

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Comcast Cable Communications, LLC, for a Determination of Effective Competition in Massachusetts Communities Listed in Appendix A	)	MB Docket No. 19-385 CSR No. 8984-E
	)	
Petition of CoxCom, LLC d/b/a Cox Communications for a Determination of Effective Competition in Holland, Massachusetts (MA0321)	)	MB Docket No. 20-10 CSR No. 8985-E
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 7, 2020**

**Released: December 7, 2020**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we grant the petitions of Comcast Cable Communications, LLC (Comcast) and CoxCom, LLC d/b/a Cox Communications (Cox), each of which seeks a determination that it faces local exchange carrier (LEC) effective competition in certain Massachusetts communities.<sup>1</sup> We conclude that AT&T’s video streaming service, AT&T TV NOW (f/k/a DIRECTV NOW),<sup>2</sup> satisfies the “LEC Test” set forth in section 623(l)(1)(D) of the Act, consistent with the Commission’s prior application of the LEC Test in the *Charter Order*.<sup>3</sup> Therefore, Comcast and Cox face effective competition and will be exempt from cable rate regulation in these Massachusetts communities (collectively, the Franchise Areas).<sup>4</sup>

**II. BACKGROUND**

2. Congress authorized local franchising authorities to regulate the rates for the basic cable

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<sup>1</sup> This form of effective competition is defined in section 623(l)(1)(D) of the Communications Act of 1934, as amended (the Act). 47 U.S.C. § 543(l)(1)(D).

<sup>2</sup> See DIRECTV, LLC, a subsidiary of AT&T Inc., Get More TV Freedom, <https://www.attvnow.com/> (last visited Dec. 3, 2020).

<sup>3</sup> *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, MB Docket No. 18-283, CSR 8965-E, Memorandum Opinion and Order, 34 FCC Rcd 10229 (Oct. 25, 2019) (*Charter Order*); see generally *Leased Commercial Access; Modernization of Media Regulation Initiative*, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 4934, 4938, para. 10 (2019) (recognizing that “consumers are able to access video programming via means other than traditional broadcast and cable television, and the Internet is widely available for this purpose”); *Communications Marketplace Report*, GN Docket No. 18-231, Report, 33 FCC Rcd 12558, 12607-08, paras. 81-82 (2018) (describing the increasing competitive relevance of video streaming services).

<sup>4</sup> Petition of Comcast Cable Communications, LLC for Determination of Effective Competition in Massachusetts Communities, MB Docket No. 19-385 (rec. Dec. 16, 2019) (Comcast Petition); Petition of CoxCom, LLC d/b/a Cox Communications for Determination of Effective Competition, MB Docket No. 20-10 (rec. Dec. 18, 2019) (Cox Petition) (collectively, Petitions). Each petition was reviewed on its individual merits, although we consider each collectively in our analysis below, differentiating only where necessary. A full list of the Comcast franchise areas is set forth below at Appendix A; the Cox Petition addresses the one franchise area of Holland, Massachusetts.

television service tier and equipment in limited circumstances and in a manner that reflects a “preference for competition.”<sup>5</sup> Local franchise authorities may not regulate the rates in franchise areas that are subject to “effective competition,” which may be demonstrated by one of four means pursuant to the Act.<sup>6</sup> One of those means, LEC effective competition (or the LEC Test), requires rate deregulation if facts indicate that the rate-regulated cable system is subject to effective competition in the franchise area from “a local exchange carrier or its affiliate (or any [MVPD] using the facilities of such carrier or its affiliate) [that] offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.”<sup>7</sup>

3. In October 2019, the Commission adopted the *Charter Order* granting a Petition for Determination of Effective Competition similar to the petitions filed by Comcast and Cox.<sup>8</sup> The Commission found the incumbent cable operator was subject to effective competition from AT&T’s video streaming service, previously known as the DIRECTV NOW video streaming service, in certain franchise areas in Hawaii and Massachusetts, under the statutory LEC Test. This streaming service offers customers access to at least 45 channels of live television, local broadcast stations, and cloud digital video recorder (DVR) storage.<sup>9</sup> This was the first time that a streaming service had been recognized as an “effective competitor” under the LEC Test. The *Charter Order* has been appealed to the United States Court of Appeals for the First Circuit (First Circuit).<sup>10</sup>

4. *Comcast Petition.* On December 16, 2019, Comcast filed a Petition for Determination of Effective Competition seeking a determination that its cable television service in the Comcast Franchise Areas is subject to effective competition under the LEC Test and therefore exempt from any rate regulation.<sup>11</sup> Comcast’s “Petition is premised on the availability of AT&T’s video streaming service – previously known as DIRECTV NOW and currently known as AT&T TV NOW.”<sup>12</sup> According to Comcast, consistent with the LEC Test and the Commission’s application of it in the *Charter Order*, the AT&T TV NOW “service: (1) is provided by a ‘LEC affiliate’; (2) is ‘offered’ in the franchise areas; (3) is offered ‘directly to subscribers’; and (4) is a ‘comparable’ video programming service under the LEC

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<sup>5</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (1992 Cable Act); 47 U.S.C. § 543(a)(2)(A), (c)(4).

<sup>6</sup> 47 U.S.C. § 543(1)(1)(A)-(D); *see also* *Modernization of Media Regulation Initiative; Revisions to Cable Television Rate Regulations*, Further Notice of Proposed Rulemaking and Report and Order, 33 FCC Rcd 10549, 10552, para. 6 (2018) (“As a consequence of the 2015 *Effective Competition Order* and the increasing competition among MVPDs, few [franchising authorities] are currently allowed to regulate [basic service tier] rates under the Act and very few cable systems remain rate regulated today.”).

<sup>7</sup> 47 U.S.C. § 543(1)(1)(D); *see also* 47 CFR § 76.905(b)(4) (implementing the statutory LEC Test).

<sup>8</sup> *See* Petition of Charter Commc’ns, Inc. for a Determination of Effective Competition, MB Docket No. 18-283 (filed Sept. 14, 2018).

<sup>9</sup> Petitioners describe the AT&T TV NOW service as substantially similar to that considered by the Commission in the *Charter Order*. *See Charter Order*, 34 FCC Rcd at 10230-31, para. 3 (describing the AT&T streaming service features, accessibility, and costs); Comcast Petition at 5 (“Comcast is unaware of any material changes to AT&T’s video streaming service occurring in the brief time since the Commission issued the *Charter* decision.”); Cox Petition at 2 (describing the “AT&T TV NOW streaming service ... offer[ing] comparable video programming (i.e., at least twelve channels of programming, including at least one channel of non-broadcast service programming) directly to all Holland residents with an internet connection” (citing *Charter Order*, 34 FCC Rcd at 10230-31, para. 3)).

<sup>10</sup> *See Massachusetts Department of Telecommunications and Cable v. FCC*, No. 19-2282 (1st Cir.).

<sup>11</sup> Comcast Petition at 1. The Comcast Petition was placed on public notice. *See Special Relief and Show Cause Petitions*, Report No. 0487, Public Notice (Dec. 20, 2020).

<sup>12</sup> Comcast Petition at 1.

