

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

In the Matter of

Amendment to the Commission's Rules
Concerning Effective Competition

Implementation of Section 111 of the STELA
Reauthorization Act

MB Docket No. 15-53

FCC 15-30

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: April 9, 2015

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The Massachusetts Department of Telecommunications and Cable (“MDTC”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“FCC”) on March 16, 2015.¹ One of the FCC’s central questions in the NPRM is whether it should reverse the longstanding presumption that cable operators are not subject to effective competition.² The MDTC answers this question in the negative for the legal, policy, and public interest reasons set forth below.

I. BACKGROUND AND SUMMARY

The MDTC “is the certified ‘franchising authority’ for regulating basic service tier rates and associated equipment costs in Massachusetts.”³ Accordingly, when a cable operator is

¹ *In the Matter of Amendment to the Comm’n’s Rules Concerning Effective Competition*, MB Docket No. 15-53, *Notice of Proposed Rulemaking* (rel. Mar. 16, 2015) (“NPRM”). Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

² NPRM, ¶ 8.

³ 207 C.M.R. § 6.02; *see also* MASS. GEN. LAWS ch. 166A, §§ 2A, 15 (establishing the MDTC’s authority to regulate cable rates). Also, the MDTC regulates telecommunications and cable services within the

deemed subject to effective competition in a Massachusetts community, cable subscribers in that community lose many of the regulatory protections that the MDTC provides.⁴ Specifically, the MDTC has found that basic service tier programming rates often increase more rapidly after a community is deemed subject to effective competition. The MDTC applauds the FCC for reviewing its effective competition rules in accordance with President Obama’s 2011 executive order.⁵ However, the FCC’s presumption of no effective competition is not outmoded, ineffective, or excessively burdensome on cable operators and thus should not be modified.⁶ As discussed in detail below, an automatic, nationwide grant of effective competition to cable operators in thousands of communities would be contrary to congressional intent and against the public interest. First, the proposed rule change is based on an incomplete assessment of the video programming competitive landscape. Second, the proposed rule change was not mandated by Congress and is not consistent with FCC precedent or section 111 of the STELA Reauthorization Act of 2014 (“STELAR”).⁷ Finally, the results of changing the rule in the manner proposed would be against the public interest, as cable subscribers in communities deemed subject to effective competition do not necessarily reap the benefit of the price discipline experienced in regulated communities.

Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

⁴ See 47 C.F.R. § 76.905(a).

⁵ See Exec. Order No. 13,579, § 2, 76 Fed. Reg. 41,587 (July 14, 2011) (encouraging agency review of rules “that may be outmoded, ineffective, insufficient, or excessively burdensome”); NPRM, ¶ 2 n.7.

⁶ As discussed below, the existing presumption of no effective competition may be insufficient to achieve the goal of keeping unregulated rates as reasonable as they would be with regulation, but obviously modifying the presumption in the way the FCC has proposed will not help to achieve that goal. See *infra* Section IV.

⁷ Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014) (codified at 47 U.S.C. § 543(o)). STELA stands for the Satellite Television Extension and Localism Act of 2010.

II. THE FCC’S REASONING BEHIND THE PROPOSED RULE CHANGE IS INADEQUATE TO SUPPORT A CHANGE

An in-depth analysis of the NPRM reveals that the data therein do not support reversing the presumption of no effective competition. Rather than using franchise area-based competition data to analyze the advisability of a fundamental change of a franchise area-based test, the NPRM focuses on national data.⁸ Further, when analyzing the competitive landscape at a more granular level, the NPRM analyzes only filed petitions for effective competition, failing to take into account the thousands of communities for which cable operators have not filed petitions for effective competition because they know such petitions would be denied.⁹ Finally, the MDTC submits that the FCC’s proposal would not significantly reduce the burden on the Media Bureau (“Bureau”) with regards to effective competition, but would simply shift a burden from cable operators onto state and local governments in their roles as franchising authorities.

A. Granular Review of the Video Programming Marketplace Reveals a Less Competitive Marketplace

The presence of competitive offerings in the video programming market was contemplated by the FCC when establishing the presumption of no effective competition and should not now justify its reversal. In its NPRM, the FCC highlights video programming offerings from direct broadcast satellite (“DBS”) providers and local exchange carriers (“LECs”) in today’s video marketplace.¹⁰ While these competing providers were not prevalent in 1993, the FCC was forward-thinking and established the presumption of no effective competition with the

⁸ NPRM, ¶¶ 5-6; *see* 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁹ NPRM, ¶ 7.

¹⁰ *Id.*, ¶¶ 5-6.

understanding that competing providers would soon provide competition in some areas.¹¹ That these competitors have come to fruition in some areas, as anticipated, is no reason to go back on what the FCC decided with the competitors' impending presence in mind.

While LECs provide valuable competition in some areas, they do not offer video programming service in every community. In Massachusetts, of the 308 communities with cable, 190 of them lack a terrestrial competitor.¹² And that number does not figure to decrease anytime soon as Verizon has ceased expansion of its FiOS product to new communities.¹³ These 190 communities do not and will not have the benefit of the increased LEC competition to which the NPRM cites. In those communities lacking increased competition from the presence of a LEC video programming option, the underlying presumption of no effective competition continues to serve its valuable and intended purpose.

