

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

In the Matter of:)	
)	
Cablevision of the Midwest d/b/a Cablevision of Ohio)	CSR 5582-E; CSR 5583-E; CSR 5584-E; CSR 5585-E; CSR 5586-E; CSR 5587-E
)	
Petitions for Determination of Effective Competition in Brooklyn, Brook Park, Garfield Heights, North Royalton, Shaker Heights, and Strongsville, Ohio (CUID Nos. OH1606; OH0823; OH1193; OH0971; OH0175; OH0841))	

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2000

Released: December 20, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Six petitions have been filed pursuant to Sections 76.7 and 76.907 of the Commission's rules for a determination of effective competition in Brooklyn, Brook Park, Garfield Heights, North Royalton, Shaker Heights, and Strongsville, Ohio (the "Communities").¹ The petitioners (herein "Cablevision") allege that their cable systems serving the Communities are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),² and the Commission's implementing rules,³ and are therefore exempt from cable rate regulation. Cablevision claims the presence of effective competition in the Communities stems from the competing services provided by Ameritech New Media, Inc. ("Ameritech"), a franchised cable operator affiliated with a local exchange carrier ("LEC"). No opposition to this petition was filed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵ The

¹Five of the petition were filed by Cablevision of the Midwest d/b/a Cablevision of Ohio; the sixth was filed by Telerama, Inc., a wholly owned subsidiary of Cablevision of the Midwest. *See* Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No.1284, dated August 23, 2000. Because of the identity of the parties and the similarity of the issue, we consider all six cases together. *See* 47 U.S.C. § 154(j).

²47 U.S.C. § 543(a)(2).

³47 C.F.R. § 76.905(b)(4).

⁴47 C.F.R. § 76.906.

⁵47 C.F.R. § 76.905.

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.⁶ Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a 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, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁷

3. The Commission has stated that an incumbent cable operator could satisfy the “LEC” effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁸ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, 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.⁹

II. DISCUSSION

4. Cablevision operates cable television systems in the Communities for which it seeks determinations of effective competition. Cablevision offers as many as 84 channels of programming in each of the Communities and qualifies as the incumbent cable operator within those Communities for purposes of the “LEC” effective competition test at issue in this proceeding.¹⁰ Cablevision provided information showing that Ameritech and Ohio Bell Telephone Company d/b/a Ameritech Ohio (“Ohio Bell”) are wholly-owned subsidiaries of SBC Communications, Inc (“SBC”). Ohio Bell is a telephone company that provides telephone exchange and other telephone services within the Communities.¹¹ Therefore, Ohio Bell qualifies as a “LEC,” and SBC’s wholly owned subsidiary Ameritech qualifies as an affiliate of a “LEC” for purposes of the “LEC” effective competition test.¹²

5. Ameritech received an unrestricted 15-year local cable franchise from, and entered into a franchise agreement with each of the Communities on various dates during the period February 1998 through July 1999 authorizing it to provide cable services throughout each of the Communities.¹³ Cablevision demonstrated that Ameritech’s franchise area in each of the Communities is the same as that of

⁶See 47 C.F.R. §§ 76.906 & 907.

⁷Communications Act, § 623(l)(1)(D), 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test within Section 632(l) may be referred to as the “LEC” effective competition test.

⁸See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

⁹*Id.*

¹⁰Cablevision Petitions at 2.

¹¹*Id.* at 4-5 & Exhibit 1.

¹²See 47 U.S.C. § 543(l)(1)(D); 47 U.S.C § 153(a)(1).

¹³*Id.* at 6 & Exhibit 2.

its own.¹⁴ In addition to holding unrestricted franchises for the provision of cable service within the Communities, Ameritech has distributed marketing materials within the Communities pointing out that the Communities' residents need only call Ameritech for installation of its cable services.¹⁵ Ameritech has either completed construction of its cable systems or is required by its franchise agreements to complete their construction by certain dates, none of which extends past September 2002, or suffer heavy monetary forfeitures and/or penalties.¹⁶ Ameritech commenced providing cable service during March 1999 in Brooklyn and Brook Park, during May 1999 in Shaker Heights and Strongsville, during October 1998 in North Royalton, and during October 1999 in Garfield Heights. As of June 1999, Ameritech had approximately 5,359 subscribers in Brooklyn, 9,000 in Brook Park, 10,300 in North Royalton, 13,500 in Shaker Heights, and 16,000 in Strongsville.¹⁷ Cablevision stated that a number of its subscribers in each of the Communities had cancelled its service and commenced taking Ameritech's services.¹⁸

6. Ameritech's marketing materials show that its cable systems offer over 90 channels of video programming that includes non-broadcast programming services such as A&E, CNN, Discovery Channel, HBO and Showtime, as well as a complement of 11 or 12 local television broadcast stations.¹⁹ This complement of programming services compares closely with the programming available on Cablevision's systems.²⁰ Therefore, Ameritech provides comparable programming as required by the "LEC" effective competition test.²¹ Cablevision also provided evidence that there are no regulatory, technical or other impediments to Ameritech's provision of service within the Communities, and that Ameritech is able to provide cable service that overlaps Cablevision's service.²²

7. Cablevision has also shown that Ameritech has commenced providing cable service within the Communities, is marketing its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfies the "LEC" effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.²³ Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence demonstrating that its cable systems serving Brooklyn, Brook Park, Garfield Heights, North Royalton, Shaker Heights, and Strongsville, Ohio, are subject to effective competition.

¹⁴*Id.* at 8.

¹⁵*Id.* at 10 and Exhibit 4.

¹⁶*Id.* at 6, 8.

¹⁷*Id.* at 7-8.

¹⁸*Id.* at 7 and Exhibit 5.

¹⁹*Id.* at 10 and Exhibit 4.

²⁰*Id.* at 10 and Exhibit 7.

²¹*See* 47 C.F.R. § 76.905(g).

²²*Id.* at 6-8 and Exhibits 3, 4, & 5.

²³14 FCC Rcd at 5305

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed by Cablevision of the Midwest d/b/a Cablevision of Ohio **IS GRANTED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.²⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Service Bureau

²⁴47 C.F.R. §0.321.