STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-M-0647 – Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements.

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INTRODUCTION

In a Joint Petition filed on November 4, 2015, Altice N.V. (Altice) and Cablevision Systems Corporation (Cablevision) (collectively the Petitioners) seek approval under Public Service Law (PSL) §§99, 100, 101, and 222 to transfer control of Cablevision's telephone and cable systems, franchises and assets, to Altice, and issue debt. Under the proposed transaction, Altice has entered into an Agreement with Cablevision whereby Cablevision, including its New York operating subsidiary, Cablevision Lightpath, Inc. (Lightpath), would be acquired by Altice through a U.S. operating subsidiary. Altice would retain all of Cablevision's existing assets in New York State and Cablevision would ultimately become a wholly owned subsidiary of Altice.

To obtain approval under the Public Service Law, the Petitioners must show that the transaction is in the public interest by demonstrating that the relative benefits outweigh the potential risks and detriments and that the transaction produces overall net positive benefits for their New York customers. The New York State Department of Public Service Staff (Staff) has reviewed the Joint Petition, and issued numerous information requests (IRs)[1] to the Petitioners, in an effort to understand the impact of the proposed transaction on New York. Based on the information submitted to date, Staff concludes that absent additional assurances regarding the

[1] Throughout these comments Staff refers to the responses to its IRs as (DPS-#).

Petitioners' project financial profile, substantive commitments and enforceable conditions similar to those adopted by the Commission in the recent Charter Communications, Inc.'s (Charter) transfer of control of the Time Warner Cable Inc. (Time Warner or TWC)[2] and described in more detail herein, the Petitioners cannot satisfy their burden under the public interest standard as applied by the Commission in several decisions regarding utility acquisitions and mergers.[3] Accordingly, Commission approval of the proposed transaction should only be granted subject to the additional commitments and enforceable conditions, absent such, the Petition should be denied.

SUMMARY OF APPLICATION

On September 16, 2015, Cablevision and Altice entered into an Agreement and Plan of Merger (Agreement), pursuant to which Altice will acquire 100 percent of the share capital of Cablevision. In order to complete the proposed transaction, Altice formed a chain of three wholly owned Dutch subsidiaries, with each subsidiary wholly owning the next and the lowest-level entity wholly owning a newly formed Delaware corporation, Neptune Holding US Corp. Neptune Holding US Corp. will wholly own Neptune Merger Sub Corp., also a Delaware corporation (Merger Sub). As part of the proposed transaction, Merger Sub

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[2] Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Petition Subject to Conditions (issued January 8, 2016)(Charter/TWC Order).

[3] See also, Case 12-M-0192, Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, Order Authorizing Acquisition Subject to Conditions (issued June 26, 2013)(Fortis Order).

will merge into Cablevision. Following this step, Merger Sub will no longer exist as a separate corporate entity. Cablevision will be the surviving corporation and will be 100 percent directly owned by Neptune Holding US Corp. and 100 percent indirectly owned by Altice. Additionally, CPP Investment Board, a Canada-based investment management organization that invests the assets of the Canada Pension Plan (CPPIB) and BC Partners Holdings Limited (BC Partners) will have the option to indirectly purchase a combined total of up to 30 percent of Merger Sub's shares. Staff has been advised that CPPIB and BC Partners have exercised these options and will therefore own an indirect non-controlling share of 30 percent of Cablevision upon completion of the proposed transaction.

In connection with the financing of the proposed transaction, Neptune Holding will form a separate wholly owned subsidiary, Neptune FinCo Corp., a Delaware corporation (Neptune FinCo). Following the close of the proposed transaction, Neptune FinCo will consolidate into Merger Sub and merge with CSC Holdings, LLC (CSC Holdings), an existing Cablevision subsidiary, with CSC Holdings surviving the merger and Neptune FinCo ceasing to exist as a separate corporate entity. CSC Holdings will remain a direct wholly owned subsidiary of Cablevision.

Altice is a publicly-traded holding company with subsidiaries that operate as providers of fixed and mobile voice, video, and broadband internet services in a number of markets including France, Belgium, Luxembourg, Portugal, Switzerland, Israel, the French Caribbean and Indian Ocean regions, and the Dominican Republic. In total, Altice serves approximately 34.5 million subscribers throughout these markets

Cablevision provides fixed voice, video and broadband internet services to approximately 3.1 million subscribers in

New York, New Jersey, and Connecticut. In New York, Cablevision services Nassau and Suffolk Counties on Long Island, parts of New York City in Brooklyn and the Bronx, and numerous municipalities in the lower Hudson Valley. Cablevision's total New York subscriber base is approximately 1.9 million customers. Cablevision's network passes approximately 43% of New York's population through an estimated 220 franchised areas. Cablevision also operates a network of over one million WiFi access points across its tri-state footprint. Cablevision's telecommunications portfolio includes Lightpath, a provider of integrated business communications solutions to companies in the metro New York area. The Company also offers regional and local advertising services through Media Sales and owns the News 12 network, Newsday, and Star Community Publishing, a publisher of weekly shoppers and community papers on Long Island.

While the Joint Petition does not seek immediate authority for changes to New York customers' rates, terms or conditions of services, or for direct assignment of Cablevision's franchises, certificates, assets or customers, after the close of the proposed transaction, the Petitioners assert that if Cablevision wishes to make additional changes that require regulatory approval, it will follow applicable New York filing and notice requirements associated with any such changes.

The proposed transaction will include the sale of stock and the issuance of substantial debt. As such, the Petitioners request approval, pursuant to PSL §101, for Lightpath to participate in financing arrangements to be entered into in connection with the proposed transaction. Specifically, the Petitioners state that the proposed transaction will be financed with $8.6 billion of new debt to be assumed by CSC Holdings (as part of Neptune FinCo's merger into CSC Holdings),

cash on hand at Cablevision, and an equity contribution of $3.3 billion from Altice, BC Partners, and CPPIB. This new debt will be assumed by CSC Holdings upon completion of the proposed transaction as follows: $3.8 billion from a seven-year senior secured term loan; one billion dollars in ten-year senior guaranteed notes; and $3.8 billion in seven-year and ten-year senior unsecured notes. The senior secured term loan and senior guaranteed notes will be guaranteed by certain of CSC Holdings' wholly owned subsidiaries, including (subject to receiving the required approvals) Lightpath and the Cablevision Cable Entities. The senior secured term loan will be secured by the pledge of capital stock held by CSC Holdings and subsidiaries that are guarantors in subsidiaries of CSC Holdings (subject to exclusions and limitations to be agreed upon). When combined with the retained debt at Cablevision, which totals $5.9 billion, the total Cablevision debt financing equals $14.5 billion. Cablevision has also secured a five-year, two billion dollar revolving facility, which the Petitioners state should ensure sufficient resources to meet Cablevision's liquidity needs. In addition, to finance a part of the equity portion of the consideration for the proposed transaction, on October 9, 2015, Altice raised $1.8 billion of new equity capital by issuing 69,997,600 Altice A shares and 24,825,602 Altice B shares. The total amount raised represents approximately ten percent of the issued share capital of each class of stock.

Finally, the Petitioners state that the proposed transaction poses no adverse competitive impacts and delivers meaningful public interest benefits. Among the "public interest" benefits put forward by the Petitioners are:

- **No anticompetitive effect.** Cablevision operates a regional cable system serving approximately 3.1 million customers in some of the most competitive markets in the country. Altice's acquisition of Cablevision will improve the competitive prospects for Cablevision in these markets and pose no anticompetitive issues of vertical or horizontal consolidation in the domestic cable or broadband market.
- **Access to additional technical resources.** Cablevision's customers will benefit from Altice's global expertise in the form of continued improvement in service, quality, and value.
- **Magnify Cablevision's capacity to compete.** Altice is a substantially larger company than Cablevision with access to capital and the ability to pursue innovation on a larger scale that will translate into additional benefits over a larger global customer base.
- **Reduce vertical integration.** Altice's acquisition of Cablevision excludes any interest in the Madison Square Garden (MSG) Network and the American Movie Channel (AMC) Networks, Inc., and thus reduces vertical integration in the cable television market by eliminating common control over these companies.

Staff's evaluation of the proposed transaction, however, based upon the Joint Petition and IR responses to date, finds that the Petitioners have failed to satisfy their burden under the public interest standard enumerated by the Commission for mergers and acquisitions of this magnitude. In fact, without commitments and enforceable conditions, there does not appear to be any incremental benefit to New York customers. In contrast, the detriments are potentially significant. Staff's analysis of the purported relative benefits as well as the identified potential detriments, are discussed in more detail below.

To ensure that the proposed transaction promotes the public interest benefit and satisfies the Commission's public interest standard under the Public Service Law, Staff recommends that the Petitioners make certain commitments and the Commission

impose enforceable conditions to mitigate potential detriments and deliver net positive benefits in New York. These conditions and commitments should at a minimum address service quality, job retention, universal service, low-income initiatives, network deployment to unserved/under-served areas and broad infrastructure investment and improvement. Only with these commitments backed by enforceable conditions set by the Commission, do we believe the merger would promote the public interest and should, therefore, be approved. Otherwise, the Petitioner's request to transfer control of these assets and systems must be denied.

PROCESS TO DATE

Under Section 617 of the Federal Communications Act (47 U.S.C. §537), when the sale or transfer of a cable television franchise requires the approval of a franchising authority, the franchising authority must act within 120 days or the request will be deemed granted, unless the requesting party and the franchising authority agree to an extension of time. On November 5, 2015, the Petitioners sent a letter to the Secretary of the Commission agreeing to extend the time for action by the Commission through April 29, 2016.

Following the filing of the Joint Petition, the Commission issued a Notice Inviting Comments (Notice) on November 23, 2015. In addition, pursuant to the State Administrative Procedure Act (SAPA), a Notice of Proposed Rulemaking was published in the State Register on November 25, 2015. The comment period for the SAPA Notice expired on January 9, 2015 and the initial comment period for the Commission's Notice expired on January 22, 2016, with replies being accepted until February 5, 2015.

The Commission also publically noticed seven Informational Forums and Public Statement Hearings in four locations. Those hearings were held on January 26 in Peekskill, New York, January 27 in the Bronx, New York, February 2 in Mineola, New York, and February 2 in Smithtown, New York. A further hearing is scheduled for February 11 in Brooklyn, New York to allow for additional on-the-record public comments from interested consumers, non-profit organizations, government and business groups, and members of the general public. To date, the Commission has received more than 40 electronically filed comments from the public at-large. Generally, comments supporting the proposed transaction assert that among other things the merger will create jobs and provide better products at more affordable rates. Those opposing the proposed transaction state that the merger will inevitably lead to higher rates and potential data caps on broadband and other services in the future.

