

*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	)	

**PETITION TO DENY, OR IN THE ALTERNATIVE, FOR CONDITIONAL GRANT**

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## SUMMARY

Altice, N.V. (Altice) seeks permission to acquire Cablevision Services Corporation (Cablevision) and the cable systems it operates. It has separately sought permission to acquire Suddenlink and the cable systems it operates.

Zoom Telephonics, Inc. (Zoom) asks the Commission to designate Altice's applications to acquire Cablevision for hearing or, in the alternative, impose conditions that insure that cable systems acquired by Altice will be operated in compliance with applicable statutes and regulations and the public interest.

Unlike Suddenlink, Cablevision does not separately state the price in for Internet service and cable modem leases in its bills for many, and perhaps all, of its customers. With respect to newer customers, Cablevision has claimed, through counsel, that Cablevision offers to customers getting new service after mid-2013 the ability to opt out of leasing a cable modem, but this claim is contradicted by Zoom's direct experience as shown on the bill in Attachment B for a customer who began service in August 2014. Moreover and in any event, this policy is not effectively implemented and communicated on Cablevision's website and by its sales agents.

Section 629 of the Communications Act requires that the price for cable modem leases be separately stated and not subsidized. Commission regulations insure that customers have the right to attach their own equipment to a cable operator's network, subject to reasonable technical requirements to protect the network from electronic or physical harm. The Commission has concurrent authority 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.

Cablevision is not operating in compliance with these legal requirements. Altice has made no representations with respect to whether it will bring Cablevision into compliance with these statutes and regulations if the Commission were to approve its applications. Absent Commission intervention, Altice may extend Cablevision's policies to the Suddenlink properties it seeks to acquire.

If the Commission is disposed to grant the applications, it can do so only by imposing conditions that insure that Altice-owned cable systems separately state an unsubsidized price for cable modem leases, that their oral, written and Internet communications prominently set forth information about the prices of cable modem leases and afford current or potential customers the right to opt out of leasing cable modems. The Commission should also require that Altice maintain reasonable policies with respect to allowing attachment of non-harmful cable modems to its networks.

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**PETITION TO DENY, OR IN THE ALTERNATIVE, FOR CONDITIONAL GRANT**

Zoom Telephonics, Inc. (Zoom) respectfully submits this petition to deny applications seeking to transfer control of Cablevision Services Corporation (Cablevision) and certain subsidiaries to Altice, N.V. (Altice). Zoom asks that the Commission designate the applications for hearing or, in the alternative, condition any grant of the applications the condition that, with respect to all the cable systems that it operates, Altice operate in full compliance 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>1</sup>

Cablevision operates cable systems in New York, New Jersey and Connecticut. As more fully discussed below, Cablevision does not break out the price of cable modem leases from Internet service for many if not all of its customers on their bills; and at least in some cases, Cablevision responds to customer inquiries by stating that their cable modem is “free.” With some effort, new Cablevision customers can find information that says that there is a separate charge for cable modems and Internet service; but in at least some cases, new customers are not told that they can purchase a modem and thereby eliminate the line charge for a cable modem

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<sup>1</sup>This petition is supported by the Declaration of Frank Manning, CEO of Zoom. (Attachment A).

lease.

It is highly relevant to this proceeding that in Docket 15-135, the Commission is also considering Altice's application for transfer of control of another cable system operator, Cequel Corporation d/b/a Suddenlink Communications (Suddenlink). Significantly, Suddenlink's cable modem leasing and attachment policies appear to be in full compliance with the above-listed statutes and regulations.

### **INTRODUCTION**

The transaction under consideration by the Commission would result in Altice's acquisition of Cablevision systems currently serving approximately 3.1 million subscribers. Suddenlink currently serves approximately 1.5 million customers. Thus, if the Cablevision and Suddenlink applications were approved, Altice would be serving some 4.6 million customers. Absent imposition of appropriate conditions, notwithstanding applicable statutes and regulations, Altice would be in the position to deny these Suddenlink and Cablevision customers the right to benefit from the access to a choice of cable modem modems in the competitive retail market, giving them no financial incentive to consider purchasing their own modem.

