

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

CSC TKR, LLC,)	
)	
Petitioner,)	
)	DOCKET NO. CC23030139
v.)	
)	
BOROUGH OF MADISON,)	
)	
Respondent)	
)	

Certification of Robert Hoch, Esq. in Support of Motion for Partial
Summary Judgment By Petitioner CSC TKR, LLC, A Wholly Owned
Subsidiary Of Altice USA

I, Robert Hoch, Esq., of full age, certify the following:

1. I make this certification in support of the motion for partial summary decision brought by Petitioner CSC TKR, LLC, a wholly owned subsidiary of Altice USA (hereinafter “Altice” or “Petitioner”). I am employed by Altice as Senior Counsel, Government Affairs, and am authorized to make this Certification on behalf of Petitioner.

2. Altice is the holder of a state issued system-wide cable franchise that authorizes Altice under state and federal law to construct a cable system within the Highways of all the communities in its franchise area, including the Borough of Madison (hereinafter “Madison”, the “Borough”, or “Respondent”), and through utility easements (the “Franchise”). A true and correct copy of the most recent Franchise applicable to Altice is annexed hereto as **Exhibit A**.

3. Pursuant to this authorization, Altice provides both cable and non-cable services over its system.

4. The Borough is fully aware that Altice and its predecessors’ cable systems have been and continue to be attached to the Borough’s utility poles, and has given its permission to

such arrangement, as evidenced by a municipal consent franchise and three subsequent renewal authorizations adopted and approved by the Borough since 1975, which were in effect prior to Altice converting its authorization, by operation of law, to the current Franchise (see N.J.S.A. 48:5A-25.1; N.J.A.C. 14:18-14.13). True and correct copies of the municipal consent franchise renewals executed by Madison over the years are collectively annexed hereto as **Exhibit B**.

5. As an example, the Borough's 1988 municipal consent ordinance states, "The Borough hereby grants to the Company its non-exclusive consent to place in, upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public ways, and public places in the Borough poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a cable television system and cable communications system. Construction pursuant to said consent is conditioned upon prior approval of the Board of Public Utilities." See Exhibit B. The Borough's 1995 and 2007 municipal consent renewal ordinances contain substantively the same provision. Id.

6. Since 2017, pursuant to its franchises, Altice has been in the process of deploying throughout its service footprint an advanced FTTH cable system, which can provide multi-Gig capable Internet and cable service to residents and small-to-medium businesses in New Jersey. Altice multi-Gig offerings are consistent with State and Federal goals to support infrastructure investments by cable operators to offer advanced communications services.

7. To date, Altice has worked with more than 120 New Jersey municipalities in the *Optimum* brand service area to successfully deploy FTTH (primarily by overlashing its existing aerial cable plant), consistent with both local right-of-way management rules and Altice's franchise authorizations. As a result, as of EOY 2022, the FTTH network passed more than 2.2

million households, and the Company continues to make steady progress on deployment and service activation.

8. On or about November 29, 2021, soon after Altice commenced aerial cabling of FTTH in the Borough pursuant to the Franchise, the Borough's police department communicated to Altice's service technicians that they were no longer permitted to conduct any activity within the Highways of the Borough. A true and correct copy of the November 29, 2021 communication from the Borough's police department is annexed hereto as **Exhibit C**.

9. Upon contacting the Borough Administrator, Altice was informed that the Borough would not permit Altice to proceed with aerial cabling until it: (1) completed an access agreement to traverse a Borough-owned parking lot within the business district ("Access Agreement"); and (2) negotiated the terms of a pole attachment agreement for the use of the utility poles owned by the Borough ("Attachment Agreement").

10. Altice quickly negotiated the terms of the parking lot Access Agreement, including the commitment to a \$10,000 payment at the Borough's request. Nevertheless, the Borough refused to permit Altice to resume cabling for FTTH until the Attachment Agreement was negotiated with the Borough, despite: (1) Altice's existing attachment agreement with Verizon; and (2) that fact that no new attachments are required for the overlap of FTTH to Altice's existing plant.

11. Six weeks later, on January 10, 2022, the Borough submitted an attachment proposal requiring that Altice pay the Borough a \$250,000 annual fee for use of the poles already subject to the existing attachment agreement with Verizon. A true and correct copy of the attachment proposal is annexed hereto as **Exhibit D**.