Pursuant to the Commission's Notice, the following are Staff's comments on the proposed transaction.

SCOPE OF REVIEW

The purpose of the Commission's review in a merger proceeding is to determine the impact that a proposed transaction will have on consumers, otherwise known as the "public interest" standard. While the Petitioners assert that certain subjects and specific benefits discussed in their filing pertain to non-jurisdictional products and services, and specifically reserve their rights to object to the Commission's jurisdiction over such services and products, we initially note here that the Commission's review should not be limited to telephone and cable services and should include broadband internet service (broadband). Staff acknowledges that the

Federal Communications Commission (FCC) recently reclassified broadband as an interstate telecommunications service subject to common carrier regulation under Title II of the Federal Communications Act[4] of 1996 (the Act) and opted to forebear from many Title II regulations, most notably rate regulation. But, in Staff's opinion the FCC's reclassification does nothing to undermine, and in fact provides further support to, Section 706 of the Telecommunications Act,[5] which seeks to remove barriers to broadband investment, deployment and competition. Section 706 is not intended to preempt state actions that seek to accomplish this important federal goal, so long as such action does not conflict with federal regulation. So, the Commission still has an obligation to consider the impacts of broadband that may result from the proposed transaction as part of its broader public interest review under the merger and acquisition provisions of the Public Service Law. In looking at the telephone and cable markets in New York, it is also necessary to look at the broadband market because all of these "communications" services are often provisioned over the same network that consumers consider increasingly essential in a digital society. The Commission recognized this in applying the public interest standard to the Time Warner/Charter transaction, which it approved in January, 2016.[6]

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[4] GN Docket No. 14-28, In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order (issued March 12, 2015) (Open Internet Order).

[5] 47 U.S.C. §1302

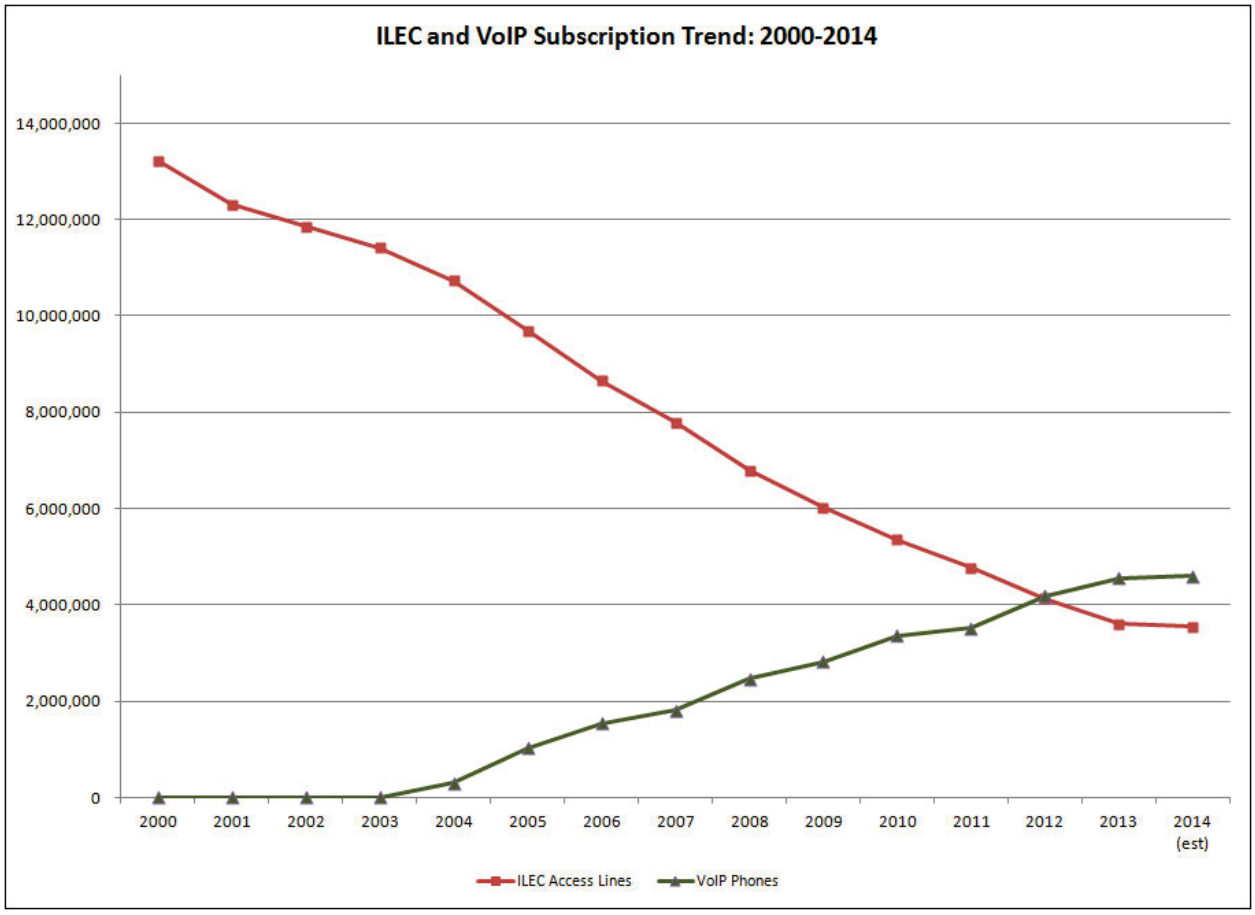
[6] Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued January 20, 2016) (Time Warner/Charter Order).

The Commission agreed with Staff in that case that application of the public interest standard to include consideration of broadband is reasonable for several reasons. First, as indicated, not only does broadband rely upon the same network as telephone and cable, but perhaps more importantly, in many instances, broadband competes directly with cable and traditional telephone for market share in New York. For example, the Petitioners' standalone broadband services allows customers to download and stream content through third-party providers such as Netflix, Hulu, Sling, and AppleTV, which compete directly with traditional cable services. As networks are upgraded and download speeds increase (which the Petitioners have indicated may occur), offerings like these and many others, will only become more robust and competitive.

Similarly, Voice over Internet Protocol (VoIP), the technology behind much of the Petitioners' voice services relies upon the same network as video and broadband, and is replacing traditional landline telephone service nationwide. In fact, in 2012, fixed VoIP providers overtook traditional phone service access lines in New York for the first time and that trend has continued.[7] The prevalence of broadband networks provided by landline telephone and cable companies, as well as terrestrial wireless companies, has opened up opportunities for advanced services to become widely available to consumers. Over the course of the last decade, more than four million New York residential and business consumers have adopted VoIP phone service as their primary means of communications. Since 2000, incumbent telephone access lines fell from more than 13 million,

[7] Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, Staff Assessment of Telecommunications Services (dated June 23, 2015), p. 12.

to less than four million.[8] Millions of these incumbent local exchange carrier line losses were customers migrating to VoIP phone service, as were many secondary line migrations from dial-up Internet, to faster, more advanced cable modem, digital subscriber line (DSL) and optical carrier broadband services now offered by most companies providing broadband in New York. The following chart represents the impact of VoIP on traditional wireline services.[9]



Under both State and Federal law, the Commission is obligated to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all …

[8] Incumbent telephone company access line counts are provided in company Annual Report filings pursuant to 16 NYCRR §641.1.

[9] Line counts are aggregated from state and federal annual reports.

(including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." 47 U.S.C. §1302(a). That statute defines "advanced telecommunications capability" to include "broadband telecommunications capability." 47 U.S.C. §1302(d)(1). And it is under the foregoing obligations, that the Commission should consider the impact of broadband as part of its overall Public Service Law merger and acquisition review.[10] The Petitioners also rely heavily upon the purported benefits of enhanced broadband offerings, stating throughout their Joint Petition that access to Altice's resources will benefit Cablevision's broadband customers[11] and acknowledge that any Commission public interest review should include an examination of broadband, in addition to telephone and cable services.

STANDARD OF REVIEW

General

Under PSL §99(2): "[n]o telephone corporation shall transfer or lease its works … without the written consent of the commission…. Any other transfer or lease between non-affiliates regardless of cost shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete such transfer

[10] The United States Court of Appeals for the District of Columbia Circuit reached the same statutory interpretation. See, Verizon v. Federal Communications Commission, et al., No. 11-1355 (decided January 14, 2014), pp. 18-19.

[11] Joint Petition, pp. 10-11.

or lease … unless the commission, or its designee, determines within such ninety days that the public interest requires the commission's review and written consent." Since Lightpath currently operates under a duly authorized and approved Certificate of Public Convenience and Necessity, Commission approval of the proposed transaction is required.[12] While a PSL §99 transfer is presumed to be in the public interest, the Commission may determine that the public interest requires further review and written consent and, it has made such a finding in this case.[13]

Under PSL §§100(1) and (3): "[n]o telegraph corporation or telephone corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock of any telegraph corporation or telephone corporation … unless authorized so to do by the commission." Moreover, "[n]o consent shall be given by the commission … unless it shall have been shown that such acquisition is in the public interest; provided, however, that any such consent shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for its consent, unless

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[12] Cases 91-C-0134, as amended in Case 92-C-06800569, Petition of NuComm Test, Inc. to Amend its Certificate of Public Convenience and Necessity to provide all forms of telecommunications service on an inter-city, interexchange, intra-city and intra-LATA basis within New York State, filed in C 91-C-0134, Order Approving Certificate (issued June 23, 1993).

[13] On November 23, 2015, the Acting Director of the Office of Telecommunications and Director of the Office of Accounting, Audits & Finance issued a letter to the Petitioners indicating that the public interest warrants further review under PSL §§99, 100 and 101, stopping the 90-day/45-day respective deadlines for Commission review. See, Case 15-M-0647, Letter informing Petitioners that the Commission will review their Joint Petition and issue a written order (dated November 23, 2015.

the commission, or its designee, determines and informs the applicant in writing within such ninety day period that the public interest requires the commission's review and its written consent." The burden of demonstrating that the transaction satisfies the public interest rests with the Petitioners. If the Petitioners cannot satisfy this burden, the Commission may, in its discretion, conduct a further review of the public harms that may result from the proposed transaction, and again, it has made such a determination here.[14]

PSL §101 states that an application is deemed approved after 45 days unless the Commission or its designee notifies the petitioner in writing, within the time period, that the public interest requires the Commission's review and its written order. Again such written notification was provided.

Similarly, under the newly amended PSL §222(3)(b): "[t]he commission shall not approve the application for a transfer of a franchise, any transfer of control of a franchise or certificate of confirmation, or of facilities constituting a significant part of any cable television system unless the applicant demonstrates that the proposed transferee and the cable television system conform to the standards established in the regulations promulgated by the commission … that approval would not be in violation of law, or any regulation or standard promulgated by the commission, and that the transfer is otherwise in the public interest…."[15] The amended PSL §222, specifically requires that the Petitioners make a demonstration that the proposed transaction is in the public interest. The burden falls to the Petitioners in the first instance to show

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[14] Id.

