



Agenda Date: 7/24/24
Agenda Item: 3B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION FOR)
RENEWAL OF A SYSTEM-WIDE CABLE TELEVISION)
FRANCHISE FOR CABLEVISION OF OAKLAND, LLC)
)
) ORDER DENYING MOTION FOR
RECONSIDERATION
)
) DOCKET NO. CE23120919

Parties of Record:

Vaughn Parchment, Esq., Norris McLaughlin, P.A., on behalf of Cablevision of Oakland, LLC
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND:

On July 1, 2009, the New Jersey Board of Public Utilities ("Board") issued an order memorializing the conversion by Cablevision of Oakland, LLC ("Cablevision of Oakland" or "Cablevision"), a wholly owned subsidiary of Altice USA, Inc. ("Altice"), of its municipal consent-based franchise in the Township of Cedar Grove to a System-wide Cable Television Franchise for a term of seven (7) years, to expire on March 20, 2016.¹

¹ In re Cablevision of Oakland, LLC for the Conversion to a System-Wide Franchise in the Township of Cedar Grove, BPU Docket No. CE09030231, Order dated July 1, 2009.

Cablevision of Oakland has since added an additional thirty-eight (38) municipalities to its System-wide Cable Television Franchise.² On March 18, 2016, the Board issued a Renewal System-wide Cable Television Franchise to Cablevision, for a term of seven (7) years which expired on March 20, 2023.³ Thereafter, on December 19, 2017, the Board issued an Order of Amendment of the March 18, 2016 Order to include one additional municipality.⁴

On August 26, 2020, Cablevision of Oakland notified the Board of its intention to renew its System-wide Cable Franchise. On November 2, 2023, the Board notified Cablevision of Oakland of its intention to review its performance under its System-wide Cable Television Franchise, pursuant to 47 U.S.C. 546, N.J.S.A. 48:5A-19(b), and N.J.A.C. 14:18-14.16, and invited Cablevision of Oakland to file comments on its performance under its System-wide Cable Television Franchise and to assess how it will meet the future needs of the communities listed in its franchise application. Cablevision of Oakland filed its initial comments with the Board on December 1, 2023, and December 8, 2023. On December 20, 2023, the Board issued a report on Cablevision of Oakland's performance under its System-wide Cable Television Franchise and the future System-wide Cable Television Franchise needs of the State and the municipalities ("Report").

On December 27, 2023, Cablevision filed its application for renewal of a System-wide Franchise with the Board. In its application, Cablevision of Oakland sought renewal of its existing system-wide franchise and to add the townships of West Orange and Montclair, New Jersey (collectively, "Townships"). Pursuant to N.J.S.A. 48:5A-16(f), two (2) public hearings were held on February 1, 2024 in connection with Cablevision's application. In accordance with N.J.S.A. 48:5A-18(a), notice of the public hearings was posted on the Board's website and in newspapers of general circulation throughout the State more than ten (10) days in advance of the hearings.

By Order dated March 20, 2024, the Board granted Cablevision's application for renewal of its System-wide Cable Television Franchise, with the addition of the Townships. In the March 2020 Order, the Board found that "pursuant to the System-wide Cable Television Franchise Act and the Cable Television Act, Cablevision of Oakland has complied or is ready to comply with all applicable rules and regulations imposed by or pursuant to State and federal law as preconditions for engaging in the proposed cable television operations, that Cablevision of Oakland has sufficient financial and technical capacity, meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment, and is capable of providing the proposed service in a safe, adequate and proper manner."⁵

Motion for Reconsideration

² The addition of these municipalities was memorialized by Orders of Amendment issued by the Board: on March 17, 2010, for two (2) municipalities; on June 18, 2010, for eight (8) municipalities; on September 16, 2010, for eight (8) municipalities; on November 10, 2010, for seven (7) municipalities; on January 19, 2011, for ten (10) municipalities; on May 16, 2011, for one (1) municipality; and on December 18, 2013, for one (1) municipality.

³ In re the Application of Cablevision of Oakland, LLC for the Renewal of its System-Wide Cable Television Franchise, BPU Docket No. CE15111317, Order dated March 18, 2016.

⁴ In re the Application of Cablevision of Oakland, LLC for the Renewal of its System-Wide Cable Television Franchise, BPU Docket No. CE15111317, Order dated December 19, 2017.

