

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

	)	CSR 7588-E
	)	CSR 7589-E
	)	CSR 7590-E
	)	CSR 7591-E
	)	CSR 7592-E
In the Matter of	)	CSR 7800-E
	)	CSR 7801-E
	)	CSR 7803-E
Comcast Cable Communications, LLC, on behalf	)	CSR 7804-E
of subsidiaries and affiliates	)	CSR 7805-E
	)	CSR 7818-E
Petitions for Determination of Effective	)	CSR 7865-E
Competition in 107 Franchise Areas in New	)	CSR 7866-E
Jersey	)	CSR 7867-E
	)	CSR 7868-E
	)	CSR 7869-E
	)	CSR 7870-E
	)	CSR 7872-E
	)	CSR 7877-E
	)	CSR 7885-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 18, 2009**

**Released: February 19, 2009**

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

**I. INTRODUCTION AND BACKGROUND**

1. Comcast Cable Communications, LLC, on behalf of subsidiaries and affiliates, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(1), 76.905(b)(2), 76.905(b)(4) and 76.907 of the Commission’s rules for determinations that Petitioner is subject to effective competition in those franchise areas listed on the Attachments hereto. Petitioner alleges that its cable systems serving those franchise areas listed in Attachment A hereto and hereinafter referred to as the “Attachment A Communities” are subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”) and Dish Network (“Dish”). Petitioner also claims to be exempt from cable rate regulation in the three Communities listed on Attachment B, hereinafter referred to as the “Attachment B Communities,” because the Petitioner serves fewer than 30 percent of the households in those Communities. Petitioner finally claims that it is exempt from cable rate regulation in the Communities listed on Attachment C, hereinafter referred to as the “Attachment C Communities,” because of the competing service provided by Verizon New Jersey, Inc., hereinafter referred to as “Competitor.”

2. All the petitions are opposed by the Division of Rate Counsel (the “DRC”) of the

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

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

Department of the Public Advocate of the Board of Public Utilities of the State of New Jersey (the “BPU”). In addition, individual oppositions were filed by the Townships of Lumberton and Mount Holly, two Communities in CSR 7877-E. The Township of Lumberton makes specific arguments against the Petition in CSR 7877-E;<sup>3</sup> the Township of Mount Holly generally states its support for the DRC’s arguments.<sup>4</sup> Petitioner filed a reply to every opposition but the Township of Mount Holly’s.

3. Petitioner has requested permission to withdraw one Community in CSR 7872-E (Lyndhurst, NJ0297) and one in CSR 7885-E (Fairfield, NJ0186) from consideration herein without prejudice to their later re-submission.<sup>5</sup> The DRC does not object, and we grant Petitioner’s request.

4. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>6</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.<sup>7</sup> 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.<sup>8</sup> For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A, B, and C.

## II. DISCUSSION

### A. The Competing Provider Test

5. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>9</sup> this test is otherwise referred to as the “competing provider” test.

6. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer at least “50 percent” of the households in the franchise area “comparable programming.”<sup>10</sup>

7. Turning to the first prong, it is undisputed that the Attachment A Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually

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<sup>3</sup> See ¶ 9 *infra*.

<sup>4</sup> Letter from Brian M. Guest, Esq., Parker McCay, counsel for the Township of Mount Holly, to Marlene H. Dortch, Commission Secretary, dated July 24, 2008.

<sup>5</sup> Motion to Withdraw Lyndhurst, New Jersey, from Petition for Special Relief, filed by Petitioner on Aug. 7, 2008; Motion to Withdraw Fairfield, New Jersey, from Petition for Special Relief, filed by Petitioner on July 3, 2008.

<sup>6</sup> 47 C.F.R. § 76.906.

<sup>7</sup> See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>8</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

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

available if households in the franchise area are made reasonably aware of the service's availability.<sup>11</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>12</sup> Petitioner's assertion that both DIRECTV and Dish offer service to at least "50 percent" of the households in the Attachment A Communities because of their national satellite footprint is undisputed.<sup>13</sup>

8. The "comparable programming" element of the first prong is satisfied if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>14</sup> and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.<sup>15</sup> In CSR 7877-E, the Township of Lumberton (NJ 0389), through its Mayor, makes an argument that we interpret as going to whether the DBS providers' programming is comparable to Petitioner's. The Mayor alleges that many of that Township's residents enjoy watching Philadelphia sports teams.<sup>16</sup> The Mayor appears to believe that those teams can be seen only on Petitioner's cable service, and are not available on the DBS providers' services. The Mayor claims that Petitioner therefore has a "monopoly or something approaching a monopoly on the broadcast of the majority of local professional sports games in the Philadelphia market."<sup>17</sup> The Mayor concludes that, therefore, Petitioner lacks effective competition in Lumberton.<sup>18</sup>

9. We find that the Township of Lumberton's argument lacks merit. As noted in the preceding paragraph, all that is necessary for the programming to be "comparable" is that it offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming. The presence or absence of any kind of program content, even popular local sports, is not material. It also appears that local sports are available to households in Lumberton in some packages offered by the DBS providers.<sup>19</sup> Accordingly, we cannot give weight to the Township of Lumberton's allegations and we find the DBS providers' programming to be comparable to Petitioner's. Accordingly we conclude that the first prong of the competing provider test is satisfied, both in Lumberton and the other Attachment A Communities.

10. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts, without objection from the DRC, that it is the largest MVPD in all the

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<sup>11</sup> See, e.g., Petition in CSR 7800-E at 3; Petition in CSR 7801-E at 3; Petition in CSR 7803-E at 3.

<sup>12</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

<sup>13</sup> See Petition in CSR 7867-E at 2-3; Petition in CSR 7868-E at 3; Petition in CSR 7869-E at 2-3.

<sup>14</sup> See 47 C.F.R. § 76.905(g); see also, e.g., Petition in CSR 7804-E at 4; Petition in CSR 7805-E at 4; Petition in CSR 7818-E at 4.

<sup>15</sup> See, e.g., Petition in CSR 7865-E at Exh. 1; Petition in CSR 7866-E at Exh. 1; Petition in CSR 7867-E at Exh. 1.

<sup>16</sup> Affidavit of Patrick Delany, Mayor of Lumberton Township at ¶¶ 11-12 (dated June 26, 2008), attached to Comment & Opposition to Petition for Special Relief Filed by Comcast Cable Commun., LLC, filed by the Township of Lumberton on June 26, 2008.

<sup>17</sup> *Id.* at ¶ 21.

<sup>18</sup> *Id.* at ¶ 22.

