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January 23, 2020

Opposition -- Filed Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
455 12th Street, SW
Washington, DC 20554

Re: *In re Comcast Cable Communications, LLC Petition for Determination of Effective Competition*, MB Docket No. 19-385

Dear Ms. Dortch:

Pursuant to 47 C.F.R. §§ 0.459, 76.7(b), and 76.9(b), the Massachusetts Department of Telecommunications and Cable ("MDTC") submits this redacted version of its Opposition in the above-captioned proceeding. The MDTC submitted its confidential Opposition in accordance with *In re Comcast Cable Commc'ns, LLC Petitions for Determination of Effective Competition in 41 Cmtys. in Pa.*, 28 FCC Rcd. 3375, 3376-77 n.16, *Memorandum Opinion & Order* (2013), yesterday via overnight delivery. The attached redacted public copy has been marked "REDACTED – FOR PUBLIC INSPECTION."

Please let me know if you have any questions.

Respectfully submitted,

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**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:

84 Massachusetts Communities

MB 19-385
CSR-8984-E

**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
OPPOSITION TO COMCAST CABLE COMMUNICATIONS, LLC'S
PETITION FOR SPECIAL RELIEF**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

KAREN CHARLES PETERSON,
COMMISSIONER

1000 Washington Street, Suite 600
Boston, MA 02118-6500
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Dated: January 23, 2020

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I. Introduction and Summary

The Federal Communications Commission (“Commission” or “FCC”) should deny the Petition for Special Relief (“Petition”) filed by Comcast Cable Communications, LLC (“Comcast” or “Petitioner”) on December 16, 2019 because Comcast is not subject to effective competition in the franchise areas referenced in the Petition (“Franchise Areas”).¹ Comcast claims that it is subject to effective competition in the Franchise Areas under the statutory local exchange carrier effective competition test (“LEC Test”).² As fully explained below, the LEC Test requires that a LEC or its affiliate offer comparable video programming services to the households in the franchise area. DIRECTV, LLC (“DIRECTV”)’s AT&T TV NOW service does not meet this standard, because it fails to satisfy three of the statute’s requirements: 1)

¹ *Petition of Comcast Cable Commc’ns, Inc. for a Determination of Effective Competition*, MB Docket No. 19-385 (2019).

² 47 U.S.C. § 543(l)(1)(D).

DIRECTV does not offer video programming services directly to consumers in the Franchise Areas, 2) DIRECTV does not provide video programming services comparable to that offered by Comcast, and 3) AT&T is not a LEC in the Franchise Areas. Any amendment to FCC regulations which might allow AT&T TV Now to satisfy the statutory requirements of the LEC Test would require a rulemaking and cannot be completed via the Charter Order³ or this proceeding. Further, the Petition is contrary to the Cable Act's goal of protecting consumers and to the Commission's goals of encouraging facilities-based investment and limiting regulation of the Internet.⁴ The Massachusetts Department of Telecommunications and Cable ("MDTC") files this Opposition pursuant to section 76.7 of the Commission's rules, and in its capacity as regulator of cable rates in the Commonwealth of Massachusetts.⁵

³ *In re Petition for Determination of Effective Competition in 32 Mass. Cmty. & Kauai, HI*, MB Docket No. 18-283, CSR 8965-E, *Memorandum Opinion & Order* (Oct. 25, 2019) ("Charter Order").

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, § 301(b)(3), 110 Stat. 115 (1996); 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). The MDTC reiterates that deregulation on account of "effective competition" does not produce the intended result of basic service tier rates being held in check. *See, e.g., In re Amendment to the Comm'n's Rules Concerning Effective Competition*, MB Docket No. 15-53, MDTC Comments at 13-14, App. 1 (Apr. 9, 2015); *In re Charter Commc'ns, Inc. Petition for Determination of Effective Competition in 46 Local Franchise Areas*, CSR-8558-E, MDTC Opposition to Charter's Petition at 4 n.12 (Feb. 15, 2012) ("MDTC Charter Opposition"); *cf.*, David Lieberman, *Charter CEO: Streaming Video Services Cannibalize Satellite Subscriptions*, DEADLINE, May 2, 2017, <https://deadline.com/2017/05/charter-ceo-streaming-video-offerings-cannibalize-satellite-subscriptions-1202081436> (quoting Charter CEO, Tom Rutledge: "If you take a look at the evidence so far, the current [over the top] offerings just seem to be cannibalizing the same satellite providers' own base. It's just a shift.").

⁵ 47 C.F.R. § 76.7. The MDTC "is the certified 'franchising authority' for regulating basic service tier rates and associated equipment costs in Massachusetts." 207 C.M.R. § 6.02; *see also* MASS. GEN. LAWS ch. 166A, §§ 2A, 15 (establishing the MDTC's authority to regulate cable rates). In addition, the MDTC is charged with representing the Commonwealth before the Commission. MASS. GEN. LAWS ch. 166A, § 16. On January 2, 2020, the Commission granted a joint motion for extension of time, extending the deadline for filing comments and oppositions to the Petition to January 23, 2020. E-mail from Brendan Murray, Deputy Chief, Policy Div., Media Bureau, Comm'n, to Sean M. Carroll, Gen. Counsel, MDTC (Jan. 2, 2020, 03:58 EST).

II. The Local Exchange Carrier Test

In 1996, Congress established a fourth test by which a cable operator could establish that it is subject to effective competition, known as the LEC Test. Congress stated that the Commission may determine that a cable operator is subject to effective competition if the operator can establish:

that a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) 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.⁶

A cable operator is presumed not to be subject to effective competition on account of the LEC Test.⁷ Accordingly, the cable operator bears the burden of proving that it is subject to effective competition under the LEC Test.⁸

To carry this burden, the Commission has determined that a cable operator petitioner must make several showings. Among them, a petitioner must demonstrate that the purported competitive service is provided by a LEC, LEC affiliate, or multichannel video programming distributor (“MVPD”) using the facilities of such LEC or its affiliate as those terms are applied under the LEC Test.⁹ Second, the petitioner must demonstrate that a LEC “offers video programming services directly to subscribers.”¹⁰ FCC regulations interpret this statutory

⁶ 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4).

⁷ 47 C.F.R. § 76.906.

⁸ *Id.* §§ 76.906-76.907(b); *In re Implementation of Cable Act Reform Provisions of the Telecomms. Act of 1996*, 14 FCC Rcd. 5296, 5305, *Report & Order* (1999) (“*Cable Reform Order*”).

⁹ 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). Unless the context dictates otherwise, for administrative ease, the MDTC refers to LECs, LEC affiliates, and MVPDs using the facilities of LECs or affiliates collectively as LEC.

¹⁰ 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4).

requirement to mean that: 1) an MVPD must be “physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service,”¹¹ 2) “no regulatory, technical, or other impediments to households taking service exist,”¹² and 3) “potential subscribers in the franchise area are reasonably aware that they may purchase the services of the MVPD.”¹³ Third, FCC regulations dictate that an MVPD must demonstrate that it offers “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming” in order for such video programming to be deemed “comparable” for purposes of Section 76.905.¹⁴ DIRECTV is an MVPD¹⁵ and, therefore, subject to these requirements regardless of whether the AT&T TV NOW service is deemed multichannel video programming.¹⁶

As demonstrated below, because AT&T TV NOW cannot satisfy these requirements, Comcast is not subject to effective competition in the Franchise Areas.

¹¹ 47 C.F.R. § 76.905(e)(1).

¹² *Id.* § 76.905(e)(2).

¹³ *Id.*

¹⁴ *Id.* § 76.905(g).

¹⁵ *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 27 FCC Rcd. 8610, 8617, ¶ 18, *Fourteenth Report*, MB Docket No. 07-269 (2012).

¹⁶ *See also In re Cablevision of Boston, Inc.*, 17 FCC Rcd. 4772, 4773, *Memorandum Opinion & Order* (2002); *In re Time Warner Cable*, 16 FCC Rcd. 2958, 2962, *Memorandum Opinion & Order* (2001); *Cable Reform Order*, 14 FCC Rcd. at 5300 (incorporating the definition of “offered” in 47 C.F.R. § 76.905(e) into the LEC Test).

III. DIRECTV Does Not Offer AT&T TV NOW In The Franchise Areas.

The LEC Test requires that a LEC offer comparable video programming directly to subscribers in the franchise areas.¹⁷ Comcast has failed to demonstrate that DIRECTV “offers” AT&T TV NOW in the franchise areas.

AT&T TV NOW is not offered in the Franchise Areas, as required by the LEC Test, because the applicable FCC regulations dictate that a LEC’s video programming service—here purportedly a streaming service that consumers can receive only via a broadband connection—is only “offered” to those who either: 1) have a broadband subscription with sufficient capacity to receive the service, or 2) do not have such a broadband service but could obtain one as a result of actions taken by the LEC. AT&T TV NOW cannot meet the statutory requirement of offering service under the plain language of the existing FCC regulations.

Specifically, FCC regulations state that a service is deemed “offer[ed]” 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 subscriber to receive service”,¹⁸ and 2) “no regulatory, technical or other impediments to households taking service exist,”¹⁹ and “potential subscribers in the franchise areas are reasonably aware that they may purchase the service[]”²⁰ The Petitioner has failed to prove that AT&T TV NOW satisfies any of the three parts of this definition of offer.

¹⁷ 47 U.S.C. § 543(l)(1)(D).

¹⁸ 47 C.F.R. § 76.905(e)(1) (emphasis added); *see also Cable Reform Order*, 14 FCC Rcd. 5296, 5300, ¶ 7 (stating that “offer” in 47 U.S.C. § 543(l)(1)(D) “has the same meaning given that term” in 47 C.F.R. § 76.905(e)(1) and (2)).

