



Bradley &
Guzzetta, LLC

June 7, 2013

VIA FED EX

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: Opposition to Petition for Special Relief in CSR No. 8794-E

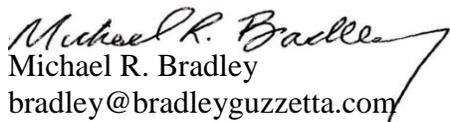
Dear Ms. Dortch:

Attached for filing *In the Matter of Comcast Cable Communications, LLC, Petition for Special Relief for Determination of Effective Competition in: Lexington, Minnesota (MN0375), CSR No. 8794-E*, are an original and four (4) copies of the Opposition of the North Metro Telecommunications Commission to Comcast's Petition for Special Relief (the "Opposition").

I have also enclosed an additional copy of the Opposition. Please date-stamp that copy and return it to me in the enclosed postage-prepaid envelope.

Very truly yours,

BRADLEY & GUZZETTA, LLC


Michael R. Bradley
bradley@bradleyguzzetta.com

Attachments

- c. Ms. Heidi Arnson
- Mr. Wesley R. Heppler
- Mr. Steven J. Horvitz
- Mr. Frederick W. Giroux
- Mr. Steven Broeckaert

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
Comcast Cable Communications, LLC,)
on behalf of its subsidiaries and affiliates)
) CSR No. 8794-E
For Determination of Effective)
Competition in: Lexington, Minnesota)
(MN0375))

**OPPOSITION OF THE NORTH METRO TELECOMMUNICATIONS COMMISSION
TO COMCAST'S PETITION FOR SPECIAL RELIEF**

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June 7, 2013

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SUMMARY

The Bureau simply cannot continue to rubber-stamp Effective Competition Petitions relying on unverified data, thereby eliminating certified rate regulatory authorities like the North Metro Telecommunications Commission (the “Cable Commission”) from exercising its regulatory authority granted by Congress in the 1992 Cable Act. Continuing this practice is a violation of the Commission’s rules and precedents and allows cable operators to exert their monopoly status to adversely impact cable subscribers. A prior effective competition order is also currently subject to an Application for Review before the Commission. The Cable Commission opposes Comcast’s Effective Competition Petition because it relies on unverified direct broadcast satellite (“DBS”) subscription data. The Media Bureau, on behalf of the Commission, must reject all unverified data, or it must make efforts to verify the data itself.

**Before the
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) CSR No. 8794-E
For Determination of Effective)
Competition in: Lexington, Minnesota)
(MN0375))

**OPPOSITION OF THE NORTH METRO TELECOMMUNICATIONS COMMISSION
TO COMCAST’S PETITION FOR SPECIAL RELIEF**

The North Metro Telecommunications Commission (the “Cable Commission”),¹ by and through its attorneys, hereby opposes Comcast’s *EC Petition*,² because the *EC Petition* relies entirely on unverified data, which cannot support a finding of effective competition. The Cable Commission urges the Media Bureau of the Commission to end its practice of rubber-stamping cable industry unverified and unreliable data and, instead, follow the Commission’s regulations and precedents by affirmatively verifying or rejecting this data and use the most conservative approach in calculating effective competition. In addition to this proceeding, the Bureau’s past effective competition petition practices is subject to an Application for Review with the

¹ On behalf of its member municipalities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes, and Spring Lake Park, Minnesota (collectively, the “Member Cities” or, individually, a “Member City”). The Cable Commission is a municipal joint powers consortium formed pursuant to an Amended and Restated Joint and Cooperative Agreement for the Administration of a Cable Communications System, in accordance with Minn. Stat. § 471.59, as amended. Pursuant to Article VIII, Sections 3, 5-8 and 17 of the Joint and Cooperative Agreement, the Cable Commission is empowered to regulate rates on its members’ behalf and is the certified rate regulation authority under the FCC’s rules.

