



Agenda Date: 8/16/23  
Agenda Item: 3A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE  
TELEVISION AND  
TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF )  
CSC TKR, LLC )

V. )

BOROUGH OF MADISON, NEW JERSEY )

ORDER DENYING MOTION FOR  
RECONSIDERATION

DOCKET NO. CC23030139

**Parties of Record:**

**Vaughn Parchment, Esq.**, CSC TKR, LLC  
**Ronald Kavanagh, Esq.**, Borough Attorney, Borough of Madison

BY THE BOARD:

**BACKGROUND:**

CSC TKR, LLC, a wholly owned subsidiary of Altice USA (“Petitioner”, “Altice” or “Company”) provides cable television services to the residents of the Borough of Madison (“Borough”) pursuant to a system-wide cable television franchise agreement issued by the New Jersey Board of Public Utilities (“Board”) in Docket No. CE10010024 on September 16, 2010. Altice’s franchise to provide cable television services in the Borough was renewed by the Board on February 22, 2017 in Docket No. CE16090920. Altice’s franchise in the Borough is scheduled to expire on January 10, 2024. Altice, through their predecessors, has had plant and equipment throughout the Borough and access to the Borough’s utility poles without dispute since the company, through its predecessors, was issued its first Certificate of Approval to provide cable service in Madison in 1974.

On October 9, 1950, the Borough and New Jersey Bell (“NJ Bell”), a telephone company in the State of New Jersey, entered into a Joint Use Agreement governing NJ Bell’s exclusive right to manage the Borough’s poles (“Joint Use Agreement”). Pursuant to the Joint Use Agreement, Verizon (NJ Bell’s successor) collects all pole attachment fees from third parties who utilize the Borough’s poles. Section 7 of the Joint Use Agreement provides that third parties may utilize the Borough’s poles upon the consent of the Borough and Verizon. Altice currently pays Verizon pole attachment fees to use the Borough’s utility poles and has done so since the grant of the original Certificate of Approval in 1974. The Joint Use Agreement is set to expire on October 13, 2023.

In November 2021, shortly after Altice commenced aerial cabling of Fiber-to-the-Home (“FTTH”) in the Borough, the Borough’s police department communicated to Altice’s service technicians that they were no longer permitted to conduct any activity within the highways of the Borough. Altice has accordingly been unable to conduct routine maintenance for the existing plant on the Borough’s poles since that time.

On March 14, 2023, Altice filed a petition with the Board, pursuant to N.J.S.A. 48:5A-9, seeking relief from the Board following the Borough’s alleged denial of Altice’s access to their plant in the Borough (“Petition”). In the Petition, Altice requested that the Board issue an order ruling that the Borough: 1) immediately cease its demand that Petitioner pay additional compensation, over and above the cable service franchise fee, in consideration for receiving access to the cable television system in the Borough; and 2) grant Petitioner the ability to immediately commence deployment of its FTTH cable television system and perform regular maintenance and servicing as needed to the cable television system located in the Borough. Altice did not seek permission from the Board to add any new pole attachments.

On April 3, 2023, the Borough filed an answer to the Petition acknowledging that, as the holder of a system-wide franchise, Altice could access the right-of-way to construct a cable system. The Borough argued, however, that the system-wide franchise only permitted Altice to access the right-of-way, asserting that “Altice is free to access the right-of-way to construct its own infrastructure in that space. If Altice seeks to utilize the Borough’s poles, however, an attachment fee is warranted.”

On April 27, 2023, Altice filed a motion for partial summary decision with the Board, seeking confirmation that Altice’s existing cable television franchise gave it a right to access all “highways” of the Borough [as defined in N.J.S.A. 48:5A-3(h)], and that such right authorized Altice to deploy the FTTH cable system by overlashing fiber-optic cable to its existing cable system within the Borough and to perform regular maintenance and servicing as needed for both its Hybrid Fiber-Coax (“HFC”) and FTTH cable systems. The Borough opposed the motion, asserting that it is a municipal electric utility which is not under the jurisdiction of the Board and that the appropriate forum for this matter is the Office of Administrative Law (“OAL”). The Borough argued that Altice’s motion was premature until the Board established its jurisdiction.

