BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

Joint Petition of **Altice N. V.** and **Cablevision Systems Corporation,** **Cablevision Lightpath, Inc.** **and Cablevision Cable Entities** for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements	)	Case No. 15-M-0647

COMMENTS BY LETITIA JAMES,
THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

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There is an urgent need for the deployment of high-speed Internet in Staten Island, Brooklyn, Queens, The Bronx, and in northern Manhattan. This need is especially acute in the service areas operated by Cablevision. Nearly a third of the residents of New York City do not have access to broadband.[1] Cablevision's franchise areas in The Bronx and Brooklyn include some of the most economically disadvantaged communities in the City with even higher rates of households without access to broadband.[2] As the Public Service Commission ("PSC" or the "Commission") is aware, the continued lack of affordable and high-speed Internet will stifle the growth and diversification of New York City's economy.[3] Whether personified by a child who

[1] *Protecting Internet Service for All New Yorkers: The Comcast Time-Warner Cable Merger and The Role of New York City's Franchise Agreements*, Mar. 2015, Office of NYC Public Advocate Letitia James, p. 7, http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/publicadvocate-comcastannualreport_2.pdf.
[2] *Internet Inequality: Broadband Access in NYC*, Dec. 2014, Office of NYC Comptroller Scott Stringer, p.1, https://comptroller.nyc.gov/wp-content/uploads/documents/Internet_Inequality.pdf.
[3] Case 14-C-0370, *In the Matter of a Study on the State of Telecommunications in New York State*, *Staff Assessment of Telecommunications Services*, (filed Jun. 23, 2015), p. 55.

has to sit on the stoop of a library to do her homework, or a start-up tech firm that has to wait months to get a broadband Internet connection, the current system is failing. For New York City's economy to remain competitive in the 21st century and continue expanding with the growth of a technology sector that creates middle class jobs, the New York State Public Service Commission must consider whether this transaction will work to bridge the digital divide.

Specifically, the law requires that:

> "[t]he commission shall not approve the application for a transfer of a franchise, any transfer of control of a franchise or certificate of confirmation, or of facilities constituting a significant part of any cable television system unless the applicant demonstrates...that the transfer is otherwise in the public interest."[4]

However, the Petitioners' proposal does not advance the public interest; in fact, it may do harm. This brief will highlight the Petitioners deficient application and the adverse impact of the Petitioners' refusal to recognize and misrepresent the City of New York's review authority in their filing with the PSC. Further, we will contend that the financing structure of this transaction is predicated upon an unstable and speculative debt that will likely result in draconian cuts to service and substantially higher prices. The new Cablevision will lack the capital to make robust investments in much needed broadband infrastructure, enhance customer service, and will likely result in considerable job losses. Lastly, we note the applicant fails to demonstrate how the acquisition will be in the public interest beyond mere cursory recitals of vague improvements.

ARGUMENT

A) THE PROPOSED TRANSACTION SHOULD NOT BE APPROVED BECAUSE THE APPLICATION CONTAINS MATERIAL MISSTATEMENTS.

Petitioners, subject to penalty pursuant to 18 U.S.C. §1001, filed an Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise

[4] NY CLS Pub. Serv. § 222(3)(b); *See* Case 15-M-0388, *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro forma Reorganization, and Certain Financing Arrangements*, Order Granting Joint Petition Subject to Conditions (issued Jan. 8, 2016), p. 10-13.

('FCC Form 394') with the State Public Service Commission.[5] In Attachment A, Petitioners list "Communities to Receive FCC Form 394" and "Communities Not Required to Receive FCC Form 394." On November 12, 2015, Petitioners completed the FCC Form 394 seeking a transfer of franchise from the City of New York. However, in the application before the PSC, the franchises Cablevision retains in the Boroughs of The Bronx and Brooklyn are listed under as communities that are not required to receive the application. Furthermore, in correspondence with the City's Department of Information Telecommunications and Technology, Cablevision rejects New York City's authority to review the proposed acquisition.[6] Thus, applicants are denying the right of New York City to review the transfer. This position is untenable for the reasons set forth below.

1) New York City Must Approve the Transfer Under the Terms of Cablevision's Franchise Agreement.

Pursuant to Title VI of the Communications Act (47 U.S.C. § 521 et seq.) The City of New York is a franchising authority and is authorized to grant non-exclusive cable franchises. Accordingly, on September 6, 2011 Cablevision Systems New York City Corporation (Cablevision NYC) entered into two franchise agreements with the City of New York to provide Internet, cable, and telephone services for the boroughs of The Bronx and Brooklyn respectively.[7] Consistent with the respective agreements, Cablevision must obtain approval from the City when seeking to transfer a telecommunications franchise except under circumstances not applicable in this transaction. Consequently, the Petitioners' application before the PSC is defective for failing to recognize and, indeed, misrepresenting the rights of millions of New Yorkers who reside and work in Cablevision's service area.

As stated above, in their application before the PSC, in Section II of Attachment A of FCC Form 394 recognizing the PSC as the franchising authority, Petitioners contend that the

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[5] Case 15-M-0647, *Joint Petition of Altice N.V. and Cablevision Systems Corporation, Cablevision Lightpath, Inc., and Cablevision Cable Entities for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements*, Joint Petition (filed Nov. 4, 2015), Exhibit C.

[6] Letter from Michael E. Olsen, Senior VP Legal Regulatory and Legislative Affairs for Cablevision, to Anne Roest, New York City Commissioner (Nov. 12, 2015) (on file with the Public Advocate).

[7] See e.g., Cable Franchise Agreement by and between The City of New York and Cablevision Systems New York City Corporation for the Borough of Brooklyn, http://www1.nyc.gov/assets/doitt/downloads/pdf/cablevision_franchise_agreement_brooklyn.pdf.

Borough of The Bronx and Borough of Brooklyn are communities not required to receive FCC Form 394. They cite two provisions of the franchise agreement that limit City approval: (1) when the transfer is the result of the exchange of publicly traded shares; and (2) when the transfer is the result of a merger of the parent of the franchisee.[8] Their arguments are not supportable. Furthermore, even if this was deemed an "exchange of publicly traded shares" or a "merger," the City's authority to approve the transaction is triggered due to the 30% investment of BC Partners and the Canada Pension Plan Investment Board.

a) The Proposed Transaction is not an Exchange of Shares.

