

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition of Cablevision of New Jersey, LLC)
For a Determination of Effective Competition in the)
System-Wide Franchise Area Comprised of)

Bergenfield Borough, NJ	CUID NJ0145)
Closter Borough, NJ	CUID NJ0374)
Demarest Borough, NJ	CUID NJ0293)
Dumont Borough, NJ	CUID NJ0211)
Emerson Borough, NJ	CUID NJ0375)
Fair Lawn Borough, NJ	CUID NJ0259)
Harrington Park Borough, NJ	CUID NJ0448)
Haworth Borough, NJ	CUID NJ0451)
Hillsdale Borough, NJ	CUID NJ0373)
New Milford Borough, NJ	CUID NJ0207)
Northvale Borough, NJ	CUID NJ0450)
Norwood Borough, NJ	CUID NJ0449)
Old Tappan Borough, NJ	CUID NJ0425)
Oradell Borough, NJ	CUID NJ0260)
Paramus Borough, NJ	CUID NJ0311)
River Vale Township, NJ	CUID NJ0420)
Rockleigh Borough, NJ	CUID NJ0585)
Saddle River Borough, NJ	CUID NJ0584)
Tenafly Borough, NJ	CUID NJ0217)
Woodcliff Lake Borough, NJ	CUID NJ0426)

CSR No. _____
PSID No. 007311

To: Chief, Media Bureau

PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY.....	2
I. BACKGROUND – CABLEVISION’S SYSTEM-WIDE FRANCHISE FOR BERGEN, NJ	2
II. CABLEVISION MEETS THE LEC TEST FOR EFFECTIVE COMPETITION IN THE BERGEN SYSTEM-WIDE FRANCHISE AREA.....	6
A. Verizon Is a Local Exchange Carrier.....	8
B. Verizon’s Service Is “Offered” in the Bergen System-Wide Franchise Area	8
C. Verizon Offers “Comparable” Multichannel Video Programming Throughout the Bergen System-Wide Franchise Area.....	14
CONCLUSION	15

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Cablevision of New Jersey, LLC (“Cablevision”) hereby submits this Petition for Determination of Effective Competition (“Petition”), pursuant to Sections 76.7, 76.905, and 76.907 of the rules and regulations of the Federal Communications Commission (“Commission” or “FCC”), to request that the Commission confirm that Cablevision faces effective competition within its system-wide franchise area in Bergen County, New Jersey (“Bergen System-Wide Franchise Area”).

INTRODUCTION AND SUMMARY

Under federal law, a cable system is subject to effective competition if a local exchange carrier (“LEC”) or its affiliate “offers video programming services directly to subscribers” and 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” (“LEC Test”).^{1/} That test is met here due to the presence of Verizon New Jersey Inc. (“Verizon”), a LEC offering comparable video programming services to subscribers via a video network that substantially overlaps Cablevision’s Bergen System-Wide Franchise Area.^{2/} Accordingly, the Commission should find that Cablevision meets the Cable Act’s standard for effective competition in the Bergen System-Wide Franchise Area, and that the Bergen System-Wide Franchise Area is not subject to rate regulation.^{3/}

I. BACKGROUND – CABLEVISION’S SYSTEM-WIDE FRANCHISE FOR BERGEN, NJ

The New Jersey System-Wide Cable Television Franchise Act of 2006 permits Cablevision to convert any of its municipal franchises in New Jersey into one or more system-wide franchises.^{4/} New Jersey law provides that conversion is automatic upon notice to the New Jersey Board of Public Utilities (“BPU” or “Board”).^{5/} State law also provides that a cable

^{1/} 47 U.S.C. § 543(l)(1)(D).

^{2/} See Declaration of Paul Jamieson, Cablevision Systems Corporation, ¶ 2 (“Jamieson Declaration”), attached as Exhibit 1.

^{3/} 47 U.S.C. § 543(a)(2).

^{4/} N.J.S.A. § 48:5A-25.1(a); see also N.J.A.C. § 14:18-14.13 (“Any cable television company currently operating under authority of a municipal consent(s) and Certificate(s) of Approval issued by the Board prior to the effective date of P.L. 2006, c. 83 may convert any or all such Certificate(s) of Approval into a system-wide franchise.”).