¹⁹ 47 C.F.R. § 76.905(e)(2).

²⁰ *Id.*

A. DIRECTV Is Not Physically Able To Offer AT&T TV NOW To Potential Customers.

The first part of this definition requires that a LEC be physically able to deliver the service to potential subscribers. DIRECTV cannot provide AT&T TV NOW to households without a broadband connection.²¹ Comcast relies on its own broadband service to attempt to show that DIRECTV offers AT&T TV NOW in the Franchise Areas.²² In fact, as discussed more fully in Section VI.B. *infra*, on average in the Franchise Areas, Comcast has a [REDACTED] % market share²³ of the broadband internet access services market at 12/1 Mbps.²⁴ The problem with this attempt is that the FCC has held that “to qualify as an entity effectively competing with a cable operator . . . the facilities [that] a multichannel distributor uses cannot be those of the operator.”²⁵ The FCC’s underlying point with this finding was not limited to MVPDs, but was, of course, a basic market economic principle that a service cannot effectively compete with a cable operator if the service requires the cable operator’s facilities in order to be received. In other words, Comcast cannot demonstrate that AT&T TV NOW competes with Comcast by relying on the claim that Comcast Internet subscribers can stream AT&T TV NOW over Comcast’s broadband facilities.

Further, neither DIRECTV nor any AT&T affiliate provides fixed broadband Internet access service in the franchise areas.²⁶ Thus, DIRECTV is not “physically able to deliver” AT&T

²¹ See Charter Order, ¶¶ 8-9; Petition at 8-10, n.35.

²² *Id.* at 8.

²³ The MDTC obtained fixed broadband subscribership data for the Franchise Areas from the FCC, and such data was provided to the MDTC on the condition that the MDTC maintain such data’s confidentiality. Thus the MDTC submits fixed broadband subscribership data for the Franchise Areas confidentially. *See In re Comcast Cable Commc’ns, LLC Petitions for Determination of Effective Competition in 41 Cmty. in Pa.*, 28 FCC Rcd. 3375, 3376-77 n.16, *Memorandum Opinion & Order* (2013) (permitting a party in an effective competition proceeding to file data confidentially and reserving the right, if another party

TV NOW to potential subscribers. At most, DIRECTV is physically able to deliver AT&T TV NOW to a broadband network, which then physically delivers the service to subscribers. This does not meet the LEC Test's standard. The statutory requirement is that a LEC be "physically able to deliver service to potential subscribers,"²⁷ not that it prepare the service for delivery by a third party. Comcast has not carried its burden of demonstrating that DIRECTV meets this standard, and AT&T TV NOW is not technically available under the LEC Test. As a result, DIRECTV does not "offer" AT&T TV NOW in the Franchise Areas under the LEC Test.

Further, in determining whether the LEC is physically able to deliver the service to potential subscribers, the Commission considers whether the competing service is "ubiquitous" in the franchise area.²⁸ The Commission regards the relevant "potential subscribers" to be the

requested access to the confidential data, to engage in a more formal process for their evaluation, protection, and limited disclosure).

²⁴ See FCC, Fixed Broadband Deployment Data: December, 2018 Status V1, <https://transition.fcc.gov/form477/BroadbandData/Fixed/Dec18/Version%201/MA-Fixed-Dec2018.zip>; U.S. Census Bureau. (Aug. 11, 2011) 2010: DEC Summary File 1 https://www2.census.gov/census_2010/04-Summary_File_1/Massachusetts/.

²⁵ *Implementation of Section of the Cable Television Consumer Prot. & Competition Act of 1992 Rate Regulation*, 8 FCC Rcd. 5631, 5652, ¶ 23, *Report & Order & Further Notice of Proposed Rulemaking* (1993).

²⁶ FCC, Fixed Broadband Deployment Data from FCC Form 477, MA - Fixed – Dec. 17v1, <https://transition.fcc.gov/form477/BroadbandData/Fixed/Dec18/Version%201/MA-Fixed-Dec2018.zip>. Comcast does not provide any evidence that DIRECTV or an affiliate offers any form of broadband service in the Franchise Areas capable of streaming AT&T TV NOW nor was any such evidence contained in the Petition giving rise to the Charter.

²⁷ *Cable Reform Order*, 14 FCC Rcd. at 5300; 47 C.F.R. § 76.905(e)(1); *see also* 47 C.F.R. § 76.905(e)(1); *In re Coxcom, Inc.*, 25 FCC Rcd. 3233, 3236 n.25, *Memorandum Opinion & Order* (2010); *In re Cablevision of Boston, Inc.*, 17 FCC Rcd. 4772, 4773, *Memorandum Opinion & Order* (2002).

²⁸ *See Cable Reform Order*, 14 FCC Rcd. at 5302, ¶¶ 9, 10; *In re Cablevision of Boston, Inc.*, 17 FCC Rcd. 4772, 4776, ¶ 2 *Memorandum Opinion & Order* (Mar. 13, 2002) ("We have said that there is an 'expectation that the LEC presence [will] be ubiquitous,'" citing *Cable Reform Order* at 5302); *Cablevision of Boston, Inc.*, 16 FCC Rcd. 14,056, 14,061, ¶¶ 14-15, *Memorandum Opinion & Order* (July 20, 2001) (finding that franchise agreement obligations and competing service provider's financial capacity and intent to build-out services in every Boston neighborhood satisfies the offer rule); *Cablevision Sys. Long Island Corp.*, 22 FCC Rcd. 13,176, 13,178, ¶ 7, *Memorandum Opinion & Order* (July 19, 2007) (finding that competing cable service provider's completion of build-out to 94% of households in the franchise area in

residents of the franchise area, not just a petitioner’s existing customers.²⁹ In other words, determining whether a LEC’s video service is offered does not depend on whether the petitioner’s existing customers could receive that service, it depends on whether all of the households—whether or not they are currently customers of the petitioner—in the franchise area *can* receive the LEC’s video service.

Both the Commission and the Petitioner acknowledge that AT&T TV NOW cannot be delivered to households that do not subscribe to adequate broadband service.³⁰ Even the media articles that Petitioner provides as evidence that potential customers in the Franchise Areas are aware that they can buy AT&T TV NOW clearly state, for example, that: “[i]n order to watch AT&T TV NOW you need both a high-speed internet connection and a compatible device.”³¹ Yet the Petitioner has only provided data on the percentage of its own subscribers in each Franchise Area who could subscribe to AT&T TV NOW. The relevant metric to determine whether DIRECTV offers AT&T TV NOW in the Franchise Areas is instead the households in

the first year and franchise agreement obligation to build-out to all remaining areas of the franchise area satisfies the offer requirement). The MDTC acknowledges the Commission’s interpretation that the LEC Test does not contain a minimum penetration requirement. Here we are talking about the purported competitor’s, DIRECTV’s, ability to actually provide the service, which can only be provided to households who subscribe to adequate broadband service.

²⁹ See, e.g., *Cable Reform Order*, 14 FCC Rcd. at 5304, ¶ 12 (determining that a LEC’s service that serves only a “specialized or niche market” does not satisfy the LEC Test); *In re CoxCom, Inc.*, 17 FCC Rcd. 17,188, 17,190, ¶ 5 nn.23, 24, *Memorandum Opinion & Order* (Sept. 18, 2002) (determining whether a LEC’s video service met the “offer” requirement of the LEC Test by measuring the percentage of franchise area households which had access to the service); *Cablevision Sys. Long Island Corp.*, 22 FCC Rcd. 13,176, 13,178, ¶ 7, *Memorandum Opinion & Order* (July 19, 2007) (finding that competing cable service provider’s completion of build-out to 94% of households in the franchise area in the first year and franchise agreement obligation to build-out to all remaining areas of the franchise area satisfies the offer requirement).

³⁰ Charter Order, ¶¶ 8-9; Petition at 8-10 & n.35.

³¹ *Id.* at Exh. 2 (“AT&T TV NOW (aka DirecTV NOW): How to Watch The Live Streaming Service,” Jeremy Laukkonen, Lifewire). Notably, AT&T TV NOW is no longer supported on Roku, the “most popular streaming platform on the planet.” Stephen Lovely, *Losing Roku Is Just the Latest Disaster for AT&T TV Now*, THE MOTLEY FOOL, Jan. 15, 2020, <https://www.fool.com/investing/2020/01/15/losing-roku-is-just-the-latest-disaster-for-att-tv.aspx>.

each Franchise Area that *can* subscribe to AT&T TV NOW.³² DIRECTV is not physically able to deliver AT&T TV NOW to households who do not subscribe to broadband service, regardless of whether those households could choose to subscribe to broadband service.

The Petitioner cannot meet the offer requirement of the LEC Test because the plain meaning of the words of Section 76.905(e)(1) mean that DIRECTV cannot provide AT&T TV NOW to a significant percentage of households in the Franchise Areas, as detailed below, because those households do not subscribe to an adequate broadband connection. In addition, as discussed more fully in Section III.B. *infra*, the plain meaning of the words of Section 76.905(e)(2) mean that DIRECTV—“the distributor”—cannot make those households capable of subscribing to AT&T TV NOW because neither DIRECTV nor any other AT&T affiliate provides fixed broadband service in the Franchise Areas,³³ much less is capable of subscribing residents on their behalf.³⁴ There may be policy reasons to change these regulatory provisions so that it would be sufficient, for proving that a LEC’s service is “offered,” that households, rather than the distributor, have the ability to change households’ capacity to access the LEC’s service. But that is not the plain meaning of either subsections (1) or (2) of Section 76.905(e). And there

³² See *supra* note 28.

