

IN THE MATTER OF

CABLEVISION SYSTEMS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3804. Complaint, April 27, 1998--Decision, April 27, 1998

This consent order requires, among other things, Cablevision Systems Corporation to divest, to a Commission-approved buyer, Tele-Communication, Inc.'s cable systems assets in Paramus and Hillsdale, New Jersey.

Appearances

For the Commission: *Jill Frumin, Phillip Broyles and William Baer.*

For the respondent: *Yvonne Quinn and James Masella, Sullivan & Cromwell, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Cablevision Systems Corporation ("CVS"), a corporation subject to the jurisdiction of the Commission, proposes to acquire certain cable television systems owned by Tele-Communications, Inc. ("TCI"), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. CVS

PARAGRAPH 1. Respondent CVS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1 Media Crossways, Woodbury, New York.

PAR. 2. Respondent CVS is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation

whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. TCI

PAR. 3. TCI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 5619 DTC Parkway, Englewood, Colorado.

PAR. 4. TCI is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE PROPOSED ACQUISITION

PAR. 5. Respondent CVS entered into an agreement with TCI in which CVS will acquire certain cable television systems presently owned and operated directly or indirectly by TCI in New Jersey and New York serving approximately 820,000 subscribers, in exchange for CVS voting securities valued at approximately \$423,000,000 ("the acquisition").

IV. THE RELEVANT MARKETS

PAR. 6. The relevant line of commerce in which to analyze the effects of the acquisition is the distribution of multichannel video programming by cable television.

PAR. 7. The relevant geographic areas in which to analyze the effects of the acquisition are the Boroughs of Paramus and Hillsdale, in Bergen County, New Jersey.

PAR. 8. The relevant line of commerce is highly concentrated with only two cable television providers -- CVS and TCI -- in the relevant geographic areas.

PAR. 9. Respondent CVS is an actual and potential competitor of TCI in the relevant line of commerce in the relevant geographic areas.

PAR. 10. Timely and effective entry in the relevant line of commerce in the relevant geographic areas is unlikely.

V. EFFECTS OF THE ACQUISITION

PAR. 11. The effects of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in the following ways, among others:

- a. Actual competition between CVS and TCI to serve existing residential neighborhoods, hotels, and apartment complexes will be eliminated;
- b. Actual competition between CVS and TCI to serve new residential neighborhoods, hotels, and apartment developments will be eliminated; and
- c. Actual and potential competition between CVS and TCI to extend their cable systems throughout the relevant geographic areas will be eliminated.

VI. VIOLATIONS CHARGED

PAR. 12. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

PAR. 13. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Cablevision Systems Corporation ("Cablevision") of certain cable television systems owned and operated by Tele-Communications, Inc. ("TCI"), and it now appearing that Cablevision, hereinafter sometimes referred to as "respondent," has been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the

executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment received, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Cablevision Systems Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1 Media Crossways, Woodbury, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That:

As used in this order, the following definitions shall apply:

A. "*Agent*" or "*representative*" means a person that is acting in a fiduciary capacity on behalf of a principal with respect to the specific conduct or action under review or consideration.

B. "*Acquisition*" means the acquisition by Cablevision of certain cable television systems owned and operated directly or indirectly by TCI and serving various communities in New Jersey and New York, as set forth in paragraph five of the draft of complaint.

C. "*Respondent*" or "*Cablevision*" means Cablevision Systems Corporation and all of its directors, officers, employees, agents, and representatives, and also includes (1) all of Cablevision Systems Corporation's predecessors, successors, assigns, subsidiaries, and divisions and all of their respective directors, officers, employees, agents, representatives, successors, and assigns; and (2) any partnerships, joint ventures, and affiliates that Cablevision Systems Corporation Controls and the respective directors, officers, employees, successors and assigns of each.

D. "*TCI*" means Tele-Communications, Inc. and all of its directors, officers, employees, agents, and representatives, and also includes (1) all of Tele-Communications, Inc.'s, predecessors, successors, assigns, subsidiaries, and divisions and all of their respective directors, officers, employees, agents, representatives, successors, and assigns; and (2) any partnerships, joint ventures, and

affiliates that Tele-Communications, Inc., controls and the respective directors, officers, employees, successors and assigns of each.

