

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

In the Matter of)	
)	CSR 8380-E
Time Warner Cable Inc.)	CSR 8381-E
)	CSR 8388-E
Petitions for Determination of Effective)	CSR 8389-E
Competition in Communities in Ohio and)	
Kentucky)	

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 2011

Released: March 15, 2011

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 four petitions pursuant to Sections 76.7, 76.905(b)(2), 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 the “Attachment A Communities.” Petitioner alleges that its cable system serving the Attachment A Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² 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 B and hereinafter referred to as Attachment B Communities, pursuant to Section 623(l)(1)(B) of the Communications Act³ and Section 76.905(b)(1) of the Commission’s rules,⁴ because the Petitioner serves fewer than 30 percent of the households in the franchise area.⁵ 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,⁶ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁷ 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.⁸ For the reasons set forth below, we grant the petitions based on our

¹ See 47 U.S.C. § 543(l)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ See 47 U.S.C. § 543(l)(1)(A).

⁴ 47 C.F.R. § 76.905(b)(1).

⁵ Time Warner has requested that 9 communities in CSR 8388-E be withdrawn. Letter from Craig Gilley, Esq., Fleischman and Harding LLP, counsel for Time Warner, to Steven A. Broecker, Senior Deputy Chief, Policy Division, Media Bureau (dated Jan. 31, 2011). There is no opposition to the request, and we grant it.

⁶ 47 C.F.R. § 76.906.

⁷ See 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

⁸ See 47 C.F.R. §§ 76.906-.907(b).

finding that Petitioner is subject to effective competition in the Communities listed on Attachments A and B.

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 (“MVPDs”) 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.⁹ This test is 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.¹⁰ It is undisputed that the Attachment A 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.¹¹ 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.¹² 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 programming¹³ and is supported in these petitions with copies of channel lineups for both DIRECTV and DISH.¹⁴ Also undisputed is Petitioner’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Attachment A Communities because of their national satellite footprint.¹⁵ Accordingly, we find that the first prong of the competing provider test is satisfied.

5. 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 Attachment A Communities.¹⁶ Petitioner sought to determine the competing provider penetration in there by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Attachment A Communities on a zip code plus four basis.¹⁷

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

¹⁰ 47 C.F.R. § 76.905(b)(2)(i).

¹¹ *See, e.g.*, Petition in CSR 8380-E at 3-5.

¹² *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹³ *See* 47 C.F.R. § 76.905(g). *See, e.g.*, Petition in CSR 8381-E at 5-6.

¹⁴ *See, e.g.*, Petition in CSR 8388-E at 6-7.

¹⁵ *See, e.g.*, Petition in CSR 8389-E at 7.

¹⁶ *See, e.g.*, Petition in CSR 8380-E at 7.

¹⁷ *See, e.g.*, Petition in CSR 8381-E at 7.

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁸ as reflected in Attachment A, 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 Attachment A Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Attachment A Communities. 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 Attachment A Communities.

B. The Low Penetration Test

7. 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 referred to as the “low penetration” test.¹⁹ 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 Attachment B Communities.

8. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, 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 Attachment B Communities.²⁰ Therefore, the low penetration test is satisfied as to the Attachment B Communities.

III. ORDERING CLAUSES

9. 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**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachments A and B **IS REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸ See, e.g., Petition in CSR 8388-E at Exh. B.

¹⁹ 47 U.S.C. § 543(l)(1)(A).

²⁰ We note that in several of the Attachment B Communities (St. Mary’s Township, Jefferson Township, Henry Township, and Northwood City) our low penetration finding is close to the statutory threshold. We are constrained by the statute to nevertheless determine the existence of effective competition. We further note that household information based on the 2010 Census is or will soon be available. If any of these Communities believes that effective competition is no longer present within its franchise area, it may file a petition for recertification pursuant to Section 76.916 of the Commission’s rules. 47 C.F.R. § 76.916.

