



STATE OF NEW JERSEY
Board of Public Utilities
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CABLE TELEVISION

IN THE MATTER OF THE PETITION OF CABLEVISION)
SYSTEMS CORPORATION FOR RELIEF PURSUANT)
TO N.J.A.C. 14:18-16.7) ORDER
DOCKET NO. CO11050279

Parties of Record:

Sidney A. Sayovitz, Esq., Schenck, Price, Smith & King, for Cablevision Systems Corporation
Stephanie A. Brand, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On May 5, 2011, Cablevision Systems Corporation ("Cablevision") filed a petition with the Board of Public Utilities ("Board") requesting relief from certain rules as permitted by N.J.A.C. 14:18-16.7. N.J.A.C. 14:18-16.7 provides that, "[u]pon a finding by the Board that the Federal Communications Commission has decertified rate regulation for any cable television system, pursuant to 47 C.F.R. § 76.905, on a final finding of effective competition, after April 17, 2000," a cable television company may seek relief from nine separate provisions of N.J.A.C. 14:18, as discussed more fully below. 47 C.F.R. § 76.905 sets forth the criteria for determining whether a cable system is subject to effective competition.¹

¹ 47 C.F.R. § 76.905(b) provides, in relevant part, that:

A cable system is subject to effective competition when any one of the following conditions is met:

- (1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.
- (2) The franchise area is:
 - (i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and
 - (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.
- (3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.
- (4) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier 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 so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

The Federal Communications Commission ("FCC") issued orders² finding that Cablevision is subject to effective competition in 162 community units, comprising 161 of its franchised municipalities.³ A list of municipalities subject to effective competition is attached to this Order as Appendix "I." Cablevision provides cable television service to 177 municipalities either by way of municipal consent-based franchises or by one of seven converted system-wide franchises, pursuant to N.J.S.A. 48:5A-25.1.

In its petition, Cablevision requests the same relief, pursuant to N.J.A.C. 14:18-16.7, as that previously granted to Verizon New Jersey, Inc. ("Verizon").⁴ Cablevision notes that, in addition to being granted effective competition in the listed municipalities, similar treatment should rightfully be accorded to the company as a direct competitor with Verizon in 87 percent of its service area. Granting the petition, Cablevision argues, levels the playing field between it and its largest, wireline cable television competitor. In addition, Cablevision notes, granting relief to Cablevision does not foreclose revisiting regulation if it becomes necessary in the future, and the Board can require Cablevision to provide information regarding any area where relief has been granted under N.J.A.C. 14:18-16.7(c).

On May 17, 2011, Board staff requested additional information from Cablevision regarding its petition. On June 20, 2011, Cablevision responded to Board staff. On May 31, 2011, the New Jersey Division of Rate Counsel ("Rate Counsel") sent discovery requests to Cablevision regarding its petition. On June 27, 2011, Cablevision responded to Rate Counsel's requests.

RATE COUNSEL'S COMMENTS

On June 3, 2011, Rate Counsel filed comments objecting to Cablevision's petition for relief of the foregoing rules. Most notably, Rate Counsel argues that since it has filed Applications for Review asking the FCC to set aside the Media Bureau's orders granting effective competition to Cablevision, a "final" finding of effective competition has not been issued by the FCC, and therefore, Cablevision's petition should be dismissed as premature. Rate Counsel contends that a Media Bureau decision is final only if no application for review is filed within 30 days.⁵ Rate Counsel notes that in 2004, Rate Counsel and the Board filed a joint application for review. Rate Counsel Letter at 1-2.

² Cablevision of Paterson d/b/a Cablevision of Allamuchy, Petition for Determination of Effective Competition in Allamuchy, 17 FCC Rcd 17239 (2002); Cablevision of Raritan Valley, Inc., Cablevision of New Jersey, Cablevision of Monmouth, Petitions for Determination of Effective Competition, 19 FCC Rcd 6966 (2004); Cablevision of Rockland/Ramapo, Inc. Montvale New Jersey, CSC TKR, LLC d/b/a Cablevision of Elizabeth, Elizabeth New Jersey and Cablevision of Warwick, LLC, West Milford New Jersey, Petitions for Determination of Effective Competition, 22 FCC Rcd 11487 (2007); Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in 103 Communities in New Jersey, 23 FCC Rcd 14141 (2008); Cablevision of Oakland, Inc. CSC TKR, Inc., Petitions for Determination of Effective Competition in Four Communities in New Jersey, 24 FCC Rcd 1801 (2009); and CSC TKR, Inc. Petition for Determination of Effective Competition in Highland Park Borough, New Jersey, 25 FCC Rcd 4948 (2010).

³ Cablevision holds two municipal consent-based franchises for the Township of Montville: most of the municipality is served by Cablevision of Oakland, LLC; the remainder is served by CSC TKR, LLC d/b/a Cablevision of Morris.