Test.”<sup>13</sup> The Massachusetts Department of Telecommunications and Cable (MDTC), the Office of the Attorney General for the Commonwealth of Massachusetts (the Massachusetts AGO), and the City of Cambridge, Massachusetts filed oppositions to Comcast’s petition,<sup>14</sup> to which Comcast replied.<sup>15</sup>

5. *Cox Petition.* On December 18, 2019, Cox filed a Petition for Determination of Effective Competition, asserting that it is subject to effective competition under the LEC Test in Holland, Massachusetts (Cox Franchise Area).<sup>16</sup> Citing to the facts in the *Charter Order*, Cox contends, “the same is true in Holland ... where Cox also competes with AT&T TV NOW and other multichannel video

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<sup>13</sup> *Id.* at 3-4 (quoting *Charter Order*, 34 FCC Rcd at 10232-38, paras. 6, 8, 11, 13).

<sup>14</sup> Massachusetts Department of Telecommunications and Cable Opposition to Comcast Cable Communications, LLC’s Petition for Special Relief, MB Docket No. 19-385 (rec. Jan. 23, 2020) (MDTC Comcast Opposition); Comments of Office of the Attorney General for the Commonwealth of Massachusetts, MB Docket No. 19-385 (rec. Jan. 23, 2020) (Massachusetts AGO Comcast Comments); Comments of the City of Cambridge, Main Opposition to Comcast’s Petition and in Support of MDTC’s Motion for Abeyance, MB Docket No. 19-385 (rec. Jan. 27, 2020) (City of Cambridge Comments). MDTC submitted its Opposition with information it designated as confidential, and served a redacted version of its Opposition on Comcast, without requesting confidential treatment from the Commission. See 47 CFR § 0.459 (“Requests that materials or information submitted to the Commission be withheld from public inspection.”). MDTC made a similar filing that included redacted confidential information in the Cox petition docket. See *infra* note 20. As described by MDTC, the redacted data indicates (1) Comcast and Cox “share[s] of the broadband internet access services market in the Franchise Area[s]”; and (2) Petitioners’ failed to establish there are no impediments to taking AT&T TV NOW service considering the number of “housing units [that] did not subscribe to broadband internet access service adequate to receive AT&T TV NOW,” in 2017. MDTC Comcast Opposition at 6-11, 23, 30, Exh. A; MDTC Cox Opposition at 6-13, 10, 10 n.36, 14, 38-39. We find that the information redacted in MDTC’s Oppositions would not assist our determination of the Petitions for reasons stated by the Commission. In the *Charter Order*, the Commission considered similar arguments and (1) concluded it is “irrelevant” whether the incumbent cable operator is the only entity providing broadband Internet access enabling the LEC affiliate streaming service; and (2) disagreed that evidence of some households choosing not to subscribe to broadband Internet access service suggests the existence of an impediment to receiving the streaming service in the Franchise Areas. See *Charter Order*, 34 FCC Rcd at 10234-36, 10244-45, paras. 9 (citing 47 CFR § 76.905(e)(2)), 21, 23. The Commission instead focused on “the record demonstrat[ing] that broadband Internet access is available throughout the Franchise Areas, at a sufficient speed to access DIRECTV NOW.” *Id.* at 10238, 10244, paras. 13, 21. We reject MDTC’s arguments for the same reasons here. Even if we were to consider MDTC’s submitted data, the broadband Internet subscription rates within the various franchise areas, as reflected in MDTC’s confidential analysis, is not at a level that would indicate an impediment to receiving the streaming service, particularly in light of uncontested information from Petitioners indicating significant broadband Internet adoption and availability throughout the Franchise Areas. *Id.* at 10233-34, 10244-45, paras. 8, 9, 21, 23, and n.35. We agree with Comcast that, “[t]he broadband Internet adoption results . . . by their nature, demonstrate deployment,” which is consistent with Comcast’s reporting that it is able to provide broadband Internet access to 100 percent of its customers and service at 25/3 Mbps is “currently available to at least 96% of the households in each of the Franchise Areas”; Cox similarly reports “[g]iven existing facilities, AT&T TV NOW can reach every customer and potential customer in Holland without installing the physical infrastructure otherwise necessary to do so.” Comcast Petition at 6-7; Cox Petition at 12. Further, we are concerned that the discrepancy in the age of the data used by MDTC to calculate the take rate in its analysis might skew the results and thus call into question its reliability. See MDTC (confidential) Opposition to Comcast Petition, Exh. A (comparing 2017 broadband subscription data with 2010 Census housing units data). We also question the relevance of the data that MDTC cites that relates to 2017 “Broadband Connections” and “Subscription Rates” with “at least 12/1 Mbps”; AT&T TV NOW is viable at 8, rather than 12, Mbps, and broadband adoption rates have been generally increasing nationwide since 2017. MDTC Comcast Opposition at Exh. A; MDTC Cox Opposition at 10, 37; see *infra* note 45.

<sup>15</sup> Comcast Cable Communications, LLC Reply to Oppositions to Comcast Cable Communications, LLC’s Petition for Special Relief, MB Docket No. 19-385 (rec. Feb. 18, 2020) (Comcast Reply to Oppositions).

<sup>16</sup> Cox Petition. The Cox Petition was placed on public notice. See Special Relief and Show Cause Petitions, Report No. 0488, Public Notice (Jan. 10, 2020). By email, the Media Bureau granted an extension of time for comments or oppositions to February 13, 2020, with replies or comments due 24 days later. See <https://ecfsapi.fcc.gov/file/10113799415214/Cox.pdf>.

programming distributors (‘MVPDs’).<sup>17</sup> Specifically, according to Cox, “[t]he AT&T TV NOW streaming service satisfies every aspect of the LEC Test: AT&T TV NOW is a LEC affiliate that is not affiliated with Cox and that offers comparable video programming (i.e., at least twelve channels of programming, including at least one channel of non-broadcast service programming) directly to all Holland residents with an internet connection, and Holland residents are broadly aware of AT&T TV NOW’s competing video service due to AT&T’s extensive marketing, among other things.”<sup>18</sup> Cox supports its description of AT&T and its streaming multichannel video service with a variety of AT&T TV NOW marketing materials, press coverage, and channel lineups.<sup>19</sup> The Commission received oppositions to the Cox Petition from MDTC and the Massachusetts AGO,<sup>20</sup> to which Cox filed a reply.<sup>21</sup>

6. *Motions for Abeyance and Requests for Discovery, and Evidentiary Hearings or References to an Administrative Law Judge.* On January 9, 2020, MDTC filed a Motion for Abeyance in the Comcast docket requesting an abeyance until sometime after its appeal of the *Charter Order* to the First Circuit has concluded.<sup>22</sup> On January 13, 2020, MDTC filed a Motion for Abeyance in the Cox docket similarly asking the Commission to hold consideration of Cox’s petition in abeyance pending resolution of its appeal of the *Charter Order*.<sup>23</sup> According to MDTC, an abeyance would prevent “any unnecessary expenditure of resources by either the Commission or the parties” should the Court, on appeal, accept MDTC’s challenge, which might require reconsideration of the Bureau’s decisions in these proceedings.<sup>24</sup> Comcast filed an opposition to MDTC’s motion on January 21, 2020, stating that no “‘extraordinary circumstances’ in this case justify the Bureau departing from its well-established procedures.”<sup>25</sup> Cox filed an opposition to MDTC’s motion on January 21, 2020, stating “it is both procedurally and substantively deficient under the Commission’s rules.”<sup>26</sup>

7. As part of its comments in each docket, the Massachusetts AGO “asks the Commission to issue discovery requests and require [Petitioners to] submit additional information to determine” the viability of AT&T TV NOW service in the Franchise Areas.<sup>27</sup> The Massachusetts AGO also requests, in

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<sup>17</sup> Cox Petition at iii.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 8-9 (contending that AT&T is a LEC affiliate), 9-14 (describing AT&T TV NOW as available throughout the Franchise Area, facing no legal or other impediment from delivering competing video service, and marketed broadly to consumers).

