

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

In the Matter of	)	
	)	
Cablevision Systems Long Island Corporation	)	
	)	CSR-7011-E
Petition for Determination of Effective	)	
Competition in The Village of Massapequa Park,	)	
New York	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 18, 2007**

**Released: July 19, 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 seeking a finding of local exchange carrier (“LEC”) effective competition in the Village of Massapequa Park, New York (“Massapequa Park” or “Village”).<sup>1</sup> Cablevision alleges that its cable system serving Massapequa Park is subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(D) of the Communications Act of 1934, as amended, (“Communications Act”), and the Commission’s implementing rules, and is therefore exempt from cable rate regulation.<sup>2</sup> Cablevision claims the presence of effective competition in Massapequa Park stems from the competing cable service provided by Verizon New York, Inc. (“Verizon”).<sup>3</sup> No opposition to the petition was filed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 76.905 of the Commission’s rules.<sup>5</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>6</sup>

3. Section 623(1)(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

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(4) & 76.907.

<sup>2</sup> 47 U.S.C. §§ 543(a)(2) & 543(1)(1)(D); 47 C.F.R. 76.905.

<sup>3</sup> Cablevision Petition at 1.

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906 & 907(b).

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.<sup>7</sup>

4. 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>8</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>9</sup>

## II. DISCUSSION

5. Cablevision asserts that it has been a franchised provider of cable services in Massapequa Park for more than 20 years and its basic service rates have been regulated by the New York State Public Service Commission ("PSC") through an agreement with a number of New York municipalities, including the Village.<sup>10</sup> Cablevision states that Verizon is a multichannel video programming distributor ("MVPD") that furnishes cable service to the Village.<sup>11</sup> Moreover, Verizon is a subsidiary of Verizon Communications, Inc. and is authorized to provide local exchange telephone service in the State of New York, including Massapequa Park.<sup>12</sup> Accordingly, Verizon qualifies as a LEC for purposes of the LEC effective competition test.<sup>13</sup>

6. Cablevision also asserts that Verizon is physically able to offer service to subscribers in Massapequa Park and that there are no regulatory, technical or other impediments preventing households from taking service. On September 26, 2005, Verizon was awarded a 10-year franchise to provide cable television service in Massapequa Park, a community with approximately 7,400 households.<sup>14</sup> The PSC confirmed the franchise award to Verizon on December 15, 2005.<sup>15</sup> According to Cablevision, under New York state law, the PSC's approval gave Verizon formal authority to offer cable television service

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<sup>7</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>8</sup> *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

<sup>9</sup> *Id.*

<sup>10</sup> Cablevision Petition at 3.

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

<sup>12</sup> *Id.*

<sup>13</sup> *See* 47 U.S.C. § 543(1)(1)(D).

<sup>14</sup> Cablevision Petition at 4, 6 and Exhibit 7 – *Resolution of the Board of Trustees of the Village of Massapequa Park Awarding a Nonexclusive Cable Television Franchise to Verizon New York, Inc. to Provide Cable Services to the Village of Massapequa Park*, September 26, 2005.

<sup>15</sup> *Id.* at 6 and Exhibit 1 - *Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the Village of Massapequa Park, Nassau County*, 05-V-1263, Order and Certificate of Confirmation, (Dec. 15, 2005) ("Verizon Franchise Confirmation Order").

in the Village.<sup>16</sup>

7. Verizon's application to Massapequa Park for a cable television franchise states that Verizon completed the construction of its fiber-to-the-premises (FTTP) network to approximately 94% of the households in the Village.<sup>17</sup> Under Verizon's franchise agreement, it must offer cable service to significant numbers of subscribers in Massapequa Park in the first year of the franchise and provide service to all residential areas of the Village within five years.<sup>18</sup> Cablevision asserts that Massapequa Park residents need only call Verizon to begin receiving cable television services, thus demonstrating that Verizon can provide service to individual subscribers in wired areas with minimal additional investment.<sup>19</sup> Cablevision also contends that its records show that some of its Massapequa Park subscribers have discontinued service and have stated that they were switching to Verizon.<sup>20</sup> Moreover, Cablevision asserts that its personnel have observed active Verizon cable service at various locations throughout Massapequa Park.<sup>21</sup> Cablevision states that according to a recent publication, Verizon is providing cable service to at least 225 residents in the Village.<sup>22</sup> Accordingly, we find that Verizon is physically able to offer cable service to Village subscribers and there are no regulatory, technical or other impediments to taking service.