⁴ Order, I/M/O Verizon New Jersey, Inc. for Relief of Compliance with Certain Provisions of N.J.A.C. 14:18 Pursuant to N.J.A.C. 14:18-16.7, Docket No. CO10040249 (issued March 30, 2011).

⁵ 47 C.F.R. § 1.115(k).

Rate Counsel further requests that, if the Board determines not to dismiss the petition as premature, the matter should be treated as a contested case, with appropriate hearings. A hearing is necessary, Rate Counsel contends, to determine whether the relief sought by Cablevision is in the public interest and whether Cablevision has shown "good cause" for the waivers sought. Rate Counsel notes two decisions, In Re Bell Atlantic New Jersey, Inc., 342 N.J. Super. 439 (App. Div. 2001) and Petition of MCI Telecommunications, 263 N.J. Super. 313 (App. Div. 1993), where the courts reversed the Board's decisions and directed hearings to be held. Rate Counsel Letter at 3.

On July 7, 2011, Cablevision responded to Rate Counsel's June 3, 2011 comments, noting that pursuant to both federal statutes and regulations, the FCC's Media Bureau findings of effective competition are final findings that are effective and binding. Cablevision Letter at 1. Cablevision stated in its petition with regard to the effective competition orders issued by the Media Bureau that, pursuant to 47 U.S.C. § 155(c)(3), any "order, decision, report, or action made or taken pursuant to any such delegation...shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission." Cablevision notes that "in the absence of Commission action to the contrary, the Media Bureau decisions have the force of law."⁶ The FCC's rules, Cablevision notes, also make it clear that the Chief of the Media Bureau, when acting pursuant to its delegated authority, has "all the jurisdiction, powers, and authority conferred by law upon the Commission"; that actions of the Bureau, when taken pursuant to the delegated authority, "have the same force and effect... as actions of the Commission";⁷ and that "[n]on-hearing actions taken pursuant to delegated authority, unless otherwise ordered...are effective upon release." Cablevision Letter at 1-2.

Further, Cablevision contends that Rate Counsel's Applications for Review do not abrogate the finality of the Media Bureau's effective competition orders. The FCC has made it clear, Cablevision argues, that whether or not a Bureau order is final for purposes of judicial appeal has no bearing on whether or not the order is final and effective for all other purposes.⁸ Cablevision also notes that Rate Counsel's motion for a stay of an effective competition order was denied by the FCC, which found that Rate Counsel had "failed to establish that it is likely to prevail on the merits of its pending Application for Review of our decision" and further that the motion did not give the FCC a "reason to reconsider our earlier rulings or revisit them in detail here."⁹ Cablevision Letter at 2-3.

In response to Rate Counsel's request for a hearing, Cablevision contends it has satisfied all of the Board's factual and pleading requirements with respect to its petition. Further, Cablevision argues that both cases referenced in Rate Counsel's argument as to why this matter should be considered a contested case addressed proper procedural mechanisms that the Board should follow in the absence of specific regulatory requirements. Cablevision contends that in the instant matter, the Board has an explicit standard and procedure for relief from certain regulatory requirements, the demonstration of a competitive market, and these cases are therefore inapposite. Cablevision Letter at 3.

⁶ *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008).

⁷ 47 C.F.R. § 0.203(a), 47 U.S.C. § 155(c)(3).

⁸ *In Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 19654 (2002).

⁹ *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in 103 Communities in New Jersey*, Memorandum Opinion and Order, 23 FCC Rcd 17012 (2008).

On August 10, 2011, in response to notification from the Board's Office of Cable Television (OCTV) that this matter would be considered at the Board's August 18, 2011 agenda meeting, Rate Counsel filed a letter requesting that the Board defer its ruling on Cablevision's rule-relief request to its September 2011 agenda meeting so that it can "file comments on the merits on or before September 1, 2011." Rate Counsel claims that it has not filed comments on the merits of the petition "because [it has] not received responses to [its] discovery requests." Rate Counsel indicated that following its receipt of the Cablevision's responses on July 27, 2011, it requested additional information on July 1, 2011, which was received on August 5, 2011. In addition, Cablevision met with Rate Counsel on August 9, 2011 to confer on the discovery responses, and agreed to provide additional information in response to Rate Counsel's requests. Rate Counsel seeks to file comments on the merits of the petition following receipt of the additional information.

On August 12, 2011, Cablevision filed a response arguing that Rate Counsel's request for a deferral should be rejected. Cablevision states that it has provided all relevant information sought by Rate Counsel to date and no relevant discovery answers are pending. Cablevision argues that Rate Counsel should have filed a motion to compel if it believed that Cablevision had not adequately responded to discovery requests. Cablevision maintains that granting Rate Counsel's request at this late date "would prejudice Cablevision and unnecessarily and unreasonably delay the benefits of deregulation to consumers" and "would also be inconsistent with Governor Christie's deregulatory policies."

