

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

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7440-E
)	
Time Warner Cable, Inc.)	CSR 7558-E
)	CSR 7565-E
Petitions for Determination of Effective)	
Competition in various Franchise Areas in Maine)	

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2008

Released: April 25, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC and Time Warner Cable, Inc., 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 the Petitioners serve fewer than 30 percent of the households in the franchise area. 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 finding that Petitioners are 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;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 Petition (CSR 7440-E) at 2-3; Time Warner Petitions (CSR 7558-E and CSR 7565-E) at 4.

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 Petition (CSR 7440-E) at 4; Time Warner Petitions (CSR 7558-E and 7565-E) at 6.

¹²*See* Comcast Petition (CSR 7440-E) at 4 and Exhibit 2 and Time Warner Petitions (CSR 7558-E and CSR 7565-E) at 6. As support, Comcast provides copies of channel lineups 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 Petition (CSR 7440-E) at 2; Time Warner Petitions (CSR 7558-E and CSR 7565-E) at 3.

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 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 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 Petitioner Time Warner 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 two franchise areas.

10. Based upon the subscriber penetration level calculated by Petitioner Time Warner, 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.

¹⁴Comcast Petition (CSR 7440-E) at 5; Time Warner Petition (CSR 7558-E) at 7; Time Warner Petition (CSR 7565-E) at 8. Comcast states that it cannot determine the largest MVPD in Bowdoin. Time Warner in CSR 7558-E states that it cannot determine the largest MVPD in Blue Hill, Burnham, Corinna, Deer Isle, Palmyra, St. Albans, Stockton Springs, Sullivan, Surry and Winterport. Time Warner in CSR 7565-E states that it cannot determine the largest MVPD in Alna, Buckfield, Dresden, Edgecomb, Jefferson, Leeds, South Bristol, Vassalboro and Wales. The Petitioners state that this is because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS subscriber. With the exception of the Time Warner Communities of Alna and Edgecomb (CSR 7565-E) which qualify under the low penetration test, the Petitioners argue that they are subject to effective competition in the above-noted Communities because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Petitioners’ subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied. In the Communities of Alna and Edgecomb, Time Warner’s subscribership is less than 15 percent.

¹⁵Comcast Petition (CSR 7440-E) at 5-6; Time Warner Petition (CSR-7558-E) at 8-9; Time Warner Petition (CSR-7565-E) at 9. The Petitioners 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 Petition (CSR 7440-E) at 7 and Exhibit 6; Time Warner Petition (CSR 7558-E) at 8-9 and Exhibits E and F; Time Warner Petition (CSR 7565-E) at 9 and Exhibits E and F.

¹⁷47 U.S.C. § 543(l)(1)(A).

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 Cable, Inc. **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 **IS 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
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7440-E, CSR 7558-E & CSR 7565-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR-7440-E

Communities	CUIDS
Bath	ME0083
Bowdoin	ME0259
Bowdoinham	ME0258
Durham	ME0363
Harpswell	ME0362
Phippsburg	ME0338
West Bath	ME0076
Wollwich	ME0285

COMMUNITIES SERVED BY TIME WARNER CABLE, INC.

CSR-7558-E

Communities	CUIDS
Bar Harbor	ME0123
Belfast	ME0107
Blue Hill	ME0247
Buckspport	ME0124
Burnham	ME0291
Cannan	ME0324
Carmel	ME0304
Corinna	ME0137
Corinth	ME0298
Deer Isle	ME0246
Denmark	ME0355

Detroit	ME0332
Dexter	ME0032
Dover- Foxcroft	ME0131
Ellsworth	ME0122
Franklin	ME0268
Hampden	ME0067
Hancock	ME0295
Hartland	ME0128
Holden	ME0180
Kenduskeag	ME0299
Lamoine	ME0293
Levant	ME0351
Milford	ME0037
Desert Mount	ME0244
Newport	ME0125
Old Town	ME0027
Orrington	ME0153
Palmyra	ME0350
Penobscot Indian Island Reservation	ME0150
Pittsfield	ME0127
Searsport	ME0108
Sorrento	ME0267
Southwest Harbor	ME0155
St. Albans	ME0187
Stockton Springs	ME0249
Stonington	ME0245
Sullivan	ME0294

Surry	ME0248
Thorndike	ME0290
Tremont	ME0156
Trenton	ME0353
Unity	ME0283
Verona	ME0185
Winterport	ME0184