<sup>19</sup> Expert Satellite, *Lumberton, New Jersey DIRECTV Offers & Information*, <http://www.expertsatellite.com/directv-lumberton-new-jersey> ("Local sports teams in Lumberton. Catch the best local sports action in Lumberton. Philadelphia Eagles. Philadelphia Flyers. Philadelphia Phillies."), visited Oct. 8, 2008; Dish Network, <http://snl.jt.org/dishnetwork/dish-network-lumberton-nj.html> ("When you upgrade to America's Top 120, . . . you can take advantage of your regional sports network"), visited Oct. 8, 2008.

Attachment A Communities.<sup>20</sup> Petitioner sought to determine the competing provider penetration in the Attachment A Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Attachment A Communities on a five-digit zip code basis.<sup>21</sup>

11. The aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data<sup>22</sup> (and, in one Community, a 2006 Census estimate<sup>23</sup>) as reflected in Attachment A, indicate that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Attachment A Communities. This evidence, if unrefuted, satisfies the second prong of the competing provider test for each of the Attachment A Communities.<sup>24</sup>

### 1. The DRC’s Objections

12. The DRC makes several objections to Petitioner’s calculations. Some objections apply to how Petitioner calculated the numerators of its ratios, and others to their denominators. Some apply to all the Attachment A Communities, and others only to individual ones.

#### General Objections

13. Timeliness of Data. The DRC objects that Petitioner’s calculations use DBS subscriber numbers from 2007 or 2008 and household data from 2000 (and, in one case, 2006). The DRC argues that the Census-derived household data is stale and that Petitioner’s subscribership and household data should be contemporaneous with each other and the date on which the Petition that contains it is filed.<sup>25</sup> We disagree with the DRC. The use of the most recent Census count of “households,” while allowing for the use of more recent and equally or more reliable household counts, is a practice that we authorized early in litigation about effective competition.<sup>26</sup> Petitioner submitted such data (the most recent available

<sup>20</sup> See, e.g., Petition in CSR 7870-E at 5; Petition in CSR 7872-E at 5; Petition in CSR 7877-E at 5.

<sup>21</sup> See, e.g., Petition in CSR 7885-E at 4-7; Petition in CSR 7800-E at 4-7; Petition in CSR 7801-E at 4-7.

<sup>22</sup> See, e.g., Petition in CSR 7803-E at 6-7; Petition in CSR 7804-E at 6-7; Petition in CSR 7805-E at 6-7.

<sup>23</sup> The Community in question is Camden, NJ0388. Petition in CSR 7877-E, Exh. 7 at 14. Petitioner estimates DBS subscribership at  $3,979 \div 24,271$ , or 16.39%.

<sup>24</sup> In its replies, Petitioner has supplied DBS subscribership estimates using DBS subscriber numbers that are more recent than those in its petitions. This is not necessary and we do not rely on the more recent data. In the vast majority of cases, however, DBS subscribership has increased based on the more recent data; in no case has it fallen below the statutory minimum. Compare, e.g., Petition in CSR 7865-E, Exh. 5, with Reply in CSR 7865-E, Exh. B; Petition in CSR 7870-E, Exh. 5, with Reply in CSR 7870-E, Exh. B; Petition in CSR 7885-E, Exh. 6, with Reply in CSR 7885-E, Exh. D.

<sup>25</sup> See, e.g., Comments in CSR 7800-E at 4; Comments in CSR 7801-E at 4-5; Comments in CSR 7803-E at 4.

<sup>26</sup> *Cable Operators’ Petitions for Reconsideration & Revocation of Franchising Authorities’ Certifications to Regulate Basic Cable Service Rates*, Order, 9 FCC Rcd 3656, ¶ 2(3) (1994):

“With respect to household data, we realize that in many cases 1990 census data represents the most recent data available. Accordingly, we believe that 1990 census data is an appropriate measure of households. Operators that have access to more recent data may submit such information if they so choose.”

See also *Subsidiaries of Cablevision Systems Corp.*, Memorandum Opinion & Order DA 08-2217 (“*Cablevision New Jersey 101*”) at ¶ 13 (rel. Oct. 2, 2008), available at 2008 WL 4449658 (“the most recent available Census data may be used to show the number of households in a community”); *Cablevision of Rockland/Ramapo Inc.*, 22 FCC Rcd 11487, 11493, ¶ 16 (2007); *Cablevision of Raritan Valley, Inc.*, 19 FCC Rcd 6966, 6968, ¶ 6 (2004) (“2000 Census data is sufficiently reliable for effective competition determinations”).

Census data) here and that sustained its initial burden of proof about household numbers in each Attachment A Community. We have also stated that we will accept more recent household numbers that are at least as reliable as Census numbers,<sup>27</sup> but the DRC has submitted no such numbers here. In many decisions, including involving the State of New Jersey, we have found competing provider effective competition to exist based on household and DBS subscribership data that are several years apart in time.<sup>28</sup> Accordingly, we conclude that the DRC's general allegations about the timeliness of the data submitted by Petitioner reveal no flaw in the petitions.

14. We also dismiss the DRC's advocacy of a "complete when filed" rule, which apparently would prohibit late-filed updates to Petitioner's data, and which the DRC advocates in the course of its argument that Petitioner's data is stale.<sup>29</sup> In previous proceedings, the DRC advocated such a rule as a procedural one, and we adopt the analysis by which we declined to follow it in those proceedings.<sup>30</sup> In addition, no updates to the data in the petitions were necessary, so the petitions herein were complete when filed.

15. Cancellations. The DRC objects that Petitioner's estimates of DBS subscribership do not account for cancellations of DBS service after the dates on which SBCA estimated subscribership and before each Petition was filed.<sup>31</sup> Attached to the DRC's comments are publications that, the DRC says, show "a steady decline in satellite subscribership in 2007."<sup>32</sup> We find no merit in the DRC's objection, which we recently rejected in another proceeding.<sup>33</sup> The available evidence shows that DBS subscribership, as a percentage of subscription to all MVPD services, generally has increased over time (that is, new subscriptions have outnumbered cancellations).<sup>34</sup> Indeed, the very publications the DRC attaches to its Comments state that DBS subscriber numbers grew steadily in absolute terms, and did not decline, in 2007.<sup>35</sup> Accordingly, we decline the DRC's request that we fault Petitioner for not making

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<sup>27</sup> *Adelphia Cable Commun.*, 22 FCC Rcd 4458, 4462, ¶ 14 (2007); *Bright House Networks, LLC*, 22 FCC Rcd 4390, 4393, ¶ 11 (2007); *Bright House Networks, LLC*, 22 FCC Rcd 4161, 4165, ¶ 11 (2007).

