

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

In the Matter of )  
 )  
Applications Filed by Cablevision Systems ) WC Docket No. 15-257  
Corporation and Altice N.V. to Transfer )  
Control of Authorizations from Cablevision )  
Systems Corporation to Altice N.V. )  
 )

**RESPONSE TO OBJECTION TO REQUESTS FOR  
ACCESS TO HIGHLY CONFIDENTIAL INFORMATION**

The Communications Workers of America (“CWA”), through counsel, hereby responds to the Objection to Requests for Access to Highly Confidential Information (“Objection”) filed by Altice N.V. (“Altice”) and Cablevision Systems Corporation (“Cablevision”) (collectively, the “Applicants”) in the above-referenced proceeding. Applicants object to the disclosure of Highly Confidential Information (“HCI”) properly requested pursuant to the *Protective Order* in this docket by Debbie Goldman, Telecommunications Policy Director, CWA, and Randy Barber, President, Center for Economic Organizing, and Consultant to CWA.<sup>1</sup> Under the plain terms of the *Protective Order*, Ms. Goldman and Mr. Barber are entitled to review the HCI submitted in this proceeding. Applicants cannot avail themselves of the benefits of the *Protective Order* and then object to the obligation to release information to those entitled to review. Accordingly, the Commission should deny the Objection and permit Ms. Goldman and Mr. Barber access to the

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<sup>1</sup> *Applications Filed by Cablevision Systems Corporation and Altice N.V. to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.*, WC Docket No. 15-257, Protective Order, DA 16-202 (Feb. 25, 2016) (“*Protective Order*”); *see also* Objection to Requests for Access to Highly Confidential Information, WC Docket No. 15-257 (Mar. 2, 2016) (“*Objection*”).

HCI subject to the terms and conditions of the *Protective Order* and their executed Acknowledgments of Confidentiality.<sup>2</sup>

Ms. Goldman and Mr. Barber are entitled to access under the *Protective Order* because: (1) CWA, as a non-profit entity, is a “non-commercial Participant” in this proceeding; (2) CWA is not a competitor to the Applicants and neither Ms. Goldman nor Mr. Barber are involved in “Competitive Decision-Making;”<sup>3</sup> (3) the decisions of the New York administrative law judge (“ALJ”) denying all parties other than the New York Public Service Commission (“NYPSC”) and Department of Public Service staff access to certain specified information are readily distinguishable from the present dispute;<sup>4</sup> and (4) granting Applicants’ Objection would impose substantial burdens on non-profit entities like CWA.

**(1) CWA is a Non-Commercial Participant**

The *Protective Order* provides that outside consultants employed by “non-commercial participants” are permitted access to HCI, so long as they are not involved in “Competitive Decision-Making.”<sup>5</sup> Applicants wrongly assert that CWA is a “commercial” entity.<sup>6</sup> It is not.

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<sup>2</sup> See Letter from Debbie Goldman, CWA, to Kris Monteith, Deputy Chief, Wireline Competition Bureau, FCC, WC Docket No. 15-257 (Feb. 26, 2016) (enclosing the Acknowledgments of Confidentiality for Ms. Goldman and Mr. Barber).

<sup>3</sup> See *Protective Order* ¶ 2 (defining “Competitive Decision-Making”).

<sup>4</sup> See *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*, Ruling Regarding Highly Sensitive Information, Case 15-M-0647, at 9-10 (Feb. 26, 2016) (“February 26<sup>th</sup> NYPSC Ruling”); see also *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*, Second Ruling on Highly Sensitive Information, Case 15-M-0647, at 4-5 (Mar. 1, 2016) (“March 1<sup>st</sup> NYPSC Ruling”).

<sup>5</sup> *Protective Order* ¶¶ 2, 7.

<sup>6</sup> Objection at 3.

CWA is a non-profit Section 501(c)(5) organization, the purpose of which is to protect the organizing and collective bargaining rights of its employee members – rights that are enshrined and protected by longstanding federal law and policy.<sup>7</sup> Unlike a commercial entity, CWA itself will not reap any commercial benefits from access to the Applicants’ HCI.

Applicants claim that CWA is somehow a “commercial Participant” because it is involved in “union organizing and collective bargaining activities directly adverse to Cablevision,” is “involved in labor disputes with Cablevision,” and is the representative for employees of Verizon.<sup>8</sup> This argument overlooks the fact that as a matter of longstanding federal law and policy, the rights of workers to organize and collectively bargain with their employers embody unique public interest policies and protections and have no similarity to the activities of Applicants’ competitors.<sup>9</sup> Indeed, federal law explicitly recognizes “the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty to contract,” and therefore declares it important federal policy to protect “the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”<sup>10</sup>

Consistent with that federal law and policy, the mere fact that CWA negotiates on behalf of union workers with Cablevision or Verizon does not change the fact that CWA is a non-profit organization and is not a commercial entity. Nor does the possibility that CWA may in some instances be “adverse” to Cablevision in negotiating on behalf of union workers have any

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<sup>7</sup> See 29 U.S.C. §§ 151-152(a)(5); *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

<sup>8</sup> Objection at 3.

