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SUMMARY

Competition among multichannel video programming distributors (“MVPDs”) in Cox’s Newport County, Rhode Island communities included in this Petition (collectively, the “Communities”), which comprise its Rhode Island Area 7 Franchise Area (the “Franchise Area”), more than satisfies the effective competition standard that Congress established in Section 623(D)(1) of the Communications Act. Cox provides superior voice, video, and data services to its customers in Newport County, Rhode Island, and customers there also may choose comparable video services offered throughout the Franchise Area by nationwide direct broadcast satellite (“DBS”) providers DirecTV and Dish Network. As described herein, more than fifteen percent (15%) of customers in the Franchise Area have chosen the competing services of Cox’s DBS rivals. This fully competitive environment provides all consumers in the Franchise Area with abundant and growing options for multichannel video and other communications services, which ensures high standards of customer service and competitive rates.

Given these circumstances, the fact that the Franchise Area is subject to effective competition under Section 623(D)(1)(B) of the Act and corresponding Section 76.905(b) of the Commission’s rules (the “Competing Provider” test) is unsurprising. Multiple competitors unaffiliated with Cox offer more than two hundred (200) channels of comparable video programming to at least fifty percent (50%) of the occupied households within Cox’s Franchise Area. In the aggregate, these competitors actually provide service to more than fifteen percent (15%) of the occupied households in the Franchise Area based upon 2010 Census data. The Competing Provider test therefore is satisfied in the Franchise Area.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	CUID No:	PSID No:	
)			
CoxCom, LLC d/b/a Cox)	Newport	(RI0027)	008685
Communications New England)	Jamestown	(RI0030)	
)	Middletown	(RI0028)	
)	Portsmouth	(RI0026)	
)	Tiverton	(RI0025)	
)	Little Compton	(RI0029)	
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Petition for Determination of)			
Effective Competition)			

To: The Secretary's Office
Attn: The Media Bureau

PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

CoxCom, LLC d/b/a Cox Communications New England (“Cox”), by its attorneys and pursuant to Sections 76.7 and 76.907 of the rules of the Federal Communications Commission (the “Commission”), 47 C.F.R. §§ 76.7, 76.907, hereby petitions the Media Bureau for a determination of effective competition in the above-captioned communities (collectively, the “Communities”), which comprise the franchise area known as Area 7 served by Cox’s cable television system in Newport County, Rhode Island (the “Franchise Area”).¹

BACKGROUND

The Communications Act (the “Act”) and the Commission’s rules provide that cable television rates may be regulated only in the absence of effective competition.² The

¹ A map illustrating Cox’s franchise area (Area 7) as defined in its franchise agreement and as determined by the State of Rhode Island Division of Public Utilities and Carriers (“DPUC”) is attached hereto as Exhibit 1.

² 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

Commission, however, presumes that cable systems do not face such competition absent a demonstration to the contrary.³ When a cable operator rebuts this presumption with evidence that effective competition is present within a franchise area, rates and other aspects of the operator's business in the affected area no longer are subject to regulation.⁴

Cox's Franchise Area is served by competitive multichannel video programming distributors ("MVPDs") in addition to Cox, including Direct Broadcast Satellite ("DBS") providers DirecTV and Dish Network. This competitive environment ensures that customers in Cox's service area have available a variety of multichannel video program offerings at competitive prices. It also ensures a high standard of customer service.

Cox is subject to effective competition under Section 623(l)(1)(B) of the Act⁵ and corresponding Section 76.905(b)(2) of the Commission's rules⁶ (the "Competing Provider" test) throughout the Franchise Area. As demonstrated below, at least two unaffiliated competitors offer comparable programming to fifty percent (50%) or more of occupied households, and competitors other than Cox collectively serve more than fifteen percent (15%) of occupied households in the Franchise Area.

³ 47 C.F.R. § 76.906.

⁴ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 at paras. 39-49 (1993) ("Rate Order"); *First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking*, 9 FCC Rcd 1164 at para. 26 (1994); *Third Order on Reconsideration*, 9 FCC Rcd 4316 at para. 7 (1994). See also 47 C.F.R. § 76.905(a); 47 U.S.C. § 533(a)(3) (MMDS and SMATV cross-ownership restrictions are inapplicable where effective competition is present); *Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 187-92 (D.C. Cir. 1995) (tier buy-through and uniform rate requirements are inapplicable where effective competition is present); Implementation of the Cable Television Consumer Protection and Competition Act of 1992, *Memorandum Opinion and Order*, 11 FCC Rcd 20206 (1996); Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 at para. 102 (2001) (cable operator subject to effective competition may place broadcast signals on upper service tiers).