Section 13.1 of the franchise agreement stipulates that Cablevision must seek approval from the City of New York for any change in ownership or control "with respect to ten (10%) or more of voting interests or twenty-five percent (25%) or more for non-voting interests of the Franchisee…by submitting FCC Form 394."[9] There are only two exceptions to this: (1) where there is a transfer to an entity that is controlled by Cablevision Systems Corporation; or (2) where ownership changes as a result of an "exchange of publicly traded shares."[10]

The proposed transaction by Altice N.V. ("Altice") and Cablevision does not fall under either exception contemplated by the franchise agreement. Shareholders of Cablevision traded under ticker symbol "CVC" will not become shareholders of the successor entity. There is no exchange of shares. Instead, Cablevision shareholders will receive cash compensation of $34.90 per share. In fact, Cablevision's 14C filing with the Securities and Exchange Commission leaves no ambiguity. In the Question and Answer component, in response to the question, "[w]hat will I receive in the Merger?" The answer:

> "[u]pon consummation of the Merger, you will receive $34.90 in cash, without interest, less any required withholding taxes, for each Share that you own, unless you properly exercise, and do not withdraw or fail to perfect, appraisal rights pursuant to Section 262 of the DGCL. For example, pursuant to the Merger Agreement, if you own 100 Shares, you will receive $3,490 in cash in exchange for your Shares, without interest, less any required withholding

[8] *Id.*
[9] *Id.* at §13.1.
[10] *Id.* at §13.1 and Appendix B.

> taxes. You will not own shares in Cablevision, Merger Sub or Altice following the Merger."[11]

By contrast, the PSC recently approved a transaction that did entail an exchange of shares, the merger between Charter Communications and Time Warner Cable. Pending FCC approval, "Charter will provide $100.00 in cash and shares of a new public parent company ("New Charter") equivalent to 0.5409 shares of CHTR for each Time Warner Cable share outstanding."[12] Additionally, according to Time Warner's financial release, some "Time Warner Cable stockholder, other than Liberty Broadband Corporation ("Liberty Broadband") or Liberty Interactive Corporation, who will receive all stock, to receive $115.00 of cash and New Charter shares equivalent to 0.4562 shares of CHTR for each Time Warner Cable share they own."[13]

The City did not challenge the failed Comcast merger with Time Warner or the second with Charter. In both transactions, the shareholders of Time Warner were scheduled to receive shares of the new entity. The legal fiction Petitioners engage in does not obviate the need to seek approval from the City of New York.

b) The Proposed Transaction is not an "Affiliate Transfer."

Petitioners contend that §13.7 (*No Consent Required For Any Affiliate Transfers*) contains a provision relinquishing City approval in "any action which is the result of a merger of the parent of the franchisee." The transaction before the Commission is an "acquisition" by Altice and their consortium partners (BC Partners and Canada Pension Plan Investment Board ("CPPIB")), not a "merger." Cablevision NYC retains both City franchises. This entity is a wholly-owned subsidiary of CSC Holdings, LLC, which in turn is 100% owned by the parent entity, Cablevision Systems Corporation.[14] Under the "affiliate transfer" exception contained in §13.7 of the Franchise Agreement, transferring the two franchises to either CSC Holdings, LLC or to their parent, Cablevision Systems Corporation, without obtaining City consent, would be

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[11] Cablevision Sys. Corp., Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Schedule 14C Information), at 10 (Dec. 2, 2015).
[12] *Charter Communications to Merge with Time Warner Cable and Acquire Bright House Networks*, TIMEWARNERCABLE.COM (May 26, 2015), http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Charter-Communications-to-Merge-with-Time-Warner-Cable-and-Acquire-Bright-House-Networks/default.aspx.
[13] *Id.*
[14] *See* Case 15-M-0647, *supra* note 5, Exhibit B.

permissible. This exception would be reasonable given that the City would have completed its due diligence and negotiated a franchise with an affiliate. Accordingly, if the parent entity merged with another company, the new company would retain components of that original entity.

That is not the case here. Cablevision is being acquired by Altice and a consortium that includes a private equity firm, a pension system, and a number of undisclosed co-investors. According to their filing with the PSC, this consortium is described as "CVC TopCo" will own a 30% stake in an entity named "CVC 2 B.V." Altice, through "CVC 1 B.V." will own 70% of CVC 2 B.V. The new entity CVC 2 B.V. will control Neptune Holdings US Corp., which will in turn control Cablevision Systems Corporation. To the best of our knowledge, the existing shareholders and board of Cablevision Systems Corporation will play no role CVC 2 B.V., nor are Altice and its consortium existing affiliates of Cablevision.

c) In the Alternative, Municipal Review is Triggered by the Percentage of BC Partners and Canada Pension Plan Investment Board's Ownership.

As discussed in the preceding section, Altice is not the sole purchaser of Cablevision. A consortium that includes BC Partners, a private equity firm, and the Canada Pension Plan Investment Board is acquiring a 30% stake in the acquisition of Cablevision through their ownership of CVC 2 B.V. Specifically, according to Exhibit B, CPPIB – Suddenlink LP will own 11.8% and BC Partners Holding Entities will own 18.2%.

