

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

In the Matter of

Comcast Cable Communications, LLC

Petition for Determination of Effective Competition in:

Duxbury, MA (MA0302)

Easton, MA (MA0233)

Lakeville, MA (MA0278)

Billerica, MA (MA0079)

Chelmsford, MA (MA0147)

North Andover, MA (MA0102)

Danvers, MA (MA0279)

Marblehead, MA (MA0263)

Middleton, MA (MA0223)

Topsfield, MA (MA0288)

6 Massachusetts Franchise Areas

Dover, MA (MA0314)

Foxborough, MA (MA0176)

Norfolk, MA (MA0248)

Walpole, MA (MA0220)

Wrentham, MA (MA0203)

Wayland, MA (MA0267)

Weston, MA (MA0268)

Ashby, MA (MA0262)

Leominster, MA (MA0017)

Maynard, MA (MA0146)

Shirley, MA (MA0295)

Stow, MA (MA0256)

Templeton, MA (MA0127)

8 Massachusetts Franchise Areas

MB 12-1

MB 13-157, CSR-8803-E

MB 13-158, CSR-8804-E

MB 13-159, CSR-8805-E

MB 13-160, CSR-8806-E

MB 13-161, CSR-8807-E

MB 13-167, CSR-8809-E

MB 13-168, CSR-8810-E

MB 13-169, CSR-8811-E

MB 13-170, CSR-8812-E

MB 13-172, CSR-8814-E

MB 13-180, CSR-8817-E

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

The Federal Communications Commission (“FCC”) should deny the Petitions for Special Relief (“Petitions”) filed by Comcast Cable Communications, LLC (“Comcast”) in the above-captioned proceedings because Comcast’s data submitted in support of the Petitions are unreliable under FCC precedent. If the FCC does not deny the Petitions outright, it should at least require Comcast to submit more accurate data prior to allowing the Petitions. The Massachusetts Department of Telecommunications and Cable (“MDTC”) files this Opposition to the Petitions pursuant to Section 76.7 of the FCC’s rules and in its capacity as regulator of cable rates in the Commonwealth of Massachusetts.¹

In June and July 2013, Comcast filed petitions for determinations of effective competition in several Massachusetts franchise areas (“Franchise Areas”).² Under its

¹ 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.

² *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Duxbury, Mass.*, MB 13-157, CSR-8803-E, *Petition for Special Relief* (filed June 11, 2013) (“Duxbury Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Easton, Mass.*, MB 13-158, CSR-8804-E, *Petition for Special Relief* (filed June 11, 2013) (“Easton Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Lakeville, Mass.*, MB 13-159, CSR-8805-E, *Petition for Special Relief* (filed June 11, 2013) (“Lakeville Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Billerica, Mass. & Chelmsford, Mass.*, MB 13-160, CSR-8806-E, *Petition for Special Relief* (filed June 12, 2013) (“Billerica Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in N. Andover, Mass.*, MB 13-161, CSR-8807-E, *Petition for Special Relief* (filed June 12, 2013) (“North Andover Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Danvers, Mass., et al.*, MB 13-167, CSR-8809-E, *Petition for Special Relief* (filed June 18, 2013) (“Danvers Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in 6 Mass. Franchise Areas*, MB 13-168, CSR-8810-E, *Petition for Special Relief* (filed June 18, 2013) (“Cohasset Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Dover, Mass., et al.*, MB 13-169, CSR-8811-E, *Petition for Special Relief* (filed June 19, 2013) (“Dover Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Wayland, Mass. & Weston, Mass.*, MB 13-170, CSR-8812-E, *Petition for Special Relief* (filed June 19, 2013) (“Wayland Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in Ashby, Mass., et al.*, MB 13-172, CSR-8814-E, *Petition for Special Relief* (filed June 27, 2013) (“Ashby Petition”); *In the Matter of Comcast Cable Commc’ns, LLC’s Petition for Determination of Effective Competition in 8 Mass. Franchise Areas*, MB 13-180, CSR-8817-E, *Petition for Special Relief* (filed July 3, 2013) (“Ashland Petition”).