On August 15, 2011, Rate Counsel was informed via e-mail from the Attorney General's office, that it would be allowed an opportunity to file a reply to Cablevision's August 12, 2011 letter by close of business on August 16, 2011. Rate Counsel filed its response via email by letter dated August 15, 2011, reiterating its request for deferral of the matter until the Board's September agenda meeting, since Cablevision had not shown granting the deferral would be prejudicial to its interests or would have detrimental impact on its business.

Rate Counsel subsequently filed an additional letter dated August 15, 2011, indicating that since it had not been informed that its deferral request would be granted, it requested that the Board consider this letter addressing the merits of Cablevision's petition at its August 18, 2011 agenda meeting. In its letter, Rate Counsel requests that if the Board declines to dismiss the petition as requested in its June 3, 2011 letter, that it should deny the waiver requests because Cablevision has failed to sustain its burden of proof to show that the waivers are warranted, in the public interest, and will have no adverse effect on the provisions of safe, proper and adequate service. By letter dated August 17, 2011, Cablevision filed its response to Rate Counsel's August 15, 2011 supplemental comments, arguing that Rate Counsel had provided no compelling reasons for the Board to delay or deny Cablevision's petition for relief. Cablevision also noted that it "is seeking the same relief that the Board has granted to its largest competitor Verizon."

At its August 18, 2011 Agenda Meeting, the matter was deferred by the Board to be heard at its next scheduled Agenda Meeting on September 21, 2011.

DISCUSSION

For the following reasons, the Board believes that Cablevision's petition and responses to requests for information satisfy the requirements for granting of relief pursuant to N.J.A.C. 14:18-16.7, and Rate Counsel's various requests for dismissal and/or denial of the petition are without merit and should be denied.

Rate Counsel's objection to Cablevision's filing as "premature" based on pending Applications for Review is not supported by FCC precedent. As noted in Cablevision's comments, the FCC has consistently recognized the effectiveness of the Media Bureau's Orders granting effective competition, under its delegated authority; and the effectiveness of such orders has not been diminished by challenges through pending Applications for Review. Nor are the FCC rules stating the requirements for judicial review of a Bureau decision dispositive on what constitutes a "final" order for purposes of review of a petition filed pursuant to N.J.A.C. 14:18-16.7.

The Board notes that the earliest FCC Order granting effective competition to Cablevision was issued in 2002, and the FCC has not acted on Rate Counsel's Applications for Review in any of the above referenced effective competition deregulation orders. Furthermore, since the FCC decertified the Board's rate regulation authority for the municipalities listed in Appendix "I", Cablevision has not included these municipalities in any of its regulated rate filings; however, Rate Counsel has never challenged the finality of these Media Bureau Orders as it relates to Cablevision's relief from rate regulation. Additionally, the Board concurs with the FCC's finding that it is unlikely that any effective competition ruling would be reversed based on Rate Counsel's Applications for Review, especially in light of Verizon's competitive entry in New Jersey's cable television market.

Further, the Board agrees with Cablevision's contentions regarding the standard of review for the filing and the lack of a necessity for hearings. N.J.A.C. 14:18-16.7 is specific as to the standard of review for rule relief, which deals with competition, rather than inability to perform or undue hardship as required for a waiver. The cases referenced by Rate Counsel wherein hearings were required to be held upon reversal of decisions of the Board addressed statutory hearing requirements, and are distinguishable from the instant matter, where there is no statutory requirement for a hearing. As noted by Cablevision, the Board has identified specific provisions of its cable television rules under N.J.A.C. 14:18-16.7, for which a cable television company may seek relief, and has explicitly determined that upon a final finding of effective competition, the Board could relieve a cable television company of these provisions since such relief would not harm customers. In this instance, no statutory right or constitutional mandate exists under which Rate Counsel is required to be granted a hearing, and therefore, Rate Counsel's request to treat the matter as a contested case is DENIED.

Moreover, "[i]t is only when the proposed administrative action is based on disputed adjudicative facts that an evidentiary hearing is mandated." In re Solid Waste Util. Customer Lists, 106 N.J. 508, 517 (1987). See also State Div. of Motor Vehicles v. Pepe, 379 N.J. Super. 411, 419 (App. Div. 2005) ("No disputed issue of material facts existed. Hence, no evidentiary hearing was required."). Since the Board has determined that the FCC has made a finding of effective competition regarding Cablevision and Rate Counsel is not entitled to a contested case "to determine whether the relief sought is in the public interest and whether Cablevision has shown 'good cause' for the waivers sought," the Board denies Rate Counsel's request for a contested-case hearing.

