

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Applications of Altice N.V. and)
Cablevision Service Corporation) WC Docket 15-257
)
For Consent to Assign or Transfer)
Control of Licenses and Authorizations)

To: Chief, Wireline Bureau
Chief, International Bureau
Chief, Media Bureau
Chief, Wireless Telecommunications Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Zoom Telephonics, Inc. (“Zoom:”) respectfully replies to the June 13, 2016 *Opposition to Petition for Reconsideration* (“*Opposition*”) filed by Altice N.V. (“Altice”) and Cablevision Systems Corporation (“Cablevision”)¹.

The *Opposition* does not dispute that in its May 3, 2016 *Staff Decision*,² the Staff deferred consideration of Zoom’s arguments pertaining to Section 629 of the Telecommunications Act of 1996 and that it failed entirely to consider Zoom’s arguments with respect to Section 706 of the Telecommunications Act, Sections 201 and 202 of the Communications Act or the public interest standard. Rather, it simply parrots the Staff’s conclusion that it need not have addressed these issues because they are not transaction-specific.

Zoom also presented arguments that Altice’s and Cablevision’s cable modem certification practices violate Section 629 and 47 CFR §76.1201. Notably, the Applicants do not

¹ Altice and Cablevision are jointly referred to herein as “Applicants.”

² *Altice N.V. and Cablevision Systems Corporation*, DA 16-485 (released May 3, 2016) (“*Staff Decision*”).

mention these certification practices except to discuss their timing, and do not dispute the facts or discuss the merits of these allegations. Instead, they attempt to argue that Zoom could have been presented these questions at an earlier stage of this proceeding.

Zoom responds to each of these arguments below.

I. THE STAFF SHOULD HAVE CONSIDERED THE MERITS OF ZOOM'S ARGUMENTS.

The Applicants argue that issues Zoom raised with respect to Applicants' billing practices are not transaction-specific and that the Staff therefore properly declined to consider them. They reiterate the Staff's determination that these arguments are "best addressed in the Commission's ongoing navigation devices rulemaking proceeding."³ The Applicants then dismiss the issues Zoom raised, saying that that "Zoom's allegations involve precisely the sort of unrelated harms the Commission routinely has refused to consider in the transaction review context."⁴

The issues here are not transaction-specific. Unlike Altice's Suddenlink customers, many Cablevision customers currently do not enjoy the benefit of receiving bills that separately state a non-subsidized price for leasing a cable modem. This circumstance is unique to Altice, and unless the Commission rules on the legality of this practice, the result of approving the transaction is to allow violation of the law and Commission regulations as to those Cablevision customers and, potentially, all other customers now served by Altice.

By resting on the claim that the Staff need not consider Zoom's allegations at all, the Applicants do not come to grips with the central point in the Petition for Reconsideration, which is that the Commission (or, in this case, the Staff) cannot make the ultimate public interest

³ *Opposition* at p. 4 (citing *Staff Decision* at ¶37).

⁴ *Opposition* at p. 6.

determination required in considering any application without examining the legal issues.⁵

II. THE PETITION FOR RECONSIDERATION PROPERLY RAISED NEWLY-ARISING AND UNDISPUTED ISSUES RELATING TO ALTICE'S AND CABLEVISION'S CABLE MODEM CERTIFICATION PRACTICES.

Zoom's *Petition for Reconsideration* presented new facts showing that both Altice and Cablevision are not in full compliance with the Communications Act and the Commission's regulations. That Petition presented correspondence showing, *inter alia*, that Cablevision lists some obsolete modems as certified for attachment to its network on its website, that Cablevision has rebuffed Zoom's good-faith efforts to have its cable modems added to the list of modems certified for attachment, that Cablevision limits its customers' rights to attach their own modems by linking to one manufacturer's website to the exclusion of competitors, and that both Cablevision and Altice have rebuffed Zoom's good-faith efforts to have their cable modems certified for attachment.⁶

The Applicants do not attempt to, and cannot, dispute the accuracy of Zoom's presentation, much less argue that these practices are permissible. Instead, they argue that the facts Zoom presents "were in fact known to Zoom no later than April 11, 2016 – more than three weeks prior to the release of the Order.... At that point, Zoom had ample opportunity to make its concerns known through the *ex parte* process...."⁷

The Applicants are doubly incorrect. First, the last opportunity Zoom had to present known facts to the Commission was on December 7, 2015, the deadline that the Commission had established for submission of pleadings in this case. The *Public Notice* initiating these proceedings clearly stated that

⁵ See, e.g., *Petition for Reconsideration* at 9 (citing cases holding that "the Commission 'should not close its eyes to the public interest factors' raised by material in its files....")

⁶ *Petition for Reconsideration* at pp. 10-13.

⁷ *Opposition* at p. 3.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. *New issues may not be raised in responses or replies.* A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously.⁸

Second, as Zoom has explained, it was engaged in discussions with the Applicants which it thought could resolve the issues without the need to invoke the Commission's processes. On April 11, 2016, Zoom sent a letter to the Applicants which related its understanding that some of the problems it had identified, including statements on Cablevision's website were under review and asking for clarification and resolution of other questions.⁹ The Applicants did not answer the letter until April 28, 2016, at which time they expressly stated, for the first time, that they believed they are in compliance with Commission rules and that they would not discuss, much less change, their policies but also stated that Cablevision expected to implement[] modifications" to its website.¹⁰ Some time thereafter, Cablevision did make a minor change to the website that did not address the shortcomings Zoom had identified.

Thus, the facts upon which Zoom relies transpired after the last opportunity to submit pleadings in this case, and the Commission stated that it would not ordinarily consider new facts, even in *ex parte* presentations, absent good cause. And, as Zoom has demonstrated, it did not become clear that there was a need to present these matters to the Commission until at least April 28, 2016 and, as to the website, some short time thereafter. Since this was just a few days before the staff issued its decision, it would not have been possible to prepare and file anything with the Commission in time for it to have been considered.

⁸ *Applications Filed for the Transfer of Control of Cablevision Systems Corporation to Altice N.V.*, 30 FCCRcd 12373, 12377-78 (2015 (citation omitted)(emphasis supplied).

⁹ *Petition for Reconsideration*, Attachment D.

¹⁰ *Petition for Reconsideration*, Attachment E.

CONCLUSION

Wherefore, Zoom asks that the staff grant its Petition for Reconsideration and all such other relief as may be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Jay Schwartzman". The signature is fluid and cursive, with a large initial "A" and "S".

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June 20, 2016

CERTIFICATE OF SERVICE

I certify that June 20, 2016, copies of the foregoing *Reply to Opposition to Petition for Reconsideration* have been served by email and United States Mail to the following:

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