

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

In the Matter of)	
)	
Time Warner Cable Inc.)	CSR 7394-E
)	
Petition for Determination of Effective)	
Competition in Charleston County (CUID)	
SC0633) and McClellanville (CUID SC0384),)	
South Carolina)	

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2008

Released: June 30, 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)(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.”¹ Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(A) of the Communications Act of 1934, as amended (“Communications Act”)² and the Commission’s implementing rules,³ and is therefore exempt from cable rate regulation in the Communities because Petitioner serves fewer than 30 percent of the households in the franchise areas. Charleston County opposed grant of the petition⁴ and Petitioner replied.⁵

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(1) 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 petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹ Time Warner Cable Inc., Petition for Special Relief (dated July 10, 2007) (“Petition”).

² See 47 U.S.C. § 543(a)(1).

³ 47 C.F.R. § 76.905(b)(1).

⁴ Objection by Charleston County to Time Warner Cable, Inc.’s Petition for Special Relief (dated Aug. 9, 2007) (“Objection”). On September 12, 2007, Charleston County also filed a “Response to Time Warner Cable, Inc.’s Reply” (“Response”). While the Commission’s rules generally do not permit such a filing, we consider this pleading herein in order to ensure that we review the full record.

⁵ Time Warner Cable Inc., Reply (dated Aug. 22, 2007).

⁶ 47 C.F.R. § 76.906.

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

⁸ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

3. 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.⁹ 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 areas.

4. Charleston County objects to grant of the petition with respect to the County. It first notes that Petitioner currently does not have a County- or state-issued franchise to provide service in the franchise area and expresses concern that this proceeding may be Petitioner’s attempt to obtain a *de facto* franchise for Charleston County.¹⁰ Next, it argues that the petition is premature, noting that Petitioner does not have a County- or state-issued franchise and that the County never secured rate regulatory certification from the Commission.¹¹ Finally, it questions the “total franchise households” calculated by Petitioner and requests that Petitioner provide the Commission with greater factual background.¹² The County notes that Petitioner does not have a franchise for Charleston County and it is not clear what the precise boundaries of its franchise will be.¹³

5. Petitioner responds that none of these arguments presents valid grounds for denial of its petition. Petitioner argues that the ongoing state franchise proceeding is unrelated to this proceeding.¹⁴ Petitioner explains that a finding of effective competition here will not have any impact on its obligation to pay franchise fees or comply with other obligations under a valid franchise.¹⁵ Petitioner asserts that Charleston County’s failure to seek or obtain a rate regulatory certification has no bearing on whether the franchise area is subject to effective competition.¹⁶ Petitioner states that it may seek an effective competition determination in any franchise area it serves at any time.¹⁷ Finally, Petitioner explains that the state-issued franchise it is seeking would cover the entire County and that it derived the “total franchise households” by subtracting the total number of households in all incorporated portions of the County from the total number of households in the County.¹⁸ According to petitioner, it calculated the “total franchise households” in a manner that overstates its penetration in the franchise area by including in this total households attributed to incorporated communities that only partially overlap the County.

6. We are not persuaded by the County’s arguments. We agree with Petitioner that this proceeding is unrelated to the ongoing franchising proceeding. By ruling on whether Petitioner has satisfied the low penetration test, we are not granting Petitioner any franchise – *de facto or de jure* – to provide service anywhere in the County. Moreover, the fact that Charleston County has not sought or obtained rate regulatory certification does not bar Petitioner from seeking a finding of effective competition.¹⁹ Lastly, we will not require Petitioner

⁹47 U.S.C. § 543(l)(1)(A).

¹⁰ Objection at 3-4.

¹¹ *Id.* at 4.

¹² *Id.* at 4-5; Response at 1-2.

¹³ Objection at 4-5.

¹⁴ Reply at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 4-5.

¹⁹ *Subsidiaries of Cablevision Systems Corp.*, MO&O DA 08-891 at ¶ 1, n.3 (rel April 16, 2008), available at 2008 WL 1756787 (“Cablevision states that, in several Communities, its cable rates have never been regulated, but that it is petitioning to be free of rate regulation because “Verizon’s provision of cable service [in those Communities] . . . removes (continued....)”).

to submit additional information regarding its “total franchise households.” Nor will we await the final determination of the boundaries of Petitioner’s franchise area. We find such actions unnecessary. While the County disputes this number, arguing that it likely is higher, it has not substantiated this argument with any evidence. Moreover, Petitioner correctly points out that should the number of “total franchise households” be higher, its penetration would be reduced not increased.

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

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. **IS GRANTED**.

9. **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**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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any doubt regarding the absence of authority to regulate Cablevision’s rates” in those Communities. [citations to record] We find no flaw in Cablevision’s reasoning and filing petitions concerning Communities where there is no present regulation. Accordingly, we will rule on its Petitions for those Communities.”); *Subsidiaries of Cablevision Systems Corp.*, MO&O DA 08-826 at ¶ 1, n.3 (rel April 8, 2008), available at 2008 WL 961122 (same).

²⁰47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7394-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Charleston County	SC0633	1110	39	3.51
McClellanville	SC 0384	206	13	6.31