[15] L. 2014, Ch 57 (Part R).

that the proposed transaction's benefits outweigh its detriments in order to obtain Commission approval.

The standards enumerated under PSL §§99, 100, 101 and 222 is in line with those used in PSL §70 transfers for electric, gas and combined electric and gas corporation mergers and acquisitions. Under the PSL §70 "public interest" criterion, a petitioner must show that the transaction would provide ratepayers a positive net benefit. As the Commission explained in the Time Warner/Charter Order, in implementing the public interest standard, the Commission's examination of the relative benefits and detriments of the proposed transaction is very broad. For example, the impact of Iberdrola's acquisition of Rochester Gas & Electric Corporation (RG&E) and New York State Electric & Gas Corporation (NYSEG) on the vertical market power of Iberdrola in the wind energy industry was examined at length by the Commission in its analysis and ultimate approval of that transaction.[16] The scope of the Commission's authority to review proposed mergers is not triggered by what particular section of the PSL is invoked, but rather by the nature of the proposed transaction. Its authority to review a particular

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[16] Case 07-M-0906, Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A., Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009) pp. 63-89 (Iberdrola Order); See also, Digital Paging Systems, Inc. v Public Serv. Commn., 360 N.Y.S.2d 931 (3d Dep't 1974)(where the Commission, in analyzing a request for authorization to purchase more than ten percent of the voting capital stock, determined that the transaction was not in the public interest because the proposed purchase would exacerbate conflict between stockholder groups, which would be an obstacle to financing and a drain on time and resources of management of the carrier).

transaction will necessarily turn of the particular circumstances of each case, regardless of whether the transaction involves monopoly providers or companies that operate in somewhat competitive markets. The end result is to protect New York customers from potential harms. This application of the public interest standard was recently confirmed by the Commission in its approval of the TWC/Charter transfer of control,[17] wherein the Commission specifically states that it is "…not compelled by statute to apply any of the analyses from any particular §70 proceeding to this case. Nevertheless, where we find those holdings helpful and appropriate, we can seek guidance from them."[18]

A review of the Commission's interpretation and application of the public interest standard under PSL §70 does however provide valuable guidance to establishing the appropriate public interest standard to be applied under PSL §99, 100, 101 and 222. As the Commission indicted in the Charter/Time Warner Order, such review will help define what is meant by the phrase "public interest," as well as identify what is required to satisfy that standard. Under the Commission's PSL §70 merger and acquisition precedent,[19] the public interest

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[17] Charter/TWC Order, pp. 10-21.

[18] Id., p. 19.

[19] Case 06-M-0878, National Grid PLC and KeySpan Corp. – Stock Acquisition, Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KEDNY and KEDLI (issued August 23, 2007) and Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KEDNY and KEDLI (issued September 17, 2007) (together KeySpan Orders); Case 07-M-0906, Acquisition of Energy East Corp. By Iberdrola, S.A., Abbreviated Order Authorizing Acquisition (issued September 9, 2008); Iberdrola Order, supra; Fortis Order, supra.

standard is satisfied if the merger or acquisition is found to produce a "net positive benefit" for ratepayers. As stated by the Commission in its Fortis Order: "the clearest articulation [of the] public interest analysis…" under which the Commission approves a merger or acquisition is that it "require[s] Petitioners to make a three-part showing: that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures."[20] Further, once the Commission has compared the transaction's benefits and detriments: "[it] can assess whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits…" referred to as positive benefit adjustments (or PBAs).[21] Therefore, if the proposed transactions' benefits do not outweigh unmitigated detriments, monetary PBAs could be used to sufficiently "tip the scale" to establish that the transaction provides a net positive benefit for existing customers. If this is accomplished, the transaction should be found to be in the public interest and ultimately approved.

Applying the public interest standard in a manner that ensures consumers obtain net positive benefits is not unique to New York.

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[20] Case 12-M-0192, supra, Fortis Order, p. 59.

[21] Id.

In fact the FCC,[22] the public utility commissions of the States of California,[23] and Oregon,[24] as well as the Commonwealth of Massachusetts,[25] all have a "net positive benefit" standard that is applied to utility mergers.

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[22] See, Comcast/NBCU Order. The FCC stated that its public interest review "entails a thorough examination of the potential harms and benefits of the proposed transaction, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose remedial conditions to address potential harms likely to result from the transaction. If, on balance, the benefits associated with the proposed transaction outweigh the remaining harms, the Commission must approve the transfer if it serves the public interest." See also, Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12363, ¶30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276, ¶22 (2008); SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶16 (2005).

[23] See, Cal. Pub. Util. Code 854(b) (1996). California has a statutory mandate that a minimum of 50% of the short- and long-term net economic benefits of electric utility merger be shared with its customers.

[24] See, Or. Pub. Util. Comm'n, In re Legal Standard for the Approval of Mergers, 212 Pub. Util. Rep. 4th 449, 455–457 (2001); I/M/O the Application of Enron Corp. For an Order Authorizing the Exercise of Influence Over Portland General Electric Company, 177 PUR 4th 587, 595-596 (June 4, 1997). Oregon has gone so far as to require that 100% of the merger savings flow through to ratepayers in order for a transaction to be considered in the public interest.

[25] See, Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96, Interlocutory Order on Standard of Review, D.P.U. 10-170 (March 10, 2011). Massachusetts recently changed its standard of review of utility mergers to require a showing of net benefits.

Application

Based on the foregoing, the Commission should ensure net positive benefits in the form of enforceable conditions, and if necessary, a PBA. In this regard, the Joint Petition fails to provide any commitments to (1) build-out to unserved and under-served areas, (2) implement a low-income program for qualified customers, (3) retain standalone and bundled broadband packages and prices, (4) ensure no customer-facing job losses,[26] (5) invest in service quality improvements, or (6) provide any tangible benefits to the people of New York State.

In stark contrast to the Joint Petition, a review of the recently approved the TWC/Charter transfer of control provides that the combined company has committed to, among other things:

- Build-out their network to pass an additional 145,000 “unserved” (download speeds of 0-24.9 Megabits per second (Mbps)) and “underserved” (download speeds of 25-99.9 Mbps) residential housing units and/or businesses exclusive of any available State grant monies from the Broadband 4 All Program;
- Convert their existing New York footprint to an all-digital network capable of delivering broadband speeds of up to 100 Mbps by the end of 2018 and 300 Mbps by the end of 2019;
- Offer a discounted broadband service to certain low-income customers eligible for the National School Lunch Program (NSLP) and senior citizens receiving benefits from the Supplemental Security Income (SSI) Assistance program;

[26] “Customer-facing jobs” is defined to mean those positions with direct interaction with customers; including, but not limited to call center and other walk-in center jobs, and service technicians.

- Offer to new subscribers Time Warner's standalone $14.99 "Everyday Low Price" service for two years following the close of the merger, at existing speeds and current price;
- Allow customers to retain the Everyday Low Price service for three years from the close of the transaction, which will run concurrently with the two-year period discussed above;
- Allow existing customers to retain, without material changes that have the intent to discourage, all other existing Time Warner standalone and bundled broadband services for three years following the close of the merger;
- Provide free broadband service to 50 community anchor institutions not already receiving such service from Time Warner or Charter, in low income or underserved areas within their service footprint, inclusive of free line extensions;
- Be precluded from reducing customer-facing jobs in New York for four years;
- Improve service quality and invest $50 million in service quality improvements in New York over two years following the close of the merger; and,
- Achieve a 35% reduction in Time Warner's 2014 cable PSC Complaint Rate by the end of 2020, with half achieved by the end of 2018. If the improvement targets are not achieved, they will be required to invest additional monies in customer service.[27]

The Petitioners in the instant case have not made sufficient commitments to share, with their New York customers, an equitable portion of the projected synergy or efficiency savings associated with the proposed transaction. Conditional approval is therefore necessary to ensure that these savings inure to the benefit of New York customers. Such commitments and enforceable conditions will also serve to lend credibility to Petitioners' claims regarding the alleged benefits of the

[27] See, generally, TWC/Charter Order, supra, f.n. 2.

proposed transaction and ensure New York receives its fair share of synergies in a fully competitive market.

Staff presents an estimate of the amount of savings that should be received by customers in a fully competitive market. As part of the proposed transaction, published reports project that the acquisition of Cablevision by Altice will ultimately produce $900 million of synergy savings.[28] Altice clarifies in its reply comments before the FCC that "the projected $900 million in cost savings will not be realized immediately or annually."[29] Altice refers to a subsequent Moody's Investors Service (Moody's) Report which notes that "Altice can reasonably expect to achieve about $450 million in savings in a phased approach over a two to three year timeframe" following the close.[30] Post acquisition, New York customers

[28] "Expanding in U.S., Altice Plans to Buy Cablevision for $17.7 Billion," New York Times (September 17, 2015), available at http://www.nytimes.com/2015/09/18/business/dealbook/altice-cablevision-telecommunications-drahi.html?_r=0.

[29] WC Docket No. 15-257, In The Matter of the Application of Altice N.V. and Cablevision Systems Corporation for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Domestic and International Section 214 Authorizations, Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation (filed December 22, 2015), p.4.

[30] Id.

would represent 61.4% or 1.91 million of Cablevision's national total customer base of approximately 3.11 million.[31]

In a fully competitive market, Staff would expect that the vast majority of savings, which Altice characterizes as efficiencies rather than synergies, would be passed through to the benefit of customers since they would be replicable by other market participants. In previous cable merger cases, most notably TWC/Charter, Staff recommended that the Commission apply a presumption of 50% customer/50% shareholder sharing of the savings applicable to New York. Staff makes the same recommendation here with one caveat. In each of those cases, the transactions - TWC and Comcast Corporation (Comcast) and subsequently TWC and Charter Communications, Inc. (Charter) following the withdrawal of Comcast's merger bid - included operations in the less competitive TWC Upstate markets. The Commission must consider whether the 50% sharing mechanism appropriate in the instant matter since Staff agrees with the Petitioners that the Downstate markets in which Cablevision operates have the most competition in the country. Cablevision faces competition not only from AT&T/Direct TV satellite services, but also from Verizon New York Inc.'s (Verizon) FiOS

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[31] The Connecticut DPUC Scorecard provides subscriber counts for cable operators in its state. For 2010, the Scorecard indicated Cablevision had 250,802 subscribers. See, CDPUC, DPUC Releases Consumer Service Complaint Scorecard for CY 2010, http://www.ct.gov/pura/cwp/view.asp?A=4144&Q=490958. The New Jersey BPU provides subscriber counts for cable operators in its state as well. For 2013, the BPU "Cable Facts" report indicated that Cablevision had 893,885 subscribers. See, NJBPU, Cable Facts 2013, http://www.state.nj.us/bpu/pdf/cablepdfs/CableFacts2013.pdf. Deducting the Connecticut and New Jersey subscriber counts from the 3.1 million aggregate figure in the Company's public filing derives a New York State subscriber count estimate of 1.955 million.

service, RCN Cable and other wireline providers. In fact, over the relatively short span of ten years, Verizon is now competing for cable services in more than 130, or about 60%, of Cablevision's franchised areas. Moreover, Staff expects that a significant portion of savings will be dedicated to Cablevision's operations in the form of reinvestment and debt service which should over time improve the Company's financial position. As such, the Commission should consider whether a more conservative 40% customer/60% company or 25% customer/75% company sharing mechanism should be applied.

