

LG

**SCHENCK
PRICE
SMITH &
KING, LLP**
ATTORNEYS AT LAW
~ Founded 1912 ~

Serving Our Clients and Community
For Over 100 Years

SIDNEY A. SAYOVITZ
Admitted in NJ and DC
Direct Line: 973-540-7356
Email: sas@spsk.com

220 Park Avenue
PO Box 991
Florham Park, NJ 07932
Telephone: 973-539-1000
Fax: 973-540-7300

www.spsk.com

Hand 8/25/16
AUG 24 2016
By Case mgmt

RECEIVED
AUG 22 2016
BOARD OF PUBLIC UTILITIES
MAIL ROOM

August 22, 2016

VIA HAND DELIVERY

Ms. Lawanda Gilbert, Director
Office of Cable Television & Telecommunications
44 South Clinton Avenue
P.O. Box 350
Trenton, New Jersey 08625-0350

In the Matter of the Verified Joint Petition of Altice N.V. and Cablevision Systems Corporation and Cablevision Cable Entities for Approval to Transfer Control of Cablevision Cable Entities

BPU Docket No.: CM15111255

and

In the Matter of the Verified Joint Petition of Altice N.V. and Cablevision Systems Corporation, Cablevision Lightpath-NJ, LLC and 4Connections LLC for Approval to Transfer Control of Cablevision Lightpath-NJ, LLC and 4Connections, LLC and for Certain Financing Arrangements

BPU Docket No.: TM15111256

REC'D
AUG 22 PM 8 56
NJ BPU
007V

Re: Most Favored Nation Analysis

Dear Ms. Gilbert:

In accordance with the Board's Order Approving Stipulation of Settlement ("Order") and the Stipulation of Settlement ("Stipulation") in the above-captioned matter, Altice USA ("Altice" or "the Company") hereby submits its Most Favored Nation ("MFN") analysis and valuation.

Case mgmt
C. Artale
L. Vashun
J. Gilbert

I. Summary

As a result of months of active engagement and constructive negotiation between Altice and Board staff and Rate Counsel, the Board's Order includes an extensive set of enforceable public interest commitments for Altice to deliver a range of network, product, workforce and other benefits and protections that reflect the specific interests of New Jersey. These conditions are complemented by the significant economic agreement that exists between the State of New Jersey and now Altice to maintain the Newark Call Center and certain employment levels in the State for up to 10 years, which Altice does not have with the State of New York. Many of the transaction-related commitments – such as network upgrades and the low income broadband offer – are common to conditions imposed by the New York State Public Service Commission (“NYPSC”).^{1/} Some of the New Jersey commitments, however, emanated from particular interests of Board staff and/or Rate Counsel and are not found in the NYPSC Order. Further, the benefits of certain commitments will inure to the benefits of all Altice customers given the centralized structure of operations and marketing of products in the legacy Cablevision footprint.

Accordingly, any incremental benefits in the NYPSC Order are not “materially greater in the aggregate” than the conditions in the Board's Order, and certainly not when calculated on the required per customer basis. Thus, the risk that the Order's MFN provision was designed to protect against never materialized, and no adjustments to the New Jersey commitments are warranted. Rather, New Jersey customers are already benefiting from Altice's customer-focused approach, expertise, and global scale and will also soon benefit from the specific public interest commitments in the Board's Order.

Below we: (1) address the applicable scope of and legal standard for the MFN analysis; (2) compare the New York and New Jersey commitments; and (3) provide the required valuation of benefits.

II. Background and Applicable Legal Standard

The MFN provision contains the following three requirements, including the scope of the analysis and the applicable legal standard.

