



STATE OF NEW JERSEY
Board of Public Utilities
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OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF REQUESTS FOR AN)
INVESTIGATION INTO THE OPERATIONS OF)
ALTICE USA IN NEW JERSEY)
)
) DOCKET NO. CX21020139

Parties of Record:

- Brian Lipman, Director, New Jersey Division of Rate Counsel
Laura M. Miller, Esq., Norris McLaughlin P.A., on behalf of Altice USA, Inc.
Elissa Grodd Schragger, Esq., Director of Law and Township Attorney, Township of Hamilton
Ronald A. Berutti, Esq., Weiner Law Group, LLP, on behalf of the Borough of Sayreville
Dawn M. Sullivan, Esq., Dorsey & Semrau, on behalf of the Township of West Milford
Anthony R. Francioso, Esq., Fornaro Francioso LLC, on behalf of the Township of Robbinsville
Gerard Lederer, Esq., Best Best & Kriegler LLP, on behalf of the Township of Piscataway
Jean L. Cipriani, Esq., Rothstein, Mandell, Strohm, Halm & Cipriani, P.A., on behalf of the Boroughs of Seaside Heights and Seaside Park
Fred Semrau, Esq., Dorsey & Semrau, on behalf of the Township of Montville
Gregory P. McGuckin, Esq., Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, on behalf of the Township of Toms River
Andrew Bayer, Esq., Pashman Stein Walder Hayden, PC, on behalf of the Township of Howell

BY COMMISSIONER HOLDEN:

BACKGROUND AND PROCEDURAL HISTORY

On February 17, 2021, the Board of Public Utilities ("Board") initiated an investigation into the adequacy of service provided by Altice USA Inc. ("Altice" or "Company"). The case commenced after the Board and the Office of Cable Television and Telecommunications ("OCTV&T") received

numerous complaints and inquiries from at least ten (10) municipalities¹ and several State legislators concerning various issues their residents and constituents are experiencing regarding the service provided by Altice including but not limited to frequent and lengthy service disruptions (across all services), inconsistent connections and fluctuating Internet speeds, long telephone wait times, poor customer service, and an inability to receive satisfactory responses to these complaints from the Company both before and after the COVID-19 pandemic. Both the customers and municipal representatives collectively maintain that Altice failed in its duty to provide safe, adequate and, proper service to their residents.

Based upon a review of the complaints received, and the concerns raised by multiple municipal officials, the Board conducted a public hearing on March 16, 2021 and thereafter, issued an Order on April 27, 2021, seeking information from Altice concerning the Company's network resiliency, expansion efforts, customer care, low income broadband offerings, free broadband, low cost broadband, and technology initiatives. Upon receipt of the responses from Altice on May 27, 2021, Board Staff commenced a review and analysis of the aforementioned data.

In a separate request, on August 24, 2021, the Township of Montville ("Montville" or "Township") submitted a letter to Altice informing them that Montville had engaged in a technical review of the Altice system within Montville and had employed the services of CBG Communications Inc. ("CBG"). Montville requested information be submitted to CBG regarding compliance with the franchise agreement between Montville and Altice.

On September 21, 2021, Staff served a second set of data requests which was responded to by Altice on October 15, 2021. In addition, an Agreement of Non-Disclosure ("NDA") was circulated by the Division of Law to the parties to facilitate the exchange of confidential information in this matter². On November 2, 2021, Altice supplemented its initial reply to Staff's data requests submitted on October 15, 2021. Thereafter on November 3, 2021, the Division of Rate Counsel ("Rate Counsel") issued discovery to Altice. On November 18, 2021, Altice responded to Rate Counsel's initial discovery request. Thereafter, Rate Counsel issued a second round of discovery to Altice that was responded to on December 6, 2021.

A Motion to Compel ("Motion") was filed by Montville on November 5, 2021, seeking an order from the Board compelling Altice provide access to all confidential information to its expert, CBG Communications, to compel non-proprietary information including but not limited to the information requested in its August 24th letter, and immediately produce outage reports for October and all complaint logs as to Montville.

