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

Applications filed to Transfer Control of Cablevision Systems Corporation to Altice N.V., WC Docket No. 15-257

Addendum to Reply of MFRConsulting
To
Joint Reply Comments
Of
Altice N.V. And Cablevision Systems Corporation

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Introduction

MFRConsulting respectfully submits this supplement to the Reply[1] to Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation (Applicants “Joint Reply”) filed on December 22, 2015[2]. The Joint Reply dismisses as no more than “speculation” and “hearsay” opponents’ criticisms and rebuttals of the claims presented in the Joint Application[3] of transaction-specific benefits from Altice’s proposed acquisition of Cablevision and the substantially improved performance of its non-U.S. properties under its ownership. The contents of the Joint Reply were substantively rebutted in this Reply. Ongoing review of Altice and French Government documents has uncovered further evidence that confirms the arbitrary and deceitful nature of the Joint Reply’s dismissive assertions, reinforcing the already documented troublesome depiction of Altice’s record of performance and behavior with its non-U.S. properties that contradicts the favorable picture presented by Altice itself.

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[1] http://apps.fcc.gov/ecfs/document/view?id=60001395403, December 28, 2015
[2] http://apps.fcc.gov/ecfs/document/view?id=60001390059, December 22, 2015
[3] http://apps.fcc.gov/ecfs/document/view?id=60001329304, October 14, 2015

The Joint Reply and Additional Documentary Evidence Rebutting Its Claims

MFRConsulting's original Comments[4] (MFR) referred to in the Joint Reply identified accounting practices by Altice that exaggerate the claimed improvement in the margins of its non-U.S. properties, for example by increasing the proportion of content costs that are capitalized. This concern was not acknowledged or addressed in the Joint Reply. Presumably it was therefore considered to be one of the speculative, i.e. unfounded allegations that the Joint Reply dismissed arbitrarily. But *mirabile dictu* in the presentation of its Q3 2015 results[5] Altice has confirmed that increased capitalization of content costs has contributed to improvements in the reported margin of its property in Israel, HOT. On p. 28 of this presentation Altice confirms that a portion of its reported improved cost base in HOT (Israel) – 290 basis points – is due to the increasing proportion of its content costs that are being capitalized (an additional 11% of these content costs in 2014). In 2011 when Altice acquired HOT no content costs were being capitalized.

The issue raised by this practice is not whether it is justified according to currently permissible accounting precepts and regulations. Rather it is whether Altice is introducing one or more accounting changes between reporting periods that it then exploits to paint a misleadingly flattering picture to regulators (and other parties) of how it has been able to improve the financial performance and strength of companies it has acquired. Proof of this practice also refutes the characterization of opposition to the Altice/Cablevision transaction as being speculative or simply motivated by "dislike" of the transaction, rather than, as is the case, based on substantive supporting evidence and analysis of verifiable information derived from several independent sources and interests. It is also noteworthy that Altice is charging a management fee with an impact of 150 basis points on HOT's margin. It is not specified in any documents seen by this author whether Cablevision would be charged a comparable fee in the event it becomes an Altice company.

Another example of evidence that directly contradicts the Joint Reply's dismissal of an issue raised by opponents involves the cost savings of $900 million forecast for an Altice-owned Cablevision. The Joint Reply argues that opponents have misread the meaning, context and consequences of this amount as an annual sum that if achieved would be harmful to Cablevision's capabilities and competitiveness and the quality of the experiences it would deliver to its customers.

[4] http://apps.fcc.gov/ecfs/document/view?id=60001351844, December 7, 2015 (MFR)

[5] Altice Q3 2015 Results, http://altice.net/wp-content/uploads/2015/10/ALTICE-Q3-2015-Results-Presentation.pdf - a more detailed analysis of Altice's practice of capitalizing content costs can be found at http://www.nasdaq.com/article/altice-overlevered-and-overvalued-cm549410 in which by comparing HOT's local financial reports with Altice's consolidated results and presentations it is estimated that over 30% of content costs are being capitalized as of the latest reporting period, up from 0% in 2011.

Yet on p.36 of the Q3 2015 Results (Business Deleveraging Profile) Altice presents alternative (to actual) Q2 2015 results for Cablevision as if the $900 million in cost savings had been achieved, which would enable it to meet its target leverage of between 5-5.5x for its US business – in this example 5.1x - versus 7.4x without them. Altice is using the very same projected cost savings that it asserts opponents are presenting falsely in order to depict a rosy financial future for Cablevision (and Suddenlink for which it forecasts savings of $215 million) under its ownership. So according to Altice it is legitimate to use this sum as a basis for calculating a benefit, but not as a basis for an examination of the harm that the deep cost cutting measures it entails might cause.

The cause of this two-faced and asymmetric attitude by Altice is not clear. Two alternative (but not the only possible) explanations[6] are that:

(i) Coordination between different people within or acting on behalf of Altice is less than perfect so the information presented to and the positions taken before different audiences may be inconsistent or even contradictory, or
(ii) The messages Altice wishes to deliver to different audiences, e.g. the investment community and regulators, do inherently conflict, hence correspondingly so must some of the claims and forecasts it chooses to present to them.

Moreover a recent decision of the French Government's Directorate for Competition, Consumer Affairs and Repression of Fraud (Direction générale de la concurrence, de la consommation et de la répression des fraudes , or DGCCRF)[7] corroborates another business practice of Altice identified in MFR that in this case most directly harms suppliers, namely unreasonably delayed payment of their invoices. This Directorate announced the imposition of fines on 5 large companies, including Numéricable and SFR, for delayed payments. Since 2009 these delays cannot exceed 60 days from the date of the invoice or 45 days after the end of the month. The fines imposed on Numéricable and SFR each amount to €375,000 (the maximum amount permissible under current French legislation, or about $410, 000) for significant and repeated delays in payment of its suppliers' invoices. The announcement by the DGCCRF states about the payment delays (unofficial English translation by the author), "…they inflict serious harm on the profitability of the creditor businesses because they oblige them to obtain short-term bank financing. These delays have a negative impact on their cash management, their competitiveness and even for the weakest among them on their existence."

[6]Suggestions about the possible motivations and circumstances of Altice driving the contents of the Joint Reply, that are irreconcilable with the contents of its own presentations to other audiences, are speculative, in contrast to fact-based exposures of the inconsistencies in and implausibility of the forecasts and claims being made by Altice to regulators.

[7] http://www.economie.gouv.fr/dgccrf/sanctions-delais-paiement, (October 27, 2015, in French)

Conclusion

In its review of the Altice/Cablevision transaction the Federal Communications Commission (FCC) has to decide whether or not to give more credence to Altice's advocacy in its favor than to the information and analyses submitted into the record by opponents, in order to determine whether there are foreseeable, credible transaction-specific benefits that outweigh foreseeable credible harm to the public interest resulting from the potential for reduced competitiveness, poorer services and less satisfactory experiences for customers etc. However, inextricably related to this decision is also the question of which one (or parts thereof) among the contrasting versions of the information made available by Altice itself (both included in what it has submitted to the FCC and have been identified by opponents) is the least implausible.

A review of Altice's acquisition of Cablevision under the public interest standard should involve the comparative assessment of a coherent scenario presented by Altice against the different outcomes inherent in one or more credible alternative scenarios developed by its opponents. But so far Altice's portrayal of Cablevision under its ownership is confusing, incomplete, and contradicted by its own documented record as well as wrapped in generic and misleading happy talk.