

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

In the Matter of

Comcast Cable Communications, LLC

Petition for Determination of Effective Competition in:

Gloucester, MA (MA0136)

MB 12-1

MB 13-142, CSR-8800-E

**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
OPPOSITION TO COMCAST CABLE COMMUNICATIONS, LLC'S  
PETITION FOR SPECIAL RELIEF**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820  
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Dated: July 25, 2013

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**I. INTRODUCTION.**

The Federal Communications Commission (“FCC”) should deny the June 4, 2013, Petition for Special Relief filed by Comcast Cable Communications, LLC (“Comcast”) concerning Gloucester, Massachusetts.<sup>1</sup> Comcast’s methodology supporting the Petition yields an inaccurate direct broadcast satellite (“DBS”) provider penetration rate, and as a result Comcast does not meet the second prong of the FCC’s “Competing Provider Test.”<sup>2</sup> Accordingly, the FCC should deny the Petition, or, at the very least, require Comcast to submit more accurate data prior to considering the Petition. The Massachusetts Department of Telecommunications and Cable (“MDTC”) files this Opposition to the Petition pursuant to

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<sup>1</sup> *In the Matter of Comcast Cable Commc’ns, LLC Petition for Determination of Effective Competition in Gloucester, Mass.*, MB 13-142, CSR-8800-E, *Petition for Special Relief* (filed June 4, 2013) (“Petition”).  
<sup>2</sup> See 47 C.F.R. § 76.905(b)(2).

section 76.7 of the FCC’s rules and in its capacity as regulator of cable rates in the Commonwealth of Massachusetts.<sup>3</sup>

**II. THE FCC SHOULD DENY THE PETITION BECAUSE COMCAST DOES NOT MEET THE SECOND PRONG OF THE COMPETING PROVIDER TEST.**

The methodology used by Comcast in support of the Petition produces an artificially inflated DBS provider penetration rate in Gloucester. Accordingly, the FCC should deny the Petition, or at least refrain from acting upon it until Comcast provides an accurately calculated DBS provider penetration rate.

Under its Competing Provider Test, the FCC may determine that a cable operator is subject to effective competition if the operator can establish that a franchise area is:

- (i) [s]erved by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and
- (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.<sup>4</sup>

Comcast argues that it meets the Competing Provider Test in Gloucester based upon the presence of two DBS providers—DirecTV, Inc. and Dish Network, Corp. (“DBS providers”).<sup>5</sup>

However, Comcast’s calculation under the Competing Provider Test produced an artificially inflated DBS provider penetration rate in Gloucester, meaning that Comcast has not established that the DBS providers have a sufficiently high level of subscribership in Gloucester

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<sup>3</sup> The MDTC “is the certified ‘franchising authority’ for regulating basic service tier rates and associated equipment costs in Massachusetts.” 207 C.M.R. § 6.02; *see also* MASS. GEN. LAWS ch. 166A, §§ 2A, 15 (establishing the MDTC’s authority to regulate cable rates). Also, the MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

<sup>4</sup> 47 C.F.R. §§ 76.905(b)(2)(i)–(ii). The MDTC reiterates that regulatory relief on account of “effective competition” does not produce the intended result of basic service rates being held in check. *See, e.g., In the Matter of Charter Commc’ns, Inc. Petition for Determination of Effective Competition in 46 Local Franchise Areas*, CSR-8558-E, et al., MDTC Opposition to Charter’s Petition at 4 n.12 (filed Feb. 15, 2012) (“MDTC 2012 Charter Opposition”).

<sup>5</sup> Petition at 2.

to meet the second prong of the Competing Provider Test.<sup>6</sup> Comcast collected and calculated its data using the same methodology used in other effective competition petitions—a methodology that the MDTC previously argued is inaccurate.<sup>7</sup> Specifically, Comcast included DBS subscribers in its penetration calculations whose housing units do not qualify as “households,” potentially skewing the DBS provider penetration rate in Gloucester upward, potentially in excess of the 15 percent statutory threshold.<sup>8</sup> As the MDTC stated previously, the FCC should not rely upon data calculated in this matter to render an effective competition decision.<sup>9</sup>

Comcast states that it obtained DBS subscribership data from the Satellite Broadcasting and Communication Association (“SBCA”).<sup>10</sup> Comcast took the number of DBS subscribers in Gloucester as a numerator (“statutory numerator”), divided it by the number of “households” in Gloucester (“statutory denominator”), and the result, according to Comcast, is the DBS providers’ penetration rate in Gloucester.<sup>11</sup> In these calculations, however, Comcast included DBS subscribers in its statutory numerator whose housing units do not qualify as “households” and thus were not included in Comcast’s statutory denominator.<sup>12</sup> This results in an artificially inflated DBS provider penetration rate.<sup>13</sup>

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<sup>6</sup> The MDTC does not dispute Comcast’s claim that the DBS providers meet the requirement of 47 C.F.R. § 76.906(b)(2)(i).

