

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

In the Matter of:	)	
	)	
Cablevision Systems Long Island Corporation	)	CSR 7040-E
	)	
Petition for Determination of Effective	)	
Competition in the Town of Hempstead, New York	)	
(NY0454)	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 22, 2007**

**Released: January 24, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cablevision Systems Long Island Corporation ("Cablevision") has filed with the Commission a petition pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in the Town of Hempstead, New York (the "Franchise Area"). Cablevision alleges that its cable system serving the Franchise Area is subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(4) of the Communications Act<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and therefore is exempt from cable rate regulation. Cablevision claims the presence of effective competition in the Franchise Area stems from the competing cable services provided by Verizon New York, Inc. ("Verizon"). No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</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>5</sup> 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 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

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<sup>1</sup> 47 U.S.C. § 543(a)(4) & 543(l)(1)(4).

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

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

4. Cablevision operates a cable television system in the Franchise Area for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) number shown in the caption, qualifies as the incumbent cable operator within the Franchise Area for purposes of the "LEC" effective competition test at issue in this proceeding. Cablevision provided information showing that Verizon is authorized to provide local exchange telephone service in Hempstead.<sup>9</sup> Therefore, Verizon qualifies as a LEC for purposes of the LEC effective competition test.<sup>10</sup>

5. Verizon received a local cable franchise from New York on May 18, 2006 authorizing it to provide cable programming services in Hempstead.<sup>11</sup> Cablevision demonstrated that the Franchise Area in Hempstead is essentially the same as that of its own, the Verizon cable plant covers most of the respective Franchise Area, and that the cable plant substantially overlaps Cablevision's service area.<sup>12</sup> In addition to holding a franchise for the provision of cable service within the Franchise Area, Verizon has distributed press releases, local advertising, and marketing materials within the Franchise Area so that potential cable subscribers in the Franchise Area are broadly aware of the availability of its cable services and need only contact Verizon to obtain service.<sup>13</sup>

6. The Verizon marketing materials show that its cable system offers over 180 channels of video programming that includes non-broadcast programming services such as MSNBC, CNN, and ESPN, as well as a complement of several local television broadcast stations.<sup>14</sup> Based on this record, we find that the Verizon complement of programming services compares with the programming available on

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<sup>6</sup> 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

<sup>7</sup> *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

<sup>8</sup> *Id.*

<sup>9</sup> *See* Petition at 4.

<sup>10</sup> *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C. § 153(a)(1).

<sup>11</sup> Petition at 1 & Exhibit 1.

<sup>12</sup> Petition at 7.

<sup>13</sup> Petition at 7-10 & Exhibit 6-7.

<sup>14</sup> Petition at 9-10 & Exhibit 9.

Cablevision's system<sup>15</sup> and is sufficient to satisfy this aspect of the LEC effective competition test.<sup>16</sup> Cablevision also provided evidence that there are no regulatory, technical or other impediments to Verizon's provision of service within the Franchise Area, and that Verizon is able to provide cable service that substantially overlaps Cablevision's service.<sup>17</sup> Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence to demonstrate that its cable system serving the Franchise Area is subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Cablevision Systems Long Island Corporation for a determination of effective competition in the Town of Hempstead, New York **IS HEREBY GRANTED**.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>15</sup> Petition at 10 & Exhibit 10.

<sup>16</sup> See 47 C.F.R. § 76.905(g).

<sup>17</sup> Petition at 7-8.

<sup>18</sup> 47 C.F.R. § 0.283.