

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements

Case 15-M-0647

**PETITION OF ALTICE USA, INC. TO AMEND
THE 2016 MERGER ORDER**

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Altice USA, Inc. (“Altice” or the “Company”) respectfully submits this Petition to amend the Public Service Commission’s 2016 Order approving the merger of Altice N.V. and Cablevision Systems Corporation (“Cablevision”) (the “Merger Order”)¹ to: (1) reimpose the Merger Order’s Low-Income Broadband Condition² for four years; and (2) establish a \$5 million investment by Altice to promote broadband accessibility and adoption³ by low-income New York households. This Petition is filed voluntarily, pursuant to discussions with Department of Public Service (“DPS”) Staff and, if granted, would advance a shared objective to connect low-income residential households in the Optimum⁴ footprint to broadband through the multiple low-income products offered by Optimum, while removing any ambiguity that might still exist as to certain provisions in the Merger Order pertaining to Altice’s low-income broadband commitments.

I. EXECUTIVE SUMMARY

On June 15, 2016, the Public Service Commission (“Commission”) issued the Merger Order. Among other conditions of approval reflecting negotiations between DPS Staff and the parties to the Matter,⁵ the Merger Order obligated the newly-formed Altice to establish a low-income broadband program (the “Low-Income Broadband Program” or the “Program”) offering a

¹ Case 15-M-0647 - *Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements*, Order Granting Joint Petition Subject to Conditions, (June 15, 2016) (hereinafter the “Merger Order”).

² *See id.* at Appendix A, II.B.

³ Consistent with the stated goals of the Low-Income Broadband Condition, this investment would promote awareness of Optimum broadband services available to non-broadband subscribing low-income households to encourage such households to adopt broadband. *See generally* the Merger Order, at pp. 70-73.

⁴ Optimum is the telecommunications brand owned and operated by Altice in Altice’s New York service territory.

⁵ As detailed in prior reports, Altice represents that it has long satisfied the Low-Income Broadband Condition and the other terms of the Merger Order -- with no pending claims of non-compliance. *See generally*, Final Altice Low-Income Broadband (LIBB) Report - 2022 (Docket (Dkt.) 216); LIBB Report – 2021 (Dkt. 215); LIBB Report – 2020 (Dkt. 212); Fourth Annual Report – 2020 (Dkt. 206); Third Annual Report – 2019 (Dkt. 196); Second Annual Report - 2018 (Dkt. 171); First Annual Report – 2017 (Dkt. 144). The Company appreciates the productive engagement of Staff in connection with its implementation of the Merger Order.

\$14.99 per month broadband product to eligible low-income households.⁶ Since the September 2017 launch of this Program, now known as *Optimum Advantage Internet* (“*OAI*”), Altice respectfully asserts that it has exceeded the Merger Order’s specific requirements while also making significant progress toward advancing the policy interest underlying the Low-Income Broadband Condition – driving broadband accessibility and adoption among low-income New York households. Through the Program and other initiatives, Altice represents that – in partnership with various government entities, public officials and community organizations – it has connected more than 30% of the target population to broadband, in excess of the Merger Order’s penetration targets.⁷

Notwithstanding its satisfaction of the Merger Order requirements, Altice remains committed to promoting broadband accessibility and adoption among low-income households, in partnership with the State – particularly following expiration of the federal Affordable Connectivity Program (“*ACP*”) benefit earlier this year. The Company also recognizes that the broadband needs of New York households and landscape of available support have changed dramatically since the Merger Order. Indeed, the Company has endeavored to meet these needs by, among other things, voluntarily upgrading *OAI* from 30 to 50 Mbps; actively participating in *ACP* (*prior to its expiration*), New York City’s Big Apple Connect, and other broadband affordability programs; and recently launching its Optimum Advantage+⁸ offer (*100 Mbps for \$25 per month*) for all *ACP*-eligible households.

⁶ Specifically, the Merger Order required Altice to offer *OAI* to customer households in its footprint with: (i) students eligible for the National School Lunch Program; and/or (ii) seniors eligible for Supplemental Security Income (SSI) that have not taken Altice broadband service within the prior 60 days. Merger Order, Appendix A, II.B.1.c.

⁷ See Final Altice LIBB Report - 2022 (Dkt 216) pp. 3-4. Altice’s data modeling methodology used to identify the *OAI*-eligible population is set forth more fully in prior filings. See e.g., Second Annual Report (Dkt. 171), at Confidential Exhibit C; Third Annual Report (Dkt. 196), at Confidential Exhibit C; and Fourth Annual Report (Dkt. 206), at Confidential Exhibit C.

