

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

Massachusetts Department of Telecommunications and Cable)	Section 76.910 INBOX
)	
Form 328 Certification of Franchising Authority to Regulate Basic Service Rates and Initial Finding of Lack of Effective Competition)	PSID No. 002938 Adams, Town of (MA0001)
)	
)	

To: Chief, Media Bureau

PETITION FOR RECONSIDERATION OF CERTIFICATION

Time Warner Cable Inc. (“Time Warner Cable”), pursuant to Sections 1.106 and 76.911(a) of the Commission’s rules,¹ hereby requests reconsideration of the Form 328 certification request filed by the Massachusetts Department of Telecommunications and Cable (the “MDTC”) as it pertains to the community of the Town of Adams, Massachusetts, a community served by a Time Warner Cable cable system. For the following reasons, the Bureau should reject the MDTC’s attempt to demonstrate that the Town of Adams is not subject to effective competition and thus subject to rate regulation.²

The MDTC’s certification filing purports to demonstrate that effective competition does not exist in the Town of Adams via a showing that MPVD penetration falls below the 15 percent threshold contained in the competing provider test of Section 623(I)(1)(B) of the

¹ 47 C.F.R. §§ 1.106, 76.911(a).

² Under state law, the MDTC is the certified franchising authority for regulating basic service tier rates and associated equipment costs in Massachusetts.” 207 C.M.R. § 6.02; see also MASS. GEN. LAWS ch. 166A, §§ 2A, 15.

Communications Act.³ The Town makes its attempted showing by presenting a Direct Broadcast Satellite (“DBS”) provider subscriber count report provided by the Satellite Broadcasting Communications Association (“SBCA”), the entity that provides such data on behalf of the two DBS providers, DirecTV and the Dish Network, that includes a DBS subscriber count for the Town of Adams. According to the MDTC, the Adams DBS subscriber count (579), measured against the number of households in Adams reported by the 2010 Census (3907), indicates that DBS penetration in Adams is 14.82 percent, just short of the 15 percent statutory threshold under the competing provider test.

The MDTC’s analysis is flawed, however, in that the SBCA’s DBS subscriber count was based on an incomplete set of nine digit Zip codes overlapping the Town of Adams. According to the MDTC, the set of Zip codes submitted to SBCA was derived from lists the MDTC obtained from MelissaData of nine digit Zip codes overlapping each community included in the certification filing, including for the Town of Adams.⁴ Time Warner Cable has reviewed the list for Adams and identified several Zip codes that were not included in the SBCA report even though they correlate to locations within the Town of Adams. Specifically, there are at least ten additional Zip codes (01220-1055, 01220-1220, 01220-1586, 01220-1593, 01220-1661, 01220-1667, 01220-1783, 01220-1787, 01220-1985 and 01220-2073) associated with locations within the boundaries of the Town of Adams, but which are not included in the MDTC’s SBCA showing. Time Warner Cable has confirmed with MelissaData that each of these ten Zip codes indeed correlates with locations in the Town of Adams.⁵

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

⁴ MDTC certification filing at Attachment 3, page 4.

⁵ Attached hereto as Exhibit A are street locations and maps from MelissaData’s website (<http://www.melissadata.com/lookups/ZipCityPhone.asp>) for each of the ten Zip codes showing that each is correlated with an address or set of addresses within the Town of Adams.

Time Warner Cable has submitted these ten Zip codes to the SBCA for an update to the Adams subscriber count. SBCA, using the same data date as the MDTC showing, indicates that there are an additional eight DBS subscribers in the Town of Adams that were not reflected in the MDTA's showing.⁶ When these additional eight DBS subscribers are added to the MDTC's DBS subscriber count of 579, competing provider subscribership in the Town of Adams increases to 587 subscribers. When this updated subscriber figure is compared against the 2010 Census household count for Adams (3907), DBS penetration is indicated at 15.02 percent, exceeding the 15 percent statutory threshold and confirming that indeed effective competition exists in the Town of Adams. For this reason, the MDTC's certification filing should be rejected with respect to the Town of Adams.

Undersigned counsel has read the foregoing Petition for Reconsideration of Certification, and to the best of such counsel's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

TIME WARNER CABLE INC.

