

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

In the Matter of)
Comcast Cable Communications, LLC, on behalf) CSR 7852-E
of its subsidiaries and affiliates)
Petition for Determination of Effective)
Competition in 18 Massachusetts Communities)
FCC Form 328 Certification Request)

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2016

Released: September 28, 2016

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

I. INTRODUCTION

1. The Town of Falmouth, Massachusetts (the Town or Falmouth) filed an Application for Review (Application) of the Media Bureau’s determination in the above-captioned proceeding that Comcast is subject to effective competition in several Massachusetts franchise areas, including Falmouth.1 The Town failed to timely serve the Application on Comcast as required by section 1.115(f) of the Commission’s rules.2 The Bureau granted Comcast an extension of time either to resolve matters with the Town, or to file an opposition to the Application.3 Falmouth and Comcast subsequently filed a Joint Motion for Media Bureau Resolution requesting that the Application be delegated to the Bureau “for a prompt resolution mutually satisfactory to both parties.”4 In addition, both parties asked the Bureau to remove Falmouth from the list of communities for which Comcast was deemed subject to effective competition.5 The Commission subsequently required all franchising authorities with existing

1 Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, Memorandum Opinion and Order, 23 FCC Rcd 10454 (MB 2008) (Order). In its initial petition seeking an effective competition finding, Comcast argued that it is subject to competing provider effective competition in the 18 Massachusetts communities, including Falmouth. The Order found that Comcast was subject to effective competition in all 18 of the communities. Order, 23 FCC Rcd at 10456, para. 7.

2 47 CFR § 1.115(f).

3 See Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, Order, 24 FCC Rcd 4902 (MB 2009).

4 Joint Motion for Media Bureau Resolution at 1 (Joint Motion). Comcast joined the motion without prejudice to refile an effective competition petition applicable to Falmouth. Id. The Bureau granted the Joint Motion but did not resolve the Application, which is hereby relegated to the Bureau level. Consequently, we will treat the Application as a petition for reconsideration (hereinafter referred to as the Petition for Reconsideration).

5 Id. Comcast stated that although it did not necessarily agree with the arguments Falmouth advanced in its Application, it was amenable to the removal of Falmouth from the Order’s list of effective competition communities. The Joint Motion further stated that the removal of Falmouth would reestablish cable rate regulation in that community, which was the objective underlying the Town’s Application. Id.

certifications that wished to remain certified to file a revised FCC Form 328 by December 8, 2015.⁶ The Massachusetts Department of Telecommunications and Cable (MDTC)⁷ filed FCC Form 328 on that date seeking to remain certified to regulate rates in several Massachusetts communities, including Falmouth.⁸ For the reasons set forth below, we affirm the certification of MDTC to regulate basic cable service rates in the Town of Falmouth and dismiss as moot the Petition for Reconsideration.

II. BACKGROUND

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as “competing provider effective competition.”⁹ Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by section 623(l) of the Act, and section 76.905 of the Commission’s rules.¹⁰ MDTC, as the franchise authority for rate regulation of cable services throughout the Commonwealth of Massachusetts, filed timely certifications for numerous Massachusetts communities, including Falmouth. Comcast did not oppose MDTC’s certification for any franchise area, including Falmouth.

III. DISCUSSION

3. Events that have occurred subsequent to our initial finding of effective competition have rendered it unnecessary to resolve the issues raised in the Petition for Reconsideration. Specifically, Falmouth and Comcast filed the Joint Motion requesting that the Bureau remove Falmouth from the list of communities for which Comcast was deemed subject to effective competition and thereby reestablishing cable rate regulation in that community.¹¹ The Bureau granted the Joint Motion.¹² Thereafter, MDTC filed a revised Form 328 seeking to remain certified to regulate rates for several Massachusetts franchise areas, including the community at issue in this proceeding, Falmouth.¹³

⁶ See *Notice of Effective Date of Revised Effective Competition Rules*, Public Notice, 30 FCC Rcd 10124, 10125 (2015) (*Effective Competition PN*).

⁷ MDTC is the franchise authority for rate regulation of cable services throughout the Commonwealth of Massachusetts.

⁸ See MDTC Form 328, Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition (filed Dec. 8, 2015), *available at* <http://apps.fcc.gov/ecfs/proceeding/view?name=INBOX-76.910>.

⁹ See *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) (*Effective Competition Order*). Section 623(l)(1)(B) of the Communications Act of 1934, as amended (the Act), provides that a cable operator is subject to competing provider effective competition if the franchise area is (a) served by at least two unaffiliated multichannel 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. 47 U.S.C. § 543(l)(1)(B); 47 CFR § 76.905(b)(2).

¹⁰ See 47 U.S.C. § 543(l)(1); 47 CFR §§ 76.905(b), 76.906.

¹¹ Joint Motion at 1.

¹² See *supra* n. 4.

¹³ In its revised Form 328, MDTC asserts that the number of households subscribing to DBS does not exceed 15 percent of the households in the franchise area, as required by the competing provider test for effective competition. MDTC Form 328, Attachment 3, Attachment to Question 6(a) at 3. MDTC indicates that the number of DBS subscribers in Falmouth is 1,881 and the 2010 Census Data for Occupied Housing Units is 14,069. MDTC calculates that the competing provider penetration rate in Falmouth is 13.37 percent. *Id.*

Accordingly, we find that Falmouth is not subject to competing provider effective competition, or any other form of effective competition, in its franchise area.

4. For the above reasons, we find that MDTC demonstrated that the presumption of competing provider effective competition does not apply to the Falmouth franchise area. MDTC has been and remains certified to regulate basic cable service rates in the Falmouth franchise area. Comcast does not dispute this conclusion. Falmouth's Petition for Reconsideration of the Media Bureau's *Order* is accordingly dismissed. Comcast remains free at any time in the future to file a petition for determination of effective competition challenging MDTC's certification to regulate basic cable service rates in Falmouth under any of the four tests for effective competition.¹⁴

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed in the above-captioned proceeding **IS DISMISSED**.

6. This action is taken pursuant to delegated authority under section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ See 47 CFR § 76.907; 47 U.S.C. § 543(l)(1)(A)-(D) (the four statutory tests for effective competition); 47 CFR § 76.905(b)(1)-(4).

¹⁵ 47 CFR § 0.283.