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. In the "Joint Application" for transfer of control of Cablevision, Altice makes no representation to the Commission concerning Cablevision's cable modem practices and, in particular, whether, if the Commission approves its applications, Altice will attempt to conform Cablevision's cable modem practices to those of Suddenlink, or vice versa.

**I. UNLIKE SUDDENLINK, CABLEVISION DOES NOT SEPARATELY STATE THE PRICE OF CABLE MODEMS FOR MANY OF ITS CUSTOMERS AND DOES NOT OFFER CUSTOMERS THE OPPORTUNITY TO OPT OUT OF LEASING CABLE MODEMS FROM CABLEVISION.**

Because Zoom received reports that Cablevision bundles the price of cable modem leases with Internet service, Zoom attempted over a period of several months to obtain assurances from Altice that it would revise Cablevision's policies to bring them into full compliance with applicable laws and regulations.

Zoom's investigation indicated that some Cablevision customer service agents have advised customers that they receive "free modems" as part of their Internet service, and that customers are not entitled to any credit or discount if they choose to purchase and install their own cable modem. In addition, the price of a cable modem lease is not separately stated on customers' bills for some and possibly all customers. After this information was presented to Altice, counsel for Altice advised counsel for Zoom that until the summer of 2013, Cablevision did, indeed provide a bundled offering of a cable modem lease and Internet service to its customers. Altice represented that these customers are "grandfathered" into that policy and that they did not, and still do not, have the opportunity to receive any credit or discount if they choose to purchase and install their own cable modem.

According to Altice, since mid-2013 new Cablevision customers are told that there is a separate price for cable modem leases, and for those customers the price for cable modems is separately stated on their bills. However, Attachment B is to the contrary. It is a screenshot taken on December 7, 2015 of a portion of the latest online bill for a customer who subscribed to Cablevision service for the first time in August, 2014. There is no separate charge broken out for

the customer's modem lease. Moreover, Zoom has discovered that customers signing up online are not offered an opportunity to opt out of leasing a cable modem from Cablevision, even after they provide personal account information (including social security numbers) and are asked to schedule an installation date. An online inquiry to a Cablevision sales agent, a print out of which is provided as Attachment C, disclosed that the agent initially did not provide information with respect to opting out of a cable modem lease and advised the customer that the only way to avoid leasing a cable modem from Cablevision was to do it with a live sales agent.

## **II. CABLEVISION'S PRICING PRACTICES ARE CONTRARY TO LAW AND FCC REGULATIONS AND ARE NOT IN THE PUBLIC INTEREST.**

Section 629 of the Communications Act and FCC regulations promulgated thereunder establish a right to attach customer-owned devices and requires that cable operators must separately state the price for cable modems that it sells or leases on each leasing customer's bill. The Commission is also empowered to require reasonable attachment policies and unbundled cable modem leasing prices under Sections 201 and 201 of the Communications Act, Section 706 of the Telecommunications Act, the public interest standard, and FCC regulations promulgated thereunder.

The premise that Cablevision is offering "free" cable modems to some of its customers is untrue on its face. Bundling the price of a cable modem with the charge for Internet service is not the same thing as offering a "free" device. It bears notice in this regard that Section 629 prohibits both bundling and subsidies. There is no reason to believe that Cablevision does not consider its cost for the cable modem when determining customer Internet service charges.

To the extent that Cablevision claims that new customers are offered the option to opt out

of leasing a separately priced modem from Cablevision, in practice, this does not appear to be the case. It does not matter if this is the consequence of a formal policy or if it is the result of poor communications and employee training; the result is that Cablevision customers are not receiving the benefits contemplated by Congress and Commission policy.

