

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)	

**ZOOM TELEPHONICS, INC. REPLY TO “REPLY COMMENTS OF
ALTICE N.V. AND CABLEVISION SYSTEMS CORPORATION”**

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

December 28, 2015

Zoom Telephonics, Inc. (Zoom) respectfully submits this reply to the *Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation* (Opposition) filed on December 22, 2015.

The Opposition is more significant for what it does not say than for what it does say. Altice¹ does not dispute any of the factual allegations Zoom presented in its December 7, 2015 *Petition to Deny, Or in the Alternative, For Conditional Grant* (Petition). Nor does Altice address, much less rebut, Zoom's reliance on the Commission's concurrent authority with respect to cable modem leasing and attachment arising under Sections 201 and 202 of the Communications Act, Section 706 of the Telecommunications Act of 1996 and the public interest standard. While Altice does address Zoom's arguments with respect to Section 629 of the Communications Act, it does so in two paragraphs which offhandedly attempt to show that Section 629 is unenforceable and does not require cable operators to do anything to achieve compliance with its requirements.

On December 18, 2015, the Commission granted Altice's applications to acquire Suddenlink.² As Zoom has explained, Suddenlink currently complies with Section 629 and the Commission's rules by offering Internet service and cable modem leases separately.³ However, Altice's unwillingness to affirm that it will not convert Suddenlink's modem policies to those now employed by Cablevision only underscores that there is a substantial and material question of fact as to whether grant of the Cablevision applications is in the public interest.

Altice says absolutely nothing to challenge any of the factual assertions Zoom has presented. Zoom's petition, accompanied by a sworn declaration, alleged that some Cablevision

¹For convenience, Cablevision Service Corporation and Altice N.V. will be referred to herein as "Altice."

²*In the Matter of Applications Filed by Altice N.V. & Cequel Corp. d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V.*, Memorandum Opinion and Order, DA 15-1451 (December 18, 2015).

³Petition, p. 2.

customer service agents have told customers that they receive “free” modems as part of their Internet service and that customers are not entitled to credits or discounts if they choose to purchase and install their own cable modems.⁴ For at least some Cablevision customers, the price of a cable modem lease is not separately stated on their bills. While Altice has represented that new customers are treated differently, Zoom presented evidence that this may not be the case.⁵ Zoom also showed that the Commission has found that there is no effective competition in the high-speed broadband market.

With respect to the legal issues, Altice asserts without elaboration that the Commission’s rules do not mandate unbundling. It says that “Zoom misreads Section 629” and that Section 629 merely gives the Commission “the discretion - but not the obligation - to impose the requirements Zoom requests.”⁶

While Altice states that it disagrees with Zoom’s reading of the Commission’s rules, it does not offer a contrary reading. It is especially telling that Altice does not quote either the rules or Section 629. Notably Section 629, using the word “shall,” unambiguously directs the Commission “to assure the commercial availability” of equipment, including cable modems, and directs that “charges to consumers for such devices and equipment are separately stated and not subsidized...”⁷

At least as important as what little Altice does say is what it does not say. Altice does not mention, much less dispute, Zoom’s demonstration that the Commission has concurrent authority to direct Altice to unbundle its modem leases from Internet service under Section 706 of the

⁴Petition, p. 3.

⁵Petition, pp. 3-4.

⁶Opposition, p. 11.

⁷Petition, p. 5 (quoting Section 629).

Telecommunications Act of 1996⁸ and Sections 201 and 202 of the Communications Act.⁹ Even more importantly, Altice does not disagree that decades-old Commission policy dating from the *Carterfone* case strongly favors unbundling of customer premises equipment.¹⁰ It offers absolutely no argument that there are any public interest benefits to allowing it to continue or expand Cablevision's policies against separately offering cable modems. So, too, Altice does not dispute Zoom's arguments that dismissing its applications or adopting suitable conditions is necessary for the Commission to fulfill its mandate under the public interest standard.¹¹

Accordingly, Zoom renews its request that the Commission designate Altice's applications for hearing; that the Commission deny the applications or, in the alternative, establish reasonable conditions on 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,



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

December 28, 2015

⁸Petition, pp. 10-12.

⁹Petition, p. 12.

¹⁰Petition, pp. 13-15.

¹¹*Id.*

CERTIFICATE OF SERVICE

I certify that on December 28, 2015, copies of the foregoing *Zoom Telephonics, Inc. Reply to "Reply Comments of Altice N.v. and Cablevision Systems Corporation"* 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 10th Street, NW
Washington, DC 20001
ydori@cov.com
mbeder@cov.com
agrevorkian@cov.com

In addition, copies of the foregoing *Zoom Telephonics, Inc. Reply to "Reply Comments of Altice N.v. and Cablevision Systems Corporation"* 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 *Zoom Telephonics, Inc. Reply to "Reply Comments of Altice N.v. and Cablevision Systems Corporation"* have been delivered by email to the following Federal Communications officials:

Neil Dellar
TransactionTeam@fcc.gov

David Krech
david.krech@fcc.gov

Dennis Johnson
dennis.johnson@fcc.gov

Clay DeCell
clay.decell@fcc.gov

Sumita Mukhoty
sumita.mukhoty@fcc.gov

Brendan Holland
brendan.holland@fcc.gov

Jeffrey Neumann
jeffrey.neumann@fcc.gov

Linda Ray
linda.ray@fcc.gov

Jeffrey Tobias
jeff.tobias@fcc.gov

In addition, a copy of the foregoing 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



Andrew Jay Schwartzman