“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.³

Comcast argues that it meets the Competing Provider Test in the Franchise Areas based upon the presence of DirecTV, Inc., Dish Network, Corp., and, in many of the Franchise Areas, Verizon New England Inc.⁴

However, Comcast’s data show total multichannel video penetration rates of over 100 percent in many of the Franchise Areas, which in and of itself has caused the FCC to reject effective competition petitions in the past.⁵ The FCC stated that data yielding penetration rates that exceed 100 percent of the households in a franchise area are “obviously inaccurate,”⁶ adding later that it would dismiss such evidence regardless of its format.⁷ In fact, the FCC denied an effective competition petition where the petitioner claimed that penetration rates exceeded 100

³ 47 C.F.R. § 76.905(b)(2). 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).

⁴ Billerica Petition at 2; Duxbury Petition at 2; Easton Petition at 2; Lakeville Petition at 2; North Andover Petition at 2; Danvers Petition at 2; Cohasset Petition at 2; Dover Petition at 2; Wayland Petition at 2; Ashby Petition at 2; Ashland Petition at 2.

⁵ Taking into account Comcast subscribers, the overall multichannel video penetration rate according to Comcast’s data is 100.71 percent in Billerica, 106.01 percent in Duxbury, 103.87 percent in Easton, 107.19 percent in Lakeville, 102.11 percent in North Andover, 102.08 percent in Marblehead, 104.59 percent in Middleton, 115.12 percent in Topsfield, 113.34 percent in Cohasset, 107.88 percent in Hanover, 105.53 percent in Hull, 105.35 percent in Norwell, 100.32 percent in Dover, 103.31 percent in Foxborough, 104.43 percent in Norfolk, 104.62 percent in Wrentham, 102.07 percent in Weston, 100.33 percent in Stow, 100.45 percent in Bellingham, 102.37 percent in Hopedale, and 100.54 percent in Mendon. Exhibit 1.

⁶ *Comm’n Announces New Standards for Showings of Effective Competition for Cable Serv.*, DA 08-1892, *Pub. Notice* (rel. Aug. 13, 2008).

⁷ *Comm’n Clarifies Standards for Evidence of Competing Provider Effective Competition for Cable Serv.*, DA 09-1361, *Pub. Notice* (rel. June 18, 2009) (declaring that the FCC will “dismiss evidence that shows obviously inaccurate . . . levels of subscription regardless of the format of such evidence.”).

percent in some franchise areas.⁸ The FCC later called the data submitted in that petition “patently inaccurate and unreliable” because the multichannel video penetration rates exceeded 100 percent.⁹ Here, Comcast’s data yield penetration rates that exceed 100 percent of the households in 21 of the Franchise Areas.¹⁰ Accordingly, the MDTC respectfully requests that the FCC adhere to its precedent and deny the Petitions, at least to the extent Comcast seeks a determination of effective competition in Billerica, Duxbury, Easton, Lakeville, North Andover, Marblehead, Middleton, Topsfield, Cohasset, Hanover, Hull, Norwell, Dover, Foxborough, Norfolk, Wrentham, Weston, Stow, Bellingham, Hopedale, and Mendon.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

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

Massachusetts Department of
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July 25, 2013

⁸ *In the Matter of Time Warner Cable Inc. & Time Warner Entm’t-Advance Newhouse P’ship (25 Petitions in Various Cmtys. in N.Y. & Pa.)*, CSR-7243-E, et al., DA 08-1893, *Memorandum Opinion & Order*, ¶ 10 (rel. Aug. 13, 2008), *recons. denied*, DA 08-4265 (rel. Nov. 7, 2008).

⁹ *In the Matter of Time Warner Cable Inc. Petition for Determination of Effective Competition in Cheshire, MA*, CSR-7233-E, *Memorandum Opinion & Order*, ¶ 13 n.38 (rel. Feb. 15, 2011) (“[T]he combined subscribership of both DBS providers and Time Warner in [CSR-7243-E] exceeded 100% in many franchise areas, thus making the submitted data patently inaccurate and unreliable.”).

¹⁰ Exhibit 1.