By: _____


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Its Attorneys

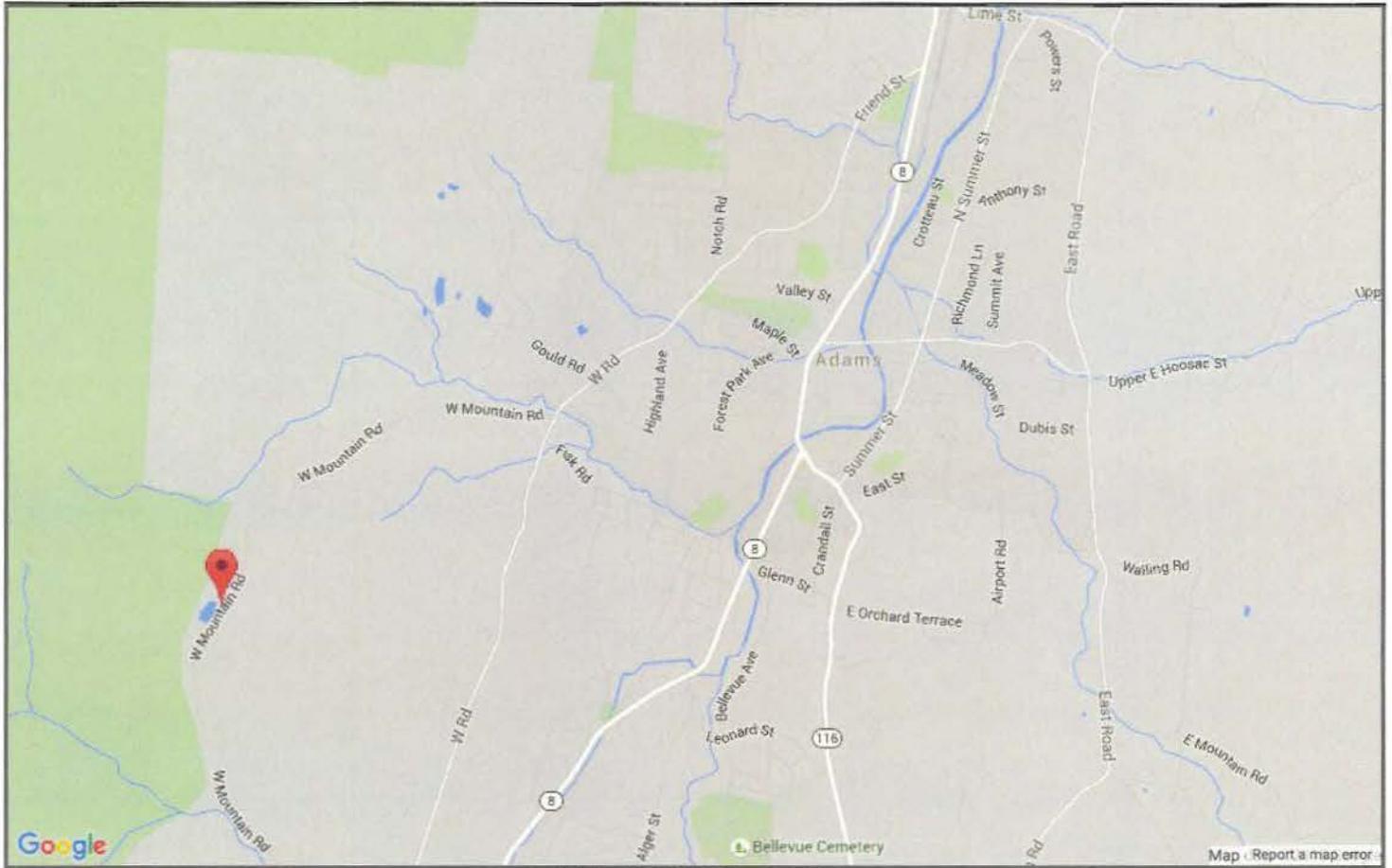
Dated: January 7, 2016

⁶ SBCA ECTR report attached as Exhibit B.

EXHIBIT A

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**201 to 299 (Odd) W Mountain RD
 ADAMS, MA
 01220-1055**

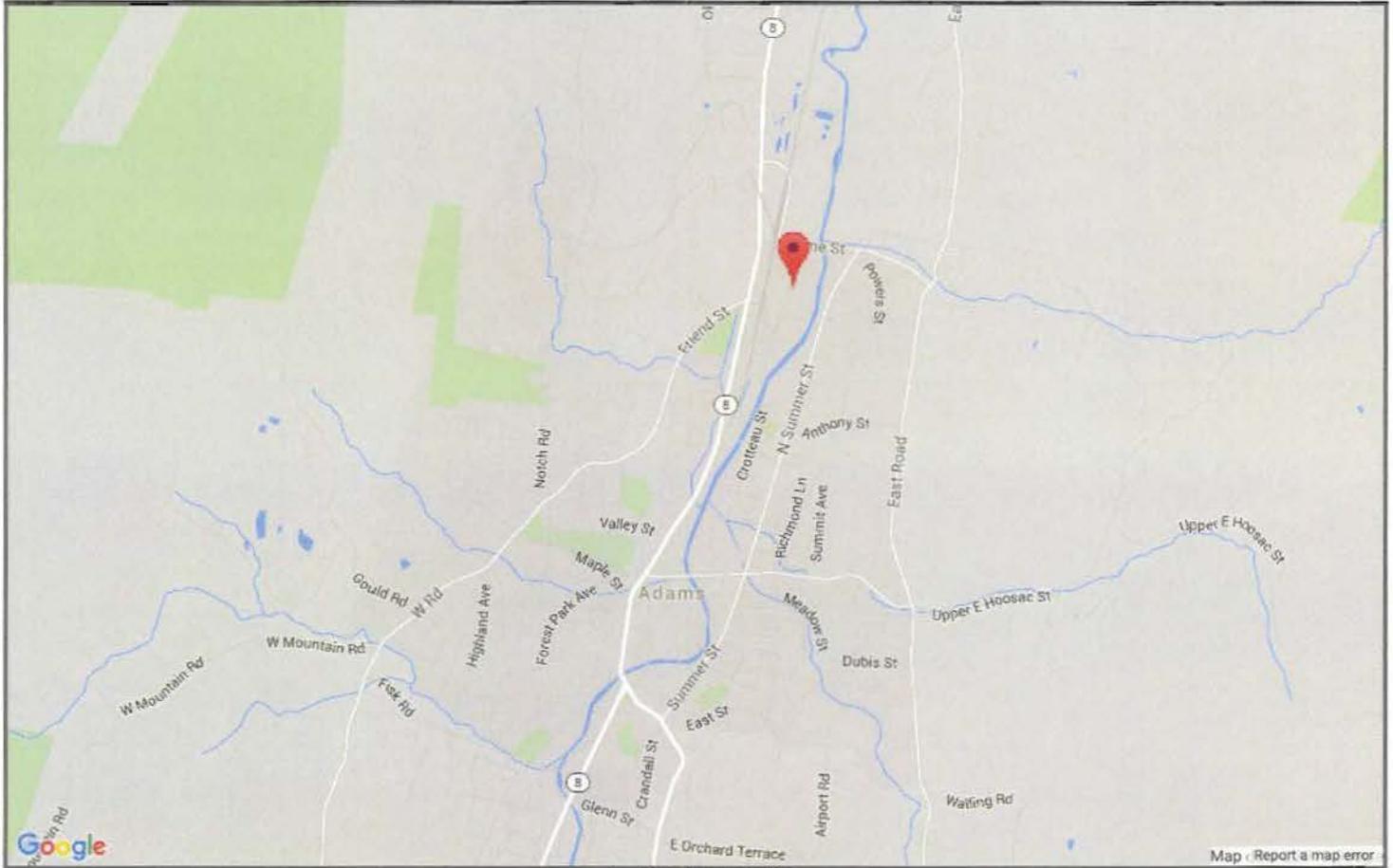
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1 to 99 Printworks DR
 ADAMS, MA
 01220-1220

