

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

In the Matter of

Massachusetts Department of Telecommunications and
Cable Form 328 Certification in:

Adams, MA (MA0001)

Section 76.910 INBOX

**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
OPPOSITION TO TIME WARNER CABLE INC.'S
PETITION FOR RECONSIDERATION**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

KAREN CHARLES PETERSON,
COMMISSIONER

1000 Washington Street, Suite 820
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(617) 305-3580

Dated: January 19, 2016

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I. INTRODUCTION

The Federal Communications Commission (“FCC”) should dismiss the Petition for Reconsideration (“Petition”) filed by Time Warner Cable Inc. (“Time Warner”) in the above-captioned proceeding, and in doing so affirm the continued certification of the Massachusetts Department of Telecommunications and Cable (“MDTC”) to regulate cable rates in the Town of Adams. First, the zip codes that Time Warner identifies do not contain residential households. Accordingly, any direct broadcast satellite (“DBS”) subscriptions in those zip codes are irrelevant to, and should not be included in, a determination of effective competition in Adams. Second, even if the nonresidential subscriptions that Time Warner found were included in the effective competition calculation, the DBS penetration rate would still be under 15% when seasonal homes are taken into account. For these reasons, Time Warner’s Petition does not rebut the MDTC’s demonstration that effective competition is not present in Adams, and the FCC should promptly dismiss the Petition, pursuant to the procedure stated in the FCC’s June 3, 2015,

Report and Order in this proceeding.¹ The MDTC files this Opposition to the Petition pursuant to section 1.106 of the FCC's rules and in its capacity as regulator of cable rates in the Commonwealth of Massachusetts.²

II. THE ZIP CODES THAT TIME WARNER IDENTIFIES DO NOT CONTAIN ANY RESIDENCES, RENDERING ANY SUBSCRIPTIONS THEREIN IRRELEVANT

The DBS subscriptions that Time Warner claims are within Adams do not correspond with residences. As a result, these subscriptions should not be included in an effective competition calculation. Time Warner finds ten zip codes that it claims are at least partially within the boundaries of Adams and correspond to eight DBS subscriptions.³ However, Melissa Data provided the MDTC with the residence count in each of those zip codes, and there are no residences within any of the ten zip codes.⁴ Accordingly, any DBS subscriptions that may correspond to these zip codes are irrelevant to an effective competition decision, which Congress mandated be based on residential households.⁵

¹ *In re Amendment to the Comm'n's Rules Concerning Effective Competition*, MB Docket No. 15-53, FCC 15-62, *Report & Order*, ¶ 28 n.131 (rel. June 3, 2015), 2015 WL 3533156 (“The Media Bureau will promptly dismiss cable operator petitions for reconsideration that do not rebut a franchising authority’s demonstration that Competing Provider Effective Competition is not present in the franchise area.”).

² 47 C.F.R. § 1.106. 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).

³ Petition at 2.

⁴ Ex. C (listing the number of residences in each zip code, as provided by Melissa Data); *see also* Ex. B (describing Melissa Data’s methodology). The MDTC previously provided Melissa Data’s methodology as Exhibit B to its Form 328 filing.

⁵ 47 U.S.C. § 543(l)(1)(B); *see also In re Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5662, *Report & Order & Further Notice of Proposed Rulemaking* (1993) (confirming that “service to ‘households’ in a given franchise area” is the important measure of competing provider subscribership for effective competition purposes); 47 C.F.R. § 76.905(b)(2).

This specific, objective evidence distinguishes Adams from the City of St. Louis in a prior case in which the FCC disapproved a “general claim” of inclusion of nonresidential zip codes.⁶ Indeed, the FCC has repeatedly accepted specific, objective evidence in effective competition proceedings, while disregarding evidence that did not meet that standard.⁷ Here, the MDTC has provided specific, objective evidence of Time Warner’s attempt to include nonresidential DBS subscriptions.⁸ The FCC should disregard these subscriptions and dismiss the Petition.

III. THE DBS PENETRATION RATE IS BELOW 15 PERCENT WHEN SEASONAL HOMES ARE TAKEN INTO ACCOUNT

Regardless of Time Warner’s discovered nonresidential subscriptions, the DBS penetration rate remains below 15% in Adams when seasonal homes are taken into account. The FCC has approved a process whereby the Satellite Broadcasting Communications Association’s (“SBCA”) reported DBS subscribership should be reduced by the percentage of seasonal homes in a community as compared to total housing units.⁹ In its Form 328 Certification filing, the MDTC accounted for seasonal homes only where the FCC-approved subscriber reduction was

⁶ See *In re Charter Commc’ns Entm’t I LLC*, 26 FCC Rcd, 5975, 5978, *Memorandum Opinion & Order* (MB 2011).