12. Further, the Borough would not agree to make the obligation conditional upon Altice's release from its obligation to Verizon, effectively subjecting Altice to an even higher combined annual financial obligation by double-charging Altice for the same poles. On January 18, 2022, Altice viewed the Borough's fee proposal as unreasonably high and discriminatory, as well as being prohibited by the Joint Use Agreement designating Verizon as the sole collector of attachment fees in the Borough.

13. On February 10, 2022, after several weeks of further negotiation, the Borough ultimately rejected a counteroffer from Altice to pay for attachment rights at a rate comparable to those paid by Altice to other municipalities in the State. A true and correct copy of the Borough's rejection letter is annexed hereto as **Exhibit E**.

14. Since the Borough's rejection continued to effectively bar Altice from accessing the Highways, Altice once again approached the Borough in late February seeking a reasonable resolution. The Borough thereafter did not respond until May 25, 2022 (three months since Altice's last inquiry and over seven months from the Borough initially stopping Altice's cabling without cause). At that time, because of the resulting delays in deployment, Altice again offered to settle the outstanding attachment dispute as well as additional items raised by the Borough in its May 25th letter.

15. Altice was responsive to all of the Borough's existing and additional requests, agreeing to the terms of the Borough's attachment agreement within a more reasonable fee structure, completing the \$10,000 payment for the parking lot Access Agreement, addressing free service requests, and agreeing to provide additional community support as consideration -- all of which the Borough led Altice to believe would result in a timely resolution of the matter.

16. The Borough indicated that the offer would be considered at three different Council meetings, but it was not so considered at any of the meetings. Then on October 5, 2022, the Borough finally responded to Altice with a counter-offer for Altice to pay the Borough a flat \$95,000 per year for the use of all Borough poles (whether actually used or not) with a 2% annual escalator. A true and correct copy of the Borough's response to Altice's counter-offer is annexed hereto as **Exhibit F**.

17. The Borough provided Altice no justification for this amount, which is almost 7 times the amount of Altice's current pole fee obligation to Verizon and was an increase over the Borough's previous proposal from February 2022.

18. Having made no further progress with the Borough, Altice filed a letter on October 11, 2022 with Lawanda Gilbert, Director of the Office of Cable Television and Telecommunications (the "Office") seeking the Office's intervention in assisting Altice to gain access to the Highways of the Borough pursuant to its rights under the Franchise and applicable law. Director Gilbert held mediation sessions for the parties on January 10 and February 23, 2023, but despite Petitioner's engagement in good faith negotiations, the Borough still refused to permit Altice access to its Highways to deploy FTTH.

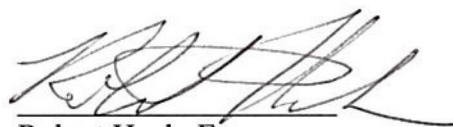
19. Immediately after Altice filed its letter with Director Gilbert seeking assistance with the Borough, the Borough adopted a resolution on October 13, 2022 authorizing the termination of the Joint Use Agreement, which will end Verizon's exclusive authority to receive compensation for attachments to the Borough's poles one year from providing notice to Verizon, on October 13, 2023. A true and correct copy of the Borough's October 13, 2022 resolution is annexed hereto as **Exhibit G**.

20. The Borough took this action 11 months after initially denying Altice the right to deploy FTTH in the Borough unless Altice agreed to pay the Borough pole attachment fees. Altice, however, maintains that, at all times relevant hereto, it continues to have the right to deploy FTTH without additional fees pursuant to its rights under the Franchise, its attachment agreement with Verizon, and Verizon's exclusive authority to manage and receive compensation for the Borough's poles under the Joint Use Agreement through October 13, 2023.

21. A demand for a separate pole attachment agreement, in addition to the one still in effect with Verizon, is to the detriment of Borough resident access to advanced services, and to whom such services would otherwise be available but for the unlawful acts of the Borough.

22. Petitioner wishes to commence cabling for FTTH in the Borough as soon as possible. Consistent with that goal, Petitioner respectfully instituted this action before the Board.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Robert Hoch, Esq.

Dated: April 24th, 2023