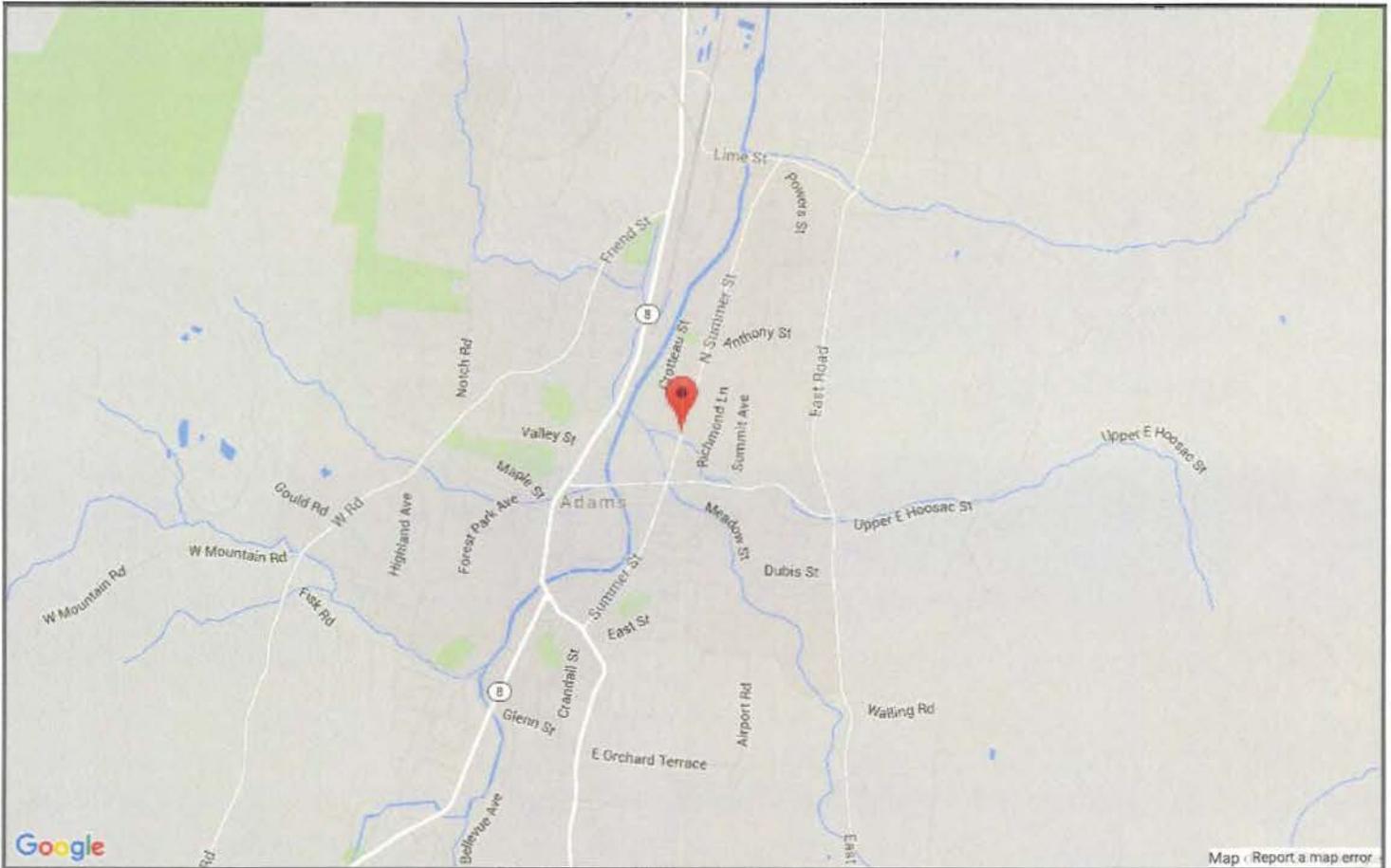
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**28 N Summer ST
 ADAMS, MA
 01220-1586**