Applying the 50% customer share of the savings to Cablevision's New York customer base, establishes that New York customers should receive approximately $138.15 million (50% x 61.4% x $450 million) in ongoing benefits annually from the proposed transaction once the savings are fully realized. Staff assumes that the full $450 million will be achieved by the Petitioners in the fourth year following the close of the transaction and that the savings will ramp up incrementally (25%, 50%, 75%) in years one through three. Over the first ten post acquisition years, New York's customer synergy savings should be approximately $1.174 billion on a nominal basis and $643.8 million on a Net Present Value basis.[32] We believe that this pro forma calculation of savings given the uncertainty associated with both the actual realization, and timing of that

[32] This estimate may be conservative, as it limits consideration of public benefits to only the first ten years post-acquisition and may not include savings associated with capital expenditure synergies and revenue synergies. Were the Commission to apply more conservative 40% or 25% sharing mechanisms, then New York customers should receive $939.3 million nominal ($515 million NPV)or $587 million nominal ($322 million NPV) over ten years respectively.

realization, is reasonable.[33] A commitment from the Petitioners to provide at least $1.174 billion of incremental benefits on a nominal basis over ten years would obviate or greatly lessen the justification for enforceable conditions, or a PBA, to establish a "net positive benefit" in this case.

However, without such a commitment, enforceable conditions would become necessary to establish a net positive benefit to satisfy the public interest standard.[34] While, the Commission has recognized that every transaction, no matter how conditioned, includes unique factors that require case-by-case analysis, here, we are faced with a transaction that purports to promise efficiency gains, but also includes both foreseen and unforeseen risks and detriments. As discussed in further detail below, the unmitigated risks of this transaction are real and potentially substantial. Therefore, Staff recommends that should the Petitioners not provide detailed commitments sufficient to mitigate these risks, and provide $1.174 billion in net positive benefits over ten years, effectively meeting their burden of showing that the transaction is in the public interest, the Commission should reject the proposed transaction outright. Although not required to do so under the Public Service Law, below Staff attempts to illustrate various ways we believe the Petitioners could fulfill their burden.

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[33] According to comments filed by the Petitioners at the FCC, these synergies are to be fully realized within three to five years of the close of the transaction. Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation, n. 24, supra.

[34] Case 07-M-0906, supra, Iberdrola Order, p. 131.

PROPOSED BENEFITS AND POTENTIAL DETRIMENTS

Staff reviewed and analyzed the Joint Petition and related IR responses. What follows is an identification of the Petitioners' purported benefits, if the proposed transaction were approved without conditions, as compared to no such merger occurring between these companies. In each case Staff describes the deficiencies of the Petitioners' proposal and also discusses the overall inherent risk associated with the proposed transaction.

Access to Additional Capital and Resources: According to the Joint Petition, Altice's focus is on building, upgrading and operating advanced networks and "is a long-term strategic enterprise with a strong track record of implementing pro-consumer network improvements and efficiencies and reinvesting in the networks it acquires."[35] The Petitioners also state that Altice will invest in upgrading Cablevision's Information Technology systems, including customer service and billing systems.[36] Further, the Petitioners state that Cablevision will have access to greater capital and technological resources following the close of the proposed transaction and that this will allow for the investment in new technologies, which might otherwise be risky for a smaller company like Cablevision to deploy on its own.[37]

The benefits described by the Petitioners are speculative and ill-defined, and thus do not constitute a net incremental benefit to New York. They contain no specific commitments that will be made in New York or any enforcement mechanisms that would be used in the event the Petitioners' fall

[35] Joint Petition, p. 13.

[36] Id.

[37] Id., pp. 14-15.

short of their commitments. The Petitioners must show, among other things, that the transaction will facilitate a greater commitment to communication network modernization throughout their New York footprint than would otherwise occur with a standalone Cablevision organization. They must also show how the transaction will facilitate increased access to their network for rural New Yorkers and business customers who today do not have the full value of a competitive market.

Increased Investment: Altice's approach to Cablevision's system post-transaction will include the deployment of fiber deeper into the system in an effort to reduce expenses associated with electricity and network maintenance as well as possibly increasing speeds to all customers, and allow Cablevision to better compete with Verizon's FiOS service. The Joint Petition also states that the access to Altice's greater resources will help to ensure these improvements are achieved.[38]

Absent concrete commitments that detail when, where, and how the Petitioners plan to deploy, for example, fiber deeper into Cablevision's system, or how investments will be made in billing and other customer services, there simply is no value to these purported benefits sufficient to meet the Commission's public interest standard. In order for any such investments to be characterized as part of a net public benefit, we conclude that Petitioners would have to establish that these investments would not have been made by Cablevision in the absence of the proposed merger.[39]

For example, in confidential responses to DPS-5, Cablevision indicates that it currently has [redacted]

[38] Joint Petition, p. 14

[39] Id., p. 16.

[redacted] wireless backhaul facilities serving cellular sites in Long Island, Metro NYC and the Hudson Valley regions. The number of backhaul facilities distributed across the three Cablevision regions is about equal in number and percentage of the total. It also estimates that its backhaul facilities constitute approximately [redacted] of the total backhaul facilities market share. From this information, Staff gathers that, in the overall context, there is significant competitive opportunity for wireless backhaul facility growth throughout the Cablevision service footprint, given its present market share. Equally important, it appears that there is growth opportunity within, not just one, or two, but in all three of its regions. However, aside from some current backhaul facility construction already underway, Cablevision has not announced plans to engage further in this market area.

In view of the obvious competitive wireless backhaul facilities growth opportunity potential in the marketplace we note that Altice has considerable international expertise in the wireless marketplace. We also note that that "Altice currently offers quadruple-play services in certain other jurisdictions, including France and Portugal," and intends to "continue Cablevision's Freewheel WiFi-based calling service and may, in the future, explore other quadruple-play strategies in the U.S. in response to future market and/or regulatory developments. Altice has also stated that it "shares Cablevision's view that WiFi can hold significant promise, particularly for mobile communications, when deployed in regions with significant population density such as Cablevision's service territory."[40]

[40] Joint Petition, pp. 13-14.

The foregoing presents an excellent, but as yet untapped opportunity that could yield tangible benefits to the new company, as well as wireless carriers, and millions of wireless service customers residing in, and traversing through, the Cablevision footprint.

Should Altice focus on network upgrades and extensions to compete, deploy and provision more backhaul facilities to the likes of AT&T, Sprint, T-Mobile and Verizon Wireless, or decide to bring its wireless networking and service expertise to the forefront with its own cellular/wireless phone options, such innovation and technological investments would clearly delineate Altice's long-term business plan strategy from Cablevision's present status quo plan. However, as is, the Joint Petition does not provide the detail specificity to translate such potential business and innovation opportunities described above into a tangible net benefit post-transaction.

No Competitive Harm & Reduction of Vertical Integration: Altice does not currently operate in any New York market. The Joint Petition further claims that while "Cablevision will retain the News 12 networks in the New York Metro area, there will be no increase in market concentration in that (or any other) market; to the contrary, the Transaction will *reduce* vertical integration by eliminating any common control between Cablevision's cable operations and cable programmers AMC Networks – including AMC, SundanceTV, IFC and WEtv – and MSG Networks, which offers regional sports networks."[41] While a reduction in vertical integration is welcome, there is no tangible benefit as a result of this aspect of the proposed transaction.

[41] Id., p. 17.

It is tangible benefit, not lack of harm that the petitioners are obligated to establish under the law. In fact, while Petitioners claim no harms will result from the proposed transaction, in Staff's view there are significant detriments which far out-weigh even the "minor" benefits described by Petitioners as follows.

Issuance of Debt: Cablevision and Altice expect to primarily debt finance the proposed transaction. The high degree of debt needed to fund the proposed transaction, could result in less financial flexibility and direct harm to Cablevision's customers. Cablevision had approximately $5.9 billion in long-term debt as of September 30, 2015. Approximately $8.6 billion in new debt will be used to finance the acquisition which consists of a term loan, senior guaranteed notes, and senior notes. The new debt would remain at the Cablevision level. Cablevision's pro forma long-term debt will be $14.5 billion, which represents an increase of 146% over its current long-term debt of $5.9 billion. In Cablevision's 2014 10-K there are several discussions regarding the substantial indebtedness and high pre-merger leverage at Cablevision. This leverage reduces Cablevision's capability to withstand adverse developments or business conditions and may adversely reduce the ability to raise capital.[42] On December 31, 2014 Cablevision had a stockholders' deficiency of approximately $5.0 billion. Such high negative equity could negatively affect its ability to comply with the covenants and restrictions in Cablevision debt

[42] Cablevision Systems Corporation, Form 10-K, For Fiscal Year 2014, p. 17, available at http://services.corporate-ir.net/SEC/Document.Service?id=P3VybD1hSFIwY0RvdkwyRndhUzUwWlc1cmQybDZZWEprTG1OdmJTOWtiM2R1Ykc5aFpDNXdhSEEvWVdOMGFXOXVQVkJFUmlacGNHRm5aVDB4TURFd01EazVOQ1p6ZFdKemFXUTlOVGM9JnR5cGU9MiZmbj1DYWJsZXZpc2lvblN5c3RlbXNDb3JwLnBkZg==

agreements (both new and existing) and may limit its ability to raise needed future financings.

Moreover, it is forecasted that Altice will have debt in excess of €48.5 billion ($53.0 billion) by the end of 2016.[43] With an acquisition by Altice, Cablevision will become part of a new entity that has slightly lower non-investment grade credit ratings. Cablevision is currently rated 'Ba2' by Moody's and 'BB-' by Standard and Poor's (S&P). Altice is not rated by Moody's and is rated one notch below Cablevision at 'B+' by S&P.

