

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of )  
 )  
Applications of Altice N.V. and )  
Cablevision Service Corporation ) WC Docket No. 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

**PETITION FOR RECONSIDERATION**

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## SUMMARY

Zoom Telephonics, Inc. seeks reconsideration of the May 3, 2016 decision of the Chiefs of the Wireline, International, Media and Wireless Bureaus (“Bureaus” or “staff”) granting applications for transfer of control of authorizations from Cablevision Systems Corporation (“Cablevision”) to Altice N.V. (“Altice”). Zoom asks that the staff reconsider its decision to defer consideration of issues pertaining to Cablevision’s billing practices for cable modems. Based on recent developments that could not have been previously presented to the Commission, Zoom also asks that the staff reconsider its determination not to examine Cablevision’s cable modem certification practices,

The standard of review for these applications requires staff to determine whether the proposed transaction is consistent with the Communications Act and rules promulgated thereunder. Even if the transaction does not violate a statute or rule, the staff must then examine whether approval would be contrary to the public interest. Only then can the staff balance any potential harms against possible benefits of granting the applications.

The staff erred by failing to make the necessary determinations. It improperly deferred consideration of Zoom’s allegations under Section 629 of the Communications Act and rules promulgated thereunder. The staff failed even to mention, much less assess, Zoom’s arguments that the transaction was inconsistent with Sections 201 and 202 of the Communications Act, Section 706 of the Telecommunications Act of 1996 and, most importantly, the public interest standard. Without having undertaken the necessary statutory judgments, the staff’s ultimate balancing of benefits and harms was fatally flawed. In light of the fact that the decision to approve the transaction was a close call, this was not harmless error.

Based on recent developments that transpired long after it was possible to present them to

the Commission, Zoom also seeks reconsideration of the staff's failure to impose conditions to insure that Altice's cable modem certification practices are consistent with the requirements of Section 629, Section 76.1201 of the Commission's rules and the public interest standard.

Cablevision deters its customers from purchasing their own modems by posting misleading information on its website that leads them to believe that they should purchase one of three cable modem models that have been approved for use on Cablevision's network. However, at least two of these three cable modem models appear to be out of production, and none appears to be available from storefront retailers. Moreover, Cablevision's website refers customers to the website of one cable modem manufacturer in a manner that implies that this is the only way customers can purchase a cable modem that can be attached to Cablevision's network. These anti-competitive practices undermine customers' right to purchase and attach their own cable modem and impede the goal of creating a competitive retail market for cable modems and other navigation devices.

As a separate matter, Suddenlink, another cable operator owned by Altice, has demonstrated that it does not have a reasonable program for certifying cable modems and that its testing program takes far too long to be consistent with the Commission's rules and policies.

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**PETITION FOR RECONSIDERATION**

Zoom Telephonics, Inc. (“Zoom:”) respectfully seeks reconsideration of the May 3, 2016 decision of the Chiefs of the Wireline, International, Media and Wireless Bureaus (“Bureaus” or “staff”) granting applications for transfer of control of authorizations from Cablevision Systems Corporation (“Cablevision”) to Altice N.V. (“Altice”).<sup>1</sup> Zoom asks that the staff reconsider its decision to defer consideration of issues pertaining to Cablevision’s billing practices for cable modems. Based on recent developments that could not have been previously presented to the Commission, Zoom also asks that the staff reconsider its determination not to examine Cablevision’s cable modem certification practices.

As explained below, this petition for reconsideration is based in part upon events that have occurred and circumstances that have changed since the last opportunity available to Zoom to present these matters to the Commission. Accordingly, these facts may properly be considered pursuant to Section 1.106(d)(1) of the Commission’s rules. In addition, the public

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<sup>1</sup>*Altice N.V. and Cablevision Systems Corporation*, DA 16-485 (released May 3, 2016) (“*Staff Decision*”).

interest requires that these facts be considered; thus, they may also be considered pursuant to Section 1.106(d)(2) of the Commission's rules.

Zoom seeks reconsideration of the staff's unconditional approval of the transaction without undertaking an assessment of whether Cablevision's billing practices violate Sections 201, 202 and 629 of the Communications Act, Section 706 of the Telecommunications Act of 1996 and, most significantly, the public interest standard of the Communications Act. Without making these determinations, the staff lacked the information necessary to conduct a proper balancing of the harms and putative benefits of the transaction.

Based on recent developments that happened subsequent to the last opportunity to submit pleadings in this matter, Zoom also seeks reconsideration of the staff's failure to impose conditions to insure that Altice fully informs its customers as to their right to purchase and attach their own non-harmful cable modems and that any certification program Altice establishes for customer-owned cable modems on its systems be open, reasonable and non-discriminatory. Even with a recent modification, Cablevision's website misleads customers as to their right to purchase and attach their own cable modems and implies that they should prefer particular cable modem models approved for use on its network, even though Cablevision no longer has an approval process. Moreover, Altice employs unreasonable procedures for certifying cable modems for attachment to its Suddenlink network. Current Cablevision and Suddenlink practices are not consonant with Commission rules and policies and the public interest standard.

**I. THE STAFF IMPROPERLY APPROVED THE APPLICATIONS WITHOUT CONSIDERING REQUIRING CHANGES IN CABLEVISION'S BILLING PRACTICES.**

It is not in dispute that at least some Cablevision customers currently receive bills that bundle the cost of cable modem leases with Internet service offerings and thus do not separately

state an unsubsidized price for the lease of cable modems.<sup>2</sup> Altice has made no commitment to change these billing practices as to these customers and, absent any condition imposed by the Commission, may be tempted to treat all other new and existing Cablevision and Suddenlink<sup>3</sup> customers similarly.<sup>4</sup>

**A. The Petition To Deny Raised Issues Under Numerous Statutory Provisions As Well As the Public Interest Standard.**

In its *Petition to Deny*, Zoom asked the Commission to find that it could not approve the applications unless it adopted appropriate conditions to insure that the applicants separately state an unsubsidized price for cable modems on customers' bills. (This is referred to herein as "billing transparency.") Zoom argued that Cablevision's billing practices violate Section 76.1206 of the Commission's rules and Section 629 of the Communications Act.<sup>5</sup> In addition, and importantly, Zoom also argued that

Cablevision's policies do not comply with Sections 201, 202 and 629 of the Communications Act, Section 706 of the Telecommunications Act of 1996, the public interest standard, and FCC rules promulgated thereunder.<sup>6</sup>

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<sup>2</sup>See Response of Altice N.V. and Cablevision Systems Corporation to Information Requests Dated February 4, 2016 (February 25, 2016) at p. 10.