<sup>20</sup> Massachusetts Department of Telecommunications and Cable Opposition to CoxCom, LLC d/b/a Cox Communication’s Petition for Special Relief, MB Docket No. 20-10 (rec. Jan. 23, 2020) (MDTC Cox Opposition); Comments of Office of the Attorney General for the Commonwealth of Massachusetts, MB Docket No. 20-10 (filed Feb. 13, 2020) (Massachusetts AGO Cox Comments).

<sup>21</sup> CoxCom, LLC d/b/a Cox Communications Reply to Oppositions to CoxCom, LLC d/b/a Cox Communications’ Petition for Special Relief, MB Docket No. 20-10 (rec. Mar. 11, 2020) (Cox Reply to Oppositions).

<sup>22</sup> Massachusetts Department of Telecommunications and Cable (MDTC), Motion for Abeyance, MB Docket No. 19-385, at 1 (rec. Jan. 9, 2020) (MDTC Motion for Comcast Abeyance); City of Cambridge Comments at 3-4 (supporting the request for abeyance); *see also Massachusetts Department of Telecommunications and Cable v. FCC*, No. 19-2282 (1st Cir.).

<sup>23</sup> Massachusetts Department of Telecommunications and Cable (MDTC), Motion for Abeyance, MB Docket No. 20-10, at 1 (rec. Jan. 13, 2020) (MDTC Motion for Cox Abeyance).

<sup>24</sup> MDTC Motion for Comcast Abeyance at 2, 3; MDTC Motion for Cox Abeyance at 2, 3.

<sup>25</sup> Comcast Cable Communications, LLC Opposition to Motion for Abeyance, MB Docket No. 19-385, at 2 (rec. Jan. 21, 2020) (Comcast Abeyance Opposition).

<sup>26</sup> CoxCom, LLC d/b/a Cox Communications, CoxCom, LLC Opposition to Motion for Abeyance, MB Docket No. 20-10, at 1 (rec. Jan. 21, 2020) (Cox Abeyance Opposition).

<sup>27</sup> The Massachusetts AGO requests discovery to determine if Petitioners are the only fixed broadband Internet service providers in the Franchise Areas; Petitioners’ available download-speed packages; whether Petitioners’

each docket, an evidentiary hearing or referral of the Petition to an administrative law judge.<sup>28</sup> Comcast challenges the necessity of any information that might be gained from granting the Massachusetts AGO's requests.<sup>29</sup> Cox similarly opposes the requests "because granting them could not aid the Bureau in considering the Petition."<sup>30</sup>

### III. DISCUSSION

8. As an initial matter, we deny the motions for an abeyance of determination of the Petitions and requests for discovery and evidentiary hearings or references to an Administrative Law Judge for the reasons described below.<sup>31</sup> In addition, we find that Comcast and Cox have demonstrated that each is subject to effective competition under the LEC Test in the Franchise Areas, consistent with the direct language of the LEC Test and the Commission's *Charter Order*, which rejects the same arguments that MDTC and the Massachusetts AGO make here.

9. *Motions for Abeyance.* We deny MDTC's motions for an abeyance of determination of the Petitions.<sup>32</sup> MDTC does not present "extraordinary circumstances" warranting unique relief under the Commission's rules, and otherwise fails to justify delaying this proceeding.<sup>33</sup> Particularly in light of the "presumption of regularity" long accorded to agency action,<sup>34</sup> an appeal of a Commission action is not ordinarily an "extraordinary circumstance" that warrants pausing any potentially related actions.<sup>35</sup> Significantly, MDTC did not seek a stay at the Commission or in the First Circuit, the appellate court reviewing the *Charter Order*.<sup>36</sup> MDTC's description of its hardship does not distinguish its position from

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download speeds match promised service levels; whether Petitioners throttle "speeds of [their] fixed broadband internet customers that do not take Petitioners' cable television services; and, the differences in rates offered for [Petitioners'] unbundled fixed broadband Internet services and those same services bundled with cable television services or telephone services." Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4.

<sup>28</sup> Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4.

<sup>29</sup> Comcast Reply to Oppositions at 14.

<sup>30</sup> Cox Reply to Oppositions at 14.

<sup>31</sup> See *infra* paras. 14-15.

<sup>32</sup> MDTC Comcast Abeyance Motion at 2-3, 6; MDTC Cox Abeyance Motion at 2-3, 6. In support of its motion, MDTC explains that, regardless of when the Petition is considered, an abeyance would not raise a prejudicial timing issue, considering a potential favorable decision for Cox would relate back to the day it filed the Petition; a commitment from Cox to "not raise its current rates for regulated services (basic service programming, equipment, and installation) through March 16, 2021"; and "MDTC's willingness to hold its review of Cox's December 16, 2019 rate filing in abeyance." MDTC Comcast Abeyance Motion at 6; MDTC Cox Abeyance Motion at 6.

<sup>33</sup> See 47 CFR § 76.7(d).

<sup>34</sup> See, e.g., *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971) (applying the "presumption of regularity," a presumption of administrative completeness and accuracy, as part of the court's inquiry).

<sup>35</sup> See Comcast Abeyance Opposition at 5 (citing *Rates for Interstate Inmate Calling Servs.*, Order, 28 FCC Rcd 15927, 105952-53, paras. 58-62 (2013); *Application of MCI Telecommunications Corp.*, Order, 11 FCC Rcd 16275, 16278-79, paras. 11-12 (1996); *KCAL-TV, Los Angeles, Cal., Letter from Barbara Kreisman, Chief, Video Services Div., Mass Media Bureau, to Counsel for The Walt Disney Comp. and Young Broadcasting of Los Angeles*, 11 FCC Rcd 11647 (1996); *Amendment of Section 73.202(b), Table of Allotments, FM Broad. Stations*, Report and Order, 3 FCC Rcd 4840, 4842-43, paras. 18-21 (1988)).