⁸ <https://www.optimum.com/advantageplus>.

Accordingly, although the specific obligation to offer the Program pursuant to the Merger Order has expired, Altice today – as part of its broader commitment to digital equity and expanding broadband accessibility and adoption in New York State and at Staff’s request – voluntarily proposes amendments to the Merger Order that would: (1) ensure the continued availability of *OAI* for four years from the date of this Petition, and (2) provide for a \$5 million investment (in-kind and/or monetary, at Altice’s discretion) to promote low-cost connectivity products (including *OAI*) to low-income New York households.

II. BACKGROUND

A. The Merger Order and Commission Findings

Altice N.V. and Cablevision filed a Joint Petition seeking approval of the companies’ merger on November 4, 2015, which the Commission approved with modifications on June 15, 2016, subject to a number of conditions. Reflecting a public interest in the affordability of communications services, these conditions included a requirement that Altice offer a low-income broadband program meeting certain criteria. Prior to the merger, Cablevision did not offer such a program.⁹ However, the Commission recognized that cost might be a barrier to low-income New Yorkers subscribing to broadband, as suggested by available data on adoption; as of the issuance of the Merger Order in 2016, only 36% of households with under \$20,000 in annual income, and 59% of households with incomes between \$20,000 and \$35,000, had adopted broadband service.¹⁰

⁹ See the Merger Order at 73.

¹⁰ *Id.* at 70-71; see also Center for Technology in Government, Broadband Internet Service Adoption and Use in New York State Households, p. 1 (May 2011) (Broadband Service Adoption Study),

<http://broadbandmap.ny.gov/documents/adoption-study/NYS-Broadband-Adoption-Study-Color.pdf>.

B. Requirements of the Low-Income Broadband Condition

Specifically, the Merger Order required Altice, within fifteen months of the close of the merger, to begin offering a low-income broadband program providing a minimum speed of 30 Mbps for \$14.99 per month, to eligible customers throughout Cablevision's New York footprint.¹¹ Subscriber eligibility was predicated on household eligibility for the National School Lunch Program, as well as for senior citizens eligible for the federal Supplemental Security Income program; no credit checks could be required; eligible customers were to be enrolled within 60 days (no waiting period of greater than 60 days); and Altice was prohibited from applying data caps to subscriptions.¹² The Merger Order also required that Altice make commercially reasonable efforts to enroll 25% of those eligible for the Program within five years of full implementation, with 12.5% enrollment within three years of full implementation as the first milestone.¹³ Failure to meet these penetration milestones would trigger obligations to make investments to promote the Program, unless it was demonstrated that Altice made all commercially reasonable efforts to achieve the penetration targets.¹⁴ Altice was also required to file annual reports for the five years following commencement of the Program,¹⁵ including the number of households enrolled in the Program.

C. Altice's Implementation of the Low-Income Broadband Program

As detailed in prior filings, Altice respectfully asserts that it complied with the Merger Order's Low-Income Broadband Condition. The Company in September 2017 fully launched (and

¹¹ Merger Order, Appendix A § II(B)(1)(b). Prior to the full roll out across its territory, Altice was also required to begin the roll out through pilot projects, outreach and marketing, training of staff, and stakeholder engagement within six months of the close of the merger. § II(B)(1)(a).

¹² *Id.* at § II(B)(1)(c)-(f).

¹³ *Id.* at § II(B)(2).

¹⁴ *Id.*

¹⁵ *Id.*

today continues to offer) the \$14.99 per month low-income broadband product, *OAI*,¹⁶ to all eligible households within its New York State footprint. In 2018, the Company applied data modeling – disclosed to Commission Staff – to identify households within its NYS footprint as eligible for *OAI*¹⁷, and subsequently targeted these households with diverse and evolving forms of *OAI* marketing over the term of the Merger Order. As a result of these efforts, the Company’s filings illustrate that more than 30% of these *OAI*-eligible households were Optimum broadband subscribers to any tier of service as of the Company’s October 2022 report¹⁸ – substantially exceeding the Merger Order’s final penetration milestone.¹⁹

In parallel, Altice also advanced the policy interest underlying the Low-Income Broadband Condition – encouraging broadband accessibility and adoption among low-income New York households – through active participation in a range of other initiatives beyond the Merger Order, including:

- ***Free Pandemic Service Offers:*** Among other initiatives in response to the Pandemic, the Company twice offered *OAI* for free to any New York student household without broadband, and also provided free service in NYC homeless shelters to support remote learning;

¹⁶ Altice launched the low-income broadband product in September 2017, originally sold and marketed as “Economy Internet,” and subsequently changed its name to *Altice Advantage Internet (AAI)*, and then again to *OAI* in 2021.