- *First*, Altice is required to file with the Board copies of final Orders and Settlement stipulations from any State or other jurisdiction under which conditions are imposed. The

^{1/} 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*, Order Granting Joint Petition Subject to Conditions, Case 15-M-0647 (rel. June 15, 2016) (“NYPSC Order”).

applicable approvals are the NYPSC Order and the Federal Communications Commission's approval.^{2/} The FCC Order contained no conditions, other than certain uniquely federal national security commitments pursuant to a confidential process overseen by the U.S. Department of Justice; accordingly, the scope of the Most Favored Nation analysis required under components two and three below is limited to the NYPSC Order. Copies of the NYPSC and FCC approvals were provided to the Board on June 24, 2016 and are also attached hereto.

- *Second*, Altice is required to file the instant analysis explaining the valuation of customer benefits awarded in the other relevant jurisdiction – New York – as compared to those awarded in the Board's Order.
- *Third*, Altice is subject to a conditional requirement to adjust the per subscriber benefits contained in the Board's Order *if* the NYPSC Order contains "materially greater benefits in the aggregate" than those in the Board's Order, so that benefits to New Jersey are "equivalent" to benefits in other jurisdictions, measured on a per subscriber basis.^{3/}

Under this legal standard, additional commitments in New Jersey are triggered only if the NYPSC Order's conditions – when evaluated *collectively* and on a *per customer* basis – are *substantially* greater than the array of conditions in the Board's Order. Under New Jersey law, "material" is given its plain text meaning and is similar to "substantial" or "significant."^{4/} Mere differences in the New York and New Jersey conditions are not sufficient to trigger adjustments in NJ; those differences must be substantial. New Jersey cases and decisions also apply a plain text reading of "aggregate" to mean a collective – not term by term – evaluation.^{5/} As such,

^{2/} *Applications Filed by Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.*, Memorandum Opinion and Order, 31 FCC Rcd. 4365 (2016) ("FCC Order").

^{3/} Stipulation § 7.

^{4/} See, e.g., *Board of Education of the Borough of Berlin v. Lee*, 2002 N.J. AGEN LEXIS 310, *11 (2002) (discussing conflicts of interest on boards of education and determining whether a benefit to a board member is "substantial and material"); *Northwest Covenant Med. Ctr. v. Fishman*, 167 N.J. 123, 128 (N.J. 2001) (whether an agency action is a "material and significant" change from past precedent is one factor in determining if the action is quasi-legislative).

^{5/} See, e.g., *Murphy v. Zink*, 136 N.J.L. 235, 241 (N.J. 1947) ("The word 'aggregate' is a word which is in ordinary and common use and has a precise and well defined meaning. Webster's New International Dictionary, Second Edition, Latest Unabridged, defines the phrase 'in the aggregate' as meaning 'collectively; together.'"); *Review of the Basic Generation Service Procurement Process*, 2012 N.J. PUC LEXIS 174, *26 (2012) ("The [basic generation service] product ([fixed price] and [commercial and

comparison of whether New York obtained materially greater benefits in the aggregate than New Jersey requires consideration of whether all New York terms, taken together, are substantially more beneficial than all New Jersey terms, taken together, taking into consideration that the New Jersey Altice customer base is approximately 49% of its New York customer base.

III. Comparison/Valuation of Benefits Provided in New Jersey and New York

New Jersey negotiated a robust set of public interest conditions on the Altice/Cablevision transaction that reflect the unique needs and interests of the State. The following outlines the nature of those conditions, noting as appropriate, how a condition may be comparable to a term in NY. Given the priorities for New Jersey and the robust nature of the conditions imposed by the BPU, the New York commitments are not materially, in the aggregate, greater than those in the Board's Order:

- *Network Upgrade:* Altice will upgrade the network to offer download speeds up to 300 Mbps by the end of 2017. It is providing this same benefit in New York.
- *Network Modernization:* Altice articulated in its Petition to the Board its intention to modernize its network by pushing fiber deeper into the network and eliminating active components in order to achieve lower failure rates.^{6/} This "network modernization" obligation was referenced in the NYPSC Order but without further obligation. There is no incremental consumer benefit in the NYPSC Order that is not already reflected in the Altice Petition in New Jersey.
- *Network Expansion:* As shared with the Board during the discovery process, we estimate that at most 0.05% of the households or small businesses in Altice's New Jersey franchise areas may not already be reached by our network, which likely reflects a lack of request for service. Altice typically extends its plant in New Jersey without customer contribution even when not required to do so, and there are no pending requests for service from prospective New Jersey customers. In New York, the Company made explicit its commitment to complete the build of Milan, a community where we had an existing franchise obligation. In addition, the Company agreed to apply to the State's broadband program for funds to make the build to the Barrier Island (Oak Beach and Gilgo Beach), in light of the exorbitant cost to

industrial price]) is by definition an aggregate, wholesale level product, inclusive of all rate classes within the [fixed price] and [commercial and industrial price] definitions.”).

^{6/} Verified Joint Petition of Altice N.V. and Cablevision Systems Corporation and Cablevision Cable Entities for Approval to Transfer Control of Cablevision Cable Entities, BPU Docket No. CM15111255, at 10-11.

build those locations. Given the very rural aspects of the Company's service area in the upper Hudson Valley, the Company committed to cover up to \$5,000 of customer contribution for line extensions, but this situation is unique to New York given the rural nature of the service area. Thus, there is no material discrepancy in benefits, even on this specific term, and particularly not when evaluated on a per customer basis or as part of the required aggregate analysis.

- *Broadband Product:* The low income broadband commitment in the Board's Order has the same speed and pricing requirements, roll-out and implementation deadlines, and eligibility standards as the low income broadband program in the NYPSC Order. The incremental marketing spending to promote the low income program that could be triggered by the NY PSC Order if certain enrollment targets are not met will benefit New Jersey, given that Altice product marketing is done NYMA-wide. Thus, the minor discrepancy between the Board's Order and the New York order does not tip the scales in New York's favor, because New Jersey will benefit if it's triggered. Again because of the uniform nature of Altice's product marketing in the legacy Cablevision footprint, New Jersey customers will benefit from the NYPSC's requirements that Altice participate in the federal Lifeline program and that Altice's standalone, non-promotional 25/5 Mbps product be offered at a uniform price throughout the state. The Board's Order contains the same low cost broadband condition – increase the download speed to 10 Mbps and offer it at \$24.95 – as does the NYPSC Order. Finally, because the requirements for free broadband service in the New Jersey system-wide franchise law^{7/} exceed the obligation in the NYPSC Order to offer free broadband to 40 anchor institutions, there is no advantage provided to Altice's New York customers.
- *Workforce Commitments:* The NJ workforce commitments are not customer benefits, nor can they be valued on a per subscriber basis. Regardless, the Company's workforce commitments in New Jersey are extensive and long lasting. The Board negotiated specific workforce commitments, reflected in the Order, which state (i) that Altice will not do reductions in force for customer facing jobs in New Jersey for two years, specifying in particular jobs at the Newark Project Facility; and (ii) that if there is a net job loss of greater than 15% within three years, Altice must provide an explanation to the Board. Further, Altice has a long term economic agreement with the State that includes a commitment to maintain a minimum number of jobs at the Newark Call Center as well as a minimum number of statewide jobs overall, not just customer facing jobs. In comparison, the only commitment in New York pertains to customer facing jobs for four years and allows for

^{7/}N.J.S.A. § 48:5A-28(k).

attrition and early retirement package.^{8/} On balance, the conditions are substantially similar in impact.^{9/}