By Order dated June 29, 2023, the Board found that it has subject matter jurisdiction over the matter as the State’s cable franchising authority pursuant to the Cable Television Act because it is statutorily empowered to adjudicate pole attachment disputes.<sup>1</sup> The June 2023 Order permitted Altice to re-access its own plant and equipment that has existed in the Borough since the initial franchise of 1974, to maintain its current plant and equipment, and deploy its FTTH system. With respect to the outstanding issue concerning the payment of money from Altice to the Borough regarding attachment fees, the Board ordered that the Petition be transmitted to the OAL for hearing as a contested case.

On July 5, 2023, the Borough filed the present motion for reconsideration and to stay the June 29, 2023 order.

On July 6, 2023, the Borough filed an Application for Permission to File an Emergent Motion with the Superior Court of New Jersey - Appellate Division (“Court”). The Application was granted the

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<sup>1</sup> In re the Verified Petition of CSC TKR, LLC, v. Borough of Madison, New Jersey, BPU Docket No. CC23030139, Order dated June 29, 2023 (“June 2023 Order”).

same day and the Borough was permitted to file a Motion for Leave to Appeal the June 2023 Order and for a stay. Altice filed opposition to the Motion for Leave to Appeal. The Board filed a letter brief in support of its position. On July 12, 2023, the Court denied the Borough's Motion for Leave to Appeal, vacated the stay imposed in the July 6, 2023 order and remanded the matter back to the Board.

On July 21, 2023, Altice filed a letter with the Board indicating that the Borough was denying the Company access to its own plant and equipment in the Borough, in contravention of the Board's June 29, 2023 order. On July 25, 2023, Altice filed an Order to Show Cause with the Superior Court of New Jersey, Chancery Division, in Morris County. On July, 28, 2023, Judge Frank J. DeAngelis issued an Order requiring the Borough to appear on August 24, 2023, implementing temporary restraints against the Borough until that time enjoining them from denying Altice access to its plant, and requiring responsive filings from Altice and the Borough on August 11 and August 14. The court also requested papers be submitted by the Attorney General's Office with respect to the application by August 14, 2023. The Attorney General's Office provided notice to the Court of the Borough's pending Motion for Reconsideration to be considered at the Board's August 16, 2023 Agenda Meeting.

#### Motion for Reconsideration

On July 5, 2023, the Borough filed the instant motion for reconsideration before the Board. Altice filed a response to the motion on July 17, 2023. The Borough filed a reply on July 24, 2023.

In its motion, the Borough argued that the Board erred in finding that it has jurisdiction over this matter because the Borough of Madison Electric Utility is not subject to the regulation or jurisdiction of the Board, pursuant to N.J.S.A. 48:2-13. The Borough contended that N.J.S.A. 48:2-13 cannot be used to infer that the Board has general jurisdiction over municipal corporations. The Borough further argued that the Board erred in finding that it has subject matter jurisdiction over this matter as the State's cable franchising authority, as the express language of N.J.S.A. 48:5A-20 and N.J.S.A. 48:5A-21 pertain only to poles owned by public utilities. The Borough asserted that the Board's authority to adjudicate pole attachment disputes is limited to the extent that rates are subject to the Board's jurisdiction, which it does not exercise over the Borough.

The Borough further argued that, assuming the Board has jurisdiction, the Board erred in finding that the prior municipal consent ordinances and the system-wide franchise give Altice the authority to utilize the Borough's utility poles. The Borough contended that the Board ignored the fact that the Joint Use Agreement expressly requires that attachments of another party shall be made only with the approval of both parties to the Agreement, as the Borough has never given Altice or any other third party approval to attach equipment to its utility poles. The Borough argued that, under the system-wide franchise, Altice is free to access the right-of-way to construct its own infrastructure in that space – which is the only right that the system-wide franchise grants Altice.

Finally, the Borough requested that the Board grant a stay of the Board's order until a ruling has been made on the Borough's motion for reconsideration, pursuant to good cause having been shown.

In response to the Borough's motion, Altice first argued that the motion should be denied for failure to comply with N.J.A.C. 14:17-9.6 because, in contravention of the rule, the Borough did not list separately numbered paragraphs in its submission that specifically outline the errors of law or fact that the motion is based upon.

Altice further argued that the instant motion should be denied because none of the Borough's arguments change any of the undisputed material facts or invalidate any legal conclusions as found by the Board in its June 2023 Order. Altice contended that the Borough selectively quoted the statutory authority relied upon by the Board in granting the prior motion for partial summary decision. Specifically, Altice asserted that the Borough's arguments failed to account for N.J.S.A. 48:5A-20(a), which confers upon the Board the power to provide prior approval for construction and maintenance of Cable Television ("CATV") systems in New Jersey. Altice argued that, additionally, the Borough selectively quoted N.J.S.A. 48:5A-21 to better suit its argument. Altice asserted that the Borough's arguments exclude the first sentence of N.J.S.A. 48:5A-21, which provides "[u]pon the prior approval of the board, any person may lease or rent or otherwise make available facilities or rights-of-way, including pole space, to a CATV company for the redistribution of television signals to or toward the customers or subscribers of such CATV company." Altice contended that this language of the statute makes clear that the Board has authority over situations in which "any person" has leased, rented, or otherwise made available facilities or rights of way to a CATV company – extending the statute's applicability beyond public utilities. Altice further noted that the Borough did not comment on the Board's reliance upon N.J.A.C. 14:18-2.9, which describes how the Board is to determine "the appropriate rental rate for cable television or similar third-party attachments on utility poles."

Next, Altice argued that the Board did not err in finding that Altice possesses a right to attach its equipment to the Borough's utility poles. Altice contended that the Borough has asserted no facts which refute the Board's finding that the Borough provided the consent necessary under the Joint Use Agreement to attach their equipment to the Borough's poles. Altice asserted that the Borough ignored the Board's finding that Altice's equipment has been attached to the Borough's poles for decades without any objection from the Borough until November 29, 2021. Altice argued that, as the Borough's arguments in the instant motion are regurgitations of its argument in opposition to the summary decision motion, the Borough has failed to meet the standard on a motion for reconsideration and the instant motion should be denied.

Finally, Altice argued that the Borough is not entitled to either a stay, pursuant to N.J.A.C. 14:17-9.7, or a preliminary injunction, as it fails to meet the standard articulated in Crowe v. De Gioia, 90 N.J. 126 (1982).

In its July 24, 2023 reply, the Borough reiterated its arguments from both its opposition to the motion for summary decision and motion for reconsideration that: 1) the Board does not have jurisdiction over the underlying matter; 2) Altice does not possess a right to attach its equipment to the Borough utility poles; and 3) the Board should grant a stay of the June 29, 2023 order until a ruling has been made in the present motion. The Borough cited to Princeton Cablevision v. Union Valley Corp., 195 N.J. Super. 257, 261 (Ch. Div. 1983) in support of its position that the Borough is not a public utility under the jurisdiction of the Board.

## **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 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.

First, as a threshold matter, the Board **HEREBY FINDS** that the instant motion for reconsideration is deficient as it fails to state in separately numbered paragraphs the alleged errors of law or fact relied upon, as required pursuant to N.J.A.C. 14:17-9.6(a).

Irrespective of the Borough's failure to submit the motion in the form required by N.J.A.C. 14:17-9.6(a), the Board **HEREBY FINDS** that the Borough has not identified any error of law or fact that warrants reconsideration of any component of the Board's June 29, 2023 order.