<sup>28</sup> See, e.g., *Cablevision New Jersey 101*, *supra* note 26; *Time Warner Cable Inc.*, 23 FCC Rcd 12210, 12214, ¶ 15 (2008) (accepting 2000 Census data and 2007 DBS subscribership data); *Jones Intercable, Inc.*, 15 FCC Rcd 7254, 7256, n.12, ¶ 5 (2000) (using 1990 Census despite the fact that it was nearly a decade old); *Tel-Com, Inc.*, 11 FCC Rcd 9153, n.36, 9159, ¶ 11 (1996) (1996 decision using 1990 Census data).

<sup>29</sup> See, e.g., Comments in CSR 7800-E at 5 ("A 'complete when filed' rule is necessary in order to weigh supporting data of even date").

<sup>30</sup> *Cablevision New Jersey 101*, *supra* note 26, at ¶¶ 21-22.

<sup>31</sup> See, e.g., Comments in CSR 7801-E at 6; Comments in CSR 7803-E at 5; Comments in CSR 7804-E at 5.

<sup>32</sup> See, e.g., Comments in CSR 7805-E at 5; Comments in CSR 7818-E at 5; Comments in CSR 7866-E at 6.

<sup>33</sup> *Cablevision New Jersey 101*, *supra* note 26, at ¶ 15.

<sup>34</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2617 (2006) (showing annual growth in the percent of MVPD subscribers receiving DBS service, rising to 28% in the most recent reported year).

<sup>35</sup> See, e.g., Comments in CSR 7800-E at Exh. A, which consists of several company announcements and securities analyses, including *EchoStar Reports First Quarter 2007 Financial Results* ("DISH Network(tm) added approximately 310,000 net new subscribers during the first quarter of 2007"); *EchoStar Reports Second Quarter 2007 Financial Results* ("DISH Network(r) service added approximately 170,000 net new subscribers during the second quarter of 2007"); *EchoStar Reports Third Quarter 2007 Financial Results* ("DISH Network(r) service . . . added approximately 110,000 net new subscribers during the third quarter of 2007"); *EchoStar Reports Fourth Quarter 2007 Financial Results* ("DISH Network added approximately 85,000 net new subscribers during the quarter ended Dec. 31, 2007"); DIRECTV Investors Day (DIRECTV "[e]xpects 17.5 million [subscribers] by year end . . . DIRECTV has 16.8 million subscribers"); Cable360Net, *Satellite in the Slow Lane?* (predicting growth, albeit slow, for DBS); Lisa Daniel, *Subscriber Bases: Quantity or Quality*, SATELLITE TODAY (Sept. 1, 2008) ("The

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post-Petition updates of cancellations of DBS service.

16. Requests for Petitioner’s “Analysis and Work Papers.” The DRC objects that Petitioner’s filings did not include “the analysis and work papers that underlie and support its calculation of satellite penetration percentage.”<sup>36</sup> Without the analysis and papers, the DRC says, it cannot examine, verify, and challenge the underlying numbers from which Petitioner’s household and DBS subscriber numbers were derived.<sup>37</sup> We have rejected this objection before<sup>38</sup> and we affirm that rejection, but here the DRC cites for the first time several Court of Appeals decisions. The decisions reversed regulatory agencies, including this Commission, for not allowing interested parties to examine calculations the agencies made and used as the bases for new regulations.<sup>39</sup> The DRC argues that, as in those cases, it would be reversible error for the Commission to rule on the present petitions without allowing it to examine all the analysis and work papers Petitioner used in preparing its case.

17. What Petitioner filed herein are all the numbers of DBS subscribers and households, the calculations by which Petitioner used those numbers to estimate DBS subscribership in the Attachment A Communities, and detailed statements by Media Business Corporation (“MBC”) and SBCA describing how they derived the numbers that Petitioner used. These appear to be all the numbers of households and DBS subscribers with which Petitioner estimated competing provider effective competition. We have accepted these statements and kinds of numbers in scores of earlier competing provider effective competition decisions. The DRC reveals no significant omission, technical flaw or analytical unsoundness in either the numbers, their derivation, or the calculations made with them; and gives no indication of what additional “underlying data,” assuming that there are any, would have added in substance to the record before the Bureau.

18. The Court of Appeals decisions cited by the DRC are inapposite on several grounds. First, those decisions found that regulators had failed to comply with the notice-and-comment requirements of Section 5 of the Administrative Procedure Act.<sup>40</sup> That Section applies only to rulemakings, however, and this proceeding is an adjudication, to which Section 5 is inapplicable. Second, the calculations that the courts reversed the regulators for not making available were calculations by the regulatory agencies themselves.<sup>41</sup> The information and analysis that the DRC seeks here, however, are by Petitioner or its independent contractors (MBC and SBCA). Third, the calculations involved in the

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leader in satellite’s trend toward higher-paying subscribers is . . . DIRECTV, analysts say. . . . DIRECTV posted its lowest churn rate in three years in the first quarter of this year. . . . EchoStar is adding subscribers . . . Cable has not added subscribers in several years and their penetration rate is declining because of satellite,” according to one analyst).

<sup>36</sup> See, e.g., Comments in CSR 7865-E at 6; Comments in CSR 7866-E at 6; Comments in CSR 7869-E at 6.

<sup>37</sup> *Id.*

<sup>38</sup> *Cablevision New Jersey 101*, *supra* note 26, at ¶¶ 19-20.

<sup>39</sup> *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227 (D.C. Cir. 2008); *Owner-Operator Independent Drivers Ass’n, Inc. v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007); *Solite Corp. v. EPA*, 952 F.2d 473 (D.C. Cir. 1991).

<sup>40</sup> 5 U.S.C. § 553(b-c).

<sup>41</sup> *American Radio Relay League, Inc.*, 524 F.3d at 236 (“More persuasive is the League’s contention that the Commission has failed to comply with the APA by not disclosing in full certain *studies by its staff* upon which the Commission relied in promulgating the rule”) (italics added); *Owner-Operator Independent Drivers Ass’n, Inc.*, 494 F.3d at 202 (“we cannot say that *the agency’s operator-fatigue model* was ‘made public in the proceeding and exposed to refutation’ as required by the APA”) (italics added); *Solite Corp.*, 952 F.2d at 500 (“We hold that *EPA’s determination* that lightweight aggregate air pollution control dust/sludge does not meet the high volume criteria violated notice and comment requirements”).

decisions that the DRC cites led to new regulations or changes in existing regulations.<sup>42</sup> As noted in the preceding paragraph, the information that the DRC seeks here is of the same kind, and the calculations are by the same formulas, that we have used in scores of previous effective competition decisions.<sup>43</sup> The DRC gives us no reason to suspect them.

