

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Altice N.V. and Cequel Corporation d/b/a Suddenlink Communications to	)	WC Docket No. 15-135
Transfer Control of Authorizations from	)	
Suddenlink Communications to Altice N.V.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 18, 2015**

**Released: December 18, 2015**

By the Chief, Wireline Competition Bureau; Chief, International Bureau; Chief, Media Bureau; and Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. Altice N.V. (Altice) and Cequel Corporation (Cequel) d/b/a Suddenlink Communications (Suddenlink and together with Altice, the Applicants) filed a series of applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), seeking consent to various assignments and the transfer of control of licenses and authorizations held by Cequel's wholly-owned subsidiaries to Altice.<sup>1</sup>

2. On June 24, 2015, the Wireline Competition Bureau, International Bureau, Media Bureau, and Wireless Telecommunications Bureau released a Public Notice seeking comment on the proposed transaction.<sup>2</sup> In response to the Public Notice, we received a total of five filings: three comments

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<sup>1</sup> 47 U.S.C §§ 214, 310(d). *See* Applications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Authorizations from Cequel Corporation to Altice S.A., WC Docket No. 15-135 (filed June 3, 2015) (Applications). Applicants filed updated ownership information on June 18, 2015 and August 10, 2015. *See* Letter from K.C. Halm, Counsel to Cequel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-135 (filed June 18, 2015); Letter from Craig L. Rosenthal, Counsel for Cequel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-135, at 1 (filed Aug. 10, 2015) (Applicants' Aug. 10 Update) (replacing, as one of the original Applicants, Altice S.A. with Altice N.V.). Applicants filed additional information regarding broadband deployment and investment on September 28, 2015. *See* Letter from Steven J. Horvitz, Counsel to Cequel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-135 (filed Sept. 28, 2015) (Applicants' Sept. 28 Supplement).

<sup>2</sup> *Applications Filed for Transfer of Control of Cequel Corporation d/b/a Suddenlink Communications to Altice S.A.*, WC Docket No. 15-135, Public Notice, 30 FCC Rcd 6442 (Wireline Comp. Bur., International Bur., Media Bur., Wireless Telecom. Bur. 2015) (*Suddenlink Public Notice*) (listing all authorizations and licenses to be transferred or assigned). Applicants state that they have received approval from all state regulatory authorities in states that are reviewing the transaction except California. Applicants' Sept. 28 Supplement at 5. Our review of applications filed with the Commission does not affect any ongoing independent proceedings on the proposed transaction at the state or local level, nor do we intend any finding in this Memorandum Opinion and Order to pre-judge such governmental entities' independent consideration of matters before them under applicable state law or precedent, which may differ from our standard of review. We note that on June 19, 2015, the U.S. Department of Justice (DOJ) granted early termination of its pre-merger review under the Hart-Scott-Rodino Antitrust Improvement Act of 1975. Early Termination Notice, <https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20151146>.

expressing concern about the transaction, and two replies.<sup>3</sup> On June 29, 2015, the DOJ, with the concurrence of the U.S. Department of Defense and U.S. Department of Homeland Security, filed a letter requesting that the Commission defer action on the applications until these agencies completed their review of the transaction for matters related to “national security, law enforcement, and public safety issues.”<sup>4</sup> On December 11, 2015, the DOJ, including the FBI, and with the concurrence of the U.S. Department of Defense and U.S. Department of Homeland Security (collectively, the Executive Branch Agencies) submitted a petition advising the Commission that they have no objection to grant of the Applications provided that we condition grant on compliance by Altice and Cequel with the commitments and undertakings set forth in the National Security Agreement between Altice, Cequel, and the DOJ, dated December 11, 2015 (National Security Agreement).<sup>5</sup>

3. We have carefully reviewed the record, including supplemental information filed by the Applicants that we requested.<sup>6</sup> Based on our analysis, we find that the likely public interest benefits outweigh any potential public interest harms. Accordingly, we conclude that the transaction, on balance, serves the public interest, and we consent to the proposed assignments and transfers subject to compliance by Altice and Cequel with the terms of the National Security Agreement.

