

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

July 10, 1995

IN REPLY REFER TO:

CSR-4086-E

Relesed: July 11, 1995

Mr. Arthur H. Harding
Fleischman and Walsh
1400 Sixteenth Street, N.W.
Suite 600
Washington, DC 20036

DA 95-1547

Mr. Dan Crisp
President and COO
Valley Wireless
5610 District Boulevard, #101
Bakersfield, CA 93313-2178

Re: Time Warner v. Valley Wireless (CSR-4086-E)

Dear Mr. Harding and Mr. Crisp:

This letter is in reference to the complaint filed on September 16, 1993 by Time Warner Cable, a division of Time Warner Entertainment Company, L.P. ("Time Warner") against Valley Wireless TV ("Valley"), a wireless operator, alleging that Valley has failed to provide information necessary for Time Warner to properly assess whether it is subject to effective competition, as defined by the Communications Act of 1934 and the Commission's rules, in the city of Bakersfield and in Kern County, California.¹

Review of the pleadings before us shows that Valley has provided Time Warner with certain information as to the reach and penetration of its system. Specifically, in its June 4, 1993 letter to Time Warner, Valley states that, with respect to Bakersfield "it would be safe to conclude that as of this date [its] service is technically and actually available to over 50% of the franchise area, presently being served by your organization in the City of Bakersfield, and that [its] subscriber base represents less than 15% of the homes within the City of Bakersfield, presently being served by Time-Warner and or Cox Cable." Similarly, with respect to Kern County, Valley stated that "[its] service is technically and actually available to over 50% of the franchise area, presently being served by your organization, and that our

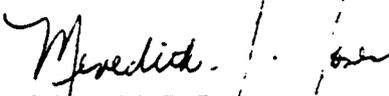
¹ Valley did not file a response with the Commission. However, Time Warner filed papers styled as a Reply and a Supplement to Reply on October 8, 1993. Its initial complaint only addressed the City of Bakersfield and Kern County, California. In its Reply, Time Warner clarified its inquiry to also include the cities of Arvin, Delano, Maricopa, McFarland, Shafter, Taft, Tehachapi, Wasco and the unincorporated areas of Kern County, California.

subscriber base represents less than 15% of the homes-within your county franchise area." Further, Valley provided certain additional information in its August 25, 1993 letter to Time Warner.² Time Warner's Reply argues that these numbers are vague and incomplete.

Pursuant to Section 76.911(b)(2) of the Commission's rules, cable television system operators are permitted, if the information is not otherwise available, to request certain information from competing service providers in order to establish the presence of effective competition. Here, based on the unique circumstances of this case, including not only that some information has been provided, but in particular the absence of any information that the presence or absence of competition is significantly in issue or that additional refinement of the data provided would be of decisional consequence with respect to the matters referenced in Section 76.911(a)(1), we conclude that Valley's response is not unreasonable and complies with the Commission's rules.

Should you have any questions regarding this matter, please contact Steve Broeckaert at (202) 416-0974.

Sincerely,


Meredith J. Jones
Chief, Cable Services Bureau

² In this letter, Valley provided the following table regarding its service and subscribership.

"	1. Bakersfield	75% Serviceable Area	2,100 Wireless Subscribers
	2. Taft	01% Serviceable Area	2 Wireless Subscribers
	3. Arvin/Lamont	40% Serviceable Area	25 Wireless Subscribers
	4. Tehachapi	00% Serviceable Area	0 Wireless Subscribers"