

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

In the Matter of)	
)	
Comcast Cable Communications, LLC, on behalf)	CSR Nos. 7654-E, 7655-E, 7656-E, 7657-E,
of its subsidiaries and affiliates)	7658-E, 7659-E, 7660-E, 7661-E, 7662-E,
)	7663-E, 7664-E, 7665-E
Petitions for Determination of Effective)	
Competition in 27 Massachusetts Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 2008

Released: June 26, 2008

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

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner” or “Comcast,” has filed with the Commission twelve petitions pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that Comcast is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Comcast alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by Verizon New England, Inc. d/b/a Verizon Massachusetts, hereinafter referred to as “Competitor” or “Verizon.” The Towns of Boxford, Hamilton, and Wenham have each filed oppositions to which Comcast has replied. All of the remaining petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Comcast is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(1)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise

¹See 47 U.S.C. § 543(1)(1)(D).

²47 C.F.R. § 76.905(b)(4).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.⁶ This test is otherwise referred to as the “LEC” test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁷ It is undisputed that these Communities are served by both Comcast and Verizon, a local exchange carrier, and that these two MVPD providers are unaffiliated. The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming⁸ and is supported in all of these petitions with copies of channel lineups for Verizon.⁹

5. The Towns of Boxford, Hamilton, and Wenham, hereinafter the “Towns,” have each filed oppositions in which they concede that Verizon qualifies as a LEC unaffiliated with Comcast and that it provides programming comparable to that of Comcast. However, all three Towns question whether Verizon “offers” services to the extent required under the LEC test. They argue that Verizon’s services do not substantially overlap Comcast’s services in the franchise areas, and that Verizon will not build-out its services in a reasonable period of time.¹⁰ They also question whether potential customers are reasonably aware of Verizon’s services.¹¹

6. Relevant build-out language from the franchise licenses granted by each Town to Verizon state as follows:

- The cable television license granted to Verizon by Boxford’s franchising authority, obligates Verizon, effective September 19, 2006, to “offer Cable Service to substantially all residential households served by [the] aerial plant... within twelve (12) months” and “to all residential areas of the Service Area, within four (4) years...”¹²
- In Hamilton, effective May 23, 2006, Verizon must offer cable service to “significant numbers of subscribers in residential areas of the Service Area... within 24 months” and must

⁶See 47 U.S.C. § 543(l)(D).

⁷See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305, ¶ 13 (1999) (“*Cable Reform Order*”).

⁸See 47 C.F.R. § 76.905(g). See also Petitions CSR 7654-E through CSR 7665-E at 12.

⁹See Petitions CSR 7654-E through CSR 7665-E at Exhibit 14.

¹⁰ See CSR-7660-E, Boxford Opposition at 1, 3; Hamilton Opposition at 1, 3; Wenham Opposition at 1, 3.

¹¹ Boxford Opposition at 8; Hamilton Opposition at 8-9; Wenham Opposition at 9.

¹² See CSR-7660-E, Boxford Opposition at 3, 4; see also Petition at Ex. 6, Cable Television Final License Granted to Verizon New England, Inc., Sept. 19, 2006, at § 3.1). “Service Area” is defined as the “entire Town of Boxford.” See Petition at Ex. 6, § 1.40.

offer cable services “to all residential areas of the Service Area within five (5) years.”¹³

- In Wenham, effective May 23, 2006, Verizon must offer cable service “to significant numbers of subscribers in residential areas of the Initial Service Area... within twenty-four (24) months,” and must offer service “to all residential areas of the Initial Service Area within five (5) years....”¹⁴

7. All three Towns argue that these schedules above do not mandate build-out within a “reasonable period of time” because they require Verizon to offer services to only portions of the Towns and do not obligate services to the entire Towns for four years (Boxford) or five years (Hamilton and Wenham).¹⁵ Furthermore, they argue the text of the licenses provide exceptions to Verizon to alter the areas it must serve or to delay or even forgo construction in certain areas.¹⁶

8. Alternatively, the Towns argue that effective competition does not exist because Verizon has insufficient competitive presence to restrain Comcast’s cable rates.¹⁷ The Towns argue that since granting Verizon a franchise, Comcast has raised its rates.¹⁸ Finally, the Towns argue that Comcast has not demonstrated by providing either direct mailings or advertisements to Town residents, that Verizon has marketed its services in the Towns to make potential customers aware that they may purchase Verizon’s services and how they may do so.¹⁹