⁵ 47 U.S.C. § 543(l)(1)(B).

⁶ 47 C.F.R. § 76.905(b)(2).

DISCUSSION

I. Cox Is Subject To Effective Competition In Its Franchise Area.

Under the Competing Provider test adopted in the 1992 Cable Act,⁷ cable operators are subject to effective competition whenever two or more unaffiliated MVPDs offer comparable programming to at least fifty percent (50%) of the households in a franchise area and the number of households subscribing to MVPDs other than the largest exceeds fifteen percent (15%) of such households.⁸ Cox's cable system serving the Franchise Area is subject to effective competition because: (1) Cox, Dish Network, and DirecTV offer service throughout Cox's Franchise Area; and (2) more than fifteen percent (15%) of the occupied households in the Franchise Area subscribe to the comparable video programming services offered by Cox's unaffiliated MVPD competitors.⁹

A. At Least Two Unaffiliated MVPD Competitors Offer Comparable Programming To More Than Fifty Percent Of The Households In The Franchise Area

The first prong of the Competing Provider test requires that at least two unaffiliated MVPDs offer comparable programming to at least fifty percent (50%) of the occupied households in the franchise area. This part of the test is satisfied easily here.

Cox is unaffiliated with either DirecTV or Dish Network, both of which are themselves unaffiliated, and both of which offer comparable video programming to virtually one hundred percent (100%) of the households in the Franchise Area.¹⁰ Cox's DBS rivals present comparable programming under the Commission's rules because each provides more than twelve channels of

⁷ *The Cable Television Consumer Protection and Competition Act of 1992*, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ 47 U.S.C. § 543(l)(1)(B).

⁹ Census data for each of the Communities comprising the Franchise Area are attached hereto in Exhibit 2.

¹⁰ The Commission presumes that DBS providers satisfy the fifty percent (50%) offering and comparable programming thresholds. *See, e.g., Comcast Cable Communications, LLC*, 20 FCC Rcd 20438 (Med. Bur. 2005); *Amzak Cable Midwest, Inc.*, 19 FCC Rcd 6208 (Med. Bur. 2004); *Time Warner Entertainment-Advanced/Newhouse Partnership*, 12 FCC Rcd 13801 at para. 10 (Cab. Serv. Bur. 1997), citing *Rate Order*, 8 FCC Rcd at 5659-60.

video programming, including at least one non-broadcast channel.¹¹ The services provided by Dish Network and DirecTV each include more than 200 channels of broadcast and non-broadcast video programming.¹² Cox similarly offers comparable programming to virtually one hundred percent (100%) of the Franchise Area and provides more than 250 channels of broadcast and non-broadcast programming. In the Franchise Area, therefore, two or more unaffiliated MVPDs offer comparable video programming to more than fifty percent (50%) of the occupied households.

The first part of the Competing Provider test also requires that at least two unaffiliated competitors actually offer video programming services in the relevant franchise area pursuant to the Commission's rules.¹³ This requirement is satisfied here because: (1) Cox offers service throughout the Franchise Area; (2) Cox is unaffiliated with Dish Network or DirecTV; (3) Dish Network and DirecTV are physically, legally, and technically able to deliver service in the Franchise Area; and (4) potential subscribers in the Franchise Area are more than reasonably aware that they may purchase competitive MVPD services from Cox's competitors. Therefore, two or more unaffiliated MVPDs offer service in the Franchise Area pursuant to the Commission's standards.

¹¹ See 47 C.F.R. § 76.905(g).

¹² Channel line-ups for DirecTV and Dish Network are included in Exhibit 3, attached hereto.