² Petition for Special Relief For Determination of Effective Competition in: Lexington, Minnesota (MN 0375), filed by Comcast Cable Communications, LLC (“Comcast”) on or about May 13, 2013, Public Notice given on May 20, 2013.

Commission.³

Although the Cable Commission had only 20 days to respond to the *EC Petition* and had no discovery tools at its disposal to evaluate the *EC Petition*,⁴ the Cable Commission continues to find significant issues with data relied upon by Comcast in its *EC Petitions*.⁵ The limited time and authority that franchising authorities have to respond to an *EC Petition*, shows precisely why the Media Bureau must undertake a thorough review of Comcast's unverified data. The Media Bureau cannot continue to rubber-stamp the unverified data supporting these *EC Petitions*. This practice is contrary to the Commission's regulations and precedent. It results in a corporate subsidy to the cable industry by eliminating the only remaining rate authority protecting cable subscribers and allowing Comcast to exert its monopoly powers over cable rates.

Cable subscribers (who fund this Commission) deserve to have their interests protected by having this Commission affirmatively verify the data that on its face is unverified and unreliable. And it should not take the Commission half a decade (or more) to verify this data. If the Commission doesn't have the resources to verify the data, the *EC Petition* should be denied outright. It is, after all, Comcast's burden and responsibility to provide the Commission with verified and reliable data and that the Commission actually reviews the underlying data not just "accept" the data as its past practices have been.

Specifically, the Bureau must conservatively calculate effective competition and undertake its own review: (i) to examine fully the flaws the Cable Commission identified with the methodology Comcast used to develop DBS subscriber numbers for the Member Cities; and

³ See Application for Review (Filed May 24, 2013) of *Comcast Cable Communications, LLC, on Behalf of Its Subsidiaries and Affiliates: Petition for Determination of Effective Competition in Six Blaine, Minnesota Franchise Areas*, Memorandum Opinion and Order, DA 13-863 (Rel. April 24, 2013).

⁴ See Attachment A, Declaration of Richard D. Treich ("Treich Declaration"), at ¶ 6.

⁵ See generally Treich Declaration.

(ii) to rectify the inaccuracy and inequity inherent in matching Census data (or other household data) with DBS subscriber data. Consumer interests must be protected and cable industry data must not continue to be rubber-stamped.

I. BACKGROUND AND INTRODUCTION.

Comcast, in its *EC Petition*, asks the Commission to accept its unverified data at face value and find effective competition in the area at question under the disguise it has been accepted in the past.⁶ The Cable Commission through its consultant has reviewed the *EC Petition* and has found this unverified data to be unreliable in the past because the allocation methodologies are unknown, unverified and there is no universally accepted data base to corresponds to zip+4 codes and political boundaries.⁷

Since the Cable Commission has shown the underlying data supporting the *EC Petition* is unverified and unreliable, the Bureau cannot now simply rubber-stamp that underlying data without affirmatively taking steps to actually verify the data. Failure to do so will violate the Commission's regulations and becomes an arbitrary and capricious practice by the Bureau.

The impact on cable subscribers is significant. If the Bureau rubber-stamps the unreliable and unverified data and finds effective competition, the Cable Commission will no longer be able to regulate basic service and associate equipment and installation rates in most if not all of its Member Cities on a going forward basis. Subscribers in the deregulated Member Cities will then be subject to Comcast's pricing whims, even though the company never definitively or adequately demonstrated to the Bureau that it satisfied the statutory criteria for effective competition.

⁶ *EC Petition* at 6.

⁷ See Treich Declaration at ¶ 6-10.