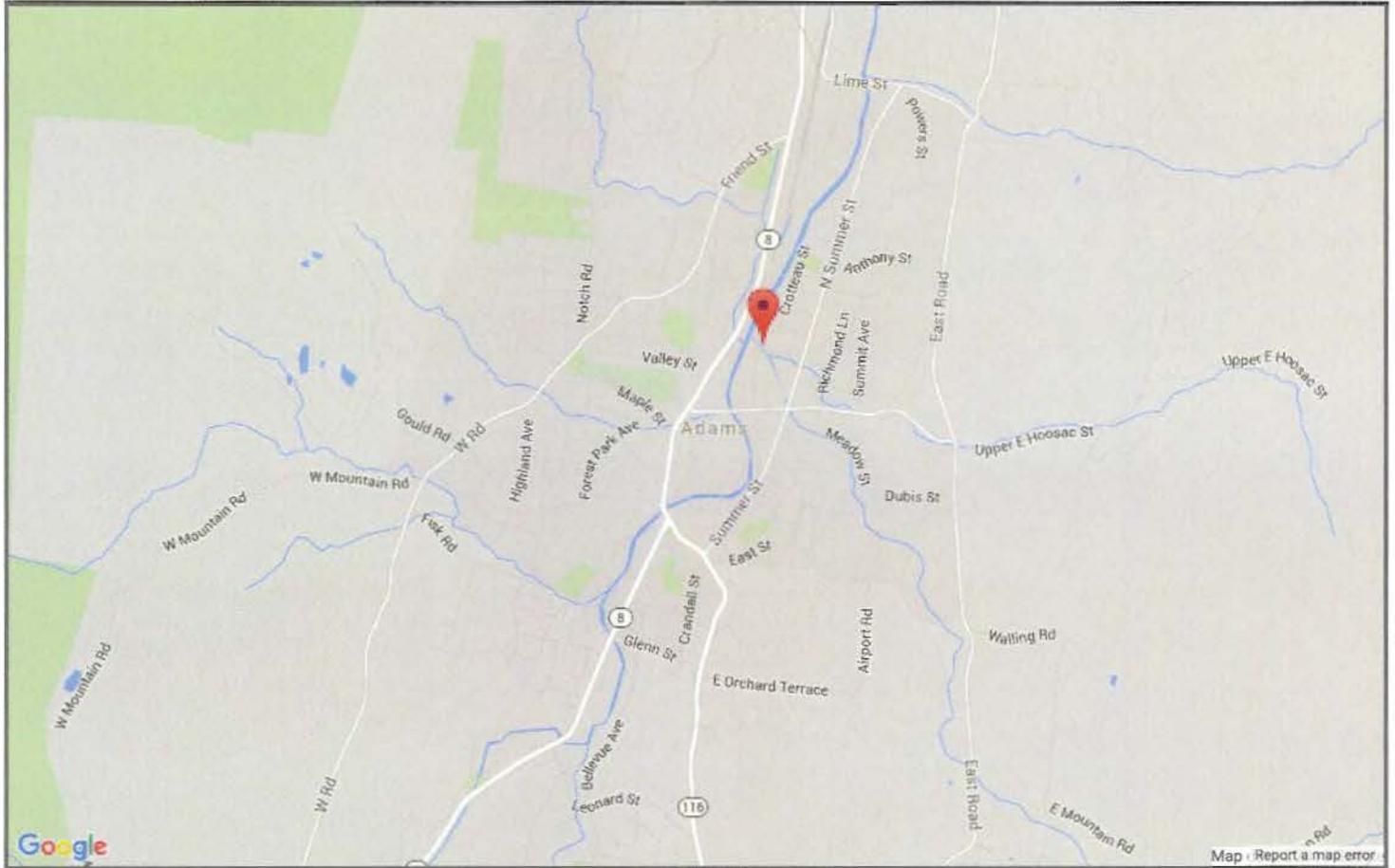
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**1 Jordan ST
ADAMS, MA
01220-1593**

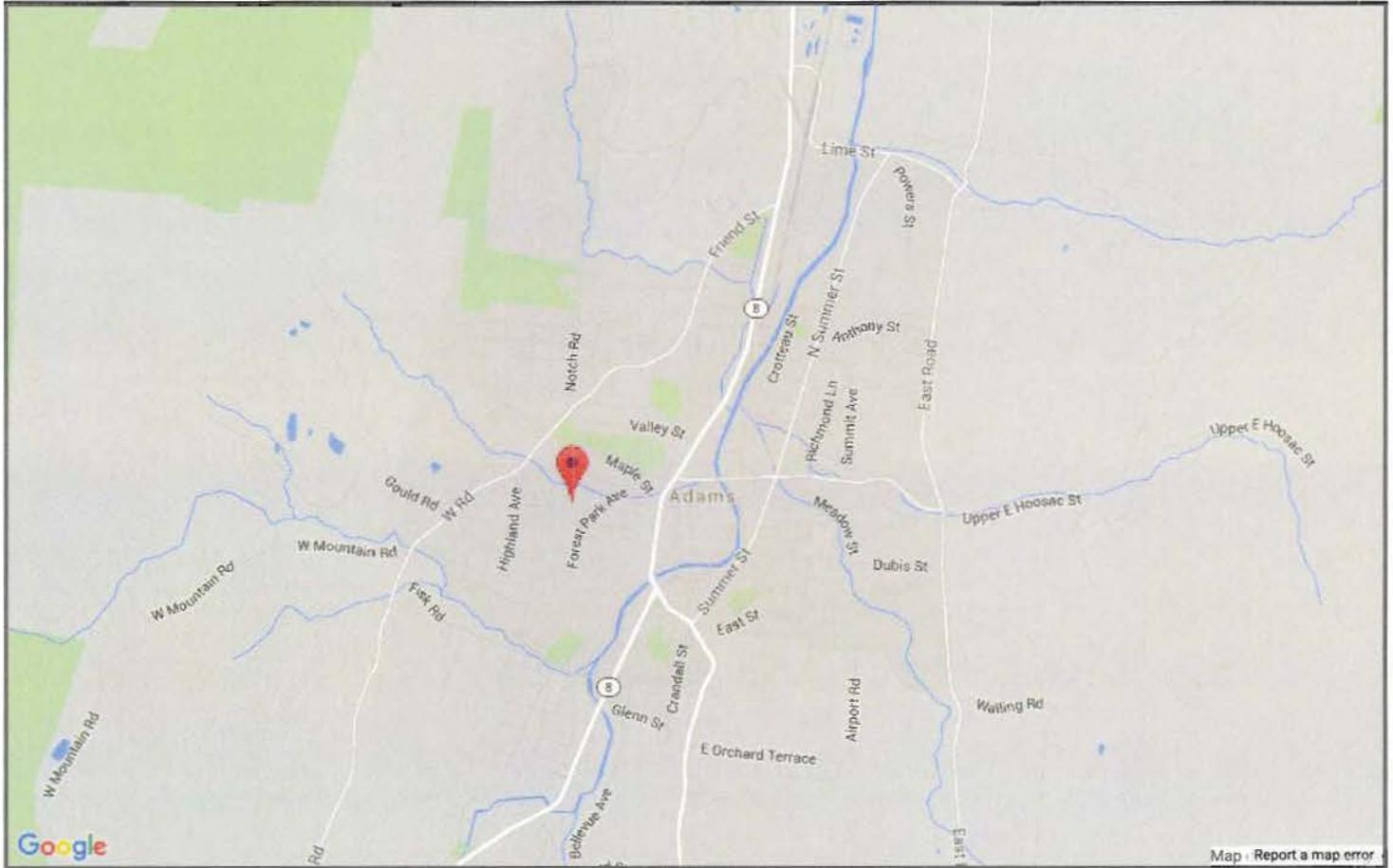
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**35 Gilead ST
 ADAMS, MA
 01220-1661**