⁷ See, e.g., *In re Time Warner Entm’t-Advance/Newhouse P’ship*, 22 FCC Rcd 4417, 4421, *Memorandum Opinion & Order* (MB 2007) (accepting a franchising authority’s objective evidence, and rejecting Time Warner’s assertions in response on account of their lack of specificity); *In re Comcast Cable Commc’ns*, 20 FCC Rcd 20438, 20441 n.28, *Memorandum Opinion & Order* (MB 2005) (rejecting claims that “rest on generalities and offer no specific evidence”).

⁸ See Ex. C (providing the number of residential homes in Time Warner’s ten zip codes, as determined by Melissa Data, a source that has been validated by the FCC, and to which Time Warner itself cites in the Petition).

⁹ See, e.g., *In re Charter Commc’ns*, 22 FCC Rcd 2289, 2294, *Memorandum Opinion & Order* (MB 2010); *In re Comcast Cable Commc’ns, LLC*, 22 FCC Rcd 1691, 1697-98 & n.61, *Memorandum Opinion & Order* (MB 2007), *recons. granted on other grounds*, 22 FCC Rcd 5320 (MB 2007).

necessary to reduce the SBCA-reported DBS penetration rate below 15%.¹⁰ The MDTC reserved the right with respect to such reductions should they be needed to demonstrate a lack of effective competition at some point in the future.¹¹ Although as explained above the eight DBS subscriptions that Time Warner found in Adams should not be included in an effective competition calculation, even if they are included, a reduction in the DBS subscriber count by the percentage of seasonal homes in Adams results in a DBS provider penetration rate of 14.91%.¹² This penetration rate does not exceed 15% so Time Warner has still not met the second prong of the competing provider test in Adams.¹³ Accordingly, Time Warner is not subject to effective competition in Adams, and the MDTC's certification to regulate rates in Adams remains valid.¹⁴ The FCC should therefore promptly dismiss Time Warner's Petition.

¹⁰ See MDTC Form 328 Certification at Attachment 3, p. 5.

¹¹ *Id.* at Attachment 3, p. 5 n.18.

¹² Ex. A.

¹³ See 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

¹⁴ See 47 U.S.C. § 543(l)(1)(B); *In re Amendment to the Comm'n's Rules Concerning Effective Competition*, MB Docket No. 15-53, FCC 15-62, *Report & Order*, ¶ 28 (rel. June 3, 2015), 2015 WL 3533156.

IV. CONCLUSION

Time Warner has not presented evidence sufficient to rebut the MDTC's showing that the Company is not subject to effective competition in Adams. Accordingly, the FCC should promptly dismiss Time Warner's Petition, and affirm the continued certification of the MDTC to regulate cable rates in Adams.

Respectfully submitted,

KAREN CHARLES PETERSON,
COMMISSIONER

By: /s/ Sean M. Carroll
Sean M. Carroll, Counsel

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

January 19, 2016

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

The undersigned signatory has read the foregoing Opposition, including all Exhibits, 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,

A handwritten signature in blue ink, appearing to read 'SMC', is positioned above a horizontal line.

Sean M. Carroll

Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

January 19, 2016

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, including all Exhibits, and I am familiar with the contents thereof and the matters referred to therein.
3. The facts contained within the Opposition, including all Exhibits are true and correct to the best of my knowledge, information, and belief.



Date: January 19, 2016

Michael Mael

Exhibit A

| Community | Number of DBS Subscribers as Reported by SBCA | Number of RCN Subscribers | 2010 Census Total Housing Units | 2010 Census Occupied Housing Units | 2010 Census Seasonal, Recreational, or Occasional Use Housing Units | % of Seasonal, Recreational, or Occasional Use Housing Units (Column F / Column D) | Number of DBS Subscribers Accounting for Seasonal Homes (Column B - (Column G * Column B)) | % of Competing Provider Penetration In Franchise Area ((Column B + Column C) / Column E) or (Column H / Column E) |
|-----------|---|---------------------------|---------------------------------|------------------------------------|---|--|--|---|
| Adams | 579 | | 4,371 | 3,907 | | | | 14.82% |
| Adams | 587 | | 4,371 | 3,907 | 34 | 0.78% | 582.43 | 14.91% |