## II. BACKGROUND

### A. Description of the Applicants

#### 1. Altice N.V.

4. Altice, a publicly-traded holding company incorporated in the Netherlands, operates, through its subsidiaries, as a provider of fixed and mobile voice, video, and broadband services in France, Belgium, Luxembourg, Portugal, Switzerland, Israel, the French Caribbean and Indian Ocean regions, and the Dominican Republic.<sup>7</sup> Altice serves approximately 34.5 million subscribers worldwide.<sup>8</sup> Neither Altice nor any of its subsidiaries currently has any U.S. operations or a 10 percent or greater interest in any domestic telecommunications carrier.<sup>9</sup> Applicants state that the Commission’s consent to the Application would mark Altice’s entrance into the U.S. market.<sup>10</sup>

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<sup>3</sup> See Comments of County of Humboldt, WC Docket No. 15-135 (filed Jul. 21, 2015) (County of Humboldt Comments); Comments of the California Emerging Technology Fund, WC Docket No. 15-135 (filed Jul. 24, 2015) (CETF Comments); Comments of MFRConsulting, WC Docket No. 15-135, at 1-2 (filed Oct. 2, 2015) (MFRConsulting Comments); Reply Comments of Altice and Cequel Corporation, WC Docket No. 15-135 (filed Aug. 10, 2015) (Applicants’ Reply); Reply Comments of Access Humboldt, WC Docket No. 15-135 (filed Aug. 10, 2015) (Access Humboldt Reply).

<sup>4</sup> See Letter from Kristin A. Taylor, Attorney, DOJ, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-135 (filed Jun. 29, 2015).

<sup>5</sup> See *infra* Section III.D.

<sup>6</sup> See *supra* n.1.

<sup>7</sup> Applications at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> On October 14, 2015, Altice filed a series of applications for the transfer of control of Cablevision Systems Corporation (Cablevision) and certain subsidiaries to Altice. See Applications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V., WC Docket No. 15-257 (filed Oct. 14, 2015). MFRConsulting submitted late-filed comments arguing, in part, that our review of the Suddenlink Applications should be delayed, and the Commission should review Altice’s purchase of Suddenlink and announced purchase of Cablevision together. See MFRConsulting Comments at 1-2. MFRConsulting did not include a motion to accept its late filing, but we have considered its process-related filing nonetheless. See 47 C.F.R. § 1.46(a). In reaching our decision here, we

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## 2. Cequel Corporation d/b/a Suddenlink Communications

5. Cequel, a Delaware corporation, provides services relevant to the transaction through subsidiaries that collectively do business as Suddenlink.<sup>11</sup> Suddenlink is the seventh largest cable operator in the United States, providing broadband Internet access, cable television, Voice over Internet Protocol (VoIP), and certain competitive telecommunications services to more than 1.5 million customers in 17 states. Cequel offers domestic interstate telecommunications services through its affiliate, Cequel Holdings, and offers international telecommunications services through its affiliates, Cebridge Telecom Limited, LLC and Cebridge Telecom TX, L.P.<sup>12</sup> Cequel's operating entities provide interstate telecommunications services and hold certificates to provide certain intrastate telecommunications services in Arizona, Arkansas, California, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Virginia, and West Virginia.<sup>13</sup> Cequel indirectly controls TCA Communications, LLC, which provides interexchange services in Arkansas, as well as Cequel Communications Access Services, LLC, and its affiliate, Orbis, L.L.C., both of which provide interexchange services nationwide.<sup>14</sup> The following entities indirectly hold a ten percent or greater interest in Cequel: CPP Investment Board, a Canadian investment management organization that invests the assets of the Canada Pension Plan (48.3 percent voting and 38.03 percent equity), and BC Partners Holdings Limited (BC Partners), a Guernsey, United Kingdom limited partnership entity (48.3 percent voting and 58.69 percent equity).

### B. Description of the Transaction

6. On May 19, 2015, Cequel and Altice entered into a Purchase and Sale Agreement (Sale Agreement) pursuant to which Altice will acquire approximately 70 percent of post-transaction Cequel's voting and equity interests, with CPP Investment Board and BC Partners Holdings Limited retaining approximately 30 percent of the shares of post-transaction Cequel.<sup>15</sup> Applicants describe the terms of the Sale Agreement in the Applications as follows. Prior to consummation, Altice will form a new indirect wholly-owned subsidiary, BidCo US, a Delaware corporation wholly owned by Altice U.S. Holding II S.à.r.l. (Altice US II), a Luxembourg holding company.<sup>16</sup> BidCo US will hold approximately 45 percent of Cequel's shares in exchange for cash and then BidCo US will merge with and into Cequel, with Cequel

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reviewed the record evidence to determine if the proposed transaction would serve "the public interest, convenience, and necessity." 47 U.S.C. § 214(a). Our review in this order is distinct and independent from, and involves different authorizations, applicants, services, and geographic areas than, the Commission's review of Altice's application to purchase Cablevision, which the Commission will consider based on the record developed in that proceeding. *See* Applicants' Sept. 28 Supplement at 5. We do not consider, however, MFRConsulting's recent untimely filing in this proceeding (also filed in the Altice-Cablevision proceeding) raising for the first time arguments on the merits regarding Altice's business model and whether it comports with the public interest. Comments of MFRConsulting, WC Docket Nos. 15-135, 15-257 (filed Dec. 7, 2015). A party seeking to raise new issues after the pleading cycle has closed must show good cause as to why it was not possible to have raised the issues previously and must also file comments within 15 days after any new facts are discovered. *See Suddenlink Public Notice*, 30 FCC Rcd at 6447. MFRConsulting did not file a motion to accept its comments filed more than four months after the close of the pleading cycle, nor did it allege good cause as to why it was not possible to raise the issues previously. We therefore disregard its December 7 filing but note, in any event, that we address the financial qualifications of Altice in this transaction below at paras. 15, 22-23.

<sup>11</sup> Applications at 4-5.

<sup>12</sup> *See* IBFS File Nos. ITC-214-20051216-00526 and ITC-214-20060330-00173.

<sup>13</sup> Applications at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5-6. Applicants note that BidCo US may have a different name when formed. *Id.*

surviving and converting equity interests in BidCo US into common shares of Cequel.<sup>17</sup> Applicants further state that Altice US Holding I S.à.r.l. (Altice US I), a Luxembourg private limited liability company indirectly and wholly owned by Altice, will hold approximately 25 percent of Cequel's shares acquired from Cequel's current owners in exchange for cash.<sup>18</sup> Applicants submit that Altice US I will wholly own Altice US II and expects to contribute its equity interests in Cequel to Altice US II shortly after the transaction is completed.<sup>19</sup> Accordingly, Altice US II, a wholly-owned indirect subsidiary of Altice, will hold a 70 percent equity interest in Cequel.

7. According to the Applicants, after the transaction is consummated, the following entities and individual will ultimately hold a ten percent or greater interest in Cequel: CPP Investment Board (direct 15 percent voting, 11.8 percent equity interest); BC Partners (direct 15 percent voting, 18.2 percent equity interest); and Patrick Drahi, a citizen of Israel (indirectly, approximately a 44.9 percent voting and equity interest through his ownership interest in Altice).<sup>20</sup> Applicants announced that the transaction is to be financed with \$6.7 billion of new and existing debt held by Suddenlink, a \$500 million vendor loan note from BC Partners and CPP Investment Board, and \$1.2 billion of cash from Altice with the remainder representing the rollover by BC Partners and CPP Investment Board.<sup>21</sup>

### III. DISCUSSION

#### A. Standard of Review

8. Pursuant to Sections 214(a) and 310(d) of the Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity. In making this determination, we assess whether the proposed transaction complies with the specific provisions of the Act,<sup>22</sup> other applicable statutes, and the Commission's rules.<sup>23</sup> If the transaction does not violate a statute or rule, we consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>24</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>25</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>26</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Applicants provided detailed organizational charts depicting pre-closing and post-closing ownership chains. *Id.* at Attach. A; *see also* Applicants' Aug. 10 Update at Exh. A.

<sup>21</sup> Altice Press Release, "Altice Enters US Market with Acquisition of Suddenlink," May 20, 2015, <http://altice.net/wp-content/uploads/2015/05/689389.pdf>.

<sup>22</sup> Section 310(d) requires that we consider applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). *See Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139, para. 18 n.35 (2015) (*AT&T/DIRECTV Order*); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*).

<sup>23</sup> *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9139-40, para. 18 (and cases cited therein); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 7 (2011).

<sup>24</sup> *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9139-40, para. 18 (and cases cited therein).