³³ FCC, Fixed Broadband Deployment Data from FCC Form 477, MA - Fixed - Dec 17v1, <https://transition.fcc.gov/form477/BroadbandData/Fixed/Dec18/Version%201/MA-Fixed-Dec2018.zip>. Indeed, although Comcast claims that other broadband providers may offer 25/3 Mbps service in the Franchise Areas, it references only its own broadband service in the Petition. See Petition at 8.

³⁴ The first part of the offer rule can also be met by a showing that the LEC has started to offer its service in the franchise area and that the service will become ubiquitous in the future, even if it was not at the time of the petition, given franchise-agreement or similarly binding obligations to build-out throughout the franchise area combined with a showing that the LEC has both the ability and intent to complete such a build-out. *Cablevision Sys. Long Island Corp.*, 22 FCC Rcd. 13,176, 13,178, ¶ 7, *Memorandum Opinion & Order* (July 19, 2007) (finding that competing cable service provider’s completion of build-out to 94% of households in the franchise area in the first year and franchise agreement obligation to build-out to all remaining areas of the franchise area satisfies the offer requirement). Here, where the distributor, DIRECTV, does not offer the broadband internet access service that is required for a potential subscriber to physically access AT&T TV NOW, there is no chance, much less an assurance, that the distributor can or intends to expand the necessary broadband subscriptions in the franchise area to make them ubiquitous.

are compelling policy reasons, detailed more fully below,³⁵ that the Commission shouldn't change Section 76.905 to have that meaning.

The broadband data the Petitioner cites as evidence that DIRECTV offers AT&T TV NOW reflect either broadband availability—not subscription—figures³⁶ or statewide or countywide broadband subscription figures.³⁷ Comcast does not provide broadband subscription data for the Franchise Areas, individually, despite the fact that its burden of showing that DIRECTV is “physically able to deliver the service to potential subscribers” is specific to each Franchise Area.³⁸ Nevertheless, the MDTC calculated the fixed broadband subscription rates for each of the Franchise Areas. Although Massachusetts enjoys high broadband subscription rates overall, there is wide variation in broadband subscription rates across Massachusetts's franchise areas.

The latest available broadband subscription data from the FCC³⁹ shows that ■■■% of housing units in the Franchise Areas do not have a broadband internet access service adequate for DIRECTV to physically deliver its AT&T TV NOW service (see Exhibit A attached

³⁵ See discussion *infra* Section VII.B.

³⁶ Petition at 8.

³⁷ *Id.* at 8-10.

³⁸ 47 U.S.C. § 543(l)(1)(D); see also *In re CoxCom, Inc. d/b/a Cox Commc'ns Orange Cty. for a Determination of Effective Competition*, 25 FCC Rcd. 3233, 3236, ¶ 11, *Memorandum Opinion & Order* (Mar. 31, 2010) (“CoxCom Petition”) (finding that a LEC video service must be offered “in the franchise area”).

³⁹ *Supra* note 23.

hereto).⁴⁰ In one franchise area, the City of Fall River, a franchise area of more than 80,000 residents, nearly [REDACTED] % of housing units lacked such service.⁴¹

Even further, the statewide subscription data from the U.S. Census Bureau which the Petitioner cites as evidence that DIRECTV is physically able to deliver the service to potential subscribers is inapplicable to AT&T TV NOW's availability because it includes Internet service that is inadequate to view AT&T TV NOW. AT&T TV NOW requires subscribers to have wireline Internet access service download speeds of at least 12 Mbps for optimal viewing.⁴² The Census Bureau data the Petitioner relies on does not measure the percentage of households that subscribe to that level of Internet access service. Instead, the Census Bureau data measures the percentage of households that subscribe to any Internet access service of any download speed "other than a dial-up subscription."⁴³ In sum, to prove that it satisfies the offer prong of the LEC Test, the Petitioner relies solely on Internet access service subscription rate data which is inapplicable both because it is statewide and because it includes Internet access service with less than 12/1 Mbps, and on inapplicable broadband availability, rather than subscription, data. As a result, the Petitioner fails to satisfy the offer prong of the LEC Test.

⁴⁰ FCC, *Residential Fixed Internet Access Service Connections per 1000 Households by Census Tract, as of Dec. 2017* (Sept. 20, 2018), <https://www.fcc.gov/maps/residential-fixed-internet-access-service-connections-per-1000-households-by-census-tract/>; U.S. Census Bureau. (Aug. 11, 2011) 2010: DEC Summary File 1 https://www2.census.gov/census_2010/04-Summary_File_1/Massachusetts/.

⁴¹ *Id.*

⁴² Petition at 8 n.30.

⁴³ Camille Ryan, American Community Survey Reports, U.S. Census Bureau, "*Computer and Internet Use in the United States: 2016*," (issued Aug. 2017) at note 2, <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>.

B. Comcast Has Not Shown That There Are No Impediments To Households Taking AT&T TV NOW.

The Petitioner fails to address its burden to show that “no regulatory, technical or other impediments to households taking service exist.”⁴⁴ In any event, the data that Petitioner used to attempt to satisfy the first part of the offer requirement would also fail to satisfy this second part.

The broadband availability data and statewide and countywide subscription data Petitioner cites cannot demonstrate that lacking a broadband connection is not an impediment to households taking AT&T TV NOW.⁴⁵ Further, although the Commission finds that this second part of the offer rule can be met even if households currently face a technical or other impediment to taking the LEC’s video service if an “individual investment,” such as installing a drop from an existing street trunk to a home, can enable service, the Petitioner provides no evidence as to how many of those households in the Franchise Areas that currently cannot receive AT&T TV NOW could do so with only an “individual investment.”⁴⁶ The FCC notes that this exception to the second part of the offer requirement is not met if a “community investment,” such as installing a cable trunk to the street, is required.⁴⁷ The Petitioner does not identify how many households in the Franchise Areas identified as having “broadband” by the Census Bureau lack the necessary download speeds required for AT&T TV NOW service. The Census Bureau data fails to distinguish between those who lack the required download speeds because they would require an “individual investment” to have access to such speeds, and those

⁴⁴ 47 C.F.R. § 76.905(e)(2).

⁴⁵ See Petition at 8-10.

⁴⁶ *Implementation of Section of the Cable Television Consumer Prot. & Competition Act of 1992 Rate Regulation*, 8 FCC Rcd. 5631, 5654-55, ¶ 27, *Report & Order & Further Notice of Proposed Rulemaking* (1993).

⁴⁷ *Id.*

who lack the required download speeds because they would require a “community investment” to have access to such speeds. The Petitioner fails to provide any other relevant data.

In sum, the only broadband data that Petitioner provides to meet its burden of showing that DIRECTV offers AT&T TV NOW in the Franchise Areas fails to satisfy either part of the “offer rule.”

C. Comcast Has Not Shown That Potential Customers Are Reasonably Aware That They Can Purchase AT&T TV NOW.

Finally, the Petitioner has failed to show that “potential subscriber in the franchise areas are reasonably aware that they may purchase the service.”⁴⁸ In making this determination, the Commission looks to whether the LEC is marketing the service in the franchise area and whether the LEC is currently providing the service to customers in the franchise area.⁴⁹ Petitioner fails to provide evidence of either. Petitioner fails to cite to a single advertisement, on any medium, promoting AT&T TV NOW, in Massachusetts or nationally. In addition, Petitioner provides no evidence of whether AT&T TV NOW has any current customers in the Franchise Areas.

Instead, to support its contention that potential customers in the Franchise Areas are “reasonably aware” of AT&T TV NOW, Petitioner offers three pieces of evidence: 1) the Commission’s references to evidence of DIRECTV’s advertising of DIRECTV NOW provided by Charter in its effective-competition petition;⁵⁰ 2) evidence of DIRECTV NOW advertising in the months following the Charter Order; and 3) evidence from AT&T’s website and some telecommunications industry reporters, discussing AT&T TV NOW.⁵¹ This evidence fails to

⁴⁸ 47 C.F.R. § 76.905(e)(2).

⁴⁹ See, e.g., *In re Cablevision of N.J., LLC*, 30 FCC Rcd. 7431, 7432, *Memorandum Opinion & Order* (2015).

⁵⁰ *Petition of Charter Commc’ns, Inc. for a Determination of Effective Competition*, MB Docket No. 18-283 (2018) (“Charter Petition”).

⁵¹ Petition at Exh. 2.

meet the Commission’s established standard for petitioners attempting to meet this third part of the definition of “offer.”

First, the Petitioner cites to the evidence of DIRECTV NOW advertising included in the Charter Petition as one way potential customers today would become aware of AT&T TV NOW.⁵² This advertising has little bearing on current potential customer awareness in Massachusetts, however, because it advertised DIRECTV NOW, not AT&T TV NOW, and because it is now up to four years old.⁵³ Second, the Petitioner’s evidence of DIRECTV’s advertising of DIRECTV NOW in early 2019 is equally unconvincing. Petitioner references only one television advertisement for DIRECTV NOW (note, the Petitioner provides no evidence of television advertisements for AT&T TV NOW) that ran after May 2019.⁵⁴ That is likely because AT&T reportedly wound down all forms of advertising for its AT&T TV NOW service in the fall of 2019 as, analysts believe, AT&T prepares to shut down that service in the coming months.⁵⁵ Indeed, AT&T appears to have ceased advertising AT&T TV NOW online completely.⁵⁶ This 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

⁵² Petition at 10.

⁵³ The Charter Order cited two pieces of evidence provided by Charter for the Commission’s conclusion that potential customers in the franchise areas for which Charter petitioned were aware of AT&T TV NOW. The first was Charter’s claim that “DIRECTV Now ‘received considerable publicity since its debut’” in 2016. Charter Order, ¶ 10 n.46. The second was a letter from the American Cable Association in support of the Charter Petition which cited a July 24, 2017 Multichannel News report. *Id.*, ¶ 10 n.48.