Fitch, Moody's and S&P all indicated actions for Cablevision's credit ratings following the announcement of the acquisition by Altice. Fitch placed Cablevision on rating watch negative,[44] Moody's placed the rating for Cablevision on review for downgrade,[45] and S&P placed it on CreditWatch with negative implications.[46] One metric that is used by the rating agencies in analyzing cable companies is: Debt to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), a measure of leverage. In the Moody's report it was stated that leverage is currently 4.75x, the limit for Cablevision's 'Ba2' rating and that Cablevision's leverage had been above this level for some time as reflected in Moody's negative outlook. As the final debt capital structure is not yet known post transaction, it is very possible that leverage in excess of 4.75x could result in a multi-notch downgrade. S&P also referenced leverage

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[43] "Altice debt binge for growth raises eyebrows," Financial Times, September 17, 2015.

[44] "Fitch Places Cablevision's 'BB-´ IDR on Rating Watch Negative," Fitch Ratings, September 18, 2015.

[45] "Moody's places Cablevision on review for downgrade," Moody's Investors Service, September 17, 2015.

[46] "Cablevision Systems Corp. 'BB-' Rating Placed on CreditWatch Negative on its Agreement to be Acquired by Altice S.A., Standard and Poor's, September 17, 2015.

when it stated in a research update that "[u]pon close of the transaction, we will lower our corporate credit rating on Cablevision to 'B' from 'BB-'reflecting high pro forma leverage of about 7.6x."[47] Cablevision's pro forma leverage ratio may be significantly higher than other comparable cable companies. Comcast is currently leveraged at 2.2x, TWC at 3.0x and Charter at 4.7x.[48]

The issuance of additional debt to fund the acquisition of Cablevision by Altice could lead to credit rating downgrades, and higher debt costs for new borrowings and difficulty in accessing capital in the future. These potential consequences of additional debt could ultimately harm Cablevision's customers, as higher debt costs will put additional pressure to either charge more for services rendered, cut-back on such services, or reduce investment levels. In Cablevision's 2014 10-K it is stated that "[a] lowering or withdrawal of the ratings assigned to our debt securities by ratings agencies may further increase our future borrowing costs and reduce our access to capital."[49] Lower credit ratings could also lead to investor reluctance to provide additional capital. This is a particular concern at times of financial turmoil, such as existed in 2008-2009. At such times, investors attempt to avoid additional risk, and companies with non-investment grade ratings can find themselves shut-out of the debt market. This lack of access to capital could severely limit Cablevision's ability to invest in its businesses, and continue to offer its

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[47] "Cablevision Systems Corp. 'BB-' Rating Remains on CreditWatch Negative; New Debt Assigned Ratings, Standard and Poor's, September 24, 2015.

[48] "Time Warner Cable Deal Stirs Debt Concerns," The Wall Street Journal, May 26, 2015.

[49] Cablevision, Form 10-K, n. 42, supra.

customers the level of service they are accustomed to receiving, let alone increase the quality of service, which Petitioners claim as a benefit of the transaction.

In an effort to properly assess the risk associated with this additional level of debt, Staff requested that the Petitioners provide for review the pro forma balance sheet, income statement and statement of cash flows for the most recent twelve month period reflecting the combination of Altice N.V., Cablevision Systems Corporation and Suddenlink Communications. The Petitioner's response was that such documents do not exist because Altice N.V. prepares financial statements in accordance with International Financial Reporting Standards (IFRS), while Cablevision and Cequel Corporation (Suddenlink's parent), operate on Generally Accepted Accounting Principles (GAAP).[50] This discrepancy, the Petitioners claim, means that in order to respond to the Staff request, a "special study to convert the Cequel and Cablevision financial statements to IFRS, or to convert the Altice N.V. consolidated financial statements to GAAP" would need to be undertaken, which they state would be a "time-consuming and burdensome process."[51] The Petitioners also state that "[b]ecause Altice maintains separate financial arrangements for its different groups; Altice to date has had no business or financial need to undertake such an accounting conversion or to prepare combined pro forma financial statements, which Altice would not otherwise complete until after closing."[52] They go on to add that "Cequel and Cablevision are separate from each other and from its non-U.S. financing, Petitioners submit that the pro forma financial statements

[50] Responses to DPS-34.

[51] Id.

[52] Id.

requested are not necessary to the Commission's review of Altice's financial qualifications."[53]

Staff understands that the conversion process may be time consuming; as a result, Staff limited its request to information concerning the financial structure of the transaction and the resulting impact to Cablevision.[54] Despite Petitioners responses providing greater detail,[55] Staff remains concerned about the high debt load that will be placed on Cablevision as a result of this transaction. In 2014 Cablevision had interest expense of $576 million and net income of $311 million. With the addition of $8.6 billion in debt at a blended debt cost of 7.5%, there will be an estimated $500 million more in annual interest expense. As detailed above, there is a substantial risk associated with such debt levels and the ability to service it. In addition, because the consideration paid by Altice for Cablevision's assets of $10 billion exceeds the book value of Cablevision's assets, which was a deficit of $5 billion for 2014, a large amount of goodwill will be created. This goodwill will be on Cablevision's balance sheet post-transaction.

In order for the Commission to conduct a thorough analysis of the public interest in this case, the Petitioners must provide evidence on the record that the increased debt obligations will not impair Cablevision's access to capital, harm customers through a reduction in service quality, a need to aggressively pursue efficiency savings, or an increase in rates in the short-term.

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[53] Id.

[54] DPS-36.

[55] Confidential Reponses to DPS-36.

Foreign Ownership: Unlike previous cable transactions before the Commission, including the abandoned TWC/Comcast (Case 14-M-0183) and TWC/Charter (Case 15-M-0388), this transaction does not involve the merging of two U.S. companies, but rather the indirect acquisition of a U.S. company by a foreign owner. In those cases where Staff was concerned about a reduced focus on New York among a larger national footprint, here, the concern is markedly different. Cablevision will remain and continue to provide service to customers following the close of the proposed transaction, however, as Altice does not currently provide any services in the U.S. market, Staff is acutely concerned that the level of service that Cablevision customers have come to expect may be severely undermined following the proposed transaction.

While Altice promises that its global reach will enable more investment at the Cablevision level, Staff believes that the increased leverage, negative credit outlook and the publicly stated $450 million in synergy savings may have the opposite effect. In order to achieve such a high synergy goal, Altice may be focused on cutting expenses and raising rates for services, to the detriment of New York customers. This is compounded by the fact that Altice has seen its stock price drop in the wake of its recent acquisitions,[56] and has experienced a heavy loss of customers. For example, in a recently acquired French mobile, Numericable has lost customers and seen sales

[56] "Altice shares tumble as Cablevision deal financing completed," Reuters(October 1, 2015), http://www.reuters.com/article/us-altice-capital-idUSKCN0RV3KI20151001

fall by 3.5% amid cost cuts by Altice.[57] In other words, following the proposed transaction, Cablevision will have a parent company that may be forced to extract profit from, and not provide world-class service to, its New York customers. While Altice has stated that it has invested heavily in these systems and that it inherited a poorly maintained system, which was the reason for subscriber losses, it has not, to date provided information on the record indicating such. Altice has never acquired a modern system like Cablevision's. It remains to be demonstrated what investments Altice expects to make in the Cablevision footprint and what the result of those investments will be for consumers.

Service Quality/Customer Service: According to a May 2015 report from the American Customer Satisfaction Index (ACSI), Cablevision ranked fifth out of the 12 rated cable television companies.[58] Among Internet Service Providers (ISPs), Cablevision ranked fourth out of the 12 rated companies and[59] seventh out of the 12 rated telephone companies.[60] While these

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[57] See, "Altice seeks to win over investors," Financial Times (November 12, 2015); "Altice's customers woes in Europe stoke concern ahead of U.S. foray," Reuters (October 20, 2015) http://www.reuters.com/article/us-altice-usa-idUSKCN0SP00720151031; "Altice customer losses spur worry about aggressive cost-control strategy," FierceCable (November 2, 2015) http://www.fiercecable.com/story/altice-customer-losses-spur-worry-about-aggressive-cost-control-strategy/2015-11-02; "Numericable-SFR stabilizes customers losses in Q3," Reuters (October 28, 2015) http://uk.reuters.com/article/altice-numericable-results-idUKP6N0QQ01R20151028.

[58] See, ACSI, Telecommunications and Information Report 2015, p. 2, available at https://www.theacsi.org/news-and-resources/customer-satisfaction-reports/reports-2015/acsi-telecommunications-and-information-report-2015.

[59] Id., p. 4.

[60] Id., p. 6.

rankings are relatively good compared to New York's other dominant telephone/cable providers, Staff is concerned that Cablevision's service quality and customer service standards following the close of the proposed transaction could potentially suffer. Under Cablevision's current management the Company is relatively well regarded, but we note that Suddenlink, which Altice recently acquired,[61] ranks much lower; ninth out of the 12 rated cable television providers and not ranked at all for its broadband or telephone service offerings.

JD Power's 2015 Survey rates residential customer satisfaction based on five points: performance and reliability, cost of service, programming (television only), billing, and communication and customer service.[62] Cablevision's cable service rated "About average" among the East Region providers, 707 on 1,000-point scale, the average score being 721. Cablevision's broadband service was similarly rated "About average" among the East Region providers, 695 points out of 1,000, the average score being 700. Cablevision's telephone service was rated "About average" as well among East Region providers, at 732 points out of 1,000, the average score being 746.

With respect to the Commission's own service quality and customer service metrics, historically, Cablevision's PSC Complaint Rate (per 1,000 customers) has been relatively good. For telephone service, the PSC Complaint rate has remained below

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[61] WC Docket No. 15-135, In the Matter of Applications File by Altice N.V. and Cequel Corporation d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V., Memorandum Opinion and Order (issued December 18, 2015).

[62] JD Power 2015 Survey (http://www.jdpower.com/press-releases/2015-us-residential-television-internet-telephone-service-provider-satisfaction)

0.01 since 2011 (the Commission's threshold is 0.075). Cablevision Lightpath has received a PSC Commendation for excellent phone service quality every year between 1998 and 2014.[63] For video service, the calculated PSC Complaint rate in 2011 was almost .04 (the threshold is again .075), but has decreased and stayed consistently between .01 and .02 annually since that time. Given its large subscriber base, Cablevision has also experienced relatively few escalated complaints from 2011 to date, as the following chart indicates:

OCS Escalated Complaint History		
Cablevision	Video	Voice
2011	69	14
2012	25	6
2013	28	4
2014	24	8
2015	7	0

On the other hand, with respect to Suddenlink's JD Power rankings for the South region, for television service providers in 2014 Suddenlink was rated "Below average," scoring 690 out of 1,000; the average score being 729. For South region ISPs, in 2015, Suddenlink was rated "About average," scoring 703 out of 1,000; the average score being 605 and ranked fifth out of ten companies.

