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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE**

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GEOFFREY G. WHY
COMMISSIONER

October 25, 2013

VIA OVERNIGHT DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

In the Matter of Charter Communications, Inc., Petitions for Determination of Effective Competition in 46 Communities in Massachusetts, New Hampshire, and New York, CSR-8558-E, CSR-8559-E, CSR-8560-E, CSR-8561-E

Dear Ms. Dortch:

I enclose an original and four copies of the Massachusetts Department of Telecommunications and Cable's Petition for Reconsideration in the above dockets. I also filed an electronic version of the Petition for Reconsideration with Mr. Steven Broeckaert and Mr. Steve Garner on October 25, 2013.

Please contact me directly at (617) 368-1161 should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean M. Carroll".

Sean M. Carroll, Hearing Officer
sean.m.carroll@state.ma.us

Encs.

cc: Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, FCC
Frederick W. Giroux, Davis Wright Tremaine LLP
Counsel for Charter Communications, Inc.
Service Lists (Attached)

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

In the Matter of

Charter Communications, on behalf of its subsidiaries
and affiliates

Petitions for Determination of Effective Competition in
46 Communities in Massachusetts, New Hampshire, and
New York

CSR-8558-E
CSR-8559-E
CSR-8560-E
CSR-8561-E

**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
PETITION FOR RECONSIDERATION**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

Dated: October 25, 2013

**Before the
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Charter Communications, on behalf of its subsidiaries
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**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
PETITION FOR RECONSIDERATION**

I. INTRODUCTION.

The Massachusetts Department of Telecommunications and Cable (“MDTC”) is requesting that the Media Bureau (“Bureau”) reconsider its September 30, 2013, Memorandum Opinion and Order (“Bureau Order”) in the above-captioned proceedings and, at a minimum,¹ reverse its findings with respect to the Town of West Brookfield (“Franchise Area”), determine that Charter Communications, Inc. (“Charter”) is not subject to effective competition in the Franchise Area, and recertify the Franchise Area to regulate basic cable service and equipment rates. The MDTC files this Petition for Reconsideration pursuant to Section 1.106 of the Federal

¹ The MDTC files this Petition for Reconsideration with the understanding that the filing tolls the appeal periods prescribed in Sections 1.104(b), 1.106(f), and 1.115(d) of the FCC’s rules until the FCC takes final action on the Petition for Reconsideration. *See, e.g., Sw. Bell Tel. Co. v. FCC*, 116 F.3d 593, 596-97 (D.C. Cir. 1997); *L.A. SMSA Ltd. P’ship v. FCC*, 70 F.3d 1358, 1359 (D.C. Cir. 1995); *Novartis AG v. Kappos*, 904 F.Supp.2d 58, 66 (D.D.C. 2012); *see also* 47 C.F.R. § 1.104(d) (“Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of public notice of such action.”). The MDTC reserves all appeal rights under FCC regulations and federal law.

Communications Commission's ("FCC") rules and in its capacity as regulator of cable rates in the Commonwealth of Massachusetts.²

II. BACKGROUND AND PROCEDURAL HISTORY.

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

- (i) served 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 programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.³

In December 2011, Charter filed with the FCC Petitions for Determination of Effective Competition ("Petitions") in 34 Massachusetts communities, claiming that it satisfied the "Competing Provider Test" set forth in Section 623(l)(1)(B) of the Communications Act of 1934 ("Act") and Section 76.905(b)(2) of the FCC's rules.⁴ In the West Brookfield Petition, Charter argued that it met the Competing Provider Test in West Brookfield based upon the presence of two direct broadcast satellite ("DBS") providers—DirecTV, Inc. and Dish Network, Corp. ("DBS providers")—in the Franchise Areas.⁵ Specifically, Charter's data showed 231 DBS subscribers and 1,479 households in West Brookfield, resulting in a DBS provider penetration

² 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.

³ 47 U.S.C. § 543(l)(1)(B).

⁴ *See id.*; 47 C.F.R. § 76.905(b)(2).

⁵ *In the Matter of Charter Commc'ns Petition for Determination of Effective Competition in 29 Mass. Franchise Areas & 1 N.H. Franchise Area*, CSR 8561-E, *Petition for Special Relief* at 3 (Dec. 8, 2011) ("West Brookfield Petition").

rate of 15.62 percent.⁶ The MDTC filed an Opposition to the Petitions on February 15, 2012.⁷ In its Opposition, the MDTC stated that Charter included DBS subscribers in its calculations whose housing units do not qualify as “households,” which resulted in an artificially inflated DBS provider penetration rate in the Franchise Area.⁸ Charter filed a Reply to the MDTC Opposition on February 27, 2012.⁹ On September 30, 2013, the Bureau released the Bureau Order granting the Petitions.¹⁰

In the Bureau Order, the Bureau stated that where franchise authorities have submitted credible numbers of seasonal homes, the Bureau has subtracted DBS subscribers from those homes from cable operators’ DBS subscriber numbers.¹¹ The MDTC provides that data for West Brookfield herein and respectfully requests that the Bureau consider the data and reverse its finding of effective competition in the Franchise Area.

