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-8859-E
For Determination of Effective Competition in:	)	Docket No. 13-310
5 Washington Franchise Areas	)	

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

REPLY TO OPPOSITION

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates ("Comcast"), hereby replies to the Opposition submitted by the City of Spokane, Washington (the "City") in the above-docketed proceedings. Comcast's Petition demonstrates that it faces effective competition in Spokane by satisfying both prongs of the "Competing Provider Test" – (1) competing MVPD service is available to at least 50% of Franchise Area households; and (2) at least 15 percent of Franchise Area households subscribe to a competing MVPD service.[1] Although the City does not dispute that Comcast has satisfied the first prong of the Competing Provider Test,[2] it objects to the data used by Comcast in calculating the competing MVPD penetration figure under the second prong of that test. The Opposition, however, mischaracterizes the evidence and raises unsupported concerns that do not overcome Comcast's demonstration of effective competition in Spokane.

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[1] *See* 47 U.S.C. § 543(l)(1)(B). *See also* 47 C.F.R. § 76.905(b)(2).

[2] *See* Opposition at 2.

I. COMCAST'S OCCUPIED HOUSEHOLD DATA IS ACCURATE AND RELIABLE

The Opposition argues that Comcast's Petition should be rejected with regard to Spokane, because Comcast's 2010 Census occupied household figure for the City is "out of date and inaccurate."[3] This argument is without merit.

The Commission has consistently approved cable operators' reliance on the most recent Census data available in effective competition cases, and it has upheld such use long after that data was compiled.[4] Although the Commission has indicated that it will consider more recent household data, it does so only if the alternative data presented by the local franchising authority is "demonstrated to be reliable."[5] The Commission has made it very clear that it will not disregard reliable Census data based on casual claims or competing data that is not carefully defined and fully supported.[6] In this case, the Opposition does not offer any such reliable alternative data.

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[3] Opposition at 4.

[4] *See, e.g., Time Warner Cable, Inc. Petition for Determination of Effective Competition in Nine Franchise Areas in New Jersey*, 25 FCC Rcd. 5457, ¶ 11 (2010) ("*Time Warner Cable- 9 New Jersey Franchise Areas*") (The Commission upheld cable operator's use of the most recently available Census household data in determining DBS penetration for the communities at issue); *Comcast Cable Commun., LLC, Petitions for Determination of Effective Competition in 107 Franchise Areas in New Jersey*, 24 FCC Rcd. 1780, ¶ 13 (2009) ("[W]e conclude that the [Rate Counsel's] general allegations about the timeliness of the [household and DBS] data submitted by Petitioner reveal no flaw in the petitions."); *Texas Cable Partners, LP,* 16 FCC Rcd. 4718 (2001) (accepting 1990 Census data until the 2000 replacement data becomes available).

[5] *See, e.g., Bright House,* 20 FCC Rcd. 16823, ¶ 10 (2005), *citing In the Matter of Adelphia Cable Commun.*, 20 FCC Rcd. 4979, 4982 (2005); *In the Matter of MCC Iowa LLC*, 2005 WL 2513517 (2005).

[6] *See, e.g., Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Ten Communities in Washington*, 28 FCC Rcd. 16292, at ¶ 15 (2013) ("[T]]he City … has not shown that its proposed estimates are as reliable as the 2000 Census count of households."); *Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Nine Minnesota Franchise Areas*, 28 FCC Rcd. 5499, at ¶ 15 (2013) ("[I]t is unclear how the [LFA] reached its [household] estimates. Accordingly, [the LFA] has not shown that its proposed

The Opposition initially relies on the affidavit of Scott Chesney (the "Chesney Affidavit") to argue that Comcast's 2010 Census data should be adjusted to account for a recent increase in the number of local households. Although Mr. Chesney claims there are "a total of 2,119 *new* households in the City" since January 1, 2010,[7] he does not reconcile that claim with the official Census figures. It is likely that some of these "new" households were actually included in the 2010 Census figure, which is based on data compiled for several months *after* January 1, 2010.[8] Nor does Mr. Chesney provide any information regarding the number of local households eliminated since the 2010 Census that would offset any of the claimed new households. In short, the City has failed to adequately support its contention that 2,119 households should be added to the Census-reported figure.

