

# MINTZ LEVIN

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May 19, 2009

Daniel Adams  
Southampton Town Attorney  
116 Hampton Road  
Southampton, NY 11968

MAY 22 2009

Dear Attorney Adams:

Enclosed is a copy of a Petition for Determination of Effective Competition filed today by Cablevision at the Federal Communications Commission ("FCC"). Cablevision is seeking a declaration that the rates it charges in Southampton for the entry-level Basic Service Tier and for equipment (such as converters and remotes) and installation are no longer subject to rate regulation due to the presence of "effective competition."

**You are receiving a copy of Cablevision's petition as required under FCC rules. You have no obligation to take any particular action with respect to it.** Cablevision has filed several such petitions covering New York municipalities. To date, no municipality has filed comments on Cablevision's petitions, which have begun to be granted by the FCC.

Under FCC rules, Cablevision is subject to effective competition (and therefore entitled to rate deregulation) if a municipality is 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 the number of households subscribing to multichannel video programming, other than the largest multichannel video programming distributor, exceeds 15 percent of the households in that municipality. DIRECTV and the Dish Network currently offer service to more than 15 percent of the households in Southampton.

The enclosed filing only affects the rates for the entry-level Basic service tier and for installation and customer equipment such as converters and remotes. All other rates charged by Cablevision (e.g., for its Family tier, digital tier, premium channel, and video-on-demand offerings) already are fully deregulated.

The process for these petitions is as follows. The FCC will place the enclosed petition on public notice ten days to four weeks after it has been filed. Once the petition is placed on public notice at the FCC, interested parties have 20 days from the date of the public notice to file any comments on the petition.

MAY 22 2009

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

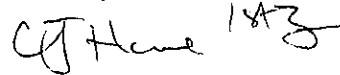
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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Page 2

If you have any questions about the petition, please do not hesitate to contact the undersigned at 202-434-7300.

Sincerely,

A handwritten signature in black ink, appearing to read "CJ Harvie" followed by a stylized flourish.

Christopher J. Harvie  
Stefanie A. Zalewski  
*Counsel for Cablevision*

cc: Joan Gilroy, Cablevision (via email)

Enclosure

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

Petition of Cablevision Systems East Hampton Corp.	)	
For a Determination of Effective Competition in	)	CSR No. _____
	)	
Town of E. Hampton	)	CUID NY0149
Village of E. Hampton	)	CUID NY0150
Town of Southold	)	CUID NY0188
Town of Southampton	)	CUID NY0190
Village of Southampton	)	CUID NY0192
Village of Westhampton Beach	)	CUID NY0197
Village of Quogue	)	CUID NY0183
Village of Sagaponack	)	CUID NY1819
	)	

To: Chief, Media Bureau

**CABLEVISION SYSTEMS CORPORATION**  
**PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION**

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May 19, 2009

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	)	

To: Chief, Media Bureau

**PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION**

Cablevision Systems East Hampton Corp.<sup>1/</sup> ("Cablevision") hereby submit 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"), to request that the Commission determine that Cablevision faces effective competition in the above-captioned franchise areas in New York.

**INTRODUCTION AND SUMMARY**

Under the standards set forth in the Cable Act, a cable system is subject to effective competition if the franchise area is "served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of

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<sup>1/</sup> Cablevision Systems East Hampton Corp., CSC Acquisition-NY Inc. and CSC Holdings, Inc. are all listed on the Media Bureau's list as franchisees for the above-captioned communities. However, all of these entities have the same PSID number of 003782. Thus, all three entities are filing under one number.

the households in the franchise area,” and “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” (“Competing Provider Test”).<sup>2/</sup>

As set forth below, DirecTV and EchoStar’s Dish Network offer comparable service throughout the Cablevision New York franchise areas of Town of East Hampton, Village of East Hampton, Town of Southold, Town of Southampton, Village of Southampton, Village of Westhampton Beach, Village of Quogue, and Village of Sagaponack (collectively, “Competing Test Provider Communities”).<sup>3/</sup> Satellite penetration data submitted with this Petition demonstrate that over fifteen percent (15%) of the households in the Competing Test Provider Communities subscribe to a multichannel video programming distributor (“MVPD”) other than Cablevision. Thus, the Competing Provider Test is met in the Competing Test Provider Communities.