III. STANDARD OF REVIEW.

Generally, the Bureau may grant a petition for reconsideration “if sufficient reason therefor be made to appear.”¹² The Bureau may grant a petition for reconsideration that relies on facts not previously presented if consideration of those facts is required in the public interest, and the petition (1) states with particularity the respects in which petitioner believes the action taken by the Bureau should be changed, (2) states specifically the form of relief sought, (3) cites the

⁶ *Id.* at Exh. 3.

⁷ *In the Matter of Charter Commc’ns Petition for Determination of Effective Competition in 29 Mass. Franchise Areas & 1 N.H. Franchise Area*, CSR 8561-E, *MDTC Opposition* (Feb. 15, 2012) (“MDTC Opposition”).

⁸ *Id.* at 6-8.

⁹ In addition, the Town of Berlin filed an Opposition on February 27, 2012, and Charter filed a Reply to that Opposition on March 7, 2012.

¹⁰ *In the Matter of Charter Commc’ns Petitions for Determination of Effective Competition in 46 Cmty. in Mass., N.H., & N.Y.*, CSR 8561-E., DA 13-2008, *Memorandum Opinion & Order* (rel. Sept. 30, 2013) (“Bureau Order”).

¹¹ *Id.*, ¶ 13 n.41.

¹² 47 U.S.C. § 405(a).

findings that the petitioner believes to be erroneous, and (4) states with particularity the respects in which the petitioner believes such findings should be changed.¹³ As demonstrated below, the MDTC's Petition for Reconsideration meets this standard, and the Bureau should overturn its finding of effective competition in the Town of West Brookfield.

IV. DISCUSSION.

The Bureau should reverse the Bureau Order with respect to West Brookfield and determine that Charter is not subject to effective competition in the Franchise Area because Charter has failed to submit data for the Franchise Area that meet the second prong of the Competing Provider Test. As the Bureau states in the Bureau Order, “[t]he MDTC correctly notes that the Company’s numerators (DBS subscribers from SBCA, for example) include dwellings that do not count as ‘households,’ such as seasonal or vacation homes, and other temporary dwellings; but that the Company’s denominators (‘households’ as defined by the Census) do not include such dwellings.”¹⁴ The Bureau, however, rejected the MDTC’s “correct[]” analysis, finding that it was “not enough to rebut the factual evidence presented by Charter.”¹⁵ The Bureau did state, however, that where a franchise authority submits credible numbers of seasonal homes, the Bureau would subtract those seasonal homes from the cable operators’ DBS subscriber numbers.¹⁶ Specifically, the Bureau reduces the DBS subscriber count by the ratio of seasonal housing units to total housing units in a franchise area.¹⁷

¹³ 47 C.F.R. §§ 1.106(c)-(d).

¹⁴ Bureau Order, ¶ 13 (footnotes omitted).

¹⁵ *Id.*

¹⁶ *Id.*, ¶ 13 n.41 (citing *In the Matter of Charter Commc’s Petition for Determination of Effective Competition in New Hanover County, N.C.*, 25 FCC Rcd 2289, 2294, ¶ 15 (rel Mar. 9, 2010); *In the Matter of Bright House Networks, LLC Petition for Determination of Effective Competition in Four Fla. Cmty.*, 22 FCC Rcd 3499, 3502, ¶ 7 (rel. Mar. 1, 2007); *In the Matter of Comcast Cable Commc’s, LLC Petition for Determination of Effective Competition in Fourteen Fla. Cmty.*, 22 FCC Rcd 1691, 1697-98, ¶ 16 & n.61 (rel. Jan. 31, 2007) (“Comcast Florida Order”).

¹⁷ Comcast Florida Order, ¶ 16 & n.61.

