

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)
In the Matter of the Application of)
Altice N.V.,)
Transferee,)
and)
Cablevision Systems Corporation,)
Transferor,)
Application for Authority Pursuant to Section)
214 of the Communications Act of 1934, as)
Amended, to Transfer Control of Domestic and)
International Section 214 Authorizations)
_____)

WC Docket No. 15-257

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

Altice N.V. (“Altice”) and Cablevision Systems Corporation (“Cablevision,” and, together with Altice, the “Joint Applicants”), by counsel and pursuant to section 1.106(g) of the Commission’s rules,¹ respectfully submit this Opposition to the Petition for Reconsideration (“Petition”) filed by Zoom Telephonics, Inc. (“Zoom”),² challenging the Bureau’s order granting authority to transfer control of Cablevision and its subsidiaries to Altice (the

¹ 47 C.F.R. § 1.106(g).

² See Zoom Telephonics, Inc. Petition for Reconsideration, WC Docket No. 15-257 (filed June 2, 2016).

“Transaction”).³ The Petition should be summarily dismissed as defective because it fails to identify any new, changed, or previously undiscoverable facts or circumstances relevant to Zoom’s allegations and instead simply rehashes the same arguments the Bureaus considered and rejected in the *Order*. If considered on its merits, the Petition should be denied. Zoom’s critique of Bureaus’ analysis in the *Order* is fundamentally flawed because it fails to rebut the Bureaus’ key conclusion: that Zoom’s allegations are not relevant to this proceeding because they raise no Transaction-specific harms.

I. The Petition Presents No New, Changed or Previously Undiscoverable Facts or Circumstances

The Commission’s rules make it abundantly clear that a petition for reconsideration will be entertained in these circumstances only if (1) it relies on events or circumstances that occurred or changed after the petitioner’s last opportunity to present them to the Commission; (2) it relies on facts or arguments that a diligent petitioner could not have learned of prior to the issuance of the decision being challenged; or (3) the Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.⁴ Zoom’s Petition satisfies none of these criteria.

The Petition’s core argument — that Cablevision’s modem and billing practices violate various provisions of the Communications Act or the Commission’s rules — was fully presented to the Commission during the review of the Transaction, as Section I of the Petition itself makes clear through its extensive quotations and citations to Zoom’s own Petition to Deny.⁵ Moreover,

³ *Applications Filed by Altice N.V. & Cablevision Sys. Corp. to Transfer Control of Authorizations from Cablevision Sys. Corp. to Altice N.V.*, Mem. Op. & Order, WC Docket No. 15-257, DA 16-485 (WCB, IB, MB, & WTB May 3, 2016) (“*Order*”).

⁴ See 47 C.F.R. § 1.106(c) (incorporating § 1.106(b)(2)(i)-(ii) by reference).

⁵ See Petition at 3-4, 6-8.

the “[r]ecent events” that Zoom claims “occurred long after the last opportunity to present pleadings in this case”⁶ were in fact known to Zoom no later than April 11, 2016 — more than three weeks prior to the release of the *Order* — when Zoom sent its letter to counsel for Altice and Cablevision detailing these same allegations and arguments.⁷ At that point, Zoom had ample opportunity to make its concerns known in the record through the *ex parte* process — a process well known to Zoom.⁸ It did not.

The Petition cites only two subsequent events: (1) an April 28, 2016, letter from the Joint Applicants’ counsel to Zoom’s counsel, in which the Joint Applicants reiterated their position that Cablevision’s and Suddenlink’s “practices are transparent to consumers and comply with applicable law;”⁹ and (2) a change in language on Cablevision’s website regarding the compatibility of non-Cablevision provided modems with Optimum Online, which, according to Zoom, occurred “some time subsequent to April 28, 2016” and was a “minor modification.”¹⁰ Zoom makes no attempt to explain — because it cannot — how these subsequent communications could possibly alter in any way the facts or circumstances underlying Zoom’s arguments, which have remained the same since Zoom submitted its Petition to Deny in

⁶ Petition at 10.

⁷ See Petition at Attachment D.