<sup>7</sup> See, e.g., *In the Matter of Charter Commc’ns, Inc. Petition for Determination of Effective Competition in Boylston, MA, et al.*, CSR-8763-E, et al., MDTC Opposition to Charter’s Petition at 5–7 (filed Feb. 11, 2013) (“MDTC 2013 Charter Opposition”); *In the Matter of Petition of the City of Boston, Mass. For Recertification to Regulate the Basic Cable Serv. Rates of Comcast Cable Commc’ns, LLC (CUID MA0182)*, CSR 8488-R, MDTC Opposition to Comcast’s Petition at 3–5 (filed May 30, 2012) (“MDTC Comcast Opposition”); MDTC 2012 Charter Opposition at 6–8. At the time of this filing, the FCC has not issued a ruling in any of these proceedings.

<sup>8</sup> See *infra* notes 14–15 and accompanying text.

<sup>9</sup> See, e.g., MDTC 2013 Charter Opposition at 5; MDTC Comcast Opposition at 3; MDTC 2012 Charter Opposition at 6.

<sup>10</sup> Petition at 6.

<sup>11</sup> *Id.* at 6–7.

<sup>12</sup> See *infra* notes 14–15 and accompanying text.

<sup>13</sup> See, e.g., MDTC 2012 Charter Opposition at 8 (explaining in full the inadequacies of such a methodology).

According to the SBCA's methodology, which does not exclude DBS subscriptions in seasonal homes, vacation homes, and temporary homes, Comcast included DBS subscriptions in these types of housing units in its statutory numerator.<sup>14</sup> These inclusions are problematic because those types of housing units do not qualify as "households" under the FCC's definition.<sup>15</sup> The result is that while Comcast included these DBS subscriptions in its statutory numerator, Comcast did not include those subscriptions' housing units in its statutory denominator. This calculation overstates the DBS provider penetration rate.

This concern is particularly pronounced in a community like Gloucester, where seasonal and vacation homes are prevalent.<sup>16</sup> Comcast asserts that Gloucester has 2,050 DBS subscribers and 12,486 households, resulting in a DBS provider penetration rate of 16.42 percent.<sup>17</sup> The MDTC acknowledges that it is unlikely that all of the seasonal housing units in Gloucester are DBS subscribers. However, assuming that seasonal residents subscribe to the DBS providers at about the same rate as the overall population of Gloucester, using Comcast's 16.42 percent DBS provider penetration rate in Gloucester, this would translate to approximately 211 seasonal DBS subscribers ( $.1642 * 1,287$  seasonal housing units).<sup>18</sup> Subtracting these 211 subscribers from Comcast's statutory numerator decreases the DBS provider penetration rate in Gloucester to 14.73 percent ( $1,839/12,486$ ), below the statutory threshold.<sup>19</sup> The FCC should scrutinize

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<sup>14</sup> See Petition at Exhibit 4.

<sup>15</sup> *In the Matter of Time Warner Entm't-Advance/Newhouse P'ship Petition for Determination of Effective Competition in Wilson, N.C.*, CSR-7199-E, *Memorandum Opinion & Order*, ¶ 20 (rel. Mar. 16, 2011) (stating that that "households" do not include "college or university dormitories, seasonal or vacation homes, or nursing homes and similar assisted living facilities.") (citations omitted).

<sup>16</sup> See Exhibit 1 (indicating that there are 1,287 seasonal homes in Gloucester, representing approximately nine percent of Gloucester's total housing units).

<sup>17</sup> Petition at Exhibit 6.

<sup>18</sup> See *id.*

<sup>19</sup> See 47 C.F.R. § 76.905(b)(2).

closely Comcast's data, rather than accepting them at face value, before ruling on a Petition that is based upon an internally inconsistent calculation.