<sup>36</sup> Cox Abeyance Opposition at 2-3 (arguing that "MDTC's claim that abeyance under these circumstances is 'equitable' and would impose 'little if any harm' on Cox . . . is anything but equitable and imposes substantial and unjustifiable harm on Cox in violation of the Communications Act and the Commission's policies," considering MDTC "elected not to submit any Petition for Reconsideration or Application for Review" of the *Charter Order* with the Commission before filing its Petition for Review of the *Charter Order* in the First Circuit, and did "not to seek a stay of Charter Order either from the Commission or from the First Circuit." (citing MDTC Cox Abeyance Motion at 1)).

parties to many appeals of Commission actions and is dissimilar to prior instances in which the Commission has recognized extraordinary circumstances warranting an abeyance.<sup>37</sup> The potential harms identified by MDTC, such as the judicial “[r]eview of the complex legal and statistical arguments,”<sup>38</sup> do not outweigh the significant public interest benefit of recognizing competition when it is present, and removing regulatory constraints in favor of market dynamics, as the LEC Test of the Act requires. MDTC’s motion for abeyance, therefore, is denied.

10. *The LEC Test.* First, we find that AT&T TV NOW is provided by a “LEC affiliate” under the LEC Test, because AT&T TV NOW is affiliated with AT&T’s LECs through common ownership by AT&T.<sup>39</sup> Second, consistent with the *Charter Order*, we find that AT&T TV NOW is “offered” in the Franchise Areas.<sup>40</sup> The effective competition rules provide that a competing service is deemed “offered” if (1) the distributor is “physically able to deliver the service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual

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<sup>37</sup> MDTC Comcast Abeyance Motion at 6; MDTC Cox Abeyance Motion at 6 (stating “MDTC will suffer the hardship of litigating two petitions before the Bureau, while simultaneously pursuing the same issues in the First Circuit challenging the Charter MO&O” (citation omitted)); Comcast Abeyance Opposition at 5-7; Cox Abeyance Opposition at 5-10. Further, MDTC’s abeyance requests do not jointly identify compelling issues of law and fact warranting a delay, and the cases they cite are not analogous. See *MCI Telecomms. Corp. v. Pac. Bell*, Order, 14 FCC Rcd 15362, 15363-64, para. 5 (1999) (granting a Joint Motion for Abeyance that “would facilitate the resolution” of issues pending before a state public utility commission and a recent judicial decision); *Policies & Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Order, 11 FCC Rcd 856 (1995) (agreeing with parties and finding “the public interest would best be served by ruling on the issues raised in the pending petitions for reconsideration before requiring affected parties to take actions to comply with the [primary interexchange carrier (‘PIC’)] verification requirements” at issue). Neither the *Charter Order*, nor any related Commission action, has been remanded, obligating the Commission to reconsider any related issue of fact or law. See *Call America Inc. v. Pacific Bell*, Order, 6 FCC Rcd 699, 699, para. 2 (CCB 1991) (granting an abeyance, due to a judicial remand, “until such time as the Commission acts upon the remand”). Further, there are no complex or outstanding evidentiary matters at issue or required to address the Petitions. See *Petition of Time Warner Cable, Inc. for a Determination of Effective Competition*, Memorandum Opinion and Order, 28 FCC Rcd 16307 (2013) (allowing additional party filings because “extraordinary circumstances exist, justifying” additional evidence “necessary to explore complex facts that emerged late in this proceeding”); *Petition of City of Boston, MA to Regulate the Basic Cable Serv. Rates of Comcast Cable Commc’ns, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 3763 (2012) (waiving rules regarding when a petition for reconsideration is due, so as to avoid requiring a re-filing of a Commission administrative form); *Petition of Time Warner Entertainment-Adv. Newhouse Partnership for a Determination of Effective Competition*, Memorandum Opinion and Order, 26 FCC Rcd 3840 (2011) (allowing relief in light of extraordinary circumstances of numerical research that “was unusually complex”).

<sup>38</sup> Comcast Abeyance Opposition at 7; Cox Abeyance Opposition at 7 (citing 47 CFR § 76.7(d)). We do not believe the issues raised by Petitioners present “complex” legal arguments given that the Commission has already interpreted this same statutory test in a nearly identical context. Moreover, although MDTC does not specify what “statistical arguments” are “implicated by the Charter Petition and the responses thereto,” we do not believe any such arguments warrant any delay or additional factfinding, considering the plain statutory language. MDTC Comcast Abeyance Motion at 7; MDTC Cox Abeyance Motion at 7 (arguing “complex legal and statistical arguments implicated by the Charter Petition and the responses thereto” are extraordinary circumstances); see *infra* para. 8 (applying the LEC Test).

<sup>39</sup> See 47 U.S.C. § 543(l)(1)(D) (requiring a competing video programming service to be provided by “a local exchange carrier or its affiliate”); *Charter Order*, 34 FCC Rcd at 10232, para. 6. Contrary to MDTC’s argument, the AT&T LEC that is affiliated with the AT&T entity that provides AT&T TV NOW service does not have to be “engaged in the provision of telephone exchange service or exchange access in the Franchise Areas.” MDTC Comcast Opposition at 23; MDTC Cox Opposition at 26-27; see generally *Charter Order*, 34 FCC Rcd at 10240, para. 16, n.67 (finding “the LEC Test does not contain any requirement that the LEC provide service in the areas at issue, and we see no need to read such a requirement into the Act here”); see also Comcast Petition at 3; Cox Petition at 9 (describing recent instances in which the Commission has found that AT&T includes LEC affiliates). Given the absence of such a requirement in the statute, we do not find MDTC’s examples persuasive. MDTC Comcast Opposition at 24-25, n.97; MDTC Cox Opposition at 28, n.119.

<sup>40</sup> See 47 U.S.C. § 543(l)(1)(D); *Charter Order*, 34 FCC Rcd at 10232-36, paras. 7-10.

subscriber to receive service,”<sup>41</sup> and (2) “no regulatory, technical or other impediments to households taking service exist, and potential customers are reasonably aware that they will be able to purchase the service.”<sup>42</sup> In order to be “offered,” LEC service must be both technically and actually available to households.<sup>43</sup> Contrary to MDTC’s assertions, we find that the first part of the “offer” rule is satisfied because AT&T is “physically able” to deliver AT&T TV NOW to subscribers via existing broadband facilities in the Franchise Areas.<sup>44</sup> Internet access is readily available in the Franchise Areas at speeds that support full use of AT&T TV NOW.<sup>45</sup> While acknowledging the presence of broadband Internet access competition within the Franchise Areas, MDTC makes generalized claims about the potential limitations of competing services.<sup>46</sup> Comcast and Cox, however, have reasonably demonstrated that AT&T TV NOW can and does reach consumers in the Franchise Areas either with their affiliated broadband Internet access service or that of a competitor.<sup>47</sup>

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<sup>41</sup> 47 CFR § 76.905(e)(1).

<sup>42</sup> *Id.* § 76.905(e)(2).

<sup>43</sup> See *Charter Order*, 34 FCC Rcd at 10232, para. 7 (quoting *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, 5303, para. 11 (1999)).

