

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

In the Matter of	)	
	)	
<b>Time Warner Cable LLC</b>	)	CSR 7639-E, CSR 7643-E
	)	
<b>Time Warner NY Cable LLC</b>	)	CSR 7646-E, CSR 7648-E, CSR 7670-E
	)	
<b>Time Warner Entertainment Advance/Newhouse Partnership</b>	)	CSR 7669-E, CSR 7671-E, CSR 7672-E
	)	
<b>CAC Exchange I, LLC</b>	)	CSR 7642-E, CSR 7644-E, CSR 7645-E, CSR 7649-E, CSR 7673-E
	)	
Thirteen Petitions for Determination of Effective Competition in various Franchise Areas in the State of California	)	
(CUIDS CA1481; CA1605; CA0187; CA0810;	)	
CA1480; CA0986; CA0893; CA0458; CA0340;	)	
CA0277; CA0064; CA0304; CA0055; CA0098;	)	
CA1091; CA0279; CA0376; CA0375; CA0308;	)	
CA0283)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 9, 2008**

**Released: April 10, 2008**

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

**I. INTRODUCTION AND BACKGROUND**

1. Time Warner Cable LLC, Time Warner NY Cable LLC, Time Warner Entertainment Advance/Newhouse Partnership, and CAC Exchange I, LLC, hereinafter referred to as “Petitioners,” have filed with the Commission thirteen petitions pursuant to Sections 76.7, 76.905(b)(2) 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 are subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> 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”).<sup>3</sup> 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,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2).

<sup>3</sup>Petitions at 2.

<sup>4</sup>47 C.F.R. § 76.906.

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 with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the petitions based on our finding that Petitioners are subject to effective competition in the Communities listed on Attachment A.

## II. DISCUSSION

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>7</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>8</sup>

5. Turning to the first prong of this test, it is undisputed that these 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.<sup>9</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>10</sup> We further find that Petitioners have provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</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>12</sup> While Petitioners did not provide copies of channel lineups for either DIRECTV or Dish, Petitioners did provide links to the relevant DBS websites where listings are available.<sup>13</sup> Petitioners are correct to note that we have consistently found that the programming of both DBS providers satisfies the programming compatibility component of the test.<sup>14</sup> Also undisputed are Petitioners' assertions that both DIRECTV and Dish offer service to at least "50

---

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

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

<sup>7</sup>47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>See Petitions at 4 - 5.

<sup>10</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>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>See 47 C.F.R. § 76.905(g). See also Petitions at 6.

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

<sup>14</sup>*Id.*

percent” of the households in the Communities because of their national satellite footprint.<sup>15</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 subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners state that they are the largest MVPD in 18 of the 19 franchise areas where they claim to be subject to competing provider effective competition.<sup>16</sup> With regard to one Community, Pomona, the Petitioner is unable to prove which MVPD is the largest.<sup>17</sup> Petitioners sought to determine the competing provider penetration in the 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 Communities on a zip code basis.<sup>18</sup>

7. Based on the data provided, the failure to identify the largest MVPD in Pomona is not fatal to that petition. While it is undetermined which provider is the largest in Pomona, the DBS subscriber penetration levels that were calculated using Census 2000 household data<sup>19</sup> reflect that the aggregate subscribership for the DBS Providers is 38.44 percent and Petitioner’s subscriber total is 24.7 percent for that Community.<sup>20</sup> Because Petitioner and the DBS providers each serve more than 15 percent of the households in Pomona, the subscriber base of any MVPD, other than the largest, exceeds the 15 percent threshold.

8. With respect to the other Communities, based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>21</sup> as reflected in Attachment A, 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 Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

9. 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 Communities listed on Attachment A.

---

<sup>15</sup>See Petitions at 7.

<sup>16</sup>Petitions at 7.

<sup>17</sup>Petition CSR 7639-E at 7.

<sup>18</sup>Petitions at 7.

<sup>19</sup>Petitions at 8; *see also* Exhibit E.

<sup>20</sup>See Petition CSR 7639-E at 7; *see also* Exhibits A & E.

<sup>21</sup> Petitions at 8; *see also* Exhibit E.

**III. ORDERING CLAUSES**

10. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Time Warner Cable LLC, Time Warner NY Cable LLC, Time Warner Entertainment Advance/Newhouse Partnership, and CAC Exchange I, LLC, **ARE GRANTED**.

11. **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**.

12. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>22</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR 7639-E, CSR 7643-E

## COMMUNITIES SERVED BY TIME WARNER CABLE LLC

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
Murrieta	CA1481 CA1605	43.49%	14,320	6,228.38
Pomona	CA0187 CA0810	38.44%	37,855	14,551.55
Temecula	CA1480	43.20%	18,293	7,902.80
San Fernando	CA0986	25.25%	5,774	1,457.74
South Pasadena	CA0893	15.42%	10,477	1,615.47

## CSR 7646-E, CSR 7648-E, CSR 7670-E

## COMMUNITIES SERVED BY TIME WARNER NEW YORK CABLE LLC

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>DBS Subscribers</b>
Newport Beach	CA0458	22.46%	33,071	7,426.10
Lancaster	CA0340	36.23%	38,224	13,848.58
Desert Hot Springs	CA0277	21.18%	5,859	1,240.76

## CSR 7669-E, CSR 7671-E, CSR 7672-E

## COMMUNITIES SERVED BY TIME WARNER ENTERTAINMENT ADVANCE/NEWHOUSE PARTNERSHIP

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>DBS Subscribers</b>
Barstow	CA0064	35.25%	7,647	2,695.44
Banning	CA0304	26.69%	8,923	2,381.38
Coachella	CA0055	21.05%	4,807	1,011.72

## CSR 7642-E, CSR 7644-E, CSR 7645-E, CSR 7649-E, CSR 7673-E

## COMMUNITIES SERVED BY CAC EXCHANGE I, LLC

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>DBS Subscribers</b>
Sierra Madre	CA0098	23.19%	4,756	1,103.04
Moreno Valley	CA1091	44.97%	39,225	17,641.18
Perris	CA0279	50.11%	9,652	4,836.60
Hemet	CA0376	39.70%	22,252	10,025.61
San Jacinto	CA0375	46.17%	8,314	3,838.21
Fillmore	CA0308	24.78%	3,762	932.20
Santa Paula	CA0323	22.18%	8,136	1,804.18
Westlake Village	CA0283	25.06%	3,270	819.45

\*CPR = Percent of competitive DBS penetration rate.