



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

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 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.)

ORDER

DOCKET NO. CS18121288

Parties of Record:

Paul Jamieson, Esq., Vice President, Government Affairs and Policy, Altice USA, Inc.
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Through this order the New Jersey Board of Public Utilities (“BPU” or “Board”), pursuant to an order of the Supreme Court of New Jersey¹ (“Supreme Court”), reinstates its November 13, 2019 Cease and Desist Order (“Cease and Desist Order”)² issued in the matter herein. Accordingly, Altice USA, Inc. (“Altice” or “the Company”) must comply with the requirements set forth therein and as clarified below.

BACKGROUND & PROCEDURAL HISTORY

Altice, formerly Cablevision Systems Corporation (“Cablevision”), owns and operates numerous cable television systems, as defined at N.J.S.A. 48:5A-3(d), in New Jersey, pursuant to applicable State and federal law, and such cable systems provide cable television services to customers in the State of New Jersey. Altice is subject to the jurisdiction of the Board and the Office of Cable

¹ 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., 253 N.J. 406 (2023).

² 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 et seq. BPU Docket Number CS18121288, Order dated November 13, 2019.

Television and Telecommunications ("OCTV&T") within the Board, pursuant to the provisions of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 to 64, and the New Jersey Administrative Code, N.J.A.C. 14:17-1.1 to 11.4, and N.J.A.C. 14:18-1.1 to 16.8.

The Board has been granted general power, authority and jurisdiction to receive or initiate complaints of the alleged violation of any provisions of N.J.S.A. 48:5A-1 to 64 or of any of the rules and regulations made pursuant thereto or the terms and conditions of any municipal consent or franchise granted pursuant thereto. Additionally, the Board, pursuant to N.J.S.A. 48:5A-9, is vested with the authority to supervise and regulate every cable television company operating within this State and its property, property rights, equipment, facilities, contracts, certificates, and franchises and to do all things necessary or convenient in the exercise of such power and authority.

In October 2016, Altice issued a bill notice to customers indicating they would no longer prorate customer bills as required pursuant to N.J.A.C. 14:18-3.8. Staff notified Altice that its actions were inconsistent with the Board rules. Following the change in Company policy in October 2016, Board Staff received over 100 inquiries/complaints from customers regarding charges incurred for services no longer rendered after termination.

On December 18, 2018, the Board issued an Order to Show Cause³ against Altice seeking a response as to why its failure to prorate customer bills should not immediately be discontinued, and why the Board should not find Altice's actions for failure to properly prorate customer bills from the period of October 2016 onward to constitute a violation of the Board's Rule Relief Order,⁴ and the Board's Merger Order,⁵ and why the Board should not issue a penalty for Altice's failure to comply with the Rule Relief Order and the Merger Order and issue refunds⁶ to all customers that have been impacted by Altice's failure to properly prorate customer bills.

On November 13, 2019 the Board issued the Cease and Desist Order, which concluded that Altice had violated the statutes and must cease and desist so doing and ordered, among other things, an audit, refunds and a contribution to Altice's low-income internet access program. Thereafter, on November 26, 2019 Altice filed an appeal of the Board's Cease and Desist Order in the Superior Court of New Jersey Appellate Division ("Appellate Division"). That same day, Altice filed a Motion for a Stay of the Cease and Desist Order with the Board.

On December 13, 2019, Altice sought an Order to Show Cause, a preliminary injunction and a temporary restraining order to prevent the Board from enforcing the Cease and Desist Order in the U.S. District Court in the District of New Jersey.

³ 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 Number CS18121288, Order dated December 18, 2018 ("Order to Show Cause").

⁴ In re the Petition of Cablevision Systems Corporation for Relief Pursuant to N.J.A.C. 14:18-16.7, BPU Docket Number CO11050279, (Order dated September 22, 2011) ("Rule Relief Order")

⁵ In re the Verified Joint Petition of Altice N.V. and Cablevision Systems Corporation and Cablevision Cable Entities for Approval to Transfer Control of Cablevision Cable Entities, BPU Docket Number CM15111255, Order dated May 25, 2016 ("Merger Order").

⁶ The Board is authorized to order refunds to subscribers for overcharges, such as here where the Company has charged customers for service they did not receive. See 47 C.F.R. § 76.942(a).

The Board denied the Motion for a Stay by order dated December 20, 2019.