Therefore, because effective competition relief has been granted by the FCC, it is within the Board's discretion to grant the requested relief, if and when the Board is satisfied that consumers are adequately protected. The Board agrees that Cablevision is subject to effective competition in the 161 municipalities listed in Appendix "I". The remaining 16 municipalities will remain subject to regulation by the Board, and the relief discussed herein is not applicable for those municipalities at this time.¹⁰

RULE RELIEF DISCUSSION

N.J.A.C. 14:18-3.8 "Method of billing." This section allows cable television companies to bill for service in a number of options (monthly, quarterly, semi-annually or annually or shorter intervals in unusual credit situations) and allows for advanced billing. The rule also requires cable television companies to prorate service in the event of disconnection. Relief can be sought provided that the cable television company provides a sample bill to be utilized in lieu of compliance with this section for approval by the Office of Cable Television (OCTV).

Cablevision requests relief from this rule and submitted several sample bills for review by the OCTV. Cablevision asserts that competition will ensure that its billing is done in a customer-oriented method; that the rule limits Cablevision's flexibility to adapt its billing to meet its customers' needs; and that its sample bill demonstrates that the company is billing in a proper manner and shows how Cablevision will prorate its bills pursuant to the requirements of this section. Additionally, Cablevision notes, a customer will switch to another provider, such as Verizon, if Cablevision does not meet its customers' billing needs.

Rate Counsel contends that the waiver should be denied because Cablevision has provided no empirical evidence to support its claims as to why it should be granted relief. Rate Counsel argues Cablevision did not provide any evidence to support its claim that it would lose customers to another provider, absent the waiver. Rate Counsel also noted that Cablevision's discovery responses did not support its claim that the waiver is needed to construct tailored billing arrangements and payment plans. Rate Counsel recommends that if the waiver is granted, the Board should require Cablevision to include FCC contact information for consumer inquiries related to Internet and VoIP telephone service and complaints; and that relief under this rule does not relieve Cablevision from bill itemization required under N.J.A.C. 14:18-3.7. Cablevision responds that Rate Counsel's argument that Cablevision's waiver should be denied because Cablevision does not currently have plans to change its billing format misses the point; and that the purpose of the waiver is to provide flexibility should Cablevision wish to modify its billing procedures in the future. Since nothing in the Board's orders implementing N.J.A.C. 14:18-16.7 requires the operator seeking relief to demonstrate specific future changes, Cablevision argues that it has met the burden that the subject rule is not necessary in a competitive environment.

¹⁰ The 16 municipalities in question are: Bedminster Township (The Hills); Berkeley Township; Bloomingdale Borough; Boonton Township; Butler Borough; Hopatcong Borough; Lincoln Park Borough; Metuchen Borough; Mount Arlington Borough; Netcong Borough; Pequannock Township; Pompton Lakes Borough; Ringwood Borough; Tenafly Borough; Toms River Township and Wanaque Borough. Cablevision's June 27, 2011 response to Rate Counsel also listed Picatinny Arsenal; however, this is federal property and not subject to Board regulation.

As noted previously, the standard for rule relief deals with competition, rather than inability to perform or undue hardship. Pursuant to the Board's rules, upon a final determination of effective competition by the FCC, the Board may relieve a cable television company of compliance with certain provisions, such as N.J.A.C. 14:18-3.8, where the Board is satisfied such relief would not harm consumers. In this instance, the Board has reviewed the sample bills submitted by Cablevision and is satisfied that Cablevision is billing its customers adequately and in a manner which provides its customers sufficient information. Rate Counsel's request that Cablevision should amend its bills to include FCC contact information for consumer inquiries related to Internet and VoIP telephone service and complaints goes beyond the scope of the petition seeking relief by placing new burdens on the provider which are unnecessary for customer protection. Moreover, the relief granted from this rule does not relieve Cablevision from providing bill itemization as required by N.J.A.C. 14:18-3.7.

Therefore, the Board **FINDS** that Cablevision has satisfied the requirements of this rule relief provision and is **HEREBY GRANTED** relief of N.J.A.C. 14:18-3.8.

N.J.A.C. 14:18-3.15 "Trial services" at subsection (b). This section requires a cable television company to keep records of any trial service for a period of three years and to provide the OCTV notice of the terms and conditions prior to offering a trial. Pursuant to N.J.A.C. 14:18-1.2, a "trial service" means the initial offering of a new capability or technology over a cable television system to some or all existing customers in the cable television company's service area for a limited, specified period of time, not to exceed six months, during which the cable television company assesses the performance or marketability of the new capability or technology, and after which the service is either introduced as a standard offering or discontinued.

Cablevision seeks relief from this provision as it is continually developing new trial products and service options for customers in order to effectively compete in the market. Requiring Cablevision to take the extra step to pre-notify the Board causes a delay in its ability to react to market changes and gives its competitors the advantage of knowing what new services Cablevision is marketing. This places Cablevision at an unusual disadvantage to its competitors, such as Verizon and direct broadcast satellite ("DBS") providers who are not subject to the rule. To comply with this rule, Cablevision maintains, which is burdensome and unnecessary, the company has spent substantial resources in notifying the Board of the scope and term of each offering and for maintaining records of such services. Cablevision, in response to Rate Counsel's request for information, noted that it had not introduced any trial services in 2010 or 2011.