19. We agree wholeheartedly that the data on which we base our decisions should be made available for analysis by commenting parties. Petitioner has made that data available, in the Exhibits to its Petitions. The DRC has simply asked for more, without any specific indication that more exists, would reveal an error, or would otherwise be helpful to efficient, pro-consumer regulation.

### Specific Objections

20. In CSR 7800-E, concerning Jersey City (NJ0558), the DRC objects that Petitioner's count of DBS subscribers omitted those in one zip code (07311) that it should have included.<sup>44</sup> Petitioner answers that that zip code is entirely included within another, 07302, which it did include.<sup>45</sup> Petitioner appears to be correct, and we accept its answer. We also note that, in this and other instances of alleged omissions of zip codes addressed in the following paragraphs, if Petitioner erroneously omitted a zip code from its calculation of DBS subscriber numbers in an Attachment A Community, that error would reduce the number of DBS subscribers and would weaken Petitioner's showing of competing provider effective competition there. Petitioner has no incentive to weaken its own case, and it does not appear to have done so with the zip codes in question. If it did, however, the DRC would not be prejudiced; indeed, only Petitioner's showing would suffer.

21. In CSR 7801-E, concerning Plainfield (NJ0126), the DRC objects that Petitioner's count of DBS subscribers omitted those in one zip code (07069) that it should have included and included those in another zip code (08812) that it should have excluded.<sup>46</sup> The source of the DRC's objection is a service on the United States Postal Service's ("USPS's") web page that associates zip codes with place names.<sup>47</sup> The USPS's service identifies one or more place names with which a zip code is primarily identified for purposes of mail delivery. It does not, however, purport to precisely track what is important for measuring competing provider effective competition, namely the political boundaries of New Jersey's many municipalities. Thus, the zip code 07069 is primarily associated by the USPS, in the web page the DRC uses, with Plainfield for mail delivery and yet includes no part of the political entity named the City of Plainfield,<sup>48</sup> and the zip code 08812 is associated with Dunellen and Green Brook for purposes of mail

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<sup>42</sup> *American Radio Relay League, Inc.*, 524 F.3d at 232; *Owner-Operator Independent Drivers Ass'n, Inc.*, 494 F.3d at 193 ("the agency violated the Administrative Procedure Act because it failed to give interested parties an opportunity to comment on the methodology of the crash-risk model that the agency used to justify *an increase* in the maximum number of daily and weekly hours that truck drivers may drive and work.") (italics added); *Solite Corp.*, 952 F.2d at 499.

<sup>43</sup> *Cf. Solite Corp.*, 952 F.2d at 485 ("because EPA's methodology remained constant, and because the added data was used to check or confirm prior assessments, we hold that the Agency did not violate the notice and comment provisions of the APA").

<sup>44</sup> Comments in CSR 7800-E at 7.

<sup>45</sup> Reply in CSR 7800-E at 6.

<sup>46</sup> Comments in CSR 7801-E at 7-8.

<sup>47</sup> *Id.*, Exhs. C & D.

<sup>48</sup> Another USPS web page lists Plainfield as an "Acceptable City name" for zip code 07069. *USPS – Zip Code Lookup – Find a City by ZIP Code Results*, [http://zip4.usps.com/zip4/zcl\\_3\\_results.jsp](http://zip4.usps.com/zip4/zcl_3_results.jsp) (visited Oct. 14, 2008).

delivery but includes a small part of the City of Plainfield.<sup>49</sup> Petitioner's method of associating zip codes with New Jersey municipalities' precise boundaries<sup>50</sup> is more nuanced, for our purposes in these decisions, than the particular USPS web page that the DRC relies on. Accordingly, it appears that Petitioner correctly included and excluded these zip codes in estimating DBS subscriber numbers in its Plainfield franchise area in CSR-7801-E.

22. The DRC makes the same kind of objections, and Petitioner makes the same kind of convincing response, in CSR 7804-E about the omission of seven zip codes for Trenton (NJ0478);<sup>51</sup> in CSR 7805-E about the treatment of parts of one zip code for Carney's Point (NJ0537);<sup>52</sup> in CSR 7818-E about the omission of one zip code and the inclusion of two zip codes for Ocean (NJ0216);<sup>53</sup> in CSR 7866-E about Petitioner's allocation of parts of one zip code between two Attachment A Communities (Long Branch (NJ0436) and West Long Branch (NJ0157));<sup>54</sup> in CSR 7867-E about Petitioner's inclusion of parts of three zip codes in Clayton (NJ0368);<sup>55</sup> in CSR 7868-E about Petitioner's inclusion of part of one zip code in High Bridge (NJ0078), parts of three zip codes in Lebanon (NJ0041), parts of three zip codes in Liberty (NJ0502), and part of one zip code in Oxford (NJ0116);<sup>56</sup> in CSR 7877-E about Petitioner's inclusion of part of one zip code in Camden (NJ0388), parts of five zip codes in Chesterfield (NJ0395), and part of one zip code in Lumberton (NJ0389);<sup>57</sup> and, in CSR 7885-E about Petitioner's inclusion of part of one zip code in Irvington (NJ0164), one in Orange (NJ0202), two in Perth Amboy (NJ0350), one in Roselle Park (NJ0247), one in Union (NJ0222), and one in Woodbridge (NJ0329).<sup>58</sup> After a thorough review of the arguments of the DRC and the responses of Petitioner, we conclude that in all these Attachment A Communities Petitioner has correctly estimated DBS subscriber numbers and the DRC has failed to find flaws in them.

### Conclusion

23. Based upon the subscribership levels for the DBS providers that are reflected in Attachment A, and despite the general and specific objections made by the DRC, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Attachment A Communities. Therefore, the second prong of the competing provider test is satisfied for each of the

<sup>49</sup> Reply in CSR 7801-E at 6-7; *id.* at Exh. B (associating 1.08% of zip code 08812 with Plainfield); *id.*, Exh. C (Affidavit of K. Pinna Gallant, Senior Vice President, Product Marketing, MBC, at ¶ 4 (dated June 12, 2008)).

<sup>50</sup> See note 21 *supra*.

<sup>51</sup> Comments in CSR 7804-E at 6-7; *id.*, Exhs. B, C; Reply in CSR 7804-E at 6-7; *id.*, Exhs. B, D, E.

<sup>52</sup> Comments in CSR 7805-E at 7; *id.*, Exh. B; Reply in CSR 7805-E at 6-7; *id.*, Exhs. B-D.