¹³ Under Section 76.905(e) of the Commission's rules, video programming services are offered:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

47 C.F.R. § 76.905(e).

The Commission uniformly has held that “DBS service is presumed to be technically available due to its nationwide satellite footprint, and [is] presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.”¹⁴ The Commission also has acknowledged repeatedly that the sustained national, regional, and local advertising campaigns conducted by DirecTV and Dish Network, and their steadily increasing market share — now more than thirty-three percent (33%) of the MVPD market¹⁵ — has resulted in a nationwide awareness of DBS availability. According to the Commission’s most recently released Video Competition Report, as of December 2010, DirecTV and Dish Network were the second and third largest MVPDs in the nation.¹⁶

Given the dramatic growth of DBS service over the past several years and its ubiquitous availability, the Commission presumes a reasonable awareness of DBS service based on the established nationwide market share of DBS operators.¹⁷ When combined with a demonstration

¹⁴ *FrontierVision Operating Partners, L.P., et al.*, 16 FCC Rcd 5228 at para. 3 (Cab. Serv. Bur. 2001) (footnote omitted, citing *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997)). See also, e.g., *Cablevision of Rockland/Ramapo, Inc.*, 22 FCC Rcd 11487 (Med. Bur. 2007); *Charter Communications et al.*, 20 FCC Rcd 20448 at para. 3 (Med. Bur. 2005); *Texas Cable Partners, L.P.*, 16 FCC Rcd 4718 at para. 4 (Cab. Serv. Bur. 2001).

¹⁵ See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Fourteenth Annual Report*, 27 FCC Rcd 8610 at para. 4 (2012) (“*Fourteenth Annual Report*”). The Fourteenth Annual Report reflects data as of December 2010 and the thirty-three percent DBS market share reported therein represents a gain of 4.3 million DBS subscribers since 2006; see *Fourteenth Annual Report* at para. 139 and Table 5.

¹⁶ See *Fourteenth Annual Report* at para. 31.

¹⁷ See, e.g., *Charter Communications*, 24 FCC Rcd 10130, 10133, para. 12 (Med. Bur. 2009) (“*Charter*”) (no evidence of DBS awareness is required because the Commission has “no reason to disregard the well-known ubiquity of DBS service [and] the nationwide subscribership of DBS at almost twice the level needed to show competing provider effective competition [which] show real widespread awareness among American households that DBS service is available to them.”) (footnote omitted). The Commission formerly presumed a reasonable awareness of DBS services within any given community based on the existence of national and regional advertising. See, e.g., *Time Warner Entertainment – Advance/Newhouse Partnership d/b/a Time Warner Cable*, 20 FCC Rcd 15709, 15710-11, para. 3 (Med. Bur. 2005); *Adelphia Communications*, 20 FCC Rcd 20487, 20488-89, paras. 4-6 (Med. Bur. 2005); see also *Amzak*, 19 FCC Rcd at 6208, para. 4 (basing awareness finding solely on the availability of national advertising within community); *CC VIII Operating, LLC*, 19 FCC Rcd 6204, 6205, para. 3 (Med. Bur. 2004) (regional and national advertising); *Texas Cable Partners, L.P.*, 19 FCC Rcd 6213, 6214 para. 3 (Med. Bur. 2004) (regional and national advertising). Under *Charter* and subsequent cases, the Commission no longer requires evidence of local advertising.

that more than fifteen percent (15%) of the franchise area's households subscribe to DBS service, such as the one Cox is providing here, a reasonable awareness of DBS service in the Communities is undeniable.¹⁸

The Commission's presumption of DBS awareness is demonstrably accurate in this case. Potential subscribers in the Franchise Area are broadly aware of the competing services provided by DirecTV and Dish Network due to extensive advertising distributed in local and national media serving the Communities.¹⁹ Moreover, given the penetration levels that DBS competitors have achieved in the Franchise Area, the existence of "reasonable awareness" regarding the availability of DBS services is unquestionable. In addition, no regulatory, technical, or other impediments to households taking service exist, and competitive DBS services are readily available to residents throughout the Franchise Area. To purchase these services, potential customers need only contact either: (1) the DBS companies directly using a toll-free telephone ordering system; (2) local dealers such as Sears, RadioShack, Best Buy, and Wal-Mart; (3) other local independent dealers; or (4) on-line retailers.²⁰

Potential subscribers throughout the Franchise Area also may purchase the services of Cox's DBS competitors with "the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service."²¹ Beyond the installation

¹⁸ See *MediaCom Illinois, LLC*, 22 FCC Rcd 13503, 13504, para. 3 (Med. Bur. 2007) ("In view of this DBS growth data, and the data . . . showing that more than 15 percent of the households in each of the Communities are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test."); *MCC Iowa, LLC*, 22 FCC Rcd 13507, 13508, para. 3 (Med. Bur. 2007) (same).

¹⁹ Examples of DirecTV's and Dish Network's local and national advertising and marketing materials are attached hereto as Exhibit 4.