Rate Counsel once again recommends that the Board reject the waiver request, arguing that Cablevision petition lacks empirical support of the reasons offered for the need for the waiver, based on Cablevision's lack of trial service offerings for 2010 and 2011. If the waiver is granted, Rate Counsel believes the Board should require Cablevision to provide notice of terms and conditions of any trial offering which is introduced as a standard or promotional offering; maintain records on promotional services for three years; and post trial services and promotions on its web site. In response, Cablevision notes once again that the fact that Cablevision has no trial or promotional offerings in New Jersey today does not preclude Cablevision from seeking relief from the rule which would provide flexibility to provide such offerings in the future as quickly as possible.

The Board has accepted Cablevision's assertions that providing notice and keeping detailed records of any offered trial service is burdensome. In addition, since trial services are for a limited time only (up to six months) and must thereafter either be introduced as a standard offering or discontinued, there is a limited time window for potential dispute. If introduced as a standard offering, Cablevision would be required to provide notice to the Board of the terms and conditions of that service. Because of the limited scope and nature of these trial services, the Board believes that customers are adequately protected. Therefore, the Board **HEREBY GRANTS** Cablevision the relief from compliance with N.J.A.C. 14:18-3.15(b) as requested in its petition.

N.J.A.C. 14:18-3.17 "Notice of alteration in channel allocation". This section requires 30 day notice of deletions and advanced notice of additions in a cable television company's channel line-up to be provided to the OCTV, consumers and municipalities. The rule also requires cable television companies to file a full revised channel allocation list, twice yearly.

Cablevision seeks relief under this section of Chapter 18 because cable television operators seeking to win and retain customers have every incentive to inform them directly about issues affecting their service and are in the best position to know how to do so, including on screen messages. Cablevision notes that in the Board order granting Verizon some relief of this provision, that relief wouldn't "have an adverse impact on customer notice protections, since channel allocation sheets are not how a customer would generally learn about channel changes."

Cablevision states that it has over 490 channels. In 2010, Cablevision filed 24,000 pages of paper with the Board, and over 52 rate and programming notices were filed in 2009, amounting to almost 28,000 pieces of paper; of which an estimated 91 percent were for the 161 municipalities where effective competition relief had been granted. The burden of providing these notices, Cablevision contends, far outweighs the benefit. When it was unable to provide timely notices, Cablevision notes, it was required to expend valuable resources filing waiver requests with the Board. Therefore, Cablevision requests the same relief as the Board granted to Verizon. Specifically, Cablevision has committed to continue to provide 30 days notice to the OCTV and to its customers of any channel deletion in a manner reasonably calculated to provide such information; to notify the OCTV and its customers no later than five days after the addition of a channel; and to file updated channel allocation sheets upon request of Board staff.

In its comments, Rate Counsel contends that limited relief should be granted, consistent with the relief granted to Verizon; but Cablevision should not be relieved from its obligations to provide channel line-up cards to its customers on a yearly basis, as required under N.J.A.C. 14:18-3.18.

The Board believes it is appropriate at this time to grant the relief sought by Cablevision under this rule based on the information provided. The relief sought is not expected to have an adverse impact on customer notice protections, since channel allocation sheets are not how a customer would generally learn about channel changes. Moreover, it is in the cable television company's best interest to provide notice to its customers of channel additions, so as to avoid calls to its customer service center(s) and potentially lose customers. Regarding Rate Counsel's recommendation, the Board notes that Cablevision is still required to provide channel line-up cards to their customers on a yearly basis, pursuant to N.J.A.C. 14:18-3.18. Therefore, the Board believes that granting the relief requested by Cablevision by allowing post-notification of channel additions within five days to its customers and the Board is reasonable. Furthermore, the Board believes it is appropriate to relieve Cablevision from filing channel

allocations sheets, except upon specific request of Board staff. Therefore, the Board **HEREBY GRANTS** Cablevision relief from the requested provisions of N.J.A.C. 14:18-3.17 under the following conditions: 1) Cablevision shall continue to provide 30 day notice to the OCTV and to its customers of any channel deletion in a manner reasonably calculated to provide such information; 2) Cablevision shall notify the OCTV and its customers no later than five days after the addition of a channel; and 3) Cablevision shall file updated channel allocation sheets upon request of Board staff.

N.J.A.C. 14:18-3.20 "Discounts for senior and/or disabled citizens" at paragraphs (a)2 and 3. These sections require a cable television company, prior to the effective date of any such discount, to provide notice to each customer and municipality served and to the OCTV along with revised schedule of prices, rates, terms and conditions showing any such changes.