In addition to DBS providers and LECs, the NPRM states that "today's consumers also access video programming on the Internet."¹⁴ This is a picture again painted with a broad brush. While online video programming is becoming more prevalent, it is still not a competitive option for many consumers, especially those that are low-income and elderly.¹⁵ It is not appropriate to

¹¹ *In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5660-61, *Report & Order & Further Notice of Proposed Rulemaking* (1993) ("Rate Order").

¹² Massachusetts Department of Telecommunications and Cable, *License to More than One Cable Operator*, <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/municipal-info/license-to-more-than-one-cable-operator.html> (last visited Apr. 1, 2015).

¹³ *See, e.g.*, Fran Shammo, CFO, Verizon Commc'ns, Remarks at the Deutsche Bank Media, Internet & Telecom Conference (Mar. 10, 2014) ("I am not going to build [FiOS] beyond the current LSAs that we have built out . . . at this point we're happy with what we have.").

¹⁴ NRPM, ¶ 6 & n.28.

¹⁵ *See In re Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Ams. in a Reasonable & Timely Fashion, & Possible Steps to Accelerate Such Deployment Pursuant to Section 706*

place these largely vulnerable consumers who still have limited video options into the same group as consumers who are able to subscribe to video programming via a broadband connection.

B. Effective Competition Orders Do Not Provide a Sufficient Basis for the FCC's Proposed Rule

The NPRM additionally relies on recent effective competition orders to support the proposed rule change.¹⁶ The NPRM states that since the beginning of 2013, the Bureau has granted petitions for effective competition in 1433 communities and denied a request for effective competition in seven communities.¹⁷ This analysis fails to capture the thousands of regulated communities for which petitions for effective competition have not been filed.¹⁸ According to FCC data, as of May 2014, there were 23,506 communities where effective competition is not present, as opposed to only 10,129 communities where effective competition has been found.¹⁹ This depicts a video programming marketplace starkly different from what was presented in the NPRM.

of the Telecomms. Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, 2015 Broadband Progress Report & Notice of Inquiry on Immediate Action to Accelerate Deployment, ¶ 95 (rel. Feb. 4, 2015); U.S. DEP'T OF COMMERCE, NAT'L TELECOMMS. & INFO. ADMIN., EXPLORING THE DIGITAL NATION: EMBRACING THE MOBILE INTERNET 15 (2014). Moreover, most fixed broadband access is provided by incumbent cable operators themselves, and thus is not competitive in the traditional sense. See FED. COMM'NS COMM'N, INTERNET ACCESS SERVICES: STATUS AS OF DECEMBER 31, 2013 31 (2014).

¹⁶ NPRM, ¶ 7.

¹⁷ *Id.*

¹⁸ The FCC's analysis also fails to capture communities for which a cable operator submitted, but withdrew a petition for effective competition. See, e.g., *In re Charter Comm'cns*, 28 FCC Rcd 15795, 15795, *Memorandum Opinion & Order* (MB 2013) (granting Charter's request to withdraw its request for a finding of effective competition in the Massachusetts communities of Paxton and Spencer).

¹⁹ *In re Implementation of Section 3 of the Cable Television Consumer Prot. & Competition Act of 1992*, MM Docket No. 92-66, DA 14-1829, ¶ 8, *Report on Cable Industry Prices* (rel. Dec. 15, 2014).

When a cable operator is deciding whether to petition the Bureau for a determination of effective competition based on the competing provider test, the operator necessarily calculates the competing provider penetration rates in a community before filing its petition.²⁰ If the calculated penetration rate is above 15 percent, the operator includes the community in the petition.²¹ If the result is 15 percent or lower, the operator does not include the community in the petition.²² Given this, it follows that in the approximately 23,000 communities for which cable operators did not file petitions for effective competition during the FCC’s selected review period, competing provider penetration rates did not reach the 15 percent threshold. The FCC’s analysis of recent petitions for effective competition does not capture these communities.²³ Rather, the NPRM’s proposed rule is based on a review of only six percent of regulated communities, which were selected by cable operators specifically because they exceeded the competing provider penetration threshold.²⁴ Indeed, given the success rate of effective competition petitions, had the remaining 94 percent of regulated communities met the competing provider penetration rate

²⁰ See 47 U.S.C. § 543(l)(1)(B).

²¹ The MDTC—and in certain cases the Bureau—has noted that cable operators’ competing provider penetration rate calculations are inaccurate, but for purposes of this discussion, the MDTC refers to the cable operators’ calculations. See *In re Charter Commc’ns*, 25 FCC Rcd 2289, *Memorandum Opinion & Order* (MB 2010); *In re Bright House Networks, LLC*, 22 FCC Rcd 3499, *Memorandum Opinion & Order* (MB 2007); *In re Comcast Cable Commc’ns, LLC*, 22 FCC Rcd 1691, *Memorandum Opinion & Order* (MB 2007).

