

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

In the Matter of:	)
	)
Connecticut Department of Public Utility Control	)
	)
Petition for Recertification of Rate Regulation	)
Authority	)
	)
Cablevision Systems of Connecticut, L.P.	)
and Cablevision Systems of Southern Connecticut,	)
L.P.	)
	)

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 9, 2002**

**Released: October 17, 2002**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. The Connecticut Department of Public Utility Control ("DPUC") has filed with the Commission a petition for recertification to regulate the basic cable rates of Cablevision Systems of Connecticut, L.P. in ten communities<sup>1</sup> and Cablevision Systems of Southern Connecticut, L.P. (collectively, "Cablevision") in six communities<sup>2</sup> in Connecticut. The DPUC alleges that Cablevision's cable systems serving these sixteen communities (the "Communities") are no longer subject to effective competition, pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"),<sup>3</sup> and Section 76.905(b)(4) of the Commission's rules, and seeks recertification to regulate basic service rates.<sup>4</sup> The DPUC bases its allegation on the discontinuation of competing services provided by a local exchange carrier ("LEC") overbuilder, SNET Personal Vision, Inc. ("SNET"). Cablevision filed comments in response to the DPUC's petition.

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<sup>1</sup> Cablevision Systems of Connecticut, L.P. is authorized to operate in Greenwich (CT0117), Stamford (CT0121), New Canaan (CT0118), Darien (CT0115), Norwalk (CT0119), Westport (CT0123), Weston (CT0122), Wilton (CT0124), Easton (CT0116), and Redding (CT0120), CT. Petition at 1 n.1.

<sup>2</sup> Cablevision Systems of Southern Connecticut, L.P. is authorized to operate in Fairfield (CT0114), Bridgeport (CT0055), Stratford (CT0056), Orange (CT0057), Woodbridge (CT0058), and Milford (CT0059), CT. Petition at 1 n.2.

<sup>3</sup> 47 U.S.C. § 543.

<sup>4</sup> 47 C.F.R. § 76.905(b)(2).

## II. BACKGROUND

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>6</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. Once the presence of effective competition has been established, the local franchising authority is no longer authorized to regulate the basic service rates of the cable operator.<sup>7</sup> A local franchising authority may petition the Commission for recertification pursuant to Section 76.916 of the Commission's rules by demonstrating that: (1) it meets the requirements of Section 623(a)(3) of the Act; (2) the cable system for which it seeks recertification is not subject to effective competition; and (3) the reasons underlying the earlier certification revocation are no longer valid.<sup>8</sup> A petition for recertification must be supported by objectively verifiable data or by affidavit.<sup>9</sup>

3. In 1997, Cablevision filed two petitions for special relief seeking a finding of effective competition with respect to its operations in the Communities.<sup>10</sup> The petitions utilized the presence of SNET within Cablevision's franchise areas to establish effective competition under the LEC test found in Section 623(l)(1)(D) of the Communications Act and Section 76.905(b)(4) of the Commission's rules.<sup>11</sup> The LEC test 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 itself providing cable service within that franchise area, provided the video programming services offered by the LEC are comparable to those provided by the unaffiliated cable operator.<sup>12</sup> The Cable Services Bureau<sup>13</sup> (the "Bureau") found that SNET's operations in the Communities satisfied the LEC test and granted Cablevision's petitions (the "Bureau Orders").<sup>14</sup>

## III. DISCUSSION

4. The DPUC has filed a petition for recertification of its basic cable rate regulatory authority over Cablevision and alleges that the conditions which led the Bureau to conclude that effective competition existed in the Communities are no longer present.<sup>15</sup> As of July 1, 2001, SNET ceased to

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<sup>5</sup> 47 C.F.R. § 76.906.

<sup>6</sup> 47 C.F.R. § 76.905.

<sup>7</sup> 47 U.S.C. § 543(a)(2).

<sup>8</sup> 47 C.F.R. § 76.916(b).

<sup>9</sup> 47 C.F.R. § 76.916(b)(3).

<sup>10</sup> Petition at 3-4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4).