**A. Section 629 and FCC Rules Promulgated Thereunder Cover Cable Modems and Prohibit Unreasonable Attachment Policies and Require Separately Stated, Unbundled Pricing for Cable Modems.**

Section 629 of the Communications Act requires cable operators to permit customers to employ third party equipment so long as it does not jeopardize safety. It also requires that equipment prices be separately stated and not subsidized:

**a) Commercial consumer availability of equipment used to access services provided by multichannel video programming distributors**

The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to *assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems*, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, *if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.*

(Emphases added.)

**1. Section 629 Covers Cable Modems.**

Section 629 reflects Congress' desire to promote competition in the equipment market.

The title of the section broadly refers to "services provided by multichannel video programming

distributors.” The legislative history reflects Congress’ view that “competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices, and higher quality.”<sup>2</sup>

The Commission unequivocally ruled that cable modems are covered by Section 629, holding that

Section 629 covers not just equipment used to receive video programming, but also equipment used to access “other services offered over multichannel video programming systems.” Such equipment includes televisions, VCRs, cable set-top boxes, personal computers, program guide equipment, *and cable modems*.<sup>3</sup>

The Commission considered and rejected arguments that Section 629 does not apply to cable modems and reiterated that

*We believe that the statutory language of Section 629 indicates that its reach is to be expansive and* that Section 629 neither exempts nor limits any category of equipment used to access multichannel video programming or services offered over such systems from its coverage. Equipment used to access video programming and other services offered over multichannel video programming systems include televisions, VCRs, cable set-top boxes, personal computers, program guide equipment *and cable modems*.<sup>4</sup>

Most recently, in the National Broadband Plan, the Commission reaffirmed that Section 629 covers cable modems.<sup>5</sup>

## **2. Cablevision’s Pricing Practices Violate Section 629 and FCC Rules Promulgated Thereunder.**

Section 629 directs the Commission to

assure the commercial availability of...equipment used by consumers to access multichannel video programming and other services offered over multichannel

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<sup>2</sup>Rept. No. 104-204, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 112 (1995).

<sup>3</sup>*Id.*, 13 FCC Rcd at 14776.

<sup>4</sup>*Id.*, 13 FCC Rcd at 14784 (Emphases added).

<sup>5</sup>See National Broadband Plan, p. 24, n. 24. (Available at <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>)

video programming systems,...

It also provides that if cable operators lease equipment, including modems, to consumers, the charges to consumers for such devices and equipment [must be] separately stated and not subsidized by charges for any such service.

Cablevision is not operating in compliance with Section 629. As described above, many of Cablevision's customers are charged a bundled price for cable modems and Internet service. Thus, Cablevision cannot plausibly argue that it does not subsidize the cost of leasing these cable modems. While newer Cablevision customers evidently have a theoretical right to opt out of leasing a cable modem and avoid paying for leasing a cable modem, it appears that in practice Cablevision does not make this opportunity readily available to such customers and its sales agents are not trained to assist customers in exercising the option. Thus, Cablevision is not in compliance with Section 629 for these customers as well.

To implement the pricing provisions of Section 629, the Commission adopted an anti-subsidy provision in Section 76.1206, which prohibits rate regulated MVPDs from bundling modems with Internet service prices:

Multichannel video programming distributors offering navigation devices subject to the provisions of §76.923 for sale or lease directly to subscribers, shall adhere to the standards reflected therein relating to rates for equipment and installation and ***shall separately state the charges to consumers for such services and equipment.***

(Emphasis added.)

There is some ambiguity created by Section 76.1206's cross-reference to Section 76.923. The best reading is that Section 76.1206 applies to all rate-regulated MVPDs which offer any kind of equipment for lease, whether or not that equipment is used to receive the basic tier of video services. As such, cable modems pricing must be separately stated and not subsidized.

Section 76.923 applies to all MVPD's, except in systems where there is effective competition. In regulated systems, Section 76.923 sets forth rate regulations, including anti-subsidy and anti-bundling requirements, for

all equipment in a subscriber's home, provided and maintained by the operator, *that is used to receive the basic service tier*, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service.<sup>6</sup>

Section 76.1206 could be read as referring to "equipment...subject to the provisions of §76.923..." Since cable modems are not devices "subject to the provisions of §76.923..." that reading would not extend the anti-bundling and anti-subsidy requirements to cable modems. As such, this reading would be inconsistent with the undisputed finding that cable modems are covered by Section 629.