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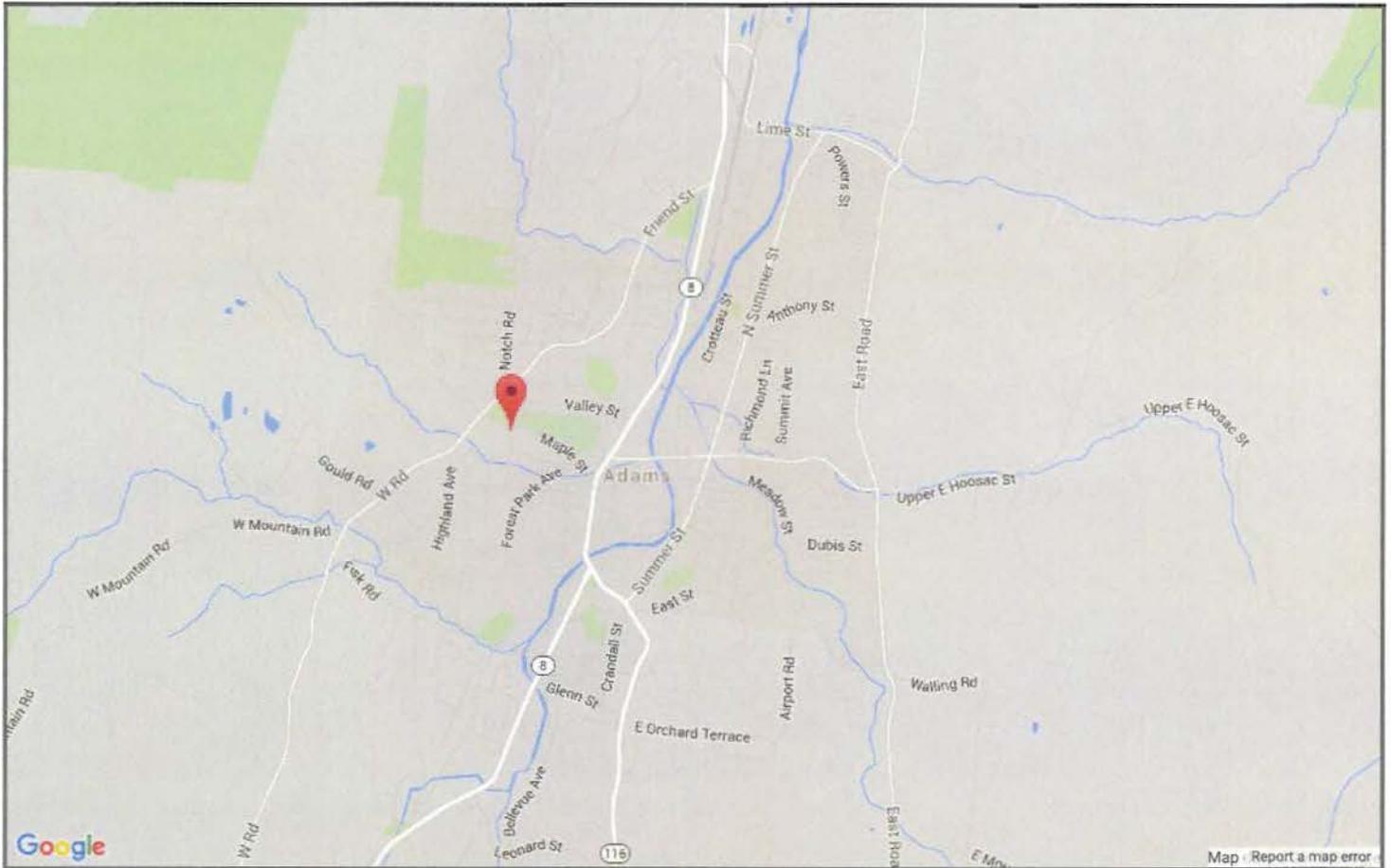
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**3 Gilead ST
ADAMS, MA
01220-1667**