⁵ In re the Application for Renewal of a System-Wide Cable Television Franchise for Cablevision of Oakland, LLC, BPU Docket No. CE23120919, Order dated March 20, 2024 ("March 2020 Order").

On April 2, 2024, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed a motion for reconsideration of the March 2024 Order, pursuant to N.J.A.C. 14:17-9.6 (“Motion”).

In its Motion, Rate Counsel first argued that the Board failed to adhere to the standards enumerated at N.J.A.C. 14:18-14.7 in allowing Cablevision to submit additional information outside of the permitted timeframe. Rate Counsel noted that N.J.A.C. 14:18-14.7 provides that system-wide franchise applicants are only permitted to submit additional, clarifying, explanatory, or supplemental information up to five (5) days after public hearings. Rate Counsel contended that, because the public hearings for Cablevision’s system-wide franchise application were both held on February 1, 2024, February 6, 2024 was the deadline for Cablevision to submit any additional, clarifying, explanatory, or supplemental information. Rate Counsel argued that, despite that deadline, Cablevision submitted such information on March 8, 2024, more than one (1) month following the public hearings. Rate Counsel argued that Cablevision’s supplemental filing required Rate Counsel to file a rushed response to the new assertions from Cablevision. Accordingly, Rate Counsel asserted that Cablevision’s comments were out of time, prejudicial to Rate Counsel, and should have been rejected.

Rate Counsel further argued that the Board erred as a matter of law by failing to consider legal requirements contained at N.J.S.A. 48:5A-17(a) and N.J.S.A. 48:5A-28(c). Rate Counsel contended that, to be granted a system-wide franchise, N.J.S.A. 48:5A-17(a) requires the Board to first find that the applicant has complied or is ready, willing and able to comply with all applicable rules and regulations imposed or pursuant to State or federal law as preconditions for engaging in the applicant’s proposed CATV operations.” Rate Counsel stated that, pursuant to N.J.S.A. 48:5A-28(c), each application for a system-wide franchise shall contain sufficient evidence that the applicant has the legal character and other qualifications to construct, maintain and operate the necessary installations, lines, and equipment and to provide the service proposed in a safe, adequate, and proper manner.

Rate Counsel argued that, with regard to the present matter, Cablevision failed to meet the statutory requirements. Rate Counsel asserted that there is no dispute that the Board issued a cease-and-desist Order on November 13, 2019, which was affirmed by the Supreme Court of New Jersey and the Appellate Division of the Superior Court of New Jersey, requiring Cablevision to refund the overage amount to each customer and provide proof of such refunds to the Board and Rate Counsel.⁶ Rate Counsel contended that there is no dispute that Cablevision has not done that and is accordingly in violation of the law. Rate Counsel argued that, given the passage of nine (9) months after a final order requiring refunds, the Board should have found Cablevision unable to meet the requirements of N.J.S.A. 48:5A-17(a) and N.J.S.A. 48:5A-28(c), denied the application for a franchise, and ultimately required an administrative hearing to resolve these issues.

Finally, Rate Counsel argued in its motion that Cablevision did not provide sufficient evidence to meet the requirements of N.J.S.A. 48:5A-28(c), as Cablevision’s application and subsequent submissions failed to provide sufficient evidence that the Company had the necessary qualifications to provide safe, adequate, and proper service.

⁶ In re the Alleged Failure of Altice USA, Inc. to Comply With Certain Provisions of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1, et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq., BPU Docket No. CS18121288, Order dated November 13, 2019 (“2019 Cease and Desist Order”).

Cablevision Opposition to Motion for Reconsideration

Cablevision filed a brief in opposition to Rate Counsel's Motion on April 12, 2024.

In opposition, Cablevision first argued that the Board did not make any errors of law or fact in its March 2024 Order because Cablevision timely provided the information required by New Jersey law for an application to renew a system-wide cable franchise, and the Board correctly concluded that Cablevision had met the applicable standards for renewal. Cablevision contended that its application and comments provided all information required by N.J.A.C. 14:18-14.18 and demonstrated material compliance with all obligations applicable to cable television franchises. Cablevision asserted that Rate Counsel's argument that the Board "failed to appreciate the lack of evidence presented by Cablevision that it had the legal, character and other qualifications required to obtain a system-wide franchise" is merely a restatement of Rate Counsel's arguments raised in connection with the March 2024 Order. Cablevision contended that the Board considered all evidence on the record which established its entitlement to a system-wide franchise.

