

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Comcast Cable Communications, LLC,)
on behalf of its subsidiaries and affiliates)
)
For Determination of Effective Competition in:)
Mullica, NJ (NJ0609))
Weymouth, NJ (NJ0563))

CSR 8654-E
MB 12-163

To: Office of the Secretary
Attn: Chief, Media Bureau

REPLY TO OPPOSITION

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates (“Comcast”), hereby submits its Reply to the Comments in Opposition to Comcast’s Petition for Effective Competition (“Opposition”) submitted by the New Jersey Division of Rate Counsel (“Rate Counsel”) in the above-captioned proceeding. The Opposition recycles several arguments attempting to discredit the accurate and reliable data used by Comcast in calculating the “competing provider” penetration rate.¹ These same arguments, however, have been raised previously by Rate Counsel and *rejected* by the Commission in several earlier “effective

¹ The Opposition correctly notes that the Commission has already issued an order, in which has found that effective competition exists in the community of Weymouth. *See* Opposition at 4 *citing Comcast Cable Communications, LLC*, 24 FCC Rcd. 1780 (2009) (“*Comcast – 107 New Jersey Franchise Areas*”). The CUID number associated with the community of Weymouth in that case (NJ0583) is incorrect and should have been reported as NJ0563. As there is no dispute that the Commission has previously issued a determination of effective competition for Weymouth, Comcast hereby withdraws the Weymouth Franchise Area from the instant proceeding. Comcast is maintaining the Petition for the remaining community of Mullica (the “Franchise Area”).

competition” decisions.² Inexplicably, Rate Counsel ignores those decisions, despite having been previously chastised by the Commission for repeating arguments that have been rejected in earlier cases.³

I. Comcast’s Occupied Housing and DBS Subscribership Data for the Franchise Area Is Accurate and Reliable.

Rate Counsel contends that Comcast erred in relying on the Census data from 2010,⁴ and instead should have identified household data that is “contemporaneous” to the date the Petition was filed.⁵ As the Commission has previously pointed out, Rate Counsel’s criticism of the Census data is without merit. Indeed, Rate Counsel’s argument is particularly strained in this case, because relatively little time has transpired since the official 2010 Census.⁶

In both *Comcast – 107 New Jersey Franchise Areas* and *Time Warner Cable, Inc.*, the Commission granted effective competition in scores of New Jersey cable communities over the

² See, e.g., *Comcast – 107 New Jersey Franchise Areas; Time Warner Cable, Inc.*, 25 FCC Rcd. 5457 (2010) (“*Time Warner Cable*”).

³ See, e.g., *Time Warner Cable* at ¶ 10 (“We find no merit in the [Rate Counsel’s] objection, which we have rejected [in] other proceedings.”); ¶ 12 (“In previous proceedings, the [Rate Counsel] proposed such a rule, and we adopt the analysis by which we declined to follow it in those proceedings.”); and ¶ 13 (“We have rejected this objection in earlier decisions as without substance and have found the cases that the [Rate Counsel] relies on to be inapposite. We adopt the analysis of those earlier decisions and again reject the [Rate Counsel’s] objection.”).

⁴ See *Opposition* at 4-5.

⁵ *Id.*

⁶ The Commission has consistently approved cable operators’ reliance on the most recent Census data available in effective competition cases, and has upheld its use long after that data was compiled. See, e.g., *Texas Cable Partners, LP Memorandum Opinion and Order*, DA 01-510 (rel. Feb. 27, 2001) (accepting 1990 Census data until the 2000 replacement data becomes available); *Tri-Lakes Cable, Monument, Colorado, Memorandum Opinion and Order*, 12 FCC Rcd. 13170 (1997).

very same “timeliness” objections by Rate Counsel.⁷ As in those cases, Rate Counsel has again failed to provide the Commission with any alternative household data. Accordingly, consistent with Commission precedent, the Commission should reject Rate Counsel’s unsubstantiated challenge to Comcast’s use of household data from the 2010 U.S. Census.

Rate Counsel further argues that the DBS subscriber data submitted by Comcast should be rejected because it is more than two months old and does not account for the “time lag” between the reported date of the satellite subscriber count and the filing date of the Petition.⁸ The Opposition mistakenly relies on an inapposite 1994 decision involving the “low penetration test”, which the Commission more recently found to be inapplicable in the context of cases like this one involving the Competing Provider Test.⁹ Significantly, the Opposition fails to mention the more recent decision even though it directly involved Rate Counsel.

Comcast has met its *prima facie* burden regarding DBS subscribership, and Rate Counsel has failed to offer any meaningful rebuttal. Comcast included with its Petition all of the relevant ZIP+4 code data associated with the Franchise Area. Rate Counsel could easily have obtained updated DBS subscriber counts if it truly believed Comcast’s data was stale. Instead, Rate

⁷ See *Comcast – 107 New Jersey Franchise Areas* at ¶ 13 (“[W]e conclude that the [Rate Counsel’s] general allegations about the timeliness of the [household and DBS] data submitted by Petitioner reveal no flaw in the petitions.”). See also *Time Warner Cable* at ¶ 11 (The Commission upheld cable operator’s use of the most recently available Census household data in determining DBS penetration for the communities at issue).