²² There would be no purpose for a cable operator to petition the Bureau for effective competition based on the competing provider test in a community if the competing provider penetration rate as calculated is 15 percent or lower. See *Comm’n Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd 3030, *Pub. Notice* (rel. Feb. 9, 1996) (defining a frivolous petition as one that lacks “good ground to support it”); NPRM, ¶ 16 (“[T]he Commission has authority to dismiss a pleading that fails on its face to satisfy applicable requirements.”).

²³ See NPRM, ¶ 7.

²⁴ 1440 communities petitioned for effective competition ÷ 23,506 communities not subject to effective competition = 6.1% of regulated communities that petitioned for effective competition.

threshold, it must be presumed that cable operators would have included them in their petitions. Rather than supporting the notion that the presumption of no effective competition should be reversed, the fact that over 23,000 communities were not included in cable operator petitions over the selected period suggests that the presumption is working as intended. Franchising authorities in these communities should not be burdened by an obligation to affirmatively show that their community lacks effective competition simply because petitions for effective competition in other communities have been successful.

Comparing the number of communities in which effective competition petitions have been granted to the number of communities for which effective competition petitions have been denied simply does not fully represent the current state of competition in the video marketplace. And it is certainly not a sufficient foundation on which to base a material change in the FCC's effective competition rules.

C. The NPRM Misconstrues the Relative Burdens that the Current and Proposed Presumptions Place on Stakeholders

One of the FCC's primary concerns in proposing this rule change is the relative burdens that the presumption of no effective competition places on the Bureau and cable operators.²⁵ Loosening "excessively burdensome" regulations is certainly a laudable undertaking, and, indeed, one that the MDTC supports.²⁶ However, rebutting a presumption of no effective competition is not excessively burdensome for cable operators, nor is it unnecessary or in need of modification.²⁷ Moreover, the proposed rule would not significantly reduce the burden on the

²⁵ See NPRM, ¶¶ 2 & n.7, 7, 21, 22, 23.

²⁶ Exec. Order No. 13,579, § 2, 76 Fed. Reg. 41,587 (July 14, 2011).

²⁷ See *id.*; NPRM, ¶ 7.

Bureau with regards to effective competition, but would simply shift the burden from cable operators to state and local governments in their roles as franchising authorities.

1. Burden on cable operators

The option to rebut a presumption of effective competition is not excessively burdensome for cable operators. Most petitions for effective competition based on the competing provider test are boilerplate, with cable operators simply switching out community names and household and subscriber numbers. Such petitions consist of a review of the most recent decennial U.S. Census for household data, a request to the Satellite Broadcast and Communications Association (“SBCA”) for DBS subscriber data, and generally no more than ten pages of actual text.²⁸ As of 2004, the most recent data available to the MDTC, a DBS subscriber report costs a cable operator 25 cents per nine-digit zip code.²⁹ Given the average revenue of cable operators, the existing presumption is not a heavy burden.³⁰

2. Burden on the Bureau and Franchising Authorities

As explained above, there are approximately 23,000 communities for which cable operators have not filed petitions for effective competition because they know such petitions

²⁸ See, e.g., *In re Comcast Cable Commc'ns, LLC*, MB Docket No. 13-143, *Petition for Special Relief* (filed June 4, 2013); *In re Time Warner Cable Inc.*, MB Docket No. 13-92, *Petition for Special Relief* (filed Mar. 27, 2013); *In re Charter Commc'ns*, MB Docket No. 13-20, *Petition for Special Relief* (filed Jan. 16, 2013).

²⁹ *In re Revisions to Cable Television Rate Regulations*, MB Docket No. 02-144, National Cable & Telecommunications Association *Notice of Ex Parte* (filed Sept. 10, 2004).

³⁰ Using a community in Texas as an example, the National Cable and Telecommunications Association (“NCTA”) estimated that it would cost a cable operator approximately \$1600 to obtain DBS subscriber data for that community. *Id.* With, conservatively, 10,000 cable subscribers in that community (50% penetration rate with 20,000 households), that cable operator is able to recoup its investment in SBCA data in a mere one month’s time if it increases its monthly rate by 16 cents per subscriber. *See id.* As the MDTC demonstrates below, an increase of 16 cents would be modest compared to increases actually incurred by communities after cable operators are granted effective competition. *See infra* Section IV.

would be denied.³¹ Thus, data exist in most if not all of those communities that demonstrate that effective competition does not exist. Presumably, then, if the FCC adopts its proposed rule change, the franchising authorities in each of these thousands of communities would immediately file new certifications rebutting the FCC’s newly established presumption.³² Not only then would the FCC’s proposal have very limited practical effect on the regulatory landscape, but it would not decrease the burden on the Bureau, and it would shift a burden, at least in the short term, from cable operators to local and state governments.³³ In fact, ***the proposed rule may actually increase the burden on the Bureau*** because after franchising authorities make the thousands of initial showings rebutting the new presumption, the burden of proof would presumably shift back to cable operators to make an affirmative showing that effective competition exists. This would place all stakeholders in exactly the same position they are in today—with the intervening step of franchising authorities filing, and the Bureau having to rule on, thousands of certification filings.³⁴

³¹ See *supra* p. 6.