^{5/} N.J.S.A. § 48:5A-25.1(a) (stating that a cable television company with municipal franchises “may, if it wishes, automatically convert any or all such franchise or franchises into a system-wide franchise upon notice to the board and the affected municipality, but without the need for the consent of either the board or the affected municipality”).

operator with a system-wide franchise may “convert additional municipal franchises and add affected municipalities to the service area covered by such system-wide franchise at any time during the term of the system-wide franchise.”^{6/}

On March 20, 2009, Cablevision provided the Board with notice pursuant to this statute of its conversion of its municipal franchise in Fair Lawn, New Jersey to a system-wide franchise (“Bergen System-Wide Franchise”).^{7/} Subsequent to that conversion, Cablevision converted the remaining municipal franchises in the Bergen System-Wide Franchise Area.^{8/} Accordingly, for purposes of rendering an effective competition determination, the 20-community Bergen System-Wide Franchise Area is now the relevant geographic area.^{9/}

^{6/} *Id.* State law is clear that a cable operator with a system-wide franchise may convert “additional municipal franchises” into the already-established system-wide franchise “at any time.” *See id.* The BPU’s rules require only that notice of the inclusion of additional franchises be provided to the Board and affected municipalities. N.J.A.C. § 14:18-14.14(a). In response to such a notice, the Board issues “an amended order which specifies which municipalities have been added to the system-wide franchise.” *Id.*

^{7/} *See Cablevision of New Jersey, Inc. for the Conversion to a System-Wide Franchise in the Borough of Fair Lawn*, Docket No. CE09030230 (N.J.B.P.U. June 10, 2009) (“*BPU Fair Lawn Conversion Order*”) (“acknowledg[ing]” the conversion of the Fair Lawn franchise). The Bergen System-Wide Franchise was originally held by Cablevision of New Jersey, Inc. *See id.* at 2. Cablevision of New Jersey, Inc. later underwent a name change to become Cablevision of New Jersey, LLC. *See, e.g., Cablevision of New Jersey, LLC for the Conversion to a System-Wide Franchise in Six Municipalities: the Borough of Bergenfield, the Borough of Dumont, the Borough of Haworth, the Borough of Hillsdale, the Borough of Oradell and the Borough of Paramus*, Order of Amendment, Docket No. CE09030230 (N.J.B.P.U. Aug. 4, 2010) (“*BPU Bergenfield Conversion Order*”).

^{8/} BPU orders acknowledging the conversion of communities to the Bergen System-Wide Franchise are attached as Exhibit 7. They typically state that the Board “commemorates” the addition of the new municipalities to the system-wide franchise. The conversion notice for Tenafly Borough is attached as Exhibit 8; the BPU has yet to issue an order acknowledging the conversion of this community, but pursuant to N.J.S.A. § 48:5A-25.1(a), Cablevision’s conversion notice for Tenafly was effective upon the date of the letter.

^{9/} *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd. 5631, ¶ 47 (1993). (“[T]he determination of effective competition should be made on the basis of a franchise area.”); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd. 1164, ¶ 24 (1994) (“[A] franchise area is the area a system is granted authority to serve in its franchise.”).

A system-wide franchise is considered a “franchise” under New Jersey law.^{10/} Indeed, each order memorializing Cablevision’s conversion of municipal-based franchises to the Bergen System-Wide Franchise expressly states that the former municipal franchise for the affected municipality has “expired by operation of law” or has “terminated,”^{11/} and that “Cablevision is authorized to provide cable television service to the [municipality] pursuant to its converted system-wide franchise.”^{12/} Thus, under applicable law, the “area” that Cablevision is authorized to serve under its Bergen System-Wide Franchise is the aggregate area of the municipalities operating under that franchise.^{13/}

^{10/} See N.J.S.A. § 48:5A-3q (“‘Franchise’ means an initial authorization, or renewal thereof, issued by a franchising authority . . . whether such authorization is designated as a franchise, . . . certificate, agreement or otherwise, which authorizes the construction or operation of a cable system.”); see also N.J.A.C. § 14:18-1.2 (defining “Franchising authority” as the “State of New Jersey, Board of Public Utilities, Office of Cable Television”); *The Effects of the System-Wide Cable Television Franchise in New Jersey*, New Jersey Board of Public Utilities, at i (N.J.B.P.U. June 2010) (“The Board is the local franchising authority and grants Certificates of Approval in both traditional and system-wide franchises.”).

^{11/} See, e.g., *BPU Fair Lawn Conversion Order* at 4; *BPU Bergenfield Conversion Order* at 2-3.

^{12/} See, e.g., *BPU Fair Lawn Conversion Order* at 4; *BPU Bergenfield Conversion Order* at 3.