¹⁷ Notably, the Merger Order did not specify a data source to govern the calculation of the penetration milestones. In that absence, Altice provided to the Commission detailed information on its data modeling methodology to substantiate the denominator used for its calculations. Similarly, the Company’s filings explain in detail the numerator used, which includes *OAI* customers as well as *OAI*-eligible customers who responded to the Company’s *OAI* offer but elected other broadband products. See e.g., Case 15-M-0647 - *Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements*, Second Annual Report, Exhibit C (June 22, 2018) (Dkt. 171); Third Annual Report, Exhibit C (June 21, 2019) (Dkt. 196); Fourth Annual Report, Exhibit C (June 22, 2021) (Dkt. 206). See also n.19, *infra*.

¹⁸ Final Altice LIBB Report - 2022 (Dkt 216) pp. 3-4.

¹⁹ Of course, that certain eligible households who responded to the Company’s marketing for *OAI* voluntarily elected other tiers of service does not - as a matter of law, logic or policy - undermine that they are to be included in the numerator for purposes of the Merger Order’s penetration milestones. To conclude otherwise (*i.e.*, only *OAI* customers should be counted in the numerator and/or Altice could not respond to such a customer’s request for an Optimum tier with higher speeds) would lead to absurd results, likely conflict with other applicable law, and undermine the overarching Commission goal of increased broadband adoption and customer choice of tiers.

- ***Voluntary Expansions of OAI:*** Altice in 2021 voluntarily increased *OAI*'s speed from 30 to 50 Mbps.²⁰ Since launch of the Program, the Company also voluntarily expanded eligibility of *OAI* to additional categories of low-income households beyond the Merger Order -- New York City residents whose household member attends a New York City public school and US military veterans who receive state or federal public assistance.
- ***Active Participation in ACP and New Offers for ACP-eligible HHs:*** Prior to the program's expiration, Altice was an active participant in the ACP. Altice offered qualifying Optimum NYS households a 300 Mbps broadband product for \$30 per month – making this service free once the ACP benefit was applied – and participated in the predecessor EBB program. To assist households in the transition from ACP, Altice has launched its 100 Mbps, \$25 per month Optimum Advantage+ offer.
- ***Public-Private Partnerships with New York City:*** Altice partnered with New York City through the Big Apple Connect program to offer no-cost broadband to residents living at NYC Housing Authority developments – the program currently provides more than 100,000 enrolled households with high-speed, in-home broadband. As noted above, the Company also partnered with the City to provide free broadband to more than 140 homeless shelters housing families.
- ***Continuation of OAI Past Term:*** Altice continued (*and continues*) to offer *OAI* beyond the Merger Order's requirement of 5 years post full-scale launch (September 2022).²¹

III. THE LOW-INCOME BROADBAND CONDITION HAS EXPIRED

The Company respectfully notes that, by its terms, the Merger Order's Low-Income Broadband Condition expired in September 2022 – five years following the September 2017 launch of the *OAI*. This ineluctable conclusion stems from the language and structure of the Merger Order, and the nature of the negotiation of the Ordering Conditions.

First and foremost, the Commission intentionally incorporated a catch-all provision in the Merger Order which expressly states that all Ordering conditions within three years unless otherwise stated. Footnote 141 on page 68 of the Merger Order in its entirety reads:

²⁰ Press Release, *Altice USA to Increase Speed of "Altice Advantage Internet" Affordable Broadband Plan and Rename Service "Optimum Advantage Internet"*, dated Sept. 14, 2021, available at <https://www.alticeusa.com/news/articles/press-release/community/altice-usa-increase-speed-%E2%80%9Caltice-advantage-internet%E2%80%9D-affordable-broadband-plan-and-rename-service>.

²¹ See III, *infra*.

Unless otherwise specifically noted in this Order or Appendix A, all conditions require compliance for a period of three years following the close of the proposed transaction. (*Emphasis added*).

The exact language is also repeated under footnote 1 on page 1 of Appendix A, which contains the specific conditions controlling Altice's implementation of the *OAI*. Based on this language, there can be no implied term for any Ordering condition exceeding three years – the Ordering condition *must expressly provide* for a longer term.