E. "*Control*" has the meaning set forth in 16 C.F.R. 801.1 as that regulation read on November 1, 1997.

F. "*Commission*" means the Federal Trade Commission.

G. "*TCI Paramus and Hillsdale Systems Assets*" means the Cable Television System Assets that were owned directly or indirectly by TCI prior to this Acquisition and that are physically located in the relevant geographic area, and all other properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held or used in the provision of Cable Television Service by TCI solely in and for the relevant geographic area, including governmental permits, franchises, intangibles, equipment and real property; provided, however, that "TCI Paramus and Hillsdale Systems Assets" shall not include:

1. The TCI Optical Transfer Network (the "OTN") that distributes Cable Television Service to certain municipalities, townships and boroughs north and south of Paramus and which is located at the intersection of Bluebell Court and Pascack Road near the border of Paramus and Washington Township;

2. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs north of Paramus, and which is located on the border of Paramus and Washington Township along Blue Bell Court, Pascack Road and Linwood Avenue;

3. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs north of Paramus, and which is located on the border of Paramus and Ridgewood Township along Gateway Road and along that portion of Linwood Avenue between Gateway Road and Paramus Road;

4. The TCI fiber optic cable that distributes Cable Television Service to certain municipalities, townships and boroughs south of Paramus and which is located along Pascack Road, Fairview Road, Century Road, Spring Valley Road and Howland Avenue; and

5. All other TCI fiber optic cables located within the relevant geographic area that are not used to provide Cable Television Service in the relevant geographic area.

H. "*Cable Television Service*" means the delivery of video entertainment and informational programming via a Cable Television System.

I. "*Cable Television System*" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide video entertainment and informational programming to multiple subscribers within a community.

J. "*Cable Television System Assets*" means those physical assets including but not limited to coaxial cable and amplifiers, that make up the facility that is a Cable Television System.

K. "*Relevant geographic area*" means that area within the official municipal boundaries of each of the Boroughs of Paramus and Hillsdale in the County of Bergen in the State of New Jersey.

L. "*Competitiveness, viability and marketability*" of the TCI Paramus and Hillsdale Systems Assets means that, subject to paragraph II.D, Cablevision shall continue the operation of the TCI Paramus and Hillsdale Systems Assets in the ordinary course of business without material change or alteration that may adversely affect the value or goodwill of the TCI Paramus and Hillsdale Systems Assets, which do not include a headend and which are currently operated (including the selection of video programming for distribution over those assets and the marketing and pricing of Cable Television Service delivered over those assets) as a part of and from the single headend of the TCI Northern New Jersey Cable Television System.

M. "*Headend*" means the control center of a Cable Television System, where incoming signals are amplified, converted, and combined, together with signals originated in the Cable Television System, in a common transmission medium for distribution to subscribers.

N. "*Person*" means a corporation, partnership, joint venture or other business entity, whether incorporated or unincorporated.

O. "*News 12 N.J.*" means the regional video programming service known as News 12 New Jersey.

P. "*TCI Northern New Jersey Cable Television System*" means the Cable Television System owned directly or indirectly by TCI that serves fifty-three communities in northern New Jersey from a single headend located in Oakland, New Jersey, and that, at the time of the Acquisition, includes the TCI Paramus and Hillsdale Systems Assets.

Q. "*Signing date*" means the date the respondent executes the agreement containing consent order.

R. "*Divestiture period*" means the six (6) month period from the signing date.

S. "*Signal services*" means the transmission by Cablevision from one or more of its headends of the signals of one or more

programming services (including broadcast television signals) to the acquirer of the TCI Paramus and Hillsdale Systems Assets, subject to Cablevision's and such acquirer's having the necessary licenses or other authorizations to re-transmit such programming service(s).

T. "*Bergen Cable Television System*" means the Cable Television System owned by Cablevision prior to the Acquisition that serves the relevant geographic area and a number of other communities in and around Bergen County in New Jersey from a single headend.

II.