II. ARGUMENT.

Comcast bears the burden of proving that effective competition exists in a particular franchise area.⁸ In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition, as that term is defined by the Commission's rules.⁹ Congress instituted the test for effective competition from which Comcast seeks relief based on its finding that the cable industry enjoyed market power.¹⁰ In the absence of a robust competitive market that would effectively prevent such market power, the Commission's rate regulation rules are necessary to protect cable subscribers and the Commission is charged with that duty under law.¹¹ Consequently, the Commission cannot grant Comcast's *EC Petition* unless it has adequately demonstrated that the "competing provider" test for effective competition has been met. Merely submitting data that is unverified and unreliable just because it has been accepted in the past is an unfair and unjust basis for the Commission to rubber-stamp this *EC Petition*. Comcast has not met its burden of proof, because it relies on unverified and unreliable evidence in support of its *EC Petition* prepared by its outside consultant and shielded from any discovery or review by the Cable Commission.

A. *The Bureau Must Stop Rubber-Stamping Unverified Data Supporting EC Petitions to Ensure the Integrity of Effective Competition Proceedings.*

The Cable Commission, through the Treich Declaration has shown that the SNL Kagan

⁸ 47 C.F.R. § 76.907(b).

⁹ See 47 C.F.R §§ 76.905 and 76.906.

¹⁰ See 47 U.S.C. § 543(a)-(f), (h)-(j), (l)-(n) (provisions of federal law related to finding of effective competition); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 2(a)(1)(2) (1992).

¹¹ 47 U.S.C. § 543(b)(1). See also *id.* at § 543(h) (Commission is responsible for preventing evasions).

data relied upon by Comcast is unverified and unreliable.¹² According to the Treich Declaration, Comcast relies on data from SNL Kagan in support of its petition, but Comcast has only provided the end results without providing the underlying allocations and assignments made by SNL Kagan.¹³ Without having the opportunity to review the allocation methodology, “it is impossible to determine the accuracy of the underlying data.”¹⁴ The data must be scrubbed to determine whether the zip+4 codes are accurate and the resulting penetration rate findings are “skewed.”¹⁵ Since “there is no universally accepted data base that corresponds zip+4 codes with municipal boundaries, the methodology must be analyzed to verify the data used to support the EC Petition.”¹⁶

The Treich Declaration is *prima facie* evidence showing potential errors in the Comcast data. The Bureau must now, based on the Cable Commission’s evidentiary showing, conduct an independent review of DBS subscribership in the affected area Member Cities, and the underlying zip+4 code determination, or require Comcast to fully support its own determinations. Without such action, the Bureau can only “guess” that the underlying zip+4 codes Comcast utilized are correct (*i.e.*, fall entirely within the territorial limits of each Member City and within the franchise area as a whole).

For example, since there is no universally accepted analysis, list, or summary of zip+4 codes that specifically considers or follows political boundaries, Comcast must rely on some sort of allocation process to assign zip+4 codes to specific areas using data from SNL Kagan.¹⁷

¹² See Treich Declaration, at ¶ 10 (“the accuracy of the zip+4 codes used in these effective competition petitions cannot be assured”)

¹³ See *Id.* at ¶ 6.

¹⁴ See *Id.* at ¶¶ 6, 9 and 10.

¹⁵ See *Id.* at ¶ 7.

¹⁶ See *Id.* at ¶ 10.

¹⁷ See *EC Petition*, at 6.

Unfortunately, the Cable Commission and the Bureau have no way of knowing exactly how zip+4 codes were allocated because Comcast never produced this information.¹⁸ Accordingly, there is no way to confirm the accuracy of Comcast's zip+4 DBS subscriber calculations based on the record before the Bureau.¹⁹ Just because zip+4 zip codes relate to relatively small geographic areas does not mean the use of zip+4 zip codes in bulk to locate DBS subscribers would necessarily be free from statistically significant errors because there could be underlying zip+4 allocation mistakes.²⁰ For instance, if SNL Kagan had "missed" a new subdivision or annexation, their data could be significantly in error when identifying zip+4 codes situated within the relevant area.²¹ Because there are identified issues with this approach, accepting this data without any analysis is purely speculative. Purely accepting the underlying allocations because of prior acceptance (without review) is an unfair and unjust basis to satisfy the Bureau's consumer-oriented responsibilities.

