

**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:)	CSR-8854-E
7 Washington Franchise Areas)	MB Docket No. 13-286
To: Office of the Secretary		
Attn: Chief, Media Bureau		

REPLY TO OPPOSITIONS

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates (“Comcast”), hereby replies to the Oppositions to Petition for Special Relief (collectively, the “Oppositions”) submitted by the communities of Burien and Kent, Washington (the “Cities”) in the above-captioned proceeding. The Oppositions misconstrue the requirements for “effective competition” showings and have no basis either in fact or law. Because the Franchise Areas in this case are subject to effective competition and because the Oppositions do not identify any credible basis to conclude otherwise, Comcast’s Petition should be granted without delay.

I. DBS PROVIDERS OFFER “COMPARABLE” PROGRAMMING

The Cities claim that the programming offered by DirecTV and Dish Network is not “comparable” to Comcast’s programming because the DBS Providers do not offer certain local PEG access channels.¹ There is no PEG requirement in the relevant effective competition

¹ See Oppositions at 2.

regulations, and the Commission has expressly rejected similar challenges in the past. In a 2009 decision, the Commission explained:

The full Commission, when it adopted the definition of “comparable programming,” was fully aware of PEG channels – it discussed both in the same decisions. If the full Commission had wanted PEG channels to be part of “comparable programming,” it would have stated so. It did not.²

More recently, the Commission confirmed that “[t]he rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being ‘comparable to cable operators’ for purposes of determining effective competition.”³

As Comcast explained in its Petition, the Commission’s rules define “comparable programming” as “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.” There is no question that DirecTV and Dish Network each satisfy this this straight-forward test.⁴

II. THE CITIES MISCONSTRUE THE LEGAL REQUIREMENTS FOR EFFECTIVE COMPETITION SHOWINGS

The Oppositions contend that cable operators should not be permitted to rely on the existence of DBS subscribership as evidence of effective competition – because DBS service does not “create effective competition.”⁵ The Oppositions urge the Commission to ignore controlling statutory language and twenty years of direct Commission precedent. The Oppositions are wrong.

² *Cablevision of Oakland, Inc. and CSC TKR Inc., Petition for Determination of Effective Competition in Four Communities in New Jersey*, 24 FCC Rcd. 1801, ¶ 7 (2009).

³ *Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Six Michigan Communities*, 26 FCC Rcd. 3993, ¶ 5 (2011).

⁴ See 47 C.F.R. § 76.905(g).

⁵ Oppositions at 2.

Section 623(I)(1)(B) of the Communications Act specifies that effective competition will be found where the franchise area is:

- (i) served by at least two unaffiliated *multichannel video programming distributors* each of which offers comparable video 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.⁶

Section 602(13) of the Act defines “multichannel video programming distributors” (“MVPDs”) specifically to include “direct broadcast satellite service.”⁷ Based on these unambiguous statutory provisions, DBS competition must be considered in this proceeding. Contrary to the Cities’ suggestion, Congress *did not* leave open to Commission discretion whether DBS service should or should not be counted under the Competing Provider Test.

The Cities’ argument for disregarding DBS competition not only conflicts with the governing statutory language, it also ignores repeated Commission decisions denying this same challenge to effective competition petitions.⁸ In a 2010 decision, the Commission ruled:

We have no authority to alter the statute and, therefore, we may not exclude DBS providers from the class of MVPDs that we consider in the competing provider test.⁹

⁶ 47 U.S.C. § 543(I)(1)(B) (emphasis added).

⁷ 47 U.S.C. § 522(13).

⁸ See, e.g., *Cablevision Systems East Hampton Corp.*, 24 FCC Rcd. 10846, ¶ 13 (2009) (“We have no authority to alter the statute and, therefore, may not exclude DBS providers from the class of MVPDs that we consider in the competing provider test.”); *CoxCom, Inc., d/b/a Cox Commun. Orange County*, 22 FCC Rcd. 4522 (2007); *Comcast Cable Commun., LLC, Petition for Determination of Effective Competition in Forty-Two California Franchise Areas*, 22 FCC Rcd. 694 (2007).

⁹ *Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Two Communities in Maryland*, 25 FCC Rcd. 13340, ¶ 13 (2010)(emphasis added).