<sup>3</sup>Altice acquired Suddenlink in 2015. *Altice N.V. and Cequel Corporation d/b/a Suddenlink Communications*, 30 FCCRcd 14352 ((WCB, IB, MB, WTB 2015). Suddenlink customers currently receive bills which separately state an unsubsidized price for cable modem leases.

<sup>4</sup>The *Staff Decision* implies, without specifically holding, that Zoom's allegations about Cablevision's billing practices are not transaction-specific. *Staff Decision* at 18, ¶37. To the contrary, they relate to specific practices of Altice and Cablevision as applied to particular customers. There is no relationship to the practices of any other cable operator. As a result of the approval of the transaction without conditions, Altice is now free to bundle cable modem leases and Internet service charges for all its customers.

<sup>5</sup>As affirmed by the recent consent decree entered into by Charter Communications, Inc., it is beyond question that cable modems are covered by Section 629. *Charter Communications, Inc., Investigation of Compliance with Rules Relating to Navigation Devices*, DA 16-512 (MB)(released May 10, 2016) at p. 1 ("Navigation devices' include cable modems, which are used to access 'other services' (namely, broadband Internet access) offered over a cable system.").

<sup>6</sup>*Petition to Deny* at p. 2; see also *id.* at p. iii ("The Commission has concurrent authority

Zoom stressed that

Even if Cablevision's attachment and pricing policies did not directly violate the Commission's rules, as well as Sections 201, 202 and 629 of the Communications Act and Section 706 of the 1996 Telecommunications Act, the Commission must still make a determination as to whether the proposed transaction are in the public interest.<sup>7</sup>

**B. The Staff Failed to Examine Zoom's Allegations.**

In approving the transaction, the staff failed to follow the standard of review it had itself defined:

Pursuant to sections 214(a) and 310(d) of the Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity. In making this determination, we assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the transaction does not violate a statute or rule, we consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>8</sup>

Contrary to this standard, the staff failed to determine whether "proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules." Rather, it declined to assess the Applicants' compliance with Section 629 and the Commission's rules promulgated thereunder. First, the *Staff Decision* does not even mention, much less discuss, Zoom's claims as to Sections 201 and 202 of the Communications Act and Section 706 of the 1996 Telecommunications Act. Second, the *Staff Decision* fails to assess

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to impose such requirements under Sections 201 and 202 of the Communications Act, Section 706 of the 1996 Telecommunications Act and regulations promulgated thereunder, and the public interest standard.")

<sup>7</sup>*Petition to Deny* at p. 13.

<sup>8</sup>*Staff Decision* at p. 4, ¶7 (citations omitted).



whether Cablevision’s billing practices are otherwise contrary to the public interest even if they do not violate specific statutes or rules.

Without making each of these determinations, the staff’s assessment of the harms from the transaction is incomplete and flawed, and thus fatally undermines its balancing of harms against the putative benefits of the proposed transaction. This is of considerable consequence here, since the staff’s ultimate determination was a close call. Having discounted most of Altice’s claimed benefits and finding that “the public interest benefits are limited,” the staff concluded that “the scales tilt in favor of granting the Applications because of the absence of harms.”<sup>9</sup> Thus, the failure to consider the issues Zoom has raised is not harmless error, since even a modest finding of harm might be enough to change the ultimate public interest determination.

**C. The Staff Improperly Failed to Rule On Issues Concerning Section 629 and Section 1.1206 of the Commission’s Rules.**

In its evaluation of Zoom’s *Petition to Deny*, the staff confined its discussion of Cablevision’s billing practices to the issues relating to Section 629 and Section 76/1206 promulgated thereunder. The *Staff Decision* declined to address Zoom’s arguments. Rather, it determined that

these issues are more appropriately addressed in the pending industry-wide rulemaking proceeding on navigation devices and, thus, need not be resolved here.<sup>10</sup>

The staff also

f[ound] that resolution of the questions posed with respect to cable modems and navigation devices, including those of Cablevision and Altice, is best addressed in the ongoing navigation devices rulemaking proceeding and, accordingly, we

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<sup>9</sup>Staff Decision at p. 24, ¶48.

<sup>10</sup>Staff Decision at p. 18, ¶37 (citing *Expanding Consumers’ Video Navigation Choices; Commercial Availability of Navigation Devices*, 31 FCCRcd 1544 (2016)).

decline to adopt the relief that Zoom requests here related to these billing practices.<sup>11</sup>

Zoom has raised important issues as to the application of Section 629 and its implementation in Section 1.1206 of the Commission's rules.<sup>12</sup> Insofar as many existing Cablevision customers will be denied the opportunity to benefit from billing transparency for many months at the least, it was an abuse of discretion not to rule immediately upon Zoom's allegations. Moreover, as explained above, the failure to make the necessary findings is incompatible with the need to make an ultimate benefit/harm assessment on the transaction.