Cablevision further argued that the Board's decision to accept additional information was permissible under N.J.A.C. 14:1-1.2(b) and therefore was not arbitrary and capricious. Cablevision contended that the Board is allowed by N.J.A.C. 14:1-1.2(b) to relax and permit deviations from its rules in the interest of fulfilling the general purpose and intent of these rules. Cablevision asserted that strict compliance with the five (5) day deadline would have required the Company to file a response within an hour of receiving Rate Counsel's arguments, as the Rate Counsel comments were filed on February 6, 2024 at 3:38 pm.

Finally, Cablevision argued that it has complied with the Board's 2019 Cease and Desist Order and that the Board correctly found that Cablevision is able to comply with the law. Cablevision asserted that it has updated its billing policies regarding termination of cable television service in compliance with the terms of the 2019 Cease and Desist Order and that it is engaging in discussions with Board Staff concerning implementation of the 2019 cease-and-desist Order's retroactive conditions. Cablevision contends that its records do not provide a basis for straightforward or accurate compliance with the retroactive conditions, specifically for identifying which customers may have been improperly billed and the respective amounts for the same. Cablevision argued that it has put forth multiple proposals to refund the purportedly affected customers.

Cablevision argued that the Board, after previously hearing the same arguments raised by Rate Counsel in its Motion, ultimately agreed with Cablevision. Cablevision noted that the Board's March 2024 Order stated, "[t]he Board's review of the application ensures that [Cablevision's] application satisfies the requirements set forth by the Legislature ... [Cablevision] has demonstrated that they have substantially complied with all of the requirements imposed by the relevant statutes and regulations."

Cablevision concluded by arguing that the Board analyzed the undisputed facts and the parties' arguments and came to a rational, correct conclusion based on the full record and that the Board's decision was the result of the record conclusively establishing Cablevision's entitlement to a system-wide franchise.

DISCUSSION AND FINDINGS

N.J.S.A. 48:2-40 expressly provides that the Board, at any time, may revoke or modify an order made by it. Twp. Of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 428 (1969); N.J.A.C. 14:17-9.6(b). Pursuant to N.J.A.C. 14:17-9.6(a), a motion for reconsideration of a proceeding may be filed by any party within fifteen (15) days after the issuance of any order by the Board. A motion for reconsideration shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation, or suspension of the action taken by the Board or other relief. N.J.A.C. 14:17-9.6(a)(1). Additionally, pursuant to N.J.A.C. 14:17-9.7(d), a party may request a stay of a decision or order of the Board upon a showing of good cause.

Generally, parties should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious, or unreasonable. D'Atria, 242 N.J. Super. at 401.

As the Board stated in its March 2024 Order, in the determination of whether to issue Cablevision a renewal of its System-wide Cable Television Franchise, and to add the Townships to its System-wide Cable Television Franchise, the Board may only consider that which is allowed by the State Cable Act, which provides, at N.J.S.A. 48:5A-16(f), that "[i]n determining whether a system-wide cable television franchise should be issued, the board shall consider only the requirements of sections 17 and 28 of P.L. 1972, c.186 (C. 48:5A-17 and C. 48:5A-28)."

N.J.S.A. 48:5A-17 permits the Board to issue a system-wide cable television franchise following its review of the application, when it finds the applicant has complied or is ready, willing and able to comply with all applicable rules and regulations imposed or pursuant to State or federal law as preconditions for providing cable television service. N.J.S.A. 48:5A-28 sets forth the elements in the application for a system-wide cable television franchise and the required commitments of a system-wide cable television franchise applicant. N.J.S.A. 48:5A-28(c), as identified by Rate Counsel in its Motion, requires each application for a system-wide franchise to contain "sufficient evidence that the applicant has the financial and technical capacity and the legal, character and other qualifications to construct, maintain and operate the necessary installations, lines and equipment and to provide the service proposed in a safe, adequate and proper manner."