On November 18, 2021 Altice filed an Opposition to Montville's Motion, and Montville filed Reply Comments to Altice's Response on December 3, 2021. A status conference was held on December 6, 2021 wherein outstanding discovery issues as well as other various concerns related to the matter were discussed by the parties of record.

¹ Boroughs of Dunellen and Sayreville, and the Townships of Green Brook, Hamilton, Howell, Jackson, Montville, North Brunswick, Piscataway, and Robbinsville.

² The Staff of the Board of Public Utilities, Rate Counsel, Fred Semrau, Esq., and Dawn M. Sullivan, Esq. on behalf of the Township of Montville, Gregory P. McGuckin, Esq. on behalf of the Township of Toms River, Gerard Lederer, Esq. on behalf of the Township of Piscataway, Elissa Grodd Schragger, Esq., on behalf of Township of Hamilton, Jean L. Cipriani, Esq. on behalf of the Boroughs of Seaside Heights and Seaside Park, Andrew Bayer, Esq. on behalf of the Township of Howell have entered into an Agreement of Non-Disclosure of Information Agreed to be Confidential.

MOTION:

Township of Montville Motion to Compel

In its motion filed on November 5, 2021, Montville asserted that Altice denied requests that confidential information be shared with CBG; did not disclose its buildout plans for the Township; and did not comply with requests for other data. Therefore, Montville motioned that the Board compel Altice to allow CBG to review the confidential information submitted and all non-proprietary information including but not limited to customer complaint logs, technical information and other responsive information requested in the motion. Montville argued that CBG should be provided the requested data as the expert agent of the Township. Montville contends the NDA signed by the Township extends to CBG. Montville asserted that the retention of the expert CBG was for the purpose of reviewing the documents discussed and therefore is entitled to: confidential discovery; documentation regarding the Township noted in the August 24th letter and outage reports, inclusive of complaint logs.

Altice, in its response to the motion argued it supplied Montville with unredacted copies of its responses consistent with the NDA approved by the New Jersey Attorney General's Office ("AG's Office") which governs the process in that matter, and to which Montville, along with the other municipalities involved in this matter, was a signatory. The additional information Montville seeks, Altice contended, is municipality specific and outside the scope of this proceeding. The information sought by Montville is characterized by Altice as independent of the case at hand and constitutes a "mini investigation" and inhibits the goal of the proceeding. Altice further stated that their representatives have met with the Township on several occasions to address issues relating to the service provided to Montville residents. The issues raised by Montville, Altice proffered, were addressed in said meetings, namely, Fiber to the Home build out data, complaint data, and responses to the Board's information requests in addition to providing NJ Cable Facts information and outage report data.

Regarding the NDA and CBG, Altice indicated that Montville's arguments lack merit and the motion should be denied. The NDA, Altice expressed, was approved by the Office of the Attorney General and limits the scope of access to counsel representing the municipalities who are parties to the case. Further, the information sought is beyond the scope of the pending proceeding as noted by the Office of the Attorney General.

Altice's response to Montville's motion rested on the terms and conditions of the NDA set forth below:

Section 6 – NDA:

"With respect to all Information Claimed to be Confidential, it is further agreed that: 9a) access to the documents designed as Confidential Information and the information contained therein, shall be limited to (i) the Party signatories to this Agreement, (ii) Board Staff or Rate Counsel's identified attorneys, employees and consultants and (iii) the chief elected official of each municipal Intervener or Participant, whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding."

According to the above, to date, Altice contended, they have complied with the NDA. Lastly, in the interest of expediency and efficiency, Altice averred the Board should deny the motion.

In its response to Altice's opposition, Montville argued Altice has not been as "transparent" or "engaged" in the process as it has represented in its filings. Moreover, pursuant to N.J.S.A. 48:5A-36, Altice like other cable providers has a duty to provide safe, adequate and proper service. Further, Montville refuted Altice's contention that the release of "purportedly confidential" information to CBG subverts state law and argued such basic information as requested should be disclosed. Montville alleged that the Township complaints speak for themselves as evidence of a breach of duty under N.J.S.A. 48:5A-36 and past settlements with the Board.