⁸ See Opposition at 6.

⁹ See *Time Warner Cable* at ¶ 19. Indeed, the Commission explained that the no-earlier-than-60-day-data requirement in the 1994 Opinion relied upon by Rate Counsel was *only* applicable to a cable operator’s own subscriber numbers under the Low Penetration Test, and not DBS subscriber data under the Competing Provider Test. See *id.* at ¶ 20.

Counsel relies on evidence of *de minimis* nationwide reductions in DBS subscribership that actually support, rather than undermine, Comcast's evidence.¹⁰

In any event, to alleviate any doubt with respect to the timeliness of the DBS subscriber data, Comcast has obtained updated data for the Franchise Area from SBCA.¹¹ As shown in Exhibit B, Rate Counsel's speculation was ill-founded – DBS subscribership actually slightly *increased* in the Franchise Area over the last few months.

II. DBS Providers Offer “Comparable Programming.”

Rate Counsel next contends that the programming offered by DBS providers is not “comparable” to Comcast's programming, because the DBS providers fail to offer local Public, Educational, and Government (“PEG”) Access programming.¹² Once again, the Commission has already considered and rejected Rate Counsel's challenge. In *Comcast – 107 New Jersey Franchise Areas*, the Commission stated that Rate Counsel “misunderstands our standards for what constitutes comparable programming for purposes of effective competition.”¹³ The

¹⁰ The information included as Exhibit A to the Opposition suggests a *de minimis* overall second quarter 2012 decline in subscribership for Dish (0.07%) and DirecTV (0.26%). Even if the reported DBS figure included as Exhibit 4 to the Petition for Mullica (362) were reduced by the higher of the two nationwide loss figures (0.26%), it would equate to a loss of less than one DBS subscriber in the Franchise Area. The resulting DBS subscriber number (361) would produce a DBS penetration figure of 16.67% ($361 / 2,154 = .1676$), which still easily exceeds the 15% Competing Provider threshold. Accordingly, Rate Counsel's own evidence fails to demonstrate a need for Comcast to refresh its analysis.

¹¹ See Exhibit A (providing total ZIP+4-based DBS subscribership for the Franchise Area, as well as all of the underlying ZIP+4 data associated with the Franchise Area).

¹² See Opposition at 6-7.

¹³ 24 FCC Rcd. 1780 at ¶ 35.

Commission went on to specify that “[w]hether Competitor’s service is comparable for effective competition purposes does not depend on whether it includes PEG channels.”¹⁴

It is clear that the governing effective competition regulations do not require competing DBS providers to offer local PEG Access programming,¹⁵ and Rate Counsel’s contrary suggestion is frivolous.

III. There is No Requirement That Comcast’s Plant Extend to the Entire Franchise Area.

Rate Counsel next argues that an effective competition finding cannot be granted because “Comcast’s plant does not extend to the entire geography” of the Franchise Area.¹⁶ Despite Rate Counsel’s unsupported claims to the contrary, there is no households-passed requirement under the effective competition regulations, much less a requirement to pass *all* occupied households in the Franchise Area. Significantly, the Commission has already considered and rejected this very

¹⁴ *Id.* (Emphasis added). See also *Time Warner Cable, Inc.*, at ¶ 29 (The Commission reminded Rate Counsel that it had rejected the very same PEG programming objections in past proceedings.).

¹⁵ See *Comcast Cable Communications Petition for Determination of Effective Competition in Six Michigan Communities*, 26 FCC Rcd. 3993, ¶ 5 (2011) (“The rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being “comparable” to cable operators’ for purposes of determining effective competition.”); *Cablevision of Oakland, Inc., et al.*, 24 FCC Rcd. 1801, ¶ 7 (2009) (“The full Commission, when it adopted the definition of “comparable programming,” was fully aware of PEG channels – it discussed both [“comparable programming” and PEG channels] in the same decisions. If the full Commission had wanted PEG channels to be part of “comparable programming,” it would have stated so. It did not.”).

¹⁶ Opposition at 7.

same Rate Counsel argument in *Comcast – 107 New Jersey Franchise Areas*.¹⁷ Accordingly, Rate Counsel’s “coverage” argument is without merit.