CSR 7565-E

Communities	CUIDS
Albion	ME0256
Alna	ME0165
Andover	ME0301
Auburn	ME0002
Augusta	ME0013
Belgrade	ME0251
Benton	ME0102
Boothbay	ME0174
Boothbay Harbor	ME0175
Bristol	ME0250
Buckfield	ME0297
Canton	ME0266
Chelsea	ME0167
China	ME0213
Clinton	ME0129
Cushing	ME0292
Damariscotta	ME0163
Dresden	ME0278
Eddington	ME0179

Edgecomb	ME0279
Farmingdale	ME0014
Friendship	ME0276
Gardiner	ME0015
Greene	ME0241
Hanover	ME0261
Jay	ME0018
Jefferson	ME0328
Leeds	ME0325
Lewiston	ME0003
Lisbon	ME0075
Litchfield	ME0306
Livermore	ME0020
Livermore Falls	ME0019
Manchester	ME0120
Mechanic Falls	ME0135
Mexico	ME0010
Minot	ME0308
Monmouth	ME0181
Mount Vernon	ME0253
Newcastle	ME0166
Nobleboro	ME0280
Owls Head	ME0074
Peru	ME0082
Pittston	ME0169
Randolph	ME0022
Readfield	ME0252
Roxbury	ME0262

Rumford	ME0021
Sabattus	ME0134
Sidney	ME0330
South Bristol	ME0296
South Thomaston	ME0302
Southport	ME0349
St. George	ME0303
Turner	ME0307
Union	ME0275
Vassalboro	ME0106
Waldoboro	ME0281
Wales	ME0336
Warren	ME0177
Wayne	ME0263
West Gardiner	ME0168
Westport	ME0282
Whitefield	ME0318
Windsor	ME0316
Winthrop	ME0121
Wiscasset	ME0164

ATTACHMENT B

CSR 7440-E, CSR 7558-E & CSR 7565-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7440-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Bath	ME0083	16.03%	4,042	648
Bowdoin	ME0259	67.38%	987	665
Bowdoinham	ME0258	34.47%	1,027	354
Durham	ME0363	29.61%	1,226	363
Harpswell	ME0362	20.81%	2,340	487
Phippsburg	ME0338	29.34%	859	252
West Bath	ME0076	15.33%	750	115
Wollwich	ME0285	28.52%	1,101	314

COMMUNITIES SERVED BY TIME WARNER CABLE, INC.

CSR 7558-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Bar Harbor	ME0123	26.25%	2,142	562.19
Belfast	ME0107	24.23%	2,765	669.92
Blue Hill	ME0247	40.18%	1,074	431.56
Bucksport	ME0124	26.25%	2,049	537.86
Burnham	ME0291	40.68%	442	180.23
Cannan	ME0324	23.78%	777	184.78
Carmel	ME0304	28.04%	932	261.35
Corinna	ME0137	42.39%	842	356.89

Corinth	ME0298	26.24%	959	251.63
Deer Isle	ME0246	32.54%	781	254.15
Denmark	ME0355	23.87%	328	78.28
Detroit	ME0332	32.75%	1,615	528.92
Dexter	ME0032	35.70%	1,658	591.83
Dover- Foxcroft	ME0131	37.66%	825	310.70
Ellsworth	ME0122	36.56%	2,755	1007.09
Franklin	ME0268	36.74%	579	212.71
Hampden	ME0067	27.99%	2,433	681.05
Hancock	ME0295	35.82%	927	332.10
Hartland	ME0128	20.21%	707	142.89
Holden	ME0180	39.38%	1,153	454.06
Kenduskeag	ME0299	26.47%	470	124.39
Lamoine	ME0293	35.31%	605	213.60
Levant	ME0351	29.27%	784	229.50
Milford	ME0037	27.36%	1,180	322.79
Desert Mount	ME0244	26.25%	962	252.49
Newport	ME0125	35.26%	1,269	447.40
City of Old Town	ME0027	18.53%	3,426	634.98
Orrington	ME0153	26.71%	1,396	372.92
Palmyra	ME0350	36.27%	768	278.52
Penobscot Indian Island Reservation	ME0150	22.52%	214	48.19
Pittsfield	ME0127	18.01%	1,627	293.07
Searsport	ME0108	25.30%	1,130	285.85
Sorrento	ME0267	21.45%	128	27.46
Southwest Harbor	ME0155	28.67%	899	257.76
St. Albans	ME0187	32.42%	718	232.75