^{13/} See, e.g., *Cablevision Systems of Connecticut, L.P. (Norwalk)*, Memorandum Opinion and Order, 14 FCC Rcd. 15253 (1999) (determining effective competition under the LEC Test based upon a telco’s aggregate presence within a ten-town franchise area and rejecting the argument that Cablevision should have to separately demonstrate effective competition in each community within its multi-town franchise area); *Cablevision Systems of Connecticut, L.P. (Fairfield)*, Memorandum Opinion and Order, 14 FCC Rcd. 15883 (1999) (determining effective competition under the LEC Test based upon a telco’s aggregate presence within a six-town franchise area and rejecting the argument that Cablevision should have to separately demonstrate effective competition in each community within its multi-town franchise area). See also *CoxCom LLC d/b/a Cox Communications New England*, Memorandum Opinion and Order, 28 FCC Rcd. 9312, n.1 (2013) (“According to Petitioner, its television system in Newport County, Rhode Island serves the following communities: Newport (RI0027), Jamestown (RI0030), Middletown (RI0028), Portsmouth (RI0026), Tiverton (RI0025), and Little Compton (RI0029). . . . These communities collectively comprise the Rhode Island Area 7 Franchise Area, as defined in Petitioner’s franchise agreement and as determined by the State of Rhode Island Division of Public Utilities and Carriers.”) (internal citations omitted); *Mediacom Delaware LLC*, Memorandum Opinion and Order, 26 FCC Rcd. 3668, n.1 (2011) (acknowledging that “the unincorporated areas that are the subject of this Petition are treated as one franchise area because the unincorporated unnamed areas of Sussex County and the unincorporated area known as Clarksville are served under a single Franchise Agreement even though these areas are identified by three separate CUID numbers”).

In the Bergen System-Wide Franchise Area, most of the communities previously were deregulated while they were still operating as municipal franchises.^{14/} Moreover, as detailed more fully below, Verizon has conveyed certified build-out information to the BPU indicating that it is at least 60% built-out in the Bergen System-Wide Franchise Area. In short, as these circumstances show, and as the facts set forth below confirm, there would be no basis for submitting – or granting – a request for certification to regulate basic tier rates in the Bergen System-Wide Franchise Area, because that area is clearly subject to effective competition.^{15/}

Nevertheless, out of an abundance of caution, Cablevision requests – as it has in previous petitions involving franchises where the LFA has not certified to regulate rates – that the

^{14/} See *Subsidiaries of Cablevision Systems Corporation Petitions for Determination of Effective Competition in 101 Communities in New Jersey*, Memorandum Opinion and Order, 23 FCC Rcd. 14141 (2008); *Cablevision of Raritan Valley, Inc., Cablevision of New Jersey, Cablevision of Monmouth Petitions for Determination of Effective Competition*, Memorandum Opinion and Order, 19 FCC Rcd. 6966 (2004).

^{15/} Cablevision notes that the BPU has never filed for certification to regulate rates in the Bergen System-Wide Franchise Area. Under Commission rules, a local franchising authority (“LFA”) cannot file for certification to regulate basic tier rates in a franchise area if it has “reason to believe” that it would be incorrect to presume the absence of effective competition. See 47 C.F.R. § 76.910(b)(4); FCC Form 328 (Question 6). The Board itself has previously acknowledged that it cannot seek certification to regulate basic rates in circumstances where it is “aware” that a cable operator is subject to effective competition. See, e.g., *Application by Verizon New Jersey for a Systemwide Cable Television Franchise*, Order, Docket No. CE06110768, at 14 (N.J.B.P.U. Dec. 18, 2006) (“*Verizon Franchise Order*”), attached as Exhibit 5. In conjunction with the award to Verizon of its system-wide franchise, the Board rejected Rate Counsel’s argument that, upon grant of the system-wide franchise, Verizon would have to file for effective competition at the FCC in order to be free of rate regulation. The Board disagreed, stating that:

In order to regulate the rates of a cable service provider, the franchising authority, here the Board, must be certified. 47 C.F.R. § 76.910. This certification requires the Board to assert that the company is not subject to effective competition, 47 C.F.R. § 76.910(b)(4), and in the absence of actual knowledge, the franchising authority may depend upon the presumption in 47 C.F.R. § 76.906. Here, the Board is aware that [Verizon New Jersey (“VNJ”)] is subject to effective competition. There would be no value, and it would require the Board to ignore the basic facts, for the Board to assert rate regulation over VNJ. As such, the Board will decline to certify itself to rate regulate VNJ’s operations in those municipalities where an incumbent cable operator is providing cable television service.

Commission grant the instant petition in order to remove any doubt regarding the absence of authority to regulate Cablevision's rates in the franchise area.^{16/}

II. CABLEVISION MEETS THE LEC TEST FOR EFFECTIVE COMPETITION IN THE BERGEN SYSTEM-WIDE FRANCHISE AREA

The LEC Test is met in the Bergen System-Wide Franchise Area due to the presence of Verizon, which offers FiOS TV, a fiber-optic cable television service delivered over Verizon's fiber-to-the-premises ("FTTP") network. A cable system is deemed subject to effective competition, and is thus exempt from rate regulation, where:

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.^{17/}

In March 1999, the Commission adopted final rules implementing the LEC Test. Verizon's cable television service offered to residents in the Bergen System-Wide Franchise Area satisfies these rules for determining whether effective competition is present.

