

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

In the Matter of )
Time Warner Cable Inc. )
Petition for Determination of Effective )
Competition in Mount Vernon, New York (CUID )
NY 0398) CSR 8087-E

MEMORANDUM OPINION AND ORDER

Adopted: January 27, 2009

Released: January 28, 2009

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 and 76.905(b)(4) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in the community listed on Attachment A and hereinafter referred to as the "Community." Petitioner alleges that its cable system serving the Community is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended ("Communications Act") and the Commission's implementing rules, and is therefore exempt from cable rate regulation in the Community because of the competing service provided by Verizon New York Inc., hereinafter referred to as "Competitor." The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules. 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. For the reasons set forth below, we grant the Petition based on our finding that Petitioner is subject to effective competition in the Community listed on Attachment A.

II. DISCUSSION

3. Section 623(1)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier ("LEC"), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services

1See 47 U.S.C. § 543(1)(1)(D).

247 C.F.R. § 76.905(b)(4).

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.

provided by the competing unaffiliated cable operator.<sup>6</sup> This test is otherwise referred to as the “LEC” test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.<sup>7</sup> It is undisputed that the Community is served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. 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>8</sup> and is supported in this petition with copies of channel lineups for Competitor.<sup>9</sup> Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Community, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>10</sup>

5. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Community has met the LEC test and is subject to effective competition.

### III. ORDERING CLAUSES

6. 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**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Community set forth on Attachment A **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>6</sup>See 47 U.S.C. § 543(l)(1)(D).

<sup>7</sup>See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-15 (1999) (“*Cable Reform Order*”).

<sup>8</sup>See 47 C.F.R. § 76.905(g). See also Petition at 5.

<sup>9</sup>See Petition at Exhs. A, D.

<sup>10</sup>See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-15. See also Petition at 3-5.

<sup>11</sup>47 C.F.R. § 0.283.

**ATTACHMENT A**

**CSR 8087-E**

**COMMUNITY SERVED BY TIME WARNER CABLE INC.**

<b>Community</b>	<b>CUID</b>
Mount Vernon	NY 0398