With respect to the Board's jurisdiction over the dispute at hand, the Board **HEREBY FINDS** that the Board did not erroneously rely upon N.J.S.A. 48:5A-20, N.J.S.A. 48:5A-21, and N.J.A.C. 14:18-2.9 in support of the Board's finding that it has subject matter jurisdiction over this matter.

Pursuant to N.J.S.A. 48:5A-20(a), “[u]pon obtaining the prior approval of the board, if necessary, a CATV company may construct and maintain the wires, cables, and conduits necessary to its business upon, under or over any highway, and may erect and maintain the necessary fixtures, including poles and posts, for sustaining such wires and cables[.]” The instant matter involves a request from a CATV company to the Board to maintain the wires, cables and conduits necessary to carry out service in the Borough pursuant to its system-wide franchise, which falls within the Board's jurisdiction.

Furthermore, N.J.S.A. 48:5A-21 contemplates situations wherein any person may, with the Board's prior approval, lease or rent or otherwise make available facilities or rights-of-way, including pole space, to a CATV company for the redistribution of television signals. The instant matter involves a rental agreement between Verizon, a “person” within the meaning of N.J.S.A. 48:5A-21, and who is empowered to manage the Borough's poles pursuant to the Joint Use Agreement, and Altice, a CATV company.

Princeton Cablevision v. Union Valley Corp., 195 N.J. Super. 257, 261 (Ch. Div. 1983) involved a dispute between a CATV franchised company and condominium developer that also owned a satellite master antenna television (“SMATV”) system that it intended to operate in the condominium community. During the pending litigation, the FCC issued its decision in In re Earth Satellite Communications, Inc., CSR-2347, F.C.C. 83-526 (1983), which preempted all state regulation of SMATV systems that were previously under the purview of the Board under the Cable Television Act. The CATV company argued that, as part of its franchise, it should be permitted access to the condominium community against the objections of the developer. The developer sought to prevent the CATV company from accessing the condominium development so that it did not have to compete with the CATV company for customers, as the developer was the owner of the SMATV system. The developer argued the grant of access amounted to a ‘taking’ as it authorized access without compensation. The ‘access’ issue was remanded for a hearing before the Board. The court ruled “that the Constitution requires fair compensation to an

owner whose property is to be physically occupied by cable television facilities, and that proceedings to fix compensation will be in the BPU.” Princeton Cablevision, 195 N.J. Super. 271 (Ch. Div. 1983). The Board has long been recognized as the proper authority to determine issues relating to access and fair compensation in matters involving CATV companies and their franchises.

Additionally, N.J.A.C. 14:18-2.9 empowers the Board to determine the appropriate rate for cable television attachments on utility poles, drawing no distinction between rental rates for poles owned by municipalities and those owned by public utilities.

Contrary to the Borough’s assertions, the Board’s order dated June 29, 2023 did not indicate that the laws cited in support of its jurisdiction constituted the entire universe of the laws that conferred jurisdiction upon the Board. Pursuant to N.J.S.A. 48:5A-9, the Board is empowered to be the local franchising authority in the State of New Jersey and the director of the Office of Cable Television, under the Board’s supervision, shall have the “full right, power, authority and jurisdiction to: [...] (b) [s]upervise and regulate every CATV company operating within this State and its property, property rights, equipment, facilities, contracts, certificates and franchises so far as may be necessary to carry out the purposes of [the Cable Television Act], and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; [and] (c) [i]nstitute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of [the Cable Television Act], [or] of the rules and regulations adopted thereunder[.]” (emphasis added).