9. Comcast replies that it meets the LEC test because Verizon offers service in the Towns that “substantially overlaps” Comcast’s service in the franchise areas.²⁰ With respect to Boxford, the franchise license obligated Verizon to build-out its service to “substantially all residential households” served by the town’s “aerial plant” by September 19, 2007. Comcast argues that because Boxford has admitted the “aerial plant” occupies a “majority” of the town,²¹ Verizon met the LEC test when it made service available to “substantially all” residents in a majority of the town by September 2007, thereby “substantially overlapping” the cable operator’s service in the franchise area.²² Similarly in Hamilton,

¹³ See CSR-7660-E, Hamilton Opposition at 3, 4; see also Petition at Ex. 6, Cable Television Final License Granted to Verizon New England, Inc., May 23, 2006, at § 3.1.1. “Service Area” is defined by the “geographic boundaries of the Town.” See Petition at Ex. 6, § 1.33.

¹⁴ See CSR-7660-E, Wenham Opposition at 3, 4; see also Petition at Ex. 6, Cable Television Final License Granted to Verizon New England, Inc., May 23, 2006, at § 3.1.1.

¹⁵ Boxford Opposition at 3; Hamilton Opposition at 3; Wenham Opposition at 3-5.

¹⁶ Boxford Opposition at 3-5; Hamilton Opposition at 3-5; Wenham Opposition at 4-6. For example, Wenham argues Verizon will not build-out its Initial Service Area in less than five years and contractual provisions allow it to alter this area or delay construction; furthermore, Verizon need not *commence* offering service for five years to Wenham’s Extended Service Area, comprising the remaining 1/4 to 1/3 of the Town, and Verizon may decide to forgo completion of these areas. Wenham Opposition at 4-6. Boxford additionally notes that Verizon’s provision of services to its areas will be further impeded by the need for non-standard installations to meet particular utility ordinances of the Town. Boxford Opposition at 4.

¹⁷ Boxford Opposition at 6 (citing *Cable Reform Order* at 5304, ¶ 11); Hamilton Opposition at 6; Wenham Opposition at 7.

¹⁸ Boxford Opposition at 7; Hamilton Opposition at 7; Wenham Opposition at 8.

¹⁹ Boxford Opposition at 8; Hamilton Opposition at 8-9; Wenham Opposition at 9.

²⁰ Reply to Boxford at 3; Reply to Hamilton at 3; Reply to Wenham at 3 (hereinafter, “Replies” unless referred to individually).

²¹ Reply to Boxford at 3, n.7 (citing Boxford Opposition at 4).

²² *Id.* at 3. The franchise area or “Service Area” is defined as the entire town of Boxford in the franchise license. *Id.* at 3 n.6.

Comcast argues that Verizon met the LEC test when it offered service to “significant numbers” of subscribers in residential areas of the “Service Area” on May 23, 2008, because the “Service Area” reaches up to the “geographic boundaries of the town.”²³ Finally, Comcast argues Verizon met the LEC test on May 23, 2008 when it offered service to significant numbers of subscribers in residential areas of Wenham’s “Initial Service Area” because this “Initial Service Area” constitutes over 2/3 to 3/4 of the Wenham franchise area.²⁴ Comcast asserts that these “substantial” and “significant” build-outs are by definition the opposite of *de minimis* service as alleged by these three towns.²⁵ Furthermore, although the Commission does not consider ‘percentage passed’ or ‘penetration’ rates under the LEC test, Comcast points out that 6 percent of Boxford’s local residents subscribed to Verizon’s service within 3 months of Verizon initiating service there in 2006, and approximately 9 percent of Hamilton and Wenham residents subscribed to Verizon within about 7 months of Verizon initiating service in these Communities.²⁶

10. Finally, Comcast argues that the Towns’ residents are reasonably aware of the availability of Verizon’s video service as a result of Verizon’s general marketing efforts. In addition to Verizon’s own news releases touting the arrival of FiOS TV in the franchise areas,²⁷ Comcast has provided evidence of local news coverage from the Towns discussing the availability of Verizon’s service, and various advertisements from the Boston Globe informing residents of the availability of the new service in these Towns.²⁸