⁵⁴ Petition at Exh. 2.

⁵⁵ Emily Groch, Industry Voices—*Groch: Wave goodbye to AT&T TV Now and U-verse TV in 2020*, FIERCEVIDEO, Jan. 9, 2020, <https://www.fiercevideo.com/video/industry-voices-groch-wave-goodbye-to-at-t-tv-now-and-u-verse-tv-2020>.

⁵⁶ E-mail from Sam Gansline, Pathmatics, Inc., to Mark Merante, Counsel, MDTC (Jan. 10, 2020, 04:32 EST) (on file with author).

to that of AT&T TV NOW—including AT&T TV, AT&T Watch TV, Max Go, HBO Go, HBO Now, HBO Max, DIRECTV, U-verse TV, etc.⁵⁷—means that potential customers are not currently “reasonably aware” that they can purchase AT&T TV NOW, despite information about the service that may be available online if potential customers happen to know where and for what to search.⁵⁸

In sum, Comcast has failed to carry its burden to prove that potential customers are reasonably aware that they can purchase AT&T TV NOW. Accordingly, for this reason also, Comcast has not proven that DIRECTV “offers” AT&T TV NOW in the Franchise Areas, as that term is defined by the LEC Test.

IV. DIRECTV Does Not Offer AT&T TV NOW Directly To Potential Customers.

In addition to not “offering” its service to households as that term is defined by Section 76.905(e), DIRECTV does not provide its service directly to subscribers. To establish effective competition via the LEC Test, Comcast must demonstrate that a LEC offers video programming services “directly to subscribers.”⁵⁹ DIRECTV does not offer AT&T TV NOW directly to

⁵⁷ *Hollywood Torrent: AT&T goes “all-in” on HBO Max as its TV business crumbles*, BLOOMBERG, <https://www.bloomberg.com/news/newsletters/2019-11-03/at-t-goes-all-in-on-hbo-max-as-its-tv-business-crumbles> (Nov. 3, 2019); Tara Lachapelle, *Buying HBO was the easy part for AT&T*, THE WASHINGTON POST, Aug. 22, 2019, https://www.washingtonpost.com/business/buying-hbo-was-the-easy-part-for-atandt/2019/08/22/b49b90fe-c4d4-11e9-8bf7-cde2d9e09055_story.html; Ty Pendlebury, *AT&T TV NOW review: Great interface and HBO don’t make up for missing channels*, CNET, Sept. 14, 2019, <https://www.cnet.com/news/at-t-tv-now-review-great-interface-and-hbo-dont-make-up-for-missing-channels/>.

⁵⁸ See, e.g., Tara Lachapelle, *Is AT&T’s Hollywood Plot too Far-Fetched*, BLOOMBERG, Nov. 8, 2019, <https://www.bloomberg.com/graphics/2019-opinion-att-hbo-hollywood-plot/>; Eli Blumenthal, *AT&T TV is live, but what is it?*, CNET, <https://www.cnet.com/news/what-is-at-t-tv-here-is-what-we-know-now/> (Aug. 19, 2019); Jon Brodtkin, *AT&T’s confusing mess of online TV services even has AT&T confused*, ARS TECHNICA, Sept. 4, 2019, <https://arstechnica.com/information-technology/2019/09/atts-confusing-mess-of-online-tv-services-even-has-att-confused/> (discussing AT&T’s error in its own marketing materials and technical support web page, which referred to AT&T TV NOW as AT&T TV, a different service that users access via the same app).

⁵⁹ 47 U.S.C. § 543(l)(1)(D).

subscribers. As Comcast acknowledges, DIRECTTV provides AT&T TV NOW to subscribers only via the subscribers' broadband Internet access service.⁶⁰ And AT&T does not provide broadband Internet access service in the franchise areas.⁶¹ In fact, the only fixed broadband service Comcast references specifically is its own broadband service.⁶² At most, then, Comcast can claim that DIRECTTV provides AT&T TV NOW indirectly to subscribers, over Comcast's broadband facilities.⁶³ As the D.C. District Court has stated, Internet-based video services transmit video signals "to Internet service providers, as opposed to sending them directly to the subscribers' digital device."⁶⁴

In addition to DIRECTTV's provision of AT&T TV NOW being indirect in plain, practical terms, Black's Law Dictionary defines "direct" as "undeviating" or "[f]ree from extraneous influence."⁶⁵ DIRECTTV does not provide AT&T TV NOW to subscribers undeviating or free from extraneous influence. Comcast describes its network management practices for broadband Internet access service as follows:

Comcast uses reasonable network management practices that are consistent with industry standards. Comcast uses various tools and techniques to manage its network, deliver its service, and ensure compliance with the Acceptable Use Policy and the Customer Agreement for Residential Services. These tools and techniques are dynamic and can and do change frequently. Network management activities may include identifying spam and preventing its delivery to customer email accounts, and detecting malicious Internet traffic and preventing the distribution of,

⁶⁰ Petition at 8-10 n.35.

⁶¹ FCC, Fixed Broadband Deployment Data from FCC Form 477, MA - Fixed - Jun 17v1, <https://transition.fcc.gov/form477/BroadbandData/Fixed/Jun17/Version%201/MA-Fixed-Jun2017.zip> (last visited Oct. 3, 2018).

⁶² Petition at 8.

⁶³ *See id.*

⁶⁴ *Fox Television Stations, Inc. v. FilmOn X LLC*, 150 F. Supp. 3d 1, 19 (D.D.C. 2015).

⁶⁵ *Direct*, BLACK'S LAW DICTIONARY (10th ed. 2014).

or inadvertent access to, malware, phishing, viruses, or other harmful code or content.

As the Internet and its related technologies continue to evolve, Comcast's network management tools will also keep pace so we can deliver an excellent, reliable, and safe experience to all of our customers. We will provide updates here as well as other locations if we make significant changes to our network management techniques.⁶⁶

Because Comcast reasonably manages traffic on its broadband network, including AT&T TV NOW, DIRECTV does not provide AT&T TV NOW to subscribers free from extraneous influence, but rather subject to Comcast's influence.⁶⁷ However nondiscriminatory that influence may be, it is unquestionably an influence that is extraneous from DIRECTV, foreclosing a finding that DIRECTV provides AT&T TV NOW directly to subscribers.

Comcast declines to address the requirement that video service be provided "directly to subscribers," simply stating that its Petition does not differ factually from Charter's 2018 effective competition petition.⁶⁸ The Commission in the Charter Order consulted pre-1996 Telecommunications Act opinions interpreting "directly to consumers" in the context of LECs' involvement in distributing video programming. Before the ban on LECs' direct provision of video programming services to their customers was lifted, the Commission and at least one

⁶⁶ XFINITY, XFINITY INTERNET BROADBAND DISCLOSURES, <https://www.xfinity.com/policies/internet-broadband-disclosures> (last visited Jan. 9, 2020). As discussed further below, it defies logic to find that Comcast faces effective competition from a video provider that is reliant on Comcast's infrastructure. *See supra* p. 6 (referencing the Commission's conclusion that "to qualify as an entity effectively competing with a cable operator . . . the facilities a multichannel distributor uses cannot be those of the operator."); *infra* note 82.

⁶⁷ The MDTC notes that the Commission recently ruled that broadband Internet access service providers such as Comcast are no longer subject to Commission-imposed network management conduct rules such as prohibitions on blocking, throttling, or paid prioritization. *In re Restoring Internet Freedom*, 33 FCC Rcd. 311, *Declaratory Ruling, Report & Order, & Order* (2018). Accordingly, while Comcast has committed to refrain from blocking or degrading lawful content or service, under Commission rules Comcast is now free, upon appropriate notice, to degrade or discriminate against online streaming video services such as AT&T TV NOW if it so chooses. *See* XFINITY, XFINITY INTERNET BROADBAND DISCLOSURES, <https://www.xfinity.com/policies/internet-broadband-disclosures> (last visited Jan. 9, 2020).

⁶⁸ Petition at 5.

circuit court of appeals found that LECs were permitted to partner with cable television providers by providing them with access to poles or other equipment in order to serve customers in the LEC's service area, and that such a partnership would not constitute unlawful direct provision of cable service by a LEC.⁶⁹ These interpretations which are moot following the 1996 Act, are inapposite to Comcast's current situation, as they dealt with a business partnership between two companies providing services to overlapping groups of customers using some dual-use equipment. In such a situation, while the LEC might have owned some or even all of the equipment used to transmit the cable company's service, the cable company would have a contractual relationship with the LEC under which it could assure that customers receive adequate service. It is a significant logical leap from holding that two companies are permitted to share equipment in order to offer services to customers in a jointly served geographic area to finding that "directly" providing services only means that there is a billing relationship between a content provider and an end user, even though the content is received via a third party not controlled by—or even known to—the content provider.

The word "directly" does not appear in any other effective competition test.⁷⁰ As then-Commissioner Furchtgott-Roth correctly stated in response to the Commission's order implementing the LEC Test: "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."⁷¹ The statute plainly requires

⁶⁹ Charter Order at n. 53.

⁷⁰ 47 U.S.C. § 543(l)(1).

⁷¹ *Cable Reform Order*, 14 FCC Rcd. at 5385 (Comm'r Furchtgott-Roth, dissenting) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

a LEC to *offer service directly* to subscribers, not just to bill them directly.⁷² In fact, Congress used the term “directly” elsewhere in the same section of the Telecommunications Act of 1996, discussing a cable operator’s provision of service “directly or through an affiliate,” demonstrating that Congress knew how to modify the word “directly” if it so desired.⁷³ DIRECTV does not provide AT&T TV NOW directly to subscribers. Accordingly, Comcast has not demonstrated that it is subject to effective competition under the LEC test.