However, the better reading is that Section 76.1206 refers to all "[m]ulti-channel video programming distributors...subject to the provisions of §76.923..." and is intended to extend the requirements of the pre-existing Section 76.923 to all equipment covered by Section 629. Thus, any MVPD which offers "navigation equipment for lease" is also subject to the requirements of Section 76.1206, and must therefore adhere to rate regulations and the requirement to separately state their prices for equipment subject to Section 629, *i.e.*, cable modems.

There are three reasons why this is the superior reading of Section 76.1206. First, it would be illogical that a statute intended to promote competition and innovation would be implemented so as to afford a right to attach but allow pricing schemes, such as Cablevision's practices at least until 2013, that would remove any incentive for customers to enter the retail market and purchase a customer-owned modem.

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<sup>6</sup>47 CFR §76.923(a)(1)(emphasis supplied).

Second, it is important to note that Section 73.923 was adopted in 1993, before cable modems were available in the commercial market.<sup>7</sup> Even then, the Commission saw that Congress intended that its jurisdiction over rates for cable equipment was broad:

We believe that Congress included equipment and installation in the definition of cable programming services to prevent cable operators from avoiding regulation of equipment, if any, used to provide cable programming services alone or in conjunction with unregulated services.”<sup>8</sup>

Thus, had cable modems been in use in 1993, the Commission would have written Section 76.923 to cover them explicitly. This comports with the view that the Commission, acting in 1998 extended the broad reach of Section 76.923 to include cable modems.

Third, it makes no sense to tie the pricing policies for cable modems to the determination that there is effective competition in video services. Whether local franchising authorities may no longer regulate basic cable rates has nothing whatsoever to do with the bundling of cable modems and Internet service. Indeed, neither cable modems nor Internet service have ever been subject to rate regulation.<sup>9</sup> Most recently, in revisiting its rules for evaluating effective competition in the context of Section 76.923, the Commission reaffirmed that the criteria for this determination are based entirely on the state of local video competition, and expressly rejected suggestions that it should take into account competitiveness in the broadband market.<sup>10</sup>

Fourth, and most importantly, it is impossible to reconcile the express anti-subsidy and anti-bundling requirements of Section 629 with a reading of Section 76.1206 which does not

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<sup>7</sup>*Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation*, 8 FCC Rcd 5631 (1993).

<sup>8</sup>*Id.*, 8 FCC Rcd at 5807.

<sup>9</sup>In fact, the Commission has expressly forborne from such rate regulation. *Protecting and Promoting the Open Internet*, 30 FCCRcd 5601, 5841 (2015).

<sup>10</sup>Amendment of the Commission’s Rules Concerning Effective Competition, 30 FCCRcd

apply to cable modems. As noted above, the Commission clearly ruled in the very same order that cable modems are covered by Section 629. To say that cable operators could fail to separately state prices for cable modems, or subsidize them, would render the last sentence of Section 629 to be a nullity. It is a basic principle of administrative law that a regulation should be interpreted so as to avoid conflict with a governing statute.<sup>11</sup> If Section 76.1206 were to be read as not applying the terms of Section 629 to cable modems, it would be void.<sup>12</sup>

Finally, as explained above, Section 706 affords an entirely independent basis for requiring that cable modem rates be separately stated and not subsidized. Since Section 706 was adopted contemporaneously with Section 629, the two must be read together. Applying the Commission's Section 706 authority to Section 76.1206 thus supports this result.

**B. Section 706 Gives the Commission Concurrent Authority over Attachment and Pricing of Cable Modems.**

Section 706(a) of the Telecommunications Act of 1996 gives the Commission a broad mandate to

encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, ...regulating methods that remove barriers to infrastructure investment.