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
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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

Franchise Area	DBS Subscribers ¹	Verizon Subscribers ²	Comcast Subscribers ³	Total Subscribers	Households ⁴	Total MVPD Penetration Percentage
Billerica	566	5,011	8,556	14,133	14,034	100.71%
Chelmsford	442	3,810	8,947	13,199	13,313	99.14%
Duxbury	242	2,150	3,273	5,665	5,344	106.01%
Easton	164	2,339	5,666	8,169	7,865	103.87%
Lakeville	151	1,628	2,214	3,993	3,725	107.19%
North Andover	309	3,909	6,520	10,738	10,516	102.11%
Danvers	439	4,050	6,101	10,590	10,615	99.76%
Marblehead	190	2,998	5,125	8,313	8,144	102.08%
Middleton	100	1,086	1,845	3,031	2,898	104.59%
Topsfield	44	1,265	1,097	2,406	2,090	115.12%
Cohasset	92	879	2,114	3,085	2,722	113.34%
Hanover	135	2,108	2,837	5,080	4,709	107.88%
Hingham	206	3,172	4,647	8,025	8,465	94.80%
Hull	167	1,785	2,934	4,886	4,630	105.53%
Norwell	108	1,330	2,305	3,743	3,553	105.35%
Randolph	1,032	3,573	6,425	11,030	11,551	95.49%
Dover	77	882	916	1,875	1,869	100.32%
Foxborough	370	1,788	4,561	6,719	6,504	103.31%
Norfolk	132	1,740	1,312	3,184	3,049	104.43%
Walpole	349	4,112	4,245	8,706	8,730	99.73%
Wrentham	227	1,456	2,191	3,874	3,703	104.62%
Wayland	107	2,247	2,344	4,698	4,808	97.71%
Weston	127	1,358	2,369	3,854	3,776	102.07%

Exhibit 1

Franchise Area	DBS Subscribers ¹	Verizon Subscribers ²	Comcast Subscribers ³	Total Subscribers	Households ⁴	Total MVPD Penetration Percentage
Ashby	277	0	759	1,036	1,105	93.76%
Leominster	1,090	5,343	9,247	15,680	16,767	93.52%
Maynard	172	1,888	1,813	3,873	4,239	91.37%
Shirley	427	0	1,672	2,099	2,264	92.71%
Stow	95	1,200	1,142	2,437	2,429	100.33%
Templeton	489	0	2,370	2,859	2,882	99.20%
Ashland	319	2,950	2,886	6,155	6,385	96.40%
Bellingham	384	2,529	3,270	6,183	6,155	100.45%
Holliston	165	3,050	1,695	4,910	4,940	99.39%
Hopedale	141	754	1,351	2,246	2,194	102.37%
Medway	142	2,486	1,742	4,370	4,435	98.53%
Mendon	149	813	1,071	2,033	2,022	100.54%
Milford	691	3,462	6,554	10,707	10,872	98.48%
Millis	203	1,124	1,594	2,921	3,030	96.40%

¹ Billerica Petition at Exhibit 8; Duxbury Petition at Exhibit 8; Easton Petition at Exhibit 8; Lakeville Petition at Exhibit 8; North Andover Petition at Exhibit 8; Danvers Petition at Exhibit 8; Cohasset Petition at Exhibit 8; Dover Petition at Exhibit 8; Wayland Petition at Exhibit 8; Ashby Petition at Exhibit 8; Ashland Petition at Exhibit 8.

² 2012 subscriber counts are available at <http://www.mass.gov/ocabr/docs/dtc/catv/stats/subscriber-counts-2012.xls> (last viewed June 28, 2013).

³ Billerica Petition at Exhibit 8; Duxbury Petition at Exhibit 8; Easton Petition at Exhibit 8; Lakeville Petition at Exhibit 8; North Andover Petition at Exhibit 8; Danvers Petition at Exhibit 8; Cohasset Petition at Exhibit 8; Dover Petition at Exhibit 8; Wayland Petition at Exhibit 8; Ashby Petition at Exhibit 8; Ashland Petition at Exhibit 8.

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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:

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Board of Selectmen
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Catrice C. Williams