<sup>13</sup> On March 25, 2002, the former Cable Services and Mass Media Bureaus were merged into the existing Media Bureau.

<sup>14</sup> *See Cablevision Systems of Connecticut, L.P.*, 14 FCC Rcd 15253 (1999); *Cablevision Systems of Connecticut, L.P.*, 14 FCC Rcd 15883 (1999).

<sup>15</sup> Petition at 5-6.

provide cable service within the Communities and SNET's cable assets were subsequently sold, transferred or removed.<sup>16</sup> The DPUC further states that it satisfies the criteria contained in Section 623(a)(3)(A)-(C) of the Communications Act.<sup>17</sup> Specifically, the DPUC avers that: (1) it has adopted and continues to administer its own rate regulation rules consistent with FCC regulations; (2) it has the legal authority to adopt, and the personnel to administer, such regulations; and (3) its procedural laws and regulations relating to rate regulation proceedings provide a reasonable opportunity for consideration of the views of interested parties.<sup>18</sup> Cablevision does not oppose the DPUC's petition and agrees that "due to 'the absence of [SNET's] market presence, Cablevision no longer meets the LEC effective competition test.'"<sup>19</sup> Based on the foregoing, we conclude that the DPUC has submitted sufficient evidence to demonstrate that Cablevision's cable systems serving the Communities are no longer subject to effective competition and hereby grant the DPUC's petition for recertification.

5. Cablevision seeks clarification regarding the timing and process under which it will again be subject to the DPUC's rate regulation authority.<sup>20</sup> The recertification process begins upon issuance of an order granting the underlying petition for recertification. Once the DPUC has filed Form 328 with the Commission specifying the entities and franchise areas in which it desires to regulate basic cable service rates, its rate regulation authority will become effective pursuant to Section 76.910 of the Commission's rules.<sup>21</sup> The DPUC's authority shall be prospective from the date the certification becomes effective. We concur with Cablevision that operators subject to recertification should be treated in the same fashion as small operators that lose their eligibility for small operator treatment.<sup>22</sup> In the small operator context, we sought to minimize the disruption to consumers and operators caused by a sudden transition to regulation.<sup>23</sup> Since the rates charged by small operators while deregulated were permissible at that time, we allowed small operators to maintain those rates into regulation, with subsequent increases subject to local franchising authority review.<sup>24</sup> We believe that the same logic governs in the instant context, particularly since the rates charged by operators subject to effective competition have been determined by Congress to be controlled by market forces.<sup>25</sup> On this basis, operators subject to recertification shall be permitted to maintain the rates that prevailed while subject to effective competition and subsequent rate increases shall be subject to generally applicable regulations governing increases.<sup>26</sup> However, we caution this should not be viewed "as an incentive for an operator to raise rates dramatically as a means of protecting those rates from regulatory review, when it becomes apparent that the operator is about to lose

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<sup>16</sup> *Id.* at 6; Cablevision Comments at 2.

<sup>17</sup> Petition at 6.

<sup>18</sup> *Id.* at 6-7.

<sup>19</sup> Cablevision Comments at 2.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> 47 C.F.R. § 76.910.

<sup>22</sup> Cablevision Comments at 3; *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5334-35 (1999) ("Cable Rate Reform").

<sup>23</sup> *Cable Rate Reform*, 14 FCC Rcd at 5334.

<sup>24</sup> *Id.* at 5334-35.

<sup>25</sup> 47 U.S.C. § 543.

<sup>26</sup> *Cable Rate Reform*, 14 FCC Rcd at 5334-35. *Cf. Revisions to Cable Television Rate Regulations*, 17 FCC Rcd 11550, 11561 (2002) (proposing "to use the last 'competitive' rate as the starting point for regulation with the price caps methodology followed thereafter").

its deregulatory status.”<sup>27</sup>

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for recertification filed in the captioned proceeding by the Connecticut Department of Public Utility Control **IS GRANTED**.

7. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.<sup>28</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>27</sup> *Cable Rate Reform*, 14 FCC Rcd at 5335.

<sup>28</sup> 47 C.F.R. § 0.283.