In a separate decision, the Commission reiterated:

DBS providers are explicitly included in the statutory definition, and, therefore, we may not exclude them from the class of MVPDs that we consider in the competing provider test.¹⁰

The controlling statute makes clear that DBS providers must be considered under the Competing Provider Test, and the Commission has properly and repeatedly ruled that it lacks discretion to entertain a contrary approach.

Finally, the Oppositions criticize Comcast for not specifically addressing whether a determination of effective competition would be in the “public interest.”¹¹ The Cities’ contention that a public interest showing must be included in effective competition petitions is unfounded. Section 76.7(a)(4) (which the Cities themselves cite in the Oppositions) provides that:

(i) The petition or complaint shall state the relief requested. It shall state fully and precisely *all pertinent facts and considerations relied on* to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. [47 C.F.R. § 76.7(a)(4)(i)(emphasis added)]

Section 76.7 is a procedural rule applicable to special relief petitions in general, not just to those petitions pertaining to effective competition. This procedural rule requires petitioners to “state fully and precisely all pertinent facts and considerations relied on,” to support a determination *by the Commission* that a grant of such relief would serve the public interest.¹² It

¹⁰ *Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Four Communities in Maryland*, 25 FCC Rcd. 12783, ¶ 6 (2010).

¹¹ Oppositions at 5-6.

¹² 47 C.F.R. § 76.7(a)(4)(i)

does not require a separate statement or demonstration within the petition that such a grant would be in the public interest, as the Cities suggest.¹³

There is no question that Comcast has set forth the “pertinent facts and considerations” necessary for the Commission to find the existence of effective competition in the Franchise Areas. Congress has already unequivocally answered the Cities’ “public interest” concerns. Congress determined twenty years ago that the public interest is best served when cable systems facing effective competition (*as defined by statute*) compete without the extra burden of local rate regulation.¹⁴ Congress’ public interest determination is necessarily controlling in this proceeding.¹⁵

¹³ The Oppositions’ comparison of rates from different communities and their speculation that rates might go up are similarly irrelevant under the statute.

¹⁴ 47 U.S.C. § 543(a)(2) (“Preference for Competition. If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section.”).

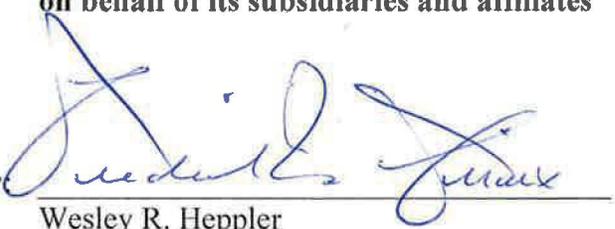
¹⁵ See *Comcast Cable Commun., LLC Petition for Determination of Effective Competition in Nine Minnesota Franchise Areas*, 28 FCC Rcd. 5499, ¶ 20 (2013) (“We decline to consider [the LFA’s] proposed [public interest] criteria, as we have declined to consider several similar proposals. . . . We note that Congress provided the Commission with expressly crafted tests for determining effective competition that do not instruct the Commission to take into account the public interest in determining the existence or non-existence of effective competition. . . . There is no statutory basis to delay basic rate deregulation in a franchise area until the arrival of perfect competition there and the resolution of all issues between a cable operator and a franchise authority to the latter’s satisfaction.”).

CONCLUSION

For the foregoing reasons, and based upon the clear and unrefuted evidence Comcast has submitted in this proceeding, the Commission should grant Comcast's Petition without delay.

Respectfully submitted,

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

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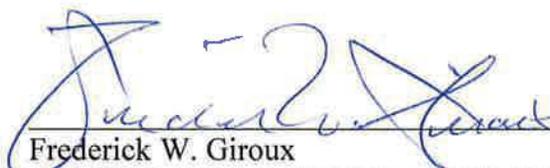
CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Reply to Oppositions, 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,

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CERTIFICATE OF SERVICE

I, Deborah Williams, do hereby certify on this 28th day of February, 2014 that a true and correct copy of the foregoing "Reply to Oppositions" has been sent via U.S. mail, postage prepaid to the following:

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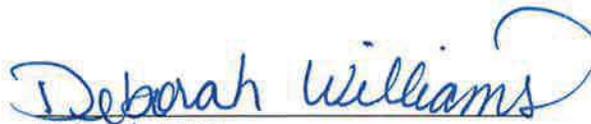
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