It is further ordered, That:

A. Cablevision shall divest, absolutely and in good faith, the TCI Paramus and Hillsdale Systems Assets within the divestiture period; provided, however, that, if respondent has entered into a binding contract with and has obtained the Commission's approval for an acquirer and filed all applications for other required governmental approvals within six (6) months from the signing date, the divestiture period shall be extended by (i) an additional period of time equivalent to the number of days that any governmental body (other than the Commission) takes to approve or disapprove an application necessary to be approved or disapproved prior to completion of the divestiture, and (ii) an additional five business days to enable the closing of the divestiture. Cablevision shall undertake its best efforts to facilitate any governmental approvals required to effect divestiture of the TCI Paramus and Hillsdale Systems Assets and their continued use in Cable Television Service in the relevant geographic area. Cablevision shall grant to the acquirer or acquirers of the TCI Paramus and Hillsdale Systems Assets an indefeasible right to use the two fibers (the "Fibers") that link the TCI Cable Television System Assets in Paramus and the TCI Cable Television System Assets in Hillsdale for so long as the acquirer or acquirers (and/or their successors in interest) use the Fibers to provide Cable Television Service, and/or voice, data or internet transmissions, in or to the TCI Paramus and Hillsdale Systems Assets. To ensure the availability of cable programming services to the TCI Paramus and Hillsdale Systems Assets after divestiture, for the period of this order, Cablevision shall waive and not obtain, solely with respect to delivery by the acquirer of the TCI Paramus and Hillsdale Systems Assets by means of a Cable Television System in the relevant geographic area, any exclusive rights to cable programming services, except for News 12 N.J.

B. For the purpose of facilitating the divestiture of the TCI Paramus and Hillsdale Systems Assets, Cablevision shall, within the earlier of the termination of the divestiture period or divestiture:

1. Extend the coaxial trunk cable currently located on Hillsdale Avenue in the Borough of Hillsdale in order to provide Cable Television Service to those homes that are located in the Borough of Hillsdale and to the west of the Garden State Parkway.

2. Create within one hundred (100) yards of the OTN a point of connection to the TCI Paramus System Assets such that the acquirer or acquirers of such assets can directly or indirectly connect a headend to such assets through that point of connection.

C. Cablevision shall divest the TCI Paramus and Hillsdale Systems Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the TCI Paramus and Hillsdale Systems Assets is to ensure the continued use of the TCI Paramus and Hillsdale Systems Assets as an ongoing, viable deliverer of Cable Television Service in the relevant geographic area, and to remedy the lessening of competition resulting from the proposed acquisition of the TCI Paramus and Hillsdale Systems Assets by Cablevision as alleged in the Commission's complaint.

D. Until divestiture of the TCI Paramus and Hillsdale Systems Assets, Cablevision shall take such actions as are necessary to maintain the competitiveness, viability and marketability, as such existed at the time of the Acquisition, of the TCI Paramus and Hillsdale Systems Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the TCI Paramus and Hillsdale Systems Assets except for ordinary wear and tear; provided, however, that nothing in this order or the annexed Agreement to Hold Separate shall be construed:

1. To prohibit Cablevision from altering the programming offered on, branding, or channel line-up of the Cable Television Service delivered over the TCI Paramus and Hillsdale Systems Assets to subscribers located in the relevant geographic area, if Cablevision alters in the same way the programming offered on, branding, or channel line-up of Cable Television Service delivered from the headend serving the TCI Northern New Jersey Cable Television System to other communities served from that headend;

2. Either to require or to prohibit Cablevision from constructing an independent headend, trunk cable(s), node(s), and/or any other

facilities for the purpose of permitting the distribution of Cable Television Service to subscribers located in the relevant geographic area;

3. To require Cablevision to divest any assets, properties, privileges, rights, interests, claims, real or personal, tangible or intangible, of TCI Northern New Jersey other than those that are the TCI Paramus and Hillsdale Systems Assets; or

4. To prohibit Cablevision from providing headend services, including signal services, to the acquirer or acquirers of the TCI Paramus and Hillsdale Systems Assets for up to twelve (12) months following divestiture.

E. Until divestiture of the TCI Paramus and Hillsdale Systems Assets, any promotion for the Cable Television Service delivered over Cablevision's Bergen Cable Television System that is offered by Cablevision to existing or potential subscribers located in the relevant geographic area shall be offered on comparable terms to other existing or potential subscribers to the Bergen Cable Television System.

III.