Section 706(b) directs the Commission to

determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's

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<sup>11</sup>See, e.g., *Caldera v. J.S. Alberici Constr. Co.*, 153 F.3d 1381, 1383 n.\*\* (Fed. Cir.1998) (“statutes trump conflicting regulations”); *Wolf Creek Collieries v. Robinson*, 872 F.2d 1264, 1267 (6th Cir.1989) (“statutory language ... prevail[s] over inconsistent regulatory language”).

<sup>12</sup>See *American Airlines, Inc. v. Transportation Security Administration*, 665 F.3d 170, 176 (D.C. Cir. 2011)(“a regulation contrary to a statute is void.”) (*quoting Orion Reserves Ltd. P'ship v. Salazar*, 553 F.3d 697, 703 (D.C. Cir. 2009)).

determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

In its most recent inquiry into advanced telecommunications capability, the Commission “conclude[d] that broadband is not being deployed to all Americans in a reasonable and timely fashion.”<sup>13</sup> The Commission thus has the obligation to “take immediate action to accelerate deployment....”

Part of the Commission’s mandate under Section 706 is to create a competitive market for equipment which will accelerate deployment by reducing prices and promoting technological innovation. This was recognized in the Commission’s *2005 Internet Policy Statement*, which was adopted pursuant to Section 706(a).<sup>14</sup> There, the Commission concluded that it had

a duty to preserve and promote the vibrant and open character of the Internet as the telecommunications marketplace enters the broadband age. To foster creation, adoption and use of Internet broadband content, applications, services and **attachments**, and to ensure consumers benefit from the innovation that comes from competition, the Commission will incorporate...[four]...principles into its ongoing policymaking activities.<sup>15</sup>

To emphasize the importance of its reference to “attachments,” the third of the four principles adopted in the *2005 Internet Policy Statement* clearly set forth that

***To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet***, consumers are entitled to *connect their choice of legal devices* that do not harm the network.<sup>16</sup>

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<sup>13</sup> *2015 Broadband Progress Report and Notice of Inquiry On Immediate Action to Accelerate Deployment*, 30 FCC Rcd 1375, 1377 (2015).

<sup>14</sup> *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))(2005 *Internet Policy Statement*).

<sup>15</sup> *Id.*, 20 FCC Rcd at 14988.

<sup>16</sup> *Id.* (first emphasis in the original).

Thus, Section 706 empowers the Commission to require cable operators to allow cable modems to be attached to their network. And it also commits the Commission to insure competition in the affected markets, including the market for equipment such as cable modems.

**C. Sections 201 and 202 Give the Commission Additional Concurrent Authority Over Attachment and Pricing of Cable Modems.**

Section 201(a) of the Communications Act provides that

All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful;

Section 202(a) of the Communications Act declares that

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

Under the Commission's *2015 Open Internet Order*,<sup>17</sup> when a cable operator provides broadband Internet access service, it is subject to the provisions of Sections 201 and 202.

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>18</sup>

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<sup>17</sup>*Protecting and Promoting the Open Internet*, 30 FCCRcd 5601 (2015).

<sup>18</sup>*Carterfone*, 13 FCC2d, 420, 426 (1968), *reconsideration denied*, 14 FCC2d 571 (1968). See also, *Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service*, 56 FCC2d 593, 595 (1975).

**D. Cablevision’s Pricing Practices Are Contrary to the Public Interest.**

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.

If the transaction would not violate a statute or rule, the Commission considers whether a grant could result in public interest harms (by substantially frustrating or impairing the objectives or implementation of the Act or related statutes) or public interest benefits.<sup>19</sup>

Practices, such as Cablevision’s, which undermine Commission policies, are not in the public interest. As the Commission has explained,

In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the 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. If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the application for hearing.<sup>20</sup>

Thus, the public interest evaluation broadly looks at Commission policy. In designating a

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<sup>19</sup>*Belo Corp., LLC*, 28 FCC Rcd 16867, 16877 (2013); *Adelphia Communications Corporation, (And Subsidiaries, Debtors-in-possession)*, 21 FCC Rcd 8206, 8207 (2006)(Footnote omitted). (“If the transactions would not violate a statute or rule, the Commission next considers whether the transactions could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.”)