<sup>44</sup> We reject MDTC’s arguments that AT&T “is not ‘physically able to deliver’ AT&T TV NOW to potential subscribers.” MDTC Comcast Opposition at 6-10; MDTC Cox Opposition at 6-10; see *Charter Order*, 34 FCC Rcd at 10234, para. 8. As in the *Charter Order*, existing broadband Internet access providers within the Franchise Areas enable access to AT&T TV NOW, and AT&T “need not make more than a minimal capital investment in order to be able to physically deliver the service to its customers because they do not need to install physical infrastructure to reach every [streaming service] subscriber.” *Charter Order*, 34 FCC Rcd at 10233, para. 8. We also reject MDTC’s contention that the LEC Test is not met because AT&T prepares the service for delivery via a third party, instead of delivering the service itself. MDTC Comcast Opposition at 7; MDTC Cox Opposition at 7. The LEC Test does not require a direct physical connection, which “would be inconsistent with prior Commission precedent in which the Commission considered the entity that provided video programming ‘directly to subscribers’ as the entity that selected and provisioned programming to customers, not the entity operating the facilities.” *Charter Order*, 34 FCC Rcd at 10237, para. 12 n.53. And, while MDTC is correct that section 76.901(e)(1) does contain a delivery component (MDTC Comcast Opposition at 9; MDTC Cox Opposition at 7), as discussed in the *Charter Order*, the rule “does not require the use of the LEC competitor’s own facilities.” *Id.* 10241-42, para. 18. Further, the Commission has already rejected MDTC’s argument that some households in the Franchise Areas cannot access AT&T TV NOW because they choose not to subscribe to broadband Internet access service, MDTC Comcast Opposition at 8-9; MDTC Cox Opposition at 8-9; *Charter Order*, 34 FCC Rcd at 10244, para. 21, and that section 76.905(e)(2) requires the distributor (here, DIRECTV or any other AT&T affiliate) to provide fixed broadband service in the Franchise Areas. See MDTC Comcast Opposition at 9; MDTC Cox Opposition at 9; *Charter Order*, 34 FCC Rcd at 10232-33, para. 7, n.30 (“an ‘offer’ can be made either by a ‘LEC affiliate or an MVPD using the facilities of a LEC or its affiliate.’” (internal citations omitted)); see 47 CFR § 76.905(e)(2).

<sup>45</sup> AT&T suggests internet download speeds of 8 Mbps per device from home Wi-Fi or wired connections and 150 Kbps to 2.5 Mbps as “ideal speeds for standard-definition streaming,” and “2.5 to 7.5 Mbps are best for high-definition quality” from a mobile broadband access provider. AT&T TV, *Internet speed suggestions for AT&T TV*, <https://www.att.com/support/article/att-tv/KM1227443> (last visited Dec. 3, 2020). Comcast reports that it offers broadband access at “speeds equal to or greater than 25/3 Mbps” to at least 96 percent of the households in each of the franchise areas, and “provides sufficient Internet capacity to access AT&T TV NOW to 100 percent of its customers in the Massachusetts Franchise Areas.” Comcast Petition at 8-9; Comcast Reply to Oppositions at 6-7. Cox reports that its “existing broadband facilities provide service to virtually one hundred percent of the Community’s residents and offer customers download speeds of up to 940 Mbps,” exceeding what is necessary to fully utilize AT&T TV NOW. Cox Petition at 11 (citing <https://www.cox.com/residential/internet.html> (Holland, MA) (last visited Dec. 3, 2020)).

<sup>46</sup> MDTC Comcast Opposition at 29-30 (recognizing that “satellite broadband providers may be able to provide their customers with sufficient download speeds to enable streaming video viewing,” but questioning the practicality of the service because of possible limited monthly data allowances); MDTC Cox Opposition at 11-12, 37-39 (generally questioning mobile broadband coverage and reliability and the practicality of satellite broadband).

<sup>47</sup> Comcast Petition at 9 (noting that AT&T wireless promotes AT&T TV NOW as a service that does not count

11. With regard to the second part of the “offer” rule, we find that there are “no regulatory, technical or other impediments to households taking” the AT&T TV NOW service within the Franchise Areas.<sup>48</sup> There is evidence indicating that one or more broadband Internet access providers are available to support AT&T TV NOW in the Franchise Areas, and contrary to MDTC’s contention, the availability and adoption of broadband Internet access within the Franchise Areas does not indicate an “impediment to households taking AT&T TV NOW.”<sup>49</sup> We also disagree with opponents, for reasons explained in the *Charter Order*, that consumer equipment costs constitute a technical barrier or impediment to adopting AT&T TV NOW.<sup>50</sup> Further, although MDTC posits that the evidence presented by Comcast and Cox to

towards the subscriber’s monthly data use); Cox Petition at 12 (reporting that “Holland residents also can choose competing broadband service from at least two other fixed broadband providers, and from at least four national mobile broadband providers (AT&T, Sprint, T-Mobile, and Verizon) that offer mobile broadband speeds sufficient to view AT&T TV NOW” (citing competing broadband carrier coverage maps)); Comcast Reply to Oppositions at 6-7 (“It is beyond dispute that existing broadband development (with sufficient speed and capacity to support AT&T TV NOW) ‘substantially overlaps’ the Franchise Areas and that the resulting availability of AT&T TV NOW is nearly universal.”); Cox Reply to Oppositions at 6-7 (“AT&T TV NOW indisputably is ‘ubiquitously’ available in” Holland).

<sup>48</sup> See 47 CFR § 76.905(e)(2); Comcast Petition at 10, n.35 (citing *Charter Order*, 34 FCC Rcd at 1034-35, para. 9); Cox Petition at 12 (citing *Charter Order*, 34 FCC Rcd at 10234-35, para. 9); Comcast Reply to Oppositions at 12; Cox Reply to Oppositions at 5, 8.

<sup>49</sup> See *Charter Order*, 34 FCC Rcd at 10234-36, para. 9 (“Because the data [petitioner] submitted and other data demonstrate that broadband Internet access service is nearly ubiquitous in the Franchise Areas, the need to have Internet access does not pose a technical barrier to consumers who want to subscribe to [AT&T TV] NOW.” (citations omitted)); MDTC Comcast Opposition at 12; MDTC Cox Opposition at 14. Similarly, considering that Petitioners have demonstrated that the vast majority of households in the Franchise Areas already have broadband Internet access subscriptions, the cost of broadband Internet access service “is not an impediment that prevents us from finding that [AT&T TV] NOW is being ‘offered’ in the Franchise Areas.” *Charter Order*, 34 FCC Rcd at 10235, para. 9; Comcast Petition at 9 (reporting broadband Internet adoption in the Comcast franchise areas (by county) varying from 81.8 to 89.4 percent); Cox Petition at 11 n.55 (“Cox provides broadband internet access service to virtually one hundred percent of the occupied households in Holland, and offers its Holland customers download speeds of up to 940 Mbps, while AT&T suggests download speeds of only 12 Mbps for optimal viewing of AT&T TV NOW.”). The Commission also has found that differences in rates due to service bundling is not considered under the LEC Test. *Charter Order*, 34 FCC Rcd at 10246, para. 24 (finding “the differences in rates offered for [the incumbent cable company’s] unbundled fixed broadband Internet services and those same services bundled with cable television services or telephone services’ is not a consideration of the LEC Test” (citations omitted)). Further, the Commission has found that whether there is a choice of broadband providers in the franchise area to compete on the cost of broadband Internet access service is irrelevant to the statutory test for LEC effective competition because the number of broadband providers does not affect any element of the LEC Test. Rather, according to the Commission, the test is satisfied where a LEC affiliate offers video programming services directly to subscribers by any means. *Charter Order*, 34 FCC Rcd at 10245, para. 23. The LEC Test does not say anything about subscribers needing multiple means of accessing the LEC affiliate’s video programming services.