Subsequently, following issuance of the Order to Show Cause and the Board executing its Cease and Desist Order in 2019, Altice initiated the above referenced series of appeals challenging the Board's regulation "requiring cable companies to refund or not charge customers who cancel cable service before the end of a billing cycle for service after the date of cancellation."⁷ At the conclusion of several rounds of litigation, on April 3, 2023, the Supreme Court issued its decision which upheld the Board's regulation, finding that "Section 543(a)(1) of the Cable Act does not preempt the proration requirement in N.J.A.C. 14:18-3.8. The regulation does not 'regulate rates for the provision of cable service,' but rather prevents cable companies from charging for cable service that customers have cancelled."⁸ The Supreme Court reinstated the BPU's Cease and Desist Order and remanded to the Appellate Division the issue of whether or not the BPU failed to properly adhere to procedures in its enforcement action.⁹ On June 30, 2023, the Appellate Division, on remand from the Supreme Court, held "the BPU followed proper procedures in its enforcement action against Altice."¹⁰ Therein the Appellate Division found that customer refunds should be calculated as of December 18, 2018, the date of the BPU's Order to Show Cause.¹¹

On July 18, 2024, Altice filed with the Board a "Notice of Compliance with the BPU 2019 Cease and Desist Order/Further Offer to Benefit Optimum NJ Customers." Therein, Altice summarized its understanding of the Cease and Desist Order obligations. The Company represented that, following the Supreme Court's ruling, it modified its billing practices, thereby leaving two remaining obligations under the order - refunding improperly billed customers the overage amount and providing a \$10,000 payment to support low income broadband in the State.

The Company, in its filing, remitted a check in the amount of \$10,000 to the State Treasurer for the purpose of supporting broadband in the State. However, with respect to the refunds, Altice expressed that "[m]ethodological limits on available data have challenged strict implementation [of the Cease and Desist Order]." In sum, the Company indicated that "billing records for that time period generally contain the date that the customer called to terminate cable service, and the last date of his/her billing cycle, but not the date the customer *wanted* to be disconnected." Altice further stated that its "billing records do not allow a determination of exactly who was 'improperly billed' or by how *much*." Therefore, Altice proposed an alternative compliance plan in its submission.

DISCUSSION AND FINDINGS

Pursuant to the above stated rulings, the Board properly exercised its authority over Altice in issuing the Cease and Desist Order upon its determination that Altice failed to prorate customer bills in accordance with N.J.A.C. 14:18-3.8(d), which provides "if a cable television company electronically disconnects or otherwise curtails, interrupts or discontinues all or a portion of the customer's services for non-payment of a valid bill or for other reasons provided under 14:18-4.3,

⁷ In re Alleged Failure of Altice USA, Inc., 253 N.J. 406, 410.

⁸ Id. at 411.

⁹ Id.

¹⁰ 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., Docket No. A-1269-19, 2023 N.J. Super. Unpub. LEXIS 1137, *2 (App. Div. June 30, 2023).

¹¹ Id. at *8, n.4.

the cable television company shall prorate the charges for all affected services as of the date of the electronic service curtailment, interruption or disconnection.”

As noted above, following Altice’s appeal of the Cease and Desist Order, the Order was affirmed by the Supreme Court on April 3, 2023, and the Appellate Division following remand from the Supreme Court on June 30, 2023. In its decision, the Supreme Court’s holding denied Altice’s argument that the proration requirement at N.J.A.C. 14:18-3.8 regulates Altice’s cable rates, and found that the regulation is not preempted by federal law.¹² Additionally, the Court found that the Board’s 2011 relief order and the 2016 Merger Order did not excuse Altice from complying with the proration requirement at N.J.A.C. 14:18-3.8.¹³ In the Appellate Division’s Order on remand, the Court held: “[a]s part of its obligation to protect aggrieved cable television consumers from unfair or destructive practices, the BPU had the statutory authority to pursue the enforcement action despite the passage of more than ninety days after receiving notice of violation and more than the 180-day period for resolving the enforcement matter.”¹⁴ As such, following the Appellate Division’s holding, the Cease and Desist Order, and all terms contained therein, were reinstated in their entirety.

The Cease and Desist Order required Altice to:

- (1) immediately Cease and Desist from its failure to comply with existing rules that require Altice to prorate monthly bills upon inception and termination of service;
- (2) within sixty (60) days of the Cease and Desist Order, issue refunds to each customer affected by the Company's failure to prorate charges for partial billing cycles upon inception and/or termination of service from the time the Company discontinued prorated billing in 2016;
- (3) remit a one-time non-recoverable contribution totaling \$10,000 toward the Altice Advantage Internet program to provide low cost internet service to New Jersey customers who are eligible for or participate in the National School Lunch Program (NSLP); or eligible for or receive Supplemental Security Income (SSI) and are 65 years of age or older; or a veteran and receives State or federal public assistance (Altice was required to submit a certification within thirty (30) days of the Cease and Desist Order to demonstrate the accounting of the contribution);
- (4) conduct an audit of its customer billing records from the date the Company ceased proration of customer bills for initiation and termination of service, in October 2016, and to report to the Board the names and account numbers of all customers who were improperly billed and the amount each customer was improperly billed due to the Company's failure to prorate, within thirty (30) days of the effective date of the Cease and Desist Order; and
- (5) within thirty (30) days of the completion of Board Staff’s review of the audit submitted, refund the overage amount to each customer and provide proof of such refunds to the Board and Rate Counsel, by way of certification attaching a sample bill showing either a credit toward a future bill, in the case of an existing customer, or a check to a former customer in the total amount of the appropriate refund.