**D. Sections 201 and 202 of the Communications Act and Section 706 of the 1996 Telecommunications Act.**

Zoom alleged that the Commission has concurrent authority over Cablevision's billing practices under three additional statutory provisions.<sup>13</sup> Because broadband Internet service is subject to regulation under Title II of the Communications Act, Zoom properly invoked the Commission's seminal *Carterfone* decision in arguing that

The bundling of cable modem leases with Internet service is a "practice[], classification[] and regulation[]" which is "unjust and unreasonable," and thus unlawful under Section 201(b). Cablevision's pricing policies interfere with creation of a competitive market for equipment, and discriminate in favor of Cablevision's cable modem leasing business and against competitive equipment providers such as Zoom. As such, they violate Section 202(a).<sup>14</sup>

Zoom also argued that the Commission has authority to address Cablevision's billing practices under Section 706(a) of the Telecommunications Act of 1996 in light of the Commission's finding that "broadband is not being deployed to all Americans in a reasonable

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<sup>11</sup>*Id.* (citing *Zoom Petition to Deny* at p. 16).

<sup>12</sup>*Petition to Deny* at pp. 6-10.

<sup>13</sup>*Petition to Deny* at p. iii.

<sup>14</sup>*Petition to Deny* at p. 12 (citing *Carterfone*, 13 FCC2d, 420, 426 (1968), *reconsideration denied*, 14 FCC2d 571 (1968) and *Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service*, 56 FCC2d 593, 595 (1975)).

and timely manner.”<sup>15</sup> Noting that the Commission’s 2005 *Internet Policy Report*, issued pursuant to Section 706(a), recognized the Commission’s duty “[t]o foster creation, adoption and use of Internet broadband content, applications, services and attachments,” Zoom argued that the Commission can also address Cablevision’s billing practices under Section 706.<sup>16</sup>

Far from considering the merits of Zoom’s arguments, the *Staff Decision* does not even mention them. It is a fundamental principle of due process and of administrative law that a decisionmaker must explain its reasoning so that there can be meaningful review of the action.<sup>17</sup> While Zoom believes that longstanding Commission policy dictates that Cablevision’s billing practices are unjust and unreasonable and that they impede broadband deployment, it is possible that the staff may consider the question and determine otherwise. However, that possibility does not relieve the staff of the obligation to consider the questions, make a determination and state the reasons for such a decision. Its failure to do so requires reconsideration.

**E. The Staff Failed to Make A Specific Determination As To Cablevision’s Billing Practices Under the Public Interest Standard.**

The most glaring omission in the *Staff Decision* is its failure to evaluate the facts under the public interest standard. As the staff itself said,

If the transaction does not violate a statute or rule, we consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>18</sup>

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<sup>15</sup>*Petition to Deny* at p. 11 (citing *2015 Broadband Progress Report and Notice of Inquiry On Immediate Action to Accelerate Deployment*, 30 FCC Rcd 1375, 1377 (2015)); *see also* *2016 Broadband Progress Report*, 31 FCC Rcd 699, 700 (2016).

<sup>16</sup>*Petition to Deny* at pp. 11-12 (citing *Internet Policy Statement Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14986 (2005) (citing *Hush-A-Phone Corp. v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956) and *Carterfone*, 13 FCC 2d 420 (1968)).

<sup>17</sup>*See, e.g., Great Lakes Comnet v. FCC*, No. 15-1064 (D.C. Cir. May 24, 2016)(slip opinion at p. 6)(citing *National Cable Television Association v. FCC*, 914 F.2d 284, 289 (D.C. Cir. 1990)(holding that agencies must explain their reasoning).

<sup>18</sup>Staff Decision at p. 4, ¶7.

Even if it could properly defer any decision with respect to Section 629 and other statutes until completion of the Commission's proceeding in Docket 16-42, the staff committed reversible error by failing to consider whether Cablevision's billing practices are consonant with the public interest standard and thus should be addressed in the instant proceeding. The requirement to assess whether the issues Zoom has raised could result in public interest harm is different from the ultimate public interest determination; before that judgment can be made, the staff must first decide whether the practices raised in a petition to deny are compatible with the public interest standard of the Communications Act.

In its pleadings and *ex parte* presentations, Zoom argued repeatedly that it is contrary to the public interest to approve the applications without mandating billing transparency.<sup>19</sup>

Referring to numerous statutory directives and longstanding policy decisions going back to *Carterfone*, Zoom said that

[i]n determining whether it is in the public interest to allow Altice to acquire Cablevision without reforming its pricing practices, the Commission must look to fundamental policy favoring competition in the equipment market.<sup>20</sup>

It said that

These strong expressions of policy demonstrate that there is a strong public interest in insuring that consumers have access to a vibrant, competitive and innovative market for cable modems.

It was manifest error not even to consider whether approval of the applications without remediating Cablevision's billing practices is contrary to the public interest.<sup>21</sup> As the staff

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<sup>19</sup>See, e.g. *Petition to Deny* at p. 13 (“Practices, such as Cablevision’s, which undermine Commission policies, are not in the public interest.”); *Zoom Ex Parte Presentation*, March 23, 2016 at p. 2; *Zoom Ex Parte Presentation*, March 4 2016 at p. 2.

<sup>20</sup>*Petition to Deny* at p. 14.

<sup>21</sup>It is notable in that regard that, in rejecting Zoom’s separate allegations concerning Cablevision’s cable modem practices discussed below, the did precisely what it failed to do as to

acknowledges, its obligation is to consider whether “the transaction could result in public interest harms by substantially frustrating or impairing the objectives of the Act or related statutes.”<sup>22</sup> It must then balance these harms against any potential benefits.<sup>23</sup> The Commission

‘should not close its eyes to the public interest factors’ raised by material in its files....[A]s a general matter, the federal regulatory agencies should construe pleadings filed before them so as to raise rather than avoid important questions. They ‘should not adopt procedures that foreclose full inquiry into broad public interest questions, either patent or latent.’<sup>24</sup>

By failing to undertake any assessment of the harm that is caused by allowing Cablevision’s billing practices to continue without change, the staff lacked the information necessary to balance those harms against the claimed benefits of the transaction. This is not something that can be deferred to consideration in a rulemaking which addresses an entirely separate statutory provision.