In sum, given Cablevision's adequate customer service performance in New York, Staff is concerned that Altice will not be in a position to maintain that level of service. This is especially so if Altice intends to import either the Altice or Suddenlink customer service model(s) as a basis for change(s) at

[63] The Commission issues a Commendation for Excellent Quality phone service based on companies meeting two criteria over the course of a year: Customer Trouble Report Rate (CTRR) of 95% or better, and, PSC Complaint Rate of 0.075 or lower. Both metrics must be met in order to receive the Commendation.

Cablevision, aimed at cost savings, that could negatively impact service quality and customer service standards.

Loss of Jobs: The proposed transaction has the potential for material job losses in New York. Cablevision currently has [redacted] call centers in New York, in [redacted] which employ [redacted] in this category of customer-facing jobs, respectively.[64] Additionally, Cablevision operates [redacted] walk-in stores in New York in [redacted] which employ [redacted] in this category of customer-facing jobs, respectively.[65] Cablevision employs more than [redacted] "Field Ops" staff as well. These customer-facing jobs are essential to sustaining daily operations and maintaining service quality over Cablevision's vast network.

Staff believes there is a real danger that Altice will look to gain operational efficiencies by moving or consolidating customer-facing jobs and other positions to out-of-state locations or simply eliminating them altogether, which could make it difficult for Cablevision to maintain its current level of customer service standards. These moves or job losses could

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[64] Confidential Responses to DPS-11, Confidential Exhibits 11-A and 11-B.

[65] Id.

potentially result in longer wait times, and lack of local knowledge could lead to increased frustration and dissatisfaction on the part of New York customers, resulting in a significant decline in the overall level of service quality.

The use of large regional call centers might result in efficiencies that could benefit Altice financially, but would be unlikely to benefit its customer in terms of improved service quality. These facilities employ staff conducting a variety of important services for customers throughout the State, services that are best provided at the local level. The Petitioners however have made no commitment regarding the number of jobs they will create or retain in New York following the proposed transaction and as stated above, there is a real concern that Petitioners will look to instead eliminate jobs to the detriment of their New York customers.

Lack of Wireline Standalone Telephone and Lifeline Service: Cablevision does not currently offer standalone wireline telephone service, or Lifeline telephone service.[66] The Commission has a long-standing policy of encouraging competition in the voice market, as well as a long-standing mission to support Lifeline telephone service. That Cablevision does not offer any such services, nor has proffered a plan to offer them, is another potential detriment of this transaction, as other potential buyers may have offered standalone wireline telephone service and would likely have offered Lifeline service. It also puts customers in Cablevision's franchise areas at a distinct disadvantage compared to customers in other parts of the State,

[66] Staff recognizes that Cablevision currently offers Freewheel, a mobile standalone telephone service, but this service requires the purchase of a $99 mobile device and is not a ready substitute for wireline telephone service.

where incumbent cable providers like TWC offer standalone voice service including Lifeline.[67]

Historically, the Commission requires companies to certify as Eligible Telecommunications Carriers (ETCs) in order to offer Lifeline phone service in their territories. By obtaining ETC status, the phone service provider becomes eligible to receive State and federal funds to subsidize the provision of Lifeline services. In New York State, incumbent and competitive local exchange carriers, wireless companies, and cable companies are eligible to receive ETC status and provide Lifeline phone service. In 2013, Time Warner became the first cable company offering telephone services in New York to request ETC status and offer Lifeline phone service throughout its entire New York State service footprint. Since becoming ETC certified, many consumers in Time Warner's service areas who were previously subscribed to another wireline or wireless provider for Lifeline phone service, have instead opted for Time Warner's Lifeline phone service. Next to Time Warner, Cablevision is the next largest cable operator in New York State, in terms of customer base, franchises and geographic service area footprint. Without a similarly comparable wireline Lifeline service offering from Cablevision, many otherwise eligible Lifeline customers in Cablevision's large footprint remain at a competitive disadvantage when it comes to choice among wired Lifeline service providers.

The lack of alternative Lifeline service providers in Cablevision's territory is an omission that could be easily

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[67] See, e.g., Case 12-C-0510, Petition of Time Warner Cable Information Services (New York), LLC for Modification of Its Existing Eligible Telecommunications Carrier Designation, Order Approving Designation as a Lifeline-Only Eligible Telecommunications Carrier (issued March 18, 2013).

remedied if the Company requested ETC status, similar to what Time Warner has done, which would make them eligible for State and federal Lifeline funding.[68]

Low-Income and Affordable Broadband: Cablevision does not offer any low-income broadband service programs.[69] Cablevision did participate in a pilot program called New York City Connected Learning between 2010 and 2013 in its Bronx and Brooklyn service areas. This program was a partnership with New York City-based nonprofit Computers for Youth and included discounted residential broadband service for $14.95/month at speeds of 15 Mbps down and 2 Mbps up. The program allowed households with a student enrolled in NSLP to receive this discount for up to two years. However, that program is no longer offered by Cablevision.

Cablevision does offer an "Everyday Low Price" package to all its customers, which includes a 5 Mbps down/1 Mbps up broadband service at $24.95/month, free digital antenna for over-the-air channels, and free access to 1.3 million Optimum WiFi hotspots of which approximately [redacted] are located in New York, along with access to an additional [redacted] hotspots in the state operated by certain other providers (e.g., TWC and Comcast).[70] While this package service is beneficial to

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[68] Staff notes that the FCC is currently undertaking a proceeding to determine whether broadband services should receive Lifeline support. This benefit then may, in the future, expand to include broadband. WC Docket No. 11-42, Lifeline and Link Up Reform and Modernization, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order (issued June 22, 2015).

[69] Responses to DPS-10.

[70] Confidential Responses to DPS-25.

some, it fails to adequately respond to New Yorkers most in need of assistance, because, among other things, the service is relatively slow and pricey compared to other low-priced offerings.

In addition to lack of options for low-income customers, the Petitioners have not provided any guarantee that they will retain current Cablevision standalone and bundled broadband services at current rates for any length of time following the proposed transaction. Without such a guarantee, New York customers could be at risk of losing affordable options they currently enjoy.

Imposition of Data Caps: Cablevision currently offers four broadband service plans, with tiers differentiated by connection speeds, measured in Mbps. It offers a 25 Mbps/5 Mbps (downstream/upstream) service plan for $39.95,[71] a 50/25 plan for $44.90, a 75/35 plan for $59.95 and a 101/35 service plan for $94.95. None of these plans are subject to a data cap.

In contrast, Suddenlink, recently acquired by Altice, offers three broadband plans that are differentiated by both connection speeds and the size of the data caps. Suddenlink offers a 50 Mbps/5 Mbps plan with a 250 Gigabyte (GB) monthly cap for $39.00, a 200/20 service plan with 450GB monthly cap for $59.00, and a 1000/50 service plan with 550GB monthly cap

[71] Promotional price, exclusive of any fees and equipment rentals, if applicable. Cablevision's retail rates, from DPS-1 indicate they offer five non-promotional broadband service plans. These are: $24.95 for a 5Mbps/1Mbps (downstream/upstream) connection, $59.95 for a 25/5 connection, $64.90 for a 50/25 connection, $79.95 for a 75/35 connection, and $109.95 for a 101/35 connection. None of the non-promotional internet plans are subject to data caps.

for $109.00.[72] Given the data caps present on these high-speed plans, the full utility of the additional bandwidth available in these tiers is questionable. When comparing these tiers, one notable observation is that the time it would take to reach the cap(s), if the connection is utilized at its rated speeds, decreases as more expensive plans are purchased. In fact, a customer could reach the data cap(s) in less than two hours on the 1000/50 service plan.

If Altice were to import Suddenlink's pricing into Cablevision service territory and impose data caps on its existing plans, some customers would be forced to upgrade not for the increased speed, but for larger data caps. For example, customers on Cablevision's low-end 5 Mbps plan, if limited to a 250 GB monthly cap, would technically be able to hit their cap after just five days of constant use. More practically, they would be limited to approximately 83 hours (a little less than three hours a day) of video streaming, if the connection were not used for anything else. Simply put, the introduction of Suddenlink-type data caps in Cablevision's New York service territory post-transaction would limit the ability of New York consumers to utilize their broadband connections at their own discretion, as they currently enjoy with Cablevision service today, and would lessen the ability of over-the-top voice and video providers to compete with Cablevision's bundled services. The imposition of Suddenlink-type data caps would be a significant detriment to New York consumers, and should not be allowed as a condition of the transaction.

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[72] Customers exceeding the data cap will, on the third and subsequent overages, be charged at the rate of $10 per 50 GB (sold in increments of 50 GB). See, SuddenLink, Data Plans: Frequently Asked Questions, http://www.suddenlink.com/data-plans#question6

Cable Modem Fees: Of potential concern is the practice of some major ISPs to bundle the rental fee for a cable modem into its pricing for Internet service. This practice is problematic since it may provide no discount for customers who buy their own routers/modems. According to the responses to DPS-7, Cablevision currently permits customers to use their own routers. In addition, use of a Cablevision-supplied router is included in the price for broadband service. Further, Altice intends to continue to allow customers to use their own modems/routers following the proposed transaction, subject to further analysis upon Altice assuming control of Cablevision and in response to future market developments. Although Altice indicates it does not have any current plans to alter or end this practice, it makes no guarantee that changes to Cablevisions modem and router fee pricing structure will not take place.

Conclusion: Hence, despite the Petitioners' claims to the contrary, the possible detriments and risks associated with this transaction are real and substantial. Unless the Petitioners can successfully demonstrate that the risks inherent in the debt are manageable, commit to a series of requirements designed to mitigate other potential harms, and the Commission imposes enforceable conditions to ensure the necessary benefits, Staff does not believe the proposed transaction can be approved under the public interest standard enumerated above and should be rejected.

ANALYSIS AND RECOMMENDATIONS

New York consumers expect and deserve best-in-class communication services and Staff would expect that Cablevision shares that same goal. Our recommendations are thus designed to facilitate Altice's deployment of advanced networks to meet this very important objective. Based on a review of the relative potential benefits and detriments described above, Staff has determined that the proposed merger would not result in a net positive benefit for New York absent assurances regarding Cablevision's finances, and specific substantive commitments or enforceable conditions designed to ensure New York will share in the promised efficiency gains.

Issuance of Debt: As an initial matter, given the current credit ratings of Cablevision, and the likelihood of detrimental credit rating actions due to the increased debt resulting from the proposed transaction, this merger presents financial risk. As was discussed previously, neither Cablevision nor Altice have investment-grade credit ratings. Conditions to require petitioner to demonstrate how the combined entity can improve its financial position, or for example, to implement dividend restrictions intended to retain earnings and free cash flow to improve Cablevision's ratings, will be needed but will not be enough to change the combined entities' credit rating to investment-grade.