<sup>20</sup>*Verizon Communications Inc. and MCI, Inc.*, 20 FCC Rcd 18433, 18443 (2005)(footnotes omitted).

hearing in the EchoStar/DirecTV proceeding, the Commission stressed that the public interest determination

necessarily encompasses the “broad aims of the Communications Act,” which includes, among other things, preserving and enhancing competition in relevant markets, ensuring that a diversity of voices is made available to the public, and accelerating private sector deployment of advanced services.<sup>21</sup>

In 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. The Telecommunications Act of 1996 expresses a strong policy preference for promoting competition in all markets, including equipment.<sup>22</sup> Indeed, it has been a cornerstone of federal policy at least since the break-up of AT&T that competition in the CPE market is preferable and leads to lower prices for consumers. As the Commission has said,

[C]ompetition in the navigation equipment market is central toward encouraging innovation in equipment and services, and toward bringing more choice to a broader range of consumers at better prices.<sup>23</sup>

Congress specifically addressed competition in equipment markets in Section 629, where it “sought to have the marketplace offer consumers a choice over a broad range of equipment.”<sup>24</sup> In its *2005 Internet Policy Statement*, issued pursuant to Section 706, the Commission declared

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<sup>21</sup>*In re EchoStar Communications Corporation*, 17 FCC Rcd 20559, 20575 (2002).

<sup>22</sup>The Conference Report to the 1996 Telecommunications Act characterized the intent of Congress as being:

to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector development of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition....

S. Conf. Rep. 104-230, 104th Cong. 2d Sess. at 113 (1996) (Joint explanatory statement of Committee of Conference).

<sup>23</sup>*Implementation of Section 304 of the Telecommunications Act of 1996*, 13 FCC Rcd 14775, 14784 (1998).

<sup>24</sup>*Id.*

that “consumers are entitled to connect their choice of legal devices that do not harm the network.”<sup>25</sup> The Commission must also evaluate Cablevision’s practices in light of the “national Internet policy” set forth in Section 230(b) of the Communications Act.<sup>26</sup> As the Commission has explained, Section 230(b) “states that it is the policy of the United States ‘to preserve the vibrant and competitive free market that presently exists for the Internet’ and ‘to promote the continued development of the Internet.’”<sup>27</sup>

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. Cablevision ignores the benefits of competition in nonetheless attempting to argue that extending its pricing and attachment policies to millions of additional customers will cause no harm.

**II. IF THE COMMISSION IS DISPOSED TO GRANT THE APPLICATIONS, THE COMMISSION MUST IMPOSE CONDITIONS THAT INSURE COMPLIANCE WITH THE LAW AND COMMISSION POLICY PROMOTING A COMPETITIVE EQUIPMENT MARKET.**

Since, as Zoom has shown, approval of the Altice applications is contrary to law, regulations and the public interest, the Commission cannot grant them in the form submitted. If the Commission is nonetheless disposed to grant the applications, it can do so consistent with the public interest only by imposing suitable conditions on Altice with respect to all cable systems it operates, including systems currently operated by Suddenlink and any cable systems that Altice may seek to acquire in the future. Such conditions should have no expiration date.

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<sup>25</sup>2005 *Internet Policy Statement*, 20 FCC Rcd at 14987 (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) (2005 *Internet Policy Statement*).

<sup>26</sup>2005 *Internet Policy Statement*, 20 FCC Rcd at 14987.

<sup>27</sup>*Id.*, citing 47 USC §§230(b)(1)-(2).

