1492
Mineral City	OH0349
Minerva	OH0168
Mogadore	OH0773
Monroe	OH1127

Monroe	OH2188
Monroeville	OH0036
Nashville	OH2194
New Franklin	OH2599
New Haven	OH0037
New London	OH0206
New London	OH2428
New Philadelphia	OH0123
Newcomerstown	OH0124
Newton	OH2228
Newton Falls	OH0413
Nimishillin	OH0429
North Fairfield	OH1253
Norton	OH0771
Norwich	OH2011
Orangeville	OH2144
Osnaburg	OH0577
Oxford (Eric Co.)	OH2006
Oxford (Tuscarawas Co.)	OH2791
Palmyra	OH1950
Palmyra	OH2234
Paris	OH2203
Paris	OH2319
Parral	OH0195
Perry (Richland Co.)	OH2185
Perry (Richland Co.)	OH2186
Perry (Ashland Co.)	OH2242
Perry (Columbiana Co.)	OH0616
Perrysville	OH0008
Peru	OH2007
Pike	OH0572
Plymouth	OH0039
Plymouth	OH0465
Plymouth	OH0881
Poland	OH1827
Polk	OH1394
Port Washington	OH2574
Randolph	OH1848
Ravenna	OH0327
Ravenna	OH0576
Richmond	OH2010
Rootstown	OH0965
Roswell	OH2578
Salem	OH0103
Salem	OH1937
Sandusky	OH1888
Sandy	OH0574
Sandy	OH0578
Savannah	OH1504
Sebring	OH0276
Seville	OH1086
Sharon	OH0466
Shelby	OH0056
Sherrodsville	OH1128
Shiloh	OH0762
Shreve	OH0198
Smith	OH0558
Smith	OH2235

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Southington	OH1612
Spencer	OH1462
Springfield	OH0947
Strasburg	OH0137
Streetsboro	OH0425
Struthers	OH0363
Suffield	OH1279
Sugarcreek	OH0125
Tallmadge	OH0242
Troy	OH0472
Tuscarawas	OH0541
Tuscarawas	OH2062
Uhrichsville	OH0126
Walnut Creek	OH2048
Washington (Stark Co.)	OH2561
Washington (Richland Co.)	OH1623
Washington (Richland Co.)	OH2189
Waynesburg	OH0350
Weathersfield	OH0211
West	OH2321
West Farmington	OH1979
West Salem	OH1132
Westfield	OH1508
Wilmot	OH0257
Windham	OH0368
Windham	OH2238
Yankee Lake	OH2146
Zoar	OH0628



## ATTACHMENT B

## CSR-7725-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Alliance	OH0763	17.91%	8908	1595.85
Atwater	OH1845	23.24%	993	230.77
Bailey Lakes	OH1503	15.53%	153	23.76
Barberton	OH0217, OH2143	15.47%	11523	1782.84
Barnhill	OH0196	22.26%	134	29.83
Beach City	OH0256	36.96%	456	168.52
Bellville	OH0088	39.38%	751	295.76
Beloit	OH0393	40.63%	426	173.06
Berlin	OH2049	29.41%	1062	312.33
Bolivar	OH0627	28.48%	375	106.82
Braceville Braceville	OH1674, OH1977	20.58%	1079	222.11
Bristol	OH1608	25.84%	1120	289.46
Burbank	OH1500	49.68%	103	51.17
Butler	OH1946	36.23%	388	140.57
Canton	OH0579	15.11%	558	839.71
Carrollton	OH0148	51.51%	1428	735.63
Center	OH0617	37.88%	2434	921.99
Charlestown	OH2077	17.74%	750	133.06
Clarksfield	OH2472	39.03%	538	209.99
Clinton	OH1097	23.23%	496	115.23
Copley	OH2716	15.69%	5140	806.55
Coventry	OH0950	15.44%	4633	715.33
Creston	OH0205	21.50%	828	178.01
Deerfield	OH1847	25.05%	1199	300.34
Dellroy	OH1126	48.72%	121	58.95
Dennison	OH0117	31.33%	1132	354.70
Dover	OH2793	21.15%	4996	1056.85
East Canton	OH0351	30.52%	664	202.66