⁸ See, e.g., Letter from Andrew Jay Schwartzman, Counsel to Zoom, to Marlene Dortch, FCC Secretary, Docket Nos. 15-149 and 15-257 (filed May 2, 2016) (reporting April 26, 2016, conversation with David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Clyburn); Letter from Andrew Jay Schwartzman, Counsel to Zoom, to Marlene Dortch, FCC Secretary, Docket Nos. 15-149 and 15-257 (filed May 2, 2016) (reporting April 27, 2016, conversation with Philip Verveer, Senior Counselor to the Chairman).

⁹ Petition at 12-13 (quoting Letter of April 28, 2016, from Yaron Dori and Tara Corvo, Counsel to Altice and Cablevision, respectively, to Andrew Jay Schwartzman, Counsel to Zoom, attached to the Petition as Attachment E).

¹⁰ See *id.* at 13.

December 2015.¹¹ Instead, Zoom’s Petition identifies precisely the same facts, and rehashes precisely the same arguments, set forth in its Petition to Deny, purportedly grounded in Sections 629, 201, and 202 of the Communications Act and Section 706 of the Telecommunications Act of 1996.¹² In short, Zoom’s Petition presents nothing new.

Nor does the Petition demonstrate that consideration of the facts or arguments therein is required in the public interest. Indeed, in approving the Transaction, the Bureaus determined that the legal questions posed with respect to billing policies for cable modems and other navigation devices, including those of Cablevision and Altice, are best addressed in the Commission’s ongoing navigation devices rulemaking proceeding.¹³ The Bureaus therefore declined to adopt the relief that Zoom requests here related to those practices. The Commission, addressing identical arguments presented by Zoom in opposition to the Charter / Time Warner Cable merger, reached precisely the same conclusion, finding that “the ongoing navigation devices rulemaking proceeding is sufficient to protect the public interest with respect to New Charter’s cable modem billing and marketing practices.”¹⁴ Zoom’s repetition of the same arguments in this proceeding presents no new facts or arguments calling into question the public interest determinations made by the Bureaus or the Commission.

¹¹ See Zoom Telephonics, Inc. Petition to Deny, or in the Alternative, for Conditional Grant, WC Docket No. 15-257, December 7, 2015 (“Zoom Petition to Deny”). Nor, to be clear, may Zoom use its Reply to this Opposition to cure this fatal defect in its Petition. Any new facts or arguments presented in an attempt to meet the *prima facie* standard for a petition for reconsideration would amount to an untimely supplement, which may not “be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.” 47 C.F.R. § 1.106(f).

¹² See *id.* at 2-9.

¹³ See Order at ¶ 37.

¹⁴ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Mem. Op. & Order, MB Docket No. 15-149, FCC 16-59, at ¶ 247 (May 10, 2016).

II. Zoom's Critique of the Bureaus' Analysis is Fundamentally Flawed

Even if the Petition met the *prima facie* requirements for seeking reconsideration — which it does not — Zoom has failed to identify any error in the *Order*'s treatment of Zoom's arguments. Zoom contends that the Bureaus erred by not ruling on the merits of Zoom's arguments under Sections 201, 202, and 629 of the Communications Act and Section 706 of the Telecommunications Act of 1996, and by declining to assess whether Cablevision's billing practices are otherwise contrary to the public interest even if they do not violate specific statutes or rules.¹⁵ Zoom argues that without ruling on the merits of these arguments, the Bureaus could not determine whether the Transaction satisfies the public interest standard under Sections 214(a) and 310(d) of the Communications Act.

Zoom is incorrect. The *Order* addressed Zoom's arguments. The *Order* concluded "that these issues are not transaction-specific and thus are more appropriately addressed in the pending industry-wide rulemaking proceeding on navigation devices."¹⁶ It is well settled that in a transaction review the Commission "will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)," and that the Commission "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."¹⁷

¹⁵ See Petition at 2-9. Zoom's Petition also argues — in a mere two sentences — that Suddenlink's cable modem certification practices "violate the mandate" of section 76.1201 of the Commission's rules. *Id.* at 15.

¹⁶ *Order* at ¶ 32. The Petition thus errs in its assertion that the *Order* merely "implies, without specifically holding, that Zoom's allegations about Cablevision's billing practices are not transaction-specific." Petition at 3 n.4.