<sup>50</sup> Massachusetts AGO Comcast Comments at 2-3; Massachusetts AGO Cox Comments at 2-3 (arguing that LEC effective competition cannot be recognized due to consumer equipment costs, such as “need[ing] to purchase an additional streaming device, e.g., Apple TV or Amazon Fire TV,” and “requir[ing] customers to navigate through the purchase and set up of a streaming device for each of their television sets”). The Commission previously recognized “that effective competition can be recognized under the LEC Test in circumstances that require reasonable customer-provided additions” and that the cost of switching to broadband Internet access service, which “some consumers may not want or be able to undertake,” is not a technical or other impediment under the LEC Test. *Charter Order*, 34 FCC Rcd at 10235, para. 9. The switching costs and setup requirements that the Massachusetts AGO lists are reasonable customer-provided additions and tasks, similar to satellite dish purchases and setup that the Commission has already held are not impediments under the LEC Test. *Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5659-60, para. 31 (1993) (“We find that [MVPD] service via such as SMATV/TVRO [(Satellite Master Antenna Television/receive-only earth stations)] service is technically available nationwide in all franchise areas that do not, by regulation, restrict the use of home satellite dishes. All consumers need to do to receive the service is purchase such a dish or, for multiple dwelling units, arrange for

(continued....)



demonstrate reasonable awareness is “unconvincing” due the rebranding from DIRECTV NOW to AT&T TV NOW,<sup>51</sup> we find that Petitioners have provided sufficient evidence indicating timely, regional and nationwide marketing and adoption of AT&T TV NOW.<sup>52</sup> MDTC asks the Commission to determine a sufficient level of customer adoption of the LEC affiliate’s service while faulting Comcast and Cox for presenting “no evidence of whether AT&T TV NOW has any current customers in the Franchise Areas.”<sup>53</sup> The LEC Test, however, unlike similar provisions relating to other competing services, does not specifically include household penetration requirements, and we refuse to require what Congress specifically excluded.<sup>54</sup> Even if MDTC were to present such evidence, it would not negate evidence presented by Petitioners of AT&T TV NOW marketing that reaches the Franchise Areas or prove that petitioners fail to meet the “offer” requirement’s reasonable awareness prong, which does not require evidence of subscriptions to demonstrate awareness of the competing service.<sup>55</sup>

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SMATV service.” (citation omitted)).

<sup>51</sup> MDTC Comcast Opposition at 13-15; MDTC Cox Opposition at 16-18. We disagree that the advertising submitted by the Petitioners “has little bearing on current potential customer awareness in Massachusetts” because some refer to “DIRECTV NOW.” AT&T, DIRECTV NOW Rebrands Under AT&T TV Family (July 30, 2019) [https://about.att.com/newsroom/2019/directv\\_now\\_rebrands\\_under\\_att\\_tv.html](https://about.att.com/newsroom/2019/directv_now_rebrands_under_att_tv.html); see also Comcast Petition at 10 (providing with its petition “supplemental marketing material and media coverage from 2019 confirming that potential customers are reasonably aware of the availability of the streaming service”), Exhs 1, 2; Cox Petition at 13, Exh. 2 (providing examples of AT&T TV NOW Marketing materials), Exh. 4 (providing examples of AT&T TV NOW press coverage).

<sup>52</sup> MDTC claims a “lack of advertising for AT&T TV NOW combined with AT&T’s continued advertising of some or all of its remaining video services, whose names are confusingly similar to that of AT&T TV NOW,” leaves potential consumers “reasonably unaware” of the steaming service. MDTC Comcast Opposition at 15; MDTC Cox Opposition at 18. Evidence submitted by Petitioners, however, includes marketing materials demonstrating potential subscribers are reasonably aware of the service offering, and Petitioners are not required to demonstrate “community-specific advertising.” *Charter Order*, 34 FCC Rcd at 10236, para. 10 & n.47 (citing *Subsidiaries of Cablevision Systems Corp. Petitions for Determination of Effective Competition in 101 Communities in New Jersey*, Memorandum Opinion and Order, 23 FCC Rcd 14141, 14152-53, 14155, paras. 37, 43 (MB 2008)); see generally Comcast Petition at 6, 10, Exh. 1 and Exh. 2; Cox Petition at 12-13, 13 n.67, Exh. 2 and Exh. 4 (citing AT&T, News Release, AT&T Announces 3-Year Financial Guidance and Capital Allocation Plan (Oct. 28, 2019) (reporting AT&T TV NOW subscriber penetration), [https://about.att.com/story/2019/att\\_third\\_quarter\\_earnings\\_2019.html](https://about.att.com/story/2019/att_third_quarter_earnings_2019.html); referencing marketing materials including AT&T’s internet materials and third-party materials from Offers.com, Groupon.com, and Sayweee.com; and presenting AT&T TV NOW press coverage from regional publications like the Journal Inquirer (Manchester, Connecticut), The Republican (Springfield, Massachusetts), The Portland Press Herald/Maine Sunday Telegram, and The Boston Globe, as well as national publications like Fortune, Adweek, Cordercutternews.com, Indiewire.com, Groovypost.com, Groundedreason.com, Streamingobserver.com, and Cnet.com). In addition to this evidence, we agree with Cox that, “MDTC fails to explain how customers in Massachusetts communities such as Brimfield and Sturbridge (4.6 and 5.1 miles from Holland, respectively) could be reasonably aware of AT&T TV NOW, as the Commission found, without the same being true in Cox’s Holland Franchise Area.” Cox Reply at 10-11.

<sup>53</sup> MDTC Comcast Opposition at 13; MDTC Cox Opposition at 17.

<sup>54</sup> *Charter Order*, 34 FCC Rcd at 10236, para. 10 n.49 (noting that “the LEC Test does not include any minimum subscriber penetration level”). Compare 47 U.S.C. § 543(l)(1)(D) with 47 U.S.C. § 543(l)(1)(A) (“fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system); 543(l)(1)(B)(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”); 543(l)(1)(B)(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”); 543(l)(1)(C) (“a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area”) (emphasis added to each).

<sup>55</sup> See 47 CFR 76.905(e)(2) (requiring that potential subscribers are reasonably aware that they may purchase the competing service in the franchise area).

12. Third, we find that the AT&T TV NOW service is offered “directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area,” as required by the LEC Test.<sup>56</sup> The Commission has explained “that the best reading of the requirement that a LEC or LEC affiliate offer video programming service ‘directly to subscribers’” includes a direct customer relationship with consumers in the franchise area.<sup>57</sup> Comcast and Cox have demonstrated a direct relationship because AT&T directly bills and receives payment for the AT&T TV NOW service from subscribers.<sup>58</sup> Although MDTC argues that AT&T TV NOW being provisioned by a broadband Internet access provider other than the affiliated LEC is not “direct” under the LEC Test,<sup>59</sup> the Commission does not require the use of the LEC competitor’s own facilities to meet the “direct” requirement.<sup>60</sup>

13. Finally, we conclude that AT&T TV NOW provides “comparable” video programming service for purposes of the LEC Test and our rules. For a video programming service to be “comparable,” our rules require the service to have “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.”<sup>61</sup> Comcast and Cox demonstrate that the AT&T TV NOW service exceeds this requirement, and therefore satisfies the Commission’s “comparable” requirement.<sup>62</sup> While MDTC disputes that the AT&T TV NOW program streams fulfill the statutory definition of a channel, the Commission has explained that it “is incorrect that the LEC Test can be satisfied only by a facilities-based video programming provider because the provider must have the ability

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<sup>56</sup> 47 U.S.C. § 543(1)(1)(D).