The City's additional claim as to the alleged dramatic decline in the local vacancy rate is similarly flawed. Mr. Chesney purportedly arrives at the estimated 4 percent vacancy rate based on information contained in a local real estate report.[9] But he fails to reconcile the calculations presented in that report with the Census Bureau's calculations, and he does not identify any statistics or data points within the report that serve as the basis for his new vacancy rate estimate. If such direct support existed, Mr. Chesney presumably would have identified it for the Commission. He instead asks the Commission to rely on his personal "estimate." In the absence of any reliable, alternative factual evidence regarding the households or the overall vacancy rate

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estimates are as reliable as the 200 Census counts that Comcast uses."); *Comcast Cable Commun., LLC Petitions for Determination of Effective Competition in Two Communities in Michigan*, 26 FCC Rcd. 3733, at ¶ 8 (2011) (Although we will accept more recent numbers of households that are at least as reliable as the Census', none of the City's other proffered numbers have the reliability of the Census' actual count of households.") (Footnotes omitted).

[7] Opposition at 4-5, Exhibit 1 (Emphasis added).

[8] *See* Exhibit A.

[9] *See* Opposition, Exhibit 1.

for Spokane, it is appropriate for the Commission to rely on the most recently available Census data submitted by Comcast.

II. COMCAST'S ZIP+4 CODE DATA IS ACCURATE AND RELIABLE

The Opposition next contends that Comcast's ZIP+4 code data is inaccurate, because ZIP codes 99026 and 99212, included in Comcast's Petition, are "completely outside the City limits."[10] The Opposition is wrong.

To address the City's claim, Comcast asked SNL Kagan ("SNL") to determine whether any portion of the contested five-digit ZIP codes, and associated household addresses in those ZIP codes, fall within the Spokane Franchise Area. SNL confirmed that a portion of the contested ZIP codes and household addresses associated with those ZIP codes are, in fact, located in Spokane.

Comcast agrees that the vast majority of ZIP codes 99026 and 99212 are located outside of Spokane, but additional data provided by SNL clearly shows that small portions of these ZIP codes are located inside the City's boundaries. Although admittedly limited in scope, the small overlap is consistent with the fact that out of the thousands of ZIP+4 codes within Spokane, SNL reported only 14 ZIP+4 codes associated with five-digit ZIP code 99026, and 65 ZIP+4 codes associated with five-digit ZIP code 99212.[11] Exhibit B, provided by SNL, includes a sample list of addresses associated with ZIP codes 99026 and 99212 (and constituent ZIP+4 codes). Exhibit C plots each of these street addresses on a map of Spokane prepared by SNL, and confirms that each of the identified street addresses lies within the Spokane Franchise Area. The data provided by SNL demonstrates that the Opposition's arguments regarding Comcast's inclusion of a

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[10] Opposition at 5.

[11] *See* Petition, Exhibit 4.

limited number of ZIP+4 codes associated with five-digit ZIP codes 99026 and 99212 are misplaced.[12]

Finally, the Opposition contends that Comcast did not provide enough information for the City to "verify the accuracy of the [SNL and SBCA] data used to calculate the total number of DBS subscribers."[13] The contention is mistaken in its characterization of the underlying ZIP+4 reporting methodology. In fact, the data Comcast submitted in its Petition included a list of every ZIP+4 code relied upon by Comcast and the exact DBS subscriber count associated with each of those ZIP+4 codes.[14] This very precise data for Spokane includes four standard five-digit ZIP codes and 15,497 discrete ZIP+4 code entries spanning nearly 300 pages.[15] The record in this proceeding includes detailed factual evidence that clearly demonstrates that the DBS penetration rate in Spokane (and each of the other four Franchise Areas) exceeds 15 percent. The Opposition errs in claiming this extensive data is somehow inadequate and in asking the Commission to instead rely on unsupported estimates to rebut Comcast's demonstration.

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[12] In any event, the entire issue is an unnecessary distraction from the fundamental issue that Comcast's showing meets the Competing Provider Test. There are a total of only 76 DBS subscribers associated with ZIP codes 99026 and 99212 that are attributed to Spokane. *See* Petition, Exhibit 4. Comcast strongly disagrees that any of the contested DBS subscribers should be removed from the competing MVPD penetration calculation, but even if every single one of these DBS subscribers were removed from the total number of DBS subscribers reported for Spokane (13,808), the resulting DBS subscriber figure of 13,732 (13,808 – 76 = 13,732), when compared to the 2010 Census household count of 87,271, would still produce a penetration rate of 15.73 percent (13,732 / 87,271 = .1573).

[13] Opposition at 5.

[14] *See* Petition, Exhibit 4.

[15] *Id.*

For the foregoing reasons, Comcast respectfully requests that the Commission grant the Petition and confirm that Comcast has satisfied the Competing Provider test in Spokane, as well as the other four Franchise Areas at issue in this proceeding.