Pursuant to §13.1 of the franchise agreement between New York City and Cablevision, unless there is an "exchange of shares," City approval is required for "any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of Franchisee."[15]

According to Petitioners' filing, two private entities will control a 30% stake in the successor entity.[16] Based upon press reports CPPIB – Suddenlink LP and BC Partners Holding Entities will have co-investors. Specifically, "CPPIB and BCEC IX will each fund 12% of

[15] *See* Case 15-M-0647, *supra* note 5, Exhibit B.
[16] Inti Landauro and Nick Kostov, *Altice Gets Partner Agreement on Cablevision Acquisition*, WALL STREET JOURNAL (Oct. 27, 2015), http://www.wsj.com/articles/altice-gets-partner-agreement-on-cablevision-acquisition-1445959614.

acquisition in Cablevision, approximately US $400 million each, with balance funded by co-investors."[17] If the 12% stake being acquired by either of these two groups comes with voting rights, then per the franchise agreement, Altice must apply to the City for approval of this transaction. If the 30% stake being acquired by this consortium does not come with voting rights, then based on the structure of the acquisition, City oversight would still be triggered on the basis that more than a 25% interest is being acquired by the BC Partners/CPPIB consortium. In our letter dated February 3, 2015, we sought additional information regarding the terms of the transaction as it relates to an alignment of interests. Based on our review of previous deals that Altice, BC Partners, and CPPIB have partnered on in the past, it is our assumption that both BC Partners and CPPIB will have voting interests, thus triggering the requisite City approval.[18]

Consequently, whether we analyze the exchange of shares provision or the interest that BC Partners and CPPIB would theoretically acquire, Petitioners should recognize their contractual obligation to seek approval of Cablevision's franchises from the City of New York.

2) The Petitioners' Misstatements Necessitate an Inquiry Into the Petitioners' Compliance with Franchise Agreements with Municipalities Across the State.

Altice and Cablevision made a material misrepresentation to this Commission. In doing so, they make a mockery of an important process and the authority of this Commission that was established to protect the rights of New Yorkers. The PSC must clarify whether Cablevision is properly seeking a transfer from each community listed under Table II, "Communities Not Required to Receive FCC Form 394."[19] Petitioners filed a FCC Form 394 with the City of New York. Remarkably, Petitioners contend that New York City does not have authority to approve the transaction.[20] Yet by filing an FCC Form 394, they inherently recognize New York City's franchise review authority and must cooperate in the City's approval process. Petitioners cannot

[17] *CPPIB and BC Partners to Acquire Stake in Cablevision*, REUTERS (Oct. 27, 2015), http://www.reuters.com/article/2015/10/27/idUSFWN12Q07120151027#2A3YjFARzA9MwgjE.97.
[18] *Cequal Communications Holdings I, LLC Annual Report for the Year Ended December 31, 2012*, http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDk2NzcxfENoaWxkSUQ9NTM1NzI3fFR5cGU9MQ==&t=1; *BC Partners and Canada Pension Plan Investment Board to Sell 70% Stake in Suddenlink*, REUTERS (May 20, 2015), http://www.reuters.com/article/idUSnMKWSm4Mka+1e4+MKW20150520.
[19] Case 15-M-0647, *supra* note 5, Exhibit C, Attachment A.
[20] Letter to Anne Roest, *supra* note 6.

file a form and then ignore the legal process it initiates. However, this is exactly what is taking place. Mr. Brian Sweeney, President and Chief Financial Officer of Cablevision, and Mr. Jérémie Bonnin, General Secretary of Altice, certified on November 12, 2015 that "the statements in this application are true, complete and correct to the best of [their] knowledge and belief and are made in good faith." But we know that eight days earlier, they both signed an FCC Form 394 for the PSC that denied New York City's authority. New York City will assert its rights; however, many communities that have been described as "Not Required to Receive FCC Form 394" may not have the resources or the wherewithal to do so.

We also know that other communities in New York State were ignored altogether and did not receive a FCC Form 394. The Villages of Amityville and Scarsdale did not receive an FCC Form 394 and they challenge Altice and Cablevision's Joint Petition for incorrectly listing them as "Communities Not Required to Receive FCC Form 394."[21] Consequently, it is imperative to determine whether Petitioners made appropriate filings that recognize communities' rights to approve or disapprove franchises. We request the PSC address the misrepresentations by obtaining clarifications from Petitioners as to which communities received FCC Form 394 but were so called "not required to" as well as ascertain why the Villages of Amityville and Scarsdale did not receive notice.

B) <u>THE PROPOSED ACQUISITION SHOULD NOT BE APPROVED BECAUSE ALLOWING CABLEVISION TO BECOME A DANGEROUSLY LEVERAGED ENTITY IS NOT IN THE PUBLIC INTEREST.</u>

Access to affordable broadband service is essential for, among other things, education, job seeking, access to government services, communication, and financial transactions.[22] Just as this Commission has required in the past, Altice should be required to make concrete and enforceable commitments to modernize their cable system and services, expand access, address the digital divide, and improve customer service within the state of New York.[23] Absent these

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[21] Letter from James P. Wandell, Mayor of the Village of Amityville, to the Honorable Kathleen H. Burgess, Secretary to the Commission (Feb. 2, 2016) (on file with the PSC); Letter from Stephen M. Pappalardo, Village Manager for the Village of Scarsdale, to the Honorable Kathleen H. Burgess, Secretary to the Commission (Feb. 4, 2016) (on file with the PSC).
[22] Case 15-M-0388, *supra* note 4, at 56.
[23] *See id.* at 2.

conditions, the public interest standard cannot be met, and the Commission should deny the petition for transaction approval.[24]

This should be especially true for companies currently operating in underserved areas. Cablevision currently operates primarily in The Bronx and Brooklyn markets, with 1,994,658 customers in Bronx County and 1,374,353 customers in Kings County.[25] Combining this information with broadband availability statistics, it is clear Cablevision operates in the more underserved areas of New York City.[26] This makes it all the more necessary for this transaction to be sustainable. In order to achieve the speed, quality, access, and innovation the State desires, the new Cablevision, which will continue to have a significant presence in our most underserved areas, needs to demonstrate the financial means to the same goals.