## **II. BASED ON RECENT DEVELOPMENTS, THE STAFF SHOULD RECONSIDER ITS DECISION NOT TO IMPOSE CONDITIONS PERTAINING TO CERTIFICATION OF CABLE MODEMS FOR USE ON ALTICE’S CABLE SYSTEMS.**

In the *Petition to Deny*, Zoom asked that the Commission impose conditions to insure that Altice customers are fully informed of their right to purchase and attach their own cable modems and that any certification program Altice establishes be reasonable and open.<sup>25</sup> Based

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Cablevision’s billing practices, which was to acknowledge that it must consider allegations concerning the public interest standard. Staff Decision at p. 18, ¶38.

<sup>22</sup>Staff Decision at p. 4, ¶7.

<sup>23</sup>*Id.*

<sup>24</sup>*Retail Store Employees, Local 880 v. FCC*, 436 F.2d 248, 254 (D.C. Cir. 1970)(quoting *Southwestern Publishing Co. v. FCC*, 243 F.2d 829, 832 (D.C. Cir. 1952) and *Midwestern Gas Transmission Co. v. FPC*, 258 F.2d 660, 668 (D.C. Cir. 1958), vacated on other grounds, 358 U.S. 280 (1959).) See also *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511, 515 (D.C. Cir. 1955).

<sup>25</sup>*Petition to Deny* at p. 16.

on the information then available, the staff declined to do so.<sup>26</sup> Recent events which occurred long after the last opportunity to present pleadings in this case mandate reconsideration.<sup>27</sup>

Altice's cable modem certification practices are not consonant with Section 629, Section 76.1201 of the Commission's rules and the public interest standard. Accordingly, the staff should reconsider its decision and direct that Altice develop certification programs and customer communications that promote a competitive retail market for cable modems.

**A. Recent Events Demonstrate That Cablevision and Altice Are Operating Their Modem Certification Programs And Customer Communications In A Manner Which Interferes With Their Customers' Right to Purchase And Attach Their Own Modems to Altice and Cablevision Networks.**

In response to the Commission's February 4, 2016 information requests in this proceeding, Cablevision and Altice responded that

At all times, customers have been allowed to bring their own modems. On its website, Cablevision lists modems that it makes available for purchase, which are approved and compatible with its network, as well as other modems that are tested and determined to be compatible with its network and for which Cablevision will provide technical support. See [https://optimum.custhelp.com/app/answers/detail/a\\_id/3832/kw/approved%20cable%20modems/](https://optimum.custhelp.com/app/answers/detail/a_id/3832/kw/approved%20cable%20modems/). In addition, customers may use any other compatible modems, but technical support for such devices must be provided by the modem manufacturer.<sup>28</sup>

Based on Altice's representations, Zoom attempted to present its cable modems to Cablevision for certification, via an email which said that Zoom

would like to know the approval process for retail cable modems to be attached to the Cablevision Network. Could you put me in touch with the person at Cablevision who is responsible for this?<sup>29</sup>

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<sup>26</sup>*Staff Decision* at p. 18, ¶38.

<sup>27</sup>The factual assertions in this petition are supported by the declaration of Hume Vance, Zoom's Director, Firmware Engineering, Attachment A hereto.

<sup>28</sup>Response of Altice N.V. and Cablevision Systems Corporation to Information Requests Dated February 4, 2016 (February 25, 2016) at p. 10.

<sup>29</sup>Attachment B.

After a delay of more than a week, Janet Moraldo of Cablevision responded by stating that “Your information has been passed on but there is no interest at this time.”<sup>30</sup>

Zoom made several efforts to obtain resolution of Cablevision’s unwillingness even to discuss its cable modem certification practices. Initially, counsel for Cablevision advised counsel for Zoom that “I think there is a disconnect on Cablevision’s policy,” and arranged to discuss the matter. However, after numerous delays, Cablevision advised that it once had a certification process but no longer has one. After Zoom pointed to inconsistent statements to the contrary on Cablevision’s website, counsel for Cablevision reiterated by email dated March 30, 2016 that

Cablevision does not have any ‘approval’ process for modems and the legacy support relates to modems they previously provided and there is no application process to get on that list (and no one has been added). I did point out the language on the website you flagged and they agreed it was likely outdated and should be revised.<sup>31</sup>

Because of the barriers imposed by Cablevision’s practices, Zoom wrote a letter to counsel for Cablevision and Altice dated April 11, 2016. In that letter, Zoom noted the webpage cited in the February 25, 2016 response and said that

The linked web page states that “If you choose to purchase your modem, there are models that are tested and approved for use with Optimum Online.”

Zoom stated that

Zoom’s view is that it is inaccurate to tell customers and the FCC that there are “modems that are tested and determined to be compatible with its network” when there is no current testing or approval program. To the extent that there may have been some testing procedures in the past, it is also misleading to leave the impression that customers may purchase approved modems when this seems to apply only to “legacy” devices that are not generally available at retail today.

Zoom also raised two other matters in the April 11, 2016 letter. It stated that

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<sup>30</sup>Attachment B.

<sup>31</sup>Attachment C.

[T]here is another, related issue which Zoom has not previously raised with respect to the statements on Cablevision's website. Under the subheading "Option to Purchase Your Modem," the webpage mentioned above not only says that "If you choose to purchase your modem, there are models that are tested and approved for use with Optimum Online..." but also directs customers to the website of one of Zoom's competitors, saying "Go to [www.arrismodemsiteCSC.com](http://www.arrismodemsiteCSC.com) to order your Optimum approved modem." This not only implies that Cablevision customers who purchase their own modem should or perhaps even must use approved modems, but also leaves the impression that the only customer-owned modems acceptable for attachment are Arris brand cable modems.

Finally, Zoom called attention to shortcomings in Suddenlink's certification process.