11. The Commission finds that Verizon’s services in Boxford, Hamilton and Wenham substantially overlap the incumbent cable operator’s services in these communities’ franchise areas. Furthermore, pursuant to its franchise licenses, Verizon has had to provide service to “substantially all” or “significant numbers” of subscribers in each of these Communities by deadlines which have already passed: by September 19, 2007 for Boxford, and by May 23, 2008 in Hamilton and Wenham. Comcast’s expected dates for completion of construction in the franchise areas, September 19, 2010 in Boxford and May 23, 2011 in Hamilton and Wenham, also meet the reasonable period of time requirement. Verizon’s marketing efforts, combined with the press coverage of Verizon in the media, have ensured that potential subscribers are reasonably aware of the availability of Verizon’s services. The fact that residents have actually subscribed to Verizon’s services shows both that these services are actually available and that subscribers are aware of their availability. We find Comcast has met the requirements of the LEC test for effective competition with respect to the Towns of Boxford, Hamilton, and Wenham.

12. Finally, for the remaining Communities that have not filed oppositions, we find that Comcast has also demonstrated that Verizon has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent

²³ Reply to Hamilton at 3, 6, nn.8 & 17.

²⁴ Reply to Wenham at 3-4, n.9.

²⁵ Replies at 3-4.

²⁶ Reply to Boxford at 4, n.11 (citing Petition at Ex. 8); Reply to Hamilton at 4, n.12 (citing Petition at Ex. 8); Reply to Wenham at 4, n.13 (citing Petition at Ex. 8).

²⁷ Replies at 8 (citing Petition at Ex. 4).

²⁸ Replies at 8 (citing Petition at Exs. 10 & 12.) The Boston Globe has been identified as a source of news for the three Towns, with relevant circulations in each. See Petition Ex. 11, Boston Globe Media, Circulation and HH Pen. – North Region – Full. The Town of Hamilton’s website also identifies the Boston Globe as a source of news for Town residents. See Reply to Hamilton at 8 n.26 & Ex.4.

with the evidentiary requirements set forth in the *Cable Reform Order*.²⁹

13. Based on the foregoing, we conclude that Comcast has submitted sufficient evidence demonstrating that its cable systems serving the Communities have met the LEC test and are subject to effective competition.

III. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

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

16. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³⁰

FEDERAL COMMUNICATIONS COMMISSION

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

²⁹See *Cable Reform Order*, 14 FCC Rcd at 5305, ¶ 13. See also Petitions CSR 7654-E through CSR 7659-E and CSR 7661-E through CSR 7665-E, at pages 5-12.

³⁰47 C.F.R. § 0.283.

ATTACHMENT A

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC, ON BEHALF
OF ITS SUBSIDIARIES AND AFFILIATES**CSR 7654-E
Communities CUID(S)**

Georgetown MA0133

**CSR 7655-E
Communities CUID(S)**

Westwood MA0204

**CSR 7656-E
Communities CUID(S)**

Tewksbury MA0145

**CSR 7657-E
Communities CUID(S)**Ipswich MA0142
West Newbury MA0188**CSR 7658-E
Communities CUID(S)**Franklin MA0152
Hopkinton MA0306
Marlborough MA0122**CSR 7659-E
Communities CUID(S)**

Wellesley MA0241

**CSR 7660-E
Communities CUID(S)**Boxford MA0327
Hamilton MA0239
Wenham MA0240**CSR 7661-E
Communities CUID(S)**Reading MA0109
Winchester MA0111
Woburn MA0033**CSR 7662-E
Communities CUID(S)**

Stoneham	MA0042, MA0101
Swampscott	MA0114

**CSR 7663-E
Communities** **CUID(S)**

Andover	MA0172
Lynn	MA0113
North Reading	MA0171

**CSR 7664-E
Communities** **CUID(S)**

Belmont	MA0316
Nahant	MA0287

**CSR 7665-E
Communities** **CUID(S)**

Acton	MA0196
Boxborough	MA0289
Lincoln	MA0324
Littleton	MA0294
Sudbury	MA0255