Specifically, Zoom believes that the following conditions are necessary:

1. Altice must establish separate unsubsidized and unbundled prices for Internet service and for cable modem leasing.
2. Altice must clearly state the cost of a cable modem lease on each service bill for all customers who lease a cable modem.
3. Altice must clearly state in a prominent place on all modem-related webpages and in all modem-related publications the price for a leased modem and the customer option to attach Altice-certified customer-owned cable modems for Altice Internet service.
4. Altice must have a reasonable, open certification program for customer-owned cable modems. Reasonable technical requirements would be designed to insure that no electronic or physical harm would be caused by the attachment or operation of those cable modems.
5. Altice must insure that all modem-related electronic sales and support communications with current and potential customers (including websites, email and online chats) disclose that customers have the right to purchase and attach their own Altice-certified cable modems.
6. Altice must insure that all modem-related oral sales and support communications with current and potential customers disclose that customers have the right to purchase and attach their own Altice-certified cable modems.
7. Altice must insure that its training of sales and support personnel is consistent with the need to comply with these conditions.

## CONCLUSION

Because it has not represented that it will change Cablevision's policies to insure that they are in compliance with applicable statutes and regulations, Altice has failed to make the affirmative showing that grant of its applications will be in the public interest that is necessary for Commission approval.

Cablevision's anti-competitive practices damage the market for cable modems and impair the innovation that comes with fully-functioning competitive markets that offer a choice of devices with innovative functionality. Unless the Commission insures that Altice will change Cablevision's cable modem policies, allowing Altice to acquire Cablevision will harm Zoom, harm U.S. retailers of cable modems, and deny millions of Cablevision customers the rights they deserve. If the Commission were to allow the Cablevision acquisition to proceed, Altice would consider itself free to apply those practices to Suddenlink customers as well, and other cable MSOs likely would also reconsider whether to cease their compliance with Section 629. While Cablevision recently appears to have made nominal efforts to comply with Section 629 with respect to new customers, there is a substantial and material question as to whether its actual practices are consistent with its claimed policy.

Section 629 was enacted to prevent this result. It applies to cable modems, and is designed to create a competitive environment that encourages technological progress. Section 706 reinforces that power. Sections 201 and 202, perhaps the strongest statutory provisions in the Commission's arsenal, clearly prohibit unjust, unreasonable and discriminatory practice. Under these statutory provisions, the Commission has adopted rules and policies to assure that there is a vibrant and competitive equipment market. All of this leads inexorably to the conclusion that

allowing Altice to acquire Cablevision without protecting the 4.6 million current Cablevision and Suddenlink subscribers, and millions more potential customers, is contrary to the public interest.

For the reasons set forth above, there are substantial and material questions of fact as to whether grant of the applications would be contrary to Sections 201, 201 and 629 of the Communications Act, Section 706 of the Telecommunications Act of 1996, the public interest standard, and FCC Rules promulgated thereunder. Accordingly, Zoom asks that the Commission designate the applications for hearing; that the Commission deny the applications or, in the alternative, establish reasonable condition upon any grant of the applications to insure full compliance with applicable statutes and regulations, and grant all such other relief as may be just and proper.

Respectfully submitted,



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Counsel for Zoom Telephonics, Inc.

December 7, 2015

# EXHIBIT 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	)	

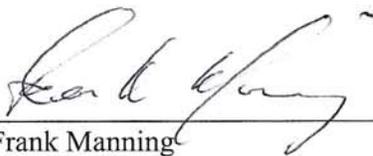
**DECLARATION OF FRANK MANNING**

I am President and CEO of Zoom Telephonics, Inc. I have knowledge of the facts set forth in the foregoing Petition to Deny, or in the Alternative, for Conditional Grant. 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:

December 7, 2015

  
\_\_\_\_\_  
Frank Manning

# EXHIBIT B

11/22 - 12/21	Optimum Gold Includes Broadcast Basic Incl. \$29.95 Promotional Savings	\$80.00
11/22 - 12/21	Multi-Room DVR	\$12.95
11/22 - 12/21	2 Cable Box(es) (At \$7.56 each and remote(s) at \$0.24 each)	\$15.60
11/22 - 12/21	Additional Outlet  Premium Service Fee	\$1.50
11/22 - 12/21	Surcharge Sports and Broadcast TV	\$5.98
<b>Total TV</b>		<b>\$116.03</b>
<b>Internet</b>		
11/22 - 12/21	Optimum Online (Incl FREE Unlimited access to Optimum WiFi) Incl. \$25.00 Promotional Savings	\$34.95
11/22 - 12/21	Ultra 50 Incl. \$4.95 Promotional Savings	\$0.00
11/22 - 12/21	Smart Router	\$0.00
<b>Total Internet</b>		<b>\$34.95</b>

# EXHIBIT C

 New party ('Joeydalis H.') has joined the session

 Joeydalis H.: Hi, my name is Joeydalis H and I will be assisting you today.