As specified in N.J.S.A. 48:5A-9(c), the Board is empowered to hear all complaints and render all decisions necessary to enforce the provisions of not only the Cable Television Act, but also of the rules and regulations adopted thereunder, a number of which are applicable in the instant circumstances. By way of example, N.J.A.C. 14:18-2.6 provides that “[e]very cable television company shall have and maintain its entire plant in such condition as will enable it to provide adequate, economical and efficient cable television service.” Additionally, N.J.A.C. 14:18-2.10(b) provides that “[i]n the event of a dispute over the terms and conditions, any party to a pole attachment or conduit rental agreement may petition the Board for resolution.” (emphasis added).

Furthermore, the Board **HEREBY FINDS** that it did not err in finding that the undisputed facts indicate that Altice is authorized to utilize the Borough’s utility poles. The Borough did not set forth any facts or arguments which warrant reconsideration of the Board’s findings with respect to Altice’s right to access their equipment that is attached to the Borough’s poles. The following facts as stated in the Board’s June 2023 Order remain without dispute: 1) Altice currently provides cable television service to the Borough pursuant to a system-wide cable television franchise agreement, which was most recently renewed by the Board on February 22, 2017; 2) the Joint Use Agreement between the Borough and Verizon remains in effect and has an expiration date of October 13, 2023; 3) the Borough’s 1988 Ordinance contains a clause which provides “[t]he Borough hereby grants to the Company its non-exclusive consent to place in, upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public ways and public places in the Borough poles, wires, cables, underground conduits, manholes and other television conductor and fixtures necessary for the maintenance and operation in the Borough of a cable television system,” a clause which appears in similar form in the Borough’s 1995 and 2007 municipal consent renewal ordinances; and 4) Altice’s equipment has been attached to the Borough’s poles for decades without objection from the Borough until November 29, 2021.

Finally, for the aforementioned reasons, the Board **HEREBY FINDS** that good cause does not exist to warrant a stay of the Board's June 2023 order.

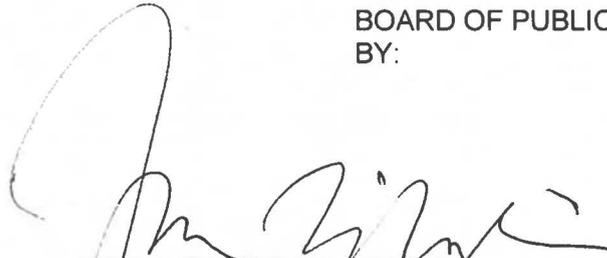
Having reaffirmed the Board's jurisdiction and the continuing validity and applicability of the system-wide franchise agreement to the instant circumstances, there is no basis to disturb or prevent Altice's access to its plant or the poles serving its customers in Madison. Accordingly, the Borough's motion seeking reconsideration and stay of the Board's June 2023 Order be and is **HEREBY DENIED** in its entirety.

This Order shall be effective on August 23, 2023.

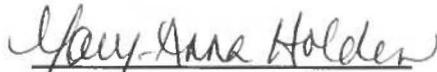
DATED: August 16, 2023

BOARD OF PUBLIC UTILITIES

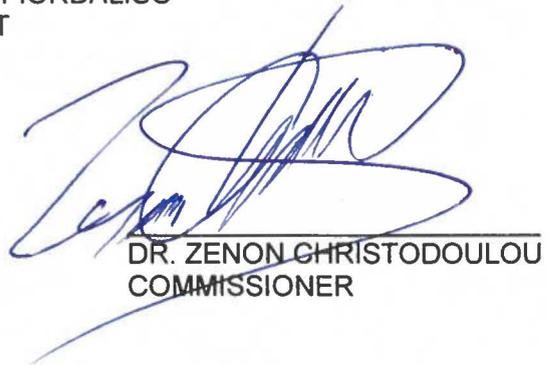
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PRESIDENT



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DR. ZENON CHRISTODOULOU  
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CHRISTINE GUHL-SADOVY  
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MARIAN ABDOU  
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 VERIFIED PETITION OF CSC TKR, LLC V. BOROUGH OF MADISON, NEW JERSEY

DOCKET NO. CC23030139

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