V. As The Cable Industry Has Consistently And Correctly Stated, Online Video Distributors, Such As DIRECTV Via Its AT&T TV NOW Service, Do Not Offer Channels Of Video Programming.

Comcast cannot demonstrate that it is subject to effective competition under the LEC Test, because DIRECTV does not offer programming that is comparable to Comcast’s programming. The LEC Test requires that a LEC offer video programming services that are comparable to the video programming services provided by the unaffiliated cable operator.⁷⁴ The Commission has made clear that “comparable programming” means “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.”⁷⁵ The Commission adopted this definition of “comparable programming” and affirmed its applicability to the LEC Test knowing that Congress had defined “channel” as “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by

⁷² 47 U.S.C. § 543(l)(1)(D).

⁷³ See Telecommunications Act of 1996, Pub. L. No. 104-104, § 301, 110 Stat. 56, 116 (1996) (codified as 47 U.S.C. § 543(m)(2)). Congress modified and broadened the word “direct” in other parts of the Act as well. See, e.g., *id.* § 101 (codified as 47 U.S.C. § 251(a)(1)).

⁷⁴ 47 U.S.C. § 543(l)(1)(D); see also 47 C.F.R. § 76.905(b)(4).

⁷⁵ 47 C.F.R. § 76.905(g); see also Petition at 11.

regulation).”⁷⁶ Thus, to prove that DIRECTV provides comparable programming via AT&T TV NOW, Comcast must prove that DIRECTV offers 12 portions of the electromagnetic frequency spectrum which are used in a cable system and which are capable of delivering a television channel. As the Media Bureau has tentatively found and the cable industry, including Comcast’s predecessor-in-interest and trade association, has repeatedly asserted, online video distributors (“OVDs”) that do not also provide this transmission path do not provide channels.⁷⁷

Comcast has not and cannot prove that DIRECTV offers 12 channels of video programming as that term is defined under federal law.⁷⁸ DIRECTV does not offer 12 portions of the electromagnetic frequency spectrum which are used in a cable system and which are capable of delivering a television channel.⁷⁹ Comcast claims that AT&T TV NOW is a streaming video service that provides customers with access to at least 45 channels of live television.⁸⁰ However, other than this conclusory statement, Comcast does not attempt to carry its burden of

⁷⁶ 47 U.S.C. § 522(4); *see also Cable Reform Order*, 14 FCC Rcd. at 5307-08. The Commission’s regulations define a “television channel” as “a band of frequencies 6 MHz wide in the television broadcast band and designated either by number or by the extreme lower and upper frequencies.” 47 C.F.R. § 73.681; *see also id.* §§ 73.603, 73.606, 73.682(a)(1). The Commission’s regulations also define a “cable television channel” as a “signaling path provided by a cable television system.” *Id.* § 76.5(r)-(u). DIRECTV does not, through AT&T TV NOW, offer television channels or cable television channels.

⁷⁷ *See infra* note 82.

⁷⁸ At the very least, the Commission cannot find that DIRECTV offers channels—and by extension, comparable programming—through AT&T TV NOW until it resolves its open rulemaking on the issue and finds that OVDs offer channels of video programming. *See Marseilles Land & Water Co. v. Fed. Energy Regulatory Comm’n*, 345 F.3d 916, 920 (D.C. Cir. 2003) (“For an administrative agency may not slip by the notice and comment rule-making requirements needed to amend a rule by merely adopting a de facto amendment to its regulation through adjudication.”); *In re Promoting Innovation & Competition in the Provision of Multichannel Video Programming Distribution Servs.*, 29 FCC Rcd. 15,995, *Notice of Proposed Rulemaking* (2014); *In re Interpretation of the Terms “Multichannel Video Programming Distributor” & “Channel” as Raised in Pending Program Access Complaint Proceeding*, 27 FCC Rcd. 3079, *Public Notice* (2012). To the extent the Commission does so in the future, and subsequently grants the Petition, the grant should be effective only as of the date the Commission finds that OVDs offer channels of video programming.

⁷⁹ *See* 47 U.S.C. § 522(4); 47 C.F.R. § 76.905(g).

⁸⁰ Petition at 7.

demonstrating that DIRECTV provides channels as that term is defined.⁸¹ In *Sky Angel*, the Media Bureau preliminarily concluded that an internet protocol television provider that provides video over a broadband Internet connection does not provide “channels” to its subscribers:

While Sky Angel appears to interpret the term “channel” in a non-technical sense to mean a stream of video programming, it fails to address the definitions of that term in the Act and the Commission’s rules, which appear to include a transmission path as a necessary element of a “channel.” . . . The evidence put forth at this stage of the proceeding indicates that Sky Angel does not provide its subscribers with a transmission path; rather, it is the subscriber’s Internet service provider that provides the transmission path.⁸²

Like Sky Angel U.S., LLC, DIRECTV does not provide its AT&T TV NOW subscribers with a transmission path; rather, it is each subscriber’s Internet service provider that provides the transmission path.⁸³ As a result, DIRECTV does not provide its subscribers with channels and thus does not provide comparable programming.

In fact, in 2015, the trade association that represents Comcast, NCTA – The Internet and Television Association (“NCTA”), stated:

[Online video distributors] do not make available multiple “channels” of video programming for purchase by subscribers. The term “channel” is itself unambiguously defined, for purposes of Title VI of the Communications Act, to require the provision of a *transmission path* on which video programming is provided – and *not* simply the video programming itself. There is no indication that Congress intended to define “channel” differently for purposes of the Title VI definition of an MVPD. To the contrary, all evidence – in the statute and in the legislative history – indicates that Congress meant the term “channel” to mean a transmission path throughout Title VI⁸⁴

⁸¹ *Id.*

⁸² *In re Sky Angel U.S., LLC*, 25 FCC Rcd. 3879, 3883, *Order* (2010) (footnotes omitted).

⁸³ *See* Petition at 8 (stating that households must have an Internet connection to view AT&T TV NOW). To find that Comcast faces effective competition from AT&T TV NOW, a product that is reliant on Comcast’s infrastructure, would ignore the fact that AT&T TV NOW subscribers actually contribute to Comcast’s profits by subscribing to Comcast’s broadband service.

⁸⁴ *In re Promoting Innovation & Competition in the Provision of Multichannel Video Programming Distribution Servs.*, MB Docket No. 14-261, NCTA Comments at 1-2 (Mar. 3, 2015) (agreeing with the Media Bureau’s tentative findings in *Sky Angel*). Ironically, Comcast is now asking the Media Bureau to do exactly what NCTA told the Commission it could not do: “The Commission may not simply discard the

The Commission adopted the definition of comparable programming and affirmed its applicability to the LEC Test with full knowledge of federal law’s definition of “channel.”⁸⁵ If the Commission wished to establish a different standard for determining whether programming is comparable, it would have done so. As the Commission stated in the *Cable Reform Order*: “As a general matter of statutory interpretation, a term used repeatedly in the same connection should be given the same meaning unless different meanings are required to make the statute consistent.”⁸⁶ Congress and the Commission use the term “channel” repeatedly in the same connection, and different meanings are not required to make the statute consistent. Accordingly, there is no basis for a claim that “channel” should mean anything but “a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).”⁸⁷ Because DIRECTV does not, via AT&T TV NOW, provide this transmission path, it does not provide channels. Accordingly, AT&T TV NOW does not provide programming comparable to Comcast’s, and Comcast thus cannot meet the LEC Test.

VI. Comcast Has Not Demonstrated That AT&T Is A Local Exchange Carrier Under The LEC Test.

AT&T is not a local exchange carrier in the Franchise Areas. To be a local exchange carrier, an entity must be “engaged in the provision of telephone exchange service or exchange

statutory definition of a ‘channel’ and replace it with one that it claims better meets its *own* policy preferences.” *Id.* at 2.

⁸⁵ See *Cable Reform Order*, 14 FCC Rcd. at 5307-08; 47 C.F.R. § 76.905(g).

⁸⁶ *Cable Reform Order*, 14 FCC Rcd. at 5307-08; see also Petition at 11 n.45.

⁸⁷ 47 U.S.C. § 522(4).

access.”⁸⁸ AT&T is not engaged in the provision of telephone exchange service or exchange access in the Franchise Areas.⁸⁹ Although AT&T may be registered as a local exchange carrier in Massachusetts, this is not sufficient to meet Congress’s definition of a local exchange carrier, which requires actual provision of local service.⁹⁰

Further, Congress made clear when it established the LEC Test that its focus was on the local, facilities-based presence of local exchange carriers in the relevant franchise area.⁹¹ Under the statutory construction canon *noscitur a sociis*, “[a] word is given more precise content by the neighboring words with which it is associated.”⁹² The LEC Test covers video programming services offered by “a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate).”⁹³ The parenthetical’s reference to the facilities of a LEC or its affiliate makes clear that the services offered by a “LEC” or “LEC affiliate” must be offered using the facilities of that LEC or its affiliate. As the Commission stated: “We believe that Congress [in the Telecommunications Act of 1996] expressed a clear preference, where possible, for facilities-based competition in the video

⁸⁸ 47 U.S.C. § 153(32).

⁸⁹ *AT&T home & business services in the United States*, ATT.COM, <https://www.att.com/local/phone> (last visited Oct. 2, 2018) (listing the states in which AT&T provides telephone exchange service, but not listing Massachusetts).

⁹⁰ *Id.* § 153(32).