### **III. CONCLUSION.**

The FCC should deny the Petition, or at a minimum take no action until it receives further information to support a conclusion that Comcast has met the Competing Provider Test. While the data Comcast submitted show, at first glance, that DBS provider subscribership is above the 15 percent threshold, Comcast included at least some households in the statutory numerator without including their housing units in its statutory denominator, causing the DBS provider penetration rate to appear higher than it actually is. As a result, the MDTC respectfully requests that the FCC deny the Petition, at least until Comcast provides data that accurately reflect the DBS provider penetration rate in Gloucester.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By: /s/ Sean M. Carroll  
Sean M. Carroll, Hearing Officer

Massachusetts Department of  
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1000 Washington Street, Suite 820  
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Sean.m.carroll@state.ma.us

July 25, 2013

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

The undersigned signatory has read the foregoing 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 it is not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sean M. Carroll", is written over a horizontal line.

Sean M. Carroll

Commonwealth of Massachusetts  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
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July 25, 2013

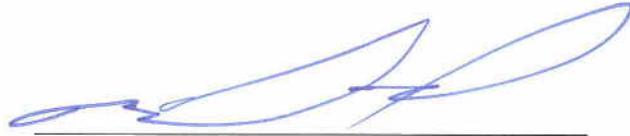
## DECLARATION OF MICHAEL MAEL

I, Michael Mael, declare, under penalty of perjury that:

1. I am a senior financial analyst at the Massachusetts Department of Telecommunications and Cable ("MDTC"). My duties include, among other things, maintaining the MDTC's records of cable basic service tier rates.
2. I have read the foregoing Opposition to Comcast's Petition for Special Relief, and I am familiar with the contents thereof and the matters referred to therein.
3. The facts contained within the Opposition are true and correct to the best of my knowledge, information, and belief.

Date: \_\_\_\_\_

7/25/13



\_\_\_\_\_  
Michael Mael

# **Exhibit 1**



QT-H1

General Housing Characteristics: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

Geography: Gloucester city, Massachusetts

Subject	Number	Percent
<b>OCCUPANCY STATUS</b>		
Total housing units	14,557	100.0
Occupied housing units	12,486	85.8
Vacant housing units	2,071	14.2
<b>TENURE</b>		
Occupied housing units	12,486	100.0
Owner occupied	7,745	62.0
Owned with a mortgage or loan	5,675	45.5
Owned free and clear	2,070	16.6
Renter occupied	4,741	38.0
<b>VACANCY STATUS</b>		
Vacant housing units	2,071	100.0
For rent	361	17.4
Rented, not occupied	25	1.2
For sale only	132	6.4
Sold, not occupied	47	2.3
For seasonal, recreational, or occasional use	1,287	62.1
For migratory workers	0	0.0
Other vacant	219	10.6
<b>TENURE BY HISPANIC OR LATINO ORIGIN OF HOUSEHOLDER BY RACE OF HOUSEHOLDER</b>		
Occupied housing units	12,486	100.0
Owner-occupied housing units	7,745	62.0
Not Hispanic or Latino householder	7,690	61.6
White alone householder	7,597	60.8
Black or African American alone householder	17	0.1
American Indian and Alaska Native alone householder	4	0.0
Asian alone householder	29	0.2
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	3	0.0
Two or More Races householder	40	0.3
Hispanic or Latino householder	55	0.4
White alone householder	43	0.3
Black or African American alone householder	2	0.0
American Indian and Alaska Native alone householder	1	0.0
Asian alone householder	0	0.0
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	7	0.1
Two or More Races householder	2	0.0
Renter-occupied housing units	4,741	38.0
Not Hispanic or Latino householder	4,567	36.6



Subject	Number	Percent
White alone householder	4,365	35.0
Black or African American alone householder	55	0.4
American Indian and Alaska Native alone householder	7	0.1
Asian alone householder	38	0.3
Native Hawaiian and Other Pacific Islander alone householder	6	0.0
Some Other Race alone householder	37	0.3
Two or More Races householder	59	0.5
Hispanic or Latino householder	174	1.4
White alone householder	95	0.8
Black or African American alone householder	10	0.1
American Indian and Alaska Native alone householder	2	0.0
Asian alone householder	1	0.0
Native Hawaiian and Other Pacific Islander alone householder	1	0.0
Some Other Race alone householder	53	0.4
Two or More Races householder	12	0.1

X Not applicable.

Source: U.S. Census Bureau, 2010 Census.

Summary File 1, Tables H3, H4, H5, and HCT1.

## CERTIFICATE OF SERVICE

I, Catrice C. Williams, do hereby certify on this 25th day of July, 2013, that a true and correct copy of the foregoing "Opposition to Comcast Cable Communications, LLC's Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

William Lake  
Chief, Media Bureau Policy Division  
Federal Communications Commission  
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Washington, DC 20554

The Honorable Carolyn Kirk  
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City of Gloucester  
9 Dale Avenue  
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Catrice C. Williams