

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

In the Matter of	)	MB Docket No. 12-54, CSR 8591-E
	)	MB Docket No. 12-55, CSR 8592-E
Cablevision Systems Corp.	)	MB Docket No. 12-56, CSR 8593-E
	)	MB Docket No. 12-57, CSR 8594-E
Petitions for Determination of Effective	)	MB Docket No. 12-58, CSR 8595-E
Competition in 23 New York Communities	)	MB Docket No. 12-59, CSR 8596-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 22, 2013**

**Released: November 22, 2013**

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

**I. INTRODUCTION AND BACKGROUND**

1. Cablevision Systems Corporation, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”). 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>3</sup> as that term is defined by Section 623(l) of the Communications Act and 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> 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.<sup>6</sup>

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

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

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

<sup>5</sup> See 47 C.F.R. §§ 76.906-.907(b).

<sup>6</sup> Petitioner discloses in note 2 on pages 2-3 of each petition that its rates in some Communities are regulated by the New York State Public Service Commission (“the PSC”) and that its rates in other Communities have never been regulated by any authority. Our grants herein terminate regulation by the PSC in the former Communities and prohibit it by any authority in the latter Communities under current conditions. See, e.g., *Bresnan Commc’ns, LLC*, 26 FCC Rcd 6137, ¶ 1, n.3 (2011); *Subsidiaries of Cablevision Systems Corp.*, 25 FCC Rcd 4786, ¶ 1, n.3 (2010).

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>7</sup> This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>8</sup> It is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>9</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in media that serve the Communities to support its assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> 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>12</sup> and is supported in these petitions with copies of channel lineups for both DIRECTV and DISH.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.<sup>14</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Petitioner asserts that in some Communities it is the largest MVPD, with over 15 percent of the households subscribing to its cable service, and in other Communities, assuming that one of the DBS providers is the largest MVPD in the community, the combined subscribership of Petitioner and any one DBS provider exceeds 15 percent.<sup>15</sup> In these conditions, whichever MVPD is the largest, the remaining competitors have subscribership of over 15 percent.<sup>16</sup> Petitioner sought to determine the competing

<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> 47 U.S.C. § 543(l)(1)(B)(i); 47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup> See, e.g., Petition in CSR-8591-E at 3-4.

<sup>10</sup> *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

<sup>11</sup> 47 C.F.R. § 76.905(e)(2).

<sup>12</sup> See 47 C.F.R. § 76.905(g); see also, e.g., Petition in CSR-8592-E at 6.

<sup>13</sup> See, e.g., Petition in CSR-8593-E at Ex. 4.

<sup>14</sup> See, e.g., Petition in CSR-8594-E at 3.

<sup>15</sup> See, e.g., Petition in CSR-8595-E at 7; *id.*, Ex. 1, Declaration of Paul Jamieson, Vice President, Legal & Regulatory Affairs for Petitioner, at ¶ 3 (Feb. 22, 2012).

<sup>16</sup> See, e.g., *Bresnan Commc’ns, LLC*, 26 FCC Rcd 6122, 6123-24, ¶5 (2011); *Time Warner Cable Inc.*, 25 FCC Rcd 14422, 14424, ¶ 6 (2010); *Charter Commc’ns*, 21 FCC Rcd 1208, 1210, ¶ 5 (2006).

provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>17</sup>

6. Based upon the aggregate DBS subscriber penetration levels that were calculated using the most recent available decennial Census data,<sup>18</sup> as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

### III. ORDERING CLAUSES

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

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

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>17</sup> See, e.g., Petition in CSR-8596-E at Ex. 6.

<sup>18</sup> See, e.g., Petition in CSR-8591-E at 7-8 & n.26 (noting that for two Communities, in which Petitioner's franchise areas are small parts of municipalities, the most recent household numbers of sufficient granularity are in the 2000 Census).

<sup>19</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

## MB Dockets No. 12-54 through 12-59, CSRs 8591-E through 8596-E

## COMMUNITIES SERVED BY CABLEVISION SYSTEMS CORPORATION

Communities	CUIDs	CPR*	Census Households	Estimated DBS Subscribers
<b>MB Docket No. 12-54, CSR 8591-E</b>				
Amenia	NY0657	17.86	1741	311
Clinton	NY1676	21.79	1602	349
Dover	NY0213	20.87	3259	680
East Fishkill	NY0275	16.20	9512	1541
Kent	NY1897	16.67	18	3
Marlborough	NY0306	21.28	141	30
Millbrook	NY1142	20.69	691	143
Millerton	NY1143	35.35	396	140
North East	NY1141	23.51	1259	296
Pine Plains	NY1462	47.57	1007	479
Union Vale	NY1461	21.49	1708	367
Stanford	NY1475	24.13	1496	361
Plattekill	NY0307	16.96	3861	655
Washington	NY0658	15.24	1956	298
<b>MB Docket No. 12-55, CSR 8592-E</b>				
Atlantic Beach	NY0932	17.27	857	148
Old Westbury	NY1096	21.99	1073	236
<b>MB Docket No. 12-56, CSR 8593-E</b>				
Greenville	NY1694	17.15	1504	258
Minisink	NY1355	22.56	1485	335
Unionville	NY1354	29.00	231	67
Florida	NY0674	19.50	1031	201
<b>MB Docket No. 12-57, CSR 8594-E</b>				
Bellport	NY0581	17.59	921	162
<b>MB Docket No. 12-58, CSR 8595-E</b>				
Greenport	NY0176	21.46	820	176
<b>MB Docket No. 12-59, CSR 8596-E</b>				
Tuxedo Park	NY0939	16.94	248	42

\*CPR = Percent of competitive DBS penetration rate.