The DRC, in its Comments in CSR 7805-E (and those in CSR 7866-E, CSR 7867-E, CSR 7868-E, and CSR 7885-E) also notes that names that the USPS service gives certain zip codes for mailing purposes are also listed by the New Jersey BPU as separate franchise areas. See, e.g., Comments in CSR 7805-E, Exh. B ("Cable Facts 2007," a publication of the BPU's Office of Cable Television). This is immaterial; a single zip code may include all or parts of two or more franchise areas because, as noted in the text above, zip code boundaries do not always coincide precisely with municipal boundaries or with popular names associated with them.

<sup>53</sup> Comments in CSR 7818-E at 6-7; *id.*, Exhs. B, C; Reply in CSR 7818-E at 6-7; *id.*, Exhs. B-E.

<sup>54</sup> Comments in CSR 7866-E at 7-8; *id.*, Exhs. C, D; Reply in CSR 7866-E at 5-7; *id.*, Exhs. B, C.

<sup>55</sup> Comments in CSR 7867-E at 7-8; *id.*, Exhs. C, D; Reply in CSR 7867-E at 5-7; *id.*, Exhs. B, C.

<sup>56</sup> Comments in CSR 7868-E at 7-8; *id.*, Exhs. C-E; Reply in CSR 7868-E at 5-8; *id.*, Exhs. B, C.

<sup>57</sup> Comments in CSR 7877-E at 7-8; *id.*, Exhs. C, D; Reply in CSR 7877-E at 5-8; *id.*, Exhs. B, C.

<sup>58</sup> Comments in CSR 7885-E at 7-8; *id.*, Exhs. C, D; Reply in CSR 7867-E at 6-8; *id.*, Exhs. D, E.



Attachment A Communities. Accordingly, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied in the Communities listed on Attachment A and that Petitioner is subject to effective competition there.

## **B. The Low Penetration Test**

24. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves “fewer than 30 percent of the households in the franchise area”;<sup>59</sup> this test is otherwise referred to as the “low penetration” test. Petitioner alleges that it is subject to effective competition under the low penetration effective competition test in the three Attachment B Communities because it serves less than 30 percent of the households there.<sup>60</sup> Petitioner’s calculations, in particular, show that its own subscribership amounts to 2 percent of the households in Mount Olive (NJ0012),<sup>61</sup> 16.78 percent in New Hanover (NJ0392), and 14.59 percent in Woodland (NJ0596).<sup>62</sup>

### **1. The DRC’s Objections**

25. The DRC makes two general objections to Petitioner’s showings of low penetration effective competition. The first is to Petitioner’s use of 2008 data for its own subscribers and 2000 Census data for the number of households.<sup>63</sup> This is the same objection that the DRC made to Petitioner’s data showing competing provider effective competition, and we dismiss it for the reasons stated in paragraphs 13-14 above.<sup>64</sup>

26. The DRC’s second objection to Petitioner’s showings is that Petitioner has failed to show that its plant passes all the homes in its franchise area and/or that there is another cable operator there.<sup>65</sup> The DRC seems to assume that low penetration effective competition is premised on the existence of a second cable operator throughout the petitioner’s franchise area to whom subscribers to petitioner’s service can turn in the event of a price increase. This is incorrect; Section 623(l)(1)(A) states no such requirement, and we discern none that is implicit in the statute. The statute requires only household penetration of less than 30 percent in the petitioner’s franchise area, and there is no dispute that Petitioner has shown that in each of the Attachment B Communities.

27. The DRC briefly alludes to a line of cases in which franchise authorities showed that cable operators had made affirmative decisions, confirmed by their own conduct, to serve less than the whole area granted in their franchises, in which cases we measured effective competition in the lesser areas.<sup>66</sup> The DRC has not attempted to make such a showing in this case, however, and therefore cannot invoke those cases’ holdings.

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<sup>59</sup> 47 U.S.C. § 543(l)(1)(A).

<sup>60</sup> Petition in 7868-E at 8; Petition in CSR 7877-E at 8.

<sup>61</sup> Petition in 7868-E at 8.

<sup>62</sup> Petition in 7877-E at Exh. 8. Petitioner states incorrect percentages at page 8 of its Petition.

<sup>63</sup> Comments in 7868-E at 8-9; Comments in 7877-E at 8-9.

<sup>64</sup> The DRC notes a Census Bureau estimate that Mount Olive’s number of households has grown since 2000 (Comments in 7868-E at Exh. F), but that would make Petitioner’s penetration even lower than as stated by Petitioner.

<sup>65</sup> Comments in 7868-E at 9; Comments in 7877-E at 8-9.

<sup>66</sup> Comments in 7868-E n.22 at 9, citing *Comcast of Greater Florida/Georgia, Inc.*, 22 FCC Rcd 4588, 4589-90, ¶ 6 (2007). See also, e.g., *Cablevision of Paterson*, 17 FCC Rcd 17239, 17240-41, ¶¶ 2-4 (2002); *Century Cable of Northern California, Inc.*, 14 FCC Rcd 18604, 18606-08, ¶¶ 4, 6-7 (1999); *TKR Cable of Northern Kentucky*, 11 FCC Rcd 9973, 9982, ¶ 20 (1996) *Cecilton CATV, Inc.*, 10 FCC Rcd 2937, 2939, ¶ 11 (1995).

28. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is satisfied in the Attachment B Communities.

### C. The LEC Test

29. Section 623(l)(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 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.<sup>67</sup> This test is otherwise referred to as the LEC test. Petitioner asserts that the cable service offered by Competitor (Verizon New Jersey, Inc.) satisfies the LEC test in the Attachment C Communities.

30. The Commission has stated that the incumbent cable operator must show that the LEC intends to build out its cable system, in an area that substantially overlaps the incumbent cable operator’s, 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.<sup>68</sup>

31. It is undisputed that the Attachment C Communities are served by both Petitioner and Competitor, that Competitor is a LEC, 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 programming<sup>69</sup> and is supported in this petition with copies of channel lineups for Competitor.<sup>70</sup> Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities pursuant to its “system-wide” franchise,<sup>71</sup> 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 with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>72</sup>

32. These showings, if unrefuted, would demonstrate that Petitioner’s cable systems serving

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<sup>67</sup> See 47 U.S.C. § 543(l)(1)(D).

<sup>68</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”).

<sup>69</sup> See 47 C.F.R. § 76.905(g). See also Petition in CSR 7588-E at 10-11.

<sup>70</sup> See, e.g., Petition in CSR 7589-E at Exh. 11; Petition in CSR 7590-E at Exh. 11; Petition in CSR 7591-E at Exh. 11.