East Sparta	OH0347	36.60%	315	115.31
Edinburg	OH1846	18.80%	791	148.71
Franklin	OH0951, OH0565, OH0469	15.78%	8375	1321.30
Fredericksburg	OH1554	15.25%	184	28.06
Glenmont	OH0060	53.86%	115	61.94
Gnadenhutten	OH0120	31.65%	513	162.38
Green	OH1947	16.01%	8742	1399.34
Greenfield	OH2057	26.44%	518	136.96
Greenwich	OH1251	34.59%	579	200.27
Hanover	OH1948	39.76%	1448	575.73
Hanoverton	OH1949	35.90%	157	56.36
Hartford	OH2145	22.34%	785	175.40
Hartville	OH0788	19.05%	863	164.39
Holmesville	OH1555	30.89%	151	46.65
Hubbard (City)	OH0598	18.47%	3456	638.46
Jefferson	OH2122	41.81%	1812	757.59
Jeromesville	OH1083	44.36%	202	89.62
Johnston	OH1610	19.28%	739	142.46
Killbuck	OH0078	48.33%	358	173.02
Knox	OH0560	21.58%	1785	385.17
Lake	OH1308 OH1096	15.36%	9166	1408.22
Lakemore	OH0529	16.41%	969	158.99
Lawrence	OH2245	22.78%	2018	459.77
Lexington (Township)	OH0467	17.91%	2047	366.72
Lexington (Village)	OH0789	17.12%	1626	278.33
Limaville	OH2271	17.91%	71	12.72
Lisbon	OH0070	36.88%	1133	417.83
Lodi	OH0071	15.67%	1274	199.69
Louisville	OH0063	19.81%	3444	682.15
Lowellville	OH1498	28.01%	520	145.64
Lucas	OH0605	50.33%	246	123.81
Malvern	OH0326, OH0348 OH0326	23.28%	530	123.40
Marlboro	OH1622	18.57%	1452	269.69
Midvale	OH0299	23.63%	213	50.33
Mifflin	OH2187	17.28%	429	74.13

Mifflin	OH2101	32.39%	64	20.73
Milan	OH0191	15.15%	1321	200.14
Milan	OH0872	24.14%	540	130.37
Millersburg	OH0079	29.41%	1213	356.74
Milton	OH1492	26.34%	1606	423.07
Mineral City	OH0349	44.55%	306	136.32
Minerva	OH0168	45.64%	1603	731.62
Mogadore	OH0773	21.38%	1485	317.46
Monroe	OH2188	34.91%	1776	620.05
Monroeville	OH0036	39.74%	523	207.85
Nashville	OH2194	50.24%	68	34.16
New Franklin	OH2599	19.16%	867	166.13
New Haven	OH0037	23.46%	1073	251.68
New London	OH0206	36.26%	1030	373.52
New Philadelphia	OH0123	22.26%	7338	1633.40
Newcomerstown	OH0124	39.72%	1654	657.01
Newton Falls	OH0413	20.41%	2171	443.02
Nimishillin	OH0429	18.08%	3270	591.25
North Fairfield	OH1253	43.97%	178	78.26
Norton	OH0771	15.90%	4343	690.57
Norwich	OH2011	22.20%	360	79.92
Orangeville	OH2144	34.04%	76	25.87
Osnaburg	OH0577	22.86%	2253	515.04
Oxford (Erie Co.)	OH2006	15.09%	383	57.79
Oxford (Tuscarawas Co.)	OH2791	44.47%	2104	935.70
Palmyra	OH1950, OH2234	19.37%	972	188.28
Paris	OH2319	41.70%	2315	965.39
Parral	OH0195	21.15%	106	22.42
Perry (Richland Co.)	OH2185, OH2186	39.38%]	449	176.83
Perry (Ashland Co.)	OH2242	41.17%	697	286.93
Perry (Columbiana Co.)	OH0616	21.28%	7068	1504.41
Perrysville	OH0008	54.59%	329	179.61
Pike	OH0572	20.88%	1604	334.97
Plymouth (Township)	OH0039, OH0881	17.99%	789	141.98
Plymouth (Village)	OH0465	27.70%	678	187.83
Polk	OH1394	42.51%	124	52.72