Instead, the proposed transaction will produce a company that will be heavily burdened with debt, possess limited capital to invest in much-needed infrastructure development, and whose parent company, a Dutch firm, is having difficulty raising funds. These factors collectively raise serious concerns about the long-term stability of this transaction and whether it is in the public interest.[27]

1) Cablevision and its Parent Company will be Saddled with a Dangerous Level of Debt that will Render it Incapable of Improving its Network

Under the proposed transaction, the new Cablevision will be unable to make the investments in infrastructure necessary to improve access to Internet and broadband as a result of their excessive debt and lack of capital. To begin, Altice disclosed Cablevision's post-transaction "debt-financing" will be $14.9 billion.[28] This number includes $8.6 billion[29] of new debt raised

[24] *See* Case 15-M-0388, *supra* note 4, at 2.
[25] Optimum by Cablevision, http://broadbandnow.com/Optimum-by-Cablevision. Also note that only 0.1% of Cablevision's customers reside in New York County, where broadband availability is highest.
[26] New York City Broadband Map, https://www.nycbbmap.com/#/map (*see* Appendix A).
[27] Case 15-M-0388, *supra* note 4, at 47.
[28] Case 15-M-0647, *supra* note 5, at 8.
[29] *Id.*; *see also* Cablevision Sys. Corp., (Schedule 14C Information), *supra* note 11, at 42.

by Neptune FinCo Corp. ("Neptune FinCo")[30] and to be assumed by CSC Holdings post-transaction; $3,064,327,000[31] in senior notes and debentures accumulated by CSC Holdings for this transaction; and $2,795,080,000[32] in Cablevision holding company debt also accumulated for this transaction. Although the sum of these three figures is only $14,459,407,000, the difference of $440,593,000 may be attributable the rolling of accrued interest into long term debt combined with other lesser debt components.

However, "debt-financing" is not the same as the total "indebtedness." In order to calculate the new Cablevision's total indebtedness, the Commission must consider the total long-term liabilities of Cablevision and its subsidiaries, which equals $9,828,160,000.[33] Admittedly, deferred revenue and deferred taxes are not "indebtedness" in the traditional sense. Thus, the Commission should exclude these amounts ($4,750,000 deferred revenue and $604,148,000 deferred tax liability).[34] The resulting figure is $9,219,262,000. The Commission should also exclude the senior notes and debentures acquired for this transaction ($5,895,407,000).[35] Thus, Cablevision's total pre-transaction long term liabilities is merely $3,323,855,000. When combined with the $6.1 billion[36] of new debt CSC Holdings will assume, the subtotal grows to $9,423,855,000. Then, factoring in Cablevision and CSC Holdings pre-transaction debt-financing,[37] Cablevision's total post-transaction debt will be $15,319,262,000. This is a stark increase from the $3 billion liabilities Cablevision would have had but for this transaction. Also notable, Altice's equitable contribution of $3.3 billion will not mitigate this debt. Instead, that cash must go towards buying out existing shareholders.[38]

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[30] Case 15-M-0647, *supra* note 5, at 7; Mark Stodden and John Diaz, *Moody's assigns B1 to Neptune FinCo Corp. (Altice/Cablevision acquisition financing)*, MOODYS.COM (Sep. 24, 2015), https://www.moodys.com/research/Moodys-assigns-B1-to-Neptune-FinCo-Corp-AlticeCablevision-acquisition-financing--PR_335284 ("Neptune Finco Corp. is a Delaware corporation and wholly owned subsidiary of Altice NV which will be used to finance Altice's acquisition of Cablevision Systems Corp. Upon close of the ultimate transaction, Neptune Finco Corp. will be merged with and into CSC Holdings LLC.").
[31] Cablevision Sys. Corp. and CSC Holdings, LLC, Quarterly Report (Form 10-Q), at 8, 20, 50 (Nov. 3, 2015).
[32] *Id.* at 14, 20.
[33] *Id.* at 3 (total liabilities of 11,703,492,000 minus current liabilities of 1,875,332,000).
[34] *Id.*
[35] *Id.* at 3, 50 ($3,064,327,000 + $2,795,080,000 = $5,859,407,000).
[36] $8.6 billion reduced by $2.5 billion of refinancing. *See* Altice Investor Presentation, Acquisition of Cablevision, 18 (Sep. 17, 2015), http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf ($2.5 billion of the $8.6 billion of new debt will be used to repay Cablevision's existing term loans, effectively bringing the total "new" debt down to $6.1 billion).
[37] $3,064,327,000 + $2,795,080,000 + $440,593,000 = $6,300,000,000.
[38] *See* Form 10-Q, *supra* note 31, at 3 (as of September 30, the total stockholders deficiency was negative $4,957,744,000).

Breakdown of Cablevision's Post-transaction Debt	
Debt	**Source**
$9,219,262,000	But for the transaction Long-Term Liabilities
$6,100,000,000	Neptune FinCo New Debt
$3,064,327,000	CSC Holdings Liability
$2,795,080,000	Cablevision Liability
$440,593,000	Unspecified Liabilities
~~$3,300,000,000~~	Altice's Equitable Contribution
$15,319,262,000	**Total Post-transaction Cablevision Debt**

Furthermore, the quality of the debt to be acquired by CSC Holdings - the $8.6 billion Neptune FinCo debt - is extremely low. Moody's has assigned it a B1 corporate family rating (CFR) and B1-PD probability of default rating (PDR).[39] This rating reflects Neptune FinCo's high leverage of over 7x debt/EBITDA (Moody's adjusted) at deal close and the significant business risk inherent in Altice's aggressive cost reduction plans.[40] Even assuming rapid and aggressive cost-cutting, Moody's believes that "if the cost cuts drive too fast a pace of organizational change and headcount reduction, this could result in disruptions to Cablevision's service quality and lead to market share erosion."[41] Thus, "execution risk will dominate Cablevision's credit profile as Altice balances the pace of cost cuts and service quality."[42] In addition, a material of these additional cuts "would likely add more execution risk than Neptune's B1 rating can accommodate."[43] These ratings could suffer further "if leverage is not on track to fall below 6x by year end 2018; if free cash flow is negative; or if liquidity deteriorates."[44] Furthermore, their credit ratings would deteriorate if the company experiences a weakening of its competitive position.[45] There is already evidence of this happening to Altice in Europe.[46]

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[39] Stodden, *supra* note 30.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] Malathi Nayak, *Altice's customer woes in Europe stoke concern ahead of its U.S. foray*, REUTERS (Oct. 30, 2015), http://www.reuters.com/article/us-altice-usa-idUSKCN0SP00720151031.