³² There are 152 such communities in Massachusetts, and, if resources permit, it is likely that the MDTC would compile the necessary data and file certifications for each of them. See *In re CoxCom, Inc.*, D.T.C. 15-1; *In re Time Warner Cable Inc.*, D.T.C. 14-7; *In re Charter Commc’ns*, D.T.C. 14-6; *In re Comcast Cable Commc’ns, LLC*, D.T.C. 14-4.

³³ It follows that if the burden on the Bureau does decrease as a result of this proposal, it would be because franchising authorities in communities with no effective competition do not have the resources necessary to file certifications. The decreased burden would thus come at the expense of basic service tier subscribers losing access to regulated rates. *But see Rate Order*, 8 FCC Rcd 5631, 5639 (“The priority established in the [Cable Television Consumer Protection and Competition Act of 1992] is clearly to protect the interests of subscribers.”).

³⁴ In the *Rate Order*, the FCC found that given the number of franchises nationwide, it could not properly conduct an effective competition analysis in each franchise area. *Id.* at 5669.

In its *Rate Order*, the FCC acknowledged that many franchising authorities lack the resources necessary to show the absence of effective competition.³⁵ While a lot has changed since 1993, the limited resource availability of state and local governments has not.³⁶ Additionally, the FCC’s common sense reasoning behind the original presumption has not changed either, as a finding of effective competition would still “serve the interests of the cable operators.”³⁷ Accordingly, it remains “reasonable to place the burden on them . . . to rebut the presumption of no effective competition.”³⁸

III. REVERSING THE PRESUMPTION OF NO EFFECTIVE COMPETITION WOULD BE CONTRARY TO CONGRESSIONAL INTENT

One of the impetuses for the NPRM was the implementation of part of STELAR.³⁹ Section 111 of STELAR states that the subsection shall not be “construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section.”⁴⁰ The FCC notes in the NPRM that “Section 111 does not by its own terms preclude the Commission from altering the burden of proof with respect to effective competition.”⁴¹ It would be illogical to follow, though, that even though Congress explicitly did not intend for

³⁵ *Id.* at 5668.

³⁶ *See* NPRM, ¶ 22 (acknowledging that franchising authorities may face “significant, unreasonable burdens” in preparing certifications).

³⁷ *Rate Order*, 8 FCC Rcd at 5671.

³⁸ *Id.*

³⁹ NPRM, ¶ 2.

⁴⁰ Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014) (codified at 47 U.S.C. § 543(o)(2)).

⁴¹ NPRM, ¶ 12.

STELAR to directly eliminate the duty of a small cable operator to prove the existence of effective competition, it somehow did intend for the FCC to eliminate the duty.

Congress’s language is very clear: “Nothing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition.”⁴² Part of “this subsection” is the directive to the FCC to establish a streamlined process for effective competition petitions filed by small cable operators.⁴³ Congress did not intend for the FCC to issue an order pursuant to section 111 that would eliminate the duty of small cable operators to prove the existence of effective competition. The NPRM seeks to dismiss this concern: “We note that, if this provision were read to restrict the Commission from *changing the presumption* for small operators, it could have the perverse effect of permitting the Commission, consistent with market realities, to *reduce burdens* on larger operators but not on smaller ones.”⁴⁴ Noticeably, however, the NPRM switches mid-sentence from discussing “changing the presumption” to discussing “reduc[ing] burdens.”⁴⁵ Clearly section 111 should not be read to restrict the FCC from seeking to reduce burdens on small cable operators. However, the NPRM conflates reducing burdens with changing the presumption and largely ignores Congress’s intent—that the FCC could seek to reduce burdens on cable operators in ways that do not involve reversing the presumption of effective competition.⁴⁶ Rather than

⁴² 47 U.S.C. § 543(o)(2).

⁴³ *Id.*

⁴⁴ NPRM, ¶ 12 (emphasis added).

⁴⁵ *Id.*

⁴⁶ *See id.*, ¶¶ 12-13 (dedicating two sentences out of a twenty-five page NPRM to addressing other ways the FCC could implement section 111). For example, the FCC could automatically grant petitions jointly filed by a small cable operator and the affected franchising authority. Alternatively, the FCC could allow

reversing the presumption of no effective competition, the FCC should seek to implement section 111 of STELAR through more targeted and nuanced means, as Congress intended.⁴⁷

