

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF COGENT COMMUNICATIONS, INC.

Robert M. Cooper
Hershel A. Wancjer
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
(202) 237-2727

Counsel to Cogent Communications, Inc.

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Cogent Communications, Inc. (“Cogent”) submits these comments concerning the joint application of Altice N.V. (“Altice”) and Cablevision Systems Corporation (“Cablevision”) (together, the “Applicants”) seeking approval for the transfer of control of Cablevision and certain subsidiaries to Altice (henceforth the “transaction” or “merger”).¹ In sum, Cogent urges that, in order to find that the transaction comports with the public interest, the Federal Communications Commission (the “Commission” or “FCC”) should impose meaningful and targeted conditions to ensure that the combined entity will not engage in interconnection practices that jeopardize its broadband customers’ access to substantially all Internet endpoints. As discussed below, such conditions amount to no more than an assurance that the post-merger entity will adhere to historical and current industry norms for interconnection.

I. The Applicants’ Failure to Offer Any Commitments Relating to Interconnection is a Cause for Concern.

In their October 14, 2015 Joint Application, Altice and Cablevision present their case for why the proposed merger will serve the public interest.² In particular, the Applicants assert that

¹ See *In the Matter of Application of Altice N.V. & Cablevision Systems Corporation for Consent to Transfer Control of Authorizations*, WC Docket No. 15-257, Joint Application (filed Oct. 14, 2015) (“Joint Application”). Cogent is a multinational Tier 1 Internet service provider offering facilities-based, low-cost, high-speed Internet access and Internet Protocol communications services to businesses across thirty-eight countries. As a Tier 1 ISP and transit provider, Cogent carries Internet traffic from edge providers across thousands of miles to other ISPs, including residential, last-mile ISPs like Cablevision, and to its own business customers. Cogent’s core business philosophy is—and has always been—that Internet access should be marketed, bought and sold as a commodity. Cogent further operates its business on the premise that constantly lower prices will spur demand, increase usage, and drive innovation. As a result, Cogent has contributed to the explosive growth in Internet traffic by making affordable, reliable, and fast Internet data transit services available to thousands of innovative edge providers.

² Section 310(d) of the Communications Act of 1934, as amended, requires the Commission to determine “whether the Applicants have demonstrated that the [proposed transaction] will serve the public interest, convenience and necessity.” See *In the Matter of Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, FCC 15-94, Memorandum Opinion and Order (released July 28, 2015) ¶ 18 (“*AT&T/DIRECTV Order*”). As part of its analysis, the Commission employs “a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.” *Id.* The

Altice’s “global scale, access to capital, and fresh perspective” will allow the combined entity to provide a “world-class” level of broadband Internet connectivity such that “Cablevision’s service remains on the cutting edge of available bandwidth, network reliability and consumer value.” Joint Application at 6-7.

However, nowhere in the Applicants’ submission do they specifically explain how they intend to ensure an enhanced level of broadband Internet access for their subscribers or how sound interconnection practices are a prerequisite to fulfilling that pledge. This stands in stark contrast to commitments concerning interconnection made by Charter Communications Inc. (“Charter”) in its proposed merger with Time Warner Cable Inc. (“TWC”), as well as recent actions by other market participants underscoring that uncongested interconnection is essential to the continued growth of the Internet and the innovative services it provides to consumers. Thus, the absence of any affirmative commitments by the Applicants concerning the combined entity’s interconnection practices, or even an acknowledgement of the critical role traffic exchange plays in the provision of broadband Internet access, is noteworthy and a cause for concern.

To be clear, Cogent’s concerns are not motivated by its pre-transaction experiences with Cablevision. Indeed, Cogent has always enjoyed a strong business relationship with Cablevision, whereby the companies have interconnected on a settlement-free basis to provide fast, high-quality, and reliable Internet connectivity to Cablevision’s residential broadband subscribers.

Rather, the public interest concerns raised here—which are inherently merger-specific—stem from the increased scale and presence that the post-merger entity will have if Cablevision is absorbed into the Altice corporate family (which already has approximately 35 million

Applicants “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.” *Id.*

subscribers outside of the United States). As the Applicants emphasize, a consummated merger “would help level the playing field by giving Cablevision the ability to invest with the backing of Altice’s global scale and access to capital, as well as its considerable technical and operational expertise.” Joint Application at 11. Moreover, if Altice’s contemporaneous acquisition of Suddenlink Communications is also consummated, the new Cablevision will become the nation’s fourth-largest cable operator and one of the largest broadband Internet access providers. With this increased scale—coupled with Altice’s financial and operational backing—will come increased incentives and leverage to impair the delivery of content that would compete with the merged firm’s video offerings, including over-the-top services offered by providers such as Netflix, Hulu and YouTube.³

