

## 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.

B. Notification required under this provision shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where, appropriate, granted by letter from the Commission's Bureau of Competition; provided, however, that prior notification shall not be required by this paragraph V for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

#### VI.

*It is further ordered, That:*

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Cablevision has fully complied with the provisions of paragraphs II, III, and IV of this order, Cablevision shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, and IV of this order. Cablevision shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, and IV of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Cablevision shall include in its compliance reports copies of all written communications to and from such parties, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require,

Cablevision shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

## VII.

*It is further ordered, That:*

Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Cablevision such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries of Cablevision or any other change in Cablevision that may affect compliance obligations arising out of the order.

## VIII.

*It is further ordered, That:*

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Cablevision, Cablevision shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Cablevision relating to any matters contained in this order; and

B. Upon five (5) days' notice to Cablevision and without restraint or interference from it, to interview officers, directors, or employees of Cablevision, who may have counsel present, relating to any matters contained in this order.

## APPENDIX I

## AGREEMENT TO HOLD SEPARATE

This Agreement To Hold Separate ("Agreement") is by and between Cablevision Systems Corporation ("Cablevision"), 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 at 1 Media Crossways, Woodbury, New York; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*

*Whereas*, Cablevision entered into an agreement with Telecommunications, Inc. ("TCI"), a Delaware corporation, whereby Cablevision will acquire certain Cable Television Systems owned and operated by TCI (hereinafter the "Acquisition"); and

*Whereas*, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

*Whereas*, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Agreement"), which would require the divestiture of the TCI Paramus and Hillsdale Systems Assets (as defined in the Consent Agreement), the Commission must place the Consent Agreement on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached, preserving the independent pricing and marketing of the Cable Television Service provided over the TCI Paramus and Hillsdale Systems Assets in the relevant geographic area during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

*Whereas*, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the assets described in paragraph II of the Consent Agreement; and

*Whereas*, the purpose of this Agreement and the Consent Agreement is to preserve the TCI Paramus and Hillsdale Systems Assets pending divestiture, and to remedy any anticompetitive effects of the Acquisition; and

*Whereas*, Cablevision's entering into this Agreement shall in no way be construed as an admission by Cablevision that the Acquisition is illegal or has any anticompetitive effects; and

*Whereas*, Cablevision understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

*Now, therefore*, upon the understanding that the Commission has not yet determined whether it will challenge the Acquisition, and in consideration of the Commission's agreement to accept the Consent

Agreement for public comment and grant early termination of the HSR waiting period, the parties agree as follows:

1. Cablevision agrees to execute and be bound by the attached Consent Agreement.

2. Cablevision agrees that it will comply with the provisions of paragraph 3 of this Agreement from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a-2.b:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Agreement has been completed.

3. Pending divestiture, Cablevision shall operate the TCI Paramus and Hillsdale Systems Assets on the following terms and conditions:

a. Cablevision will retain two (2) members of the management of TCI Northern New Jersey (the "management team"), who are fully familiar with the TCI Paramus and Hillsdale Systems Assets, to price and market the Cable Television Service delivered over the TCI Paramus and Hillsdale Systems Assets. The individuals on the management team shall price and market such Cable Television Service independently of the management of Cablevision's other businesses, including Cablevision's Paramus and Hillsdale Cable Television Systems. The individuals on the management team shall not be involved in any way in the operation or management of any other Cablevision Cable Television System. If any member of the management team is unable or unwilling to continue to serve on the management team (or becomes unable to do so during the term of this Agreement) that position will be filled by an individual not involved in any way in the operation or management of any other Cablevision Cable Television System.

b. The management team, in its capacity as such, shall report directly and exclusively to an individual to be designated by Cablevision (the "Cablevision Contact") who has no direct responsibilities for Cable Television System operations and who is competent to assure the continued operations of the TCI Paramus and Hillsdale Systems Assets in accordance with this Agreement.

c. Cablevision shall not exercise direction or control over, or influence directly or indirectly, the management team or any of its activities relating to the pricing and marketing of Cable Television Service delivered by the TCI Paramus and Hillsdale Systems Assets;

provided, however, that Cablevision may exercise such direction and control over the management team and the TCI Paramus and Hillsdale Systems Assets as is necessary to ensure compliance with this Agreement and with the Consent Agreement and with all applicable laws.

d. Pending divestiture and subject to paragraphs II.D and I.L of the Consent Agreement, Cablevision shall maintain the competitiveness, viability and marketability of the TCI Paramus and Hillsdale Systems Assets and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair their competitiveness, viability or marketability (as defined in the Consent Agreement).