<sup>25</sup> *See id.*

<sup>26</sup> *See id.*

9. The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition, accelerating private sector deployment of advanced services, promoting a diversity of information sources and services to the public, and generally managing the spectrum in the public interest.<sup>27</sup> Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.<sup>28</sup> In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.<sup>29</sup>

10. The Commission's competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>30</sup> The Commission and the DOJ each has independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by the DOJ.<sup>31</sup> The Commission, like the DOJ, considers how a transaction would affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction.<sup>32</sup>

11. The DOJ, however, reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.<sup>33</sup> The DOJ review is consequently limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.<sup>34</sup> Moreover, the Commission's competitive analysis under the public interest standard is broader. For example, the Commission considers whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.<sup>35</sup>

12. Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions that ensure that the public interest is served by the transaction.<sup>36</sup> Specifically, Section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>37</sup>

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<sup>27</sup> See *id.* at 9140, para. 19.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 9140-41, para. 20 (and cases cited therein).

<sup>31</sup> See, e.g., *id.*

<sup>32</sup> See *id.*

<sup>33</sup> 15 U.S.C. § 18; see also *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 21 (and cases cited therein).

<sup>34</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 21 (and cases cited therein).

<sup>35</sup> See *id.*

<sup>36</sup> See *id.* at 9141, para. 22; see also *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998) (*WorldCom/MCI Order*) (stating that the Commission may attach conditions to the transfers).

<sup>37</sup> 47 U.S.C. § 303(r). See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 22 (and cases cited therein); *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10 (citing *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to Section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (holding that Section 303(r) permits the Commission to

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Indeed, our extensive regulatory and enforcement experience enables us, under this public interest authority, to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.<sup>38</sup> In exercising this authority to carry out its responsibilities under the Act and related statutes, the Commission has imposed conditions to confirm specific benefits or remedy specific harms likely to arise from transactions.<sup>39</sup>

## B. Applicants' Qualifications

13. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under Section 310(d) of the Act and the Commission's rules. In general, when evaluating transfers or assignments under Section 310(d), we do not re-evaluate the qualifications of the transferor or assignor.<sup>40</sup> Exceptions to this rule occur where, for example, issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>41</sup> This is not the case here. Thus, we need not evaluate Suddenlink's basic qualifications.

14. Section 310(d) also requires that the Commission consider the qualifications of the transferee or assignee as if it were applying for the license directly under Section 308 of the Act.<sup>42</sup> As part of its public interest inquiry, the Commission must consider whether the applicant has the "requisite . . . financial, technical, and other qualifications."<sup>43</sup> Among the factors that the Commission considers in its public interest inquiry is whether the applicant has the requisite "citizenship, character, and financial, technical, and other qualifications."<sup>44</sup>

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order a cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to Section 303(r) authority).

<sup>38</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 22 (and cases cited therein).

<sup>39</sup> See *id.*

<sup>40</sup> See, e.g., *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582-83, para. 23 (2008) (*Sprint Nextel/Clearwire Order*); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17464, para. 31 (2008) (*Verizon Wireless/ALLTEL Order*).

<sup>41</sup> See, e.g., *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17582-83, para. 23; *Verizon Wireless/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31.

<sup>42</sup> 47 U.S.C. § 310(d).

<sup>43</sup> 47 U.S.C. § 308; *AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 190. See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14947-48, para. 568 (1999); see also 47 U.S.C. § 310(d).

<sup>44</sup> 47 U.S.C. §§ 308(b) ("All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station . . ."), 310(d); 47 C.F.R. § 63.03(c)(1)(v) (stating that the Commission, acting through the Chief of the Wireline Competition Bureau, may determine that an application "requires further analysis to determine whether a proposed transfer of control would serve the public interest"). See *AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25465, para. 14 (Wireless Telecom. Bur., International Bur. 2000).

15. No commenter has raised substantive concerns regarding Altice's qualifications to provide service, and we find no evidence in the record that Altice is unqualified to hold Commission authorizations. Other than the ordinary market risks that accompany any business transaction, there is no evidence in the record indicating that this transaction will be likely to result in financial harms or distress that would compromise Altice's ability to maintain and improve broadband and other services in the Suddenlink service territory.<sup>45</sup> As explained below, there is persuasive evidence in the record that Altice will bring operational expertise, scale, and resources to enable it to maintain and accelerate service offerings for Suddenlink's customers.<sup>46</sup> Further, no commenters raised concerns regarding Altice's character or technical qualifications. We therefore conclude that Altice satisfies the qualification requirements of Section 310(d).

