

NEW YORK PUBLIC SERVICE COMMISSION

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

**INITIAL COMMENTS OF**  
**COMMUNICATION WORKERS OF AMERICA, DISTRICT 1**

This proceeding was commenced by the filing of a Joint Petition by Altice N.V and Cablevision entities (the "Joint Applicants" or "JAs") on November 4, 2015. A series of procedural rulings has occurred as well as discovery pursuant to Commission rules, which is incomplete as of this filing. The public docket contains much, but not all, of these rulings and events.

These Initial Comments are filed under protest. CWA has not received answers to its' Discovery Requests (DRs), nor to its request for complete copies of JA responses to Staff DRs, sufficient to permit it to fully analyze the public interest issues at stake in this proceeding. As late as the morning of February 5, JAs have continued their grudging and incomplete disgorgement of relevant and probative material to which CWA is entitled. CWA now possesses documents and data which are contradictory and require reconciliation. CWA has a number of pending requests and motions concerning the failure of discovery. CWA reserves the right to supplement or revise these Comments after it receives all documents and information to which it is entitled.

CWA notes that it has received and reviewed Confidential material as defined in the Protective Order issued by Administrative Law Judge Van Ort. It has conformed to the requirements of that Order in every respect. No information

designated Confidential is included in these Comments. Because of the unreliability of JAs production, and the overbroad and unnecessary assertion of protections under the Protective Order, these Comments are based on public record information only. CWA reserves the right to supplement or modify these Comments when issues of discovery and the Protective Order are resolved.

## **I. Legal Deficiencies In The Joint Application**

This proceeding was called to inquire into whether or not the public interest will be served by Commission approval of the Joint Application. (“...the public interest requires a more detailed review of the petition.”)<sup>1</sup>. While there is broad agreement among the parties as to the words, there is disagreement as to their meaning. The Commission, in its' Order in Case 15-M-0388 concerning the merger of Charter and Time Warner set forth guidelines.

First, the contour of the public interest will inevitably vary from case to case. “Our analysis will be tailored to the specific transaction under review to determine whether there are benefits related to the transaction and whether the benefits outweigh the harms depends on the specifics of the industry and facts of the case....we have broad discretion to choose the scope of review that best fits the transaction at hand...”<sup>2</sup>

The Charter/Time Warner Order then goes through an extensive discussion of the particulars of the public interest inquiry, which CWA will not recapitulate, referring the Commission to the Order itself. We do emphasize one Commission determination that explicitly embraces a public interest concern as applicable to all analyses, including the proceeding herein. “...as in **all** cases of this type, the Commission is concerned about the economic development effects of the merger, including how the proposed transaction will impact existing and new employment opportunities.”<sup>3</sup> (emphasis added) The public interest requirement for “economic development...including employment” is of particular relevance in this case, as appears below.

CWA also notes that recent changes in governing law have shifted the burden of proof with respect to the public interest inquiry to the JAs. In the Commission's own words, the law now requires “... an affirmative showing by the Petitioners that the proposed transaction is in the public interest.”<sup>4</sup>

CWA notes that Applicant Altice also has the burden of proving that any purported

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1 See November 23, 2015 letter to JAs from Peter McGowan of DPS Staff, Filing 7 on the public docket.

2 Order, Case 15-M-0388, electronic page 17.

3 Order, Case 15-M-0388, electronic page 31.

4 Order, Case 15-M-0388, electronic page 15.

public benefits flowing from the transaction are directly caused by it. To be credited to Altice such benefits "...would not have been made in the absence of the proposed merger.<sup>5</sup> Altice may not offer as a public benefit for the purposes of this proceeding any action or policy instituted by Cablevision.

CWA notes the widespread expectation that JAs will seek to negotiate with the Commission a mitigation package, in which particular public interest concerns are addressed in hope that an otherwise insufficient Application will be approved. Whatever the virtues and defects of such a package, CWA notes a legal concern that is significantly more problematic in this proceeding than in other proceedings, notable the Charter/Time Warner merger. In the cases in which mitigation packages were dispositive or included, the Application did not raise a fundamental concern about the financial viability of the transaction. Unlike, for example, the TimeWarner/Charter transaction, the Joint Application herein gives rise to profound concern that the transaction will fail economically. CWA neither predicts nor hopes for an economic failure if a transaction is approved. But the public interest requires a particularly hard look at such an outcome for particular legal reasons.

If Altice is unable to fund both operations and investment, and debt service, a traditional and appropriate forum for resolving such situation is bankruptcy court. CWA reiterates that the likelihood of a bankruptcy proceeding is uncertain. But the Commission must recognize that in such an event, no matter how strong are the assurances that a mitigation package will be effectuated, a bankruptcy court has the right and responsibility to cancel such state mandates as part of a debtor workout.