Notwithstanding the reinstatement of the Cease and Desist Order, the Board notes that the Appellate Division found that customer refunds should be calculated as of December 18, 2018, the date of the BPU’s Order to Show Cause, rather than the October 2016 date provided in the Cease and Desist Order.

¹² In re Alleged Failure of Altice USA, Inc., 253 N.J. 406, 410.

¹³ Id.

¹⁴ In re Altice USA, Inc., 2023 N.J. Super. Unpub. LEXIS 1137, *13.

Having reviewed Altice's July 18, 2024 filing, the Board **FINDS** that in order to fully implement the conditions of the Cease and Desist Order and to properly consider the appropriateness of the proposal, the Board, consistent with the terms and conditions of the Cease and Desist Order is requiring an audit, by an independent consultant, of Altice's billing records to determine the adequacy of Altice's billing records to identify improperly billed customers dating to the December 18, 2018 Cease and Desist Order, and the overages attendant to each customer who falls within that classification.

The Company, in its filing, remitted a check in the amount of \$10,000 to the State Treasurer for the purpose of supporting broadband in the State. The terms of the Cease and Desist Order however, requires the following:

Altice shall remit a one-time non-recoverable contribution totaling \$10,000 toward the Altice Advantage Internet program to provide low cost Internet service to New Jersey customers who are eligible for or participate in the National School Lunch Program; or eligible for or receive Supplemental Security Income and are 65 years of age or older; or a veteran and receives State or federal public assistance.

The order further requires that the Company "file a certification within 30 days of the effective date of the order demonstrating the accounting of the \$10,000 one-time non-recoverable contribution toward the Altice Advantage program."

Accordingly, the check submitted in the amount of \$10,000 will be transmitted back to Altice, and Altice is instructed to follow the requirements noted in the Cease and Desist Order as set forth above.

Accordingly, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 14:8-3.8(d), the Rule Relief Order, and the 2016 Merger Order, and pursuant to the above referenced holdings of the Supreme Court and the Appellate Division ("the Courts"), that the Board is within its authority to reinstate the Cease and Desist Order against Altice, with the clarifications as noted below consistent with the Court's holdings.

As such, Altice is **HEREBY ORDERED** to:

(1) within sixty (60) days of the effective date of this Order, conduct an audit of its customer billing records from December 18, 2018, the date of the Board's Order to Show Cause to the present, including the names and account numbers of all customers who were improperly billed and the amount each customer was improperly billed due to the Company's failure to prorate; the audit shall be conducted by an independent consultant that shall be retained by the Company to review the billing records of the Company; the data collected should be submitted in excel spreadsheet format listing the information outlined above and submitted to the Secretary of the Board. Fees for the said services shall be borne by Altice. In order to ensure timely compliance with the audit requirements, Board approval of the selected consulting firm is not required prior to commencement. The Company shall simultaneously file with the Board a summary of the results of the independent audit, including total number of customers, total refund amount, a breakdown of whether those customers are existing or former customers, as well as a certification verifying the same.

(2) within sixty (60) days of the completion of Board Staff's review of the audit, the completion of which to be determined by Board Staff, refund the overage amount to each customer and provide proof of such refunds to the Board and Rate Counsel, by way of certification, attaching a sample bill showing a credit toward a future bill, in the case of an existing customer; or a refund check was issued to the former Altice customer and that funds were accepted in the event the consumer is no longer a customer of Altice;

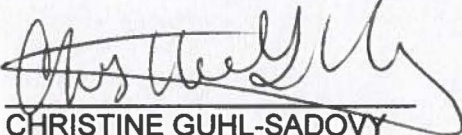
(3) within thirty (30) days of the effective date of this Order, remit a one-time non-recoverable contribution totaling \$10,000 toward the Altice Advantage Internet program to provide low cost internet service to New Jersey customers who are eligible for or participate in the National School Lunch Program (NSLP); or eligible for or receive Supplemental Security Income (SSI) and are 65 years of age or older; or a veteran and receives State or federal public assistance; and


(4) within thirty (30) days of the effective date of this Order, Altice must file a certification demonstrating the accounting of the \$10,000 one-time non-recoverable contribution toward the Altice Advantage program.

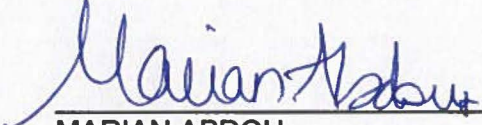
This Order shall be effective on July 31, 2024.

DATED: July 24, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRIL 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 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.

DOCKET NO. CS18121288

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