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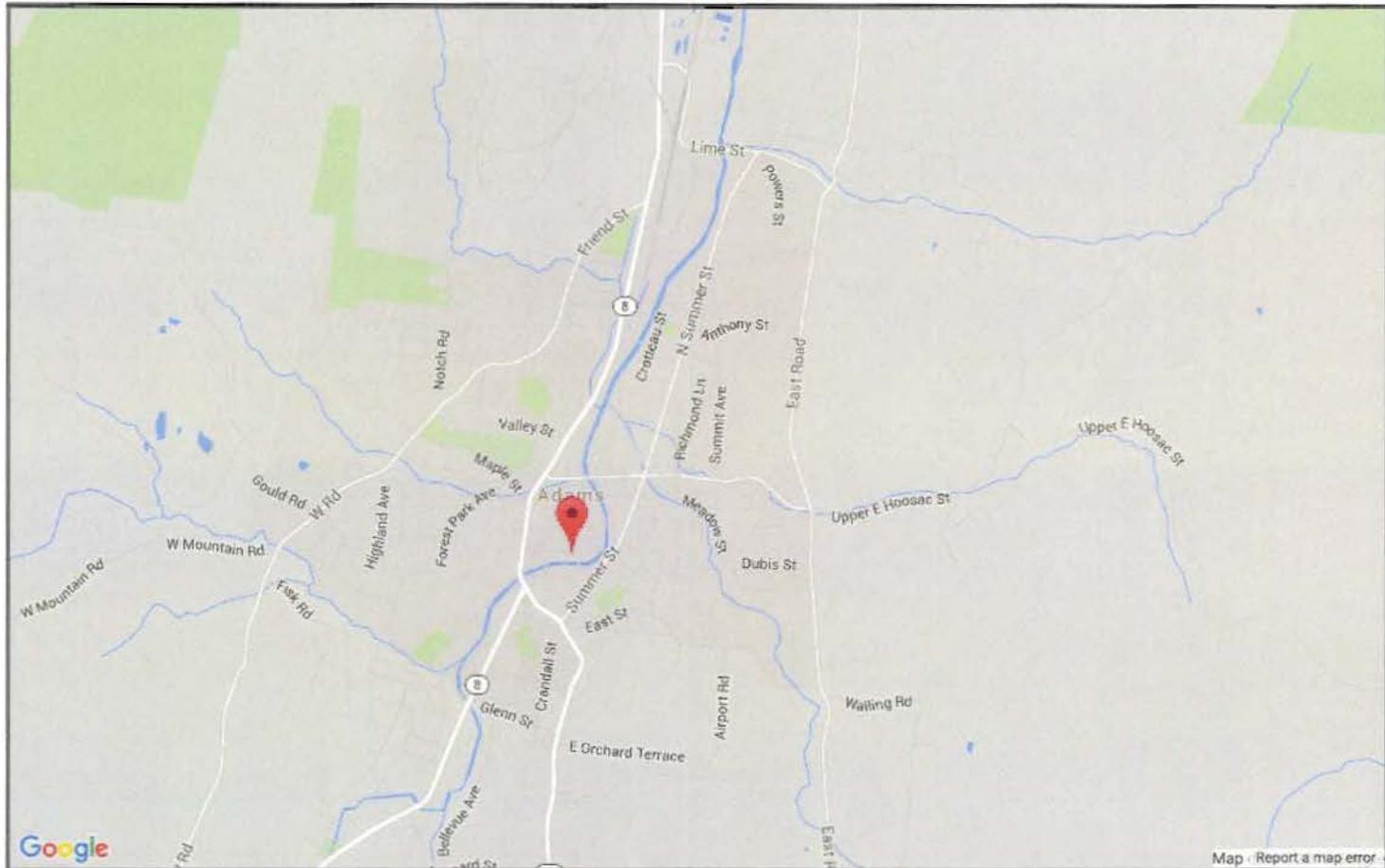
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 ADAMS, MA
 01220-1783**