Exhibit B

State of Massachusetts

Melissa Data Professional Services

Engineer: Oscar Li

Methodology

1. Abstract:

MA Department of Telecommunications and Cable seeks a listing of all 9 digit zip codes within a County Subdivision for all towns within the state of Massachusetts. Melissa Data will assist in generating and delivering a list containing all zips & plus4s within Massachusetts along with the county subdivision they belong to. As well as business, residential, total, and zipcode type for each ZIP+4.

2. Technical:

- Python, Shapely GIS package, SQL, SSIS, Melissa Data Contact Verify Component

3. Data Sources:

- Census TIGER Data
- USPS address data along with RBDI (residential/business delivery indicator)
- Tom Tom and Navteq

4. Methods:

- a. Generate list of every known town and county subdivision in MA.
- b. Use Census TIGER Data to correlate each town and county subdivision with polygon boundary shapes for county subdivision.
- c. Generate all ZIP+4 for State of MA.
- d. Associate each ZIP+4 to interpolated latitude and longitude for ZIP+4 centroid from Navteq and TomTom.
- e. Determine county subdivision using a Python script and the Shapely GIS package by checking each county subdivision's polygon shape against all ZIP+4 coordinates
- f. Use USPS RBDI data to generate a count of all total addresses that exist within the ZIP+4.
- g. Separate out the residential and business counts using USPS RBDI data.
- h. Determine ZipCode type for each ZIP code is using USPS RBDI data.

5. Important Notes:

- Unknown ZipCode Type means that USPS does not have any information on this ZIP+4
- 999 records for Cambridge and Springfield is caused by walk sequence generated by USPS. Walk Sequence is to help when sorting mail to minimize the amount of walking for USPS (USPS separates for enhanced carrier routing). Large buildings have a lot of walk sequences and that is what is being counted. USPS starts a new plus4 when it reaches 999. The 999 records seems to be all the same address however each with a distinct walk sequence. 999 Address are known what is called a Drop Stop. Basically a delivery point where a postal employee drops a bundle of advertising material to one location that do not have individual unit numbers available. Building can have 1 stop for 999 drops.
- PO Boxes usually has their own plus4 designation

Exhibit C

| Zip | Zip4 | SubCountyName | SubCountyCityName | ResidentialCount |
|-------|------|---------------|-------------------|------------------|
| 01220 | 1055 | Adams | Adams town | 0 |
| 01220 | 1586 | Adams | Adams town | 0 |
| 01220 | 1593 | Adams | Adams town | 0 |
| 01220 | 1661 | Adams | Adams town | 0 |
| 01220 | 1667 | Adams | Adams town | 0 |
| 01220 | 1783 | Adams | Adams town | 0 |
| 01220 | 1787 | Adams | Adams town | 0 |
| 01220 | 1985 | Adams | Adams town | 0 |
| 01220 | 2073 | Adams | Adams town | 0 |
| 01220 | 1220 | Adams | Adams town | 0 |

Exhibit D



DP-1

Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

Note: This is a modified view of the original table.

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dpsf.pdf>.

Geography: Adams town, Berkshire County, Massachusetts

| Subject | Number | Percent |
|---|--------|---------|
| HOUSING OCCUPANCY | | |
| Total housing units | 4,371 | 100.0 |
| Occupied housing units | 3,907 | 89.4 |
| Vacant housing units | 464 | 10.6 |
| For seasonal, recreational, or occasional use | 34 | 0.8 |

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

CERTIFICATE OF SERVICE

I, Sara Clark, do hereby certify that on this 19th day of January, 2016 that a true and correct copy of the foregoing Opposition, including all Exhibits, has been sent via U.S. mail (postage prepaid) or electronic service via ECFS to the following:

Via ECFS:

William Lake, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Steven Broeckaert
Senior Deputy Policy Division
Chief Media Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20006

Via U.S. Mail, postage prepaid:

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Vice President & Assistant Chief Counsel
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60 Columbus Circle
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Town of Adams
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Seth Davidson
Craig Gilley
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
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Washington, D.C. 20004

A handwritten signature in blue ink that reads "Sara Clark".

Sara Clark