Relevant to the Low-Income Broadband Condition, the Merger Order's express language establishes – *at most* – a five-year obligation to offer *OAI*, beginning from the Program's full launch. This five-year term (*i.e., September 2017 – September 2022*) is reflected in three different provisions of the Merger Order: (1) the second and final penetration milestone occurring in Year 5 following full launch of the Program; (2) the reporting provisions for five years following full implementation of the Program; and (3) the Commission's valuation of the Program's net incremental benefit – which was predicated on a five-year horizon.²² Respectfully, to read any duration of the Low-Income Broadband Condition longer than five years finds no support as a legal matter and would lead to incongruous results.²³

²² Merger Order, pp. 72-74.

²³ For instance, an implication that Altice agreed to an *indefinite* obligation to offer a 30 Mbps product (a now legacy speed, as evidenced by consumer, technological trends) for \$15 proves far too much. If the explicit language of the Merger Order specifying at most a 5 year duration for the Condition were not enough, it is facially unsustainable to read the Merger Order as requiring the offering of a 30 Mbps, \$15 product through 2116 or longer, at the Commission's whim. *See Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc.*, 178 F. Supp. 655, 661 (SDNY, Nov. 16, 1959) (stating that “the courts are loathe to find that the absence of a terminal point indicates an intention to contract for the indefinite future, and a perpetual obligation will not usually be inferred... *the terminal date or condition of termination will be that to be ascertained from the actual though unexpressed intention of the parties* or as a remedy for their neglect. If the parties intend that the obligation be perpetual, they must expressly say so.”) (*Emphasis added*); *Readsboro v. Hoosac Tunnel & W.R. Co.*, 6.F.2d 733, 735 (2d Cir., Feb. 9, 1925) (Judge Learned Hand positing that the plaintiff's reasoning that the defendant would be bound forever to pay expenses under the contract was “untenable,” arguing that “[h]ad the parties expressed the intention to make a promise for perpetual maintenance, we should, of course, have nothing to say; their words would be conclusive. But they did not, and, as no time is expressly fixed, *we must look to the circumstances* to learn what they meant.”) (*Emphasis added*).

A longer than five-year term would have been inconsistent with basic canons of legal interpretation applicable to the Merger Order and would lead to unrealistic results. Because the Merger Order imposed conditions relating to broadband service – including the Low-Income Broadband Condition – that the Commission could not impose directly on a cable or telecommunications provider, the Commission’s power depended on Altice’s agreement with those terms. An implication that Altice agreed to an *indefinite* obligation to offer a 30 Mbps product) for \$15 – notwithstanding the Merger Order’s plain text specifying a five-year term -- is contrary to long-established principles of contract law. New York Courts have long recognized that where a “contract did not expressly provide for perpetual performance... the law will not imply that a contract calling for continuing performance is perpetual in duration.”²⁴ Finally, a time-limit for the Low-Income Broadband Condition is also consistent with the Commission’s lack of authority to regulate the price of broadband services directly.²⁵

IV. ALTICE’S PROPOSED AMENDMENTS TO THE MERGER ORDER ADVANCE CONTINUED SUPPORT FOR LOW-INCOME ACCESSIBILITY AND ADOPTION IN NEW YORK

Notwithstanding expiration of the Merger Order’s Low-Income Broadband Condition, Altice embraces its partnership with the State to support low-income broadband accessibility²⁶ and

²⁴ *Haines v. City of New York*, 41 N.Y.2d 769, 772 (1977); see *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 441 (2015) (“the traditional principle [is] that courts should not construe ambiguous writings to create lifetime promises”); see also *Warner* 178 F. Supp. at 661; *Better Living Now, Inc. v. Image Too, Inc.*, 67 A.D.3d 940, 941 (NY App. Div. 2009); 3 Corbin on Contracts § 553 (1960); 5 Corbin on Contracts § 24.29 (2018).

²⁵ See Merger Order, p. 28-30 (“this Order *only* requires the Petitioners to be *bound by their own commitments*.... This Order in no way subjects the Petitioners’ cable services to common carrier regulations. Nor does it contravene the FCC’s Open Internet Order...”) (*emphasis added*). The Commission has recognized that it does not regulate internet service providers and that its jurisdiction is limited. See e.g., *New York State Public Service Commission Broadband Assessment Program*, 2022 Report on the Availability, Reliability and Cost of High-Speed Broadband Services in New York State, at 24 (2022); Case 21-M-0042, *In the Matter of an Investigation into the Utilities’ Preparation for and Response to August 2020 Tropical Storm Isaias and Resulting Telephone and Cable TV Service Outages*, Investigation Report on Tropical Storm Isaias Impact on Telephone and Cable Television Networks and Services, 1 n. 1 (Feb. 11, 2021).