Respectfully submitted,

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

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February 24, 2014

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

The below-signed signatory has read the foregoing Reply to 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 is not interposed for any improper purpose.

Respectfully submitted,

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

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February 24, 2014

Its Attorney

EXHIBIT A

Newsroom

FOR IMMEDIATE RELEASE: THURSDAY, APRIL 1, 2010

SHARE

Census Bureau Says It's Not Too Late to Mail Back 2010 Census Forms

Nation's Participation Rate on Census Day is 54 Percent

Release Information

CB10-CN.41

Contact: Public Information Office
(301) 763-3030 (phone)
(301) 763-3762 (fax)
(301) 457-1037 (TDD)

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BY RSS: What's this?
XML 2010 Census

As elected officials and community leaders across the nation take part in "Census Day" activities to increase local participation in the 2010 Census, the U.S. Census Bureau today announced that 54 percent of the nation's estimated 134 million households have mailed back their census forms.

While April 1 is officially designated as Census Day, the Census Bureau will continue to accept 2010 Census questionnaires by mail through mid-April. Beginning May 1, census workers will begin going door to door to households that failed to mail back their forms — a massive operation that costs taxpayers an average of $57 per household versus the 42 cents it takes to get a response back by mail.

"The Census Bureau and I would like to thank everyone who has already taken 10 minutes to fill out and mail back the 2010 Census," Census Bureau Director Robert Groves said. "For those who have not yet had a chance to send it back, I'd like to reiterate that it's not too late to participate and doing so will save a lot of taxpayer money."

Census Day serves as the point-in-time benchmark for the nation's population count for the next 10 years. April 1 has been designated by law as Census Day since 1930. Before that, the decennial population count's reference date fell on different days, such as Aug. 7 in 1820, June 1 in 1880, and April 15 in 1910.

Severe weather conditions during the 1920 Census, which had a Census Day of Jan. 2, led to the April 1 date when weather would be temperate enough to allow census takers to travel within their assignment areas.

The Census Bureau is urging communities nationwide to take charge of their 2010 Census mail participation rates. Anyone can visit the 2010 Census Web site to see how well their state, county or neighborhood is participating in the census. From the same interactive rate map, anyone can also embed a Participation Rate Tracker "widget" on their Web site that will display an area's latest participation rates.

ABOUT THE 2010 CENSUS

The 2010 Census is a count of everyone living in the United States and is mandated by the U.S. Constitution. Census data are used to apportion congressional seats to states, to distribute more than $400 billion in federal funds to tribal, state and local governments each year and to make decisions about what community services to provide. The 2010 Census form is one of the shortest in U.S. history, consisting of 10 questions, taking about 10 minutes to complete. Strict confidentiality laws protect the respondents and the information they provide.