Cablevision seeks relief from the provisions of paragraphs (a)2 and 3 because the expense in notifying each customer and municipality served prior to offering the discount may reduce the frequency of the discount offerings to seniors and disabled persons. Cablevision states it should be permitted the flexibility to offer such discounts without advanced notice.

Rate Counsel argues that Cablevision could not confirm that any notices were given in 2010 and 2011 related to the waiver. If the waiver is granted, Rate Counsel recommends that the Board require that Cablevision continue prior notice of alteration or discontinuance of discount programs to seniors, disabled customers, municipalities and the Board; continue providing notice to customers on a quarterly basis of the availability of senior and/or disabled discounts as required under N.J.A.C. 14:18-3.18, and post all discounts to seniors and disabled customers on its web site. Cablevision responds that it has met its burden of proof while Rate Counsel offers no justification upon which denial could be based.

The Board notes that there is no requirement that a cable television company offer a senior and/or disabled discount, although a cable television company may offer one on a voluntary basis. The Board believes that because the senior/disabled discounts are voluntary, it is in the best interest of the cable television company to notify its customers of the discount that is applicable to them. Otherwise, there would be no point to offering the discount. Requiring Cablevision to post all senior/disabled discounts on its website, as suggested by Rate Counsel, would impose additional burdens upon Cablevision which would be inconsistent with the relief sought. Additionally, sufficient customer protections remain in place, since Cablevision would still be required under N.J.A.C. 14:18-3.18 to provide notice to its customers on a quarterly basis of the availability of a senior and/or disabled discount, as well as provide prior notice of any alteration or discontinuance of the discounts. Therefore, the Board believes that customers are adequately protected and **HEREBY GRANTS** Cablevision relief from the provisions of N.J.A.C. 14:18-3.20(a)2 and 3.

N.J.A.C. 14:18-3.22 "Notice of planned interruptions". This section requires a cable television company to provide reasonable notice to all customers in advance of any planned interruption.

Cablevision seeks relief of this rule because in order to gain customers and prevent losing customers it must offer the highest quality services. Cablevision notes it is necessary to routinely upgrade and maintain their networks to do so. It is also necessary to minimize disruptions to customers, which is why Cablevision performs most of its system maintenance in the overnight hours. Notifying customers of planned interruptions where the customer might not even notice the disruption is burdensome and has no concomitant benefit to the customer.

Additionally, because Cablevision is in a competitive environment where its competitors do not have to comply with this rule, Cablevision notes, it should be granted the relief sought.

Rate Counsel argues that Cablevision did not provide any notices in 2010 and 2011 related to the rule, and that the waiver request should be denied because there is no public interest benefit. Rate Counsel recommends that the Board should require that all planned interruptions be posted on Cablevision's web site at least seven days prior to such planned interruptions. Cablevision responds that it has met its burden of proof while Rate Counsel offers no justification upon which denial could be based.

While the Board agrees that advanced notice of a planned outage or interruption to customers is good business practice, it is not convinced if a customer does not receive notice, that the customer is irreparably harmed. The Board believes that, in a competitive environment, the cable television company can decide how and when to notice its customers, and therefore, does not adopt Rate Counsel's recommendation for additional notice. Therefore, the Board **HEREBY GRANTS** Cablevision relief from the provisions of N.J.A.C. 14:18-3.22.

N.J.A.C. 14:18-7.4 "Notification of system rebuilds, upgrades, hub and headend relocations". This section requires a cable television company to provide at least 30 days' notice of a system rebuild, upgrade, hub or headend relocation or other significant change in the system as designed as well as providing information as to how the system will perform once the work has been performed.

Cablevision requested relief from this rule noting that it should not be held to the 30 days advanced notice of infrastructure changes to the OCTV. Cablevision notes that requiring a minimum notification period before any network improvements is inimical to today's video distribution market. Cablevision must upgrade and update their networks continually and consumers directly benefit from these changes. Cablevision seeks the same relief as granted to Verizon, and has committed to provide advanced notice to the OCTV of any major infrastructure changes on its Video Hub Office(s) (VHO) or Super Headend(s) (SHE) that would affect its New Jersey customers.

Rate Counsel argues that Cablevision should be denied relief because there is no public interest benefit and noted that they would still be required to provide notices for any hub or headend that serves a franchise area not subject to effective competition. Cablevision responds that it has met its burden of proof while Rate Counsel offers no justification upon which denial could be based. Rate Counsel recommends that the Board require that Cablevision confirm that it will notify OCTV prior to the start of any major infrastructure change on its Video Hub Office(s) (VHO) or Super Headend(s) (SHE) that could adversely affect cable television service.