¹⁷ *Applications of Celco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC*, Mem. Op. and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463 (2008); see also *Domestic Section 214 Application Filed for the Transfer of Control of Hawaiian Telcom, Inc. & Hawaiian Telcom Servs. Co., Inc., Debtors-in-Possession*, Public Notice, 25 FCC Rcd. 13149, 13151 (WCB 2010) ("The Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.") ("*Hawaiian Telcom Order*"); *Applications for Consent to the Assignment &/or Transfer of Control of Licenses Time Warner Inc., & its Subsidiaries*, 24 FCC Rcd. 879, 887 ("[T]he Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are reasonably related to the Commission's responsibilities under the Communications Act and related statutes.") (footnote omitted).

The Transaction before the Commission was the transfer of control of Cablevision to Altice. Zoom’s allegations involve precisely the sort of unrelated harms that the Commission routinely has refused to consider in the transaction review context.

At bottom, Zoom objects to Cablevision’s existing cable modem policies and practices;¹⁸ and the core of Zoom’s complaint is that “Altice has made no commitment to change these billing practices as to these customers and, absent any condition imposed by the Commission, may be tempted to treat all other new and existing Cablevision and Suddenlink customers similarly.”¹⁹ Zoom thus asserts that the Commission was required to assess “the harm that is caused by allowing Cablevision’s billing practices to continue without change.”²⁰ In other words, Zoom argues that, absent Commission action, the Transaction would have *no effect* on the Cablevision practices to which Zoom objects. This is precisely the *opposite* of a transaction-specific harm; the Petition effectively concedes that the alleged harm Zoom complains of has nothing whatsoever to do with the transfer of control of Cablevision. The Bureau correctly recognized this attempted sleight of hand in its *Order* when it concluded that the Commission foreclosed consideration of such allegations in a transaction review.

The Petition’s cursory attempt to evade the Commission’s unambiguous precedent on this key point — which Zoom limits to three sentences and relegates to a footnote²¹ — is unavailing. Zoom argues that its allegations are transaction-specific because “they relate to specific practices of Altice and Cablevision as applied to particular customers.”²² This is a non-sequitur. The

¹⁸ See Petition at 1-4, 10-15. Zoom’s objections to Suddenlink’s practices are more cursory and less defined.

¹⁹ Petition at 3 (footnote omitted).

²⁰ Petition at 9.

²¹ Petition at 3 n.4.

²² *Id.*

Commission’s definition of a transaction-specific harm is one that “arise[s] from the transaction,” not simply an alleged harm that involves a party to the transaction. For instance, in granting a series of Section 214 assignment and transfer of control applications involving Hawaiian Telcom, the Wireline Competition Bureau rejected arguments by Time Warner Cable that the Bureau should impose conditions based on Hawaiian Telcom’s alleged failure to comply with statutory obligations “to provide access to the poles, conduits, and rights-of-way ... [o]n a reasonable and nondiscriminatory basis.”²³ Applying Commission precedent, the Bureau refused, holding instead that “[w]here competitors have raised allegations concerning past discriminatory conduct by parties to a transaction ... and asserted that they are likely to perpetuate the alleged anticompetitive behavior absent conditions, the Commission has been clear that those issues are more appropriately addressed in other proceedings.”²⁴

The Petition’s argument is no different. Zoom alleges — erroneously²⁵ — that Cablevision’s existing and past cable modem practices violate the Communications Act and the Commission’s rules, and that these practices are likely to be perpetuated absent conditions. Commission precedent establishes that because such claims are unrelated to the transfer of control presented for Commission review in this docket, they are appropriately addressed in other proceedings, which is precisely what the *Order* concluded in determining that Zoom’s issues are best resolved in the industry-wide navigation device proceeding. In light of that determination, Staff was under no obligation to delve further into Zoom’s arguments. Staff met

²³ *Hawaiian Telcom*, 25 FCC Rcd at 13150.

²⁴ *Id.* at 13151.

²⁵ See Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation, WC Docket No. 15-257, at 11 (filed Dec. 22, 2015).

the standard of review by making the determination that Zoom's non-transaction specific, general policy arguments were better suited to an industry-wide proceeding.

III. Conclusion

For the reasons set forth above, the Petition should be dismissed or denied.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION

ALTICE, N.V.





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