<sup>71</sup> Under a New Jersey law enacted in 2006, a company may receive from the BPU “a system-wide franchise by constructing or operating a [cable] system at any location within the State in which the company, at the time of issuance of the system-wide franchise, either has plant or equipment in use for the provision of any consumer video, cable or telecommunications service, or has proposed to place such plant or equipment into use to provide such service.” Evidently, Verizon’s system-wide franchise has the scope of the territory in which it has provided telecommunications service. See The Assembly Telecommunications & Utilities Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 804, No. 804--L.2006, c.83 (May 11, 2006), printed in N.J.S.A. 48:5A-2.

<sup>72</sup> See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16. See also, e.g., Petition in CSR 7592-E at 5-10 & Exhs. 7-9; Petition in CSR 7588-E at 5-10 & Exhs. 7-9; Petition in CSR 7589-E at 5-10 & Exhs. 7-9.

the Communities listed on Attachment C have met the LEC test and are subject to effective competition.

### 1. The DRC's Objections

33. The DRC makes three general objections to Petitioner's showings of LEC effective competition. The first are legal. The DRC objects that system-wide franchises were not contemplated when Congress enacted the statutory provision for LEC effective competition,<sup>73</sup> and therefore no system-wide franchise may lawfully be the basis for a finding of LEC effective competition.<sup>74</sup> The DRC also bases this objection on our decision in *Service Electric Cable TV of New Jersey*,<sup>75</sup> where the Commission refused to allow a cable operator to aggregate franchise areas, making it inconsistent to allow Petitioner to rely on Verizon's system-wide franchise here.<sup>76</sup> Finally, the DRC objects that, given the novelty of system-wide franchises, the Bureau may not lawfully rule on them as a basis for LEC effective competition findings until the Commission has ruled on them.<sup>77</sup>

34. Petitioner's objections lack merit. First, even if we assume that the applicable statute was enacted before system-wide franchises, that would not disable the statute from applying to such franchises. The DRC has given us neither legislative history nor reasoning indicating that LEC competition may be found only with reference to types of franchises that existed at the statute's enactment. In fact, we have found LEC effective competition in previous cases based on a statewide franchise.<sup>78</sup> Our decision in *Service Electric Cable TV of New Jersey*, relied on by the DRC, is not to the contrary. That decision, which ruled on a competing provider test of effective competition rather than a LEC test, prohibited a cable operator from combining DBS subscribership data for many franchise areas in a single sum, attempting to thereby show subscribership in excess of 15 percent in all the franchise areas combined. We required that the cable operator document subscribership counts based on a franchise by franchise basis.<sup>79</sup> *Service Electric Cable TV of New Jersey* is not applicable in this case since it does not concern the LEC test, which we are addressing here. Furthermore, issues of subscribership data do not even arise under the LEC test. Rather, the elements of LEC effective competition are those stated in paragraphs 28 and 29 above.

35. The DRC's second objection to Petitioner's showing of LEC effective competition is that Competitor does not offer video programming that is "comparable" to Petitioner's because Competitor's programming does not yet include "public, government, and educational" or PEG channels.<sup>80</sup> The DRC misunderstands our standard for what constitutes comparable programming for purposes of effective competition. 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 programming<sup>81</sup>

<sup>73</sup> The provision, 47 U.S.C. § 543(l)(1)(D) was first enacted in 1996. Telecommunications Act of 1996, Pub. L. No. 104-104 § 301(b)(3)(C), 110 Stat. 56, 115, approved Feb. 8, 1996.

<sup>74</sup> See, e.g., Comments in CSR 7590-E at 4-5; Comments in CSR 7591-E at 4-5; Comments in CSR 7592-E at 4-5.

<sup>75</sup> *Service Elec. Cable TV of New Jersey, Inc.* ("Service Electric"), 20 FCC Rcd 20532 (2005).

<sup>76</sup> See, e.g., Comments in CSR 7588-E at 5; Comments in CSR 7589-E at 5; Comments in CSR 7590-E at 5.

<sup>77</sup> *Id.*

<sup>78</sup> *Cablevision Systems of Connecticut, L.P.*, 14 FCC Rcd 15883, 15884, ¶ 4 (1999); *Cablevision Systems of Connecticut, L.P.*, 14 FCC Rcd 15253, 15254, ¶ 3 (1999).

<sup>79</sup> *Service Electric*, 20 FCC Rcd at 20534, ¶ 6 ("the fact that Service Electric operates the 26 [franchises] as a single contiguous system is immaterial to our analysis. The statute requires Service Electric to demonstrate effective competition in each franchise area.") (internal quotations and footnote omitted).

<sup>80</sup> See, e.g., Comments in CSR 7589-E at 6-7; Comments in CSR 7590-E at 6-7; Comments in CSR 7591-E at 6-7.

<sup>81</sup> 47 C.F.R. § 76.905(g).

and is supported in this petition with citations to the channel lineups for Competitor.<sup>82</sup> There is no doubt that the petitions satisfy that standard. Whether Competitor's service is comparable for effective competition purposes does not depend on whether it includes PEG channels.<sup>83</sup>

36. The DRC's final objection to Petitioner's showing of LEC effective competition is that Petitioner has not shown that Competitor has any subscribers for its video service.<sup>84</sup> This is incorrect. Petitioner has shown that Competitor has subscribers in each Attachment C Community.<sup>85</sup> Moreover, it is not necessary that Petitioner show that Competitor's service has reached a certain level of subscribership in those Communities.<sup>86</sup> In adopting the LEC competition test, Congress believed that a LEC would be a formidable competitor to an incumbent cable operator from its commencement of service in part of a community.<sup>87</sup> Therefore, we have consistently required that a petitioner show only that a LEC has actually begun to provide service in areas that substantially overlap petitioner's (which the DRC does not deny), that the LEC is marketing its services so that potential customers are aware of it, and that it intends to build out its cable system within a reasonable period of time if it has not already done so.<sup>88</sup> Petitioner has shown that Competitor has done all these things, thus sustaining its burden of proof. The DRC has not successfully refuted any of Petitioner's evidence.

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<sup>82</sup> See note 70 *supra*.

<sup>83</sup> *CoxCom, Inc.*, 14 FCC Rcd 7134, 7142, ¶19 (1999) ("PEG programming is not one of the factors the Commission has indicated is germane in determining whether comparable programming is being offered by a competitor."), *reconsideration granted on other grounds*, 15 FCC Rcd 728 (2000).

<sup>84</sup> See, e.g., Comments in CSR 7590-E at 7; Comments in CSR 7591-E at 7; Comments in CSR 7592-E at 7.