A speculative "best guess" standard in effective competition proceedings is not only a significant breach of the trust Congress bestowed on the FCC to protect subscribers against unreasonable cable industry pricing, but also a violation of Commission rules which require a cable operator to prove effective competition does not exist in a franchise area.²² It is particularly important for the Bureau not to speculate, given the refusal of the Bureau to allow rate regulatory authorities like the Cable Commission from engaging in any form discovery,²³ despite the fact that 47 C.F.R. § 76.939 requires cable operators to respond to franchising

¹⁸ See Treich Declaration at ¶¶ 6-10.

¹⁹ See Treich Declaration at ¶¶ 6, 9-10.

²⁰ See Treich Declaration at ¶ 7.

²¹ See Treich Declaration at ¶ 7 (if SNL Kagan erroneously included thousands of zip+4s, the resulting DBS penetration will be skewed).

²² 47 C.F.R. § 76.907.

²³ See Treich Declaration at ¶ 6.

authorities' requests for information. The inability to engage in discovery seriously undermines the Cable Commission's ability to evaluate the merits of Comcast's Petition because it cannot obtain the underlying data, assumptions and calculations Comcast used to produce the relevant DBS subscriber figures. Further, the Bureau itself cannot in good faith just rely on the acceptance of this unverified data.

The integrity of the effective competition process requires that the Bureau not simply rubber-stamp the data supporting EC Petitions, but actually require the data supporting the petitions to be verifiable and reliable by itself.

B. Rubber-Stamping Unverified Data Conflicts with the Commission's Regulations and Case Precedent.

1. Rubber-Stamping the Data Prejudicially Shifts the Burden of Proof Away from the Cable Operator.

Section 76.907 of the FCC's rules plainly states that Comcast "bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area."²⁴ Comcast has not met that burden. As the Treich Declaration shows,²⁵ the Comcast data supporting the EC Petition is unverified and unreliable. As explained above, the underlying data and allocations of SNL Kagan, that Comcast relies upon, are completely unknown to the Bureau and the Cable Commission.²⁶

Since, the Bureau is faced with evidence indicating the underlying data to be unverified and unreliable,²⁷ it must now undertake efforts on its own to verify the data purporting to support the *EC Petition*. If the Bureau cannot, it must deny the relief requested. By accepting (or

²⁴ 47 C.F.R. § 76.907.

²⁵ See Treich Declaration at ¶ 10.

²⁶ See Treich Declaration at ¶ 6.

²⁷ See generally Treich Declaration.

rubber-stamping) Comcast's unverified information, the Bureau would, in essence, unlawfully shift the burden of proof in this matter to the Cable Commission to review data to which it does not have access. In the alternative, the Cable Commission would have to create its own data. When this has been done in the past, the Bureau as deemed that data unreliable but has accepted as "gospel" the unverified data by the cable operator.²⁸

The Bureau must comply with 47 C.F.R. § 76.907, which unequivocally requires a cable operator to rebut the presumption that effective competition does not exist. Stated differently, the Bureau cannot accept Comcast's data, without investigation, when confronted with analyses performed by the Cable Commission.²⁹ If the Bureau rubber-stamps Comcast's unverified and unreliable data that the Cable Commission challenges, the Bureau will have acted arbitrary and capricious by effectively transferring the burden of proof in the case to the Cable Commission. That approach is impermissible under the Commission's rules.³⁰

2. Commission Precedent Requires The Bureau to Use the Most Conservative Approach Possible when Performing Effective Competition Calculations.

Commission precedent makes clear that the Bureau must use the most conservative approach possible to calculating effective competition, particularly when potential errors in a cable operator's data have been identified.³¹ Accepting unverified and unreliable data would be

²⁸ See Application for Review (Filed May 24, 2013) of *Comcast Cable Communications, LLC, on Behalf of Its Subsidiaries and Affiliates: Petition for Determination of Effective Competition in Six Blaine, Minnesota Franchise Areas*, Memorandum Opinion and Order, DA 13-863 (Rel. April 24, 2013).