In sum, Montville contended that the information sought is a part of the current matter before the Board and serves to add to the investigation rather than delay the process and therefore they should be allowed to receive the data requested.

DISCUSSION

Regarding the Motion to Compel filed by Montville, discovery before an agency such as the Board is controlled by the Uniform Administrative Procedure Rules, specifically N.J.A.C. 1:1-10.1 et seq. The purpose of discovery, as set out by N.J.A.C. 1:1-10.1 is to provide litigants access to "facts which tend to support or undermine their position or that of their adversary." Discovery is appropriate "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," N.J.A.C. 1:1-10.1(b) and the test for the judge in reviewing a discovery motion requires the judge to "weigh specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness," N.J.A.C. 1:1-10.1(c).

Additionally, pursuant to the NDA executed by the parties to this matter Section 6(b) states in relevant part

"All non-signatories to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgement of Agreement attached hereto as "Attachment 1", which executed Acknowledgement of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and Rate Counsel."

Thus far, Board Staff has received copy of executed 'Acknowledgement of Agreement' from retained consultants and experts of Rate Counsel. Montville's assertion that the NDA signed by the Township extends to CBG automatically is incorrect and is explicitly in contrast to the NDA executed by representatives for Montville.

The Board's Order initiating this investigation articulated the intent to assess the service provided by Altice throughout its entire service territory. The goal of the investigation is to evaluate the quality and overall provisioning of service provided. While several towns sought and were granted participation and intervention status,³ the focus of the investigation remained constant: an understanding of the level of service being provided statewide and what measures are needed to ensure the provisioning of safe, adequate and proper service.

³ By Order dated March 15, 2021 issued by Presiding BPU Commissioner Mary-Anna Holden, the Townships of Robbinsville, Hamilton, Montville, and Howell, and the Boroughs of Seaside Heights and Seaside Park were granted intervenor status, and the Townships of West Milford, Piscataway, and Toms River, and the Borough of Sayreville were granted participant status.

Thus, to tailor the focus to an individual municipality would not be prudent or serve the State and is outside the scope of the present investigation Notwithstanding, any municipality served by Altice can seek information from the company through an independent investigation to determine if the service provided is consistent with their franchise agreement.

Therefore, I **HEREBY FIND** that the additional discovery requests of Montville are limited to the service provided to the Township. The franchise specific data requested by Montville, while germane to the issue of compliance with the franchise agreement entered into by the Township with Altice, shifts the broad focus of this investigation and can unduly delay the overall proceeding. Accordingly the motion to compel filed by Montville is **HEREBY DENIED**.

With respect to the disclosure of data responses exchanged between the parties, after consideration of the papers and the arguments contained therein, I **HEREBY FIND**, regarding Staff's data requests, the information both proprietary and non-proprietary has been made available to the signatories of the NDA consistent with the terms of the agreement. Release to non-signatories is inconsistent with the agreement and is therefore **DENIED**.

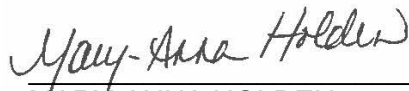
Regarding the progress of the case, I have reviewed the procedural schedule set forth in Exhibit A attached hereto which was discussed at the status conference conducted by Staff on December 6, 2021 and agreed upon by Staff, Rate Counsel and the parties in attendance and **HEREBY ISSUE** the following Procedural Schedule identified as Exhibit A, attached to this order and **HEREBY DIRECT** the parties to comply with said schedule.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

This Order shall be effective on December 17, 2021.

DATED: December 17, 2021

BY:



MARY-ANNA HOLDEN
COMMISSIONER

Exhibit A

Procedural Schedule

Discovery deadline	January 12, 2022
Status Conference	January 25, 2022
Settlement Conference	March 2, 2022
Pre filed Testimony	T/B/D (if necessary)
Discovery on Testimony	T/B/D (if necessary)
Hearing	T/B/D (if necessary)
Initial and Reply Briefs	T/B/D (if necessary)

**IN THE MATTER OF REQUESTS FOR AN INVESTIGATION INTO THE OPERATIONS OF
ALTICE USA IN NEW JERSEY**

BPU DOCKET NO. CX21020139

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