In granting Verizon a system-wide franchise to provide cable services in New Jersey, the BPU acknowledged that Verizon, "a LEC, will be providing comparable service in the franchise

^{16/} See, e.g., *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in Communities in New York State*, Memorandum Opinion and Order, 25 FCC Rcd. 4786, n.3 (2010); *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in Communities in New York State*, Memorandum Opinion and Order, 23 FCC Rcd. 6517, n.3 (2008) ("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. 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."); *Time Warner Cable Inc, Petition for Determination of Effective Competition in Various South Carolina Communities*, Memorandum Opinion and Order, 23 FCC Rcd. 12201, ¶ 13 (2008) ("[T]he fact that North Charleston has not sought or obtained rate regulatory certification does not bar Petitioner from seeking a finding of effective competition.").

^{17/} 47 U.S.C. § 543(l)(1)(D).

area of unaffiliated cable operators, and thus the effective competition definition appears to be triggered.”^{18/} Verizon has filed certifications that together indicate that it offers video programming service to more than 60% of the residents in the Bergen System-Wide Franchise Area.^{19/} Since the 1990s, the Commission has specifically found that the LEC Test applies when the local exchange carrier in question has a statewide franchise that operates within the franchise area of an incumbent cable operator.^{20/} The Commission has upheld this precedent in a number of effective competition orders.^{21/} Moreover, the Commission previously has found effective competition existed for many of Cablevision’s franchise areas in New Jersey based on the provision of Verizon’s FiOS TV service, which is offered pursuant to a statewide authorization.^{22/}

^{18/} *Verizon Franchise Order* at 13.

^{19/} *See infra* p. 11.

^{20/} *See, e.g., Cablevision Systems of Connecticut, L.P.; Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 14 FCC Rcd. 15253 (1999) (“*SNET Personal Vision P*”); *Cablevision Systems of Connecticut, L.P.; Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 14 FCC Rcd. 15883 (1999) (finding effective competition under the LEC Test based on the statewide video franchise granted to the Southern New England Telephone Company in the state of Connecticut).

^{21/} *See, e.g., Cablevision of Connecticut, L.P. and Cablevision Systems of Southern Connecticut, L.P.; Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 23 FCC Rcd. 8538 (2008) (finding effective competition existed for two of Cablevision’s franchise areas in Connecticut based on the provision of AT&T’s U-Verse video service, which is offered pursuant to a statewide video authorization); *Mediacom Delaware LLC; Petition for Determination of Effective Competition in the Unincorporated Unnamed Areas of Sussex County, DE*, Memorandum Opinion and Order, 26 FCC Rcd. 3668 (2011) (finding effective competition existed for three franchise areas within Verizon Communications Inc.’s statewide franchise to provide video programming services in Delaware).

^{22/} *See, e.g., CSC TKR, Inc., Petition for Determination of Effective Competition in Highland Park Borough, New Jersey*, Memorandum Opinion and Order, 25 FCC Rcd. 4948, ¶ 6 (2010) (“*Highland Park Order*”); *Cablevision of Oakland and CSC TKR, Inc., Petition for Determination of Effective Competition in Four Communities*, Memorandum Opinion and Order, 24 FCC Rcd. 1801 (2009) (finding effective competition based on the LEC Test in three New Jersey communities); *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in 101 Communities in New Jersey*, Memorandum Opinion and Order, 23 FCC Rcd. 14141 (2008) (finding effective competition based on the LEC Test in 79 New Jersey communities).

A. Verizon Is a Local Exchange Carrier

As recognized by the New Jersey BPU, Verizon is a local exchange carrier in New Jersey,^{23/} and Verizon provides telephone service throughout the Bergen System-Wide Franchise Area. Cablevision is unaffiliated with Verizon. Because Verizon is itself both a franchised provider of cable service and a certified provider of local exchange service in the Bergen System-Wide Franchise Area, the first element of the LEC Test is met.

B. Verizon's Service Is "Offered" in the Bergen System-Wide Franchise Area

Verizon currently offers cable service to households in the Bergen System-Wide Franchise Area. Service of a multichannel video programming competitor is deemed to be "offered" for purposes of effective competition:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.^{24/}

In the *Cable Reform Order*, the Commission stated that, to satisfy the "offer" prong of the LEC Test, a cable operator must show that "the LEC is technically and actually able to provide service that substantially overlaps the incumbent cable operator's service in the franchise area."^{25/} The Commission also has noted that "precedent makes clear that a cable operator claiming LEC effective competition need not show that the LEC is offering service throughout the cable operator's territory . . . nowhere did the Commission require that a LEC's service be available

^{23/} *Verizon Franchise Order* at 13.