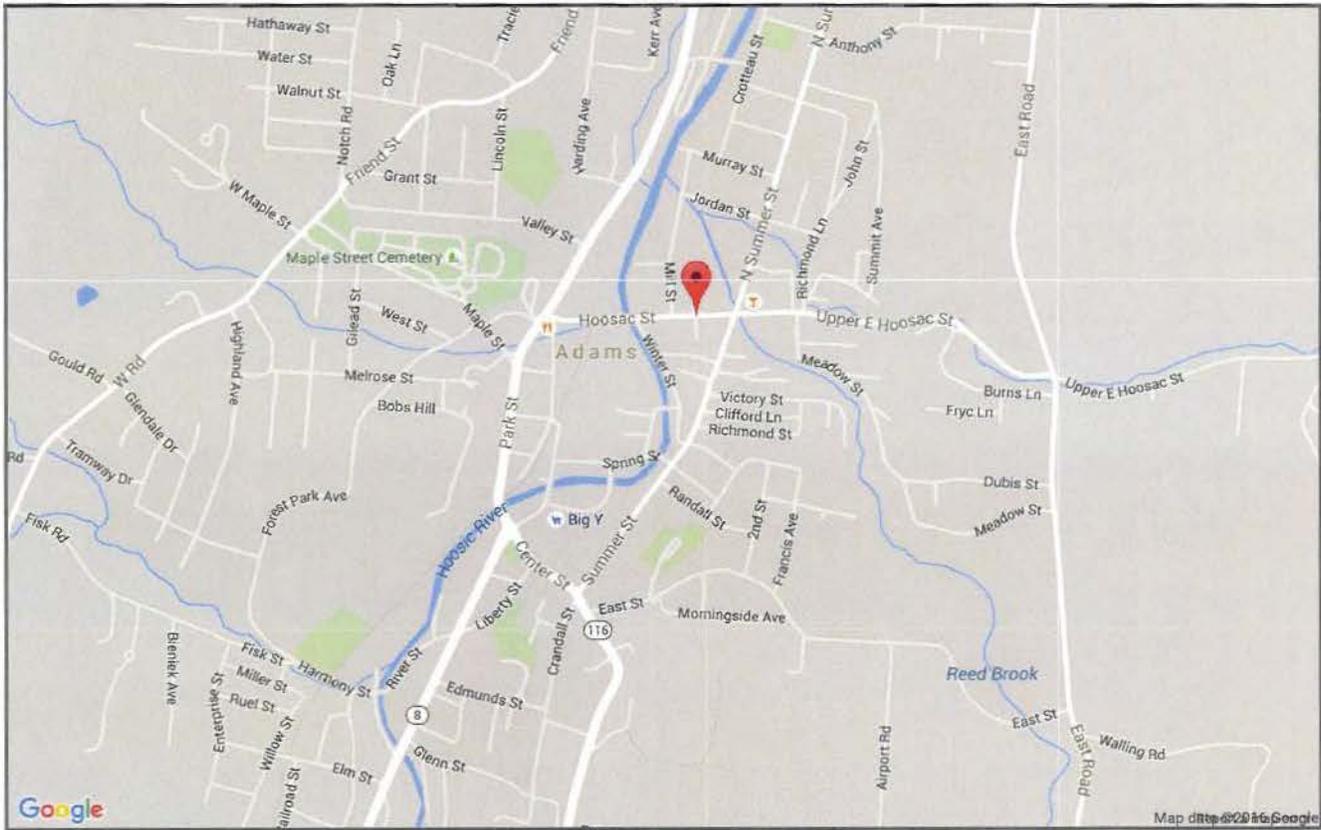
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21 Hoosac ST
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01220-1787

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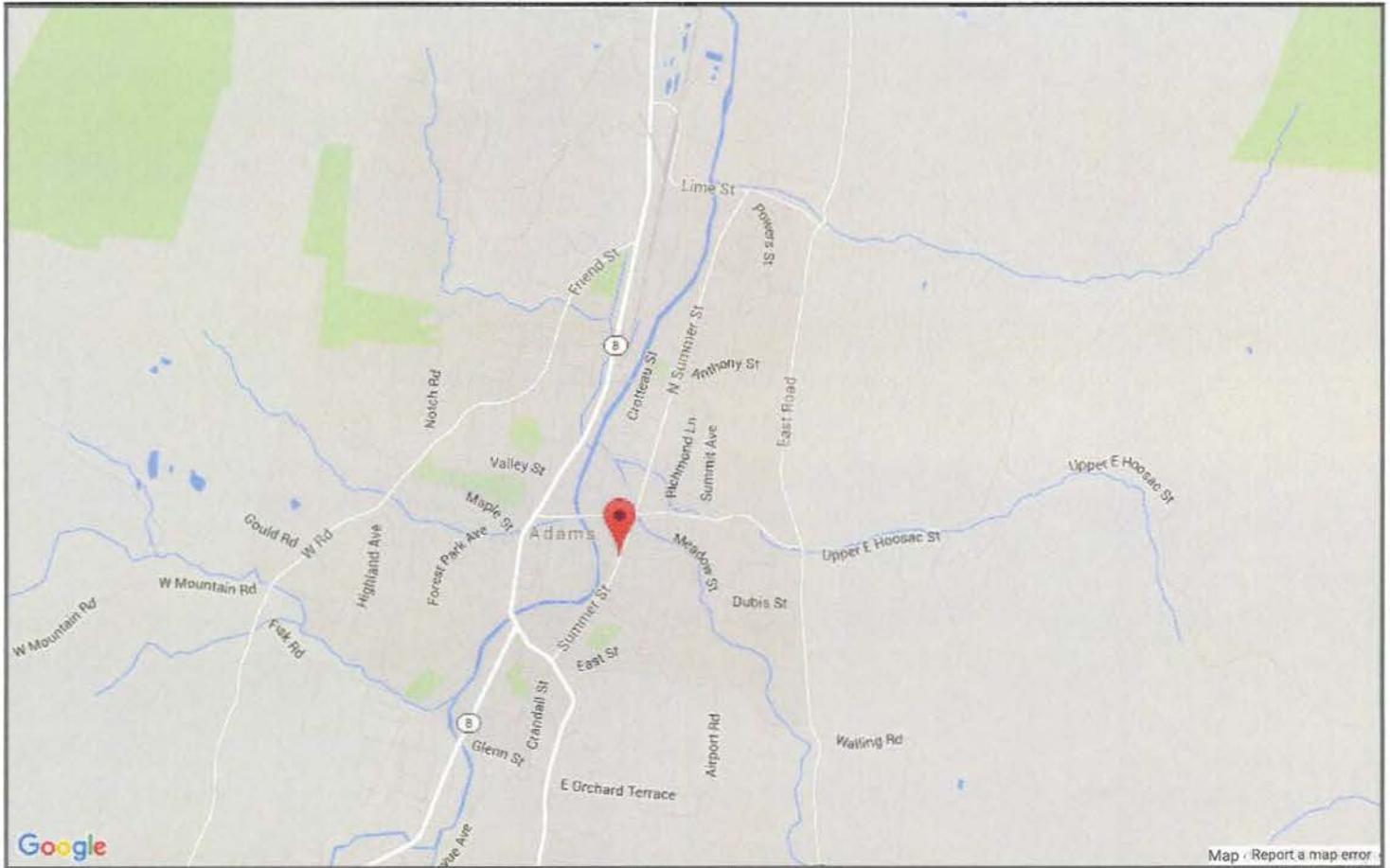
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**84 Summer ST
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 01220-1985**

