

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

In the Matter of )  
Comcast of Potomac, LLC )  
 ) CSR No. 8733-E  
For Determination of Effective Competition in: )  
Chevy Chase Village, MD (MD0277) )  
Chevy Chase Section 3, MD (MD0472) )  
Laytonsville, MD (MD0235) )  
Poolesville, MD (MD0228) )

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

**RESPONSE TO THE MOTION FOR LEAVE TO FILE SURREPLY AND THE  
SURREPLY OF MONTGOMERY COUNTY, MARYLAND**

Comcast of Potomac, LLC (“Comcast”) hereby responds to both the Motion for Leave to File Surreply (“Motion”) and the Surreply submitted by Montgomery County, Maryland (“County”) in the above-referenced proceeding. As a threshold matter, the County wrongly contends that the Comcast Reply raised a “new argument” regarding the “scope of the Commission’s discretion” in resolving effective competition petitions.<sup>1</sup> Comcast’s Reply simply responded to the County’s Opposition argument that the Commission could choose to ignore the effective competition standards specified in Section 623 of the Communications Act (“Act”).<sup>2</sup> Because the County’s Opposition had failed to either acknowledge or identify the multiple Commission decisions expressly rejecting the County’s argument, the Comcast Reply set forth

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<sup>1</sup> Motion at 1, Surreply at 1.

<sup>2</sup> 47 U.S.C. § 543. See County Opposition to Petition for Special Relief (“Opposition”) at 2-9.

this well-established Commission precedent.<sup>3</sup> Thus, no “new argument” was raised in Comcast’s Reply, and the County’s Motion should be denied.

In any event, the County’s Surreply continues to ignore both the plain language of Section 623 specifically prescribing the Commission’s role in resolving effective competition petitions and the direct precedent confirming the limitations Congress imposed on the Commission’s discretion. Section 623(a)(2) states that there shall be no rate regulation “[i]f the Commission finds that a cable system is subject to effective competition.”<sup>4</sup> Section 623(l)(1) then sets forth the controlling statutory definitions of “effective competition.” Once a cable operator satisfies the statutory test, it is deemed subject to effective competition.<sup>5</sup> There is no latitude for the Commission to ignore this unequivocal language, and the County’s novel attempt in the Surreply to read some measure of regulatory discretion into the statute’s use of the phrase “subject to” would directly contravene Congress’s clear statutory directive.<sup>6</sup> Equally baseless is the County’s assertion that the “Commission should defer action on Comcast’s petition until the Commission can re-visit its approach to effective competition.”<sup>7</sup> Comcast is entitled to a prompt resolution of this adjudication,<sup>8</sup> and the County’s Opposition and Surreply offer no credible grounds for either denial or delay.

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<sup>3</sup> See Reply to Opposition to Petition for Special Relief at 3-4.

<sup>4</sup> 47 U.S.C. § 543(a)(2).

<sup>5</sup> 47 U.S.C. § 543(l)(1).

<sup>6</sup> Surreply at 2. The three cases identified in the County’s Surreply do not support the County’s argument as none of them even remotely address a clear statutory directive to a federal agency to apply a specific regulatory test -- as is the case in Section 623.

<sup>7</sup> Surreply at 3.

<sup>8</sup> Even were the Commission to consider the statute ambiguous, which it is not, an adjudication such as this is not the appropriate proceeding for the Commission to substantively modify its effective competition rules. See *Comcast Cable Communications, LLC Six Petitions for Determination of Effective*

**Respectfully submitted,**

**COMCAST OF POTOMAC, LLC**

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January 29, 2013

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*Competition in Forty-Two Local Franchise Areas in Texas*, 20 FCC Rcd. 20438, ¶ 5 (2005) (“We may not substantively modify [the effective competition] rules in adjudicatory proceedings such as this one. The appropriate vehicle for such a modification is a petition for rulemaking, not an opposition filed in a proceeding initiated pursuant to Section 76.7 of the rules.”).

**CERTIFICATE OF SERVICE**

I, Paulette E. Humphries, do hereby certify on this 29th day of January, 2013 that a true and correct copy of the foregoing "RESPONSE TO THE MOTION FOR LEAVE TO FILE SURREPLY AND THE SURREPLY OF MONTGOMERY COUNTY, MARYLAND" has been sent via U.S. mail, postage prepaid to the following:

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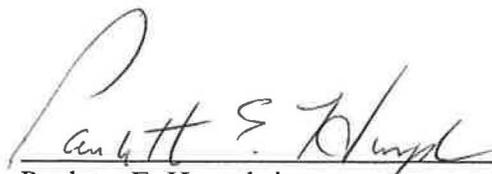
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