²¹ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8380-E, 8381-E, 8388-E, 8389-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8380-E				
Roundhead Township	OH2162	47.14%	280	132
CSR 8381-E				
Adelphi Village	OH0768	25.00%	156	39
Harrison Township	OH2614	30.57%	471	144
Huntington Township	OH0423	17.60%	2199	387
Liberty Township	OH1726	23.94%	965	231
Nile Township	OH1188	38.87%	764	297
Pee Pee Township	OH2649	34.55%	1291	446
Piketon Township	OH0535	31.31%	693	217
Springfield Township	OH2637	23.68%	929	220
Union Township	OH2640	17.80%	2613	465
Waverly Township	OH0182	17.01%	2028	345
CSR 8388-E				
Concord Township	OH2204	48.62%	1300	632
Deer Creek Township	OH0827	41.10%	382	157
Hamilton Township	OH0877	29.87%	1798	537
Harrison Township	OH3009 OH2911	40.58%	653	265
Hopewell Township	OH1984 OH2988	45.29%	1029	466
Liberty Township (Delaware County)	OH2909	36.48%	3407	1243
Murray City Village	OH0495	40.53%	190	77
Newton Township	OH0273	27.26%	1948	531
North Bloomfield	OH1343	45.77%	697	319
Pataskala	OH0944	31.87%	3922	1250
Perry Township	OH0203 OH3016	30.45%	867	264
Pleasant Township (Fairfield County)	OH0407	30.46%	1855	565
Powell City	OH1470 OH1664	18.18%	1975	359
Shawnee Hills Village	OH2461	17.13%	181	31
Washington Township (Muskingum County)	OH0158 OH1852	16.75%	1606	269
Wayne Township	OH0159 OH2643 OH2886	16.51%	1738	287

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8389-E				
Arlington Village	OH1032	19.04%	520	99
Attica Village	OH1365	40.20%	393	158
Center Township	OH3028	44.86%	399	179
Clay Township	OH0913	43.26%	1061	459
Clinton Township	OH1039	25.32%	1560	395
Clyde City	OH0031	22.96%	2304	529
Fostoria City	OH0034 OH2286 OH2292	17.21%	5565	958
Green Springs Village	OH1044 OH1245	19.64%	443	87
Harpster Village	OH2285	17.65%	85	15
Liberty Township	OH0444 OH2884 OH3030 OH2761	23.99%	2363	567
Marion Township	OH0443	32.92%	881	290
Marseilles Village	OH2900	29.17%	48	14
Millbury Village	OH1182	42.99%	421	181
New Washington Village	OH1369	20.87%	393	82
Perry Township	OH0552	27.85%	736	205
Rawson Village	OH1248	15.09%	159	24
Upper Sandusky City	OH0042	26.24%	2744	720
Washington Township	OH3021	43.71%	636	278
Wayne Village	OH1459	20.77%	313	65
West Millgrove Village	OH2217	56.00%	25	14
Weston Township	OH3034	37.87%	272	103

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B

CSRs 8380-E, 8381-E, 8388-E, 8389-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8380-E				
Clay Township	OH2994	251	31	12.35%
Goshen Township	OH2399	187	35	18.72%
Jennings Township (Van Wert County)	OH3023	228	6	2.63%
Jennings Township (Putnam County)	OH3013	492	1	0.20%
Liberty Township	OH3014	408	3	0.74%
Logan Township	OH2442	325	2	0.62%
Marion Township	OH1144	1012	184	18.18%
Monroe Township	OH1238	607	70	11.53%
Moulton Township	OH2443 OH2439	587	6	1.02%
Noble Township	OH2440	427	3	0.70%
Pusheta Township	OH2995	444	12	2.70%
Richland Township	OH1413	658	11	1.67%
St. Marys Township	OH2437	1384	411	29.70%
City of St. Marys	OH0050	3218	685	21.29%
Sugar Creek Township	OH3018 OH1751	404	69	17.08%
Union Township (Auglaize County)	OH2398	592	1	0.17%
Union Township (Mercer County)	OH2412	300	17	5.67%
Washington Township (Auglaize County)	OH2441	367	3	0.82%
Washington Township (Van Wert County)	OH3024	1592	155	9.74%
Willshire Township	OH2410	375	2	0.53%
CSR 8381-E				
Centerville Township	OH3047	134	19	14.18%
Colerain Township	OH1976	565	17	3.01%
Concord Township	OH3065	1102	141	12.79%
Franklin Township	OH1998	616	100	16.23%
Green Township (Adams County)	OH2993	266	4	1.50%
Green Township (Ross County)	OH2931 OH3066	3460	728	21.04%
Unincorporated Greenup County	KY0148	6630	431	6.50%