In other words, the particular economic fragility of the proposed transaction gives rise to reasonable uncertainties about the enforceability of any mitigation package.

CWA requests that it be informed of and the right to participate in any mitigation discussions.

CWA notes that these uncertainties may be diminished if the mitigation package is funded by or guaranteed by a funded entity controlled by Altice.

In any event, a possible bankruptcy is a relevant and credible legal uncertainty that the Commission must consider if it seeks a mitigation package.

CWA asks that the Joint Application be disapproved for the legal reasons stated herein, in addition to other objections set forth below.

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<sup>5</sup> JA Application electronic p. 36.CHECK

## **II. Evidentiary Deficiencies In The Joint Application**

Separate from the substantive analysis of the inadequacies of the Joint Application below, CWA initially notes that the JAs have failed to meet their burden of showing that the transaction is in the public interest. This is the first grounds upon which the Commission should rest its' rejection of the Application.

This failure is partially the result of the failure of the Application itself to contain supporting evidence for its sweeping and conclusory language. It is partially the result of the failure of the JAs to adequately respond to DRs seeking documents and information which could prove or disprove their assertions.

There are dozens of failures to assert and produce evidence which render the Application unapprovable as a matter of law. CWA, as a result of its extensive interactions with the JAs believes that this failure to produce supporting evidence is a considered tactical judgment by the JAs that should not be permitted to continue. It is possible to read the Commission Order in Case 15-M-0388 as beginning with a rejection of the Application, and then moving to a discussion of negotiated mitigation actions. CWA asserts that the JAs in this case are acting as though rejection of their Application is inevitable, and that complying with traditional discovery will not change that, and that they are relying on mitigation negotiations with DPS staff and/or parties to solve their problems with the Application.

This presents the Commission with a unique and difficult legal problem. If, as we assert, the Application and Record do not contain evidence supporting JAs burden of proof, then the Application may not be approved, no matter how substantial the negotiated mitigation measures may be. Adequate mitigation cannot substitute for a record upon which the Commission may adjudge that the statutory burden of proof has been met. To conduct these proceedings otherwise is to advise future applicants that the Commission will not functionally disapprove an application, no matter how inadequate. If the Commission determines that the evidence in the record does not meet the burden of proof requirement, it may not and should not proceed to private or public mitigation negotiations.

CWA asks that the Joint Application be disapproved for failure to conform with evidentiary standards in addition to the other grounds set forth herein.

## **III. Technical And Procedural Deficiencies In The Joint Application**

### **A. Failure and Inadequacy of Discovery**

CWA objects to the schedule set forth by the Commission with respect to the

filing of Initial Comments. Initial Comments were originally due on January 22, 2016. CWA, citing JAs failure to produce discovery material, asked for an extension of time for such filing to two weeks after the closure of discovery. The Secretary instead extended the filing deadline to February 5. JAs failure to produce documents has not been remedied in the intervening period. While certain documents, largely redacted and Confidential copies of materials responsive to DPS Staff Discovery Requests, were produced, numerous other documents and information pursuant to both Staff and CWA DRs remain outstanding. (See Attachment 1 for a partial list of outstanding documents and information.) These documents are relevant and highly probative. They are central to CWA's ability to fully analyze the transaction and therefore to fully and fairly participate in this proceeding. Our objection to this procedure can be cured by timely production of the documents and information.<sup>6</sup>

These discovery matters are the subject of at least three JA Motions for Designation as Highly Sensitive and CWA responses, as well as a series of requests made by CWA to Administrative Law Judge Van Ort which have not yet been decided. The Commission is in possession of all such documents, which are hereby incorporated by reference into these Comments. For the convenience of the Commission certain CWA emails are attached hereto as Attachment 2.

#### B. Failure and Inadequacy of Municipal Approval/Form 394 Requirements

By law and franchise language, the JAs are required to seek the approval of numerous municipal governments. JAs have made at least a partial admission of same in their Application, although disputing those admissions in other fora.

CWA has been approached by numerous municipalities who complain of the failure of JAs to admit that franchise language entitles them to approval, and/or that required notification and paperwork has not been received. CWA objects to any approval process by the Commission that does not include reasonable efforts to assure that the JAs are in compliance with their municipal approval obligations. An example of such concerns is contained in Attachment 3.

CWA asks that the Joint Application be disapproved because of substantial procedural defects described above, in addition to other grounds set forth herein.

#### **IV. The Transaction's Financial Structure Is Not In The Public Interest**

At the core of the public interest analysis of the proposed transaction is the size

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<sup>6</sup> CWA notes the letter from Secretary Burgess of February 3 which provides for an application for extension if documents to which we are entitled are not produced by February 16. CWA will make such application if needed.

and structure of the debt, and the destructive impacts of resulting synergies, under which the new entity will struggle. This debt will be an enormous burden and endangers the fiscal survival, operational integrity, and practices and policies affecting the public interest. Simply put, payment of debt service is likely to cause major financial disruptions, or in re-purposing of company revenues toward debt service and away from operations and investment affecting the public interest.