Accordingly, the Commission should find that Cablevision meets the Act’s standard for effective competition in the Competing Test Provider Communities and that those franchise areas are no longer subject to rate regulation.<sup>4/</sup>

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

<sup>3/</sup> The New York Public Service Commission conducts rate regulation over the following franchise areas: Town of East Hampton, Village of East Hampton, Town of Southampton, Village of Southampton, Village of West Hampton Beach, Village of Quogue, and Village of Sagaponack. The local franchising authority in the Town of Southold regulates the rates in the Town of Southold.

<sup>4/</sup> 47 U.S.C. § 543(a)(2). The Commission recently found that Cablevision is subject to effective competition under the LEC Test and/or the Competing Provider Test in 102 communities throughout the State of New Jersey. Cablevision predicates this petition on evidence that is similar in all material respects to the evidence it presented to the Commission for those 102 communities. See *Subsidiaries of Cablevision Systems Corporation, Petitions for Determination of Effective Competition in 101 Communities in New Jersey*, 23 FCC Rcd 14141, ¶ 5 (2008) (“2008 Cablevision Subsidiaries Order”).

**I. CABLEVISION SATISFIES THE COMPETING PROVIDER TEST FOR EFFECTIVE COMPETITION IN THE COMPETING TEST PROVIDER COMMUNITIES**

**A. Competing Providers Offer Comparable Programming to over Fifty Percent of the Households in the Competing Test Provider Communities**

Competing providers, none of which are affiliated with Cablevision, are available and offer comparable programming to more than fifty percent (50%) of the households in the Competing Test Provider Communities. DirecTV and Echostar's DISH Network offer service in Competing Test Provider Communities.

The Commission previously has found that "DBS service is presumed to be technically available due to its nationwide satellite footprint,"<sup>51</sup> and "presumed to be actually available if households in the franchise area are made reasonably aware that the service is available" and reception equipment and subscription service is similarly reasonably available.<sup>61</sup> Under the Commission's rules and procedures for effective competition proceedings, DirecTV and Dish Network are presumptively available to cable subscribers in any franchise area.<sup>71</sup> The

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<sup>51</sup> See, e.g., *Time Warner Entertainment - Advance/Newhouse Partnership d/b/a Time Warner Cable Petition for Determination of Effective Competition in Nineteen California Franchise Areas*, 20 FCC Rcd 15709, ¶ 3 (2005); *Jones Intercable, Inc., Petition for Determination of Effective Competition*, 15 FCC Rcd 7257, ¶ 4 (2000) ("*Jones Intercable*").

<sup>61</sup> See, e.g., *Brighthouse Networks, Petition for Determination of Effective Competition in Six Communities in California*, 23 FCC Rcd 16992, ¶ 5 (2008); *2008 Cablevision Subsidiaries Order* ¶ 5; *Liberty Cablevision of Puerto Rico, Ltd. Petition for Determination of Effective Competition in Seven Local Franchise Areas in the Commonwealth of Puerto Rico*, 21 FCC Rcd 11995, ¶ 5 (2006); *Jones Intercable* ¶ 4; see also *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, 8 FCC Rcd 5631, ¶ 32 (1993) ("*Cable Order*").

<sup>71</sup> *Mountain Cable Company d/b/a Adelphia Cable Communications, et al.*, 14 FCC Rcd 13994, ¶ 15 (1999) ("*Mountain Cable*") (DBS providers that provide nationwide service are presumed to satisfy the 50 percent threshold); *Cable Order* ¶ 32; *Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates*, 6 FCC Rcd 4545, 4554 n.52 (1991) (presuming DBS service to be available nationwide when any one DBS licensee begins operations).

Competing Test Provider Communities are within the satellite footprint of DirecTV and Dish Network. Cablevision is not aware of any local regulations prohibiting reception by home satellite dishes or placement of home satellite dishes on local property to receive satellite services in those communities.

Households may be made “aware” of the availability of competing services and equipment “through any sort of local, regional, or national media, provided that such media reach the community in question.”<sup>8/</sup> The Commission’s rules further provide that there must be no regulatory, technical, or other impediments to households taking the competitors’ programming service.<sup>9/</sup> Residents of the Competing Test Provider Communities are aware of the availability of competing service from DBS providers via television and radio advertising spots that run in the area,<sup>10/</sup> as well as through print advertisements in national publications, and service, marketing and promotional materials available to any resident with an Internet connection.<sup>11/</sup> DirecTV’s website advertises for new customers “over 150 channels for just

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<sup>8/</sup> Cable Order ¶ 32; see also *Mediacom Southeast, LLC Four Petitions for Determination of Effective Competition in Twenty-One Local Franchise Areas*, 21 FCC Rcd 3506, ¶ 3 (2006) (“*Mediacom Southeast*”) (accepting evidence of national advertising for DBS service).

<sup>9/</sup> 47 C.F.R. § 76.905(e).

<sup>10/</sup> Exhibit 1, Declaration of Paul Jamieson (“Jamieson Declaration”); see also Exhibit 2.

<sup>11/</sup> Exhibit 2; see also *Dish Network Taps Comedian for Ads*, ROCKY MOUNTAIN NEWS, Feb. 2, 2008 (reporting that the Dish Network was launching a “multimillion dollar advertising campaign” featuring a comedian impersonating celebrities); *Sharing the Wealth; DirecTV Adds 275k Subscribers*, MULTICHANNEL NEWS, May 12, 2008 (reporting that DirecTV gained 275,000 subscribers in the first quarter of 2008); *AT&T, DirecTV Ink Satellite TV Service Deal*, FINANCIAL WIRE, Sept. 28, 2008 (reporting on AT&T’s agreement to market and sell DirecTV as a co-branded satellite television service after January 2009); *Satellite TV Operator DISH Freezes Pricing to 2009*, REUTERS, Jan. 7, 2008 (reporting that Echostar will freeze prices for its most popular packages for current customers and that it is offering “three months free programming to new customers and will waive activation fees”); Mike Farrell, *Cable’s Triple Play Keeps Heat on DBS*, MULTICHANNEL NEWS, April 30, 2007 (noting DirecTV’s efforts to rollout 100 HD channels by the end of the year in an effort to retain customers); John Dempsey, *MLB Pitches DirecTV Deal*, FORBES.COM, Mar. 9, 2007 (reporting on DirecTV’s deal with Major League



\$29.99” per month for 12 months, and free Showtime for three months.<sup>12/</sup> The Dish Network’s website advertises for new customers packages “as low as \$9.99 per month for six months” for “100 channels plus 50 HD channels plus a free HD DVR upgrade.”<sup>13/</sup> Moreover, DirecTV and the Dish Network have promoted the unique features they offer for special sporting and political events and multicultural programming.<sup>14/</sup>

Thus, “[g]iven the saturation of DBS advertising on all facets of today’s media,” it would be difficult to argue that residents of the Competing Test Provider Communities are not reasonably aware of the availability of DBS services.<sup>15/</sup> The Commission’s most recent data indicate that as of June 2006, 27.97 million U.S. households subscribed to DBS services and that DBS subscribers represent 29.2 percent of all MVPD subscribers nationwide.<sup>16/</sup> The number represented a 7% increase in DBS subscribership from the previous year.<sup>17/</sup> According to the most recent *Video Competition Report*, DirecTV and EchoStar ranked as the second and third

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Baseball for seven years and its “marketing campaign aimed at cable customers who are so beside themselves at losing Extra Innings that they’ll cancel cable and shell out for DirecTV’s satellite dish”).

<sup>12/</sup> <http://www.directv.com/DTVAPP/index.jsp> (last viewed May 12, 2009).

<sup>13/</sup> <http://www.dishnetwork.com/> (last viewed May 12, 2009).

<sup>14/</sup> See John Kell, *Dish Network, Time Warner Cable Reach Deals with Univision*, WALL STREET JOURNAL, April 1, 2009 (reporting on Dish Network’s deal to provide Univision’s Spanish-language programming); *NCC Partners with DIRECTV to Integrate Regional Sports Offerings and Sales Efforts*, ENTERTAINMENT BUSINESS NEWSWEEKLY, Sept. 7, 2008 (reporting on DirecTV’s cable advertising efforts in major markets to promote its regional sports programming offerings); *DirecTV Customers Count on Mix Channel For Election Night Coverage*, BUSINESS WIRE, Oct. 21, 2008 (reporting on DirecTV’s promotions of an interactive Election Channel).

<sup>15/</sup> *Charter Communications Petitions for Determination of Effective Competition in Mount Vernon, Okawville, Salem and Richmond, Illinois*, 21 FCC Rcd 3400, ¶ 6 (2006).

<sup>16/</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, FCC 07-206, ¶ 75 (rel. Jan. 16, 2009).

<sup>17/</sup> *Id.*

largest MVPDs respectively in the nation.<sup>18/</sup> Thus, residents of the Competing Test Provider Communities “may be deemed reasonably aware of the availability of DBS services.”<sup>19/</sup>

The programming offered by DirecTV and Dish Network is comparable to that offered by Cablevision in the Competing Test Provider Communities. The Commission has defined programming to be “comparable” when it offers “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.”<sup>20/</sup> Cablevision’s systems serving the Competing Test Provider Communities offer more than 100 channels of video programming,<sup>21/</sup> while DirecTV and Dish Network both offer well over 100 channels, including substantial non-broadcast service channel offerings.<sup>22/</sup> The Commission has “consistently found that the programming of both DBS providers satisfies the programming comparability component of the competing provider effective competition test.”<sup>23/</sup>

**B. Competing MVPDs Serve More than Fifteen Percent of the Households in the Competing Test Provider Communities**

A cable operator is subject to effective competition if more than fifteen percent (15%) of the households in its franchise area subscribe to programming services offered by alternative

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<sup>18/</sup> *Id.* ¶ 76.

<sup>19/</sup> *Mediacom Illinois LLC, Mediacom California LLC; Petitions for Determination of Effective Competition in Ten Local Franchise Areas in Illinois and in Ridgecrest, California*, 22 FCC Rcd 13059, ¶ 3 (2007); *WaveDivision VI, LLC, Mediacom California LLC, Mediacom Illinois LLC; Petitions for Determination of Effective Competition in Various California and Illinois Communities*, 22 FCC Rcd 13171, ¶ 3 (2007).

<sup>20/</sup> 47 C.F.R. § 76.905(g); *see also Charter Communications Petition for Determination of Effective Competition in Various Nevada Communities*, 21 FCC Rcd 11268, ¶ 3 (2006) (“*Charter Nevada*”).

<sup>21/</sup> Exhibit 3.

<sup>22/</sup> Exhibit 4.

MVPDs.<sup>24/</sup> The subscribers of all unaffiliated MVPDs, other than the largest (the cable operator) may be aggregated to satisfy this fifteen percent (15%) threshold.<sup>25/</sup> Effective competition, therefore, is calculated by adding the total of all subscribers to all MVPDs other than Cablevision.<sup>26/</sup> As noted above, in the Competing Test Provider Communities, these MVPDs include DirecTV and EchoStar.

Cablevision is the largest MVPD in the Competing Test Provider Communities.<sup>27/</sup> The Table below shows the household data for the Competing Test Provider Communities, which is based upon the most recent Census information.<sup>28/</sup> DBS subscribership data compiled by the Satellite Broadcasting and Communications Association ("SBCA") and Media Business Corp. ("MBC") for the Competing Test Provider Communities is also listed in the following Table.<sup>29/</sup>

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<sup>23/</sup> *The Helicon Group, L.P. d/b/a Charter Communications*, 17 FCC Rcd 16632, n.8 (2002) ("Helicon Group"); see also *Mediacom Wisconsin LLC Two Petitions for Determination of Effective Competition in Seven Local Franchise Areas*, 21 FCC Rcd 3368, ¶ 3 (2006).

<sup>24/</sup> 47 U.S.C. § 543(l)(1)(B)(ii); 47 C.F.R. § 76.905(b)(2).

<sup>25/</sup> *Time Warner Entertainment Co., L.P. et al. v. FCC*, 56 F.3d 151, 189 (D.C. Cir. 1995); *Mountain Cable* ¶ 14.

<sup>26/</sup> See, e.g., *Mediacom Minnesota LLC Petition for Determination of Effective Competition in Various Minnesota Franchise Areas*, 21 FCC Rcd 11742, ¶ 9 (2006).

<sup>27/</sup> Exhibit 1, Jamieson Declaration.

<sup>28/</sup> A copy of the relevant Census 2000 data is attached hereto as Exhibit 5. The Commission has stated that for purposes of calculating effective competition, it will accept Census data as reliable, as long as cable operators use the most recently available data. See, e.g., *Marcus Cable Associates d/b/a Charter Communications, Petitions for Determination of Effective Competition*, 16 FCC Rcd 14435, ¶ 3 n.8 (2001); *MCC Iowa, LLC & Mediacom Iowa, LLC Petition for Determination of Effective Competition in Various Local Franchise Areas*, 21 FCC Rcd 3457, ¶ 4 (2006).

<sup>29/</sup> Data on DTH subscribership in the Competing Test Provider Communities is at Exhibit 6. SBCA and MBC have taken over tracking and reporting DTH satellite subscriber counts from SkyTrends, and the Commission routinely has accepted data from these entities. See, e.g., *Mediacom Southeast* ¶ 4; *Texas Cable Partners, L.P., Petition for Determination of Effective Competition*, 16 FCC Rcd 4718, ¶ 8 (2001); see also *Texas Cable Partners, L.P., Petition for Determination of Effective Competition in Certain Communities in Texas*, 16 FCC Rcd 4886, ¶¶ 3-6 (2001).

Franchise Area	CUID #	Census 2000 Households	DTH Subscribers	DTH Penetration
<b>Riverhead System</b>				
Quogue	NY0183	453	135	29.80%
Southampton Village	NY0192	1651	342	20.71%
Southampton Town	NY0190	17562	3571	20.33%
Sagaponack	NY1819	249	72	28.92%
Southold	NY0188	7685	1801	23.44%
Westhampton Beach	NY0197	805	154	19.13%
East Hampton Village	NY0150	635	208	32.76%
East Hampton Town	NY0149	7035	1571	22.33%

The DBS subscribership data is current as of November 30, 2008,<sup>30/</sup> and the zip codes used by SBCA to compile the data are set forth in Exhibit 7.

The data demonstrates that Cablevision faces effective competition in the Competing Test Provider Communities because competing providers serve more than fifteen percent (15%) of all households in the Competing Test Provider Communities.<sup>31/</sup> Accordingly, pursuant to the

<sup>30/</sup> Exhibit 6.

<sup>31/</sup> Cablevision utilized 9-digit DTH subscriber data obtained from SBCA to compute the franchise area competing provider penetration data shown in the Table. Initially, Cablevision provided MBC with a list of the franchise areas covered by the instant Petition, and MBC mapped all 9-digit ZIP codes to each franchise area, finding all cases in which a ZIP code boundary intersects a franchise boundary. This resulted in a list of ZIP codes that are either wholly or partially within a franchise area. Cablevision then provided this list of zip codes to SBCA, which then furnished DTH subscriber counts for each 9-digit zip code. DTH subscriber

Commission's rules, the basic service tier and associated equipment and installation rates should be deregulated in the following New York franchise areas: Town of East Hampton, Village of East Hampton, Town of Southold, Town of Southampton, Village of Southampton, Village of Westhampton Beach, Village of Quogue, and Village of Sagaponack because Cablevision has demonstrated the presence of effective competition under the Competing Provider Test.

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counts for 9-digit zip codes that cover multiple franchise areas were allocated based upon a block group household analysis methodology utilized in previous effective competition filings approved by the Commission. *See* MBC Methodological Explanation, Exhibit 6; *see also* *MCC Iowa, LLC Petition for Determination of Effective Competition in Carroll, IA*, 20 FCC Rcd 20476, ¶¶ 4, 7 (2005) (stating that the "Commission repeatedly has accepted DBS subscriber reports provided by the SBCA and the Zip Code+4 methodology when determining the number of subscribers to DBS providers within franchise areas on a franchise-specific Zip Code+4 basis in satisfaction of Section 76.907(c) of the Commission's rules. We find this method of determining DBS subscribers within a franchise area to be reasonable and sufficiently reliable for purposes of determining the presence of effective competition."); *see also* *Comcast Cable Communications, LLC on Behalf of its Subsidiaries and Affiliates, Petition for Determination of Effective Competition in Salisbury, Massachusetts (CUID 0162)*, 23 FCC Rcd 17325, ¶ 6 n.15 (2008) (noting that the "zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information."); *Charter Communications, on Behalf of its Subsidiaries and Affiliates, Petition for Determination of Effective Competition in St. James Parish, LA*, 23 FCC Rcd 11407, ¶ 6 n.16 (2008).

## CONCLUSION

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

Respectfully submitted,



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Attorneys for Cablevision Systems Corporation

May 19, 2009

## **Exhibits**

- Exhibit 1 - Declaration of Paul Jamieson, Cablevision Systems Corporation
- Exhibit 2 - Television and Print Advertisements, and Service Marketing and Promotional Materials from DBS Providers
- Exhibit 3 - Cablevision Channel Line-ups
- Exhibit 4 - DBS Channel Line-ups
- Exhibit 5 - 2000 Census Data
- Exhibit 6 - DBS Subscribership Data and MBC Methodology
- Exhibit 7 - Zip Codes Used for DBS Penetration Data

## CERTIFICATE OF SERVICE

I, Stefanie A. Zalewski, hereby certify that on this 19<sup>th</sup> day of May 2009, a copy of the foregoing "Petition for Determination of Effective Competition" was served to the following:

Marlene H. Dortch* Secretary Federal Communications Commission 445 12 <sup>th</sup> Street, SW Washington, DC 20554	Monica Desai, Chief* Media Bureau Federal Communications Commission 445 12 <sup>th</sup> Street, SW Washington, DC 20554
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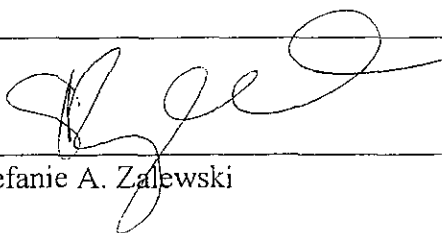
\* Via Hand Delivery and Email (without attachments)

\*\*Via U.S. Mail and Email (without attachments)

+Via U.S. Mail



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Mark Epley+ Village of Southampton Mayor 23 Main Street Southampton, NY 11968	Richard DePetris+ Southampton Village Attorney 23 Main Street Southampton, NY 11968
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Stefanie A. Zalewski

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