⁹¹ See 142 CONG. REC. H1159 (daily ed. Feb. 1, 1996) (statement of Rep. Boucher) (predicting that, due to their physical presence, telephone companies offering cable service would deploy broadband “throughout their local exchanges”). Indeed, the entire thrust of the Telecommunications Act of 1996 was facilities-based competition. See *In re Implementation of Section 302 of the Telecommunications Act of 1996*, 11 FCC Rcd. 18,223, 18,259, *Second Report & Order* (1996).

⁹² See, e.g., *Life Techs. Corp. v. Promega Corp.*, 137 S. Ct. 734, 740 (2017), cited in *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, FCC 18-133, ¶ 55, *Declaratory Ruling & Third Report & Order* (2018).

⁹³ 47 U.S.C. § 543(l)(1)(D).

marketplace from both cable operators and telephone companies.”⁹⁴ Indeed, in implementing the LEC Test, the Commission specifically emphasized LECs’ “ubiquitous presence in the market” as part of Congress’s rationale in adopting the LEC Test.⁹⁵ LECs, collectively, may have a ubiquitous presence nationwide, but a company clearly does not have a ubiquitous, facilities-based presence in a state in which it does not provide telephone exchange service or exchange access.⁹⁶

Furthermore, the Commission has consistently found that LECs meet the “local exchange carrier” requirement in the LEC Test due to their actual provision of telephone exchange service *in the relevant franchise area*.⁹⁷

⁹⁴ *In re Implementation of Section 302 of the Telecommunications Act of 1996*, 11 FCC Rcd. 18,223, 18,259, *Second Report & Order* (1996).

⁹⁵ *Cable Reform Order*, 14 FCC Rcd. at 5302 (confirming Congress’s intent that “the LEC presence would be ubiquitous” in the franchise area); *see also In re Comcast of Potomac, LLC*, 31 FCC Rcd. 3947, 3949 n.21, *Memorandum Opinion & Order* (2016) (“The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so.”); *In re Mediacom Del. LLC*, 26 FCC Rcd. 3668, 3674 n.60, *Memorandum Opinion & Order* (2011) (reaffirming the LEC’s ubiquity in the franchise area as a congressional rationale); *Cable Reform Order*, 14 FCC Rcd. at 5305 (referring to a LEC’s construction to enable video service in the franchise area).

⁹⁶ Senator Pressler explained his rationale by referencing “the technological evolution [LECs’] networks are undergoing.” (141 CONG. REC. S8243 (daily ed. June 13, 1995) (statement of Sen. Pressler). The Senator’s statement is again a clear reference to LECs’ use of their own facilities in the relevant franchise area to provide the competing video service.

⁹⁷ *In re Paragon Commc’ns, Inc.*, 17 FCC Rcd. 27,866, 27,866, *Memorandum Opinion & Order* (2002) (finding that RCN was a LEC in Gardena because it provided local exchange and other telephone services within Gardena); *In re AT&T CSC, Inc.*, 17 FCC Rcd. 24,638, 24,639, *Memorandum Opinion & Order* (2002) (finding that RCN was a LEC in Lexington because it provided local exchange and other telephone services within Lexington); *In re Kansas City Cable Partners*, 16 FCC Rcd. 18,751, 18,752, *Memorandum Opinion & Order* (2001) (holding that Everest Connections Corporation was a LEC under the LEC Test because the company was a local exchange carrier “serving customers in Kansas”); *In re Time Warner Entm’t-Advance/Newhouse P’ship*, 16 FCC Rcd. 4822, 4823, *Memorandum Opinion & Order* (2001) (deeming ClearSource a LEC in Waco under the LEC Test due to its provision of telephone exchange and other telephone services within Waco); *In re Cablevision of Midwest*, 16 FCC Rcd. 1383, 1384, *Memorandum Opinion & Order* (2000) (finding that Ohio Bell was a LEC because it provided telephone exchange and other telephone services *within the franchise areas*). Even in cases where the Commission references a statewide telecommunications service registration, the Commission’s findings are generally backed by a LEC’s actual provision of service in the franchise area. *In re Bright House Networks, LLC*, 22 FCC Rcd. 12,905, 12,905, *Memorandum Opinion & Order* (2007) (finding Verizon to be a LEC for purposes of the LEC Test in the franchise area where it provided local exchange access services); *In re Mediacom Minn. LLC*, 21 FCC Rcd. 204, 204, *Memorandum Opinion & Order* (2006) (“Mediacom further

Finally, because carriage classification is activity-based, a provider can be classified as a local exchange carrier only where it is actually engaged in the provision of telephone exchange service or exchange access.⁹⁸ For example, in the context of common carriage, the Ninth Circuit recently held that an entity is a common carrier only with respect to its common carriage activities.⁹⁹ In other words, an entity is not a common carrier with respect to its non-common-carriage activities.¹⁰⁰ Likewise, then, an entity is a local exchange carrier only with respect to its provision of telephone exchange service or exchange access.¹⁰¹ And an entity is not a local exchange carrier with respect to areas in which it does not provide telephone exchange service. As a result, AT&T is a LEC only where it actually provides telephone exchange service or exchange access. As AT&T does not provide telephone exchange service in the Franchise Areas, it is not a LEC in the Franchise Areas, and Comcast cannot meet the LEC Test.

asserts that Wabash and HomeTown Solutions are local exchange carriers that *provide local exchange access services in the respective Franchise Areas.*”) (emphasis added); *In re Time Warner Entm't Co., L.P.*, 18 FCC Rcd. 1837, 1837, *Memorandum Opinion & Order* (2003) (determining that Doylestown Telephone Company Inc. was a LEC in the franchise areas for purposes of the LEC Test where it provided service in the franchise areas); *In re Tex. Cable Partners, L.P.*, 17 FCC Rcd. 4377, 4377 *Memorandum Opinion & Order* (2002) (finding that ClearSource, Inc. was a LEC in Corpus Christi under the LEC Test where the company provided “local exchange carrier (“LEC”) service” in Corpus Christi); *see also In re MCC Iowa LLC*, 20 FCC Rcd. 15,273, 15,273, 15,275, *Memorandum Opinion & Order* (2005) (relying on Texas Cable Partners due in part to ClearSource’s actual provision of “local exchange access services” in Corpus Christi).

⁹⁸ *See Fed. Trade Comm’n v. AT&T Mobility LLC*, 883 F.3d 848 (9th Cir. 2018) (holding that AT&T’s classification as a common carrier extends only insofar as it is engaging in common-carrier services).

⁹⁹ *See id.* (upholding the Commission’s interpretation that the Federal Trade Commission has jurisdiction “over non-common-carrier services of entities that also engage in common carriage services within the exclusive jurisdiction of the FCC”).

¹⁰⁰ *Id.* at 863-64.

¹⁰¹ *See* 47 U.S.C. § 153(32).

VII. Granting this Petition Would Undermine The Commission’s Policy Goals.

Granting Comcast’s Petition would contravene several of the Commission’s long-standing policy goals.

A. A Finding Of Effective Competition Based On A Non-Facilities-Based Streaming Video Service Would Undermine The Commission’s Policy Goal Of Encouraging Facilities-Based Investment And Limiting Regulation Of The Internet.

First, 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. One of the Commission’s primary goals in recent years has been to make decisions that encourage investment in broadband-capable facilities.¹⁰² A finding of effective competition based on DIRECTV’s provision of a service over an unaffiliated entity’s broadband facilities is wholly inconsistent with that goal. As discussed above, Congress intended the LEC Test to promote facilities-based competition in the video marketplace. Granting Comcast’s Petition would not only disregard the desirability of facilities-based investment on its own, but this disregard would be particularly striking in light of the congressional intent behind the LEC Test. Such a finding would construe a statute by which Congress referred to LECs’ facilities and attempted to encourage facilities-based competition in a way that actually discourages network investment. Specifically, to enable claims of effective competition based on non-facilities-based online video service would be a message to

¹⁰² See, e.g., *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd. 3266, *Notice of Proposed Rulemaking, Notice of Inquiry, & Request for Comment* (2017) (seeking ways to better enable broadband providers such as AT&T to build, maintain, and upgrade their networks); *In re Bridging the Digital Divide for Low-Income Consumers*, 32 FCC Rcd. 10,475, *Fourth Report & Order, Order on Reconsideration, Memorandum Opinion & Order, Notice of Proposed Rulemaking, & Notice of Inquiry* (2017) (proposing to amend the Commission’s Lifeline rules “to encourage investment in broadband-capable networks”); Ajit Pai, Comm’r, Fed. Commc’ns Comm’n, Remarks of Commissioner Ajit Pai at the Brandery: A Digital Empowerment Agenda (Sept. 13, 2016) (discussing the importance of incentivizing broadband network buildout).

competitive broadband providers and content providers that also provide broadband (*e.g.*, AT&T, Comcast, Google) that using a competitor’s broadband facilities for provision of their content rather than expanding their own is good enough for the Commission. This is particularly so given the Commission’s consistent presupposition of some sort of physical presence when applying the LEC Test. For almost two decades, the Commission, as Congress intended, has construed the LEC Test to require some sort of facilities in the franchise area.¹⁰³ Given this history, granting Comcast’s Petition without any physical presence from a LEC would be a stark course reversal, enhancing such a finding’s inconsistency with the Commission’s policy goals.

Further, granting the Petition would necessarily expand regulation of the Internet, contrary to the Commission’s consistent policy to strive for a deregulatory environment with respect to the Internet.¹⁰⁴ First, if the Media Bureau granted the Petition and thus deemed AT&T a local exchange carrier that provides video programming services, AT&T and its provision of AT&T TV NOW would be subject to the regulations and restrictions the Telecommunications Act of 1996 imposed on telephone companies that provide video programming services, including cable franchising.¹⁰⁵ It seems clear that this expansion of regulation to streaming online video would be contrary to the Commission’s policy goals.