Accordingly, the contemplated transaction is one over which the Commission should retain the ability to step in and remedy instances where a combined Altice-Cablevision might engage in interconnection practices that are antithetical to Open Internet principles. This is particularly the case where the Commission’s broad, public interest authority enables it to, consistent with its extensive regulatory and enforcement experience, “impose and enforce transaction-related conditions that ensure that the public interest is served.”⁴

³ The absence of vertical integration concerns (*see* Joint Application at 13) does not alter this analysis. While vertically-integrated programming provides an incentive to disadvantage over-the-top substitutes, it is not the only source of such incentives. Preservation and protection of the post-merger entity’s lucrative video distribution business can have the same effect.

⁴ *AT&T/DIRECTV Order* ¶ 22; *see also In the Matter of Applications of Comcast Corp., Gen. Elec. Co. & NBC Universal Inc.*, MB Docket No. 10-56, Memorandum Opinion & Order, 26 FCC Rcd 4238, 4249 ¶ 25 (released January 20, 2011).

II. The Commission’s Review of the Instant Transaction Should Reflect that Interconnection is an Indispensable Component of Broadband Internet Access Service.

The importance of interconnection and its relevance to the public interest are now widely understood, including the recognition that the manipulation of interconnection capacity can have an especially harmful effect on edge providers and consumers. Unlike blocking a particular content source within an ISP’s own network, congested interconnection points degrade *all* traffic that passes through the associated ports.

Over the last several years, various participants in the Internet distribution chain have been harmed by, and forced to endure the congestion and corresponding degradation of Internet content caused by, a number of large BIAS providers. This well-documented conduct influenced in part the Commission’s *Open Internet Order*.⁵ There, not only did the Commission recognize the centrality of interconnection to the provision of broadband Internet access service, but also that “broadband Internet access providers have the ability to use terms of interconnection to disadvantage edge providers and that consumers’ ability to respond to unjust or unreasonable broadband provider practices are limited by switching costs.”⁶ As the Commission further explained, “When links are congested and capacity is not augmented, the networks . . . experience degraded quality of service due to reduced throughput, increased packet loss, increased delay, and increased jitter.”⁷

⁵ Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 (released Mar. 12, 2015) (“*Open Internet Order*”).

⁶ *Id.* ¶ 205.

⁷ *Id.* ¶ 199. *See also id.* ¶ 8 (“The record reflects that broadband providers hold all the tools necessary to deceive consumers, degrade content, or disfavor the content that they don’t like.”); ¶ 20 (“[W]hen a broadband provider acts as a gatekeeper, it actually chokes consumer demand for the very broadband product it can supply”); ¶ 195 (“We note that anticompetitive and discriminatory practices

Similarly, in evaluating the AT&T-DIRECTV transaction, the Commission emphasized the importance of monitoring the terms of the combined entity’s future interconnection agreements to determine whether such agreements will be used “to deny or impede access to networks in ways that limit competition from third-party online video content providers.”⁸ Accordingly, as a condition of approving that transaction, the Commission required the combined entity to (a) “disclose all of its interconnection agreements to the Commission for four years after closing,” and (b) “work with an independent measurement expert to report certain Internet interconnection performance metrics, and to the extent possible, make such metrics publicly available.”⁹

Interconnection issues were also a catalyst to the eventual abandonment of the Comcast-TWC merger. In that proceeding, various parties explained how the combined entity’s control over its interconnection arrangements, coupled with the increased size of its footprint, would allow it degrade the delivery of competing content requested and paid for by its own subscribers.¹⁰ Or, as FCC General Counsel Jonathan Sallet later explained, interconnection was a component of a merged Comcast-TWC’s “toolkit that would allow it put sand in the gears of

[involving the exchange of Internet traffic] can have a deleterious effect on the open Internet.”); ¶ 205 (“When Internet traffic exchange breaks down—regardless of the cause—it risks preventing consumers from reaching the services and applications of their choosing, disrupting the virtuous cycle.”). Those harmed by degradation include edge providers (like Netflix), transit providers (like Cogent) and, most importantly, consumers who pay for access to all lawful Internet content.

⁸ See *AT&T/DIRECTV Order* ¶ 396.

⁹ *Id.*

¹⁰ See, e.g., *In the Matter of Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc. and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Petition to Deny of Cogent Commc’ns Grp., Inc. (filed Aug. 25, 2014); *In the Matter of Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc. and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Amended Petition to Deny of Netflix, Inc. (filed Aug. 27, 2014).

competition.”¹¹ Here, it is axiomatic that a combined Altice-Cablevision cannot provide the “world class” broadband Internet connectivity it espouses without employing sound interconnection practices. Put differently, without interconnection, there is no Internet access. And without reasonable interconnection practices, there is degraded Internet access.

A growing number of key market participants—ISPs themselves—are also acknowledging and embracing the importance of uncongested interconnection. For example, under Charter’s recently announced “IP Interconnection Policy,” a newly combined Charter/TWC/Bright House—which would become the nation’s second-largest cable operator and broadband Internet access provider—would interconnect with qualifying Internet service and content providers, and perform capacity augments as necessary, on a settlement-free basis.¹² In response to certain critiques concerning the timing of capacity augments under its policy, Charter has further confirmed that it contemplates regular meetings with its peering partners to plan ahead for “augmentation and management of the network,” that it will start to augment capacity “when ports reach 70% utilization at peak,” and that capacity augments will generally be completed within 90 days.¹³ The policy, which Charter has proffered as an enforceable merger condition, reflects the historical practice among major Internet networks that have interconnected

¹¹ Jonathan Sallet, General Counsel, FCC, Telecommunications Policy Research Conference: “The Federal Communications Commission and Lessons of Recent Mergers & Acquisitions Reviews” (Sept. 25, 2015), at 14, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-335494A1.pdf (last visited Dec. 1, 2015).

¹² See Letter from Samuel L. Feder (Outside Counsel for Charter) attaching “Charter Communication’s IP Interconnection Policy and Requirements,” to Marlene Dortch, Secretary, FCC, MB Docket No. 15-149 (July 15, 2015) at 1 (“Interconnection and any subsequent capacity augments under this policy will be undertaken subject to a mutual interconnection agreement at no charge to either party for traffic exchange.”).

¹³ *In the Matter of Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations*, MB Docket No. 14-149, Applicants’ Opposition to Petitions to Deny and Response to Comments (filed Nov. 2, 2015) at 13.

without the exchange of payments and augmented connections as necessary to maximize the efficient use of the Internet.¹⁴

Based on these commitments, Cogent and Netflix, two of the most vigorous and vocal opponents of the proposed Comcast-TWC merger, both expressed their support of the Charter-TWC transaction.¹⁵ This is because Charter’s commitments, if implemented, will help ensure that the Charter-TWC merger is in the public interest.

Notably, Charter is not alone. Interconnection agreements Cogent has recently entered into with Verizon, AT&T, TWC and CenturyLink—and that Level 3 Communications, Inc. has recently entered into with Comcast, Verizon, and AT&T—recognize the need for durable interconnection solutions that not only solve congestion today, but ensure that as broadband usage continues on its upward trajectory congestion will not reappear in short order.¹⁶ For

¹⁴ In addition to settlement-free interconnection—which will “facilitate[] the ability of edge providers to have robust and frictionless access to Charter customers”—Charter has also pledged to not (a) “block or throttle Internet traffic or engage in paid prioritization, regardless of the outcome of the litigation over the *Open Internet Order*,” (b) charge consumers additional fees to use third-party applications; (c) engage in zero-rating; or (d) impose data caps. *Id.* at 8-9.

¹⁵ See Letter from Robert N. Beury Jr. (Chief Legal Officer, Cogent) to Marlene Dortch, Secretary, FCC, MB Docket No. 15-149 (filed July 15, 2015); Letter from Christopher D. Libertelli (Vice President-Global Public Policy, Netflix, Inc.) to Marlene Dortch, Secretary, FCC, MB Docket No. 15-149 (filed July 15, 2015).

¹⁶ See “Cogent and Verizon enter into interconnection agreement,” Press Release, May 1, 2015, available at <http://www.verizon.com/about/news/cogent-and-verizon-enter-into-interconnection-agreement> (last visited Dec. 1, 2015); “Cogent and AT&T Enter Into Interconnection Agreement,” Press Release, June 10, 2015, available at http://about.att.com/newsroom/cogent_and_att_enter_into_interconnection_agreement.html (last visited Dec. 1, 2015) (“Cogent-AT&T Press Release”); “Comcast and Level 3 Announce Long-Term Interconnection Agreement,” Press Release, May 21, 2015, available at <http://corporate.comcast.com/news-information/news-feed/comcast-level-3> (last visited Dec. 1, 2015) (“Level 3-Comcast Press Release”); “Level 3 and Verizon Enter Into Interconnection Agreement,” Press Release, April 23, 2015, available at <https://www.verizon.com/about/news/level-3-and-verizon-enter-interconnection-agreement> (last visited Dec. 1, 2015); “Level 3 and AT&T Enter Into Interconnection Agreement,” Press Release, May 11, 2015, available at http://about.att.com/newsroom/level_3_and_att_enter_into_interconnection_agreement.html (last visited Dec. 1, 2015); “Joint Statement from Time Warner Cable and Cogent Communications,” Press Release, October 8, 2015, available at <http://www.timewarnercable.com/en/about-us/press/joint-statement-from->