Additionally, Altice's own indebtedness, especially post-transaction, is even more troubling. Analysts expect Altice's debt to rise to €48.5 billion ($54.01 billion)[47] by the end of 2016, assuming Cablevision is acquired by Altice.[48] This is practically a 30-fold increase in debt of €46.8 billion ($52.12 billion) in only four years.[49] Recently, Moody's Rating Agency downgraded Altice and its subsidiaries to account for their recent transactions.[50] Specifically, Moody's assigned Altice Luxembourg S.A. a B1 CFR and B1-PD-PDR rating; confirmed Altice Luxembourg S.A.'s B1 senior unsecured notes rating; downgraded Numericable-SFR S.A.'s CFR to B1, PDR to B1-PD, and senior secured debt rating to B1; confirmed Altice International's B1 CFR and B1-PD PDR; and confirmed Altice International's subsidiaries ratings of B1 and B3.[51] All of these ratings are considered "not prime," meaning they lack the ability to repay short-term debts.[52] They are also all given a "B" rating, which means they are considered speculative and are subject to high credit risk.[53] The assigning of a poor PDR is especially disconcerting as this indicates the relative likelihood that any entity within a corporate family will default on one or more of its long-term debt obligations.[54] Corporate families rated B-PD are also considered speculative and are subject to high default risk.[55]

In essence, Altice has a tremendously risky level of debt that it acquired in an unsustainably rapid period of time. Such a parent company will be unable to meet the needs of what would be an equally indebted Cablevision, which has been rated Ba2 since 2010 but is under review for downgrade for the first time.[56] Moody's potential downgrade action is a direct result of the present transaction; Moody's stated that if the transaction does not happen, it will "conclude Cablevision's review for downgrade with ratings that reflect its current ownership and expected operating performance."[57]

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[47] Utilizing the 1.11 conversion rate on Feb. 5, 2016.
[48] Leigh Thomas, *Altice shares tumble as Cablevision deal financing completed*, REUTERS (Oct. 1, 2015), http://www.reuters.com/article/us-altice-capital-idUSKCN0RV3KI20151001.
[49] Thomas, *supra* note 48.
[50] Christian Rauch and Michael J. Mulvaney, *Moody's confirms certain Altice ratings (CFR at B1), downgrades Numbericable-SFR to B1*, MOODYS.COM (Oct. 5, 2015), https://www.moodys.com/research/Moodys-confirms-certain-Altice-ratings-CFR-at-B1-downgrades-Numericable--PR_334536.
[51] *Id.*
[52] *Id.*; *Ratings Symbols and Definitions*, MOODYS.COM (Jan. 2016), at 6, https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004.
[53] *Ratings Symbols and Definitions*, *supra* note 52, at 5.
[54] *Id.* at 15.
[55] *Id.*
[56] Rauch, *supra* note 50.
[57] Stodden, *supra* note 30.

Clearly, this transaction "leaves the successor entity in a considerably worse credit position," and the excessive debt in this transaction poses significant risks for Cablevision and its customers and employees.[58] As this Commission correctly observed in the recent New Charter deal, "increased debt hurts credit metrics such as debt/earnings before interest, taxes, depreciation, and amortization that measure a company's ability to repay its debt obligations."[59] More debt issuances related to a transaction means more interest payments while obtaining no increase in customers or revenues arising from the transaction. The consequences of the $15.3 billion debt burden can be significant. If Cablevision cannot meet its debt service obligations, it may lead to default and, eventually, bankruptcy. High debt service will also limit capital investment in new products, expansion of existing markets, and service quality. It also makes it difficult, if not impossible, to secure additional debt to support further capital expenditures - this is especially true for Petitioners, who have received near-junk-level ratings from Moody's.

In fact, when compared to the recent New Charter deal heavily scrutinized by this Commission, the debt levels in the present transaction are significantly more crippling to Cablevision and Altice's access to capital. While Altice's post-transaction debt is projected to be almost $50 billion, New Charter's post-merger debt was projected to be approximately $60 billion.[60] At first glance, it appears Altice would have less post-transaction debt than New Charter. But when accounting for the disparity in revenues between the two companies, Altice's debt is far more dangerous. In 2014, Cablevision's consolidated net revenue was only $6.461 billion.[61] Altice's 2014 revenue was only €3.934 billion[62] ($4.38 billion).[63] By contrast, in that same year, Time Warner and Charter made $22.812 billion[64] and $9.1 billion,[65] respectively. That is a deficit of approximately $21.061 billion. Also staggering is the difference in size of the

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[58] Case 15-M-0388, *supra* note 4, at 47.
[59] *Id.*
[60] Case 15-M-0388, *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Redacted Comments of the New York State Department of Public Service Staff (filed Sep. 16, 2015), p. 37.
[61] *Cablevision Systems Corporation Reports Fourth Quarter and Full Year 2014 Results*, CABLEVISION.COM (Feb. 25, 2015), http://www.cablevision.com/investor/index.jsp.
[62] *Altice S.A. Annual Report*, p. 4, http://altice.net/wp-content/uploads/2015/04/altice-fy-14-annual-report.pdf.
[63] Utilizing 1.11 conversion rate on Feb. 5, 2016.
[64] *Time Warner Cable Reports 2014 Fourth-Quarter and Full-Year Results*, TIMEWARNERCABLE.COM (Jan. 29, 2015), http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Time-Warner-Cable-Reports-2014-Fourth-Quarter-and-Full-Year-Results/default.aspx.
[65] *Charter Announces Fourth Quarter and Full Year 2014 Results*, PRNEWSWIRE.COM (Feb. 5, 2015), http://www.prnewswire.com/news-releases/charter-announces-fourth-quarter-and-full-year-2014-results-300031449.html.

two companies. Post-merger, New Charter was projected to own or manage systems serving approximately 19.4 million broadband customers, 17.3 million video customers, and 9.4 million voice customers across 41 states.[66] By contrast, Cablevision Systems Corporation serves approximately 2.6 million video customers, 2.8 million high speed data customers, and 2.2 million voice customers in and around the New York area.[67] Combined with Suddenlink, the company's American presence will only be 4.6 million customers in 20 states.[68] Altice has only 3.1 million cable customers outside of its two new U.S. markets.[69] Considering these factors, Altice's $50 billion post-transaction debt seems crippling. In fact, the Moody's ratings of the two companies supports this conclusion. While parties in the New Charter deal had already-troubling ratings of Baa2 and Ba1,[70] Altice has an even worse rating: B. Their unsustainable debt-equity ratio means Altice will be unable to secure affordable funding to achieve many - if any - of the goals and requirements this Commission put in place for the New Charter deal.