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8381-E continued				
Jefferson Township	OH2192	382	108	28.27%
Laurelville, Village of	OH0769	256	40	15.63%
Unincorporated Lewis County	KY0202	4737	98	2.07%
Madison Township	OH3057	836	36	4.31%
Raccoon Township	OH2527	490	3	0.61%
Salt Creek Township (Hocking County)	OH3054	459	5	1.09%
Salt Creek Township (Pickaway County)	OH3054	324	35	10.80%
Scioto Township	OH2251	5940	127	2.14%
Seal Township	OH1183	1098	64	5.83%
CSR 8388-E				
Allen Township	OH1556	512	3	0.59%
Auglaize Township	OH2784	843	20	2.37%
Berlin Township	OH2120 OH2998	1180	63	5.34%
Big Island Township	OH2989	475	4	0.84%
Blendon Township	OH3001	2841	12	0.42%
Blue Rock Township	OH3061	249	7	2.81%
Bokescreek Township	OH2406	193	3	1.55%
Bowling Green Township	OH3004	204	2	0.98%
Buck Township	OH3002	2428	4	0.16%
Canaan Township	OH2888	591	111	18.78%
Cass Township	OH3008	509	97	19.06%
Chester Township	OH1857	1605	1	0.06%
Clay Township	OH2984 OH2754	353	5	1.42%
Clayton Township	OH2889	500	47	9.40%
College Township	OH2985	143	34	23.78%
Green Camp Township	OH3005	1163	4	0.34%
Harmony Township	OH1855	714	4	0.56%
Hilliar Township	OH2986	546	74	13.55%
Holmes Township	OH0475	505	2	0.40%
Howard Township	OH1985	1682	194	11.53%
Jackson Township	OH2990 OH3010	655	45	6.87%
Jefferson Township	OH3011	160	3	1.88%
Lafayette Township	OH2996	766	5	0.65%
Leesburg Township	OH2908	407	46	11.30%
Liberty Township (Union County)	OH2910	585	85	14.53%
Liberty Township (Fairfield County)	OH1390	1539	74	4.81%

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8388-E continued				
Liberty Township (Knox County)	OH2755	526	33	6.27%
Lincoln Township	OH1854	576	4	0.69%
Linton Township	OH2997	196	6	3.06%
Lykens Township	OH2980	238	2	0.84%
Madison Township	OH3012	185	3	1.62%
Marion Township	OH1787	2401	7	0.29%
Middlebury Township	OH2115	369	2	0.54%
Mifflin Township	OH3035	248	2	0.81%
Morgan Township	OH3060	303	3	0.99%
Morris Township	OH2116	715	2	0.28%
Muskingum Township	OH0813 OH1465	1399	55	3.93%
Orange Township	OH2999	12464	3	0.02%
Oxford Township	OH3000	295	2	0.68%
Peru Township	OH1853	439	7	1.59%
Pleasant Township (Marion County)	OH2912	1162	139	11.96%
Pleasant Township (Knox County)	OH2316	464	4	0.86%
Pleasant Township (Franklin County)	OH1176	2424	163	6.72%
Pleasant Township (Madison County)	OH0908	506	9	1.78%
Pleasant Township (Perry County)	OH3063	298	3	1.01%
Porter Township	OH2890	579	89	15.37%
Richland Township (Wyandot County)	OH2416	198	44	22.22%
Richland Township (Marion County)_	OH3006	602	3	0.50%
Salem Township	OH2415	243	5	2.06%
Scioto Township	OH1897	767	3	0.39%
South Bloomfield Township	OH1856	504	6	1.19%
Troy Township	OH3052	816	86	10.54%
Waldo Township	OH3007	264	2	0.76%
Ward Township	OH3055	397	1	0.25%
Washington Township (Licking County)	OH3026	313	11	3.51%
CSR 8389-E				
Bloom Township	OH3027 OH3025	320	33	10.31%
Cass Township	OH2982	1098	142	12.93%
Damascus Township	OH3003	379	3	0.79%

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8389-E continued				
Delaware Township	OH2019	271	14	5.17%
Freedom Township	OH1581	472	56	11.86%
Groton Township	OH2891	500	14	2.80%
Henry Township	OH3029	256	57	22.27%
Madison Township	OH0443	435	45	10.34%
Marseilles Township	OH2991	128	2	1.56%
Milton Township	OH3031	236	3	1.27%
Northwood City	OH1082	2024	480	23.72%
Oregon City	OH3075	7708	1	0.01%
Perrysburg Township	OH1190	5161	278	5.39%
Plain Township	OH2885	616	5	0.81%
Pleasant Township	OH3022 OH1036	282	38	13.48%
Portage Township	OH2983 OH3032	363	33	9.09%
Reed Township	OH2014	341	45	13.20%
Scott Township	OH3020	532	1	0.19%
Sherman Township	OH3017	172	1	0.58%
Thompson Township	OH1046	2383	100	4.20%
Webster Township	OH3034	434	2	0.46%