Additionally, if the Media Bureau finds that DIRECTV’s provision of AT&T TV NOW satisfies the LEC Test, it is likely that DIRECTV’s provision of online video service renders the

¹⁰³ See, *e.g.*, *In re Comcast of Potomac*, LLC, 31 FCC Rcd. 3947, 3949 n.21, *Memorandum Opinion & Order* (2016) (“The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so.”); *Cable Reform Order*, 14 FCC Rcd. at 5305 (“Where the competition is from a wire or cable distribution system, the incumbent cable operator must show what commitments the LEC has made to serve that area, *including the status of construction* and the estimated completion date.”) (emphasis added); *supra* Section VI.

¹⁰⁴ See, *e.g.*, *In re Restoring Internet Freedom*, 33 FCC Rcd. 311, *Declaratory Ruling, Report & Order, & Order* (2018).

¹⁰⁵ See 47 U.S.C. §§ 571-573; *supra* Section VII.

company an MVPD with respect to such provision.¹⁰⁶ If OVDs are classified as MVPDs, the Commission’s regulatory reach expands immensely, extending to online video providers like Netflix, Hulu, and Amazon, among many others. To demonstrate this, Chairman Pai stated correctly as a Commissioner concurring with Chairman Wheeler’s proposal to classify OVDs as MVPDs: “In my view, the Commission’s fundamental proposal . . . is premature. And the legal analysis contained in the Notice is heavily slanted to support that result.”¹⁰⁷ Then-Commissioner Pai continued: “Indeed, I fear that [the proposal] could impede continued innovation. I am also worried that this proposal will pave the way for more comprehensive regulation of Internet-based services.”¹⁰⁸ These statements are consistent with Commission regulatory policy since the Chairman was appointed in 2017. The Commission would undermine this policy if it granted the Petition.

¹⁰⁶ See discussion MDTC Charter Opposition at Section IV.

¹⁰⁷ *In re Promoting Innovation & Competition in the Provision of Multichannel Video Programming Distribution Servs.*, 29 FCC Rcd. 15,995, 16,049 (2014) (Comm’r Pai, concurring).

¹⁰⁸ *Id.*

B. A Finding Of Effective Competition Based On A Limited, Higher-Cost Competitive Service Would Be Unreasonable And Would Undermine The Commission’s Policy Goal Of Protecting Consumers.

Even if the Media Bureau were to disregard the plain meaning of the applicable FCC regulations, granting the Petition on the grounds that AT&T TV NOW provides competition to Comcast’s video service is unreasonable, given the ways AT&T TV NOW differs from Comcast’s video programming service, the fact that Comcast controls access to AT&T TV NOW via its broadband service in the Franchise Areas, and the much higher costs of obtaining AT&T TV NOW service compared with Comcast’s. For these reasons, granting the Petition would also undermine the Commission’s and the Cable Act’s related goals of fostering competition and, thereby, protecting consumers.¹⁰⁹

First, AT&T TV NOW does not provide a comparable service: for example, in at least 18 of the 84 Franchise Areas, AT&T TV NOW does not provide any local broadcast programming.¹¹⁰ Second, most residents of the Franchise Areas have little choice but to purchase a service from Comcast regardless of whether they choose between Comcast or AT&T TV NOW for their video programming services because, as stated above, households cannot subscribe to AT&T TV NOW if they do not also subscribe to broadband service,¹¹¹ and for the majority of potential customers in the Franchise Areas, Comcast is the only fixed broadband provider. And the satellite broadband providers’ services do not offer a viable choice for those seeking a service like AT&T TV NOW. Although Comcast claims there are “multiple” other broadband options in

¹⁰⁹ See, e.g., 47 U.S.C. § 543(l)(1)(D); *Cable Reform Order* at ¶ 12 (“We do not believe that Congress intended for us to apply the LEC test so broadly that the protections Congress intended through the rate regulation system are lost to consumers without the prospect of competition”).

¹¹⁰ See <https://www.att.com/tv/locals/>.

¹¹¹ See Petition at 7, 8. Throughout this Section VII.B., “broadband” refers to service adequate to stream AT&T TV NOW, 12/1 Mbps and above.

the Franchise Areas, in most cases that includes only the two satellite broadband providers.¹¹²

And although satellite broadband providers may be able to provide their customers with sufficient download speeds to enable streaming video viewing, their limited monthly data allowances make streaming video subscriptions impractical for households with those services. Analysts estimate that watching AT&T TV NOW consumes between 360 MB/hour (for the lowest quality picture) and 2.1 GB/hour (for the highest quality picture).¹¹³ HughesNet offers four data plans, ranging from 10 GB/month (\$59.99/month after the first six months) to 50 GB/month (\$149.99/month after the first six months).¹¹⁴ According to Nielsen, Americans over the age of 18 watch an average of four hours of television per day.¹¹⁵ Assuming, conservatively, that all household members watch all of their television simultaneously, a Franchise Area household consuming the average American's video programming would use up virtually the entire data allowance HughesNet offers through its largest capacity plan just by watching video via AT&T TV NOW (43.2 GB), and at the lowest possible quality. It is no surprise, therefore, that, as of the most recently available broadband subscription data from the FCC, the two satellite broadband providers had only [REDACTED] subscribers among the 912,916 housing units in the 84 Franchise Areas combined and that Comcast's share of the broadband Internet access service market averaged [REDACTED]% across the Franchise Areas.¹¹⁶

¹¹² *Id.*; see also Petition at 7, 8.

¹¹³ Luke Bouma, *Can Cord Cutters Live With 1 TB Data Caps? We Take a Look . . .*, June 29, 2017 <https://www.cordcuttersnews.com/can-cord-cutters-live-1tb-data-caps-take-look/>.

¹¹⁴ <https://satelliteforinternet.com/high-speed-hughesnet-plans/>.

¹¹⁵ <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/q3-2018-total-audience-report.pdf>.

¹¹⁶ FCC, *Residential Fixed Internet Access Service Connections per 1000 Households by Census Tract, as of Dec. 2017* (Sept. 20, 2018), <https://www.fcc.gov/maps/residential-fixed-internet-access-service-connections-per-1000-households-by-census-tract>; U.S. Census Bureau. (Aug. 11, 2011) 2010: DEC Summary File 1 https://www2.census.gov/census_2010/04-Summary_File_1/Massachusetts/; *supra* note 23.

Further, all Comcast's purported alternatives to its existing basic tier service—AT&T TV NOW via one of the two satellite broadband providers or AT&T TV NOW via Comcast's broadband service—would cost potential customers many times as much as Comcast's existing basic tier cable service. HughesNet's only plan that is adequate to cover the average American's television viewing time via AT&T TV NOW would cost a potential customer in the Franchise Areas \$214.99/month.¹¹⁷ This is more than 10 times as much as the average price Comcast subscribers in the Franchise Areas currently pay for Comcast's basic tier service.¹¹⁸ The only other terrestrial fixed broadband option available to a majority of potential customers of AT&T TV NOW in the Franchise Areas, subscribing to AT&T TV NOW and a broadband connection through Comcast, would still be nearly seven times more expensive than Comcast's basic service tier service after Comcast's one-year introductory broadband service rate.¹¹⁹ At the same time, with the deregulation of the basic service tier, rates for basic service in the Franchise Areas can be expected to increase, which Commissioners have recognized will harm consumers, and will disproportionately harm the most vulnerable consumers.¹²⁰ A finding that AT&T TV NOW via

¹¹⁷ See Petition at Attachment 1 (advertising the most inexpensive AT&T TV NOW plan for \$65 per month); HIGH SPEED INTERNET SERVICE FROM XFINITY BY COMCAST, <https://www.xfinity.com/learn/internet-service> (last visited Jan. 9, 2020); see <https://satelliteforinternet.com/high-speed-hughesnet-plans/>.

¹¹⁸ Comcast's current average basic tier rate in the Franchise Areas is \$20.80/month. See *Petition of Comcast Commc'ns, Inc. to establish & adjust the basic serv. tier programming, equip., & installation rates for the cmtys. in Mass. served by Comcast Commc'ns, Inc. that are currently subject to rate regulation*, D.T.C. Docket No. 19-5 (filed Sept. 30, 2019).

¹¹⁹ See HIGH SPEED INTERNET SERVICE FROM XFINITY BY COMCAST, <https://www.xfinity.com/learn/internet-service> (last visited Jan. 9, 2020) (Comcast's current promotional rate for the slowest broadband service in the Franchise Areas, \$39.99, is currently available for 12 months, with the standard rate of \$77.95 applying thereafter).

¹²⁰ See Charter Order at 28 (Comm'r Starks, concurring) ("I foresee harm to vulnerable consumers from the action we take today. . . . [T]hose consumers relying on basic cable service, while they may be few, are often our most underprivileged consumers, and often are on fixed incomes. While some of these consumers were paying as little as \$12 per month for the regulated basic cable services, they may well have to spend upwards of \$100 per month—that is no small expense to someone surviving on a fixed income. These are members of the community who are retired, elderly, veterans, or simply trying to make ends meet. The

any of the alternatives to Comcast’s existing basic tier service constitutes “effective competition” would be unreasonable, therefore, even if current FCC regulations allowed for such a finding, which, as they demonstrate above, they plainly do not.

In sum, the Commission has diligently fostered a regulatory environment that encourages investment in broadband facilities and does not unnecessarily regulate nascent services and has worked to encourage competition that benefits consumers with lower cost services. The Media Bureau would contravene these policy goals if it granted the Petition. The Media Bureau should deny the Petition.