²⁰ Examples of local and national retailers offering DirecTV and Dish Network's programming services in the Communities can be found at http://www.directv.com/DTVAPP/global/findRetailer.jsp?assetId=cms_find_retailer&lpos=Footer.2 (last visited Jan. 16, 2013); <http://www.dish.com/support/tools-apps/locate-retailer/> (last visited Jan. 16, 2013). A non-exhaustive list of local DBS retailers in the Franchise Area is attached hereto as Exhibit 5.

²¹ 47 C.F.R. § 76.905(e).

services and customer premises equipment that DirecTV and Dish Network customers must purchase, no additional investment by either the distributor or the customer is necessary. Dish Network and DirecTV therefore satisfy each of the Commission's standards regarding the offering of comparable video programming.

Because two or more unaffiliated MVPDs offer comparable programming to more than fifty percent (50%) of the households in the Franchise Area, the first prong of the Competing Provider test is satisfied.

B. More Than Fifteen Percent Of The Households In The Franchise Area Subscribe To Video Services Offered By MVPDs Other Than Cox.

The second and final prong of the Competing Provider test requires that more than fifteen percent (15%) of the occupied households in the relevant franchise area subscribe to services offered by competitors other than the largest MVPD.²² As the analysis and independent third-party reports described below confirm, more than fifteen percent (15%) of occupied households in the Franchise Area subscribe to MVPDs other than Cox. Cox is the largest MVPD in the Franchise Area because the number of Cox subscribers exceeds the aggregate total of customers served by its MVPD competitors.

To determine precisely the number of DBS subscribers in the Franchise Area, Cox first ascertained all the residential zip codes located either wholly or partially within its Franchise Area.²³ Cox then purchased an effective competition tracking report ("ECTR") pursuant to an

²² So long as the first prong of the Competing Provider test is satisfied, the subscribers of all other MVPDs in the franchise area are aggregated to determine whether the statutory fifteen percent (15%) standard has been met under the second prong of the test. *See Time Warner*, 56 F.3d at 189.

²³ To ascertain the relevant zip codes, Cox first examined the U.S. Postal Service ("USPS") and related commercial websites to determine which residential zip codes USPS associates with each of the Communities within the Franchise Area. *See* <http://www.usps.com>; www.melissadata.com; www.zipmap.net; <http://maps.google.com>. Cox then confirmed that all or a portion of each zip code area listed by the USPS was actually located wholly or partially within the borders of the Communities by consulting detailed maps that reflected political boundaries as well as zip code areas.

agreement with the Satellite Broadcasting and Communications Association (“SBCA”).²⁴ The ECTR reported total DBS subscribers for the relevant zip codes in Cox’s Franchise Area. Cox obtained official 2010 Census occupied household data for each of the Communities in the Franchise Area, and for each of the five-digit zip codes located within the Franchise Area.²⁵ To account for zip codes that are only partially located in a franchise area and therefore to accurately determine DBS penetration in a franchise area, Cox commonly allocates the subscribers reported in the ECTR to the Franchise Area using the FCC’s standard methodology.²⁶ In this case, however, no allocation is required because the overall zip code boundaries exactly correspond with the franchise area boundaries established by the Rhode Island DPUC.²⁷ Given the identical boundaries of the Cox Franchise Area and the associated zip codes, the aggregated 2010 Census occupied households in the Franchise Area equals the aggregated 2010 Census occupied households in the relevant zip codes.²⁸ Therefore, the number of DBS subscribers reported in the

²⁴ The ECTR Cox purchased from the SBCA is attached hereto as Exhibit 6. The ECTR includes five-digit zip codes encompassing in whole or in part each of the Communities within the Franchise Area.

²⁵ As the Commission has recognized consistently, current Census data satisfies the Commission’s effective competition evidentiary requirements. *See, e.g., Comcast Cable Communications, LLC*, 27 FCC Rcd 4307, at para. 6 (approving use of 2010 census data); *Time Warner Cable, Inc.*, 26 FCC Rcd 17130, at para. 6 (same); *Cablevision of Rockland/Ramapo, Inc.*, 22 FCC Rcd 11487, at para. 16 (approving use of 2000 census data); *Comcast Cable Communications, LLC*, 20 FCC Rcd 20438 at para. 11 (same); *Comcast of Dallas, LP*, 20 FCC Rcd 17968 at para. 9 (Med. Bur. 2005) (same); *Amzak*, 19 FCC Rcd at 6210, para. 6 (citing Cable Operators’ Petitions for Reconsideration and Revocation of Franchising Authorities’ Certifications to Regulate Cable Service Rates, *Order*, 9 FCC Rcd 3656 (1994)). *See* Exhibit 2.

