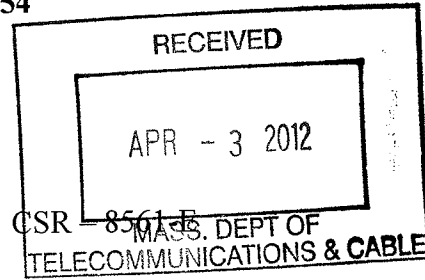


**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**



In the Matter of )  
 )  
Charter Communications, )  
on behalf of its subsidiaries and affiliates )  
 )  
For Determination of Effective Competition in: )  
29 Massachusetts Franchise Areas )  
1 New Hampshire Franchise Area )  
  
To: Chief, Media Bureau

**REPLY TO OPPOSITION**

Charter Communications, on behalf of its subsidiaries and affiliates (together “Charter” or the “Company”), hereby replies to the Opposition to Petition for Special Relief (the “Opposition”) submitted by the Town of Berlin, Massachusetts (the “Town”), in the above-referenced proceeding. The Town has failed to identify any credible basis to deny the contested Petition.

**I. DBS PROGRAMMING IS “COMPARABLE.”**

The Town first contends that the programming offered by DBS providers DirecTV and Dish Network is not “comparable” to Charter’s programming, because the DBS providers fail to offer local Public, Educational, and Government (“PEG”) Access programming.<sup>1</sup> There is, of course, no such requirement in the governing “effective competition” regulations.

As Charter explained in its Petition, the Commission’s rules clearly define “comparable programming” as “at least 12 channels of video programming, including at least one channel of

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<sup>1</sup> See Opposition at 2-6.

nonbroadcast service programming.”<sup>2</sup> There is no dispute that DirecTV and Dish Network satisfy this straight-forward test, as the Commission has properly concluded in hundreds of cases spanning more than a decade. The Opposition itself concedes that “the Commission has on a number of occasions ... rejected [the Town’s argument] regarding the ‘comparable programming’ requirement and the absence of PEG Access programming by DBS providers.”<sup>3</sup>

The Town, nonetheless, contends that it is “an obligation of the Commission to rethink its rulings, and its regulations ...” on the issue of “comparable programming.”<sup>4</sup> However, the Town has not demonstrated that the Commission failed to consider PEG programming when it adopted the “comparable programming” rule in 1993, nor has it demonstrated that a lack of PEG programming fatally undermines DBS as a viable competitor. To the contrary, 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.”<sup>5</sup>

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<sup>2</sup> 47 C.F.R. § 76.905(g).

<sup>3</sup> Opposition at 3.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Cablevision of Oakland, Inc., et al.*, 24 FCC Rcd. 1801, ¶ 7 (2009) citing *Implementation of Section of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd. 5631, ¶¶ 37-38 (discussing comparable programming), ¶¶ 158-60 (discussing PEG channels) (1993), *on reconsideration*, 9 FCC Rcd. 4316, ¶¶ 11-14 (discussing comparable programming), ¶ 139 (discussing PEG channels), ¶ 144 (discussing PEG channels) (1994), *reversed in part on other grounds, Time Warner Entertainment Co., L.P. v. FCC*, 56 F3d 151 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1112 (1996).

In any event, if the Town wants to change the definition of “comparable programming” in Section 76.905(g) of the Commission’s rules, it should file a petition for rulemaking. This effective competition adjudication is not the place to abandon well-established rules that have been applied in hundreds of cases over many years.<sup>6</sup>

## **II. CHARTER HAS ALREADY PROVIDED ALL APPROPRIATE DOCUMENTATION.**

The Town also requests that Charter be required to “document its calculation in support of the second prong of the competing provider test.”<sup>7</sup> In fact, Charter has already provided that documentation.

As discussed at length in its Petition, Charter relied on independent third-party data in order to determine the DBS penetration in each of the Franchise Areas, including Berlin. Charter began its analysis by obtaining a list of franchise-specific ZIP+4 codes from Media Business Corp. (“MBC”). Charter then obtained from the Satellite Broadcasting and Communication Association (“SBCA”) a report detailing the number of DBS subscribers associated with the indentified ZIP+4 codes and tallying the total number of DBS subscribers in each of the Franchise Areas. The list of ZIP+4 codes, the associated DBS subscribers, and the summary of DBS subscribers in each of the Franchise Areas were all included in Exhibit 7 to Charter’s Petition. Charter then calculated DBS penetration by comparing the number of DBS subscribers associated with each of the respective Franchise Areas to the U.S. Census Bureau’s 2010

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<sup>6</sup> See *Cablevision Systems East Hampton Corp.*, 24 FCC Rcd. 10846, ¶9 (2009) (“Any objection to the scope of our definition [of ‘comparable programming’] is more suited to a rulemaking proceeding where a rule can be modified than an adjudicatory proceeding where it is merely applied to a set of facts.”).

<sup>7</sup> Opposition at 6.

occupied housing data.<sup>8</sup> Not only has Charter already submitted the relevant data and documentation to the Town, but the Opposition has failed to identify any flaws in Charter's DBS penetration calculation or the underlying data already provided.

**CONCLUSION**

Charter has met its burden under Section 623 of the Communications Act and Section 76.905 of the Commission's implementing regulations. The Town's allegations regarding the lack of "comparable programming" and the "supporting documentation" are legally and factually flawed. For the reasons set forth herein and in the Company's initial Petition, the Commission should promptly issue an order recognizing the existence of effective competition in this case.

Respectfully submitted,

**Charter Communications,  
on behalf of its subsidiaries and affiliates**

By: \_\_\_\_\_

Frederick W. Giroux

**Davis Wright Tremaine, LLP**  
1919 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20006  
(202) 973-4200

March 7, 2012

Its Attorney

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<sup>8</sup> The comparison is provided in Exhibit 9 to Charter's Petition. The U.S. Census figures used in that comparison are included in Exhibit 8 to the Petition.

**CERTIFICATE OF SERVICE**

I, Deborah D. Williams, do hereby certify on this 7<sup>th</sup> day of March, 2012 that a true and correct copy of the foregoing "Reply to Opposition" has been sent via U.S. mail, postage prepaid to the following:

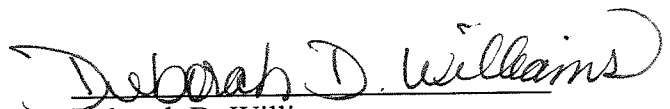
Steven A. Broeckaert, Esq.  
Media Bureau Policy Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-A865  
Washington, DC 20554

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

William H. Solomon  
319 Main Street  
Stoneham, Massachusetts 02180

Geoffrey G. Why  
Commissioner  
Massachusetts Department of  
Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500

Sean M. Carroll  
Hearing Officer  
Massachusetts Department of  
Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500

  
Deborah D. Williams