e. Except for the Cablevision Contact and the management team, Cablevision shall not permit any other Cablevision employee, officer, or director to be involved in the pricing or marketing of Cable Television Service delivered by TCI Paramus and Hillsdale Systems Assets; provided, however, that Cablevision employees involved in engineering, construction, customer service, data processing, training, human resources, finance, legal services, tax, accounting, insurance, internal audit, payroll, programming, purchasing, real estate, risk management, telephony, compliance with FCC regulations, contract administration, and similar services may provide such services to the TCI Paramus and Hillsdale Systems Assets.

f. The management team shall serve at the cost and expense of Cablevision. Cablevision shall indemnify the management team against any losses or claims of any kind that might arise out of management team members' involvement under this Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team.

g. If any member of the management team ceases to act or fails to act diligently, a substitute member shall be appointed.

4. Should the Federal Trade Commission seek in any proceeding to compel Cablevision to divest any of the TCI Paramus or Hillsdale Systems Assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Agreement or this Agreement, or in any way relating to the Acquisition, as defined in the Consent Agreement, Cablevision shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition.

Cablevision also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires Cablevision to take, or prohibits Cablevision from taking, certain actions that otherwise may be required or prohibited by contract, Cablevision shall abide by the terms of this Agreement or the Consent Agreement and shall not assert as a defense such contractual requirements in any action brought by the Commission to enforce the terms of this Agreement or the Consent Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Cablevision made to its principal office, Cablevision shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Cablevision and in the presence of counsel to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Cablevision relating to compliance with this Agreement; and

b. Upon five (5) days' notice to Cablevision, and without restraint or interference from Cablevision, to interview officers or employees of Cablevision, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Complaint

125 F.T.C.

IN THE MATTER OF

CUC INTERNATIONAL INC., ET AL.

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-3805. Complaint, May 4, 1998--Decision, May 4, 1998*

This consent order requires, among other things, the New Jersey-based corporation to divest all of its Interval timeshare exchange business assets to Interval Acquisition Corporation, a new entrant into the timeshare exchange services market controlled by a venture capital firm, Willis Stein & Partners, L.P.

#### *Appearances*

For the Commission: *Jacqueline Mendel, Eric Elmore, Ann Malester and William Baer.*

For the respondents: *Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, New York, N.Y. and Michael L. Weiner, Skadden, Arps, Slate & Meagher, New York, N.Y.*

#### COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that CUC International Inc. has agreed to acquire HFS Incorporated, both corporations subject to the jurisdiction of the Commission, 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"), 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, stating its charges as follows:

#### I. RESPONDENTS

1. Respondent CUC International Inc. ("CUC") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated ("HFS") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6 Sylvan Way, Parsippany, New Jersey.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as

"commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## II. THE ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated May 27, 1997, CUC will acquire all of the voting shares of HFS for approximately \$8.7 billion ("the Acquisition").

## III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Acquisition is the sale of timeshare exchange services to timeshare developers and owners. A significant benefit of timeshare ownership is the right to exchange the use of that unit for another comparable unit at a different resort property (or at the same resort for a different time period). The ability of timeshare owners to trade timeshare ownerships for vacation through worldwide exchange networks is a major reason why consumers decide to purchase timeshare interests. In lieu of returning to the same resort every year for a vacation, the timeshare exchange program allows an owner the opportunity to stay at many different vacation destinations. The owner of a particular resort unit relies on the timeshare exchange company to provide the exchange properties and to process the exchange. Exchange companies label time periods according to whether they are high, mid, or low season. They also grade and rate each property to provide for an equal or fair exchange.

6. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition is the world.

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios. CUC and HFS are the only two competitors in the relevant market; thus the Acquisition would result in a monopoly in the relevant market.

8. Entry into the relevant market, which requires significant sunk costs, would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraphs nine and ten because of, among other things, the difficulty of establishing a worldwide network of timeshare resorts in order to provide the relevant services. The significant network externalities in this market result in high entry barriers: a new entrant cannot sign up members unless it already has a substantial membership and it cannot get a substantial membership if it cannot sign up new members. Thus, it is

extremely unlikely that a new entrant not already in the timeshare exchange business could enter successfully.

#### IV. EFFECTS OF THE ACQUISITION

9. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between CUC and HFS;

b. By increasing the likelihood that the firm created by the merger of CUC and HFS would unilaterally exercise market power;

c. By increasing the likelihood that timeshare resort developers and timeshare owners would be forced to pay higher affiliation and exchange fees; and

d. By increasing the likelihood that timeshare exchange service provided to developers and owners would be reduced.