²⁹ See generally Treich Declaration.

³⁰ See 47 C.F.R. § 76.907.

³¹ *Bright House Networks, LLC, Petition for Determination of Effective Competition in Unincorporated Hillsborough County, Florida*, Memorandum Opinion and Order, 20 FCC Rcd 16823, 16826 at ¶ 9 (2005). See also *Tri-Lakes Cable, Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 12 FCC Rcd 13170, 13179-80 (1997) ("we will

the polar opposite of past precedent. The Bureau would instead be taking the most “liberal” approach to calculating effective competition by using Comcast’s unverified and unreliable data. The Bureau, as a fact-finder, has an obligation to investigate the problems the Cable Commission identified, and to conservatively calculate the number of DBS subscribers and occupied households in the affected area using data that are most adverse to a finding of effective competition.³² The Bureau must follow Commission precedent and use the most conservative approach possible when calculating effective competition. This requires the Bureau to reject data that is shown to be unverified and unreliable. Since the Cable Commission has made such a showing, the Bureau must deny the *EC Petition*.

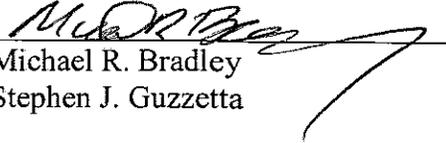
III. CONCLUSION.

The Bureau must not rubber-stamp data submitted in support of the *EC Petition* when it has been shown that the data is unverified and unreliable. It must make its own efforts to verify the data or outright reject the data and follow Commission precedent by using the most conservative approach possible when calculating for effective competition. Based on the foregoing, the Commission must deny the *EC Petition*.

use those household and subscriber figures proffered in the pleadings that are most adverse to a finding of competition.”).

³² See fn. 31, *supra*.

Respectfully submitted,

By: 
Michael R. Bradley
Stephen J. Guzzetta

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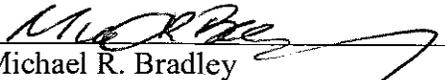
*Attorneys for the North Metro
Telecommunications Commission*

Dated: June 7, 2013

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

The undersigned has read the foregoing Opposition of the North Metro Telecommunications Commission to Comcast's Petition For Special Relief, 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,

By: 
Michael R. Bradley

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*Attorneys for the North Metro
Telecommunications Commission*

Dated: June 7, 2013

ATTACHMENT A
Declaration of Richard D. Treich, Dated June 7, 2013

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:
Seven North Suburban Communications
Commission Franchise Areas

Lexington, Minnesota (MN0375) and

The South Washington County
Telecommunications Commission Franchise
Area

DECLARATION OF RICHARD D. TREICH

I, Richard D. Treich, declare as follows:

1. I submit this declaration in support of the Opposition to the Petitions for Special Relief (“EC Opposition”) submitted by the North Metro Telecommunications Commission (“NMTC”), the North Suburban Communications Commission (“NSCC”), and the South Washington County Telecommunications Commission (“SWCTC”) (collectively “LFAs”). I am fully competent to testify to the facts set forth herein, and if called as a witness, I would testify to them.

2. I have served as CEO of Front Range Consulting, Inc. (“FRC”) since December 2002. I previously served as Senior Vice President, Rates and Regulatory

Matters for AT&T Broadband (and its predecessor TCI Communications, Inc.). I was also the Partner-in-Charge of KPMG Peat Marwick's national Cable Television and Utility consulting practices. I earned my Bachelor of Science in Business Administration from Susquehanna University in 1975.

3. I have over thirty-five years of experience in cable and utility rate regulation matters. I have testified in over 20 different states in 200 proceedings on utility regulatory matters involving cost-of-service and rate design proceedings and in state court as an expert witness. I have co-authored a book entitled *Gas Rate Fundamentals* on cost-of-service studies.

4. During part of my tenure with TCI and AT&T Broadband, I was the senior executive in charge of the regulatory group. My primary responsibilities in that capacity were to direct and approve all of the rate filings made by TCI and AT&T Broadband, to oversee and negotiate local cable television franchises and to manage TCI's and AT&T Broadband's mergers and acquisitions from a regulatory and franchising standpoint. My duties also included discussions with senior FCC staff on changes being proposed to FCC regulatory filings. Since forming FRC, I have been actively involved in numerous cable rate regulatory proceeding and effective competition analyses.

5. I was retained by the NMTC, the NSCC, and the SWCTC to review the Petitions for Special Relief filed by Comcast on May 13, 2013.

6. Of primary concern with any review of the underlying data supporting the effective competition petitions is determining the accuracy of the Comcast zip or zip+4 data. To this end, Comcast is providing a listing of the zip+4 data and not the underlying allocations and assignments made by the Comcast's outside consultant, in this case SNL

Kagan (formerly MBC). For example, in the previous NMTC effective competition petition, when the NMTC asked for the underlying data, such a request was denied. Without seeing the allocation procedure used by SNL Kagan, it is impossible to determine the accuracy of the underlying data.

7. The mere suggestion of the fact that using zip+4 somehow makes the underlying data less subject to significant errors because the zip+4 is for a much smaller area is incorrect. If the SNL Kagan data has erroneously included thousands of zip+4s not within the franchise area, the resulting DBS penetration will be skewed.

8. As I identified in the prior NMTC effective competition petition, the results of the SNL Kagan showed significant variation between one zip code data and two zip+4 analyses.

9. Without the affected LFA having access to the allocation methodologies used by SNL Kagan and relied upon by Comcast or the FCC undertaking that critical review of the methodology used by Comcast, the FCC cannot be assured that the zip+4s identified in the Comcast petitions are correct and form an accurate basis for determining effective competition.

10. It is clear from Exhibit 4 to the Petitions that SNL Kagan uses an allocation methodology as the SNL Kagan letter states "... utilizes a multi-step process to accurately identify cable client franchise area and associated ZIP and ZIP+4 Codes." Further they state "SNL Kagan uses Place, Minor Civil Division (MCD), and County boundaries from Dynamap, a division of Pitney Bowes Business Insight, which contain ZIP+4 centroid correspondence for virtually all deliverable ZIP+4 Codes within municipal boundaries, ... , and Tele Atlas master street database." From this description

it is clear that an allocation is occurring as there is no universally accepted data base that corresponds zip+4 codes with municipal boundaries. Absent an investigation into the allocation methodologies used by SNL Kagan and relied upon by Comcast, the accuracy of the zip+4 codes used in these effective competition petitions cannot be assured.

11. I declare under penalty of perjury that the facts stated herein, are true and correct to the best of my knowledge and belief.

This declaration was executed on 7th day of June, 2013 at Castle Rock, CO.

A handwritten signature in black ink, appearing to read "Richard D. Treich". The signature is stylized and cursive, with the first name being the most prominent.

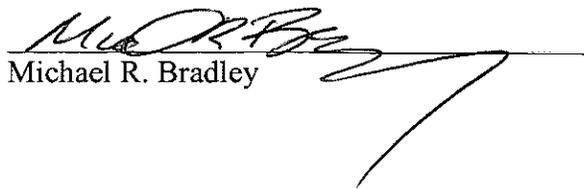
Richard D. Treich

CERTIFICATE OF SERVICE

I, Michael R. Bradley, do hereby certify that on this 7th day of June 2013, that true and correct copies of the foregoing Opposition of the North Metro Telecommunications Commission to Comcast's Petition For Special Relief have been sent via First-Class U.S. Mail, postage prepaid, to the following:

Steven A. Broeckaert
Media Bureau -- Policy Division
Federal Communications Commission
445 12th Street, S.W., Room 4-A865
Washington, DC 20554

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Frederick W. Giroux
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Michael R. Bradley