IV. THE PROPOSED RULE IS CONTRARY TO THE PUBLIC INTEREST

In addition to the burdensome effect reversing the presumption would have on franchising authorities, the MDTC is concerned about the impact the proposed rule would have on basic service tier subscribers. The MDTC does not have demographic data for basic tier subscribers immediately at its disposal, but given that the basic service tier is the lowest cost service offered to consumers, it is reasonable to presume that price conscious consumers, such as low-income individuals and seniors, are among the most prevalent subscribers.⁴⁸ These subscribers receive a measure of price protection as a cable operator's rates are subject to a reasonableness review by the franchising authority.⁴⁹ In Massachusetts, the MDTC reviews the reasonableness of proposed basic service tier rates and associated equipment and installation costs.⁵⁰ The MDTC in its review of FCC Forms 1240 and 1205 often discovers errors, clerical or

unopposed petitions for effective competition to be deemed granted 30 or 60 days following public notice and notice to the franchising authority of the petition. *Cf.* 47 C.F.R. § 63.71(c). The FCC could also consider amending its rules to allow small cable operators to file joint petitions or allow their trade associations to file petitions covering multiple communities. *See* Letter from Matthew M. Polka, President and CEO, Am. Cable Assoc., to U.S. Senate Comm. on Commerce, Sci., & Transp., (Mar. 17, 2014), *available at* <http://www.americancable.org/files/140317%20STELA%20Questions%20Answers%20FINAL.pdf>.

⁴⁷ The MDTC recognizes that the FCC's proposal to reverse the presumption for large cable operators is pursuant to Executive Order 13,579, but as is demonstrated herein, the presumption of no effective competition is not ripe for modification.

⁴⁸ Former FCC Chairman William Kennard was concerned about seniors knowing their rights in the newly deregulated cable marketplace. *See* Press Release, William Kennard, Chairman, FCC (Apr. 8, 1999), *available at* http://transition.fcc.gov/Bureaus/Miscellaneous/News_Releases/1999/nrmc9018.html. The FCC's proposal in the NPRM warrants similar concerns.

⁴⁹ 47 U.S.C. § 543(b); MASS. GEN. LAWS ch. 166A, §§ 2A, 15.

⁵⁰ MASS. GEN. LAWS ch. 166A, §§ 2A, 15; 47 C.F.R. §§ 76.922(a), 76.923.

otherwise, which result in changes to operators' maximum permitted rates, and occasionally, refunds to subscribers where a rate is unreasonable or the operator selected rate exceeds the revised maximum permitted rate.⁵¹

Under the FCC's proposed rule, many communities would lose this reasonableness review, even though the community's cable operator is not subject to effective competition.⁵² Moreover, it is unclear whether subscribers actually are offered competitive cable rates after a community is found to be subject to effective competition. The FCC has suggested that the national average basic service tier rate in unregulated communities may be lower than in regulated communities.⁵³ However, the average basic service tier rate in unregulated communities increases annually at a higher rate than inflation, suggesting that "effective" competition is not actually resulting in cost competition.⁵⁴ Further, in comparing similar communities in Massachusetts, there is evidence that basic service tier subscribers in unregulated communities are assessed higher monthly rates than subscribers in regulated communities.⁵⁵ For example, in Massachusetts, subscribers in certain unregulated communities are assessed a

⁵¹ See, e.g., *In re Time Warner Cable Inc.*, D.T.C. 13-10, *Rate Order* (Nov. 26, 2014) (*appeal filed* Dec. 29, 2014); *In re Comcast Cable Commc'ns, LLC*, D.T.C. 13-5, *Rate Order* (Mar. 13, 2014); *In re Comcast Cable Commc'ns, LLC*, D.T.C. 12-2, *Rate Order* (Jan. 30, 2013); *In re Charter Commc'ns*, D.T.C. 11-13, *Rate Order* (Sept. 27, 2012); *In re Comcast Cable Commc'ns, LLC*, D.T.C. 10-8, *Rate Order* (Jan. 27, 2012).

⁵² See *supra* Section II.B.

⁵³ See *In re Implementation of Section 3 of the Cable Television Consumer Prot. & Competition Act of 1992*, MM Docket No. 92-66, DA 14-1829, Attachments 2, 3, and 5, *Report on Cable Industry Prices* (rel. Dec. 15, 2014).

⁵⁴ Compare *id.* at Attachment 8, with MEDIA BUREAU, FED. COMM'NS COMM'N, THIRD QUARTER 2014 INFLATION ADJUSTMENT FIGURES FOR CABLE OPERATORS USING FCC FORM 1240 NOW AVAILABLE, DA 15-107 (Jan. 26, 2015).

⁵⁵ See Appendix 1.

“Broadcast TV Fee” that is not assessed to subscribers in regulated communities.⁵⁶ As a result, subscribers in communities such as Uxbridge and Oxford that were recently deemed subject to effective competition have incurred a large increase in the rates they pay to subscribe to the basic service tier.⁵⁷

In establishing basic service tier rate regulation, Congress made clear that the FCC has an obligation to subscribers, and must design its regulations “to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.”⁵⁸ While Congress has directed the FCC to streamline the effective competition review process for small cable operators, that directive did not eliminate the FCC’s obligation to design its regulations to protect subscribers.⁵⁹ Adopting a presumption that all cable systems are subject to effective competition does not protect subscribers. A properly designed regulation should not risk subscribers losing the protection of basic service tier rate regulation and bearing the burden of unreasonable rates as the result of an attempt to streamline the effective competition review process.

⁵⁶ See Appendix 2. In addition, in other regulated communities where a cable operator embeds the Broadcast TV Fee in its basic service tier rate, the fee is subject to review and the amount assessed is subject to the maximum permitted rate for those communities. See *In re Comcast Cable Commc’ns, LLC*, D.T.C. 13-5, *Rate Order* (Mar. 13, 2014).

