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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
TRENTON, NEW JERSEY

BOARD AGENDA

DATE: JUNE 29, 2023

ITEM 3A
CABLE TELEVISION

DOCKET NO. CC23030139

CSC TKR, LLC, PETITIONER V. BOROUGH OF MADISON,
RESPONDENT

BEFORE: PRESIDENT JOSEPH L. FIORDALISO
COMMISSIONER MARY-ANNA HOLDEN
COMMISSIONER DR. ZENON CHRISTODOULOU
COMMISSIONER CHRISTINE GUHL-SADOVY
COMMISSIONER MARIAN ABDOU

J.H. BUEHRER & ASSOCIATES
884 Breezy Oaks Drive
Toms River, New Jersey 08754
(732) 295-1975

1 PRESIDENT FIORDALISO: Lawanda,
2 you're up.

3 MS. GILBERT: Good morning, Mr.
4 President and Commissioners.

5 PRESIDENT FIORDALISO: Good
6 morning, Lawanda.

7 MS. GILBERT: This item involves a
8 petition filed by Altice's subsidiary, CSC TKR,
9 regarding a dispute with the Borough of Madison
10 involving access to the Borough's highways for the
11 provision of cable of TV service.

12 In its petition, Altice seeks
13 relief from the Board to address allegations that
14 the Borough has unlawfully denied Altice access to
15 its cable plant within the rights of way of the
16 Borough, thereby restricting Altice from engaging in
17 construction and maintenance of its cable plant
18 unless they agree to provide additional fees to the
19 Borough through a pole attachment agreement.

20 As background, cable television
21 service was initially established in the Borough
22 through its adoption of a municipal consent
23 ordinance by its governing body, followed by the
24 issuance by the Board of a certificate of approval,
25 or COA, to Altice's predecessors on February 19,

1 1975. Pursuant to the State's Cable TV Act codified
2 at N.J.S.A. 48:5A, the COA permitted the
3 construction, operation, and maintenance of a cable
4 television system in the Borough. Since 1975 up to
5 the present, the Borough's governing body has
6 adopted renewal ordinances and the Board has issued
7 renewal COAs to Altice and its predecessors.

8 Altice is currently the holder of a
9 systemwide cable franchise that authorizes the
10 company under State and federal law to continue to
11 construct and maintain the cable television system
12 within the highways and the rights of way of the
13 Borough. Altice routinely maintains pole attachment
14 agreements and with local utility companies for
15 access to utility poles located within the service
16 area.

17 In this case, the Borough is one of
18 ten towns within the State that owns its own
19 municipal electric utility and poles. However, the
20 management of the poles has been governed by an
21 agreement entered into between the Borough and New
22 Jersey Bell Telephone Company, Verizon's
23 predecessor, in 1950 referred to as the Joint Use
24 Agreement. Pursuant to the Joint Use Agreement,
25 Verizon exclusively manages the Borough's poles and

1 has been the designated entity collecting pole
2 attachment fees from Altice since the approval of
3 the provision of cable television service in the
4 Borough in 1975.

5 Altice began the deployment of an
6 advanced fiber to the home, or FTTH, cable system
7 throughout its service footprint in 2017. Soon
8 after, Altice had commenced aerial cabling of its
9 FTTH upgrade of its cable system in the Borough. In
10 2021 the Borough informed Altice that they would not
11 be allowed to continue with the upgrade or to access
12 their plant to conduct maintenance until they have
13 negotiated the terms of a pole attachment agreement
14 for the Borough to collect fees for the use of their
15 utility poles. These were the same poles for which
16 Altice currently paid fees to Verizon under the
17 Joint Use Agreement.

18 Despite months of negotiations
19 between the parties, they could not reach an
20 agreement on the amount for pole attachment fees.
21 In October 2022 Altice reached out to the Board's
22 Office of Cable Television and Telecommunications,
23 the OCTV&T, seeking its intervention with gaining
24 access to its plant. Mediation sessions held
25 between the parties were unsuccessful in reaching a

1 settlement and the Borough continues refusal to
2 permit Altice access to its plant.

3 On March 14, 2023, Altice filed its
4 formal petition with the Board requesting the Board
5 issue an order ruling that the Borough should, one,
6 immediately cease its demand that Altice pay
7 additional compensation over and above the cable TV
8 franchise fee in consideration for receiving access
9 to its cable television system in the Borough and,
10 two, grant Altice the ability to immediately
11 commence deployment of its FTTH cable television
12 system and perform regular maintenance as needed to
13 the cable television system located in the Borough.

14 Altice asserted that it has the
15 right to deploy FTTH without incurring additional
16 pole attachment fees pursuant to its rights under
17 the franchise and the joint use agreement, which
18 grants Verizon the exclusive authority to manage and
19 receive compensation for the Borough's poles through
20 its expiration date of October 13, 2023. Altice
21 also argued that the Borough's fee demand for access
22 violates the statutory limit on compensation by a
23 cable service provider in a municipality.

24 On April 3, 2023, the Borough filed
25 its answer to the petition where it denied it had

1 unlawfully demanded Altice pay additional
2 compensation over the franchise fee and restricted
3 Altice's access. The Borough argued that under the
4 franchise, Altice was allowed to use the rights of
5 way in the Borough, but not the utility poles owned
6 by the Borough's municipal utility, which they
7 believe the Board did not have jurisdiction over.
8 Additionally, the Borough alleged that Altice was in
9 violation of its franchise due to its failure to
10 provide free services to several municipal
11 locations.

12 Altice filed a response to the
13 Borough's answer, noting that the Borough agreed
14 that the series of franchises going back to 1975 all
15 authorized Altice to deploy facilities in the public
16 rights of way. Altice also denied the Borough's
17 allegations regarding the free services, arguing
18 that their prohibition to access their plant
19 prevented the construction of such services and that
20 the Borough's allegations do not justify the actions
21 continuing to prevent Altice from deploying its
22 facilities.

23 Thereafter, on April 27, 2023,
24 Altice filed a motion for partial summary decision
25 in the matter requesting the Board issue a ruling

1 only on its ability to access its plant in the
2 Borough to complete construction and plant
3 maintenance and allow the Pole Attachment Agreement
4 issue to be dealt with separately.

5 The Borough filed responses to the
6 motion in opposition reiterating its previous
7 arguments. Altice filed additional responses as
8 well reiterating its previous arguments.

9 Based upon Staff's review of
10 voluminous records of the proceeding, relevant
11 statutes and rules, along with the history of the
12 cable franchise agreements in the Borough, Staff
13 concludes as follows: One, the Board and the OCTV&T
14 have jurisdiction over this matter as the State's
15 federally recognized cable franchise authority and
16 may therefore enforce COAs based upon the municipal
17 consent granted by the Borough for access to the
18 rights of way which includes poles. The Board and
19 the OCTV&T are also statutorily empowered to
20 adjudicate pole attachment disputes under federal
21 law.

22 Two, Altice has legal authority
23 under its franchise to own, construct, and operate a
24 cable television system in the Borough and is
25 entitled to maintain its equipment in the Borough.

1 Three, the Borough provided the
2 necessary consent for the use of the poles based
3 upon the numerous municipal consent ordinances
4 granted by the Borough's governing body. In
5 addition, the Borough was aware of the company's
6 presence on the poles for decades without objection.

7 Four, the Borough's restriction of
8 Altice's access to maintain their equipment in the
9 municipality is unlawful and negatively impacts
10 service to its cable subscribers.

11 Staff, therefore, recommends that
12 the Board: One, grant Altice's motion for partial
13 summary decision and issue an order directing the
14 Borough to immediately allow Altice access to its
15 plant to enable them to complete maintenance and
16 work on its system, as well as commence deployment
17 of its FTTH cable upgrade. Two, require that Altice
18 provide the requested free services to the municipal
19 properties as required under its franchise and
20 provide proof to the OCTV&T within 90 days. And,
21 three, transmit all outstanding issues regarding
22 pole attachment rates to the Office of
23 Administrative Law for hearing.

24 COMMISSIONER HOLDEN: So moved.

25 COMMISSIONER CHRISTODOULOU: Second.

1 PRESIDENT FIORDALISO: Questions,
2 comments.

3 COMMISSIONER CHRISTODOULOU: If I
4 could, just one quick comment, as long as Nancy Wolf
5 is in charge of making sure that they fulfill their
6 requirements, I'm very comfortable with this.

7 MS. GILBERT: I am as well. Thank
8 you, Commissioner.

9 PRESIDENT FIORDALISO: That was a
10 nice shout out for you guys and well deserved.

11 COMMISSIONER HOLDEN: Absolutely.

12 PRESIDENT FIORDALISO: Any other
13 comments, questions? Roll call?

14 MS. GOLDEN: On the motion to
15 approve Staff's recommendation, Commissioner Holden?

16 COMMISSIONER HOLDEN: Yes.

17 MS. GOLDEN: Commissioner
18 Christodoulou?

19 COMMISSIONER CHRISTODOULOU: Yes.

20 MS. GOLDEN: Commissioner
21 Guhl-Sadovy?

22 COMMISSIONER GUHL-SADOVY: Yes.

23 MS. GOLDEN: Commissioner Abdou?

24 COMMISSIONER ABDOU: Yes.

25 MS. GOLDEN: President Fiordaliso?

1 PRESIDENT FIORDALISO: Yes. Thank
2 you, Lawanda.

3 MS. GILBERT: Thank you.

4 (Cable Television - 3A Concluded.)
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C E R T I F I C A T E

I, DENISE L. SWEET, a Certified Court Reporter and Registered Professional Reporter, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

DENISE L. SWEET, CCR, RPR
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