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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC,	)	
on behalf of its subsidiaries and affiliates	)	
	)	CSR No. 8795-E
For Determination of Effective Competition in:	)	Docket No. 13-132
Seven North Suburban Communications	)	
Commission Franchise Areas	)	

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

REPLY TO OPPOSITION TO PETITION FOR SPECIAL RELIEF

Comcast Cable Communications, LLC ("Comcast") hereby replies to the Opposition to Petition for Special Relief ("Opposition") submitted by the North Suburban Communications Commission ("NSCC") in the above-captioned proceeding. NSCC's Opposition fails to contest any of the facts set forth in Comcast's Petition. Further, NSCC never advances a substantive argument rebutting Comcast's specific showing that DBS penetration exceeds the 15 percent effective competition standard in each of the communities covered by the Petition (the "Franchise Areas"). Because each of the Franchise Areas is subject to effective competition, and because the Opposition does not even attempt to prove otherwise, Comcast's Petition should be granted without delay.

I. COMCAST'S PETITION PROPERLY DEMONSTRATED THE PRESENCE OF EFFECTIVE COMPETITION.

Comcast's Petition demonstrated that DBS penetration in each of the Franchise Areas satisfied the "Competing Provider Test" set forth in Section 623(*l*)(1)(B) of the Act.[1] Comcast's Petition carefully explained and supported these DBS penetration figures -- describing how SNL Kagan matched ZIP+4 Codes to Franchise Area boundaries and how SBCA provided the number of DBS subscribers associated with each of the identified ZIP+4 Codes.[2] Moreover, Comcast provided NSCC and the Commission with a community-specific list of every ZIP+4 Code relied upon by Comcast and the exact DBS subscriber count associated with each of those ZIP+4 Codes.[3] To ensure both accuracy and reliability, Comcast's submission identified each DBS subscriber included in the Competing Provider Test by its assigned ZIP+4 Code.[4]

The Opposition complains that Comcast's Petition "only provided the end results"[5] – as if the "end results" Comcast had provided were mere conclusory statements of the DBS penetration rate in each Franchise Area. However, the "end results" Comcast submitted in its Petition included the underlying data supporting those results, including every ZIP+4 Code Comcast relied on and the associated DBS subscriber count. Thus, the record in this proceeding

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[1] 47 U.S.C. Section 543(*l*)(1)(B). The Petition demonstrated the following DBS penetration percentages: Arden Hills -- 17.96%; Little Canada -- 17.91%; Mounds View -- 21.80%; New Brighton -- 17.77%; North Oaks -- 19.87%; St. Anthony -- 19.96%; and Shoreview -- 20.14%. *See* Pet. at 7.

[2] See Pet. at 6-7, Exhs. 4 and 5.

[3] Pet., Ex. 5.

[4] Significantly, while the Commission rules do not even require use of ZIP+4 Codes (rather than standard 5-digit ZIP Codes), Comcast incurred the extra expense in this case because of the Commission "preference" for this approach. *See Public Notice, "Commission Clarifies Standards for Evidence of Competing Provider Effective Competition for Cable Service*," 24 FCC Rcd. 8198 (2009).

[5] Opp. at 5.

already includes the underlying evidence that clearly demonstrates that the DBS penetration rate in each of the Franchise Areas exceeds 15 percent.

II. THE OPPOSITION FAILS TO REBUT COMCAST'S EFFECTIVE COMPETITION SHOWING.

NSCC's Opposition does not identify a single error in the extensive data Comcast submitted with its Petition. Although the Opposition does attach and reference a declaration from NSCC's outside consultant (the "Treich Declaration") as "*prima facie* evidence showing *potential* errors in the Comcast data,"[6] the Treich Declaration conspicuously *fails to identify any error whatsoever in Comcast's data*, let alone provide evidence that the local DBS penetration rate in any of the Franchise Areas falls below 15 percent.[7] Rather, NSCC and its consultant merely speculate that there might be an error in the ZIP+4 Code data produced by SNL Kagan – an entity long-recognized by the Commission as providing reliable data in effective competition proceedings. Moreover, as noted above, Comcast submitted a comprehensive list of ZIP+4 Codes and associated DBS subscribers in its Petition, which would have allowed NSCC itself to verify the accuracy of Comcast's evidence and identify any alleged errors. In fact, NSCC's consultant has attempted (unsuccessfully) to challenge such evidence in the past;[8] notably, it has refrained from doing so here. Accordingly, NSCC has provided absolutely no legal basis for the Commission to deny the Petition.