⁵⁷ See Appendix 3. The MDTC’s Application for Review of the Bureau’s order granting effective competition in these communities is pending. See *In re Charter Commc’ns*, CSR-8558-E, et al., MDTC Application for Review (filed Dec. 11, 2013).

⁵⁸ 47 U.S.C. § 543(b)(1).

⁵⁹ *Id.*, § 543(o); see also *supra* Section III.

V. CONCLUSION

In the NPRM, the FCC provides a recent history of the video programming landscape as a “backdrop” for the FCC’s proposed rule change. While periodically reviewing regulations is commendable, the NPRM’s discussion does not account for the totality of the video programming marketplace, and therefore lacks a basis on which to reverse the FCC’s longstanding presumption of no effective competition. Accordingly, the FCC should not adopt the proposed rule, but should maintain a rebuttable presumption of no effective competition.

Respectfully submitted,

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April 9, 2015

Appendix 1

Charter Communications							
Basic Service Tier Rates in Regulated vs. Unregulated Franchise Areas							
Regulated Franchise Areas							
	2014				2015		
	BST	BTF*	Total Rate		BST	BTF*	Total Rate
Chicopee	\$ 18.12	\$ -	\$ 18.12		\$ 18.12	\$ -	\$ 18.12
Brimfield	\$ 17.94	\$ -	\$ 17.94		\$ 17.94	\$ -	\$ 17.94
Spencer	\$ 17.69	\$ -	\$ 17.69		\$ 17.69	\$ -	\$ 17.69
Unregulated Franchise Areas							
	2014				2015		
	BST	BTF	Total Rate		BST	BTF	Total Rate
Uxbridge	\$ 15.99	\$ 5.00	\$ 20.99		\$ 15.99	\$ 5.25	\$ 21.24
Oxford	\$ 17.99	\$ 5.00	\$ 22.99		\$ 17.99	\$ 5.25	\$ 23.24
Webster	\$ 26.99	\$ 5.00	\$ 31.99		\$ 26.99	\$ 5.25	\$ 32.24
BST - Basic Service Tier BTF - Broadcast TV Fee							
* Charter Communications only assesses the Broadcast TV Surcharge to basic service tier subscribers in communities subject to effective competition.							
Source: Charter Rate Notices							

Comcast Cable Communications, LLC
Basic Service Tier Rates in Regulated vs. Unregulated Franchise Areas

Regulated Franchise Areas

	2014			2015		
	BST	BTF	Total Rate	BST	BTF	Total Rate
Bellingham	\$ 9.75	\$ 3.25	\$ 13.00	\$ 9.75	\$ 3.25	\$ 13.00
Blackstone	\$ 11.75	\$ 3.25	\$ 15.00	\$ 11.75	\$ 3.25	\$ 15.00
Clinton	\$ 7.63	\$ 3.25	\$ 10.88	\$ 7.63	\$ 3.25	\$ 10.88
Gardner	\$ 11.75	\$ 3.25	\$ 15.00	\$ 11.75	\$ 3.25	\$ 15.00
Leominster	\$ 10.00	\$ 3.25	\$ 13.25	\$ 10.00	\$ 3.25	\$ 13.25
Mendon	\$ 18.20	\$ 3.25	\$ 21.45	\$ 18.20	\$ 3.25	\$ 21.45
Phillipston	\$ 5.59	\$ 3.25	\$ 8.84	\$ 5.59	\$ 3.25	\$ 8.84
Southwick	\$ 8.58	\$ 3.25	\$ 11.83	\$ 8.58	\$ 3.25	\$ 11.83
Templeton	\$ 8.47	\$ 3.25	\$ 11.72	\$ 8.47	\$ 3.25	\$ 11.72
Palmer	\$ 11.29	\$ 3.25	\$ 14.54	\$ 11.29	\$ 3.25	\$ 14.54

Unregulated Franchise Areas

	2014			2015		
	BST	BTF	Total Rate	BST	BTF	Total Rate
Ashburnham	\$ 19.00	\$ 3.25	\$ 22.25	\$ 19.00	\$ 3.25	\$ 22.25
Ashby	\$ 22.00	\$ 3.25	\$ 25.25	\$ 22.00	\$ 3.25	\$ 25.25
Erving	\$ 17.10	\$ 3.25	\$ 20.35	\$ 17.10	\$ 3.25	\$ 20.35
Hopkinton	\$ 14.50	\$ 3.25	\$ 17.75	\$ 14.50	\$ 3.25	\$ 17.75
Littleton	\$ 19.50	\$ 3.25	\$ 22.75	\$ 19.50	\$ 3.25	\$ 22.75
Hardwick	\$ 17.10	\$ 3.25	\$ 20.35	\$ 17.10	\$ 3.25	\$ 20.35
Lunenburg	\$ 17.50	\$ 3.25	\$ 20.75	\$ 17.50	\$ 3.25	\$ 20.75
Shirley	\$ 21.50	\$ 3.25	\$ 24.75	\$ 21.50	\$ 3.25	\$ 24.75
Townsend	\$ 19.50	\$ 3.25	\$ 22.75	\$ 19.50	\$ 3.25	\$ 22.75
Westminster	\$ 19.00	\$ 3.25	\$ 22.25	\$ 19.00	\$ 3.25	\$ 22.25