2) As a Result of the Five-fold Debt Increase to $15.3 billion, Altice will be Forced to cut Cablevision's Costs in a Manner that is Likely to Negatively Affect the Public Interest.

In order to assuage investor concerns surrounding Cablevision's significant $15.3 billion debt accumulation, Altice already announced plans to cut $900 million in operating expenses and $150 million in capital expenditures. The cuts include:

- Capital expense: $150,000,000
- Network and Operations: $315,000,000
- Customer operations: $135,000,000
- Sales and marketing: $45,000,000
- Eliminate duplicative functions and "public company" costs: $135,000,000
- Other unspecified cuts: $135,000,000.[71]

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[66] *Id.* at 3.
[67] Stodden, *supra* note 30.
[68] Reinhardt Krause, *Altice Takes on Verizon with Cablevision Buy*, INVESTOR'S BUSINESS DAILY (Sep. 17, 2015), http://www.investors.com/news/technology/altice-to-acquire-cablevision-verizon-fios-competition/; Brian Stelter and Mark Thompson, *Big cable deal: Altice buys Cablevision*, CNN MONEY (Sep. 18, 2015), http://money.cnn.com/2015/09/16/media/cablevision-altice-deal/.
[69] Mike Farrel, *Five Things You Need to Know About Altice*, MULTICHANNEL NEWS (May 20, 2015), http://www.multichannel.com/blog/money/five-things-you-need-know-about-altice/390771.
[70] Case 15-M-0388, *Financing Arrangements*, *supra* note 60, at 37-38.
[71] Altice Investor Presentation, *supra* note 36, at 16.

These cuts are consistent with how industry experts describe Altice's strategy: "do deals with cheap debt, then slash costs at the target companies to improve profits."[72] One analyst conceded there was room to trim U.S. spending, but that "Altice was taking it to an extreme."[73] The dramatic cuts are guaranteed to negatively impact the business, both in quality of service and job retention.[74]

As a matter of fact, this reality is currently playing out in Altice's European markets. Drahi has already driven away customers and alienated employees in France since his acquisition Bouygues Telecom via its French unit, Numericable-SFR ("SFR").[75] In SFR's case, Altice eliminated costs to boost SFR's profit margins.[76] Among Altice's practices with SFR were: efforts to stall payments for suppliers, initiating salary and job cuts, and a reduction in spending on meaningful service upgrades.[77] We know, for example, SFR was forced to completely stop paying suppliers in order to force a renegotiation for cheaper supplies.[78] The French government appointed a mediator to resolve the issues.[79] Moreover, these business practices failed to effectuate Altice's goals. Just four months ago, Altice reported "worse-than-expected" third-quarter results for SFR that drove the company's shares down 10 percent.[80] In fact, SFR lost one million customers in just one year.[81] Investors correctly attribute customer losses to Altice's aggressive cost-trimming.[82] As one expert explains, "the savings came first immediately and now the churn (or customer defection) goes up."[83] Another analyst describes Altice's "dangerous" actions as not only cutting out the fat, but also the meat and the bones.[84] Thus, customer losses are inevitable as Altice's "extreme" acquisition expenditures require "huge" cuts to customer

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[72] Thomas, *supra* note 48.
[73] Nayak, *supra* note 46.
[74] *See id.*
[75] Ruth Bender and Stacy Meichtry, *Patrick Drahi's Altice Tests Limits for European Telecom Mergers*, WALL STREET JOURNAL (Jun. 22, 2015), http://www.wsj.com/articles/drahis-altice-confirms-bid-to-buy-french-rival-bouygues-telecom-1434956056.
[76] *Id.*
[77] Phillip Dampier, *New York City Questions Public Interest of Altice Buyout of Cablevision; Suddenlink Workers Worry*, STOP THE CAP! (Dec. 23, 2015), http://stopthecap.com/2015/12/23/new-york-city-questions-public-interest-of-altice-buyout-of-cablevision/.
[78] Bender, *supra* note 42.
[79] *Id.*
[80] Nayak, *supra* note 46.
[81] Dampier, *supra* note 77.
[82] Nayak, *supra* note 46.
[83] *Id.*
[84] *Id.*

service, installation costs, maintenance, and marketing.[85] Admittedly, Altice attributes a portion of its customer losses to inherited poor network quality,[86] but this only further evidences Altice's reluctance, or inability, to invest in necessary upgrades.

Despite this track record and the admitted plans to cut costs, Altice loosely claims in its application that they will "continue investing in and upgrading Cablevision's IT systems, including customer care, service provisioning, and billing systems."[87] Altice also asserts it will "upgrad[e] Cablevision's network with wider and deeper fiber deployment and other operational efficiencies."[88] But it is clear these promises are illusory at best, or worse - blatantly false. Altice cannot support these ambitions with capital it does not appear to have. Altice's own financing arrangement plan explains that it is Cablevision's $2 billion of additional debt availability that will "ensure ample resources to meet Cablevision's liquidity needs."[89] There is no other stated plan for financing upgrades. Moreover, because Altice has already taken on so much debt, it will be occupied with paying down that debt before it will be capable of investing in upgrades. Just as Altice cannot upgrade SFR's network quality, Altice will be unable to fund the upgrades Cablevision's New York customers desperately need.

3) Because the Debt-equity Ratio in the Altice-Cablevision Transaction is Debilitating, the Companies can Give Only Vague, Insufficient Assurances Regarding Their Public Interest Commitment.