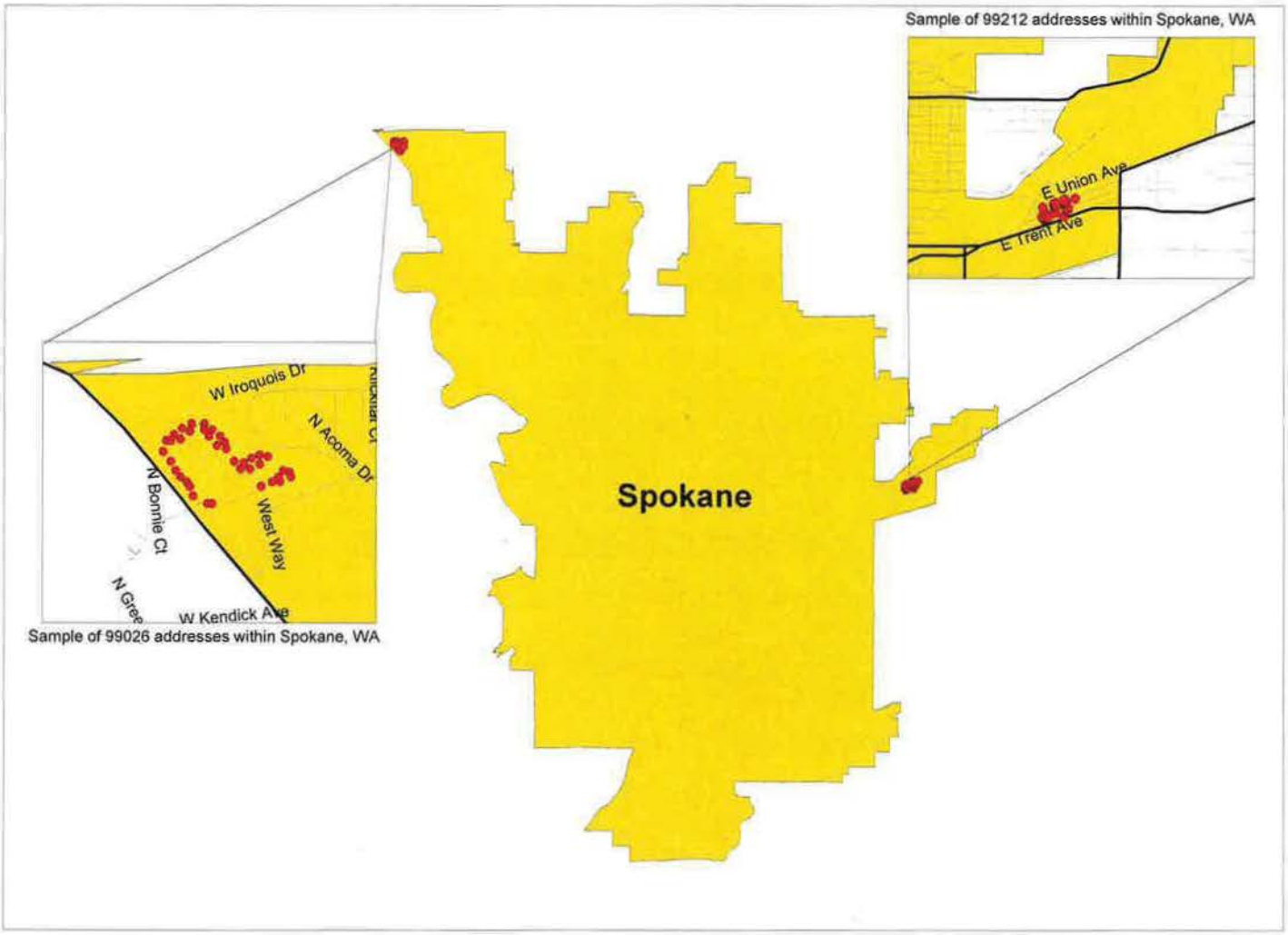
-X-

EXHIBIT B

title	address	st	zip	zip4
RESIDENT	10409 N JIMMY DR	WA	99026	9277
RESIDENT	10413 N JIMMY DR	WA	99026	9277
RESIDENT	6909 W QUENTIN CT	WA	99026	9655
RESIDENT	6921 W QUENTIN CT	WA	99026	9655
RESIDENT	6922 W QUENTIN CT	WA	99026	9655
RESIDENT	6925 W QUENTIN CT	WA	99026	9655
RESIDENT	6928 W QUENTIN CT	WA	99026	9655
RESIDENT	6902 W JIMMY CT	WA	99026	9281
RESIDENT	6906 W JIMMY CT	WA	99026	9281
RESIDENT	6910 W JIMMY CT	WA	99026	9281
RESIDENT	6914 W JIMMY CT	WA	99026	9281
RESIDENT	6918 W JIMMY CT	WA	99026	9281
RESIDENT	6922 W JIMMY CT	WA	99026	9281
RESIDENT	6926 W JIMMY CT	WA	99026	9281
RESIDENT	10425 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10426 MAXIMILIAN LN	WA	99026	9278
RESIDENT	6902 W QUENTIN CT	WA	99026	9655
RESIDENT	6903 W QUENTIN CT	WA	99026	9655
RESIDENT	6908 W QUENTIN CT	WA	99026	9655
RESIDENT	10411 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10415 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10418 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10419 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10421 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10422 MAXIMILIAN LN	WA	99026	9278
RESIDENT	10402 N JACQUELINE LN	WA	99026	9284
RESIDENT	10406 N JACQUELINE LN	WA	99026	9284
RESIDENT	10410 N JACQUELINE LN	WA	99026	9284
RESIDENT	10414 N JACQUELINE LN	WA	99026	9284
RESIDENT	10418 N JACQUELINE LN	WA	99026	9284
RESIDENT	10422 N JACQUELINE LN	WA	99026	9284
RESIDENT	10402 N JIMMY DR	WA	99026	9277
RESIDENT	10406 N JIMMY DR	WA	99026	9277
RESIDENT	10414 N JIMMY DR	WA	99026	9277
RESIDENT	10418 N JIMMY DR	WA	99026	9277
RESIDENT	10422 N JIMMY DR	WA	99026	9277
RESIDENT	10426 N JIMMY DR	WA	99026	9277
RESIDENT	10502 N JIMMY DR	WA	99026	9002
RESIDENT	10506 N JIMMY DR	WA	99026	9002
RESIDENT	10510 N JIMMY DR	WA	99026	9002
OCCUPANT	5227 E TRENT AVE	WA	99212	1352
RESIDENT	5001 E COMMERCE AVE	WA	99212	1303
RESIDENT	5004 E COMMERCE AVE	WA	99212	1303
RESIDENT	5007 E COMMERCE AVE	WA	99212	1303
RESIDENT	5012 E COMMERCE AVE	WA	99212	1303
RESIDENT	5016 E COMMERCE AVE	WA	99212	1303