Zoom stated that

there have been lengthy delays and a lack of responsiveness from Suddenlink in response to Zoom's efforts to obtain approval for its cable modems. Zoom's model 5354 was submitted to Suddenlink for approval on March 13, 2015 and several other models have been submitted since then, but there is no indication when action will be forthcoming. Indeed, Nathan Vineyard, Director of Corporate DOCSIS Engineering, has not responded to any emails from Zoom since a phone call last October 6. Zoom advised him on December 2 that sample devices were ready for submission, and queried him again on December 8 and January 13. Failing to hear from him, Zoom submitted three of its Motorola branded cable modem models to Suddenlink on January 14, and provided related files and documentation on January 18. On February 19, Zoom provided updated code for one model (Motorola MG7310) and requested Suddenlink's help in pushing out the code update to the Suddenlink network. Zoom made another email status query on March 1. On March 10 and 15 Zoom submitted an additional Zoom branded cable modem model and related files and documentation to Suddenlink. On April 7, Zoom resent its March 1 status query and asked for a return phone call.

By letter dated April 28, 2016, counsel for Altice and Cablevision responded in a letter which reads in its entirety as follows:

We are in receipt of your letter dated April 11, 2016. We appreciate your observations regarding Cablevision's and Suddenlink's cable modem practices and are taking them under advisement. As noted in your earlier exchange with Tara, Cablevision has been made aware of your concerns regarding some of the language on its website, and the company is in the process of implementing modifications intended to address them. More generally, both Cablevision and Suddenlink previously have provided the Federal Communications Commission (and you) with considerable information about their respective cable modem



practices, and the companies continue to believe that their practices are transparent to consumers and comply with applicable law.<sup>32</sup>

At some time subsequent to April 28, 2016, Cablevision made a minor modification to the referenced webpage. As noted above, the webpage formerly said

If you choose to purchase your modem, there are models that are tested and approved for use with Optimum Online.

As modified, the webpage now says:

If you choose to purchase your modem, there are many DOCSIS-certified models that are compatible with Optimum Online, but they don't include tech support, including malfunction or upgrade equipment replacements.

Notably, the webpage still lists six specific cable modem models that are described as “compatible for use on our networks.” Two of those six are listed as “Available for use by customers that use an Optimum-provided modem only.” Another is listed as “for Small-Medium Businesses Only.” None of the six appears to be available at any storefront retailer, and at least four of the six appear to be models that are no longer produced. In addition, and significantly, the website then provides a link to the webpage of Arris, another cable modem producer, advising customers that they should “Go to [www.arrismodemsiteCSC.com](http://www.arrismodemsiteCSC.com) to order an Optimum-compatible modem.”

**B. The Staff Must Reconsider Its Decision and Require That Altice Adopt Certification Programs and Customer Communications That Promote A Competitive Retail Market for Cable Modems.**

Section 76.1201 provides that

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

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<sup>32</sup>Attachment D.

Zoom recognizes that cable operators may wish to impose reasonable certification requirements to protect their networks from electronic or physical harm and cooperates with cable operators' certification programs. However, as the foregoing discussion demonstrates, Altice is frustrating its customers' right to purchase and attach their own cable modems to its networks and is thus not in compliance with Section 76.1201.

**1. Cablevision's Website Misleads Customers and Deters Them from Seeking Competitive Offerings.**

Even as modified, Cablevision's website misleads its customers and deters them from attempting to purchase their own modems in two different ways:

First, the website implies that Cablevision has a preference for three specific difficult-to-buy cable modem models because they are the only cable modems that have been specifically determined to be compatible.<sup>33</sup> While the website is somewhat ambiguous as to whether Cablevision will provide technical support for these three modems, Altice and Cablevision specifically informed the Commission that these modems will receive Cablevision technical support.<sup>34</sup>

Based on research on Amazon.com and retailer websites, Zoom believes that the three cable modems still listed on Cablevision's website are no longer generally available at retail

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<sup>33</sup>Moreover, while Altice and Cablevision now say that they do not currently have a certification program, their representation to the Commission in this regard was, at best, misleading; they said that their website lists modems "that are tested and determined to be compatible with its network..." Response of Altice N.V. and Cablevision Systems Corporation to Information Requests Dated February 4, 2016 (February 25, 2016) at p. 10. The use of the present tense suggests that there is a current certification program.

<sup>34</sup>Response of Altice N.V. and Cablevision Systems Corporation to Information Requests Dated February 4, 2016 (February 25, 2016) at p. 10. ("On its website, Cablevision lists modems that it makes available for purchase, which are approved and compatible with its network, as well as other modems that are tested and determined to be compatible with its network and for which Cablevision will provide technical support.")

storefronts, and at least two are apparently no longer produced.<sup>35</sup> Cablevision’s website indicates that using an approved modem is a better option because it will receive technical support. As a result, many customers may fruitlessly search for these modems and, given limited availability and disappointing features, give up and opt to lease or purchase a modem from Cablevision rather than purchase a modem at retail.

Second, by directing customers to Arris’ website, Cablevision’s website misleads its customers into thinking that the Arris website is the only place that compatible modems can be purchased. This discriminates against other manufacturers of compatible modems and, more importantly, reduces competition and innovation by discouraging customers from comparing prices and features of competing modems.

These policies frustrate the right to attach established by Section 76.1601 and are clearly contrary to the goal of creating a competitive retail market embodied in policies adopted under Sections 201, 202, 629 and 706 and the public interest standard.

## **2. Suddenlink’s Certification Process Is Unreasonable.**

As discussed above, Zoom has been attempting to obtain Suddenlink’s certification for its cable modems for more than a year. This delay violates the mandate of Section 76.1201 by “prevent[ing] the connection or use of navigation devices....”

## **3. Requested conditions.**

To address the shortcomings in Altice’s cable modem certification and customer communications processes, Zoom asks that the Commission reconsider the Staff Decision and impose the following conditions on all cable systems controlled by Altice.

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<sup>35</sup>Of the three models, only one - the Arris TM822 - is available on Amazon.com. (A used model of the Arris TM804 is also available.) None of the three are available at BestBuy.com or Walmart.com.