A. The Increase In Indebtedness, And The Structure Of The Debt, Are Unsupportable and Endanger The Public Interest

As CWA understands the parameters of the transaction from its' analysis of publicly available information

- The transaction is valued at \$17.7 billion, of which \$10 billion will be applied to purchasing Cablevision from its existing owners with an additional \$7.7 billion in debt assumed by the purchasers. To finance this transaction, Altice will raise \$8.6 billion in new debt, which Cablevision will assume on top of its existing \$5.9 billion. In addition, Altice and two partners will provide \$3.3 billion in equity to fund the transaction.
- Assuming the transaction closes, Cablevision will have \$14.4 billion in debt.
- The \$8.6 billion in new debt is a 146% increase over Cablevision's current debt levels.
  - Cablevision will be responsible for both principle and interest payments on both existing and new debt, which will not be guaranteed in any way by Altice.<sup>7</sup> As Altice describes it, Cablevision will be in a "silo" and will be required to succeed or fail on its own.
  - This will almost double Cablevision's current interest payments, from \$654 million to about \$1.2 billion.<sup>8</sup>
- Approximately \$800 million of Cablevision's existing cash and equivalents will be used to fund the transaction. Starting with an estimated \$900 million prior to closing, it will be left with a \$100 million "minimum cash" level.

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<sup>7</sup>"Altice CFO Dennis Okhuijsen stated 'We're not going to lever up the existing businesses. This is a stand-alone capital structure. So we're leveraging up the target.' Given the status of Cablevision and Suddenlink as unrestricted subsidiaries of Altice, the leverage from the US entities would not be counted toward Altice's leverage." Jonathan Schroer, UniCredit Research, September 21, 2015; The new debt the company will be required to assume will be isolated in a "distinct" "Cablevision silo." <http://altice.net/wp-content/uploads/2015/10/ALTICE-Q3-2015-Results-Presentation.pdf> pages 33 through 35.

<sup>8</sup> Standard & Poor's Capital IQ Database and JAs reply to CWA 6-1

- While Altice and two partners will make \$3.3 billion in equity investments in the transaction, all these funds plus a portion of the new debt will be used to pay the \$10 billion purchase price to existing Cablevision shareholders.
- Despite taking on \$8.6 billion in new debt and ceding another \$800 million in cash to fund the transaction, Cablevision will not actually receive any of the new equity or debt financing proceeds. They will be applied to the transaction itself.
- In sum, after the transaction closes, Cablevision will be the same company, with the same plant and equipment, but with substantially more debt and relatively little cash on hand.

Below are two tables extracted from an Altice presentation at a Credit Suisse conference in Barcelona<sup>9</sup>, detailing the new and existing Cablevision debt

CVC New Debt Raised	Maturity	Size in \$
L+400 TLB	Oct-22	3,800
6.625% Snr Guaranteed Notes	Jul-25	1,000
10.125% Snr Notes	Jan-23	1,800
10.875% Snr Notes	Jan-25	2,000
<b>Total New Debt</b>		<b>8,600</b>

Existing CVC Debt	Maturity	Size in \$
7.875% Snr Debentures	Feb-18	300
7.625% Snr Debentures	Jul-18	500
8.625% Snr Notes	Feb-19	526
6.75% Snr notes	Nov-21	1,000
5.25% Snr notes	Jun-24	750
8.625% Snr notes	Sep-17	900
7.75% Snr Notes	Apr-18	750
8.00% Snr Notes	Apr-20	500
5.875% Snr Notes	Sep-22	649
<b>Total Existing Debt</b>		<b>5,875</b>

<b>Total Debt</b>	<b>14,475</b>
<b>Blended cost of debt</b>	<b>7.5%</b>
<b>Average life</b>	<b>6.6 years</b>

For further discussion of debt structure, specifically “leverage ratios” please see IV. (C) below “The JAs Reliance On Subsequent And Undisclosed “Synergies”

<sup>9</sup> <http://altice.net/wp-content/uploads/2015/10/20151001-CS-Leverage-Finance-Barcelona-Conf-Presentation.pdf>

## Endangers The Public Interest”

### B. A Crucial Reason For The Crushing Debt Load Is That Altice Overpaid For Cablevision

The Commission is being asked to approve a transaction that endangers the public and enriches Cablevision management. The purchase price for a sale of an operating company is usually a matter between buyer and seller. When that price endangers the ability of the buyer to operate and invest in the company, it is a matter the Commission must understand and address.