 Joeydalis H.: Good Evening Andrew!

 Joeydalis H.: =)

 Joeydalis H.: How may we help?

 Andrew Schwartzman: Hi. I'm considering ordering service. However, I want to use my own modem. It looks like you charge \$4.95 for a modem, and I don't see how to order without paying the \$4.95.

 Joeydalis H.: Oh okay.

 Joeydalis H.: I can take care of that for you and process the prder.

 Joeydalis H.: order\*

 Joeydalis H.: No worries =)

 Joeydalis H.: May I have the address where you are looking to set up service?

 Andrew Schwartzman: Don't process the order until I understand the question about the modem.

 Joeydalis H.: I would go over everything with you before I process the order.

 Andrew Schwartzman: Please just tell me about the modem.

 Joeydalis H.: I wouldn't just process the order without your consent.

 Joeydalis H.: What do you want to know about the modem?

 Joeydalis H.: What kind of modem do you have?

 Joeydalis H.: You can use your own modem to avoid the fee.

 Joeydalis H.: That's no problem.

 Joeydalis H.: I just want to make sure that your modem is compatible with our network.

 Joeydalis H.: .....Are you still there Andrew?

 **Andrew Schwartzman:** I will use an Arris TM822.

 **Joeydalis H.:** Your modem is compatible with our network so there will be no hiccups and you can definitely use it =)

 **Joeydalis H.:** The following modems are compatible for use with our network: • Arris TM822 - 2 port 3.0 Modem • Arris TM804 - 4 Port 3.0 Modem • Arris TM1602 - 2 port 3.0 modem\* • Motorola SBV6220 3.0 modem\*

 **Andrew Schwartzman:** Yes, but what about the \$4.95 charge?

 **Joeydalis H.:** Oh.. That fee would be completely taken off since you'll be using your own modem.

 **Joeydalis H.:** You do have that option when we set up the order for you.

 **Joeydalis H.:** That's no problem.

 **Andrew Schwartzman:** But when I tried to do this online, there was no way to opt out. Do I have to sign up with you or on the phone to avoid the \$4.95 charge?

 **Joeydalis H.:** Yes. If the option is not available when you set up the order on your own then you would have to.

 **Joeydalis H.:** I apologize for that.

 **Joeydalis H.:** I can go ahead and set it up for you and send you an email confirmation regarding the order just so you can confirm that there are no surprises or anything of that sort.

 **Andrew Schwartzman:** OK, thanks. Signing off.

## CERTIFICATE OF SERVICE

I certify that on December 7, 2015, copies of the foregoing *Petition to Deny, or in the Alternative, for Conditional Grant* 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  
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Yaron Dori  
Michael Beder  
Ani Gevorkian  
Covington & Burling  
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Washington, DC 20001  
ydori@cov.com  
mbeder@cov.com  
agrevorkian@cov.com

In addition, copies of the foregoing *Petition to Deny, or in the Alternative, for Conditional Grant* have been delivered by email to the following Federal Communications officials:

Neil Dellar  
TransactionTeam@fcc.gov

Brendan Holland  
brendan.holland@fcc.gov

Dennis Johnson  
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Clay DeCell  
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In addition a copy of the foregoing *Petition to Deny, or in the Alternative, for Conditional Grant* has been delivered by email to the Commission's duplicating contractor:

Best Copy and Printing, Inc.  
fcc@bcpiweb.com



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Andrew Jay Schwartzman