BST - Basic Service Tier
 BTF - Broadcast TV Fee

Source: Comcast Rate Cards

Appendix 2



NOV 28 2014

November 24, 2014

Ms. Catrice Williams
Secretary
Commonwealth of Massachusetts
Dept. of Telecommunications & Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Dear Ms. Williams,

Containing costs and efficiently managing our operations are critical to our goal to provide customers with the best value possible. Like every business, Charter faces rising costs that require occasional price adjustments.

As a result, customers in all of Charter's unregulated communities in Massachusetts have been notified of the following price adjustment through a billing statement message on or after November 21, 2014:

Due to rising programming costs, effective with your January billing statement, pricing will be adjusted for the Broadcast TV Surcharge from \$5.00 to \$5.25. This reflects charges assessed to Charter by broadcast TV stations.

We remain committed to providing excellent communications and entertainment services in all of the communities we serve. If you have any questions about this change, please feel free to contact me at 508-595-5457 or via email at Tom.Cohan@charter.com.
Sincerely,

Thomas P. Cohan
Director of Government Affairs

Effective October 2014. All charges exclude applicable taxes, state and local regulatory fees, FCC fees, public access fees and franchise fees.

BASIC SERVICE	\$17.69
EXPANDED SERVICE	\$49.30

CHARTER TV -SELECT	\$59.99
Includes Basic Service, Expanded Service and the following services where available (check your local lineup for availability): Bloomberg TV, Disney Jr., Hallmark Movies & Mysteries, Indie Plex, Movie Plex, Retro Plex	

CHARTER TV - SILVER	\$79.99
Includes Charter TV Select, Digi Tier 1, HBO, Cinemax, and Showtime (check your local lineup for availability)	

CHARTER TV - GOLD	\$99.99
Includes Charter TV Silver, Digi Tier 2, TMC, Starz, Encore, and EPIX (check your local lineup for availability)	

EQUIPMENT & INTERACTIVE GUIDE SERVICE (with subscription to CHARTER TV SELECT, SILVER or GOLD)	
Standard Digital or HD or DVR or DVR/HD Receiver, Remote & Interactive Guide Services (per outlet)*	\$6.99
CableCARD™♦	\$2.00
DVR Service Fee for 1 DVR receiver	\$11.99
DVR Service Fee Package includes up to 4 DVR receivers (additional \$19.99 for 5-8 DVR receivers)	\$19.99
Digital Interface Device!!	\$6.99

DIGITAL TIERS (available with subscription to CHARTER TV SELECT, SILVER or GOLD)	
Digi Tier 1	\$10.00
Digi Tier 2	\$10.00
Latino View	\$6.99
TV Japan	\$14.99
South Asian View	\$29.99
French View	\$6.99

PREMIUM NETWORKS (available with subscription to CHARTER TV SELECT, SILVER or GOLD)	
HBO	\$15.00
Cinemax	\$15.00
Showtime	\$15.00
TMC	\$15.00
Starz	\$15.00
Encore	\$15.00
EPIX (includes access to epixhd.com)	\$15.00

CHARTER PAY-PER-VIEW AND ON DEMAND
 Rates for transactional movies, adult programming & events vary. For a full listing of On Demand programming go to Charter.net/ondemand or go to Channel 1. Please see your interactive program guide for title-specific pricing prior to ordering or call 1-888-GET CHARTER. Many programs available through OnDemand are free.

SUBSCRIPTION SERVICES ON DEMAND	
Anime Network	\$6.99
Disney Family Movies	\$4.99
FUNimation	\$6.99
Here! Monthly	\$6.99
Karaoke Monthly	\$6.99
Too Much for TV	\$14.99

MISCELLANEOUS CHARGES	
Whole House Wire Maintenance	\$4.99
Insufficient Funds Fee	\$20.00
Phone Payment Processing (Charter assisted)	\$5.00
Past Due 45 Day Fee	5%
Additional Bill Copies	\$1.99

UNRETURNED EQUIPMENT FEES (per unit)	
Digital Receiver	\$125.00
CableCARD™	\$39.00
Tuning Adapter	\$142.00
Digital Interface Device	\$195.00

DIGITAL HOME	\$70.99
Includes Basic Service, Expanded Service, Standard Digital Receiver and Interactive Guide Services	

VIDEO EQUIPMENT RENTAL & OTHER SERVICES (with subscription to Basic, Expanded or Digital Home)	
Standard Digital Receiver & Remote	\$0.00
HD or DVR or DVR/HD Receiver & Remote*	\$5.00
Interactive Guide Services (per digital receiver)**	\$6.99
DVR Service Fee (per DVR receiver)	\$10.00
CableCARD™♦	\$2.00
Digital Interface Device!!	\$6.99