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[6] Opp. at 5 (emphasis added).

[7] *See* Opp., Decl. of Richard D. Treich.

[8] *See, e.g., Comcast Cable Comm'ns, LCC, Petition for Determination of Effective Competition in Six Blaine, Minnesota Franchise Areas,* Memorandum Opinion and Order, 28 FCC Rcd. 5508, ¶¶ 14, 18, and 20 (2013).

Contrary to the Opposition's claim,[9] additional discovery into SNL Kagan's methodology for matching ZIP+4 Codes to political boundaries would *not* have been helpful to NSCC because (as explained above) Comcast already shared all of the ZIP+4 Code data used to establish that the local DBS penetration rate exceeds 15 percent in each of the Franchise Areas. NSCC had ample opportunity to dispute any of that data and failed to do so.

III. THE OPPOSITION DOES NOT PROVIDE A CREDIBLE BASIS FOR THE COMMISSION TO ABANDON ITS WELL-ESTABLISHED APPROACH TO EFFECTIVE COMPETITION ADJUDICATIONS.

According to NSCC, "Commission precedent makes clear that Bureau must use the most conservative approach possible to calculating effective competition."[10] But the limited precedent relied upon by NSCC does not support the proposition that the Commission should disregard credible evidence submitted by a cable operator, particularly when the local regulator has offered no conflicting evidence.[11] Under NSCC's theory, a local regulator could bring the entire effective competition process to a halt – even when the local regulator presents absolutely no evidence – by simply filing an unsupported challenge to a clear demonstration of effective competition. Such a result would be at odds with the controlling statutory and regulatory framework as well as established Commission precedent.[12]

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[9] Opp. at 6-7.

[10] Opp. at 8-9.

[11] The Opposition elsewhere concedes that approval of Comcast's Petition would be consistent with Commission precedent and practice, and it urges the Commission to change that approach in this adjudication. Opp. at 1 (NSCC "urges the Media Bureau of the Commission to end its practice of rubberstamping cable industry. . . data."). In fact, the Commission has granted hundreds of effective competition petitions (affecting thousands of communities) based on precisely the data at issue here – including ZIP+4 Code data compiled by SNL Kagan and its predecessors.

[12] *See, e.g., See Cox Communications Kansas, LLC*, 26 FCC Rcd. 2085, ¶ 12 (2011)("Once a cable operator has used [previously accepted data and methodologies] and shown DBS subscribership in excess of 15 percent, the burden shifts to the opposing franchising authority.");

For the foregoing reasons, and based upon the clear and unrefuted evidence Comcast has submitted in this proceeding, the Commission should grant Comcast's Petition without delay.

Respectfully submitted,

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

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Comcast Cable Communications, LLC, 22 FCC Rcd 694, ¶ 14 (2007) ("Once the petitioner meets the burden of proving that effective competition exists, then the opposition has the opportunity to respond. By allowing Comcast to use SBCA data, the Commission is not shifting the burden of proof to the City; however, once Comcast has satisfied its burden of proof, the City can no longer simply rely on the presumption of no effective competition."); *Amzak Cable Midwest and Minnesota Cable Properties, Inc.*, 19 FCC Rcd. 6208, ¶¶ 11-13 (2004)("If the City believed other data would provide more accurate DBS subscriber counts, it had the burden of presenting such evidence for the record. In failing to present any data shown to be more accurate than that presented by the Cable Operators, the City failed in its burden of coming forward to meet the initial evidentiary showing made by Cable Operators.").

CERTIFICATE OF SERVICE

I, Nichele Rice, do hereby certify on this 20th of June, 2013 that a true and correct copy of the foregoing "Reply to Opposition to Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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