Commission’s goal, our mission, should be to make service more affordable for these consumers, not more expensive. Instead, I fear this decision risks reinforcing the inequity between families with resources to pay for these services, and families without.”); *id.* at 26 (Comm’r Rosenworcel, concurring) (“[L]et me detail here what the consequences are for consumers where this agency is overriding state authority to regulate what is known as the basic cable service tier. According to the record in this proceeding, some consumers in the states affected by this proceeding can expect that rates for the basic cable service tier will double. . . . If you ask me, this is not the kind of competition that protects consumers.”); *c.f. id.* at n.41.

VIII. Conclusion

The Media Bureau should deny the Petition because Comcast is not subject to effective competition in the franchise areas. To establish effective competition based on the LEC Test, a cable operator must prove a direct, physical connection between a local exchange carrier and the households in the franchise area. Comcast has not carried its burden of rebutting the presumption that effective competition does not exist because, under the LEC Test, AT&T is not a LEC in the franchise areas, and DIRECTV's AT&T TV NOW service does not provide channels and does not offer video programming services directly to subscribers. Accordingly, the Media Bureau should deny the Petition.

Respectfully submitted,

KAREN CHARLES PETERSON
COMMISSIONER

By: /s/ Rosalie Fazio-Eynullayeva
Rosalie Fazio-Eynullayeva, Counsel

/s/ Mark A. Merante
Mark A. Merante, Counsel

/s/ Sean M. Carroll
Sean M. Carroll, General Counsel

Massachusetts Department of
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January 23, 2020

EXHIBIT A

Franchise Area	Housing Units 2010 Census	Broadband Connections of at least 12 Mbps	Subscription Rate to at least 12/1 Mbps Broadband
Acushnet	4118		
Agawam	12139		
Amesbury	7110		
Amherst	9711		
Attleboro	18022		
Avon	1769		
Barnstable	26343		
Berkley	2187		
Beverly	16641		
Blackstone	3628		
Bridgewater	8336		
Brockton	35552		
Buckland- Shelburne	1819		
Cambridge	47291		
Carlisle	1758		
Chatham	7343		
Clinton	6397		
Concord	6947		
Dartmouth	12435		
Deerfield	2181		
Dennis	15586		
Dighton	2591		
Dracut	11351		
East Bridgewater	4906		
Eastham	5960		
Essex	1600		

REDACTED – FOR PUBLIC INSPECTION

Fairhaven	7475				
Fall River	42750				
Falmouth	21970				
Freetown	3317				
Gardner	9126				
Gloucester	14557				
Granby	2460				
Greenfield	8377				
Groveland	2439				
Hanson	3589				
Harwich	10284				
Hatfield	1563				
Haverhill	25657				
Holyoke	16384				
Lancaster	2614				
Longmeadow	5948				
Lowell	41431				
Manchester-by-the-Sea	2394				
Merrimac	2555				
Milton	9700				
Montague	3958				
New Bedford	42933				
Newbury	2936				
Newburyport	8264				
Northampton	12728				
Norton	6741				
Orleans	5344				
Palmer	5534				
Peabody	22220				
Pelham	570				
Plainville	3482				
Provincetown	4494				

REDACTED – FOR PUBLIC INSPECTION

Quincy	42838				
Rehoboth	4280				
Rockport	4223				
Salem	19130				
Saugus	10775				
Scituate	8035				
Sharon	6456				
Somerset	7394				
South Hadley	7156				
Southwick	3916				
Springfield	61706				
Sunderland- Whately	2390				
Swansea	6343				
Templeton	3139				
Ware	4590				
Warren	2211				
Wellfleet	4305				
West Bridgewater	2669				
West Springfield	12697				
Westfield	16075				
Westhampton	696				
Weymouth	23480				
Whitman	5522				
Winthrop	8320				
Yarmouth	17464				

Form 477 broadband subscription is measured at the census tract level. In three cases, a rate-regulated town is contained within a census tract which includes another town. In two of these cases, Buckland and Sunderland, the rate-regulated town is combined with an unregulated Comcast town, Shelburne and Whately respectively. In these cases, take rates were calculated based on both town's population and housing unit count. In one case, Williamsburg, the regulated town is combined with an unserved town. In this case, Williamsburg is omitted as Comcast's reported subscriptions in the town would apply to both served and unserved areas and would artificially lower the take rate. For all other cases, one or more census tracts exclusively cover the relevant town or city.

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

The undersigned signatory has read the foregoing Opposition, and, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,



Sean M. Carroll

Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
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January 22, 2020

DECLARATION OF MICHAEL MAEL

I, Michael Mael, declare, under penalty of perjury that:

1. I am a senior financial analyst at the Massachusetts Department of Telecommunications and Cable ("MDTC"). My duties include, among other things, maintaining the MDTC's records of cable basic service tier rates.
2. I have read the foregoing Opposition to Comcast's Petition for Special Relief, and I am familiar with the contents thereof and the matters referred to therein.
3. The facts contained within the Opposition are true and correct to the best of my knowledge, information, and belief.



Date: January 22, 2020

Michael P. Mael

CERTIFICATE OF SERVICE

I, Shonda D. Green, do hereby certify on this 23rd day of January, 2020, that a true and correct copy of the foregoing "Opposition to Comcast Cable Communications, LLC's Petition for Special Relief" has been sent via U.S. mail, postage prepaid, to the following:

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122 Main Street
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Town of Amesbury
62 Friend Street
Amesbury, MA 01913

City of Attleboro
77 Park Street
Attleboro, MA 02703

Town of Barnstable
367 Main Street
Hyannis, MA 02601

City of Beverly
191 Cabot Street
Beverly, MA 01915

Town of Bridgewater
25 South Street
Bridgewater, MA 02324

Town of Buckland
17 State Street
Shelburne Falls, MA 01370

Town of Carlisle
66 Westford Street
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Carlisle, MA 01741

Town of Clinton
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Clinton, MA 01510

Town of Dartmouth
400 Slocum Road
Dartmouth, MA 02747

Town of Dennis
485 Main Street
P.O. Box 2060
South Dennis, MA 02660

City of Agawam
36 Main Street
Agawam, MA 01001

Town of Amherst
4 Boltwood Avenue
Amherst, MA 01002

Town of Avon
65 East Main Street
Avon, MA 02322

Town of Berkley
One North Main Street
Berkley, MA 02779

Town of Blackstone
15 St. Paul Street
Blackstone, MA 01504

City of Brockton
45 School Street
Brockton, MA 02301

City of Cambridge
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Cambridge, MA 02139

Town of Chatham
549 Main Street
Chatham, MA 02633

Town of Concord
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Concord, MA 01742

Town of Deerfield
8 Conway Street
Deerfield, MA 01373

Town of Dighton
979 Somerset Avenue
Dighton, MA 02715

Town of Dracut
62 Arlington Street
Dracut, MA 01826

Town of Eastham
2500 State Highway
Eastham, MA 02642

Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

City of Gardner
95 Pleasant Street
Gardner, MA 01440

Town of Granby
250 State Street
Granby, MA 01033

Town of Groveland
183 Main Street
Groveland, MA 01834

Town of Harwich
732 Main Street
Harwich, MA 02645

City of Haverhill
4 Summer Street
Haverhill, MA 01830

Town of Lancaster
695 Main Street
P.O. Box 293
Lancaster, MA 01523

City of Lowell
375 Merrimack Street
Lowell, MA 01852

Town of East Bridgewater
175 Central Street
East Bridgewater, MA 02333

Town of Essex
30 Martin Street
Essex, MA 01929

City of Fall River
One Government Center
Fall River, MA 02722

Town of Freetown
3 North Main Street
Assonet, MA 02702

City of Gloucester
9 Dale Avenue
Gloucester, MA 01930

Town of Greenfield
14 Court Square
Greenfield, MA 01301

Town of Hanson
542 Liberty Street
Hanson, MA 02341

Town of Hatfield
59 Main Street
Hatfield, MA 01038

City of Holyoke
536 Dwight Street
Holyoke, MA 01040

Town of Longmeadow
20 Williams Street
Longmeadow, MA 01106

Town of Manchester-By-The-Sea
10 Central Street
Manchester-By-The-Sea, MA 01944

Town of Merrimac
2 School Street
Merrimac, MA 01860

Town of Montague
One Avenue A
Montague, MA 01376

Town of Newbury
25 High Road
Newbury, MA 01951

City of Northampton
210 Main Street
Northampton, MA 01060

Town of Orleans
19 School Road
Orleans, MA 02653

City of Peabody
24 Lowell Street
Peabody, MA 01960

Town of Plainville
142 South Street
Plainville, MA 02762

City of Quincy
1305 Hancock Street
Quincy, MA 02169

Town of Rockport
34 Broadway
Rockport, MA 01966

Town of Saugus
298 Central Street
Saugus, MA 01906

Town of Sharon
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Sharon, MA 02067

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Town of Swansea
81 Main Street
Swansea, MA 02777

Town of Ware
126 Main Street
Ware, MA 01082

Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

Town of West Springfield
26 Central Street
West Springfield, MA 01089

Town of Westhampton
One South Road
Westhampton, MA 01027

Town of Whitman
54 South Avenue
Whitman, MA 02382

Town of Winthrop
One Metcalf Square
Winthrop, MA 02152

Town of Southwick
454 College Highway
Southwick, MA 01077

Town of Sunderland
12 School Street
Sunderland, MA 01375

Town of Templeton
690 Patriots Road
Templeton, MA 01468

Town of Warren
48 High Street
Warren, MA 01083

Town of West Bridgewater
65 North Main Street
West Bridgewater, MA 02379

City of Westfield
59 Court Street
Westfield, MA 01085

Town of Weymouth
75 Middle Street
Weymouth, MA 02189

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Town of Yarmouth
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Shonda D. Green
Department Secretary