^{24/} 47 C.F.R. § 76.905(e).

^{25/} *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd. 5296, ¶ 13 (1999) ("*Cable Reform Order*").

everywhere in the incumbent cable operator's franchise area.^{26/} Verizon's presence and ongoing recruitment of subscribers in the Bergen System-Wide Franchise Area is evidence that Verizon is "offering" service in Cablevision's franchise area.^{27/}

First, Verizon is "physically able" to offer service to subscribers "in the franchise area."^{28/} In December 2006, Verizon obtained a franchise from the BPU authorizing it to provide cable television service to 316 communities in New Jersey – including communities within the Bergen System-Wide Franchise Area – and to add additional communities to its system-wide franchise at its discretion upon notice to the Board.^{29/} On August 20, 2013, Verizon filed a renewal application for its New Jersey system-wide franchise.^{30/} That application contained an exhibit listing areas where FiOS TV is or will be available, which list included communities within the Bergen System-Wide Franchise Area.^{31/} On January 30, 2014, the BPU granted Verizon a renewal of its franchise, which provides Verizon with continued authority to serve the communities covered by its New Jersey system-wide franchise.^{32/}

According to the official Verizon FiOS service availability website, households located at addresses within Cablevision's Bergen System-Wide Franchise Area are able to receive FiOS

^{26/} *Highland Park Order* ¶ 10.

^{27/} *SNET Personal Vision I* ¶ 20.

^{28/} *Cable Reform Order* ¶ 13.

^{29/} *See Verizon Franchise Order*. On January 30, 2014, the BPU granted Verizon a renewal of its system-wide franchise, noting that Verizon is authorized to provide service in 379 municipalities in New Jersey. *Application of Verizon New Jersey, Inc. for Renewal of a System-Wide Cable Television Franchise*, Order, Docket No. CE13080756, at 1 (N.J.B.P.U. Jan. 30, 2014) ("*Verizon Franchise Renewal Order*"), attached as Exhibit 5.

^{30/} Verizon New Jersey - Renewal of a System-Wide Cable Television Franchise (filed Aug. 20, 2013) ("*Verizon Renewal Application*"), available at http://www22.verizon.com/about/community/nj_swf_renewal.htm

^{31/} *Id.* at Exhibit B, List of Municipalities.

^{32/} *Verizon Franchise Renewal Order* at 8 (granting Verizon a renewal of its system-wide franchise for a period of seven years).

TV service.^{33/} Verizon's website lists FiOS TV store locations in Paramus, NJ, which are accessible to multichannel video programming distributor ("MVPD") subscribers residing in the Bergen System-Wide Franchise Area.^{34/} In addition, Cablevision service technicians, customer service representatives, and other personnel have observed active FiOS TV service being provided to residents in the Bergen System-Wide Franchise Area.^{35/} Accordingly, Verizon is "physically able" to deliver cable service in the Bergen System-Wide Franchise Area.^{36/}

Second, there are no regulatory, technical, or other impediments to households taking service from Verizon. As noted above, in both Verizon's original and renewal applications for a system-wide cable franchise, communities in the Bergen System-Wide Franchise Area were included among the municipalities covered by those applications, and Verizon is free to add any additional communities not already included in its franchise area upon notice to the Board.^{37/} In addition, Verizon has obtained a Community Unit Identification ("CUID") number from the Commission for the bulk of communities in the Bergen System-Wide Franchise Area.^{38/}

^{33/} See *Can I Get FiOS?*, Verizon, <http://www.verizon.com/home/fios/v/>; see also *Verizon New Jersey FiOS*, Verizon, <http://www22.verizon.com/local/new-jersey-fios/>

^{34/} See *Verizon Stores for New Jersey*, Verizon, <http://www22.verizon.com/home/storelocatorresults/?State=NJ&SName=New+Jersey>

^{35/} See *Jamieson Declaration* ¶ 3 ("Cablevision service technicians, customer service representatives, and other personnel have observed active FiOS TV service being provided to residents in the Bergen System-Wide Franchise Area. Television and radio advertisements for Verizon's FiOS TV service can be seen and/or heard on TV and radio stations available in the Bergen System-Wide Franchise Area.").

^{36/} See, e.g., *Cablevision of the Midwest, Middleburg Heights, OH*, Memorandum Opinion and Order, 14 FCC Red. 13838, ¶ 11 (1999) (concluding that the "physically able" prong of the LEC Test is met when Cablevision demonstrates that Ameritech New Media's cable television service "will be offered to City pursuant to franchise agreement" and that Cablevision "subscribers have switched to Ameritech New Media's cable service").

