

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

	)	CSR 7079-E
In the Matter of	)	CSR 7080-E
	)	CSR 7735-E
Subsidiaries of Cablevision Systems Corporation	)	CSR 7741-E
	)	CSR 7742-E
Petition for Determination of Effective	)	CSR 7793-E
Competition in Communities in New York State	)	CSR 7794-E
	)	CSR 7795-E
	)	CSR 7796-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 16, 2008**

**Released: April 16, 2008**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Cablevision Systems Corporation, through several subsidiaries, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for determinations that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by Verizon, hereinafter referred to as “Competitor.”<sup>3</sup> The petitions are unopposed.

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 623(l) of the Communications Act and 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

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<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(4).

<sup>3</sup> Cablevision states that, in several Communities, its cable rates have never been regulated, but that it is petitioning to be free of rate regulation because “Verizon’s provision of cable service [in those Communities] . . . removes any doubt regarding the absence of authority to regulate Cablevision’s rates” in those Communities. See, e.g., Petition in CSR 7741-E at 4 n.6; Petition in CSR 7793-E at 4 n.6. We find no flaw in Cablevision’s reasoning and filing petitions concerning Communities where there is no present regulation. Accordingly, we will rule on its Petitions for those Communities.

Cablevision also states that in some of the Communities, its cable rates are regulated not by Community-specific bodies, but by the New York Public Service Commission or by multi-Community regulatory bodies. See, e.g., Petition in CSR 7735-E at 4; Petition in CSR 7742-E at 4. Accordingly, in paragraph 7, *infra*, we revoke authority to regulate basic cable rates of both those Communities and other regulatory bodies.

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the Petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

## II. DISCUSSION

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition 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 the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.<sup>7</sup> This test is otherwise referred to as the “LEC” test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; 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> It is undisputed that these Communities are served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>9</sup> and is supported in this petition with copies of channel lineups for Competitor.<sup>10</sup> Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>11</sup>

5. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

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

<sup>7</sup>See 47 U.S.C. § 543(l)(D).

<sup>8</sup>See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”).

<sup>9</sup>See 47 C.F.R. § 76.905(g). See also Petition in CSR 7079-E at 11; Petition in CSR 7794-E at 13.

<sup>10</sup>See Petition in CSR 7080-E at 11-12 & Exh. 8; Petition in CSR 7795-E at 13-14 & Exh. 8.

<sup>11</sup>See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16. See also Petition in CSR 7796-E at 6-13.

**III. ORDERING CLAUSES**

6. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by the subsidiaries of Cablevision Systems Corporation **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to, or exercised on behalf of, any of the Communities set forth on Attachment A **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>12</sup>47 C.F.R. § 0.283.

## ATTACHMENT A

CSR 7079-E, CSR 7080-E, CSR 7735-E, CSR 7741-E, CSR 7742-E, CSR 7793-E, CSR 7794-E, CSR 7795-E, CSR 7796-E

## COMMUNITIES SERVED BY SUBSIDIARIES OF CABLEVISION SYSTEMS CORPORATION

Communities	CUID(S)
<b>CSR 7079-E</b>	
Village of Upper Nyack	NY0869
Village of Grandview-On-Hudson	NY0873
Town of Clarkstown	NY0449
<b>CSR 7080-E</b>	
Village of Laurel Hollow	NY0664
Village of Lynbrook	NY0940
Village of Cedarhurst	NY0924
<b>CSR 7735-E</b>	
Larchmont	NY0902
Rye	NY0814
Pelham Manor	NY0804
Town of Mamaroneck	NY0901
Village of Mamaroneck	NY0900
<b>CSR 7741-E</b>	
Malverne	NY1186
Stewart Manor	NY0748
Centre Island	NY1551
East Williston	NY0290
<b>CSR 7742-E</b>	
Branch	NY0667
<b>CSR 7793-E</b>	
Sleepy Hollow	NY0735
Briarcliff Manor	NY0734
<b>CSR 7794-E</b>	
Town of Ossining	NY0733
Village of Ossining	NY0736
<b>CSR 7795-E</b>	
Huntington Bay	NY0653
<b>CSR 7796-E</b>	
Oyster Bay Cove	NY1134