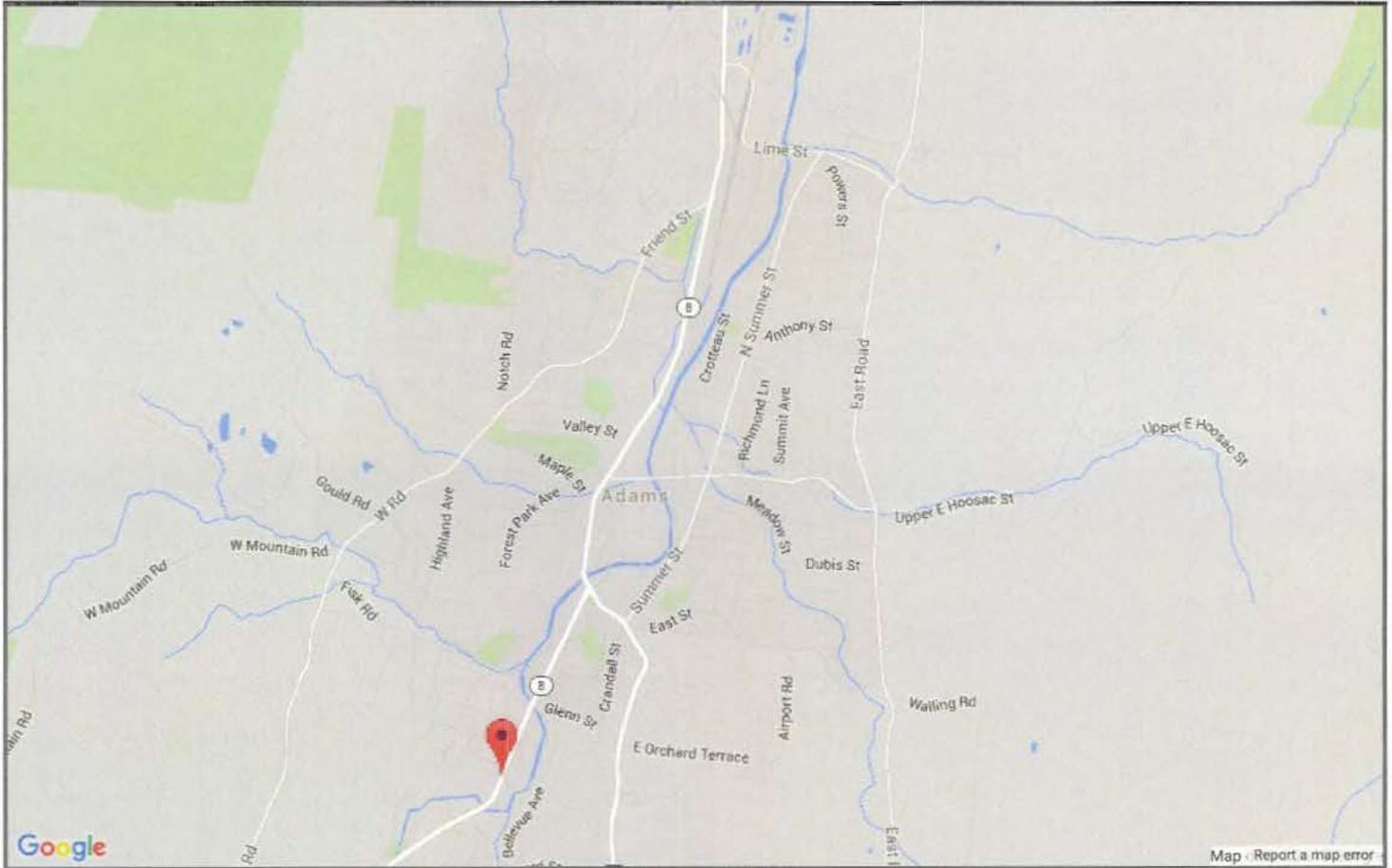
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121 Commercial ST
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 01220-2073

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EXHIBIT B

ECTR – Effective Competition Tracking Report



Provided by
Satellite Broadcasting and Communications Association

Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated January 5, 2016 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: January 6, 2016

ZIP Codes	DTH Count
012201055	1
012201220	0
012201586	1
012201593	0
012201661	1
012201667	1
012201783	1
012201787	1
012201985	1
012202073	1
Total	8

Data is current through 9/30/2015

Report Prepared by:
Martin Esteves
Manager, Program Manager
202-349-3630
mesteves@sbca.org

Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV and DISH Network residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members' subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

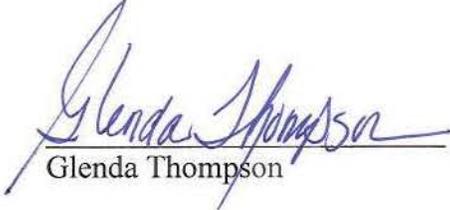
CERTIFICATE OF SERVICE

I, Glenda Thompson, a secretary at the law firm of Mintz Levin Cohn Ferris Glovsky and Popeo PC, hereby certify that, on this 7th day of January, 2016, copies of the foregoing "Petition for Reconsideration of Certification" were sent via first-class mail, postage prepaid, to the following:

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Boston, MA 02118-3580

*Via ECFS


Glenda Thompson