Port Washington	OH2574	51.95%	204	105.98
Randolph	OH1848	20.96%	1958	410.35
Ravenna	OH0327	17.74%	4980	883.53
Ravenna	OH0576	17.74%	3739	663.35
Richmond	OH2010	23.88%	398	95.03
Rootstown	OH0965	15.68%	2624	411.48
Roswell	OH2578	22.26%	91	20.26
Salem	OH1937	21.28%	5146	1095.32
Sandusky	OH1888	17.94%	320	57.40
Sandy	OH0578	33.86%	2713	918.54
Savannah	OH1504	17.28%	134	23.15
Sebring	OH0276	15.86%	2088	331.17
Seville	OH1086	21.05%	808	170.12
Sharon	OH0466	17.54%	3911	686.11
Shelby	OH0056	15.71%	4073	639.79
Sherrodsville	OH1128	40.86%	122	49.85
Shiloh	OH0762	38.90%	246	95.71
Shreve	OH0198	37.49%	650	243.67
Southington	OH1612	20.52%	1408	288.96
Spencer	OH1462	47.39%	285	135.07
Springfield	OH0947	16.68%	5970	995.74
Strasburg	OH0137	27.26%	947	258.17
Streetsboro	OH0425	19.39%	4908	951.71
Struthers	OH0363	17.07%	4704	803.10
Suffield	OH1279	20.39	2411	491.65
Sugarcreek	OH0125	24.77%	873	216.28
Tallmadge	OH0242	15.07%	6273	945.35
Troy	OH0472	15.18%	2441	370.52
Tuscarawas	OH0541, OH2062	32.01%	373	85.84
Uhrichsville	OH0126	32.04%	2254	722.29
Washington (Stark)	OH2561	15.63%	2514	393.03
Washington (Richland)	OH1623 OH2189	24.39%	1766	430.80
Waynesburg	OH0350	27.38%	391	107.06
West Farmington	OH1979	26.22%	188	49.29
West Salem	OH1132	39.60%	573	226.90
Westfield	OH1508	20.93%	1492	312.29
Wilmot	OH0257	38.11%	124	47.25

Windham	OH2238	34.31%	959	329.05
Yankee Lake	OH2146	18.02%	40	7.21
Zoar	OH0628	28.48%	79	22.50

## ATTACHMENT C

## CSR-7725-E

## COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Bazetta	OH1094	2627	17	0.65%
Berlin	OH2049	1062	188	17.7%
Bethlehem	OH1200	2346	336	14.32%
Boston	OH2694	703	92	13.09%
Brookfield	OH0400 OH2063	4078	55	1.35%
Brown	OH0573 OH2320	3226	323	10.01%
Butler	OH0089, OH0561	1245	27	2.17%
Cass	OH2009	547	12	2.19%
Center	OH0617	2434	537	22.06%
Champion	OH0216	3692	35	0.95%
Chatham	OH2140	739	54	7.31%
Clarksfield	OH2472	538	129	23.98%
Coitsville	OH2148	646	17	2.63%
Congress	OH1395	64	7	10.94%
Dover	OH0118	1749	1	0.06%
Fairfield	OH1254	445	9	2.02%
Farmington	OH1980	739	103	13.94%
Fitchville	OH2693	366	18	4.92%
Girard	OH0395	4631	778	16.80%
Goshen	OH0562, OH1936	1240	73	5.89%
Green	OH0952	8742	30	0.34%
Guilford	OH1507	1954	467	23.90%
Harrison	OH2706	914	48	5.25%
Hartland	OH2005	343	29	8.45%
Hubbard (Township)	OH0310, OH1439	5783	674	11.65%
Knox	H0560	1785	373	20.90%
Mifflin	OH0471	429	30	6.99%

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Monroe	OH1127	1776	233	13.12%
New London	OH2428	1289	16	1.24%
Newton	OH2228	3803	197	5.18%
Oxford	OH2006 OH2791	383	61	15.93%
Paris	OH2203	2315	458	19.78%
Peru	OH2007	351	28	7.98%
Poland	OH1827	5471	329	6.01%
Salem	OH0103	2082	287	13.78%
Sandy	OH0574	2713	626	23.07%
Smith	OH0558 OH2235	1923	245	12.74%
Walnut Creek	OH2048	877	78	2.03%
Westfield	OH1508	1492	254	17.02%
Weathersfield	OH0211	11338	548	4.83%
West	OH2321	1166	167	14.32%
Windham	OH0368	742	94	12.67%

\*CPR = Percent of competitive DBS penetration rate.