Excessive leverage related to the merger poses risk for Cablevision and its customers. With the additional debt, Cablevision must pay more interest, while at the same time obtaining no increase in customers and revenues resulting from the transaction. The consequences of this heavy debt burden can be substantial. The payment of interest and return of principal are atop the hierarchical payments that a debtor-company must make. In a worst case scenario a corporation that borrows too

much money might face bankruptcy or default during a business downturn. A high debt service could also serve to limit capital investment, both in terms of new products and expansion of existing markets and may result in a decline in general service quality since a company may have to seek cost cuts in these areas if it cannot otherwise service its debt. A sustained high debt load could also lead to a lower credit rating and increase in future financing costs and make it more difficult for a company to raise additional debt to support its capital expenditures.

In order to mitigate these concerns, the Petitioners should propose concrete steps to improve its credit metrics post acquisition. One such example would be to impose a dividend restriction until key credit metrics thresholds can be attained. The Commission must ensure that the Petitioners have made the proper demonstration that the debt associated with the deal will not impair Cablevision's access to capital or interfere with the reinvestment of synergy savings in their New York operations, or harm customers through a reduction in service quality. At this point, the Petitioners have not made such a showing.

Assuming such a showing can be made by the Petitioners, the Commission must then ensure it adopts other provisions that offset the other risks and consequences of the proposed transaction. Finally, assuming those risks are successfully mitigated, the Commission must impose enforceable conditions to ensure that New York customers receive a tangible benefit.

Network Upgrades: While the Petitioners state that access to Altice's resources may lead to investment in additional fiber the result of which will in turn lead to deployment deeper into Cablevision's network, Staff notes that the Petitioners have not made any concrete commitments with

respect to this deployment either in scope or timing. Therefore, Staff recommends that the Commission impose a series of enforceable conditions designed to produce tangible benefits.

First, following the close of the transaction, Altice, and by extension Cablevision, should be required to make investments designed to increase broadband speed, network reliability and resiliency. In confidential responses,[73] the Petitioners identified 22 primary headend/system groups, describing the different hybrid-fiber coaxial network (HFC) cascade design of each primary group.[74] For instance, Cablevision's network in the Bronx/NYC and Brooklyn/NYC groups is designed with fewer amplifiers in its coaxial segment than Hicksville/Woodbury [redacted] Its other 19 headend/system groups have an even higher cascade design [redacted] The Petitioners address these variations in HFC network design, indicating that part of Altice's plan to modernize the Cablevision network is to reduce the number of amplifiers in the network as it has done in other operations or countries. According to the Petitioners, active amplifier cascades limit bandwidth, and are subject to power outages (resulting in potential service downtime and service quality degradation), and require network redesign to increase bandwidth capabilities.

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[73] Confidential Responses to DPS-22, Exhibit 22-A.

[74] In an HFC cable network, signal strength declines over distance in the coaxial segment of the network. Depending on the length of the coaxial cable between the fiber node and the customer premise, "active" or powered amplifiers are placed to boost the signal. The cascade design or "N + X" refers to the number of amplifiers "X," in the coaxial segment served from the node "N."

They indicate that reducing amplifier cascade in the network and deploying an architecture with much deeper fiber penetration "will help future proof the network for advanced services and larger data packages to subscribers due to smaller node size and more reliable service."[75] The Petitioners also state that in greenfield (or unbuilt) areas, the option to deploy Fiber-To-The-Home (FTTH) could be leveraged using "its experience acquired by deploying such networks in both France and Portugal."[76] They also state that "[g]oing forward, Altice expects to use this basic design to enhance Cablevision's network, subject to existing Cablevision topology, density, and other factors that will require further analysis after closing."[77]

Staff concurs with the stated benefits that accompany reduced amplifier cascades. Moreover, deeper fiber penetration should produce greater network reliability, improved service quality, more advanced services provisioning and operational flexibility over the Cablevision footprint. We also note that none of Cablevision's network design is currently free of amplification, and, in fact, the vast majority of the headend/system groups are [redacted] design.[78] An amplifier free (or N+0) network deployment throughout the Cablevision network would bring its design much closer to the passive-type design that Verizon has deployed over its FTTP FiOS network in many parts of the State, enabling faster speeds and a more resilient network.

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[75] Responses to DPS-22.

[76] Id.

[77] Id.

[78] Confidential Responses to DPS-22.

Thus, as a condition for approval, the Commission should require the Petitioners to develop, and provide for review, a plan to implement network upgrades following the same industry standards Altice has applied in other areas, to build an amplifier-free (N+0) cascade design throughout the New York State footprint. The N+0 cascade upgrades should be complete with 36 months of close of the proposed transaction. The Petitioners should be directed to work with Staff as they develop deployment strategies and should also be required to provide the Commission with periodic progress reports and status updates during the upgrade period, as necessary to meet completion timetables.

In order to ensure that Cablevision's customers continue to receive best-in-class services, in connection with the system upgrades described above, the Petitioners should commit to, or the Commission should require that, they make upgrades sufficient to provide all customers with broadband service of at least 300 Mbps within three years of the close of the proposed transaction. The Petitioners should be required to work with Staff to target these upgrades by franchise area and should develop and file with the Commission a plan to accomplish these upgrades following of the close of the proposed transaction. It bears noting that the Commission, in the recently approved TWC/Charter transfer, also required such network upgrade capable of delivering faster speeds of up to 300 Mbps throughout their service footprint.[79]

Network Expansion: There are areas in Cablevision's service territory that currently do not have service available to them due to various reasons (such as construction

[79] See, Case 15-M-0388, Order Granting Joint Petition Subject to Conditions, Appendix A.

difficulties in historic neighborhoods, homes located outside of primary service areas, and franchise areas pending construction.) In confidential response to DPS-9, Cablevision estimates that there are approximately [redacted] within the municipal boundaries of 25 of its franchise areas that are not served by its wireline cable network. Cablevision stated that all homes in the remainder of its franchise areas, (approximately 195 franchise areas) are fully served by its cable network, and capable of subscribing to Triple Play services.

In a confidential response to DPS-1, regarding broadband services, Cablevision states that all of the broadband service tiers identified therein are available to every home and small business passed by its network. However, Cablevision also states that it serves [redacted] homes located on two barrier islands (Oak Beach and Gilgo Beach, Suffolk County) with video service provided by a microwave link from the mainland, and the cable network passes approximately [redacted] homes on these islands. The island cable network is a one-way video system, and is not capable of offering broadband or voice services. The Petitioners describe the barrier island system as being the only areas passed by Cablevision in New York where broadband and voice services are not available. The barrier island homes are located outside of the primary service area as defined in the Town of Babylon franchise, meaning Cablevision is not required, to offer service to these residents.

Further, in confidential responses to DPS-9, Cablevision indicates that for the years 2013, 2014 and to date, in 2015, it completed line extensions to the following number of

homes and business locations in New York State: [redacted] The number of line extensions Cablevision has completed in recent history is significantly larger than the estimated remaining number of unserved homes in its service footprint. Clearly, the large number of annual line extensions completed by the company is an indicator that Cablevision has the requisite technical and resourcing capabilities to successfully accomplish line extension work on a large and sustained scale and timetable. Given that the company's estimated remaining number of unserved homes is less than the full 2015 line extension figure provided in its IR response, Staff believes that, conservatively speaking, the Petitioners could reasonably develop a two-year plan to extend cable network to the unserved homes identified within the franchise areas cited in Amended Exhibit 9-B. For locations identified as particularly challenging for service deployment, such as historical neighborhoods with restrictive construction codes, the Petitioners should still be able to identify those locations on a more granular basis, and address on a case-by-case basis.

Based on the foregoing, Staff recommends three conditions for both network and service expansion. First, by Cablevision's own estimation, only a very small raw number and percentage of homes, located within a minority of its franchise areas in portions of nine counties, do not have cable network available. Deployment of advanced network to this relatively small unserved or under-served group of homes would provide a tangible benefit for those consumers. Moreover, a network expansion of this type is supportive of Governor Cuomo's State goal to foster advanced communications access to all New

Yorkers.[80] Given the small number of municipalities identified with limited numbers of homes without advanced network available, the Petitioners should be required to develop an expansion plan and to deploy cable network to serve these homes. The Commission should require that this network expansion be completed within 24 months after the proposed transaction closes.

Second, Staff recommends deployment of Cablevision's upgraded network to the Oak Beach and Gilgo Beach communities. Presently, those homes are served by Cablevision's one-way video system via microwave link from the Long Island mainland. While Cablevision states that the barrier island homes are located outside of the primary service area defined by the Town of Babylon franchise, and is therefore not required to offer service, in fact, Cablevision has opted to provide cable network service to both communities. Staff recognizes that deployment of advanced network services to the barrier islands, including high speed broadband, and VoIP phone service, will require some engineering analysis, given the current architecture involving the microwave link providing video-only service. However, in their petition, Altice identifies its technical and engineering expertise as a benefit of the proposed merger. Therefore, Staff is confident that Altice can translate this representation into this tangible benefit. We therefore recommend that the Commission require the Petitioners to commence engineering analyses of both barrier islands, and collaborate with Staff on a deployment plan that would provide for video, voice and

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[80] Governor Andrew Cuomo has established a $500 million infrastructure fund to promote deployment of broadband infrastructure capable of providing speeds of 100 Mbps. See, 2015 Opportunity Agenda: Restoring Economic Opportunity, Re: Statewide Broadband Access for Every New Yorker (issued January 16, 2015).

broadband services to the Oak Beach and Gilgo Beach communities within 18 months after the close of the proposed transaction.

Third, in confidential responses to DPS-9, the Petitioners indicate that Cablevision's cable network passes [redacted] schools and [redacted] municipal locations (including libraries and community centers). Of those, Cablevision currently serves [redacted] schools and [redacted] municipal locations. To the extent that the remainder of the estimated [redacted] potentially unserved or under-served schools and municipal locations within the Cablevision footprint may not be served at all, or are underserved by some other competitive provider, Staff recommends that the Petitioners commit to and initiate and maintain an outreach program to those locations with the aim of informing them that advanced network services are available. Should any of these entities wish to subscribe to Cablevision's services, the Petitioners should develop promotional programs to encourage service subscriptions. Staff recommends that line extension fees should be waived, if any such fees are deemed necessary upon engineering survey, for these locations, should any of those entities opt to subscribe

to Cablevision services.[81] Additionally, Petitioners should commit to an expansion of Cablevision's existing WiFi network. This network provides valuable access to Cablevision customers away from their homes. Specifically, the Petitioners should commit to providing additional WiFi access in public locations, including, but not limited to, parks, community centers or schools.