Having considered the arguments raised in the instant motion for reconsideration, as well as the entire record in this matter, the Board **HEREBY FINDS** that it did not err in finding that Cablevision has complied or is ready to comply with all applicable rules and regulations imposed by or pursuant to State and federal law as preconditions for engaging in the proposed cable television operations, and that Cablevision has sufficient financial and technical capacity meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment, and is capable of providing the proposed service in a safe, adequate and proper manner.

First, the Board **HEREBY FINDS** that it did not err in its March 2024 Order in finding that Cablevision satisfied the provisions of N.J.S.A. 48:5A-28(c), as the record in this matter contains sufficient evidence to establish that Cablevision possesses the legal character and other

qualifications to construct, maintain and operate the necessary installations, lines, and equipment and to provide the service proposed in a safe, adequate, and proper manner.

As noted in the Report, Cablevision demonstrated the ability to successfully construct, maintain and operate the necessary installations, lines, and equipment to provide the service proposed in a safe, adequate, and proper manner. Cablevision submitted a complete application for renewal of its system-wide franchise, provided supplemental information to the application as requested by Board Staff, provided detailed service area maps for all townships served under the system, and detailed its plans for buildout of its system in the Townships. Further, each township within the Oakland franchise, including the newly added Townships, provided consent for Cablevision to place its equipment and lines over their rights of way. Additionally, no members of the public or elected officials of any township within the Oakland system raised objection to renewal of the Cablevision of Oakland Franchise, which in and of itself evidences Cablevision's ability to successfully construct, maintain and operate the necessary installations, lines, and equipment to provide the service proposed in a safe, adequate, and proper manner to all townships it serves under the Oakland system.

The established record contains no evidence suggesting that Cablevision is incapable of constructing, maintaining and operating the necessary installations, lines, and equipment necessary to serve each town under its system-wide franchise. Further, no arguments have been raised in connection with these system-wide franchise proceedings to suggest that Cablevision failed to adequately construct, maintain and operate the necessary installations, lines, and equipment necessary to provide service. The Report issued by the Board concluded that Cablevision provided service to each township under the Oakland franchise in a safe, adequate, and proper manner.

The Board **HEREBY FINDS** that it did not err in its March 2024 Order in concluding that Cablevision satisfied the provisions of N.J.S.A. 48:5A-17, as the record contains sufficient evidence to suggest that Cablevision is ready, willing and able to comply with all applicable rules and regulations imposed or pursuant to State or federal law as preconditions for providing cable television service. As noted in its March 2024 Order, the Board considered Rate Counsel's comments recommending that the Board deny the application subject to certain conditions outside of the parameters of the statutory review (N.J.S.A. 48:5A-17 and N.J.S.A. 48:5A-28) or beyond the scope of the review required by the same. In the instant motion, Rate Counsel has not identified any other instances to suggest that Cablevision is neither willing nor able to comply with all applicable rules and regulations imposed or pursuant to State or federal law as preconditions for cable television service.

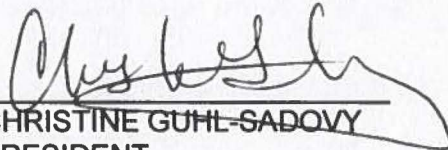
Finally, the Board **HEREBY FINDS** that, in light of its instant findings with respect to 48:5A-16(f), which considered the substantive arguments raised by Rate Counsel in response to Altice's comments filed outside the parameters established at N.J.A.C. 14:18-14.7, that reconsideration is unwarranted solely on the grounds that Cablevision submitted additional information outside the permitted timeframe.

Accordingly, Rate Counsel's Motion is **HEREBY DENIED** in its entirety.

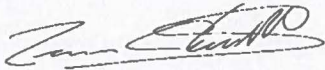
This Order shall be effective on July 31, 2024.

DATED: July 24, 2024

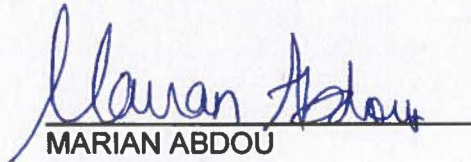
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ATTEST:



SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE APPLICATION FOR RENEWAL OF A SYSTEM-WIDE CABLE
TELEVISION FRANCHISE FOR CABLEVISION OF OAKLAND, LLC

DOCKET NO. CE23120919

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