The SEC Form 14-C filing<sup>10</sup>, particularly pages 20 and 21 sets forth the economic arrangements and establishes the massive overpayment by Altice.:

Altice’s offered price is 64.6% higher than Cablevision’s average closing price over the one year period prior to September 15, 2015 (the last day of trading before the announcement), 35.1% above the average closing price over the previous thirty days prior to September 15, and 22.3% higher than the closing price on September 15, 2015.

The following chart provides a graphic demonstration that Altice offered a dramatically higher price than Cablevision shareholders have seen in more than three years:



Cablevision retained three financial advisory firms to determine the “fairness” of

<sup>10</sup> While the JAs provided a preliminary version of the 14-C filing, this analysis relies on the final version filed on December 2, 2015. See also Exhibit 12-A and final SEC Form 14-C, page 19

the Altice offer to Cablevision shareholders. They were explicitly not asked to opine or advise on any other basis. As part of their analyses, they derived an “implied value” range for Cablevision using seven different methodologies. The table below reports on the low and high implied share values for each methodology, along with the variance of such implied values with the \$34.90 per share being offered by Altice:

<b>CVC Advisors' Analyses of Its Implied Value Using Various Methodologies</b>				
	<b>Implied Per Share Equity Value</b>		<b>Versus \$34.90 Per Share Merger Consideration</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Comparable Company Analysis	\$15.62	\$23.42	-55.2%	-32.9%
Precedent Transaction Comparisons	\$24.11	\$31.87	-30.9%	-8.7%
Discounted Cash Flows - Cablevision Projections				
Terminal Multiple Method	\$12.38	\$20.64	-64.5%	-40.9%
Perpetuity Growth Method	\$6.40	\$20.74	-81.7%	-40.6%
Discounted Cash Flows - Wall Street Projections				
Terminal Multiple Method	\$15.66	\$24.22	-55.1%	-30.6%
Perpetuity Growth Method	\$12.21	\$31.32	-65.0%	-10.3%
Discounted Wall Street Target Prices	\$7.35	\$21.04	-78.9%	-39.7%
<b>Unweighted Average</b>	<b>\$13.39</b>	<b>\$24.75</b>	<b>-61.6%</b>	<b>-29.1%</b>

*Source: Cablevision SEC Form 14-C Final, Filed December 2, 2015, pp. 36-39*

While Cablevision cautions that no single factor was determinative of either the fairness opinions nor the Board’s decision, it is instructive to see that the unweighted average of implied values for Cablevision were between 29.1% and 61.6% lower than the \$34.90 being offered by Altice.

Another factor which almost certainly weighed on the Cablevision Board was the report by its advisors that:

“there were no other potential strategic purchasers that would be reasonably likely to engage in a transaction in the near term and no financial sponsors that would be reasonably likely to make an offer at a price per Share greater than the price being offered by Altice”<sup>11</sup>

Beyond the very large premium price, management and the board had a strong financial incentive to accept the Altice offer. For example, Cablevision’s top five executives will have almost \$160 million in “golden parachute” compensation available to them under certain circumstances if the transaction is approved, of which almost \$100 million will become automatically triggered and payable upon consummation of the merger.<sup>12</sup>

<sup>11</sup> Exhibit 12-A and final SEC Form 14-C, page 19

<sup>12</sup> See pp. 47-49 in CABLEVISION’s 14-C filing, along with pp. 44-47 for additional information.

Moreover, the board has an undisclosed financial interest in this transaction based on the conversion price of their Restricted Stock Units (the full \$34.90 per share).

Cablevision shareholders, executives and directors, are poised to receive an enormous financial windfall, particularly since the Board of Directors was advised that there were no credible alternative buyers available. The public, as a result, will face a surviving entity stripped of its financial and operational capacities.

C. The JAs Reliance On Post-Transaction And Undisclosed "Synergies" Endangers The Public Interest

1.) JAs Description of "Synergies" Is Unclear, Contradictory And Unreliable.

The massive debt structure and the massive overpayment lead inexorably to a question of how Altice will meet its financial obligations. The answer, in the words of the JAs, is that Altice will find "synergies" that will fund debt service, operations and capital investment.

JAs description of "synergies" is as follows:

In general, Altice uses the term "synergies" to describe efficiencies and other performance improvements achieved as a result of an acquisition or other combination of entities. In Altice's experience, these synergies may include, among other things, reducing duplicative overhead and administrative expenses; improving the combined company's ability to negotiate favorable procurement agreements; and sharing best practices, expertise, technologies, and research and development costs among previously separate entities.