Stockton Springs	ME0249	42.97%	628	269.87
Stonington	ME0245	26.43%	502	132.68
Sullivan	ME0294	48.04%	480	230.61
Surry	ME0248	46.00%	551	253.49
Thorndike	ME0290	37.02%	279	103.27
Tremont	ME0156	37.88%	662	250.75
Trenton	ME0353	35.31%	574	202.66
Unity	ME0283	37.66%	713	268.49
Verona	ME0185	26.25%	223	58.54
Winterport	ME0184	37.65%	1,379	519.16

CSR 7565-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
Albion	ME0256	19.57%	719	140.74
Andover	ME0301	40.14%	359	144.09
Auburn	ME0002	16.38%	9,764	1599.50
Augusta	ME0013	22.87%	8,565	1958.74
Belgrade	ME0251	23.66%	1,178	278.73
Benton	ME0102	20.95%	1,013	212.18
Boothbay	ME0174	23.83%	1,261	300.55
Boothbay Harbor	ME0175	20.09%	1,097	220.36
Bristol	ME0250	27.88%	1,203	335.43
Buckfield	ME0297	34.96%	668	233.55
Canton	ME0266	27.90%	400	111.59
Chelsea	ME0167	20.99%	959	201.27
China	ME0213	40.61%	1,549	628.98
Clinton	ME0129	20.27%	1,278	259.05
Cushing	ME0292	31.37%	541	169.71

Damariscotta	ME0163	16.90%	942	159.16
Dresden	ME0278	40.21%	642	258.17
Eddington	ME0179	37.66%	825	310.70
Farmingdale	ME0014	19.67%	1,202	236.39
Friendship	ME0276	31.15%	508	158.25
Gardiner	ME0015	23.41%	2,510	587.71
Greene	ME0241	34.38%	1,494	513.62
Hanover	ME0261	18.88%	106	20.01
Jay	ME0018	26.26%	2,019	530.19
Jefferson	ME0328	49.01%	945	463.15
Leeds	ME0325	44.50%	736	327.49
Lewiston	ME0003	17.74%	15,290	2712.61
Lisbon	ME0075	18.23%	3,608	657.74
Litchfield	ME0306	25.62%	1,190	304.84
Livermore	ME0020	31.55%	842	265.61
Livermore Falls	ME0019	24.58%	1,322	324.93
Manchester	ME0120	22.18%	977	216.74
Mechanic Falls	ME0135	27.59%	1,163	320.92
Mexico	ME0010	22.99%	1,298	298.39
Minot	ME0308	19.37%	794	153.78
Monmouth	ME0181	25.74%	1,435	369.42
Mount Vernon	ME0253	33.99%	603	204.96
Newcastle	ME0166	23.95%	724	173.43
Nobleboro	ME0280	33.74%	678	228.79
Owls Head	ME0074	22.31%	723	161.28
Peru	ME0082	27.73%	585	162.23
Pittston	ME0169	22.82%	1,010	230.44

Randolph	ME0022	19.18%	829	159.01
Readfield	ME0252	29.75%	867	257.93
Roxbury	ME0262	41.57%	165	68.60
Rumford	ME0021	20.11%	2,876	578.22
Sabattus	ME0134	34.70%	1,708	592.67
Sidney	ME0330	21.12%	1,314	277.52
South Bristol	ME0296	40.50%	410	166.04
South Thomaston	ME0302	24.98%	594	148.41
Southport	ME0349	33.84%	331	112.00
St. George	ME0303	27.20%	1,119	304.33
Turner	ME0307	37.49%	1,768	662.80
Union	ME0275	33.29%	863	287.25
Vassalboro	ME0106	22.87%	1,549	354.24
Waldoboro	ME0281	32.09%	1,983	636.44
Wales	ME0336	34.70%	468	162.39
Warren	ME0177	27.37%	1,346	368.43
Wayne	ME0263	20.74%	465	96.44
West Gardiner	ME0168	23.41%	1,115	261.08
Westport	ME0282	16.65%	318	52.95
Whitefield	ME0318	34.27%	844	289.22
Windsor	ME0316	23.84%	846	201.70
Winthrop	ME0121	19.61%	2,495	489.23
Wiscasset	ME0164	23.35%	1,472	343.78

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

COMMUNITIES SERVED BY TIME WARNER CABLE, INC.

CSR 7565-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Alna	ME0165	266	36	13.53%
Edgecomb	ME0279	466	67	14.38%