<sup>9</sup> See 29 U.S.C. §§ 151-152(a)(5).

<sup>10</sup> National Labor Relations Act, 49 Stat. 449, § 1 (1935) (codified as amended at 29 U.S.C. § 151-169).

bearing on whether CWA is a commercial entity. The Applicants cite no precedent in support of their assertion.

**(2) Ms. Goldman and Mr. Barber are not Involved in “Competitive Decision-Making”**

“Competitive Decision-Making” is defined in the *Protective Order* as

a person’s activities, association, or relationship with any clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.<sup>11</sup>

Neither Ms. Goldman’s work, as Telecommunications Policy Director of CWA, nor Mr. Barber’s work, as an economic analyst hired by CWA to assist in this proceeding, involve anything related to “competition with” or “a business relationship with” the Applicants. In response to a question raised by Applicants, Mr. Barber is the President of the Center for Economic Organizing and has been retained as a Consultant by CWA, and is not an employee of CWA.<sup>12</sup>

CWA is not “in competition” with the Applicants, and collective bargaining is not a “Competitive Decision-Making” activity within the meaning of the *Protective Order*. State public utility commissions (“PUCs”) have squarely rejected the idea that a union representing a company’s employees is a “competitor” of that company. For example, the Rhode Island PUC examined an argument by a utility that attempted to prevent the required disclosure of sensitive commercial and financial information to the unions representing its workers. The utility tried to

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<sup>11</sup> *Protective Order* ¶ 2.

<sup>12</sup> See Objection at 3 n. 8 (Applicants request that “Mr. Barber clarify his employment status before a determination as to whether HCI must be disclosed to him is made,” and state that a clarification that Mr. Barber is not an employee of CWA and is not involved in Competitive Decision-Making, as CWA makes clear herein, may cause them to “reconsider their position with respect to Mr. Barber.”). Attached is an updated Acknowledgment of Confidentiality reflecting Mr. Barber’s position as President of the Center for Economic Organizing.

invoke an exemption for the disclosure of information that would cause “substantial harm to the competitive position” of the company. The Rhode Island PUC, in ruling in favor of the union, noted that the utility had been unable to find any federal or state law interpreting a labor union to be “a competitor with its own company,” and emphasized that the “competitive harm” exemption had never been interpreted “to deem a labor union which is in dispute with its own company to be in competition with its own company.”<sup>13</sup> The Washington, D.C. PUC confirmed that “a labor union . . . representing a utility’s own employees, should not be viewed as a ‘competitor’ of the utility for purposes of discovery.”<sup>14</sup> And the Missouri PUC found it “obvious” that CWA is “not a competitor” of Sprint Nextel.<sup>15</sup>

Regardless, and to alleviate any concerns, and consistent with past arrangements for reviewing such information, Ms. Goldman is willing to agree that she will not participate in collective bargaining for 18 months after an order is issued granting the Transaction.

**(3) The New York ALJ’s Decisions Denying Access are Readily Distinguishable from the Present Case**

Under the FCC’s *Protective Order*, once a party signs an Acknowledgment of Confidentiality, Applicants cannot selectively pick and choose which parties see what information. The New York ALJ’s decisions to deny *all outside parties* access to *certain specific* “highly sensitive information” as defined under a NYPSC Protective Order has no bearing on whether Ms. Goldman and Mr. Barber are able to access to all “Highly Confidential

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<sup>13</sup> *New England Gas Co. Rate Filing*, 2002 R.I. PUC LEXIS 15, at \*7 (May 6, 2002).

<sup>14</sup> *Formal Case No. 1054, Application of Washington Gas Light Co.*, Order on Reconsideration, Order No. 14586, 11, 26, 59 (D.C. PSC Sept. 28, 2007).

<sup>15</sup> *Application of Sprint Nextel for Approval of Transfer of Control*, 2006 Mo. PSC LEXIS 218, at \*2 (Jan. 18, 2006).

Information” under the FCC’s *Protective Order*. As explained below, the New York ALJ’s decisions are not applicable in this context, and, moreover, those decisions are on appeal.<sup>16</sup>

First, the ALJ specifically acknowledged the merits of CWA’s request, and both decisions correctly found that there was “no basis” to believe that CWA would use any information obtained improperly; in both cases, the ALJ simply found that disclosure could only be made to the regulator and not to any party to the proceeding.<sup>17</sup>

Second, unlike the HCI at issue in this proceeding, the NY ALJ decided that no outside party at all could access the 11 specific items at issue. In this case, Applicants seem to want to exclude only Ms. Goldman and Mr. Barber from reviewing HCI. The *Protective Order* does not allow Applicants to pick and choose in this way.<sup>18</sup>

Third, as the Applicants concede, disclosure of HCI under the *Protective Order* in this proceeding is not so restrictive. Indeed, they state that “the *Protective Order* permits the Commission to afford certain individuals access to HCI,” in acknowledgment of which “Applicants have not objected to access sought to date by qualified individuals who have

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<sup>16</sup> See *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*, Appeal of Certain Rulings by Administrative Law Judge Van Ort, Case 15-M-0647 (Mar. 7, 2016).