RESIDENT	5019 E COMMERCE AVE	WA	99212	1303
RESIDENT	5020 E COMMERCE AVE	WA	99212	1303
RESIDENT	5023 E COMMERCE AVE	WA	99212	1303
RESIDENT	5024 E COMMERCE AVE	WA	99212	1303
RESIDENT	5028 E COMMERCE AVE	WA	99212	1303
RESIDENT	5034 E COMMERCE AVE	WA	99212	1303
RESIDENT	5029 E COMMERCE AVE	WA	99212	1303
RESIDENT	5037 E COMMERCE AVE	WA	99212	1303
RESIDENT	5038 E COMMERCE AVE	WA	99212	1303
RESIDENT	5203 E COMMERCE AVE	WA	99212	1375
RESIDENT	5204 E COMMERCE AVE	WA	99212	1375
RESIDENT	5207 E COMMERCE AVE	WA	99212	1375
RESIDENT	5208 E COMMERCE AVE	WA	99212	1375
RESIDENT	5211 E COMMERCE AVE	WA	99212	1375
RESIDENT	5218 E COMMERCE AVE	WA	99212	1375
RESIDENT	5219 E COMMERCE AVE	WA	99212	1375
RESIDENT	5223 E COMMERCE AVE	WA	99212	1375
RESIDENT	5226 E COMMERCE AVE	WA	99212	1375
RESIDENT	5227 E COMMERCE AVE	WA	99212	1375
RESIDENT	1915 N WALDO RD	WA	99212	1359
RESIDENT	1907 N WALDO RD	WA	99212	1359
RESIDENT	5104 E UNION AVE APT 1	WA	99212	1310
RESIDENT	5104 E UNION AVE APT 2	WA	99212	1310
RESIDENT	5104 E UNION AVE APT 4	WA	99212	1310
OCCUPANT	5107 E UNION AVE	WA	99212	1319
RESIDENT	5108 E UNION AVE	WA	99212	1319
RESIDENT	5112 E UNION AVE	WA	99212	1319
RESIDENT	5118 E UNION AVE	WA	99212	1319
RESIDENT	5122 E UNION AVE	WA	99212	1319
RESIDENT	5128 E UNION AVE	WA	99212	1319
OCCUPANT	5205 E UNION AVE	WA	99212	1386
RESIDENT	5204 E UNION AVE APT A	WA	99212	1311
RESIDENT	5204 E UNION AVE APT B	WA	99212	1311
RESIDENT	5204 E UNION AVE APT C	WA	99212	1311
RESIDENT	5208 E UNION AVE	WA	99212	1386
RESIDENT	5212 E UNION AVE	WA	99212	1386
RESIDENT	5218 E UNION AVE	WA	99212	1386
RESIDENT	5224 E UNION AVE	WA	99212	1386
RESIDENT	5228 E UNION AVE	WA	99212	1386
RESIDENT	5223 E UNION AVE	WA	99212	1386
OCCUPANT	5315 E UNION AVE	WA	99212	1320
OCCUPANT	5323 E UNION AVE	WA	99212	1320
RESIDENT	5328 E UNION AVE	WA	99212	1320
RESIDENT	5332 E UNION AVE	WA	99212	1320

EXHIBIT C


Sample of 99212 addresses within Spokane, WA
E Union Ave
E Trent Ave
Spokane
W Iroquois Dr
N Acoma Dr
N Bonnie Ct
West Way
W Kendick Ave
Sample of 99026 addresses within Spokane, WA

CERTIFICATE OF SERVICE

I, Deborah Williams, do hereby certify on this 24th day of February, 2014 that a true and correct copy of the foregoing "Reply to Opposition" has been sent via U.S. mail, postage prepaid to the following:

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