

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

|  |   |                       |
|--|---|-----------------------|
| In the Matter of                         | ) |                       |
|  | ) | MB 13-157, CSR 8803-E |
| Comcast Cable Communications, LLC        | ) | MB 13-158, CSR 8804-E |
|  | ) | MB 13-159, CSR 8805-E |
|  | ) | MB 13-160, CSR 8806-E |
| Petitions for Determination of Effective | ) | MB 13-161, CSR 8807-E |
| Competition in Various Massachusetts     | ) | MB 13-167, CSR 8809-E |
| Communities                              | ) | MB 13-168, CSR 8810-E |
|  | ) | MB 13-169, CSR 8811-E |
|  | ) | MB 13-170, CSR 8812-E |
|  | ) | MB 13-172, CSR 8814-E |
|  | ) | MB 13-180, CSR 8817-E |

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 21, 2016**

**Released: April 21, 2016**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC (“Comcast”) has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Comcast is subject to effective competition in the communities listed on Attachment A (the “Communities”). Comcast alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and that it is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”) and DISH Network (“DISH”), as well as Verizon. The Massachusetts Department of Telecommunications and Cable (“MDTC”) and the Town of Hull, Massachusetts (“Hull”) filed oppositions to the petitions.<sup>3</sup> Comcast filed replies. In addition, the MDTC filed a revised Form 328 seeking to remain certified to regulate rates in several communities, including one of the Communities at issue in this proceeding, Templeton.<sup>4</sup> Herein we address that Form 328 insofar as it pertains to Templeton.

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as competing provider effective competition.<sup>5</sup> Accordingly, in the absence of a demonstration to the contrary, the Commission now

<sup>1</sup> See 47 U.S.C. § 543(l)(1)(B).

<sup>2</sup> 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> We refer to these pleadings as “MDTC Comments” and “Hull Comments.”

<sup>4</sup> See MDTC Form 328 (filed Dec. 8, 2015), available at <http://apps.fcc.gov/ecfs/proceeding/view?name=INBOX-76.910>.

<sup>5</sup> See *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) (“*Effective Competition Order*”).

presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.<sup>6</sup> For the reasons set forth below, we grant Comcast's petitions.

## II. THE COMPETING PROVIDER TEST

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multichannel video programming distributors ("MVPDs"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>7</sup> This test is referred to as the "competing provider" test. Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.

### A. The First Part

4. The first part of this test has three elements: the franchise area must be "served by" at least two unaffiliated MVPDs who offer "comparable programming" to at least "50 percent" of the households in the franchise area.<sup>8</sup> As explained in the *Effective Competition Order*, "we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH, presumptively satisfies the" first part of the test for competing provider effective competition, absent evidence to the contrary.<sup>9</sup> The MDTC and Hull have not put forth any information to rebut the first part of the competing provider effective competition test. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast, we thus find that the first part of the test is satisfied.

### B. The Second Part

5. The second part of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area.<sup>10</sup> As explained in the *Effective Competition Order*, "[w]ith regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD."<sup>11</sup> The MDTC and Hull argue that Comcast's data is inaccurate and unreliable, yielding penetration rates of more than 100 percent in many franchise areas.<sup>12</sup> Comcast responds that the MDTC and Hull overstate the cumulative subscriber

<sup>6</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> 47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup> *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

<sup>10</sup> 47 C.F.R. § 76.905(b)(2)(ii).

<sup>11</sup> *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

<sup>12</sup> MDTC Comments at 2-3; Hull Comments at 2-3. The MDTC requests that the Commission dismiss Comcast's petitions, at least with regard to the 21 franchise areas where Comcast's data allegedly yields penetration rates that exceed 100 percent. Those franchise areas are: Billerica (MA 0079), Duxbury (MA0302), Easton (MA 0233), Lakeville (MA 0278), North Andover (MA 0102), Marblehead (MA 0263), Middleton (MA 0223), Topsfield (MA 0288), Cohasset (MA 0207), Hanover (MA 0244), Hull (MA 0205), Norwell (MA 0206), Dover (MA 0314), Foxborough (MA 0176), Norfolk (MA 0248), Wrentham (MA 0203), Weston (MA 0268), Stow (MA 0256), Bellingham (MA 0221), Hopedale (MA 0218), and Mendon (MA 0252).

counts by including commercial, seasonal, and dual<sup>13</sup> subscribers in MDTC's subscriber numbers, and by excluding new occupied households that were not reported in the 2010 Census, which erroneously inflated the cumulative MVPD penetration rate.<sup>14</sup> Comcast maintains, however, that the alleged subscriber surplus does not in any way impact the competing provider test because the 15 percent threshold under the statutory test is exceeded in every community.<sup>15</sup> Further, Comcast objects to the MDTC and Hull's request that the Commission dismiss the petitions because, unlike instances in which the Commission denied petitions where the stated subscriber numbers exceeded the number of households,<sup>16</sup> here Comcast utilized the more detailed and reliable nine-digit zip code plus four data.<sup>17</sup>

6. We recognize that including dwellings that do not count as "households," such as seasonal homes, could have at least some impact on competing provider subscriber figures. More significantly, however, the MDTC and Hull do not dispute that the 15 percent threshold necessary to demonstrate competing provider effective competition is present.<sup>18</sup> The evidence submitted by the MDTC and Hull is not specific or significant enough to demonstrate a lack of competing provider effective competition, particularly given the new presumption regarding the presence of this type of effective competition.

