



# PUBLIC NOTICE

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DA 09-1361  
Released: June 18, 2009

## COMMISSION CLARIFIES STANDARDS FOR EVIDENCE OF COMPETING PROVIDER EFFECTIVE COMPETITION FOR CABLE SERVICE

On August 18 and September 2, 2008, the Federal Communications Commission issued Public Notices concerning the evidentiary showings required from cable operators that petition for findings of “competing provider” effective competition.<sup>1</sup> That form of effective competition requires a petitioning cable operator to show that the number of households subscribing to video programming, other than the largest video programming distributor, exceeds 15 percent of households in the franchise area.<sup>2</sup>

The two Public Notices reflect the Commission’s reaction to recent showings that used Five-Digit Zip Code data and yielded rates of subscription to video programming in excess of 100 percent. Such evidence is obviously inaccurate, and the Public Notices required the use of more detailed and reliable Nine-Digit, “Zip Code Plus Four” data in certain competing provider effective competition proceedings.

After further consideration, the Commission will not require the use of Nine-Digit data in any showing of competing provider effective competition. Rather, the Commission will, as it has in the past, entertain filings by cable operators using Five-Digit, Nine-Digit, or other kinds of evidence. The Commission will, however, dismiss evidence that shows obviously inaccurate or highly questionable levels of subscription regardless of the format of such evidence. The Commission suggests that a cable operator with Five-Digit Zip Code evidence showing such flawed results consider the use of Nine-Digit Zip Code data or some other kind of evidence that credibly sustains its burden of proof that subscribers to video programming services other than the largest operator exceed 15 percent of the households in its franchise area.

For further information, contact Senior Deputy Chief, Policy Division, Media Bureau, Steven Broecker, (202) 418-1075, [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov), TTY (202) 418-7171.

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<sup>1</sup> *Commission Revises & Suspends Pending OMB Approval New Standards for Showing Effective Competition for Cable Service*, Public Notice DA 08-2030 (rel. Sept. 2, 2008), available at 2008 WL 4077098; *Commission Announces New Standards for Showings of Effective Competition for Cable Service*, 23 FCC Rcd 12067 (2008).

<sup>2</sup> 47 U.S.C. § 543(l)(1)(B)(ii); 47 C.F.R. § 905(b)(2)(ii).