1. If Cablevision or another Altice cable operator does not maintain a current certification program for cable modems, it should remove references in customer communications to cable modems previously determined to be compatible for use on its network.
2. In the absence of a certification program, customer communications from Cablevision and other cable systems controlled by Altice should clearly state that customers may purchase and use any DOCSIS certified modem on the Cablevision network.
3. If Cablevision or other cable systems controlled by Cablevisin establish a certification program for cable modems, it should be non-discriminatory, it should be limited to protection against harm to the systems' network, and should provide that the certification process be completed within three weeks after a completed application for certification is received.<sup>36</sup>
4. If Cablevision or other cable systems controlled by Altice list any cable modem models available at retail in their customer communications,, they should list all modems available at retail.
5. Cablevision or other cable systems controlled by Altice should not refer customers seeking to purchase their own modems to any particular retailer or manufacturer or otherwise discriminate in favor of a particular cable modem manufacturer.

## **CONCLUSION**

Wherefore, Zoom asks that the staff

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<sup>36</sup>*See Charter Communications, Inc., Investigation of Compliance with Rules Relating to Navigation Devices, DA 16-512 (MB)(released May 10, 2016).*

1. Reconsider its decision, and make determinations with respect to Zoom's allegations under Sections 201, 202 and 629 of the Communications Act, Section 76.1206 of the Commission's rules and the public interest standard;
2. Determine that Cablevision's billing practices violate Sections 201, 202 and 629 of the Communications Act, Section 76.1206 of the Commission's rules and the public interest standard;
3. Adopt conditions requiring Altice to employ billing transparency with respect to the cable systems it operates;
4. Adopt the conditions set forth above with respect to certification of cable modems on cable systems operated by Altice; and
5. Grant all such other relief as may be just and proper.

Respectfully submitted,



Andrew Jay Schwartzman  
Room 312  
600 New Jersey Avenue, NW  
Washington, DC 20001  
(202) 662-9170  
andyschwartzman@gmail.com  
*Counsel for Zoom Telephonics, Inc.*

June 2, 2016

# ATTACHMENT A

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	
	)	
Applications of Altice N.V. and	)	
Cablevision Service Corporation	)	WC Docket No. 15-257
	)	
For Consent to Assign or Transfer	)	
Control of Licenses and Authorizations	)	

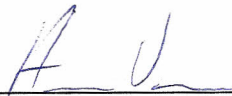
**DECLARATION OF HUME VANCE**

I am Director, Firmware Engineering, of Zoom Telephonics, Inc. I have knowledge of the facts set forth in the foregoing Petition for Reconsideration. To the best of my knowledge and belief, those facts are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

June 2, 2016

  
\_\_\_\_\_  
Hume Vance

# ATTACHMENT B





Andrew Schwartzman <andyschwartzman@gmail.com>

---

## RE: Question on approval process for retail cable modems

1 message

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**Corvo, Tara** <TMCorvo@mintz.com>

Fri, Mar 11, 2016 at 11:10 AM

To: Andrew Schwartzman <AndySchwartzman@gmail.com>

Hi Andy - I spoke to Cablevision about this. I'm out of the office today, but are there some times Monday that work for you? I think there is a disconnect on Cablevision's policy. Thanks, Tara

---

**From:** Andrew Schwartzman [mailto:[AndySchwartzman@gmail.com](mailto:AndySchwartzman@gmail.com)]

**Sent:** Wednesday, March 09, 2016 5:58 PM

**To:** Corvo, Tara

**Cc:** [ydori@cov.com](mailto:ydori@cov.com)

**Subject:** FW: Question on approval process for retail cable modems

Dear Tara:

This is the email exchange to which I referred in our conversation.

As I said, Zoom is interested good relations with Altice and Cablevision and would like to work with the company to have its Zoom and Motorola brand cable modems certified for attachment to Cablevision's network.

Please let me know what we can do to facilitate this process.

Andy

On Mar 9, 2016, at 1:39 PM, Janet Maroldo <[JMAROLDO@cablevision.com](mailto:JMAROLDO@cablevision.com)> wrote:

Your information has been passed on but there is no interest at this time.

Janet

From: Hume Vance [mailto:[humev@zoom.net](mailto:humev@zoom.net)]

Sent: Wednesday, March 09, 2016 12:33 PM

To: Janet Maroldo <[JMAROLDO@cablevision.com](mailto:JMAROLDO@cablevision.com)>

Cc: Julie K. Lee <[juliel@zoom.net](mailto:juliel@zoom.net)>; Andy Pollock <[andyp@zoom.net](mailto:andyp@zoom.net)>; Phil Frank <[phil.frank@zoom.net](mailto:phil.frank@zoom.net)>

Subject: RE: Question on approval process for retail cable modems

Hello Janet,

I wonder if you could check with David whether he's had a chance to look at the below.

Thank you and regards,

Hume

From: Hume Vance

Sent: Tuesday, March 01, 2016 10:59 AM

To: '[jmaroldo@cablevision.com](mailto:jmaroldo@cablevision.com)'

Cc: Julie K. Lee; Andy Pollock

Subject: Question on approval process for retail cable modems

Hello Janet,

I wonder if you could pass along this message to David Dribble.

Thank you very much.

Regards,

Hume

Hello David,

I am Hume Vance at Zoom Telephonics, Inc. I am responsible on the engineering side for our Zoom and Motorola branded cable modem products.

We would like to know the approval process for retail cable modems to be attached to the Cablevision network. Could you put me in touch with the person at Cablevision who is responsible for this?

Thank you in advance.

Regards,

Hume

Hume Vance

Director, Firmware Engineering

Zoom Telephonics, Inc.

207 South Street

Boston, MA 02111

USA

[humev@zoomtel.com](mailto:humev@zoomtel.com)

+1 617 753-0032

---

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---

*Andrew Jay Schwartzman*

Andrew Jay Schwartzman  
Georgetown University Law Center  
Institute for Public Representation  
[202 662-9170](tel:2026629170)

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# ATTACHMENT C



Andrew Schwartzman <andyschwartzman@gmail.com>

---

**RE: following up**

1 message

---

**Corvo, Tara** <TMCorvo@mintz.com>

Wed, Mar 30, 2016 at 8:50 AM

To: Andrew Schwartzman <AndySchwartzman@gmail.com>

Hi Andy – I don't have anything to report other than what we discussed earlier- that Cablevision doesn't have any "approval" process for modems and the legacy support relates to modems they previously provided and there is no application process to get on that list (and no one has been added). I did point out the language on the website you flagged, and they agreed it was likely outdated and should be revised.