8. Cablevision also asserts that potential subscribers in the Village are reasonably aware that they may purchase Verizon's cable service.<sup>23</sup> Cablevision states that Verizon's cable service in Massapequa Park has been the subject of numerous articles in national and local publications, as well as several articles in smaller newspapers which also serve the Village.<sup>24</sup> Additionally, Verizon has informed Massapequa Park residents about its fiber optic television service ("FiOS TV") through its own press releases and direct mail marketing.<sup>25</sup> Cablevision also states that Verizon has also been utilizing door-to-door sales efforts to increase the awareness of the availability of its services.<sup>26</sup> Based on the information provided, we find that consumers in Massapequa Park are reasonably aware of Verizon's newly offered

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<sup>16</sup> Cablevision Petition at 6. *See* N.Y. Pub. Serv. Law § 221 (McKinney 2005); *Verizon Franchise Confirmation Order* at 1; *see also* N.Y. Pub. Serv. Law § 219 (municipality approval also condition precedent to operation of cable service).

<sup>17</sup> Cablevision Petition at 4-5 and Exhibit 2 (Application for Cable Television Franchise by: Verizon New York, Inc. at p. 2).

<sup>18</sup> *Id.* at 6 and Exhibit 8 (Verizon Massapequa Park Franchise Agreement, Section 3.1.1).

<sup>19</sup> *Id.* at 5 and Exhibits 3, 4 & 5 (a sampling of newspaper articles and other publicly available publications discussing Verizon's offering of cable service in the Village; Verizon promotional materials; and, press releases discussing Verizon's services).

<sup>20</sup> *Id.* and Exhibit 6 (Declaration of Stephen J. Gerber, Senior Counsel, Regulatory Affairs, Cablevision Systems Corporation).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* and Exhibit 3 (referring to the article by Keiko Morris, entitled *Saying Hello to FiOS; Cost, Convenience and Love of Competition Send Massapequa Park Cable Customers to Verizon*, *Newsday*, March 30, 2006, at A 49).

<sup>23</sup> Cablevision Petition at 7.

<sup>24</sup> *Id.* and Exhibit 3.

<sup>25</sup> *Id.* and Exhibits 4 & 5.

<sup>26</sup> *Id.* and Exhibit 6 (Declaration of Steven J. Gerber, Senior Counsel, Regulatory Affairs, Cablevision Corporation).

FiOS TV service as an alternative to Cablevision.

9. Cablevision also submits that Verizon offers comparable cable service in Massapequa Park. Verizon offers subscribers more than 180 channels of programming and Cablevision states that Verizon replicates a number of programming services offered to its subscribers.<sup>27</sup> Verizon also offers local New York broadcast stations, in addition to many satellite-delivered cable programming networks such as ESPN, CNN, TNT, and MTV.<sup>28</sup> In addition, Verizon provides multiplexed offerings of HBO, as well as pay-per-view and on-demand channels.<sup>29</sup>

10. Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence to demonstrate that its cable system serving Massapequa Park is subject to effective competition.

### III. ORDERING CLAUSES

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

12. **IT IS FUTHER ORDERED** that any certifications to regulate basic cable service rates granted to the local franchising authorities overseeing Cablevision Systems Long Island Corporation in the Village of Massapequa Park, New York **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>30</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>27</sup> *Id.* at 8 and Exhibits 9 & 10 (Channel lineups for Verizon and Cablevision in Massapequa Park).

<sup>28</sup> *Id.* and Exhibit 9.

<sup>29</sup> See <http://www22.verizon.com/FiosForHome/Channels/FiosTV/Fiospackage.aspx>.

<sup>30</sup> 47 C.F.R. § 0.283.