As recently as January 8 of this year, this Commission evaluated the merger of two cable/Internet providers.[90] This Commission approved that merger, but only on the condition that the parties agree to make *concrete* and *enforceable* commitments to modernize their cable system and services, expand access, address the digital divide, and improve customer service.[91] Specifically, this Commission required that the parties show the transaction would result in, among other requirements:

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[85] Nayak, *supra* note 46.
[86] *Id.*
[87] Case 15-M-0647, *supra* note 5, at 13.
[88] *Id.*
[89] *Id.* at 8.
[90] *See generally* Case 15-M-0388, *supra* note 4.
[91] *Id.* at 2 (emphasis added).

- network modernization and speed enhancements;[92]
- network expansion;[93]
- broadband availability for low-income New Yorkers;[94]
- general broadband availability;[95]
- job growth and protection against job losses;[96] and
- maintained or enhanced customer service.[97]

As another cable/Internet provider transaction, the Altice-Cablevision transaction shares some similarities with the recently approved New Charter petition. The same public interests are at stake, the same standards of review apply, and the same deficiencies in New York's broadband infrastructure exist. But, it is the stark differences between the two deals that make the present transaction more troubling.

Most notably, the New Charter deal had significant levels of specificity in its requirements to contribute to the public interest of New Yorkers. By contrast, Altice makes only vague promises to bring its experience to Cablevision and continue investing in Cablevision's IT systems.[98] The missing plans and requirements include:

- completion of one million line extensions nationally in the first four years;[99]
- $2.5 billion investment within four years to build-out unserved or underserved areas in existing territories;[100]
- creation of 300,000 additional Internet WiFi hotspots within four years;[101]
- conversion of facilities to an all-digital system for 99% of customers within 30 months;[102]
- preclusion from reducing New York customer-facing jobs for four years;[103]
- investment of $50 million in service quality improvements in New York within two years;[104]
- $435 million in net incremental benefits over ten years;[105]
- $655 million in associated investments;[106]

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[92] Case 15-M-0388, *supra* note 4, at 50-52.
[93] *Id.* at 52-55.
[94] *Id.* at 55-59.
[95] *Id.* at 59-63.
[96] *Id.* at 63-62.
[97] *Id.* at 62.
[98] *See, e.g.*, Case 15-M-0647, *supra* note 5, at 13.
[99] Case 15-M-0388, *supra* note 4, at 32.
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.* at 5.
[104] *Id.*
[105] *Id.* at 6.
[106] *Id.*

- build-out of their network to an additional 145,000 unserved and underserved residential housing units or businesses within four years;[107]
- conversion of existing New York footprint to an all-digital network capable of delivering faster broadband speeds;[108]
- broadband speeds of up to 100 Mbps to all customers by the end of 2018 and 300 Mbps by the end of 2019;[109]
- introduction of 60 Mbps broadband service in order to enable subscribers to obtain faster speeds at lower prices;[110]
- discounted broadband service to certain low-income customers;[111]
- free broadband service to 50 community anchor institutions not already receiving such service;[112]
- 35% reduction in the PSC Complaint Rate by the end of 2020;[113]

In total, the Commission was able to require approximately $435 million in incremental net benefits to Time Warner and Charter customers and confirm approximately $655 million network modernization investment commitments.[114]

By contrast, Altice has given no specific monetary commitments whatsoever. In fact, given this Commission's recent decision in New Charter, Petitioner's utter lack of specificity is highly suspect. The New Charter petition enumerated many concrete public benefits in the form of plans that were backed up by financial statements, and this Commission held that it was still not enough: New Charter's "projected benefits [we]re described in terms that [we]re too indefinite to permit us to assume that the benefits w[ould] occur as described to make a meaningful contribution to the transaction's net benefits."[115] In this case, Petitioners make only broad, sweeping statements through threadbare recitals of abstract public benefits. They have made no good-faith effort to present this Commission with tangible plans to contribute to the public good. Though they have provided investors with an itemized list of cost-cutting plans, they failed to provide this Commission with even cursory estimations of infrastructure-investment plans.

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[107] Case 15-M-0388, *supra* note 4, at 4.
[108] *Id.*
[109] *Id.* at 4.
[110] *Id.*
[111] *Id.*
[112] *Id.* at 5.
[113] *Id.*
[114] *Id.* at 68.
[115] *Id.* at 41.

4) **Even Assuming Some Benefits Have Been Articulated, the Public Interest Standard Is Not Met Because These "Benefits" Only Maintain the Status Quo.**

The "benefits" Petitioners were able to articulate can only truly be considered beneficial if the Petitioners can adequately demonstrate that Cablevision, but for Altice's take over, would not have otherwise achieved the same results. Unfortunately, all two of the "benefits" Petitioners reference simply continue on the same path Cablevision is already pursuing.

a) Enhanced Competition

Petitioner argues the transaction will "enhance competition" because it does not raise concerns of competitive harm resulting from vertical integration. But this is a passive contention. Petitioners fail to explain how avoiding vertical integration will proactively benefit New York customers. Without such explanation, this "benefit" is nothing more than the avoidance of negative change. Petitioners also attempt to argue competitive harm will not result from the transaction because Altice and Cablevision are not currently competitors. However, this cannot be considered a benefit because, again, it merely preserves present conditions.

b) Access to Expertise

After lengthy descriptions of Cablevision's "long history of service and innovation in the New York Metro area," Petitioners proclaim that Altice "is driven by *the same* philosophy and conviction.[116] They then explain how Altice will "*continue* investing in and upgrading" Cablevision's systems, drawing from Altice's experience in these areas.[117] In one specific example, Altice, because it "*shares* Cablevision's view that WiFi can hold significant promise," anticipates "*continuing* to invest in WiFi services."[118] In these ways, Altice will "bolster Cablevision's ability to *continue* to creatively meet consumers' changing needs."[119]

Even ignoring the lack of ingenuity Altice offers, their own company history disputes much of what they claim as "expertise." In truth, Altice articulates only one area of expertise -

[116] Case 15-M-0647, *supra* note 5, at 11-12 (emphasis added).
[117] *Id.* at 13 (emphasis added).
[118] *Id.* (emphasis added).
[119] *Id.* at 14 (emphasis added).

their "strong track record of implementing pro-consumer network improvements and efficiencies and reinvesting in the networks it acquires."[120] But as explained above, the recent case of Numericable-SFR proves otherwise.[121] At least one million customers were unhappy with SFR's services and left the provider in droves.[122] By Altice's own admission, much of this customer loss was due to poor network quality, which it claims it inherited.[123] But if Petitioners' lofty claims were true, poor network quality, even if inherited, would not exist within the "highly-experienced" Altice.