^{37/} *Verizon Franchise Order* at Appendix A; *Verizon Franchise Renewal Order* at Exhibit I; Verizon Renewal Application at Exhibit B.

^{38/} The Commission's CUID list for the state of New Jersey can be found at <http://www.fcc.gov/mb/engineering/list/NJ.xls>

Third, the service areas of Verizon and Cablevision within the Bergen System-Wide Franchise Area substantially overlap. FiOS TV is offered to the substantial majority of the households in the Bergen System-Wide Franchise Area.^{39/} Indeed, the New Jersey Board has approved a number of certifications filed by Verizon showing that it has the capability to serve at least 60% of homes within the Bergen System-Wide Franchise Area.^{40/} Based upon the FiOS TV homes passed data provided in each of the BPU 60% certification orders involving communities in the Bergen System-Wide Franchise Area, and Census 2010 household data for the Bergen System-Wide Franchise Area, Verizon's FiOS TV offering is available to at least 64% of the homes in that franchise area.^{41/} Accordingly, there is widespread availability of Verizon's FiOS service throughout the Bergen System-Wide Franchise Area.

Fourth, potential subscribers in the Bergen System-Wide Franchise Area are "reasonably aware" that they may purchase Verizon's FiOS service.^{42/} Verizon's provision of cable television service to residents of the Bergen System-Wide Franchise Area has received considerable publicity since those communities were wired to receive FiOS TV in 2005 and

^{39/} See *infra*, note 41.

^{40/} See *Verizon New Jersey, Inc. Certification of Capability to Provide Cable Television Service to 60 Percent of Households in Designated Municipalities*, Order, Docket No. CO07050321 (N.J.B.P.U. June 28, 2007) ("*Verizon Certification Order*"). Exhibit 6 contains each BPU order certifying Verizon's passing of 60% of households in communities within the Bergen System-Wide Franchise Area.

^{41/} According to Census 2010 data, the total number of occupied households for the Bergen System-Wide Franchise Area is 74,501. The homes passed data provided in the Board Orders where Verizon has certified availability to least 60% of homes in a community yields an aggregate total FiOS TV homes passed number for the Bergen System-Wide Franchise Area of 47,808, which results in a total homes passed rate for the franchise area of 64%. See Exhibit 6, New Jersey BPU Orders Certifying Verizon Passing 60% of Homes in Communities in Bergen System-Wide Franchise Area; see also http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none (link providing searchable access to Census 2010 household data for each community in the Bergen System-Wide Franchise Area).

^{42/} The Commission clarified in the *Cable Reform Order* that cable operators may rely on advertising, direct mail, or any other marketing outlet to demonstrate that potential subscribers are reasonably aware that they may purchase a competitor's service. *Cable Reform Order* ¶ 15.

began receiving it in 2007,^{43/} and continues to do so today.^{44/} Verizon has a specific web page devoted to its FiOS offerings in New Jersey, including FiOS TV, offering access to detailed information regarding channel line-ups, rate plans and packages, features and capabilities, and street address level availability.^{45/}

^{43/} See, e.g., Martha McKay, *Local Battles on Verizon's Mind; CEO Campaigns to Shift Television Talks from Towns*, THE RECORD (BERGEN CTY.), July 22, 2005 (discussing that Verizon "wants to sell TV service – competing with cable and satellite – over a high-capacity fiber-optic network it's building in Bergen and Passaic counties and other parts of the state" and reporting that the FiOS network has already been built out in Closter, Demarest, Emerson, Harrington Park, Haworth, Northvale, Norwood, Old Tappan, Paramus, River Vale, Rockleigh, and Saddle River in Bergen County); Martha McKay, *Verizon Widens FiOS Network*, THE RECORD (BERGEN CTY.), Oct. 21, 2005 (announcing that Verizon is building its FiOS network in 16 additional New Jersey towns, including Bergenfield, Dumont, and Woodcliff Lake in Bergen County, and explaining that "Verizon wants a statewide [video] franchise so it can begin to offer TV service over its new network"); Martha McKay, *New Round Begins in Fight over Choice; Verizon Rolls Out Fiber-Optic TV Service*, THE RECORD (BERGEN CTY.), Jan. 12, 2007 (discussing that Verizon "flipped the switch Thursday on cable TV service in 106 towns, including 35 in Bergen County" and reporting on consumer responses to that news in Emerson and Closter); Kevin DeMarrais, *How Do Deals Stack Up? Verizon, Cablevision Customers Have Strong Opinions on 3-Way Packages*, THE RECORD (BERGEN CTY.), Sept. 14, 2008 (announcing that FiOS TV is available in most Bergen County towns and engaging in a detailed comparison of Verizon's FiOS and Cablevision's Optimum offerings in light of the "all-out, multimillion-dollar battle to win the hearts and accounts of telephone, television and Internet customers").