The Board notes that Cablevision's cable television plant is designed differently than that of its competitor, Verizon. Cablevision does not have VHOs or SHEs. Therefore, to only require that Cablevision provide notice when upgrading a VHO or SHE would completely eliminate any notification to the OCTV or Board. The equivalent in Cablevision's infrastructure would be headends or hubs. Therefore, the Board **HEREBY GRANTS** Cablevision relief from the provisions of N.J.A.C. 14:18-7.4, under the following conditions: if Cablevision plans to perform major infrastructure changes on its headend(s) or hub(s) that would affect its New Jersey customers, it must notify the OCTV prior to the start of the project.

N.J.A.C. 14:18-7.6 "Telephone system information". This section requires a cable television operator to provide the OCTV with information concerning the operation of its telephone system.

Cablevision requested relief because it contends that the report is burdensome to compile and relief would not leave the Board unable to identify any potential inadequacy with its telephone system, since they would still be required to comply with N.J.A.C. 14:18-7.7 and 7.8, which address telephone performance.

Rate Counsel submits that the waiver should be denied, arguing that since Cablevision will still be required to report on its remaining regulated systems, the grant of this waiver will not change the status quo. Rate Counsel suggests that the Board should require that Cablevision comply with federal standards under 47 CFR § 76.309 and N.J.A.C. 14:18-7.8.

The Board believes in a competitive environment, it is necessary for a cable television company to have the equipment available to answer its telephones. In addition, N.J.A.C. 14:18-7.8 "Telephone Performance" will ensure that Cablevision is answering its telephones in accordance with the federal standard found at 47 C.F.R. § 76.309, regardless of how the company chooses to do so. Therefore, the Board **HEREBY GRANTS** Cablevision relief from the provisions of N.J.A.C. 14:18-7.6.

Having reviewed this matter the Board **HEREBY FINDS** for good cause shown, that the relief requested pursuant to N.J.A.C. 14:18-16.7 is appropriate in the 162 communities listed in Appendix "I". Therefore, the Board **HEREBY APPROVES** Cablevision's request for rule relief subject to the following conditions:

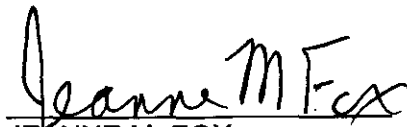
1. Cablevision shall continue to comply with the rules where relief has been granted herein in the 16 municipalities listed above where there has been no finding of effective competition relief from the FCC. If Cablevision is granted a finding of effective competition by the FCC in any of the 16 municipalities, then the relief granted herein shall apply to those municipalities as well, upon notice to the Board.
2. Cablevision shall continue to provide 30 day notice to the Board and to its customers of any channel deletion in a manner reasonably calculated to provide such information.
3. Cablevision shall notify the Board and its customers no later than five days after the addition of a channel.
4. Cablevision shall file updated channel allocation sheets upon request of Board staff.
5. If Cablevision plans to perform major infrastructure changes on its hub(s) or headend(s) that would affect its New Jersey customers, it must notify the OCTV prior to the start of the project.
6. Cablevision shall cooperate with any reasonable requests for information from the Board or Board staff regarding any matter for which relief has been granted.


7. Cablevision shall continue to comply with all other applicable State and federal laws, and the rules and regulations of the Board and the OCTV.
8. This Order shall become effective upon the service thereof, in accordance with N.J.S.A. 48:2-40.

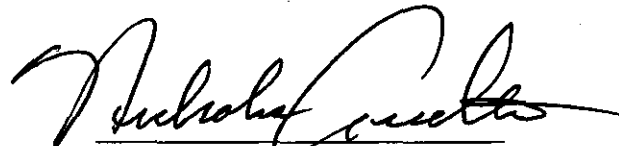
DATED: 9/22/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

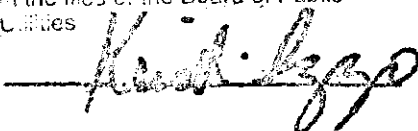

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



Appendix "I"
Cablevision Municipalities Subject to Effective Competition per Finding by the FCC

Municipality	County
Aberdeen Township	Monmouth
Allamuchy Township	Warren
Allendale Borough	Bergen
Allentown Borough	Monmouth
Alpine Borough	Bergen
Asbury Park City	Monmouth
Avon by the Sea Borough	Monmouth
Bayonne City	Hudson
Belmar Borough	Monmouth
Bergenfield Borough	Bergen
Bernards Township	Somerset
Bogota Borough	Bergen
Boonton Town	Morris
Bound Brook Borough	Somerset
Bradley Beach Borough	Monmouth
Bridgewater Township	Somerset
Brielle Borough	Monmouth
Cedar Grove Township	Essex
Chatham Borough	Morris
Clifton City	Passaic
Closter Borough	Bergen
Colts Neck Township	Monmouth
Cresskill Borough	Bergen
Demarest Borough	Bergen
Denville Township	Morris
Dover Town	Morris
Dumont Borough	Bergen
Dunellen Borough	Middlesex
East Hanover Township	Morris
Edison Township	Middlesex
Elizabeth City	Union
Elmwood Park Borough	Bergen
Emerson Borough	Bergen
Englishtown Borough	Monmouth
Fair Lawn Borough	Bergen
Farmingdale Borough	Monmouth
Florham Park Borough	Morris
Franklin Lakes Borough	Bergen
Freehold Township	Monmouth
Garfield City	Bergen