<sup>57</sup> *Charter Order*, 34 FCC Rcd at 10237, para. 11.

<sup>58</sup> *Id.* (finding that “the best reading of the requirement that a LEC or LEC affiliate offer video programming service ‘directly to subscribers’ is that it ‘must have (or offer to have) a direct customer relationship with consumers in the franchise area’”) (citation omitted); Comcast Reply to Oppositions at 12-13; Cox Reply to Oppositions at 6-8.

<sup>59</sup> MDTC Comcast Opposition at 15-19; MDTC Cox Opposition at 15-19.

<sup>60</sup> *Charter Order*, 34 FCC Rcd at 10241-42, para. 18 (citing 47 CFR § 76.905(e)). MDTC takes issue with the precedent discussed in support of this position and instead asserts that the statute requires a LEC to offer service directly to subscribers. MDTC Comcast Opposition at 17-19; MDTC Cox Opposition 19-22. This assertion ignores that the LEC provide service “directly to subscribers *by any means* (other than direct-to-home satellite services).” 47 U.S.C. § 543(1)(1)(D) (emphasis added). The Commission reasonably construed the phrase “by any means (other than direct-to-home satellite services)” to permit a LEC affiliate such as DIRECTV to offer a competing service by means of third-party broadband facilities. *Charter Order*, 34 FCC Rcd at 10241, para. 18. The Commission also concluded that it is “irrelevant” whether the incumbent cable operator was the only entity providing broadband access enabling the LEC affiliate streaming service where, as here, the “LEC affiliate offers video programming services directly to subscribers by any means.” See *id.* at 10245, para. 23 (“We find that whether there is a choice of broadband providers, fixed or otherwise, is irrelevant to the statutory test for LEC effective competition because the number of broadband providers does not affect any element of the LEC test.”); MDTC Comcast Opposition at 6; MDTC Cox Opposition 6 (contending the LEC affiliate’s service cannot “‘qualify as an entity effectively competing with a cable operator’” if it utilizes an incumbent cable operator’s broadband access service) (quoting *Implementation of Section of the Cable Television Consumer Protection & Competition Act of 1992 Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5652, para. 23 (1993)). Further, we note that the Commission has distinguished MDTC’s reliance on *Fox Television Stations, Inc. v. FilmOn X LLC*, 150 F. Supp. 3d 1, 19 (D.D.C. 2015), stating that “[t]he case did not concern the Communication Act’s LEC Test, but instead was limited to the specific provisions of the Copyright Act at issue in that case.” *Charter Order*, 34 FCC Rcd at 10237, para. 12 n.53; MDTC Comcast Opposition at 16; MDTC Cox Opposition at 19. Similarly, we reject the City of Cambridge’s assertion that the legislative history requires a finding that the LEC Test applied only to LECs that provide video programming services “either over a common carrier video platform or as a cable operator.” Cambridge Comments at 2-3. As discussed in the *Charter Order*, “the statutory language that Congress ultimately codified, however, includes language different from the Senate or House drafts, and it contains no facilities-based test.” *Charter Order*, 34 FCC Rcd at 10240-41, para. 17.

<sup>61</sup> *Charter Order*, 34 FCC Rcd at 10237, 10242, paras. 13, 20; 47 CFR § 76.905(g).

<sup>62</sup> See Comcast Petition at 7, Exh. 1 (describing that the AT&T TV NOW programming packages range from 45-125 channels); Cox Petition at 14, Exh. 6 (same); Cox Reply to Oppositions at 13.

to deliver electromagnetic channels.”<sup>63</sup>

14. Beyond the LEC Test, MDTC contends that “granting an effective competition petition based on a non-facilities-based streaming video service would undermine the Commission’s goals of encouraging facilities-based investment and limiting regulation of the Internet.”<sup>64</sup> We disagree. As the Commission found in the *Charter Order*, “we do not see any link between the outcome of this proceeding and the incentives of [competitive broadband providers and content providers] to engage in facilities-based investment.”<sup>65</sup> Moreover, the Commission stated in the *Charter Order* that “[n]either the Act nor Commission precedent increases regulation applied to AT&T or the Internet, in general, as a consequence of recognizing the effective competition of DIRECTV NOW in the Franchise Areas.”<sup>66</sup> We also disagree with the suggestion of the Massachusetts AGO that the LEC Test requires the competing LEC affiliate to carry specific local broadcast channels, in addition to our comparable programming requirements.<sup>67</sup> Neither the statute nor our implementing rule require this.<sup>68</sup> Because we conclude that the AT&T TV NOW service satisfies each of the elements of the LEC Test in the Franchise Areas, we grant each Petitioners’ request for a finding of effective competition and revoke the certifications to regulate basic cable service rates in the Franchise Areas.

15. *Requests for Discovery and Evidentiary Hearings or References to an Administrative Law Judge.* We deny the requests for discovery and evidentiary hearings or referral to an Administrative Law Judge. The Commission “has observed that such trial-type hearings are costly and impose significant burdens and delays on both applicants and the agency that may not be necessary.”<sup>69</sup> Referral to an Administrative Law Judge, including discovery and evidentiary hearings, as suggested by the Massachusetts AGO, would not aid our consideration of the Petitions.<sup>70</sup> Consistent with the *Charter Order*, we find “the extent to which [Petitioners are] the only fixed broadband Internet service provider[s]

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<sup>63</sup> *Charter Order*, 34 FCC Rcd at 10242-43, para. 20; *see* MDTC Comcast Opposition at 20; MDTC Cox Opposition at 23 (arguing petitioners must demonstrate that the video streaming service “offers 12 portions of the electromagnetic frequency spectrum which are used in a cable system and which are capable of delivering a television channel”). We also reject MDTC’s argument that the Bureau’s preliminary conclusions in *Sky Angel* require a finding that AT&T TV NOW does not provide channels to subscribers. MDTC Opposition at 21. As the Commission explained in the *Charter Order*, this precedent is inapplicable in this context. *Charter Order*, 34 FCC Rcd at 10243, para. 20, n.90 (distinguishing *Sky Angel U.S., LLC*, Order, 25 FCC Rcd 3879 (MB 2010)).

<sup>64</sup> MDTC Comcast Opposition at 26; MDTC Cox Opposition at 30.

<sup>65</sup> *Charter Order*, 34 FCC Rcd at 10242, para. 18, n.79.

<sup>66</sup> *Id.* at 10243, para. 20, n.90; *see also* Cox Reply to Oppositions at 14, n.67.