^{44/} See, e.g., Steve Donohue, *Verizon Pressured to Expand FiOS in New Jersey*, FIERCECABLE, Oct. 4, 2013, available at <http://www.fiercecable.com/story/verizon-pressured-expand-fios-new-jersey/2013-10-04> (reporting that Verizon offers FiOS in 355 municipalities in 19 counties in New Jersey and reporting on requests to further expand the service); Eliot Caroom, *Cable Companies Lose Subscribers to Verizon FiOS, Streaming Sites, Across Jersey and Nation*, STAR-LEDGER, June 3, 2012, available at http://www.nj.com/business/index.ssf/2012/06/cable_companies_lose_subscribe.html ("Verizon FiOS ate up market share in New Jersey and the nation, growing nearly 20 percent through 2011 in Jersey, even better than the national gain for paid TV by telecommunications companies, up 15 percent."); *Holiday iPhone Sales Ring Up Profits for Verizon*, TRENTON TIMES, Apr. 20, 2012 ("Verizon's cable-like FiOS service continued to attract customers."). Indeed, advertisements for FiOS TV routinely appear in Bergen County's local newspaper. See, e.g., Television and Print Advertisements, and Service Marketing and Promotional Materials from Verizon New Jersey Inc., attached as Exhibit 4 ("Exhibit 4 Verizon Marketing Materials") (containing, among other things, copies of advertisements for FiOS that ran in *The Bergen County Record* on March 15 and 22, 2014; April 17 and 26, 2014; and May 10 and 17, 2014).

^{45/} Verizon New Jersey Online, Verizon, <http://www22.verizon.com/about/community/nj/>; see also Verizon New Jersey FiOS, Verizon, <http://www22.verizon.com/local/new-jersey-fios/>

Verizon also has been engaged in an active and ongoing advertising and marketing campaign for its FiOS TV service.^{46/} The entirety of the Bergen System-Wide Franchise Area resides within the New York City Designated Market Area (“DMA”), and Verizon has aired numerous television and radio spots within the New York City DMA advertising the availability of its FiOS TV service.^{47/} In addition, Verizon also launched its own exclusive regional channel, FiOS1 New Jersey, which features news, sports, weather, and local information, as well as entertainment programming, that “won’t be found on cable TV.”^{48/} Verizon officials themselves have characterized the response to FiOS TV from New Jersey consumers as “nothing short of astounding,”^{49/} and have stated that “[c]ustomers in New Jersey have enthusiastically embraced

^{46/} See, e.g., Verizon Press Release, “FiOS1 to Offer N.J. and L.I. FiOS TV Customers Local High School Sports Championship Games On Air, Online and On Demand,” Oct. 31, 2013, *available at* <http://newscenter.verizon.com/corporate/news-articles/2013/10-31-fios1-to-offer-high-school-sports-programming/> (reporting that FiOS TV subscribers in Northern New Jersey will have additional access to top high school sports programming); Verizon Press Release, “Verizon Invested More than \$627 Million on New Jersey’s Wireline Communications, IT Infrastructure in 2012,” Feb. 25, 2013, *available at* <http://newscenter.verizon.com/corporate/news-articles/2013/02-25-nj-infrastructure-investment/> (discussing “[c]ontinued deployment of the company’s award-winning, 100 percent fiber-optic FiOS TV and FiOS Internet services” and stating that “[a]t year’s end, FiOS services were available to more than 1.9 million New Jersey homes and businesses”); Verizon Press Release, “Verizon Marks Third Anniversary of Launching FiOS TV in New Jersey by Expanding the Service to Three More Municipalities,” Dec. 8, 2009, *available at* <http://newscenter2.verizon.com/press-releases/verizon/2009/verizon-marks-third.html> (noting “Verizon is now the largest TV provider in New Jersey, exceeding Comcast and Cablevision, in terms of total locations served”); see also Jamieson Declaration ¶ 3; Exhibit 4 Verizon Marketing Materials.

^{47/} See Exhibit 4 Verizon Marketing Materials. Storyboards of sample FiOS TV advertisements running in the New York City DMA and recently airing in the Bergen System-Wide Franchise Area are included in the Exhibit 4 Verizon Marketing Materials.