In West Brookfield, “a proportionate reduction in the SBCA DBS figures for the percentage of seasonal, recreational, or occasional use properties” causes the overall DBS provider penetration rate to fall below 15 percent in the Franchise Area.¹⁸ According to the 2010 U.S. Census, there are 121 seasonal, recreational, or occasional use housing units in West Brookfield, which represent 7.12 percent of the 1,699 total housing units in the Franchise Area.¹⁹ A 7.12 percent reduction of Charter’s DBS subscriber count for West Brookfield results in 16 fewer DBS subscribers,²⁰ which produces a DBS provider penetration rate of approximately 14.54 percent, below the 15 percent statutory threshold.²¹ Accordingly, Charter is not subject to effective competition in West Brookfield, and the Bureau should reverse its findings with respect to the Franchise Area in the Bureau Order.

V. CONCLUSION.

While the data Charter submitted for West Brookfield appear to show DBS subscribership above the 15 percent threshold required by the second prong of the Competing Provider Test, Charter included subscribers in its statutory numerator without including their households in its statutory denominator, a methodology that artificially inflated the DBS provider penetration rate upward. After the MDTC removed these DBS subscribers from Charter’s data, the DBS provider penetration dropped to 14.54 percent, below the 15 percent

¹⁸ *Id.*, ¶ 16.

¹⁹ (121 / 1,699 = .0712). See Exh. 1. Consideration of this fact is in the public interest under Section 405(a) of the Act and Section 1.106(c) of the FCC’s rules because it is important for the Bureau to make a determination on effective competition using the most complete record. *In the Matter of Fla. Cablevision Mgmt., Corp. d/b/a Cablevision Indus.*, 11 FCC Red 6876, 6880, ¶ 10 (rel. June 5, 1996); see also *In the Matter of Clinton Cable Ltd. P’ship*, 10 FCC Red 3210, 3211, ¶ 8 n.16. In addition, as the MDTC has demonstrated, it is in the public interest to maintain rate regulation where appropriate. MDTC Opposition at 4 n.12, Exh. 1, Exh. 2 (“As Exhibits 1 and 2 show, the rates and rate increases experienced by basic-only subscribers in franchise areas that are unregulated far outpace the increases in those franchise areas that are still subject to regulation.”).

²⁰ (.0712 * 231 = 16.45).

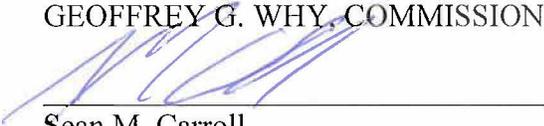
²¹ (215 / 1,479 = .1454). See 47 U.S.C. § 543(l)(1)(B)(2); cf. Comcast Florida Order, ¶ 16 n.61.

statutory threshold. Accordingly, sufficient reason exists for the Bureau to reverse its findings with respect to the Town of West Brookfield in the Bureau Order, determine that Charter is not subject to effective competition in the Franchise Area, and recertify the Franchise Area to regulate basic cable service and equipment rates.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By:


Sean M. Carroll

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

October 25, 2013

Exhibit 1



QT-H1

General Housing Characteristics: 2010

2010 Census Summary File 1

Note: This is a modified view of the original table.

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

Geography: West Brookfield town, Worcester County, Massachusetts

Subject	Number	Percent
OCCUPANCY STATUS		
Total housing units	1,699	100.0
TENURE		
Occupied housing units	1,479	100.0
VACANCY STATUS		
Vacant housing units	220	100.0
For rent	25	11.4
Rented, not occupied	0	0.0
For sale only	24	10.9
Sold, not occupied	13	5.9
For seasonal, recreational, or occasional use	121	55.0
For migratory workers	1	0.5
Other vacant	36	16.4

X Not applicable.

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

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

CERTIFICATE OF SERVICE

I, Andrea Nixon, do hereby certify on this 25th day of October, 2013, that a true and correct copy of the foregoing "Petition for Reconsideration" has been sent via U.S. mail, postage prepaid, or electronic mail to the attached service lists.

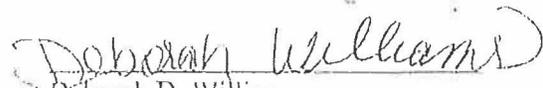

Andrea Nixon

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 6th day of December, 2011 that a true and correct copy of the foregoing "Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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

Chairman, Board of Selectmen
Town of Wales
3 Hollow Road
Wales, MA 01081


Deborah D. Williams

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 7th day of December, 2011 that a true and correct copy of the foregoing "Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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

Mr. Art Basin
Town Supervisor
Ancram Town Hall
1416 County Rte. 7
Ancram, NY 12502

Mr. Jeff Braley
Town Supervisor
Austerlitz Town Hall
812 Route 203
Spencertown, NY 12165

Mr. Robert Jaeger
Town Supervisor
Berlin Town Hall
65 South Main Street
Berlin, NY 12022