²⁶ With regard to accessibility, Altice emphasizes that every household passed by the Optimum NY network has access to the full suite of Optimum products, including all broadband tiers (subject to the income qualifications for

adoption in New York – particularly given the federal ACP benefit’s recent expiration. Indeed, as noted above, the Company voluntarily launched a 100 Mbps, \$25 per month Optimum Advantage+ offer available to all ACP-eligible households within the Optimum footprint. Consistent with the Commission’s goal of supporting low-income broadband accessibility and adoption in New York State, the Company hereby is willing to abide by the attached amendments to the Merger Order’s Low-Income Broadband Condition, which would to ensure the continued availability of the *OAI* product in New York State for at least another four years, supported by a multi-year investment by Altice to promote both *OAI* and the Company’s other low-cost broadband offers available to low-income New York households.²⁷

These amendments are attached hereto in redline and in a clean version as Exhibits A and B, respectively. In summary, these amendments would make the following changes:

- ***Availability of OAI For At Least 4 More Years:*** The amendments would ensure that the existing \$14.99 per month, income-eligible *OAI* product – as voluntarily upgraded by the Company to download speeds of 50 Mbps and continued to be offered even after cessation of the requirement to do so –will remain available across New York State for at least another four years;
- ***\$5M Low-Income Broadband Investment:*** The amendments would commit Altice to an investment of \$5 million composed of in-kind and/or monetary support (at the Company’s discretion). These investments would support efforts to make likely eligible consumers aware of Altice’s low-income connectivity offers, including *OAI*, Optimum Advantage+ and Optimum Complete,²⁸ while

OAI and OA+). In short, all Optimum HHs have full access to all Optimum services. Thus, the instant petition addresses broadband adoption, whose multifaceted challenges can include income for certain households.

²⁷ As explained in Sections II and III, *supra*, Altice respectfully asserts that it has fully complied with its obligations under the Merger Order. Nonetheless, the Company offers the amendments in Exhibit A in good faith and based on discussions with Department Staff. In the event the Commission seeks to modify Altice’s proposed amendments or deviate from the terms as proposed, the Company reserves the right to accept such modified terms, respond with its comments, withdraw this Petition, and/or, to the extent necessary, proceed to formal settlement with Department Staff pursuant to 16 NYCRR § 3.9. Put differently, the amendments as proposed should not be construed as an admission of liability under the Merger Order, or otherwise be extrapolated to expand Altice’s obligations other than as specifically described herein. This is consistent with the Merger Order – insofar as Altice ultimately had the option to accept the Terms of the Merger Order as it modified the Company’s Petition. *See* Merger Order, p. 88. To the extent that the Company declines to accept such modified terms, this Petition and any resulting Order shall have no effect on the remaining Conditions of the Merger Order.

²⁸ Optimum Complete unites Optimum’s advanced internet and mobile services in a simple, customer-friendly offer

leaving the forms of such investment to Altice's discretion – to avoid prescriptive review and mandates on how to reach the target population and give Altice maximum flexibility in such efforts;

- ***Harmonizing the Merger Order with NYS Affordable Broadband Act:*** To harmonize the Merger Order with New York State's Affordable Broadband Act (ABA), which is pending in litigation, the amendments clarify that compliance with the ABA will satisfy the Company's obligation to offer *OAI* per the Merger Order; and
- ***Continued Reporting:*** The amendments provide for annual reporting to Staff for informational purposes indicating the number of enrolled subscribers in *OAI*, summarizing the forms of such investment, and an accompanying certification of such investments made during the calendar year.

Through reimposition of and substantial investment to promote the availability of *OAI*, along with other low-cost Optimum connectivity services, these proposed amendments will help expand use of home broadband by currently unconnected low-income households throughout the Company's New York footprint – allowing them to work from home, take classes online, attend telehealth appointments and otherwise participate fully in the digital world.

V. CONCLUSION

Through these amendments and its commitments thereto, Altice looks forward to continuing its partnership with New York State to address the critical issue of expanding low-income broadband accessibility and adoption.

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