---

**From:** Andrew Schwartzman [mailto:[AndySchwartzman@gmail.com](mailto:AndySchwartzman@gmail.com)]

**Sent:** Tuesday, March 29, 2016 1:07 PM

**To:** Corvo, Tara

**Subject:** following up

Dear Tara:

Have you been able to talk to Cablevision about the issues we discussed last week?

Thanx

Andy

*Andrew Jay Schwartzman*

Andrew Jay Schwartzman  
Georgetown University Law Center  
Institute for Public Representation  
[202 662-9170](tel:2026629170)

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# ATTACHMENT D



Andrew Jay Schwartzman  
600 New Jersey Avenue, NW  
Room 312  
Washington, DC 20001  
(202) 662-9170  
AndySchwartzman@gmail.com

*Via Email*

April 11, 2016

Yaron Dori  
Covington & Burling LLP  
One CityCenter  
Washington, DC 20001-4956

Tara Corvo  
Mintz, Levin Cohn Ferris Glovsky and Popeo P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004-2608

RE: Zoom Telephonics, Inc.

Dear Yaron and Tara:

Over the last few weeks, a problem has arisen with respect to Zoom Telephonics' communications with Cablevision about its attachment policies for cable modems. In discussing this with my client, it is apparent that there are also some issues in Suddenlink's processes as well.

Zoom would like to work together with Altice and Cablevision to resolve these issues in the hope that this can also help establish an effective working relationship going forward.

First, with respect to Cablevision, there appears to be a disconnect between what Altice and Cablevision have said to the FCC and what Tara has described as Cablevision's actual practices.

In the February 25 responses to the Commission's information requests, Altice and Cablevision said (on page 10) that:

“At all times, customers have been allowed to bring their own modems. On its website, Cablevision lists modems that it makes available for purchase, which are approved and compatible with its network, as well as other modems that are tested and determined to be compatible with its network and for which Cablevision will provide technical support. See [https://optimum.custhelp.com/app/answers/detail/a\\_id/3832/kw/approved%20cable%20modems/](https://optimum.custhelp.com/app/answers/detail/a_id/3832/kw/approved%20cable%20modems/) . In addition, customers may use any other compatible modems,

but technical support for such devices must be provided by the modem manufacturer.”

The linked web page states that “If you choose to purchase your modem, there are models that are tested and approved for use with Optimum Online.”

Based on those representations, Zoom attempted to contact Cablevision’s Chief Technology Officer David Dibble to find out how it could submit its cable modems to Cablevision for testing and approval. That led to a contact with Janet Maroldo, who Zoom believes works with David Dibble. By email dated March 9, Ms. Maroldo responded to Zoom, stating, “Your information has been passed on but there is no interest at this time.”

After I asked Tara to look into this, she advised me on March 14 that Cablevision does not certify modems for attachment on its network, that it has no testing process and no technical requirements other than DOCSIS certification. After I called her attention to what is on Cablevision’s website, by email dated March 30, Tara responded that

“I don’t have anything to report other than what we discussed earlier- that Cablevision doesn’t have any ‘approval’ process for modems and the legacy support relates to modems they previously provided and there is no application process to get on that list (and no one has been added). I did point out the language on the website you flagged, and they agreed it was likely outdated and should be revised.”

Zoom’s view is that it is inaccurate to tell customers and the FCC that there are “modems that are tested and determined to be compatible with its network” when there is no current testing or approval program. To the extent that there may have been some testing procedures in the past, it is also misleading to leave the impression that customers may purchase approved modems when this seems to apply only to “legacy” devices that are not generally available at retail today.

Second, there is another, related issue which Zoom has not previously raised with respect to the statements on Cablevision’s website. Under the subheading “Option to Purchase Your Modem,” the webpage mentioned above not only says that “If you choose to purchase your modem, there are models that are tested and approved for use with Optimum Online...,” but also directs customers to the website of one of Zoom’s competitors, saying “Go to [www.arrismodemsiteCSC.com](http://www.arrismodemsiteCSC.com) to order your Optimum approved modem.” This not only implies that Cablevision customers who purchase their own modem should or perhaps even must use approved modems, but also leaves the impression that the only customer-owned modems acceptable for attachment are Arris brand cable modems.

Third, with respect to Suddenlink, Zoom has told me that there have been lengthy delays and a lack of responsiveness from Suddenlink in response to Zoom’s efforts to obtain approval for its cable modems. Zoom’s model 5354 was submitted to Suddenlink for approval on March 13, 2015 and several other models have been submitted since then, but there is no indication when action will be forthcoming. Indeed, Nathan Vineyard, Director of Corporate DOCSIS Engineering, has not responded to any emails from Zoom since a phone call last October 6.

Zoom advised him on December 2 that sample devices were ready for submission, and queried him again on December 8 and January 13. Failing to hear from him, Zoom submitted three of its Motorola branded cable modem models to Suddenlink on January 14, and provided related files and documentation on January 18. On February 19, Zoom provided updated code for one model (Motorola MG7310) and requested Suddenlink's help in pushing out the code update to the Suddenlink network. Zoom made another email status query on March 1. On March 10 and 15 Zoom submitted an additional Zoom branded cable modem model and related files and documentation to Suddenlink. On April 7, Zoom resent its March 1 status query and asked for a return phone call.