<sup>67</sup> Massachusetts AGO Comcast Comments at 3; Massachusetts AGO Cox Comments at 3 (arguing that the LEC-affiliate must provide the same local broadcast channels that are carried by the competing incumbent cable company); *see Charter Order*, 34 FCC Rcd at 10242-43, para. 20 (finding the “comparable programming prong of the LEC Test” is satisfied when “both local broadcast channels and nonbroadcast channels” are “available throughout the Franchise Areas”); 47 CFR § 76.905(g).

<sup>68</sup> *See* 47 U.S.C. § 543(1)(A)-(D); 47 CFR § 76.905(g). There is no dispute in the record that AT&T TV Now has at least 12 channels of video programming and that at least one of those channels is nonbroadcast. If the Massachusetts AGO believes that this regulation is no longer appropriate, the proper procedure for changing the regulation is via rulemaking, not via adjudication. *See Deer Creek Broad., LLC*, 23 FCC Rcd 9553, 9556 (MB 2008) (“An adjudicatory proceeding involving a specific application is not the proper forum for requesting changes in Commission procedures and processing guidelines, or for seeking changes in well-established FM allotment priorities.”).

<sup>69</sup> *Procedural Streamlining of Administrative Hearings*, Report and Order, FCC 20-125, 35 FCC Rcd 10729, para. 1 (2020).

<sup>70</sup> *See Charter Order*, 34 FCC Rcd at 10245-48, paras. 22-28 (concluding “additional factfinding is not warranted” when the “record adequately informs [the Commission’s] analysis while addressing the issues raised by all parties”); *see also* Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4; Comcast Reply to Oppositions at 14; Cox Reply to Oppositions at 14.

in the franchise areas” is irrelevant under the LEC Test,<sup>71</sup> considering record evidence demonstrating that broadband Internet access service enabling the streaming service is widely available within the Franchise Areas.<sup>72</sup> Additional hearings or procedures to determine whether Petitioners’ customers “are receiving the download speeds promised to them as part of [Petitioners’] fixed broadband internet service packages” is not required under the LEC Test or necessary, in light of evidence indicating sufficient broadband Internet access availability.<sup>73</sup> Also, MDTC has provided no evidence indicating a systemic issue with the quality of service of Petitioners’ broadband Internet service, such as throttling, that would interfere with AT&T’s ability to offer AT&T TV NOW in the Franchise Areas.<sup>74</sup> Finally, “the differences in rates offered for [Petitioners’] unbundled fixed broadband Internet services and those same services bundled with cable television services or telephone services”<sup>75</sup> is not a consideration of the LEC Test, as discussed above.<sup>76</sup> Finding that the record adequately supports our analysis of all pertinent issues, we deny the requests for discovery, evidentiary hearings, and referral to an Administrative Law Judge.

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that the Massachusetts Department of Telecommunications and Cable Motions for Abeyance **ARE DENIED**.

17. **IT IS FURTHER ORDERED** that the Petitions of Comcast Cable Communications, LLC and CoxCom, LLC d/b/a Cox Communications **ARE GRANTED**.

18. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to or on behalf of any of the Communities set forth in Appendix A and in Holland, Massachusetts (MA0321) **ARE REVOKED**.

19. **IT IS FURTHER ORDERED** that the Massachusetts Office of the Attorney General discovery requests and requests for evidentiary hearings or referrals to an Administrative Law Judge **ARE DENIED**.

20. This action is taken pursuant to delegated authority pursuant to section 0.283 of the Commission’s rules.<sup>77</sup>

FEDERAL COMMUNICATIONS COMMISSION

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<sup>71</sup> Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4; *see Charter Order*, 34 FCC Rcd at 10245, para. 23.

<sup>72</sup> Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 3-4; *see supra* para. 9 for discussion of Internet access availability.

<sup>72</sup> Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4; *see Charter Order*, 34 FCC Rcd at 10245, para. 23.

<sup>73</sup> *Id.*

<sup>74</sup> Massachusetts AGO Comcast Comments at 4 & Declaration of Jo An Bodemer, dated Jan. 23, 2020, para. 5 (stating that “some” consumer complaints relating to Comcast referenced unspecified “concerns with data speeds and intermittent and unreliable service”); Massachusetts AGO Cox Comments at 4; *see also Charter Order*, 34 FCC Rcd at 10246, para. 24 n.111 (noting that “[t]o the extent someone in the future has evidence that [AT&T’s] service is no longer ‘comparable’ to [the incumbent cable company’s] service due to throttling or for other reasons, an LFA could petition to reverse the finding of effective competition and recertify for rate regulation” (citing 47 CFR § 76.919)).

<sup>75</sup> Massachusetts AGO Comcast Comments at 4; Massachusetts AGO Cox Comments at 4.

<sup>76</sup> *See supra* n.50; *Charter Order*, 34 FCC Rcd at 10246, para. 24, n.111.

<sup>77</sup> 47 CFR § 0.283.

Michelle M. Carey  
Chief, Media Bureau

## APPENDIX A

MB Docket No. 19-385, CSR No. 8984-E

MASSACHUSETTS COMMUNITIES SERVED BY  
COMCAST CABLE COMMUNICATIONS, LLC

Community	CUID
Attleboro	MA0128
Avon	MA0214
Barnstable	MA0039
Berkley	MA0266
Beverly	MA0124
Blackstone	MA0222
Bridgewater	MA0269
Brockton	MA0156
Buckland	MA0070
Cambridge	MA0280
Carlisle	MA0293
Chatham	MA0058
Clinton	MA0175
Concord	MA0270
Dartmouth	MA0100
Deerfield	MA0090
Dennis	MA0041
Dighton	MA0265
Dracut	MA0169
East Bridgewater	MA0253
Eastham	MA0110
Essex	MA0153
Fairhaven	MA0131
Fall River	MA0099
Falmouth	MA0072
Freetown	MA0264
Gardner	MA0016
Gloucester	MA0136
Granby	MA0118
Greenfield	MA0021
Groveland	MA0071
Hanson	MA0215
Harwich	MA0040
Hatfield	MA0157
Haverhill	MA0031
Holyoke	MA0034
Lancaster	MA0237
Longmeadow	MA0138
Lowell	MA0082
Manchester-By-The-Sea	MA0154
Merrimac	MA0165
Milton	MA0163
Montague	MA0023

<b>Community</b>	<b>CUID</b>
New Bedford	MA0067
Newbury	MA0143
Newburyport	MA0125
Northampton	MA0108
Norton	MA0170
Orleans	MA0095
Palmer	MA0024
Peabody	MA0119
Pelham	MA0084
Plainville	MA0150
Provincetown	MA0193
Quincy	MA0126
Rehoboth	MA0303
Rockport	MA0137
Salem	MA0063
Saugus	MA0112
Scituate	MA0208
Sharon	MA0211
Somerset	MA0149
South Hadley	MA0035
Southwick	MA0161
Springfield	MA0168
Sunderland	MA0091
Swansea	MA0151
Templeton	MA0127
Ware	MA0025
Warren	MA0026
Wellfleet	MA0194
West Bridgewater	MA0235
West Springfield	MA0053
Westfield	MA0052
Westhampton	MA0322
Weymouth	MA0129
Whitman	MA0200
Williamsburg	MA0158
Winthrop	MA0061
Yarmouth	MA0006