²⁶ *See, e.g., Alert Cable TV of South Carolina, Inc.*, 21 FCC Rcd 269 at para. 9 (Med. Bur. 2006); *Amzak*, 19 FCC Rcd at 6210, para. 6; *CC VIII*, 19 FCC Rcd at 6205-06, para. 4; *Texas Cable Partners, L.P.*, 19 FCC Rcd at 6215, para. 7.

²⁷ Pursuant to the Commission’s methodology, Cox commonly calculates an allocation percentage for a franchise area by comparing the aggregated 2010 Census data for occupied households in each community with a total of the 2010 Census occupied household data for the zip code areas located either wholly or partially within a franchise area. This comparison yields an allocation percentage that Cox applies to the total number of DBS subscribers reported in the ECTR for the zip codes covering the relevant franchise area. In this instance, however, the contiguous nature of the Franchise Area and zip code boundaries negates the need for such an allocation.

²⁸ Aggregated 2010 Census data for the Franchise Area reflects 34,911 occupied households and a total of 34,911 occupied households for the relevant zip codes located within the Franchise Area. Cox’s calculations are set forth in Exhibit 7.

ECTR by zip code also represents 100% of the DBS subscribers in the Franchise Area.²⁹ Under these circumstances, dividing the number of DBS subscribers reported in the ECTR by the aggregated 2010 Census occupied households for the relevant zip codes (which is identical to 2010 Census occupied households for Cox’s Newport County (Area 7) Franchise Area) accurately determines DBS penetration rate in the Franchise Area.

Applying the methodologies described above to the data Cox received from SBCA revealed a competitive penetration rate in the Franchise Area that exceeds the fifteen percent (15%) statutory test for effective competition. The following table reflects competitive penetration in the Franchise Area pursuant to the Commission’s standards:

FRANCHISE AREA COMMUNITY	OCCUPIED HOUSEHOLDS	DBS CUSTOMERS	TOTAL DBS PENETRATION
Rhode Island Area 7	34,911	5,383	15.42%

Inasmuch as the number of households subscribing to video programming services offered by competing MVPDs exceeds fifteen percent (15%) of the occupied households in the Franchise Area, Cox is subject to effective competition pursuant to Section 623(d)(1)(B) of the Act.

²⁹ The ECTR reports 5,383 DBS subscribers for the residential zip codes located within the Franchise Area. Based on the contiguous boundaries of the Franchise Area and its associated zip codes, Cox concluded that DBS operators serve 5,383 subscribers in Cox’s Franchise Area. See Exhibit 7.

CONCLUSION

For the reasons stated above, the Bureau should grant this Petition forthwith and revoke the local franchising authority's certification to regulate Cox's basic service, equipment, and installation rates.

Respectfully submitted,

CoxCom, LLC d/b/a Cox Communications New England



Gary S. Lutzker

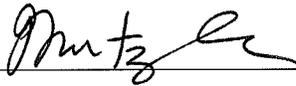
DOW LOHNES PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
202-776-2000

Its Attorneys

January 24, 2013

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this Petition for Determination of Effective Competition 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.



Gary S. Lutzker

January 24, 2013

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 24th day of January 2013, I caused the foregoing Petition for Determination of Effective Competition to be served by first-class mail, except where hand delivery is indicated, on the following:

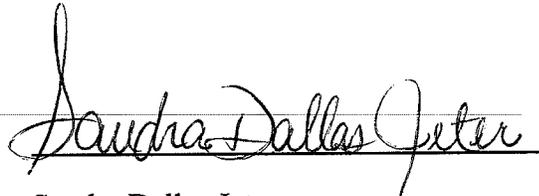
Mr. William Lake *
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-C740
Washington, D.C. 20554

Ms. Marlene H. Dortch, Esq. *
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Steven A. Broeckaert, Esq.*
Deputy Chief Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A865
Washington, D.C. 20554

Ms. Claudia Tillery *
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rhode Island Division of Public
Utilities and Carriers
89 Jefferson Blvd.
Warwick, RI 02888
Attn: Mr. Tom Ahern
Mr. Tom Kogut



Sandra Dallas Jeter

* *By Hand Delivery*