<sup>17</sup> February 26<sup>th</sup> NYPSC Ruling at 9 (“I credit CWA’s arguments that the information would indeed assist CWA in its participation in this case . . . and no basis has been established on this record to suggest that they will fail to carry out [the obligation to use any information provided solely for purposes of this case]. Rather, my conclusion is based on the nature of the information and not the identity of the party seeking access to it.”); see also March 1<sup>st</sup> NYPSC Ruling at 4-5.

<sup>18</sup> In any event, the parties have not explained whether the set of information designated as HCI under the FCC’s *Protective Order* is entirely the same as, broader than, or different from the 11 items designated “highly sensitive” in the New York proceeding. Even assuming *arguendo* that the set of documents is entirely the same, this still has no bearing on parties’ ability to access HCI under the FCC’s *Protective Order*.

requested access to HCI.”<sup>19</sup> Applicants did not, for example, object to Acknowledgments seeking access to HCI filed by representatives of Cogent Communications, Inc. (a competitor to Cablevision) or Zoom Telephonics, Inc., (a commercial producer of cable modems), also reflecting that Applicants’ distribution of HCI under the *Protective Order* is broader than the distribution of “highly sensitive” information under the NYPSC proceeding.<sup>20</sup>

Accordingly, the NY ALJ’s decisions are distinguishable, and are neither relevant nor determinative (and they are on appeal).

**(4) Applicant’s Objection Substantially Burdens Non-Profit Entities**

Finally, there is an additional strong public policy reason that militates against granting the Applicants’ Objection. If the *Protective Order* were construed to prevent in-house union employees like Ms. Goldman from obtaining access to HCI, it would impose on non-profit organizations like CWA the burden and expense of either: (1) hiring more external advisors to perform tasks currently performed by employees, or (2) expanding and reorganizing CWA’s in-house staff to separate structurally those employees who are involved with collective bargaining from those who work on Commission proceedings such as this one, functions that are currently integrated with CWA’s staff.

Imposing such additional costs and structural separation burdens on CWA here, and unions in general, would prejudice them relative to larger entities with more resources available for specialized staff dedicated to FCC matters. The result would likely be to chill union participation in proceedings such as this one, denying the Commission the benefit of critical

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<sup>19</sup> Objection at 2.

<sup>20</sup> See Letter from Hershel A. Wancjer, Boies, Schiller & Flexner LLP, to Marlene H. Dortch, Secretary, FCC (Mar. 1, 2016) (enclosing Acknowledgments of Confidentiality of Robert Cooper and Hershel Wancjer); Letter from Andrew Jay Schwartzman to Marlene H. Dortch, Secretary, FCC (Feb. 26, 2016) (enclosing Acknowledgment of Confidentiality of Andrew Jay Schwartzman).

input concerning the impact of FCC applications such as this one on the Applicants' employees. The Commission should not "deny the Commission the benefit of comment from commenters with limited resources, and tilt the record on which the FCC makes its decisions improperly toward the interests of FCC regulated employers and against their employees."<sup>21</sup>

For the reasons stated above, Ms. Goldman and Mr. Barber are entitled to access to HCI under the *Protective Order* in this proceeding. CWA, as a non-profit organization representing union workers, is a "non-commercial Participant" in this proceeding. CWA is not a competitor to Cablevision or Altice N.V., and Ms. Goldman and Mr. Barber cannot properly be considered as involved in "Competitive Decision-Making." For these reasons, the Objection should be denied, and the Commission should order the Applicants to provide Ms. Goldman and Mr. Barber with access to the HCI pursuant to the terms of the executed Acknowledgments that have already been delivered to the Applicants.

Respectfully submitted,

**COMMUNICATIONS WORKERS OF AMERICA**



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March 21, 2016

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<sup>21</sup> *Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24829, ¶ 17 (1998).

## APPENDIX B

## Acknowledgment of Confidentiality

WC Docket No. 15-257

I am seeking access to [ ] only Confidential Information or  Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this 18 day of MARCH, 2016

Randy Barber

[Name]	TRUDY BARBER
[Position]	CONSULTANT
[Firm]	CENTER FOR ECONOMIC ORGANIZING
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[Party]	COMMUNICATIONS WORKERS OF AMERICA

## CERTIFICATE OF SERVICE

I, Benjamin D. Tarbell, hereby certify that on this 21<sup>st</sup> day of March 2016, I caused true and correct copies of the foregoing "Response to Objection to Disclosure of Highly Confidential Information" to be served by email and first class mail to the following individuals:

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/s/ Benjamin D. Tarbell  
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