7. Subsequent to the filing of Comcast's petition, the Commission in the *Effective Competition Order* required all franchising authorities with existing certifications that wished to remain certified to file a revised Form 328, including a showing rebutting the presumption of competing provider effective competition.<sup>19</sup> The MDTC filed a revised Form 328 seeking to remain certified to regulate rates for several franchise areas, including one of the Communities at issue in this proceeding, Templeton. In its revised Form 328, the MDTC asserts that the number of households subscribing to DBS does not exceed 15 percent of the households in the franchise area.<sup>20</sup> In particular, with regard to Templeton, the MDTC argues that the DBS subscribership must be reduced by the high percentage of seasonal homes in that community as compared to total housing units.<sup>21</sup> As stated above, we recognize that including dwellings that do not count as "households," such as seasonal homes, could have at least some impact on competing provider subscriber figures. We find, however, that the evidence the MDTC submitted regarding seasonal homes is not specific or significant enough to demonstrate a lack of competing

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<sup>13</sup> We use the term "dual subscribers" to reference those subscribing to more than one MVPD. The Commission permits the inclusion of dual subscribers in the competing MVPD penetration calculation, even though their inclusion necessarily inflates the cumulative number of MVPD subscribers in each community and the overall penetration rate. See Comcast Replies at 9, citing *Mediacom Minnesota LLC*, 20 FCC Rcd 4984, 4988, ¶ 13 (2005).

<sup>14</sup> Comcast Replies at 2, 5-9, Attachment B (Declaration of Mark Renaud, Director, Regulatory Accounting, Comcast Cable Communications, LLC).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> See, e.g., *Time Warner Cable Inc., and Time Warner Entertainment–Advance/Newhouse Partnership*, 23 FCC Rcd 12069, 12072, ¶ 10 (MB 2008), *reconsideration denied*, 23 FCC Rcd 16483 (MB 2008).

<sup>17</sup> Comcast Replies at 12-13, citing *Time Warner Cable Inc.*, 25 FCC Rcd 14422, 14424, ¶ 8 (MB 2010); *Time Warner Cable Inc., and Time Warner Entertainment–Advance/Newhouse Partnership*, 23 FCC Rcd at 12072.

<sup>18</sup> Notwithstanding Comcast's explanation for the alleged subscriber surplus, we urge Comcast to make its petitions as accurate as possible.

<sup>19</sup> *Effective Competition Order*, 30 FCC Rcd at 6592, ¶¶ 27-28 ("If a currently certified franchising authority files revised Form 328 and there is a pending cable operator Effective Competition petition . . . the Media Bureau will consider the record from that filing along with the new certification in making its determination regarding whether the franchising authority has overcome the presumption of Competing Provider Effective Competition.").

<sup>20</sup> MDTC Form 328, Attachment 3, Attachment to Question 6(a) at 3.

<sup>21</sup> MDTC Form 328, Attachment 3, Attachment to Question 6(a) at 5.

provider effective competition, particularly given the new presumption regarding the presence of this type of effective competition.

8. For the above reasons, the arguments put forth by the MDTC and Hull fail to rebut the presumption of competing provider effective competition. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast, the MDTC, and Hull we thus find that the second prong of the test is satisfied.

### III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED** as to the Communities listed on Attachment A hereto.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachment A **IS REVOKED**.

11. **IT IS FURTHER ORDERED** that the Form 328 certification request filed by the Massachusetts Department of Telecommunications and Cable **IS DENIED** with regard to Templeton, Massachusetts.

12. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>22</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

CSR 8803-E, 8804-E, 8805-E, 8806-E, 8807-E, 8809-E, 8810-E, 8811-E, 8812-E, 8814-E, 8817-E

## COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATION, LLC

| Community                    | CUIDS  | DBS<br>Subscribers | Verizon<br>Subscribers <sup>23</sup> | 2010 Census<br>Households | Estimated DBS<br>and Verizon<br>Penetration |
|------------------------------|--------|--------------------|--------------------------------------|---------------------------|---|
| <b>MB 13-157, CSR 8803-E</b> |        |                    |                                      |                           |   |
| Duxbury                      | MA0302 | 242                | 2150                                 | 5344                      | 44.76%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-158, CSR 8804-E</b> |        |                    |                                      |                           |   |
| Easton                       | MA0233 | 164                | 2339                                 | 7865                      | 31.82%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-159, CSR 8805-E</b> |        |                    |                                      |                           |   |
| Lakeville                    | MA0278 | 151                | 1628                                 | 3725                      | 47.76%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-160, CSR 8806-E</b> |        |                    |                                      |                           |   |
| Billerica                    | MA0079 | 566                | 5011                                 | 14034                     | 39.74%                                      |
| Chelmsford                   | MA0147 | 442                | 3810                                 | 13313                     | 31.94%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-161, CSR 8807-E</b> |        |                    |                                      |                           |   |
| North Andover                | MA0102 | 309                | 3909                                 | 10516                     | 40.11%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-167, CSR 8809-E</b> |        |                    |                                      |                           |   |
| Danvers                      | MA0279 | 439                | 4050                                 | 10615                     | 42.29%                                      |
| Marblehead                   | MA0263 | 190                | 2998                                 | 8144                      | 39.15%                                      |
| Middleton                    | MA0223 | 100                | 1086                                 | 2898                      | 40.92%                                      |
| Topsfield                    | MA0288 | 44                 | 1265                                 | 2090                      | 62.63%                                      |
|                              |        |                    |                                      |                           |   |
| <b>MB 13-168, CSR 8810-E</b> |        |                    |                                      |                           |   |
| Cohasset                     | MA0207 | 92                 | 879                                  | 2722                      | 35.67%                                      |
| Hanover                      | MA0244 | 135                | 2108                                 | 4709                      | 47.63%                                      |
| Hingham                      | MA0251 | 206                | 3172                                 | 8465                      | 39.91%                                      |

<sup>23</sup> Comcast obtained the Verizon subscribership figures from the MDTC's website. See e.g., Comcast Petition in MB 13-168, CSR-8810-E at n. 25 (<http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/statistics-and-general--info/>).

|                              |        |      |      |       |        |
|------------------------------|--------|------|------|-------|--------|
| Hull                         | MA0205 | 167  | 1785 | 4630  | 42.16% |
| Norwell                      | MA0206 | 108  | 1330 | 3553  | 40.47% |
| Randolph                     | MA0212 | 1032 | 3573 | 11551 | 39.87% |
|                              |        |      |      |       |        |
| <b>MB 13-169, CSR 8811-E</b> |        |      |      |       |        |
| Dover                        | MA0314 | 77   | 882  | 1869  | 51.31% |
| Foxborough                   | MA0176 | 370  | 1788 | 6504  | 33.18% |
| Norfolk                      | MA0248 | 132  | 1740 | 3049  | 61.40% |
| Walpole                      | MA0220 | 349  | 4112 | 8730  | 51.10% |
| Wrentham                     | MA0203 | 227  | 1456 | 3703  | 45.45% |
|                              |        |      |      |       |        |
| <b>MB 13-170, CSR 8812-E</b> |        |      |      |       |        |
| Wayland                      | MA0267 | 107  | 2247 | 4808  | 48.96% |
| Weston                       | MA0268 | 127  | 1358 | 3776  | 39.33% |
|                              |        |      |      |       |        |
| <b>MB 13-172, CSR 8814-E</b> |        |      |      |       |        |
| Ashby                        | MA0262 | 277  |      | 1105  | 25.07% |
| Leominster                   | MA0017 | 1090 | 5343 | 16767 | 38.37% |
| Maynard                      | MA0146 | 172  | 1888 | 4239  | 48.60% |
| Shirley                      | MA0295 | 427  |      | 2264  | 18.86% |
| Stow                         | MA0256 | 95   | 1200 | 2429  | 53.31% |
| Templeton                    | MA0127 | 489  |      | 2882  | 16.97% |
|                              |        |      |      |       |        |
| <b>MB 13-180, CSR 8817-E</b> |        |      |      |       |        |
| Ashland                      | MA0231 | 319  | 2950 | 6385  | 51.20% |
| Bellingham                   | MA0221 | 384  | 2529 | 6155  | 47.33% |
| Holliston                    | MA0236 | 165  | 3050 | 4940  | 65.08% |
| Hopedale                     | MA0218 | 141  | 754  | 2194  | 40.79% |
| Medway                       | MA0189 | 142  | 2486 | 4435  | 59.26% |
| Mendon                       | MA0252 | 149  | 813  | 2022  | 47.58% |
| Milford                      | MA0181 | 691  | 3462 | 10872 | 38.20% |
| Millis                       | MA0174 | 203  | 1124 | 3030  | 43.80% |