<sup>85</sup> Petition in CSR 7588-E at Exh. 10 (Declaration of Marge Jackson, Vice President of Marketing for the Comcast New Jersey Region, that "there are former Comcast subscribers from each of the [Attachment C] Communities that have discontinued service since the beginning of [2007] for the stated reason that they were switching to Verizon's competing cable service"); see also *id.* at Exh. 3 (Letter from Zedford D. Dancey, Assistant General Counsel, Video Services, Verizon, to Steven J. Horvitz, Esq., Davis Wright Tremaine LLP, dated April 5, 2007, stating that "to the best of my knowledge, Verizon's FiOS TV service is currently being offered to one or more residents" in each Attachment C Community).

<sup>86</sup> See *Armstrong Commun., Inc.*, 16 FCC Rcd 1039, 1043-44, ¶9 (2001) (LEC test does not specify any minimum amount of service to be offered by the LEC or include any penetration standards; it requires only that the offering be substantially more than *de minimis*); *CoxCom, Inc.*, 14 FCC Rcd 7134, 7143, ¶24 (1999) ("Congress did not include a pass or penetration test in the LEC effective competition standard and the Commission has not indicated that it would impose such a test"), *reconsideration granted on other grounds*, 15 FCC Rcd 728 (2000); *Cable Reform Order*, 14 FCC Rcd at 5303, ¶10 ("we reject arguments that we should adopt penetration standards").

The DRC misstates our decision in *Marcus Cable Assocs., L.P.*, 13 FCC Rcd 9326 (1998), *review denied*, 16 FCC Rcd 15612 (2001), as holding that LEC effective competition requires "direct evidence of subscribership." Comments in CSR 7589-E at 7; Comments in CSR 7590-E at 7; Comments in CSR 7591-E at 7. Our *Marcus Cable* decision noted that the cable operator indeed showed that the LEC had 50 subscribers for its service, but that that and other evidence failed to show that most consumers were "reasonably aware" of its availability. *Marcus Cable Assocs., L.P.*, 13 FCC Rcd at 9331, ¶14.

<sup>87</sup> *Cable Reform Order*, 14 FCC Rcd at 5302, ¶9 ("The thrust of the 1996 Act is Congress' expectation that LECs will be robust competitors of cable operators because of their financial and technical ability and . . . their ubiquitous presence in the market") (footnote omitted); *id.* at 5303, ¶11 (noting with approval that "the Cable Services Bureau has found that a LEC's presence can have a competitive impact on a cable operator before the LEC finishes installing its plant or rolling out its service"); *id.* at 5304, ¶11 (noting "Congress' intent that the Commission have the discretion to consider the likelihood and extent of impending competition when considering whether effective competition exists under the LEC test. Congress sought to restrain cable rates and stimulate quality cable services. Once the LEC's competitive presence is sufficient to achieve these goals, even if the LEC's buildout or roll out is not complete, the intent of the effective competition test has been met").

<sup>88</sup> *Id.*, 14 FCC Rcd at 5303, ¶11, 5305, ¶13.

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

### III. MISCELLANEOUS

38. In its Comments in several proceedings, the DRC observes that the Commission has rules requiring the payment of fees in connection with the petition and the listing of franchise areas in the petition.<sup>89</sup> Because the DRC does not allege, much less substantiate, any specific violation of those rules by Petitioner, we find no significance in its observations. The DRC also makes the additional and more specific objection in some proceedings that Petitioner erred in paying only one filing fee per cable system instead of one fee per Community.<sup>90</sup> In support of its allegation, the DRC cites a Commission rule that does not exist.<sup>91</sup> The DRC's objection is mistaken. Petitioner filed the correct amount of fees, which is one per cable system regardless of how many Communities are involved.<sup>92</sup>

### IV. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, **ARE GRANTED**.

40. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachments A, B, and C **IS REVOKED**.

41. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>93</sup>

## FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>89</sup> See, e.g., Comments in CSR 7801-E at 5-6; Comments in CSR 7865-E at 5-6; Comments in CSR 7566-E at 5-6; Comments in CSR 7867-E at 5-6.

<sup>90</sup> See, e.g., Comments in CSR 7801-E at 5-6; Comments in CSR 7869-E at 5-6; Comments in CSR 7870-E at 5-6; Comments in CSR 7872-E at 5-6; Comments in CSR 7877-E at 5-6; Comments in CSR 7885-E at 5-6.

<sup>91</sup> *Id.*, citing "Section 1.104(8)(g) of the FCC rules." 47 C.F.R. § 1.104 of the Commission's rules concerns "Preserving the right of review; deferred consideration of application for review" and has no subsection numbered 8 or g. Section 1.1104(9)(g) requires a fee with each Petition, but is silent about whether a fee is required for each system or each community.

<sup>92</sup> *Reminder as to Procedures for Filing Cable Television Effective Competition Petitions*, Public Notice DA 05-921, 20 FCC Rcd 7294 (2005) ("Although for the convenience of the filing parties multiple communities and multiple cable physical systems ('PSIDs') may be combined in a single filing, each PSID must be separately identified and a separate fee must be paid for each PSID") (italics added); see also *Cablevision New Jersey 101*, *supra* note 26, at ¶ 46; *Comcast Cable Commun., LLC, Memorandum Opinion & Order* DA 08-1908 at ¶ 6 n.14 (rel. Aug. 14, 2008) ("Two petitions were filed because some of the Communities with different CUIDs numbers are on a separate Comcast cable system and required the filing of a separate filing fee"); *CoxCom, Inc.*, 22 FCC Rcd 4522, ¶ 1 n.1 (2007) ("regulatory filing fees are assessed by cable system").

<sup>93</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

CSR 7800-E, CSR 7801-E, CSR 7803-E, CSR 7804-E, CSR 7805-E, CSR 7818-E, CSR 7865-E, CSR 7866-E, CSR 7867-E, CSR 7868-E, CSR 7869-E, CSR 7870-E, CSR 7872-E, CSR 7877-E, CSR 7885-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF  
COMCAST CABLE COMMUNICATONS, LLC