- *Customer Service:* As in New York, the Board affirmatively required that Altice maintain its repair and service calls rate per customer within 10% of its 2015 rate, with quarterly investments for exceeding the benchmark. Any perceived incremental advantages to New York customers from the NYPSC requirement that 90% of trouble calls be resolved within two days and/or the differing sanctions for missed metrics are eliminated by the fact that Altice runs its customer service operations regionally, with New Jersey and New York customers served by the same virtual call centers and centrally managed field service operations. Application of missed metrics in New York will inure to the benefit of New Jersey customers. In addition, New Jersey's vigilance on customer service regulation^{10/} serves as a counterweight to the incremental transaction condition in the NYPSC order.
- *Walk In Centers:* Adjusting on a per customer basis, the Board's Order's requirement to maintain 13 of 16 Walk In Centers ("WICs") – including those in urban areas – exceeds the NYPSC Order's obligation to keep 14 of 18 WICs open for two years.
- *Customer Premises Equipment:* As referenced in filings made to the Board during the approval process, Altice will roll out its "all in one" home center footprint-wide, on a deployment schedule that will include New Jersey households; as such, customers in New Jersey and in New York will benefit equally from the introduction of newer, more reliable, and more customer-friendly customer premises equipment, and no New York advantage exists.
- *Network Resiliency:* The Board negotiated a specific and extensive array of network resiliency/emergency response conditions – in some respects more specific than those in the NYPSC Order. Specifically, Altice is required to create public service announcements and customer-facing communications about storm preparedness efforts and resources; provide

^{8/} *EDA Approves \$37M Urban Transit Hub Grant to Cablevision*, NJBIZ.com (June 12, 2012), <http://www.njbiz.com/article/20120612/NJBIZ01/120619954/eda-approves-37m-urban-transit-hub-grant-to-Cablevision>.

^{9/} New York also requires Altice to establish a pilot employment program with the State University of New York and the City University of New York – an institution-specific condition that cannot be applied in New Jersey.

^{10/} *See, e.g.*, Subchapter 3 of the Board's cable television rules, setting forth a series of customer-focused obligations on cable companies, including requirements to promptly restore service in the event of outages.

power companies with access to real-time outage data at no cost during emergencies and under a commercial arrangement at other times; offer non-customer access to Wi-Fi and the News12 Site during emergencies; provide backup customer support; provide backup powering; and maintain and Ring within Ring topology and remote hub technology. Taken together, these benefits are in all meaningful respects the same as the benefits that Altice has agreed to provide in New York. And again, because Altice's New York and New Jersey operations are largely managed centrally and on a uniform basis, the results of the commitments are essentially the same.

- *Financial Reporting and Other New Jersey Specific Commitments:* The Board's interest in the financial aspects of the transaction resulted in commitments not found in the NYPSC Order. Specifically, Altice must: (1) report and explain any planned response in the event a major ratings agency downgrades Cablevision's credit rating; (2) notify the Board in the event of a material default on the terms of its notes; and (3) provide an array of other reports and certifications on financial and legal matters not required by New York.¹¹⁷ No such provisions are contained in the NYPSC Order.

IV. Conclusion

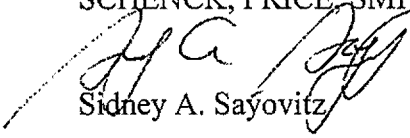
Since the transaction closed June 21, 2016, Altice has been focused on executing on its vision to improve the customer experience, take steps to upgrade network and train and empower its workforce in New Jersey and the rest of the legacy Cablevision footprint. The Company's focus in New Jersey includes active engagement on fulfillment of the conditions required by the Board's Order. As set forth above, the New Jersey conditions plainly are materially in the aggregate not less advantageous when analyzed collectively and on a per customer basis against the obligations in the NYPSC Order. Rather, the Board and Rate Counsel were effective in their negotiations, making the backstop of the MFN provision unnecessary.

¹¹⁷ See, e.g., Altice's letter and enclosures to the Board made on August 5, and supplemented on August 11 (financial analysis provided in the format of SEC form 10-Q).

Altice looks forward to productive engagement with the Board on satisfaction of the conditions. Please direct any questions on this submission to the undersigned.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP


Sidney A. Sayovitz

cc: Stephanie Brand, Division of Rate Counsel (via Federal Express)