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Altice projects potential synergies that may be realized by a potential acquisition by assessing the relevant company's existing operations, facilities, investments, and other factors, as well as any improvements that may be realized by applying Altice's expertise and best practices followed by Altice's operators.<sup>13</sup>

As part of the transaction announcement presentation, the JAs disclosed their "synergy" targets of \$900 million in operating expense and \$150 million in capital expenditure reductions.<sup>14</sup>

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<sup>13</sup> JAs responses to CWA DRs 5-1 and 5-2

<sup>14</sup> <http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf> Page 16

## SOURCES OF SYNERGIES AND EFFICIENCIES ACROSS THE ENTIRE COST STRUCTURE

	Description	% of total	
<b>Customer operations</b>	<ul style="list-style-type: none"> <li>Further improvement of customer experience</li> <li>Reduction of operational complexity</li> <li>Upgrade of legacy systems</li> </ul>	~15%	\$900m
<b>Network &amp; operations</b>	<ul style="list-style-type: none"> <li>Implementation of best-practices</li> <li>Modernization of network reduces operating expenses</li> <li>Simplification of processes with IT improvement</li> </ul>	~35%	
<b>Sales &amp; Marketing</b>	<ul style="list-style-type: none"> <li>Channel mix optimization with enhanced use of technology</li> <li>Back-office systems upgrading</li> </ul>	~5%	
<b>G&amp;A</b>	<ul style="list-style-type: none"> <li>Elimination of duplication in functions</li> <li>Elimination of "public company" type costs</li> </ul>	~15%	
<b>Other</b>	<ul style="list-style-type: none"> <li>Business optimization across other businesses and Suddenlink</li> </ul>	~15%	
<b>Capex</b>	<ul style="list-style-type: none"> <li>Procurement improvements</li> <li>IT systems upgrades and streamlining</li> <li>Engineering best practice transfers (no volume cuts)</li> </ul>	~15%	\$150m

This disclosure by JAs asserts five broad categories of operating expenditures and estimates for each as a percentage of the projected \$900 million in synergies. Using these percentages, CWA has calculated the approximate target synergies by category:

- Network Operations: \$315 million
- Customer Operations: \$135 million
- Sales and marketing: \$45 million
- Eliminate duplicative functions and "public company" costs: \$135 million
- Other unspecified reductions: \$135 million

To the CWA's knowledge, the Joint Applicants have not indicated how synergies, if achieved, would be used to meet the new Cablevision's financial obligations, fund its debt service or make additional capital investments.

There was some initial confusion about how long the JAs project that these synergies will be achieved, and even whether these are one-time or annual run-rate goals. It is now clear that they are targeting three to five years or more to realize the full synergy projections, which are expressed as annual run-rate

savings.<sup>15</sup>

JAs public statement are confusing and inadequate.

First, the operating and capital expense synergies are projected to provide an annual \$1.05 billion in annual savings.

It would appear that these savings are earmarked for two basic requirements:<sup>16</sup>

- \$654 million in additional annual interest payments
- about \$400 million in additional EBITDA/AOCF<sup>17</sup>, helping reduce the company's leverage ratio as well as helping pay down outstanding debt.

In various presentations, Altice has implied that it intends to reduce the new Cablevision's operating expenses from the current \$49/customer/month to something similar to its European peers at \$14 to \$16/customer/month. This would double Cablevision's EBITDA/AOCF from 29 percent to 48 percent.

Whether this is achievable without severely impacting Cablevision's customer service and quality cannot be evaluated without exploration of Confidential data recently received by CWA and the withheld "Highly Sensitive" documents which CWA continues to seek.

## 2) JAs Description Of "Leverage Ratios" Further Illuminates The Financial Uncertainties Of The Transaction.

The JAs reveal much of their future financial strategies in an extended discussion of Altice's "leverage ratio" if the transaction is approved. "Leverage Ratio" is a key financial metric used to measure the relationship between a firm's net debt (i.e. total debt less cash) and its operating cash flows. The calculation of Leverage Ratio is expressed as Net Debt divided by AOCF (or EBITDA).

The JAs have made clear their intention to use revenues to significantly reduce their "leverage ratio". The JAs have disclosed a projection for a 7.1x leverage

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<sup>15</sup> Moody's that says that half of the synergies (\$450 million) will come in the first 2-3 years.

<sup>16</sup> \$1.05 billion in annual synergies minus \$550 million for new interest payments leaves \$500 million available for other purposes.