It is further ordered, That:

A. If Cablevision has not obtained the Commission's approval of an acquirer for the TCI Paramus and Hillsdale Systems Assets within the divestiture period:

1. The Commission may appoint a trustee to divest the TCI Paramus and Hillsdale Systems Assets. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Cablevision shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order; and

2. Cablevision shall construct a headend with the necessary capability to enable the TCI Paramus and Hillsdale Systems Assets to provide Cable Television Service comparable to that being provided over the TCI Paramus and Hillsdale Systems Assets in the

relevant geographic area on the signing date. Cablevision shall initiate the process of creating this headend at the time this paragraph III.A.2 becomes applicable, if ever, and shall complete the construction of this headend no later than twelve months from the date this order becomes final; provided, however, that paragraph III.A.2 shall not apply in the event that an acquirer that has entered into a binding agreement to acquire the TCI Paramus and Hillsdale Systems Assets notifies Cablevision and the Commission in writing that the acquirer would prefer to construct the headend itself after its acquisition of the TCI Paramus and Hillsdale Systems Assets.

B. If Cablevision has, prior to the end of the divestiture period, both obtained the Commission's approval of an acquirer for the TCI Paramus and Hillsdale Assets and filed all applications for other governmental approvals that must be obtained prior to divestiture, but one or more of such approvals are denied after the divestiture period, then the divestiture period shall be extended by a period of time equal to the time between the date of submission of the application for the approval(s) that were denied and the date that such approval(s) were denied. Notwithstanding this extension of the divestiture period, the requirements of paragraph III.A.2 shall apply.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A.1 of this order, Cablevision shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after appointment of the trustee, Cablevision shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

3. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the TCI Paramus and Hillsdale Systems Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.2 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the period for divestiture by the trustee may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the TCI Paramus and Hillsdale Systems Assets or to any other relevant information as the trustee may request. Cablevision shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Cablevision shall not take any action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Cablevision shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to Cablevision's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Cablevision from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Cablevision, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Cablevision, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from

the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Cablevision, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the TCI Paramus and Hillsdale Systems Assets.

8. Cablevision shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A.1 of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the TCI Paramus and Hillsdale Systems Assets.

12. The trustee shall report in writing to Cablevision and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That:

Cablevision shall comply with all terms of the Hold Separate Agreement, attached to this order and made a part hereof as Appendix I. The Hold Separate Agreement shall continue in effect until such time as the TCI Paramus and Hillsdale Systems Assets shall have been divested as required by this order.

V.

It is further ordered, That:

A. For a period of ten (10) years from the date this order becomes final, Cablevision shall not, without providing advance written

notification to the Commission, directly or indirectly through subsidiaries, partnerships or otherwise:

1. Acquire any stock, share capital, equity, or other ownership interest (an "Interest") in any concern, corporate or non-corporate, that is engaged at the time of such acquisition, or that has been engaged within the two (2) years preceding such acquisition, in providing Cable Television Service within the relevant geographic area; or

2. Acquire any assets used for or previously used for (and still suitable for use for) providing Cable Television Service within the relevant geographic area; provided, however, that this paragraph V shall not apply to the acquisition of products or services in the ordinary course of business; and provided, further, that this paragraph V shall not apply to:

(i) The acquisition by Cablevision of any Interest in a person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2 that results in Cablevision's owning no more than 5% of the total Interests in that person and that does not give Cablevision Control of that person;

(ii) The acquisition by Cablevision of any Interest in a person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2 if (a) the value of such business or assets represents no more than 10% of the total value of such person, (b) in connection with such acquisition such person agrees with Cablevision to divest such business or assets prior to the consummation of such acquisition, and (c) such business or assets are, in fact, so disposed of within such period;

(iii) The acquisition by any person of the business described in subparagraph V.A.1 or of any assets described in subparagraph V.A.2 if (a) Cablevision owned an Interest in that person prior to such person's acquisition of such business or assets, (b) the value of such business or assets represents no more than 5% of the total value of such person following its acquisition, and (c) Cablevision owns no more than 33 $\frac{1}{3}$ % of the total Interests in such person; or

(iv) The formation and operation, with any person that is engaged in the business described in subparagraph V.A.1 or that owns any assets described in subparagraph V.A.2, of any joint venture, enterprise or partnership concerning any telecommunication service (including, but not limited to video, data or voice) and ancillary services related thereto that does not involve the TCI Paramus and Hillsdale Systems Assets.