Mr. Rick Keaveney
Town Supervisor
Canaan Town Hall
1647 Route 5 South
Canann, NY 12029

Mr. Jesse DeGroot
Town Supervisor
Chatham Town Hall
488 State Route 295
Chatham, NY 12037

Mr. Thomas Curran
Mayor
Chatham Village Hall
77 Main Street
Chatham, NY 12037

Mr. Reginald Crowley
Town Supervisor
Copake Town Hall
230 Mountain View Road
Copake, NY 12516

Mr. Larry Andrews
Town Supervisor
Ghent Town Hall
2306 State Route 66
Ghent, NY 12075

Mr. Art Baer
Town Supervisor
Hillsdale Town Hall
Main Street
Hillsdale, NY 12529

Mr. Paul Trova
Chairman, Board of Selectmen
Town of Hinsdale
39 South Street
Hinsdale, MA 01235

Mr. Paul A. Boudreau
Town Administrator
Town of Lanesboro
83 North Main Street
Lanesborough, MA 01237

Ms. Margaret Robertson
Town Supervisor
New Lebanon Town Hall
Route 22
New Lebanon, NY 12125

Mr. Peter Schaaphok
Town Supervisor
Petersburg Town Hall
55 Main Street
Petersburg, NY 12138

Mr. Earl Moffatt
Chairman, Board of Selectmen
Town of West Stockbridge
21 State Line Road
West Stockbridge, MA 01266


Deborah D. Williams

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 6th day of December, 2011 that a true and correct copy of the foregoing "Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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

Mr. Michael Coughlin
Town Administrator
Town of Westport
816 Main Road
Westport, MA 02790


Deborah D. Williams

CERTIFICATE OF SERVICE

I, Deborah D. Williams, do hereby certify on this 8th day of December, 2011 that a true and correct copy of the foregoing "Petition for Special Relief" has been sent via U.S. mail, postage prepaid to the following:

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

Ms. Julie A. Jacobson
Town Manager
104 Central Street
Auburn, MA 01501

Mr. David Battistoni
Town Administrator
Henry Woods Building
40 West St.
Barre, MA 01005

Ms. Margaret Sardell
Secretary, Board of Selectmen
23 Linden St.
Berlin, MA 01503

Mr. Peter O'Connell
Chairman, Board of Selectmen
6 Central St.
Brookfield, MA 01506

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1 Main Street
Brookline, NH 03033

Ms. Robin L. Craver
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37 Main St.
Charlton, MA 01507

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Executive Administrator
29 Depot Street
Douglas, MA 01516

Mr. Peter Jankowski
Town Administrator
71 West Main Street
Dudley, MA 01571

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Chairman, Board of Selectmen
511 Mani Street
Dunstable, MA 01827

Mr. Leo Fayard
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122 Connie Mack Drive
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30 Providence Road
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173 Main Street
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Ms. Elaine Peterson
Town Secretary
7 Main Street, Unit #3
Hubbardston, MA 01452

Mr. Robert Spain
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127 Elm Street
Millbury, MA 01527

Ms. Helen Coffin
Executive Secretary
8 Central Street
Millville, MA 01529

Ms. Leslie Scott Burton
Administrative Assistant to Board of
Selectmen
215 North Main Street
North Brookfield, MA 01535

Mr. John Coderre
Town Administrator
63 Main Street
Northborough, MA 01532

Mr. Clayton Rice
Chairman, Board of Selectmen
2 Coldbrook Rd, Unit 1
Oakham, MA 01068

Mr. Joseph Zeneski
Town Manager
325 Main Street
Oxford, MA 01540

Mr. John Moak
Town Administrator
1 Main Street
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Mr. Leroy Clark
Chairman, Board of Selectmen
250 Main Street
Rutland, MA 01543

Ms. Jean Kitchen
Town Administrator
17 Common Street
Southborough, MA 01772

Mr. Christopher Clark
Town Manager
41 Elm Street
Southbridge, MA 01550

Mr. James Smith
Town Administrator
4 Uxbridge Road
Sutton, MA 01590

Ms. Blythe Robinson
Town Manager
1 Main Street
Upton, MA 01590

Mr. Michael Szlosek
Town Administrator
21 South Main Street
Uxbridge, MA 01569

Mr. Tom Long
Chairman
2 East Main Street
West Brookfield, MA 01585

Mr. Michael V. O'Brien
City Manager
455 Main Street
Worcester, MA 01608

Mr. John F. McAuliffe
Town Administrator
350 Main Street
Webster, MA 01570

Mr. James Malloy
Town Administrator
34 West Main Street
Westborough, MA 01581


Deborah D. Williams