<sup>17</sup> EBITDA refers to the standard financial metric, "Earnings Before Interest Taxes Depreciation and Amortization." This is sometimes called "operating cash flow." The JAs refer to AOCF, or "Adjusted Operating Cash Flow," which on occasion it uses interchangeably with EBITDA and also uses to compute the firm's "Leverage Ratio" in the same manner in which EBITDA is usually employed. Leverage ratio in this context is Net Debt [Total Debt less Cash] divided by EBITDA or AOCF.

ratio, a very high debt-to-operating cash flows measure.<sup>18</sup>

According to Investopedia, "Ratios higher than 4 or 5 typically set off alarm bells because this indicates that a company is less likely to be able to handle its debt burden, and thus is less likely to be able to take on the additional debt required to grow the business."<sup>19</sup>

Once the \$1.05 billion in projected synergies are fully achieved, the JAs calculate that Cablevision's leverage ratio will be 4.9x.<sup>20</sup>

Even then, and even with the full \$900 million in projected synergy cost savings, Cablevision's leverage ratio is still projected to be higher than it is today

The improved leverage ratio is derived exclusively from reduced expenses, and thus higher EBITDA or AOCF.

Again, corporate strategies on debt ratios are often a matter for the corporation itself. Again, the Commission's public interest analysis requires it to review and approve of these financial arrangements because they endanger Altice's ability to meet reasonable levels of investment in operations, capital expenditures and other public interest concerns.

These concerns have been noted by the rating agencies.

Moody's wrote:

As a result of the heavy debt financing, Moody's immediately put Cablevision under review for downgrade. Net debt at 8 times EBIDTA "creates a risk for a company in a capital intensive, competitive industry." Later, Moody's downgraded Altice's largest holding, French Numericable-SFR. "The ratings...consider the risks associated with the growing complexity of the aggregate Altice group organization, which has been assembled in a short time period largely through debt funded acquisitions."<sup>21</sup>

Standard and Poor's wrote:

The Cablevision debt is on a credit watch with negative implications which

<sup>18</sup> <http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf> Slide 18

<sup>19</sup> <http://www.investopedia.com/terms/n/net-debt-to-ebitda-ratio.asp>

<sup>20</sup> <http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf> Slide 18

<sup>21</sup> [https://www.moodys.com/research/Moodys\\_places-Cablevision-on-review-for-downgrade--PR\\_334839](https://www.moodys.com/research/Moodys_places-Cablevision-on-review-for-downgrade--PR_334839) and [https://www.moodys.com/research/Moodys-confirms-certain-Altice-ratings-CFR-at-B1-downgrades-Numericable--PR\\_334536](https://www.moodys.com/research/Moodys-confirms-certain-Altice-ratings-CFR-at-B1-downgrades-Numericable--PR_334536)

“reflects the potential for at least a one notch downgrade upon completion of the acquisition by Altice.”<sup>22</sup>

To summarize:

The Joint Applicants have not provided any data indicating that Altice will inject any new funds into Cablevision. Rather, Altice is only injecting \$8.6 billion of debt into Cablevision, along with the accompanying interest and principle amortization requirements.

Altice’s offered price is 65% higher than Cablevision’s average closing price over the year prior to the announcement and a full third higher than the price the month before.

Cablevision retained three financial advisory firms to determine the “fairness” of the Altice offer to Cablevision shareholders. Using seven different methodologies, these firms determined that the Altice price was somewhere between 29.1 % (at the low range) to 61.6 percent (at the high range) above the implied value of Cablevision.

We understand that it is not the PSC’s role to determine whether the purchase price is “too high.” However, we provide this information to provide a context. In order for the new Cablevision to pay the high debt costs incurred partly because Altice offered such a lucrative deal to the current Cablevision shareholders, the new Cablevision will need to implement the drastic “synergy” cuts – which will harm Cablevision customers and communities with declining service quality, reduced network investment, job and service cuts.

The transaction will result in reduced network investment, service quality and job cuts.

Despite Applicants claim that Altice is fully committed to investing in the Cablevision network, the financial structure of the transaction and the already announced \$1.05 billion in so-called “synergy” savings will result in fewer financial resources available for network maintenance and investment and fewer employees to provide prompt, quality service to customers.

CWA believes that the Commission’s recent order in the Charter / Time Warner proceeding is applicable to the instant matter:

The Joint Applicants do not even attempt to demonstrate how the proposed transaction would benefit New York customers. It is clear, in fact, that the

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<sup>22</sup> <http://iadweek.me/2015/09/17/sp-puts-cablevision-systems-bb-rtg-on-creditwatch-negative/>

proposed transaction would result in lower spending on expenses and capital equipment in an effort to recoup the debt service which the deal foists on Cablevision without providing it with any additional financial resources.

**V. The Transaction's Impact on Economic Development Including Employment Is Not In The Public Interest**

As set forth above the public interest standard is both broad and particular to the contours of each transaction brought before the Commission. In this case the public interest analysis includes transaction impacts on economic development and employment. These impacts will be severe and destructive and require disapproval of the transaction., separate and apart from their destructive consequences on service quality, programming, technological improvement, affordability, diversity and other important public interest concerns.

Cablevision is a major economic presence in New York State. Cablevision serves about 3.1 million customers and generated approximately \$6.5 billion in revenues annually, much of which it spends within New York State for supplies, services and salaries. The transaction as proposed will require billions of dollars in reduced expenditures for employment, operational and capital purposes. These are referred to by the JAs as "synergies". Call them what you will, they will reduce economic activity and employment in New York, which is detrimental to the public interest in a robust economy.

The evidentiary insufficiency and uncertainty about purported "synergies" are discussed above. We note their particular impact on economic activity and employment even if accomplished as described. We note with particular concern the consequences for the economy and employment if the optimistic and unsupported forecasts for synergies do not materialize.

Assume, arguendo, that the Commission negotiates mitigation measures with the Joint Applicants which are significant and enforceable. Assume also that the financial projections made by the JAs are inaccurate, and that the new entity is unable to generate synergies or cash sufficient to meet its debt service obligations. If the new entity seeks bankruptcy protection, as is its' legal right, then any and all mitigation measures, much less collective bargaining agreements, are subject to judicial dissolution. Indeed, it is highly likely that these kinds of employment and economic arrangements would be the first things to go. This concern is more fully explored in Section I. Legal Deficiencies In The Joint Application, above.

CWA respectfully reminds the Commission that the burden of establishing the reliability of the economic and employment arrangements falls squarely on the

JAs. The evidence in the record is not close to sufficient to meet that burden.

With respect to economic development and employment issues CWA first points out that these issues have intrinsic relevance to the public interest, as previously determined by the Commission in the Charter/Time Warner Order. We additionally point out that JAs raised these issues in their Application, in numerous ways and numerous times. JAs, inter alia<sup>23</sup>, informed the Commission that "There is no material strike, lockout, slowdown, work stoppage, unfair labor practice or other labor dispute, or material arbitration or grievance pending or, to the knowledge of the Company, threatened. Each of the Company and its Subsidiaries is in compliance with all applicable Laws respecting labor, employment and employment practices, terms and conditions of employment, wages and hours, and occupational safety and health"<sup>24</sup>

We share with the JAs the view that their records on compliance with law is relevant.

Unfortunately, the JAs record in this area is objectively unacceptable. Applicant Cablevision is a serial violator of such laws. CWA refers the Commission to Attachment 4, which contains a description of brought by government agencies against Cablevision.

With respect to civil litigation, Cablevision has brought numerous actions against individual employees alleging defamation, tortious interference and violations of penal laws resulting from organizing activities. In these cases Cablevision uses its vast economic resources to stop New Yorkers from exercising the legal and human rights. In virtually every case, these Cablevision attacks on individual workers and labor organizations have been dismissed or denied. CWA refers the Commission to Attachment 5, which contains a description of actions brought by Cablevision against employees and labor organizations.

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23 JAs make a broad assertion of compliance with all laws: "*(i) Compliance with Laws; Licenses. Since the Applicable Date, the businesses of each of the Company and its Subsidiaries have not been, and are not being, conducted in violation of any federal, state or local law, statute or ordinance, common law, or any rule, regulation, judgment, order, writ, injunction or decree, of any Governmental Entity (collectively, "Laws") that is applicable to the Company or its Subsidiaries, including Laws relating to privacy, publicity, data protection and the collection and use of personal information and user information gathered or accessed in the course of its operations*" JA Application pp. 68-69. While much of the language which follows discusses privacy laws, this Application statement is a broad and unconditional denial of legal violations, and is factually incorrect.

24 JA Application electronic p, 466 et. al. Please refer to January 22, 2016 JA Response to CWA "Supplemental Request" page 6 in which JAs attempt to conflate the use of the word "material" in the Application with the term of art "Material Adverse Effect" also used in the Application to explain away their failure to accurately inform the Commission of the existence of a pattern of violations. The explanation is false and insufficient.

Cablevision's unrelenting, unfair and unsuccessful attempts to intimidate employees and others is destructive to the public interest. Whether it be government agencies like the NLRB or the courts of the state such campaigns by a major corporate citizen must cease.

Altice's position on economic impacts and the Cablevision litigation campaigns is, at best, uncertain. CWA has sought information about Altice's policies and practices in numerous ways, including discovery. We refer the Commission to CWA DR-11 (7) and (8):

7. Regarding employment and compensation levels, will Altice commit that it will maintain or grow New York State employment levels after the transaction, that no employee will lose his or her job as a result of the transaction, that there will be no reduction in compensation and other working conditions as a result of the transaction, and that all employees' employment rights will be protected?
8. For employees who have elected to have union representation, will Altice commit to recognize the collective bargaining status of its employees that existed prior to transfer? Will Altice commit that it will take no action to violate the legal or contractual rights of any employee with respect to collective bargaining? Will Altice commit to recognize the current collective bargaining agreement?