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
<b>CSR 7800-E</b>				
Jersey City	NJ0558	20.20%	88632	17901
<b>CSR 7801-E</b>				
North Plainfield	NJ0124	21.88%	7202	1576
Plainfield	NJ0126	22.18%	15137	3358
South Plainfield	NJ0130	26.28%	7151	1879
<b>CSR 7803-E</b>				
Beachwood	NJ0091	17.35%	3475	603
<b>CSR 7804-E</b>				
Trenton	NJ0478	20.42%	29437	6011
<b>CSR 7805-E</b>				
Carneys Point Township	NJ0537	21.07%	3121	658
<b>CSR 7818-E</b>				
Ocean Township	NJ0216	24.89%	2446	609
<b>CSR 7865-E</b>				
Cranbury	NJ0437	36.18%	1091	395
East Brunswick	NJ0021	18.86%	16372	3088
Jamesburg	NJ0438	20.64%	2176	449
Spotswood	NJ0440	20.09%	3099	623
<b>CSR 7866-E</b>				
Atlantic Highlands	NJ0363	16.57%	1969	326
Deal	NJ0471	36.55%	434	159
Long Branch	NJ0436	22.61%	12594	2847
West Long Branch	NJ0157	17.60%	2448	431
<b>CSR 7867-E</b>				
Clayton	NJ0368	19.74%	2464	486
East Greenwich	NJ0460	20.58%	1901	391
Paulsboro	NJ0413	15.79%	2353	372
<b>CSR 7868-E</b>				
Belvidere	NJ0115	27.68%	1088	301
Califon	NJ0555	28.48%	401	114
High Bridge	NJ0078	24.19%	1428	346

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
<b>CSR 7868-E (continued)</b>				
Lebanon	NJ0041 <sup>94</sup>	27.84%	1963	547
Liberty	NJ0502	36.67%	980	359
Oxford	NJ0116	37.03%	886	328
White	NJ0240	28.94%	1668	483
<b>CSR 7869-E</b>				
Atlantic City	NJ0006	15.13%	15848	2398
Bass River	NJ0629	19.83%	548	109
Corbin City	NJ0455	19.26%	172	33
Dennis	NJ0454	16.79%	2159	362
Egg Harbor City	NJ0528	17.11%	1658	284
Egg Harbor Township	NJ0002	23.95%	11199	2682
Galloway	NJ0415	17.17%	10772	1849
Hamilton	NJ0332	23.49%	7148	1679
Pleasantville	NJ0004	23.27%	6402	1489
Port Republic	NJ0623	24.38%	365	89
Ventnor	NJ0031	15.24%	5480	835
Weymouth	NJ0583	51.92%	851	442
Woodbine	NJ0466	18.65%	773	144
<b>CSR 7870-E</b>				
Barnegat Light	NJ0182	18.22%	371	68
Beach Haven	NJ0016	20.92%	586	123
Long Beach	NJ0018	21.35%	1664	355
Ship Bottom	NJ0019	21.52%	664	143
Surf City	NJ0020	20.36%	706	144
<b>CSR 7872-E</b>				
Carlstadt	NJ0296	22.86%	2393	547
East Newark	NJ0300	32.90%	767	252
Wallington	NJ0382	18.24%	4752	867
<b>CSR 7877-E</b>				
Camden City	NJ0388	16.39%	24271	3979
Chesterfield	NJ0395	49.93%	899	449
Easthampton	NJ0416	19.21%	2226	428
Fieldsboro	NJ0384	23.19%	189	44
Florence	NJ0387	18.16%	4149	753
Lumberton	NJ0389	18.98%	3930	746
Mansfield	NJ0419	32.85%	2077	682
Mount Holly	NJ0356	19.38%	3903	757
Pemberton Borough	NJ0390	19.71%	470	93
Pemberton Township	NJ0310	18.52%	10050	1861
Pennsauken	NJ0257	17.74%	12389	2198
Plumstead	NJ0391	28.47%	2510	715
Shamong	NJ0594	15.29%	2132	326
Southampton	NJ0418	15.32%	4574	701
Springfield	NJ0411	25.27%	1098	278

<sup>94</sup> Petitioner gave this system the CUID NJ00415, but we assume it intended to give it NJ0041 rather than NJ00415 or another CUID that has been assigned to Lebanon, NJ0491.

<b>Communities</b>	<b>CUID(s)</b>	<b>CPR*</b>	<b>2000 Census Households</b>	<b>Estimated DBS Subscribers</b>
<b>CSR 7877-E (continued)</b>				
Tabernacle	NJ0595	15.41%	2346	361
Westhampton	NJ0417	19.63%	2525	496
Wrightstown	NJ0394	17.12%	312	53
<b>CSR 7885-E</b>				
Belleville	NJ0220	22.16%	13731	3043
Bloomfield	NJ0221	15.51%	19017	2949
Carteret	NJ0402	29.69%	7039	2090
Irvington	NJ0164	16.09%	22032	3545
Orange	NJ0202	17.25%	11885	2051
Perth Amboy	NJ0350	24.70%	14562	3596
Rahway	NJ0354	20.12%	10028	2017
Roselle	NJ0248	21.40%	7520	1609
Roselle Park	NJ0247	15.43%	5137	793
Secaucus	NJ0325	15.38%	6214	956
South River	NJ0443	32.45%	5606	1819
Union	NJ0222	23.66%	19534	4621
Winfield	NJ0361	23.89%	694	166
Woodbridge	NJ0329	22.22%	34562	7681

\*CPR = Percent of competitive DBS penetration rate.



## ATTACHMENT B

## CSR 7868-E, 7877-E

COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF  
COMCAST CABLE COMMUNICATONS, LLC

<b>Communities</b>	<b>CUID(s)</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
<b>CSR 7868-E</b> Mount Olive	NJ0012	9068	181	2.00%
<b>CSR 7877-E</b> New Hanover	NJ0392	1162	195	16.78%
Woodland	NJ0596	425	62	14.59%

## ATTACHMENT C

CSR 7588-E, CSR 7589-E, CSR 7590-E, CSR 7591-E, CSR 7592-E  
COMMUNITIES SERVED BY SUBSIDIARIES AND AFFILIATES OF  
COMCAST CABLE COMMUNICATONS, LLC

<b>Communities</b>	<b>CUID(s)</b>
<b>CSR 7588-E</b>	
Eatontown	NJ0132
Fair Haven	NJ0435
Freehold	NJ0474
Holmdel	NJ0487
Little Silver	NJ0206
Middletown	NJ0362
Oceanport	NJ0158
Red Bank	NJ0433
Rumson	NJ0469
Sea Bright	NJ0156
Shrewsbury Borough	NJ0274
Tinton Falls	NJ0434
<b>CSR 7589-E</b>	
Audubon Borough	NJ0172
Barrington	NJ0230
Cherry Hill	NJ0241
Haddon Heights	NJ0205
Haddonfield	NJ0301
Lawnside	NJ0303
<b>CSR 7590-E</b>	
East Rutherford	NJ0295
Wallington	NJ0382
<b>CSR 7591-E</b>	
Cranford	NJ0360
Garwood	NJ0378
Kenilworth	NJ0351
<b>CSR 7592-E</b>	
Monroe	NJ0372