10. All of the above increase the likelihood that the only firm in the relevant market would increase prices or reduce services in the near future and in the long term.

#### V. VIOLATIONS CHARGED

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

12. The Acquisition described in paragraph four, 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.

Commissioner Thompson not participating.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of HFS Incorporated by CUC International Inc., and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with

violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 respondents have 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 comments received, now in further conformity with the procedure described 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 CUC International Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6 Sylvan Way, Parsippany, New Jersey.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. "*CUC*" means CUC International Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by CUC International Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. CUC, after consummation of the Acquisition, includes HFS Incorporated.

B. "*HFS*" means HFS Incorporated, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by HFS Incorporated, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Respondents*" means CUC and HFS, individually and collectively.

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

E. "*Acquisition*" means the merger of HFS with and into CUC pursuant to the Agreement and Plan of Merger dated as of May 27, 1997.

F. "*Interval*" means (a) Interval Holdings, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 6262 Sunset Drive, Miami, Florida; (b) CUC Vacation Exchange, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 707 Summer Street, Stamford, Connecticut; and (c) all assets of and equity interests in all direct and indirect subsidiaries of Interval Holdings, Inc. or CUC Vacation Exchange, Inc., except for those subsidiaries listed in Appendix A to the order.

G. "*RCI*" means Resort Condominiums International, Inc., a wholly-owned subsidiary of HFS, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 3502 Woodview Trace, Indianapolis, Indiana, and all assets of and equity interests in all direct and indirect subsidiaries of Resort Condominiums International, Inc., including, but not limited to, Resort Computer Corporation.

H. "*Timeshare Exchange*" means the offering for exchange, trade, barter or other temporary use of the right to accommodations at a vacation development previously allocated to any individual, corporation, partnership or other business entity for a specified period of time each year, for a specified number of years (including for perpetuity)("such properties") in exchange for the temporary use of such properties at other times and/or locations.

I. "*Timeshare Exchange Business*" means the business of conducting Timeshare Exchanges including, without limitation, the provision of those goods and services associated with conducting such Timeshare Exchanges.

J. "*CUC Timeshare Exchange Business*" means:

1. Interval;
2. All books, records, and files relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
5. All rights under any trademarks used in the Timeshare Exchange Business as operated by CUC prior to the Acquisition, including, but not limited to, all rights under trademarks held by CUC Publishing, Inc.; and
6. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition.

K. "*HFS Timeshare Exchange Business*" means:

1. RCI;
2. All books, records and files relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition; and
5. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition.

L. "*IAC*" means Interval Acquisition Corp., a Delaware corporation, or an affiliate thereof, formed, and controlled, directly

or indirectly, by Willis Stein & Partners, L.P. for the purpose of acquiring the CUC Timeshare Exchange Business from CUC.

M. "*Stock Purchase Agreement*" means the stock purchase agreement entered into between CUC and IAC dated as of October 29, 1997.

N. "*Non-public member information*" means any information not in the public domain furnished by Interval to CUC prior to the effective date, or during the term, of a transition services agreement contemplated by paragraph V of this order for the purpose of securing services from CUC for Interval members. Non-public information shall not include (i) information which subsequently falls within the public domain through no violation of this order by CUC, or (ii) information which subsequently becomes known to CUC from a third party, which to the knowledge of CUC is not in breach of a confidential disclosure agreement with Interval.

O. "*RCC software*" means the computer software which has been designed and developed, or may be designed and developed, by RCI or its affiliates, in each case, for use by timeshare property developers in managing their respective timeshare properties, including, but not limited to, such software which has been offered under the names "RCC Premier" and "RCC Express."

## II.

*It is further ordered, That:*

A. (1) Respondents shall divest, absolutely and in good faith, the CUC Timeshare Exchange Business to IAC, pursuant to the Stock Purchase Agreement, no later than ten (10) days after the Acquisition.

(2) If respondents have not divested the CUC Timeshare Exchange Business as required by paragraph II.A(1) of the order, and if the Acquisition has occurred, respondents shall divest the HFS Timeshare Exchange Business within six (6) months after the date on which respondents signed the agreement containing consent order. Respondents shall divest the HFS Timeshare Exchange Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

(3) Provided, however, that if respondents have divested the CUC Timeshare Exchange Business to IAC pursuant to the Stock Purchase Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that IAC is not an acceptable acquirer, or the Stock Purchase Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with IAC and shall divest within one hundred twenty