DIGITAL TIERS (available with subscription to Basic, Expanded or Digital Home)	
Digital View	\$5.00
Digital View Plus	\$10.00
Sports View	\$10.00
HD Ultra View	\$5.00
Latino View	\$6.99
TV Japan	\$14.99
South Asian View	\$29.99
French View	\$6.99

PREMIUM NETWORKS (available with subscription to Basic, Expanded or Digital Home)	
HBO/Cinemax	\$20.00
Showtime/TMC	\$15.00
Starz/Encore	\$15.00
EPIX (includes access to epixhd.com)	\$10.00

Premium Package- pick two	\$30.00
Premium Package- pick three	\$40.00
<i>Note: Premium packages include HBO/Cinemax, Showtime/TMC or Starz/Encore together; premiums cannot be interchanged.</i>	

SUBSCRIPTION SERVICES	
Zee TV	\$14.99
Playboy TV	\$19.99

INSTALLATION/SERVICE CALL (per activity)	
Primary Outlet	
Installation/Reconnect (when truck roll required)	\$48.99
Additional Outlet "A/O" (per outlet)***	
1 A/O with Initial Install	no charge
Each additional A/O at Install	\$9.99
Special Trip A/O Activation	\$43.00
Change of Service	
Special Trip	\$33.50
Computerized	\$1.99
Labor Charge	\$42.00
Inside Wire Service Call Charge (for customers without wire maintenance)	\$45.00

Effective October 2014. All charges exclude applicable taxes, state and local regulatory fees, FCC fees, public access fees and franchise fees.

Accessory Equipment Installation	
With Initial Install	\$9.99
Special Trip	\$40.00
Wall Fish	\$31.50

DVR service fee required with subscription to DVR or DVR/HD receiver.

Provides access to the electronic program guide - to receive program information, perform efficient channel surfing, use parental controls and access to order Pay-Per-View On Demand (where available).

*An amplifier may be required for a dwelling with multiple outlets (outlet = digital receiver/modem/eMTA). Technician assessment and professional installation required.

Due to system technology enhancements in a switched digital market, access to certain digital channels will require a receiver, as HDTVs equipped with CableCARDs can not access certain digital channels requiring two-way communication. CableCARD customers with TiVo equipment will also need a Tuning Adapter for access to such digital channels.

DLNA-enabled Ethernet connector; 2 device limit per customer; limited to customers who subscribe to the Basic Service Tier only and who own IP-enabled clear QAM devices; includes CableCARD; professional installation required.

CableCARD customers subscribing to any service package in which Charter leased equipment is included in the package price, may receive a discounted price, reduced by an amount equal to/greater than the fee for such equipment not leased from Charter. We lease CableCARDs for \$2.00 per month per CableCARD for use in customer-owned retail CableCARD-ready devices. Our leased digital receivers also include either a CableCARD or integrated security inside the device. Our lease rate for digital receivers with CableCARD includes a \$2.00 imputed charge for the included CableCARD.

OTHER TERMS: Prices are per month unless noted otherwise. All services may not be available in all areas. Unless specified on this rate card, additional installation services are generally billed using the Labor Charge in 1/4 hour increments. All rates and services are subject to change. Charter reserves the right to institute different rates/or terms and conditions of service for promotional purposes.

IMPORTANT CUSTOMER INFO: Customers are not required to subscribe to any tier of service, other than the basic service tier, in order to purchase premium channels, or where available, Pay-Per-View or On Demand. Charter issued digital receiver or CableCARD required to view programming channels. Charter issued digital receiver required to view PPV and On Demand programming (where available). HD capable equipment required to view HD programming (where available). All programming may not be available to CableCARD customers. The programs, packages, services, number of channels, content, format, rates and other aspects of Charter offerings are subject to change or discontinuance at any time in accordance with applicable law.

WIRE PROTECTION PLAN: A Wire Maintenance Plan is an optional service available to customers for a low monthly rate. It ensures that You do not have to pay Charter to repair cable and telephone communications wires that are inside Your home. Certain limitations apply to the Plan, such as the exclusion of repairs to alarm/electrical/twisted pair wiring, customer-caused damage or abuse, and alterations to Charter equipment. Please contact Charter for more information about the Wire Maintenance Plan.

Appendix 3

Charter Communications Basic Service Tier Rates							
	2011	2012	2013	Eff ect ive Com peti tion	2014	2015	
	Rate	Rate	Rate		Rate*	Rate *	
Uxbridge	\$ 13.01	\$ 13.40	\$ 14.99			\$ 20.99	\$ 21.24
Oxford	\$ 16.42	\$ 17.78	\$ 16.61			\$ 22.99	\$ 23.24

* The combined cost of Basic Service and the Broadcast TV Fee. Charter Communications only assesses the Broadcast TV Fee to subscribers in communities deemed subject to effective competition. See Appendix 2. The communities of Uxbridge and Oxford became subject to effective competition in September 2013. See *In re Charter Commc'ns*, 28 FCC Rcd 13989, *Memorandum Opinion & Order* (MB 2013).

Source: Charter Rate Notices