Municipality	County
Glen Rock Borough	Bergen
Green Brook Township	Somerset
Hackensack City	Bergen
Haledon Borough	Passaic
Hamilton Township	Mercer
Hanover Township	Morris
Harrington Park Borough	Bergen
Hasbrouck Heights Borough	Bergen
Haworth Borough	Bergen
Hawthorne Borough	Passaic
Highland Park Borough	Middlesex
Hillsdale Borough	Bergen
Hoboken City	Hudson
Ho-Ho-Kus Borough	Bergen
Howell Township	Monmouth
Interlaken Borough	Monmouth
Jackson Township	Ocean
Jefferson Township	Morris
Keansburg Borough	Monmouth
Keyport Borough	Monmouth
Kinnelon Borough	Morris
Lake Como Borough	Monmouth
Lakewood Township	Ocean
Lavallette Borough	Ocean
Little Falls Township	Passaic
Lodi Borough	Bergen
Madison Borough	Morris
Mahwah Township	Bergen
Manalapan Township	Monmouth
Manasquan Borough	Monmouth
Manville Borough	Somerset
Marlboro Township	Monmouth
Matawan Borough	Monmouth
Maywood Borough	Bergen
Middlesex Borough	Middlesex
Midland Park Borough	Bergen
Millstone Township	Monmouth
Milltown Borough	Middlesex
Mine Hill Township	Morris
Montague Township	Sussex

Municipality	County
Montvale Borough	Bergen
Montville Township (Morris System)	Morris
Montville Township (Oakland System)	Morris
Morris Plains Borough	Morris
Morris Township	Morris
Morristown Town	Morris
Mount Olive Township	Morris
Mountain Lakes Borough	Morris
Neptune City Borough	Monmouth
Neptune Township	Monmouth
New Brunswick City	Middlesex
New Milford Borough	Bergen
Newark City	Essex
North Bergen Township	Hudson
North Brunswick Township	Middlesex
North Caldwell Borough	Essex
North Haledon Borough	Passaic
Northvale Borough	Bergen
Norwood Borough	Bergen
Nutley Township	Essex
Oakland Borough	Bergen
Ocean Township	Monmouth
Old Bridge Township	Middlesex
Old Tappan Borough	Bergen
Oradell Borough	Bergen
Paramus Borough	Bergen
Park Ridge Borough	Bergen
Parsippany-Troy Hills Township	Morris
Passaic City	Passaic
Paterson City	Passaic
Piscataway Township	Middlesex
Prospect Park Borough	Passaic
Ramsey Borough	Bergen
Randolph Township	Morris
Raritan Borough	Somerset
Ridgewood Village	Bergen
River Edge Borough	Bergen
River Vale Township	Bergen
Riverdale Borough	Morris
Robbinsville Township	Mercer
Rochelle Park Township	Bergen
Rockaway Borough	Morris

Municipality	County
Rockaway Township	Morris
Rockleigh Borough	Bergen
Roxbury Township	Morris
Saddle Brook Township	Bergen
Saddle River Borough	Bergen
Sandyston Borough	Sussex
Sayreville Borough	Middlesex
Sea Girt Borough	Monmouth
Seaside Heights Borough	Ocean
Seaside Park Borough	Ocean
Somerville Borough	Somerset
South Amboy City	Middlesex
South Bound Brook Borough	Somerset
South Hackensack Township	Bergen
South Orange Village Township	Essex
Spring Lake Borough	Monmouth
Spring Lake Heights Borough	Monmouth
Stanhope Borough	Sussex
Teaneck Township	Bergen
Totowa Borough	Passaic
Union Beach Borough	Monmouth
Union City	Hudson
Upper Freehold Township	Monmouth
Upper Saddle River Borough	Bergen
Victory Gardens Borough	Morris
Waldwick Borough	Bergen
Wall Township	Monmouth
Warren Township	Somerset
Washington Township	Bergen
Watchung Borough	Somerset
Wayne Township	Passaic
Weehawken Township	Hudson
West Milford Township	Passaic
West New York Town	Hudson
Westwood Borough	Bergen
Wharton Borough	Morris
Woodcliff Lake Borough	Bergen
Woodland Park Borough	Passaic
Wood-Ridge Borough	Bergen
Wyckoff Township	Bergen

IN THE MATTER OF CABLEVISION SYSTEMS CORPORATION FOR RELIEF OF
COMPLIANCE WITH CERTAIN PROVISIONS OF N.J.A.C. 14:18 PURSUANT TO N.J.A.C.
14:18-16.7
DOCKET NO. CO11050279

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