As Zoom has made clear from its initial efforts to communicate with Altice, Zoom would like to develop an effective working relationship and had hoped to avoid having to take up its concerns with the FCC. The responses that Altice and Cablevision have submitted to the FCC have shown that the differences between the companies as represented to the FCC are not so great that they cannot be effectively resolved. For this to happen, there need to be appropriate revisions to Cablevision's website, promotional materials and customer service scripts so that they make plain that customer-owned modems do not have to be approved by Cablevision. Zoom also seeks changes in these materials to insure that Arris not be favored and that Zoom and Zoom's Zoom and Motorola brands not be disfavored. Alternatively, if Cablevision wishes to establish criteria for approving cable modems, Zoom would seek to insure that the process is neither overly burdensome nor discriminatory.

With respect to Suddenlink, Zoom seeks assurances that Suddenlink will be responsive and prompt in its testing and approval process.

Assuming that we can reach an understanding about Suddenlink and Cablevision attachment policies, Zoom would ask your clients to consider joining in a policy statement that expresses principles Zoom believes are consistent with FCC requirements as well as with what Altice and Cablevision have stated as their policies. Such a statement would have the following elements:

1. Separately stated prices. You (Altice, Cablevision, and Suddenlink) agree to charge separate prices for cable modem leasing and Internet service, and to set forth charges for a cable modem lease as a separate line item on customer bills.
2. Non-subsidized prices. Your price for a cable modem lease must not be subsidized by charges for other service offerings, must not discriminate in price against retail devices to support a competitive marketplace for cable modems, and must be reasonably commensurate with industry practices.
3. Transparency of cable modem offerings. Your website and Internet-related promotional materials must clearly inform customers about your policies with respect to cable modem leasing and attachment. This shall include the following:
  - a. You will inform customers that they have the option of supplying their own cable modem rather than leasing a cable modem from you, that customers who choose to supply their own cable modem and not to lease a cable modem from you will not be charged the clearly stated

price for leasing a cable modem, and that customers may cancel their cable modem lease at any time without penalty; and

b. In the event that you choose to specify which customer-provided cable modems are allowed on your network, you will prominently provide on your websites a clear, fair, and non-discriminatory list of all allowed cable modems.

4. Certification practices. If you maintain a cable modem certification program or otherwise decide which cable modems customers may attach to your network, your acceptance process will be non-discriminatory, will establish reasonable prices for certification testing, will permit submission of a cable modem for testing at any time, and will provide that testing and associated revision of the approved cable modem list will be completed within 75 days of a complete submission. Your testing criteria shall be limited to testing reasonable Internet-related functionality and may not include requirements for wireless router performance.

Zoom hopes to reach an amicable result quickly, rather than spend more time and money with FCC filings. Thus, I would ask if you can identify Altice and Cablevision executives who would be in a position to participate in such discussions along with Zoom's management.

I look forward to hearing from you.

Sincerely,

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".

Andrew Jay Schwartzman

cc. Frank Manning, Zoom Telephonics, Inc.

# ATTACHMENT E

April 28, 2016

*Via Electronic Mail*

Andrew Jay Schwartzman  
600 New Jersey Avenue, N.W.  
Room 312  
Washington, D.C. 20001

Re: Zoom Telephonics, Inc.

Dear Andy:

We are in receipt of your letter dated April 11, 2016. We appreciate your observations regarding Cablevision's and Suddenlink's cable modem practices and are taking them under advisement. As noted in your earlier exchange with Tara, Cablevision has been made aware of your concerns regarding some of the language on its website, and the company is in the process of implementing modifications intended to address them. More generally, both Cablevision and Suddenlink previously have provided the Federal Communications Commission (and you) with considerable information about their respective cable modem practices, and the companies continue to believe that their practices are transparent to consumers and comply with applicable law.

Very truly yours,

\_\_\_\_\_/s/  
Tara M. Corvo  
Mint Levin Cohn Ferris Glovsky  
and Popeo P.C.  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

*Counsel for Cablevision*

\_\_\_\_\_/s/  
Yaron Dori  
Covington & Burling LLP  
One City Center  
850 Tenth Street, N.W.  
Washington, D.C. 20001

*Counsel for Suddenlink*

## CERTIFICATE OF SERVICE

I certify that on December 28, 2015, copies of the foregoing *Petition for Reconsideration* have been served by email and United States Mail to the following:

Tara M. Corvo  
Christopher J. Harvie  
Paul D. Abbott  
Mintz Levin Cohn Ferris Glovsky and Popeo, PC  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004  
tmcorvo@mintz.com  
cjharvie@mintz.com  
pdabbott@mintz.com

Yaron Dori  
Michael Beder  
Ani Gevorkian  
Covington & Burling  
One City Center  
850 10<sup>th</sup> Street, NW  
Washington, DC 20001  
ydori@cov.com  
mbeder@cov.com  
agrevorkian@cov.com

In addition, copies of the foregoing *Petition for Reconsideration* have been delivered by email to the following:

Robert M. Cooper  
Hershel A. Wancjer  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
rcooper@bsfllp.com  
hwancjer@bsfllp.com

Debbie Goldman  
George Kohl  
Communications Workers of America  
501 Third St. N.W.  
Washington, D.C. 20001  
dgoldman@cwa-union.org  
gkohl@cwa-union.org

Martyn Roetter  
MFRConsulting  
144 Beacon Street  
Boston, Massachusetts 02116-1449  
mroetter@gmail.com

In addition, copies of the foregoing *Petition for Reconsideration* have been delivered by email to the following Federal Communications officials:

Neil Dellar  
TransactionTeam@fcc.gov

Sumita Mukhoty  
sumita.mukhoty@fcc.gov

Dennis Johnson  
dennis.johnson@fcc.gov

David Krech  
david.krech@fcc.gov

Clay DeCell  
clay.decell@fcc.gov

Linda Ray  
linda.ray@fcc.gov

Brendan Holland  
brendan.holland@fcc.gov

Jeffrey Tobias  
jeff.tobias@fcc.gov

Jeffrey Neumann  
jeffrey.neumann@fcc.gov

In addition, a copy of the foregoing foregoing *Petition for Reconsideration* has been delivered by email to the Commission's duplicating contractor:

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fcc@bcpiweb.com



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Andrew Jay Schwartzman