Low Income Broadband Program and Standalone Broadband Services: The Petitioners have not proposed a low-income broadband program as part of the record in this case. Staff finds this both surprising and problematic, given that the largest block of consumers not subscribed to a broadband service are those in low- and middle-income brackets. With access to broadband so important for all New Yorkers, the Petitioners should commit to a series of steps and service offerings designed to make broadband service truly universal in its New York footprint.

Petitioners should commit to, or the Commission should require, the establishment of a program similar to that to be offered by Charter following the consummation of its acquisition of Time Warner. This service, announced on December 17, 2015, would provide low-income customers with a 30 Mbps broadband service for $14.99 a month, including a cable modem and free installation. Eligibility for this program should include families eligible for the NSLP (which Cablevision has previous

[81] If any of the locations require exceptionally uncharacteristic, expensive, or physically daunting engineering work to serve, than otherwise expected of line extension-type work, the company can seek waiver, on an individual location basis, for exemption of free extension fee conditions. In any of those instances, however, staff would expect that some cost reduction would be provided to extend service to those exempted locations.

experience with via its participation in the New York City Connected Learning program) and seniors and disabled persons eligible for SSI. Additionally, the Petitioners should commit to not requiring a credit check for this service, or a waiting period to sign-up, and not limit eligibility based on prior broadband subscriptions or arrears.

Additionally, Petitioners should commit to, or the Commission should require, that they provide free or discounted computers and digital literacy training (either themselves or in partnership with a New York based non-profit organization) and develop a community outreach plan to ensure the maximum benefit from this service.

Finally, Petitioners should commit, or be required by the Commission, to improve its "Everyday Low Price" package, as described above, by increasing the broadband connection speed to 15 Mbps to ensure that customers who are not eligible for the low-income broadband program, but have limited incomes, are still able to access broadband resources at an affordable price. Petitioners should also leverage Cablevision's extensive WiFi network and experience by proposing a low income WiFi offering to public housing units.

Finally, in order to ensure that all Cablevision customers are able to obtain standalone broadband services at speeds and prices that they can afford, the Petitioners should commit to retain Cablevision's standalone broadband offerings, at rates as of January 1, 2016, for three years following the close of the transaction.

Protecting Against Loss of New York Jobs: To maintain basic service quality, and avoid undue negative economic consequences, any approval of the proposed transaction should be conditioned upon specific job-related commitments. Following the close of the proposed transaction there should be no loss of

customer-facing jobs in New York for at least five years. In addition, the Petitioners should be required to provide 90-day advance notice to the Commission, of any planned call center closing, or call center relocations out of New York. This requirement recognizes the importance of providing customer assistance services within New York and should also extend for five years. We note that these conditions are similar to those imposed by the Commission in the recent approval of the TWC/Charter transfer.[82]

Standalone Wireline Telephone/Lifeline: Cablevision should be required to gain ETC status from the Commission and to offer standalone wireline telephone service as well as Lifeline discounts to eligible households. The ability of consumers to subscribe to Lifeline and standalone phone services from alternative wireline and wireless providers in the Cablevision market area, coupled with Cablevision's dominant position in the wireline phone market in areas of Downstate New York, necessitate the need to open up these service options to the growing number of consumers who have chosen Cablevision for service, and who would benefit from these important choices.[83]

Staff recognizes that the popularity of landline telephone service has been decreasing, especially among Lifeline customers, and that Cablevision offers standalone mobile telephone service through its Freewheel offering. If Cablevision were granted ETC status for its wireline VoIP services, not only would customers within its service territory benefit, but all customers within the State would benefit from

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[82] See, Case 15-M-0388, Order Granting Joint Petition Subject to Conditions, Appendix A.

[83] As noted previously, these benefits may be expanded in the future as a result of the FCC's proposal to expand the Federal Lifeline program to include broadband.

the increased competition for wireline Lifeline services because, with the addition of Cablevision as a wired Lifeline service provider, essentially every New Yorker would have at least two choices of wired Lifeline service. Whether residing in Albany, Buffalo, Champlain, Montauk, Mount Kisco, or Warwick, consumers with telephone company Lifeline service availability would also now have cable company Lifeline service as an option.

Service Quality: Similar to Time Warner Cable, ETC status would obligate Cablevision to adhere to core Commission regulatory requirements such as service quality measurement and reporting and contributions to public policy (e.g. Universal Service) funds. In light of Staff's concerns regarding a deterioration in service quality and customer service standards following the close of the proposed transaction, the Petitioners should commit, or the Commission should require, that Cablevision's current PSC Complaint rates for cable and telephone be maintained to prevent any backsliding from 2015 levels in the wake of the close of the proposed transaction. In the event Cablevision is unable to maintain these levels of service quality, it should be subject to a performance incentive mechanism until such time that service is restored to acceptable levels. That incentive mechanism must be set at a level commensurate with the size of the new company to ensure an appropriate service quality improvement response. Staff proposes a $5 million incentive mechanism for cable and telephone, respectively, if the performance standards are not met, on an annual basis, with a doubling to $10 million for any consecutive failures.

Additionally, Petitioners should be subject to service quality reporting, customer service mechanisms and other consumer protections, inclusive of their VoIP products, to ensure customers are not harmed by the proposed transaction.

Currently, the Department's Office of Consumer Service assists New York subscribers of Lightpath phone services. This consumer assistance and protection, including protections related to terminations, should be expanded to include Cablevision's residential VoIP phone service as well. Doing so will provide over a million New Yorkers with consumer service protections, and will help level the playing field for the major wireline telecommunications providers in New York State who are providing local and long distance phone services to consumers. Again, given its dominance in the phone market, particularly in the Downstate, Metro NYC, and Long Island regions, Cablevision should be subject to service quality reporting requirements. These metrics should include quarterly reporting by service/franchise areas for their entire New York service footprint on: (1) calls answered rate, (2) missed appointments, (3) percent out-of-service for 24 hours, (4) customer trouble reports, and (5) installations completed within seven days. Reporting should include the number of phone subscribers month-ending for each of the months within the quarter.

Miscellaneous: Staff has also determined that the Commission should require a series of additional conditions designed to ensure the reliability of Cablevision's system following the proposed transaction as follows.

Battery Backup and Cable Modem Deployment – The Petitioners indicate that there is robust backup powering at each system headend and within the outside plant distribution network. They state that Cablevision's headend facilities are typically powered through the electrical grid, with backup generators on standby to ensure uninterrupted operation. The Petitioners also state that Cablevision's outside plant, such as nodes and amplifiers, are powered by commercial power supplies backed up by batteries and portable generators. It is expected

that powering reliability and resiliency of the outside plant will further improve as active amplifiers are removed during the fiber network upgrade processes as well. However, customer premises equipment (e.g., cable modems), is not nearly as well protected by backup powering as the other major network components should commercial power fail. In the event of a commercial power outage affecting customer and business locations, cable modems and other customer premises equipment with battery back-up may still be operational and fully capable of processing bi-directional VoIP phone and broadband services, while company-leased customer premises equipment installed in homes and businesses that is not provisioned with battery backup will likely not work.

In order to subscribe to Cablevision's Optimum Voice (VoIP) service, customers must use a cable modem. The modems provided by Cablevision are capable of using backup battery power. Customers can purchase rechargeable batteries for these cable moderns directly through Cablevision, or from the modern manufacturer. In confidential response to DPS-35, the Petitioners' indicate that there are [redacted] Optimum Voice customers in New York State. In confidential response to DPS-7, the Petitioners' indicate that approximately [redacted] of the Optimum Voice cable modems deployed as of the beginning of 2015 were equipped with battery back-up, while the remainder of the Optimum Voice cable modems are not.

Given the represented strength of the backup power systems already present in Cablevision's headend and distribution network, the lack of battery backup powering in approximately [redacted]

[redacted][84] of company-leased cable modems is a sizeable gap in the overall resiliency and reliability of the network should commercial power fail.

Staff recommends that the Petitioners be required to develop and implement a plan to expand the number of subscriber devices with battery backup powering, including making available more standard options to consumers choosing to provide their own battery backup. The provision of uninterrupted telephone service to reach emergency services and 911 is most critical during emergency events that often include commercial power outages. This concern is heightened for the most vulnerable of customers, that is, the elderly, disabled, those who have medical needs, and those who rely on Lifeline service as primary means to communicate. Therefore, as a condition of the Commission's approval of the proposed transaction, Staff recommends that the Petitioners be required to provide these customers with a battery backup option for their voice service free of any installation or recurring charge that is consistent with FCC battery backup requirements. This would require the waiving of a one-time $29.95 fee currently imposed by Cablevision for such battery backups.

Data Caps and Modem Fees – The Petitioners have not provided any assurance to the Commission or to the FCC that it will not impose data caps on its broadband customers following the proposed transaction. Because a number of the conditions Staff recommends here would likely involve the investment of substantial capital, we further recommend that the Commission require that the Petitioners not impose data caps on New York customers for at least three years following the close of the proposed transaction. Such a requirement will ensure that the

[84] Confidential Responses to DPS-7.

Petitioners do not seek to fund the network deployment and modernization conditions we recommend by charging broadband customers, but rather that these investments are funded through the achievement of synergy savings.

Additionally, in light of the Suddenlink pricing structures detailed above, in order to protect those consumers who would otherwise receive a discount by owning their own devices, Staff recommends that a condition to the Commission's approval of the proposed transaction there be no changes to Cablevision's current router and modem fee structure for at least four years following the close of the proposed transaction.

CONCLUSION

Staff has reviewed the purported benefits identified by the Petitioners as well as the potential detriments of the proposed transaction, and we find that they have not established the requisite net positive benefit as a result of the proposed merger. Without the proper demonstration that the debt associated with the deal will not interfere with the reinvestment of synergy savings in their New York operations, the mitigation of additional risks identified above and enforceable conditions that translate into New York consumers being guaranteed to share promised efficiency gains, the proposed transaction must be rejected. To ensure the proposed transaction promotes the public benefit and satisfies the Commission's public interest standard under the Public Service Law, Staff recommends that the Petitioners make the necessary demonstrations and commitments and agree to enforceable conditions to deliver net positive benefits to New York customers. These commitments and enforceable conditions should at a minimum address service quality, job retention, universal

service, network deployment to unserved/under-served areas, and broad infrastructure investment and improvement.[85]

Respectfully submitted,

_____/s/_____

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[85] The conditions adopted by the Commission should be binding and enforceable. Section 25 of the PSL requires that a company "comply with … every order … adopted" pursuant to the PSL and that any failure to comply may result in a company being required to "forfeit to the people of the State of New York a sum not exceeding one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense." In the event that a company fails to comply with the conditions contained herein, pursuant to PSL §26, "the [C]ommission may direct counsel to the [C]ommission to commence an action or special proceeding in the supreme court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented."