

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 30, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Thomas J. Dunleavy
Maureen O. Helmer

CASE 97-V-1372 - Application of Cablevision Systems Suffolk Corporation for approval of a renewal of its cable television franchise for the Village of Lindenhurst (Suffolk County) Initial Case No. 10321.

ORDER APPROVING RENEWAL

(Issued and Effective December 11, 1997)

BY THE COMMISSION:

The above-captioned application was submitted by Cablevision Systems Suffolk Corporation d/b/a Cablevision on August 1, 1997. A copy of the same was served on the Village and all local notice requirements have been met. No comments or objections have been received.

This application is governed by Section 222 of the Public Service Law which requires our approval unless we find specific violations of law, the regulations of the Commission, or the public interest. Section 222(4) of the statute provides that we may approve the renewal contingent upon compliance with standards or conditions consistent with the public interest. Having reviewed this application in the context of all applicable statutory and regulatory standards, we have determined to approve the renewal subject to conditions as hereinafter set forth.

The application seeks our approval of a franchise renewal agreement authorized by resolution of the Village Board dated June 17, 1997 following a public hearing held on June 3, 1997. The term of the renewal is ten years measured from the date of Commission approval. Since there was no delay in the

submission of the application, we shall approve the renewal for a period of ten years from the date of this order. Various matters require comment.

First, we find that the renewal agreement substantially complies with Section 595.1 of our rules but that the provisions relative to Section 595.1(o) concerning franchise fees should be noted. Section 17.1 of the agreement provides for the payment by Cablevision of a franchise fee based on a percentage of "gross receipts." The term "gross receipts" is defined to exclude "amounts collected from subscribers. . .for franchise fees" This exclusion is inconsistent with Section 595.1(o) but at the time the agreement was executed, it was consistent with a ruling by the FCC on franchise fees. On July 31, 1997, the Court of Appeals for the Fifth Circuit in City of Dallas, Texas v. Federal Communications Commission, No. 96-60427, invalidated the FCC ruling. We do not here attempt finally to resolve this issue but, as in similar cases, we shall retain authority to take such further action as needed to ensure clarity and consistency in the definition of gross receipts.

Second, we note that the franchise agreement contains provisions pertaining to public, educational and governmental (PEG) access. It shall be a condition of this order that the parties comply with the minimum standards applicable to PEG access contained in Section 595.4 of our rules.

Finally, the renewal agreement contains provisions not required by Part 595 of the Commission's rules. Our approval of these provisions is granted to the extent that they pertain to the provision of cable service and are, and remain, consistent with Article 11, our regulations, policies and orders and applicable federal statutes and regulations. In the event of an ambiguity in any such provision, or among separate provisions of the agreement, the agreement shall be construed in a manner most favorable to the franchisor.

The Commission orders:

1. Pursuant to Section 222 of the Public Service Law and the rules and regulations of this Commission, the application

of Cablevision Systems Suffolk Corporation for a renewal of its cable television franchise for the Village of Lindenhurst (Suffolk County) is hereby approved, subject to the terms and conditions set forth herein. The term of the renewal shall extend for a period of ten years from the date of this order.

2. This Order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.

3. This proceeding is closed.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary