

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

In the Matter of	)	
	)	
Time Warner Cable Inc.	)	CSR 7568-R
	)	
Petition for Subscribership Information Pursuant	)	
to Section 76.907(c) of the Commission's Rules	)	

**ORDER**

**Adopted: April 5, 2011**

**Released: April 6, 2011**

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

**I. INTRODUCTION AND BACKGROUND**

1. Time Warner Cable Inc. ("Time Warner" or "the Company"), intends to file a petition seeking a finding that it is subject to "competing provider" effective competition in and around San Antonio, Texas.<sup>1</sup> The Company's petition will need to show the Commission that, in each of the areas in question, more than 15 percent of the households subscribe to video services offered by competing multichannel video program distributors ("MVPDs").<sup>2</sup> To sustain this burden of proof, Time Warner needs numbers of subscribers from three companies: the direct broadcast satellite ("DBS") providers DIRECTV, Inc., and DISH Network, and the local exchange carrier AT&T Texas ("AT&T"), which provide service in the areas in question. Time Warner needs AT&T numbers for seven areas in which the DBS providers' subscribers do not reach the threshold of more than 15 percent of households.<sup>3</sup>

2. AT&T refuses to produce its subscriber numbers,<sup>4</sup> for essentially two reasons. First, it cites the confidential nature of its customer numbers in the competitive MVPD marketplace.<sup>5</sup> Second, it alleges that Time Warner does not need AT&T's subscriber numbers because the Company could show that it is subject to another form of effective competition, so-called "local exchange carrier" or LEC effective competition, without any confidential numbers from AT&T.<sup>6</sup>

3. Time Warner filed the present petition, requesting that we order AT&T to disclose its subscriber numbers in the areas in question. Time Warner invokes Section 76.907(c) of our rules, which provides:

"If the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach

<sup>1</sup> Time Warner "Petition for Special Relief" in CSR 7568-R at 2.

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

<sup>3</sup> Petition at 2 & n.6.

<sup>4</sup> Petition, Exhs. B & D (letters from counsel for AT&T to counsel for Time Warner). The DBS providers make their community-specific subscriber numbers available through the Satellite Broadcasting and Communications Association.

<sup>5</sup> "Opposition of AT&T" at 1, 3, 7.

<sup>6</sup> *Id.* at 5-7; see also 47 U.S.C. § 543(l)(1)(D); 47 C.F.R. § 76.905(b)(4).

and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals.”<sup>7</sup>

4. AT&T’s refusal lacks merit. There is no reason to doubt that Time Warner needs AT&T’s subscriber numbers to prove that it is subject to competing provider effective competition. Although those numbers may be confidential to AT&T, there are customary methods for such information to be used in Commission proceedings with adequate protection from disclosure to competitors and the general public. Such methods are familiar to AT&T<sup>8</sup> and have been used in effective competition proceedings.<sup>9</sup> We are confident that AT&T and Time Warner can arrange to provide the Commission with the numbers of subscribers to competing MVPDs without compromising AT&T’s legitimate interest in the confidentiality of its own subscriber numbers.<sup>10</sup>

5. That Time Warner might be able to show a form of effective competition that does not require AT&T’s subscriber numbers as evidence is immaterial.<sup>11</sup> Time Warner is entitled to choose which form(s) of effective competition to claim and not to claim, and to present a case for competing provider effective competition without first proving that it cannot show other forms of effective competition. The Company’s request for AT&T’s subscriber numbers in the San Antonio communities in question is entirely within its rights under Section 76.907(c) of our rules.<sup>12</sup>

## II. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition **IS GRANTED** and that AT&T shall, within fifteen (15) days of the release of this Order, comply with its obligations under Section 76.907(c) of the Commission’s rules, 47 C.F.R. § 76.907(c).

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

### FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>7</sup> 47 C.F.R. § 76.907(c).

<sup>8</sup> See, e.g., *Cellco Partnership, d/b/a Verizon Wireless & AT&T, Inc.*, 25 FCC Rcd 10985, 10992-94, ¶¶ 15-17 (2010); *Craig O. McCaw*, 9 FCC Rcd 5836, 5922-25, ¶¶ 159-68 (1996), *aff’d*, *SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

<sup>9</sup> *CoxCom, Inc.*, 22 FCC Rcd 4384, ¶ 2 n.6 (2007).

<sup>10</sup> See Time Warner “Reply” at 4 & n.12.

<sup>11</sup> AT&T’s certainty that Time Warner could show LEC effective competition is unfounded in the absence of an actual filing to that effect by Time Warner and an opportunity to challenge such a filing, in all its elements, by interested persons. It is also possible that such a filing would require confidential information from AT&T.

<sup>12</sup> To the extent that AT&T challenges the validity of 47 C.F.R. § 76.907(c), the appropriate place for such a challenge is a petition for rulemaking.

<sup>13</sup> 47 C.F.R. § 0.283.