example, Cogent’s interconnection agreement with AT&T “will not only improve efficiency of traffic exchange, but also create additional capacity and new interconnection locations between the networks allowing customers to continue to experience high-quality performance and network reliability.”¹⁷ Similarly, Level 3’s interconnection agreement with Comcast reflects the companies’ “shared goal” of “enabling a growing, secure and resilient interconnection environment.”¹⁸ This pattern of pro-consumer interconnection arrangements among most of the industry’s major United States players not only establishes a benchmark for current Internet traffic exchange practices but, just as importantly, shows that Altice’s silence on these issues renders it an outlier and calls into question whether the instant transaction is in the public interest.

III. Should It Approve This Merger, The Commission Should Impose Enforceable Conditions Relating to Interconnection.

As shown above, the Commission and a chorus of industry participants recognize the importance strong interconnection practices play in ensuring that end-users have the widest possible access to the Internet services and applications of their choosing. Moreover, the size and scope of the Altice-Cablevision transaction necessarily increases the risk that the combined entity can and would use interconnection agreements to degrade competing online video and OVD content. To that end, the Commission has stated that it remains essential to carefully monitor and address anti-competitive incentives in mergers and acquisitions concerning

[twc-and-cogent-communications.html](#) (last visited Dec. 1, 2015); “CenturyLink and Cogent enter into interconnection agreement,” Press Release, November 24, 2015, *available at* <http://news.centurylink.com/news/centurylink-and-cogent-enter-into-interconnection-agreement> (last visited Dec. 1, 2015).

¹⁷ See Cogent-AT&T Press Release.

¹⁸ See Level 3-Comcast Press Release.

broadband Internet access service and Internet traffic exchange.¹⁹ Accordingly, Cogent urges the Commission to impose the following conditions that will allow it to find that the proposed transaction will be in the public interest.

First, consistent with Charter’s recently announced interconnection policy, the Applicants should be required to interconnect with qualifying networks or edge providers and augment capacity on a settlement-free basis. The incorporation of this or a substantially similar policy as an enforceable merger condition will ensure that a combined Altice-Cablevision’s residential subscribers can access the lawful Internet content of their choosing in an environment free of congestion and the resulting degradation such congestion causes. Moreover, this condition is not onerous and should be of no concern to Altice if it sincerely desires to deliver reliable and high-quality broadband Internet access to its existing and future customers. All it does is ensure that other Internet networks or edge providers of substantial scale that are willing to exchange traffic with Altice at reasonably localized locations can do so without having to pay a fee to access Altice customers, who already pay for broadband Internet access.²⁰

Second, the Applicants should agree to disclose all interconnection agreements for a period of four years from the closing of the transaction and regularly report Internet interconnection performance metrics such as latency, packet loss and congestion/utilization. As the Commission has explained elsewhere, this condition will enable it to determine “whether the

¹⁹ *Open Internet Order* ¶ 203; *AT&T-DIRECTV Order* ¶ 396.

²⁰ With respect to defining “reasonable locations” and “reasonably localized” interconnection, these are the type of technical arrangements that should be amenable to agreement between Altice-Cablevision and any network or edge provider with whom it interconnects. In practice, there are simply not that many edge providers or other networks that have sufficient scale to interconnect with Altice-Cablevision on such a basis, thus further limiting the burden the condition would impose on the Applicants. However, while the number of potential peering relationships such a condition might affect is small, the number of residential broadband subscribers that would be at risk absent such a condition is large.

combined entity is using such agreements to deny or impede access to its networks in ways that limit competition from third-party online video content providers.”²¹

It should not be assumed that if the transaction proceeds absent such conditions that other mechanisms will exist to shield against post-merger congestion and broadband degradation. It is for that reason that the public interest demands a sustainable mechanism to prevent the congestion that can impair consumer broadband Internet access.

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Respectfully Submitted,

/s/ Robert M. Cooper
Robert M. Cooper
Hershel A. Wancjer
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
(202) 237-2727

Counsel to Cogent Communications, Inc.

²¹ *AT&T-DIRECTV Order* ¶ 396.