C) <u>CONCLUSION</u>

It is for these reasons we believe the Joint Petition as currently filed with the Public Service Commission is not in the public interest.

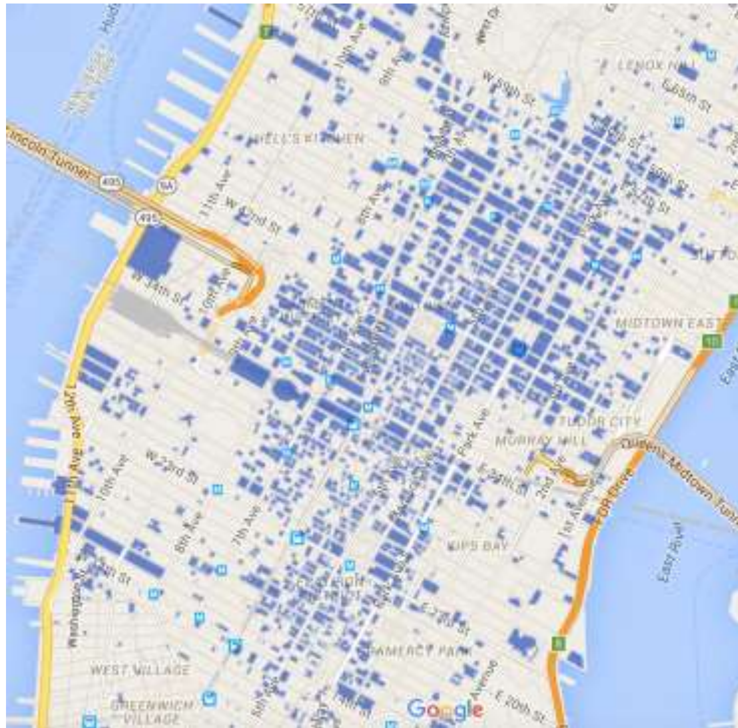
/s/
M. Umair Khan
Deputy Counsel

[120] Case 15-M-0647, *supra* note 5, at 13.
[121] *See* Nayak, *supra* note 46.
[122] *Id.*
[123] *Id.*

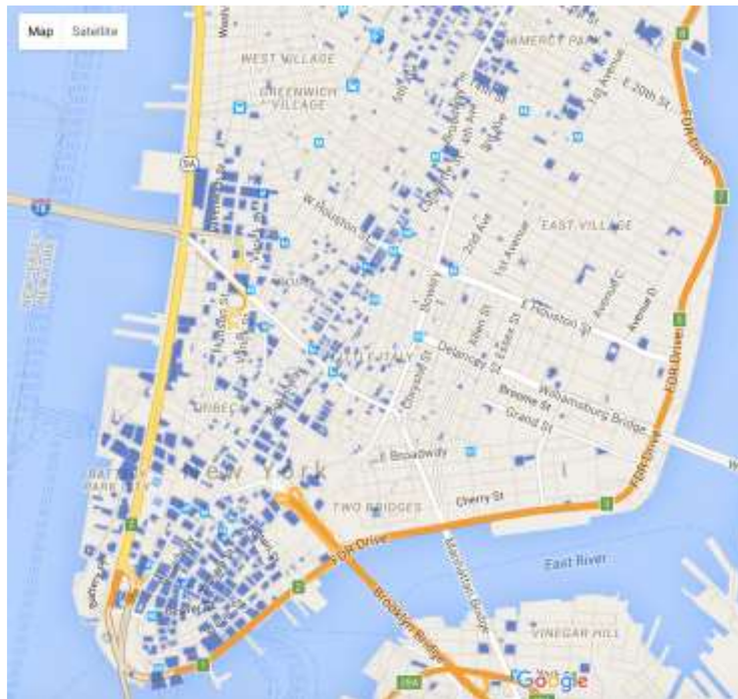
Appendix A: High-speed Broadband Availability

Source: NYC Economic Development Corporation at www.nycbbmap.com

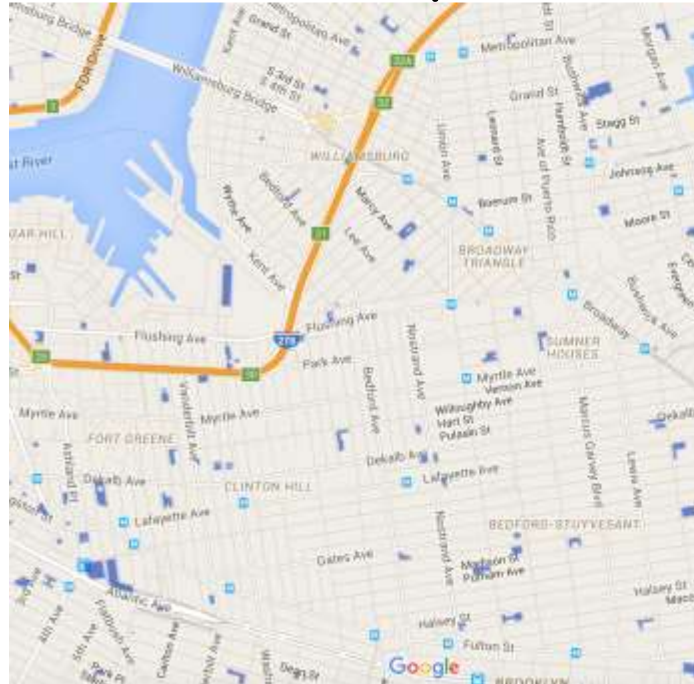
Midtown Manhattan



Lower Manhattan



North Brooklyn



South Bronx