^{48/} Verizon Press Release, “Verizon Launches FiOS1 Channels on Long Island and in Northern New Jersey,” June 22, 2009, *available at* <http://newscenter2.verizon.com/press-releases/verizon/2009/verizon-launches-fios1.html>

^{49/} Verizon Press Release, “Verizon FiOS: Two Years and Growing at Lightning Speed in New Jersey,” Dec. 16, 2008, *available at* <http://newscenter2.verizon.com/press-releases/verizon/2008/verizon-fios-two-years-and.html>

FiOS.”^{50/} A Verizon executive further boasted that “we promised to bring our FiOS network to virtually every city in our service area in New Jersey, and . . . we’ve done that and more.”^{51/} Currently, Verizon is conducting a widespread campaign offering Triple Play subscriptions for \$79.99.^{52/} Furthermore, Verizon’s website invites customers to check the availability of FiOS television service in their respective communities and advertises Triple Play subscriber promotions such as a prepaid Visa gift card.^{53/}

C. Verizon Offers “Comparable” Multichannel Video Programming Throughout the Bergen System-Wide Franchise Area

In the *Cable Reform Order*, the Commission noted that, for purposes of the effective competition test, video programming must be “comparable” to that offered by the incumbent cable operator and will be deemed comparable if it “includes access to at least 12 channels of programming, at least some of which are television broadcasting signals.”^{54/} Verizon offers its subscribers up to 380 channels of programming and 110 channels in high definition, far exceeding the 12-channel threshold set forth in the Commission’s rules.^{55/} Verizon’s channel line-up replicates a number of programming services Cablevision offers to its subscribers,^{56/} and features numerous digital music and video-on-demand (“VOD”) offerings. Verizon’s services

^{50/} Verizon Press Release, “Verizon Marks Third Anniversary of Launching FiOS TV in New Jersey by Expanding the Service to Three More Municipalities,” Dec. 8, 2009, *available at* <http://newscenter2.verizon.com/press-releases/verizon/2009/verizon-marks-third.html>

^{51/} *Id.*

^{52/} *See* FiOS Triple Play, Verizon, <http://www.verizon.com/?lid=//global//residential>; *see also* Exhibit 4 Verizon Marketing Materials.

^{53/} *Id.*

^{54/} *Cable Reform Order* ¶ 16.

^{55/} *See* Verizon New Jersey Inc. Channel Line-ups, attached as Exhibit 3; Exhibit 4 Verizon Marketing Materials.

^{56/} *See* Cablevision Channel Line-ups, attached as Exhibit 2.

are therefore “comparable” to those offered by Cablevision under the definitions established by the Commission to satisfy the LEC Test.

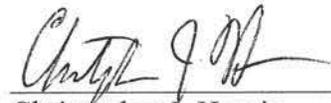
In sum, the Commission should confirm that the basic service tier and associated equipment and installation rates in the Bergen System-Wide Franchise Area are not subject to rate regulation due to the presence of effective competition under the LEC Test.

CONCLUSION

For the above reasons, Cablevision’s Petition for a Determination of Effective Competition should be granted.

Alexander Maltas
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(202) 524-4305

Respectfully submitted,



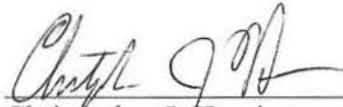
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June 13, 2014

Verification Pursuant to 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Petition for Determination of Effective Competition, and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and is not interposed for any improper purpose.

Respectfully submitted,



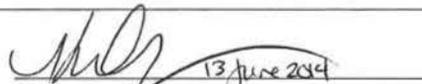
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June 13, 2014
Date

CERTIFICATE OF SERVICE

I, Kara D. Romagnino, hereby certify that on this 13 day of June 2014, a copy of the foregoing "Petition for Determination of Effective Competition" was sent via U.S. mail, unless otherwise noted, to the following individuals listed below:

<p>Marlene Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i></p>	<p>William Lake Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i></p>
<p>Steve Broecker Senior Deputy Policy Division Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i></p>	<p>Nancy Murphy Associate Bureau Chief, Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i></p>
<p>Steve Garner Media Bureau Federal Communications Commission 445 12th Street, SW Washington, DC 20554 <i>Via hand delivery</i></p>	<p>Kristi Izzo Secretary New Jersey Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350</p>
<p>Lawanda Gilbert Acting Director Office of Cable Television New Jersey Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350</p>	<p>John Jay Hoffman Acting Attorney General Department of Law & Public Safety Division of Law R.J. Hughes Justice Complex 25 Market Street P.O. Box 112 Trenton, NJ 08625-0112</p>
<p>Christopher White Division of Rate Counsel 140 East Front Street, 4th Floor P.O. Box 003 Trenton, NJ 08625</p>	<p>Geoffrey R. Gersten, Esq. Department of Law & Public Safety Division of Law 124 Halsey Street P.O. Box 45029 Newark, NJ 07101-45029</p>
<p>Mayor and Council Borough of Tenafly 100 Riveredge Road Tenafly, NJ 07670</p>	<p>Kimberly Holmes Division of Rate Counsel 140 East Front Street, 4th Floor P.O. Box 003 Trenton, NJ 08625</p>


 Kara D. Romagnino