The JAs have not responded to CWA DR-11.<sup>25</sup>

Cablevision's aggressive campaigns against employees and labor organizations, combined with Altice's calculated indifference to the issue as it impacts this proceeding, combined with the false representations in the Joint Application about the existence of the existence of employee, litigation, unfair labor practice or other conflicts are evidence of the JAs unwillingness to address these important public interest issues.

CWA asks that the Application be disapproved because of its failure to address economic development and employment issues, as well as the other matters raised herein.

## **VI. The Transaction's Impact On Other Issues Is Not In The Public Interest**

CWA has additional concerns about a variety of service issues, all of which go to the impact on customers if the transaction is approved. CWA reiterates its

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<sup>25</sup> See January 8, 2016 JA Responses to CWA DRs.

financial, economic development and other concerns expressed above. It notes that these same factors will impact the system's ability to address network modernization including improved speed, network expansion, enhanced programming, impacts on low-income broadband services and customers, service quality and specific concerns like data caps, among others.

We reiterate that the record as it currently exists is largely silent on these issues, and that the JAs have not met their burden of proving that the proposed transaction is in the public interest with respect to these issues.

We draw the Commission's attention to the specific efforts of CWA to establish what level of "customer facing" employment currently exists at Cablevision. After discussion with JAs were unavailing, CWA sought, in a February 1, 2016 email to Judge Van Ort copied to all parties, a ruling requiring JAs to provide this information. "We request that such information be presented in a format that permits us to understand which jobs are "customer-facing" and which are not. If such format is provided, no further production is required.

The Commission must consider the likelihood that there will be substantial reductions in important jobs that include but are not limited to "customer facing"<sup>26</sup> employment. This is relevant, even critical to, the public interest. The Commission must have information sufficient to judge the current and projected levels of such jobs, and fashion any ruling to protect them.

We further note that the Application appropriates for the benefit of Altice the benefits of certain planned and ongoing efforts by Cablevision. This is impermissible. As the Commission pointed out in its Charter/TimeWarner Order "Many of the asserted benefits from the proposed transaction are events triggered by actions taken independently from the merger, and others are likely to be undertaken by TWC in any event, should the merger not be approved."<sup>27</sup>

The ability of Altice to provide high quality and affordable customer service is critical to the public interest. Their existing record raises substantial question about their willingness and ability to do so.

Altice has an inferior and damaging history of cost reductions and "synergies" whose effect is marked deterioration of service quality for their customers. The

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<sup>26</sup> The Commission has defined "customer-facing positions as those "with direct interaction with customers; including, but not limited to call center and other walk-in center jobs, and service technicians." See Charter/Time Warner Order footnote 125. For the purpose of these Comments CWA means any jobs that impact the quality and availability of service to customers and urges the Commission to adopt this definition. Examples of jobs that would then be properly the subject of the public interest inquiry include but are not limited to Outside Plant Technicians, Construction Technicians and Coordinators.

<sup>27</sup> JA Application electronic pp. 43-44.

Application's assertions otherwise are untrue. Altice has failed to provide evidence sought in DRs that would allow the Commission to rule that the JAs have met their burden of establishing that the public interest in quality system performance and customer service has been met.

In the absence of such evidence we refer the Commission to publicly available reports of a collapse of service quality for customers of SFR, one of France's largest telecom service providers, owned by Altice.<sup>28</sup> This has caused a doubling of complaints from wired customers between 2014 and 2015 and a corresponding increase in complaints about wireless service of 50%. Altice had two responses: First, it blamed the company it purchased SFR from "we pay the price of under-investment from the previous [owner]". Second, it disputes whether the level of complaint is unacceptable "For now, we are not very good, but we are not bad,"<sup>29</sup>

CWA asks that the Application be disapproved because of its failure to meet its burden of establishing that these public interest concerns are adequately addressed, in addition to the other separate grounds asserted herein.

For all the foregoing reasons, CWA asks that the Application be disapproved.

Respectfully submitted,

/s/

Richard Brodsky  
Counsel for CWA, District 1

cc: All parties

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<sup>28</sup>The following two such public reports are in French:

1) <http://www.lavoixdunord.fr/region/bugs-chez-sfr-ca-ne-va-pas-beaucoup-mieux-de-nombreux-ia0b0n3028570>

2) <http://www.universfreebox.com/article/33347/Patrick-Drahi-reduit-les-couts-chez-SFR-mais-a-quel-prix>

An English version of these assertions is: <http://stopthecap.com/2016/02/02/altices-sfr-rising-discontent-among-subscribers-over-drahi-ordered-cost-cutting/>

<sup>29</sup>These SFR statements appear in the French documents cited in Footnote 9 above.