IV. Comcast Provided All the Data Necessary to Support a finding of Effective Competition in the Franchise Area.

Rate Counsel’s final claim is that Comcast’s Petition is deficient because Comcast failed to “submit the analysis, maps and work papers that underlie and support the calculation of satellite penetration”¹⁸ Again, in *Comcast – 107 New Jersey Franchise Areas*, the Commission expressly rejected a similar request by Rate Counsel for “the analysis and workpapers that underlie and support” the Company’s DBS penetration calculation. The Commission explained: “Petitioner has made that data available, in Exhibits to its Petitions. The [Rate Counsel] has simply asked for more, without any specific indication that more exists, would reveal an error, or would otherwise be helpful to efficient, pro-consumer regulations.”¹⁹

In this case, Comcast not only provided the critical DBS penetration rates for the Franchise Areas, it also submitted the underlying ZIP+4 list (sorted by Franchise Area) and the associated DBS subscriber data from which it calculated the penetration rates. Thus, Rate

¹⁷ See *Comcast – 107 New Jersey Franchise Areas*, at ¶ 27 (“The [Rate Counsel] briefly alludes to a line of cases in which franchise authorities showed that cable operators had made affirmative decisions, confirmed by their own conduct, to serve less than the whole area granted in their franchises, in which cases we measured effective competition in the lesser areas. The [Rate Counsel] has not attempted to make such a showing in this case, however, and therefore cannot invoke those cases’ holdings.”)(Footnotes omitted).

¹⁸ Opposition at 7.

¹⁹ 24 FCC Rcd. 1780 at ¶ 19. See also *Time Warner Cable*, at ¶ 13; *Comcast Cable Communications, LLP - Petition for Determination of Effective Competition in Seventeen Communities in California*, 23 FCC Rcd. 8564, ¶ 9 (2008) (The Commission rejected the franchising authority’s unsubstantiated concerns regarding Comcast’s methodology for determining DBS penetration, because it determined that Comcast’s evidence “cannot be overturned by franchising authorities expressing only generalized concerns and doubts,” and that “[i]t is reasonable to require franchising authorities to present factual evidence and showings about their own communities.”).

Counsel is in possession of all the information necessary to challenge the ZIP+4 code data, the associated DBS subscribers, and the resulting DBS penetration calculation included in Comcast's Petition. Rate Counsel's objection is unfounded.

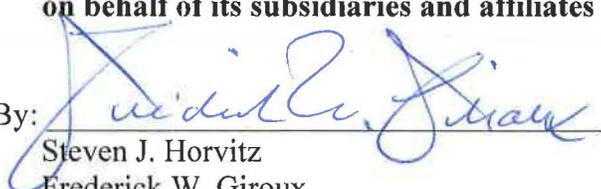
CONCLUSION

Comcast has met its evidentiary burden under Section 623 of the Communications Act and Section 76.905 of the Commission's implementing regulations. Comcast respectfully requests that the Media Bureau promptly issue an order recognizing the existence of effective competition in the Franchise Area.

Respectfully submitted,

**Comcast Cable Communications, LLC
on behalf of its subsidiaries and affiliates**

By:


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Its Attorneys

August 28, 2012

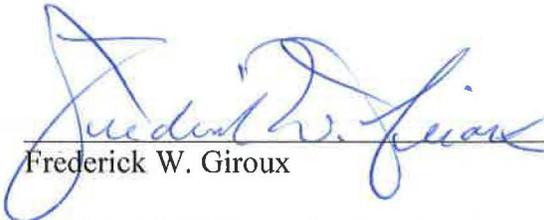
CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Reply to Opposition, and to the best of my 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,

**Comcast Cable Communications, LLC
on behalf of its subsidiaries and affiliates**

By:



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Washington, DC 20006
(202) 973-4200

Its Attorney

August 28, 2012

EXHIBIT A

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 February 17, 2011 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: August 23, 2012

ZIP Codes

DTH Count

| | |
|---------------------------------|-----|
| Requested total for Mullica, NJ | 366 |
|---------------------------------|-----|

Data is current through 7/31/2012

Report Prepared by:
Martin Esteves
Manager, Membership and Data Management
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.

; oldest data from 2012-07-31

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| 082154640 | 2 |
| Total | 366 |

EXHIBIT B

| Community | State | ECTR Report 8/23/2012 Total DBS Subscribers | 2010 Census Occupied Housing Units | % of DBS Penetration In Franchise Area Column C/ Column E |
|------------------|-------|--|---------------------------------------|---|
| Mullica Township | NJ | 366 | 2,154 | 16.99% |

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 28th day of August, 2012 that a true and correct copy of the foregoing "Reply to Opposition" has been sent via U.S. mail, postage prepaid to the following:

Kimberly Johnson
Township Clerk
Mullica Township
P.O. Box 317
Elwood, NJ 08217

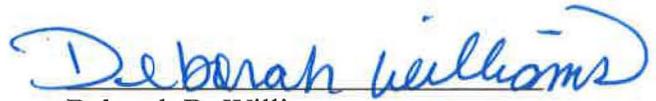
Bonnie Yearsley
Township Clerk
Weymouth Township
45 South Jersey
Dorothy, NJ 08317

Lawanda R. Gilbert
Acting Director
Office of Cable Television
Board of Public Utilities
44 South Clinton Ave., 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Stefanie A. Brand, Esq.
Jose Rivera-Benitez, Esq.
Christopher J. White, Esq.
Maria Novas-Ruiz, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

William Lake
Media Bureau
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554


Deborah D. Williams