### C. Public Interest Harms and Benefits

16. In this section, we consider the potential harms and benefits arising from the transaction. As discussed below, we find the transaction is likely to result in tangible benefits for customers through improved broadband service and investment. Because Altice does not currently serve the U.S. market, the transaction does not reduce the number of service providers in local, regional, or national markets. Applicants filed additional evidence in the record further supporting the broadband deployment benefits they claim may result from the transaction.<sup>47</sup> We find that certain issues raised in comments are not relevant to the transaction and are therefore outside the scope of our review.<sup>48</sup> We conclude that, on balance, the transaction's benefits outweigh any potential public interest harms.

#### 1. Potential Harms

##### a. Competition

17. Based on the record evidence, we find the transaction is unlikely to have adverse competitive effects. In order for a transaction to have horizontal effects on competition, the parties must currently provide, or be very likely to provide, similar services within the same relevant geographic market.<sup>49</sup> In order for a transaction to have vertical effects on competition, one of the parties or its competitors must currently provide, or be very likely to provide, goods or services to the other or its competitors.<sup>50</sup> Applicants assert because neither Altice nor any of its subsidiaries currently holds any Commission authorizations or has any domestic operations, they do not compete for customers in the transaction's

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<sup>45</sup> See *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5980-83, paras. 18-24 (2010) (explaining that the Commission accepts that all transactions carry risks and that all companies are vulnerable to unforeseen events, but that Frontier, as the acquiring company, demonstrated that it was likely to be able to expand broadband and meet service quality commitments based on financial conditions at the time it entered into the transaction).

<sup>46</sup> See *infra* paras. 19-23; Application at 6-7; Applicants' Reply at 7.

<sup>47</sup> See Applicants' Sept. 28 Supplement.

<sup>48</sup> See *infra* para. 18.

<sup>49</sup> The Commission has stated that a transaction is considered to be horizontal when the parties to the transaction sell products that are in the same relevant product and geographic markets. See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 23 & n.82.

<sup>50</sup> See *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4250, para. 27 (2011); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12367, para. 36 (2008); KIP VISCUSI, JOHN M. VERNON AND JOSEPH E. HARRINGTON, JR., *ECON. OF REG. AND ANTITRUST* 192, 233 (3d ed. 2000).

relevant market.<sup>51</sup> Since Altice has no current existing interest in any U.S. communications entity, the transaction poses neither horizontal nor vertical concerns. Specifically, with regard to potential horizontal effects, the combined post-transaction entity will not hold market power, and the proposed transaction will not result in a significant reduction of competition at the local level or, based on any aggregation of subscribers, at a regional or national level.<sup>52</sup>

**b. Other Issues**

18. The County of Humboldt and Access Humboldt request that we deny the Application, or condition approval on specific conditions that, as a general matter, promote universal access, localism, the open Internet, and general broadband adoption.<sup>53</sup> The County of Humboldt also raises an ongoing dispute with Cequel regarding the amount of public, education, and government (PEG) access fees Cequel's subsidiaries should pay to Humboldt County.<sup>54</sup> The California Emerging Technology Fund comments that we should, as a general matter, condition grants of mergers or transfers of control on five particular terms that advance affordable broadband rates.<sup>55</sup> We find that in the case of this particular transaction, as reflected in the record before us, these issues are outside the scope of our review. The Commission has rejected requests to impose conditions on applicants in particular transactions solely to serve broad-based policy goals.<sup>56</sup> The Commission has held that it will impose conditions "only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes," and thus "generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."<sup>57</sup>

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<sup>51</sup> Applications at 14-15, 18.

<sup>52</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9187, 9190, paras. 146-47, 155 (finding that although the transaction would result in some loss of competition between AT&T and DIRECTV, which provided overlapping video services, the transaction did not result in harmful horizontal effects because the parties focused their marketing efforts on customers of cable companies, which they considered to be their primary competitors, and because AT&T's wireline and DIRECTV's satellite video services were not "particularly close substitutes").

<sup>53</sup> County of Humboldt Comments at 1; Access Humboldt Reply at 2.

<sup>54</sup> County of Humboldt Comments at 1; Applicants' Reply at 6.

<sup>55</sup> CETF Comments at 2-4.

<sup>56</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9195, para. 170 n.476; see also *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations; Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, IB Docket No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9674, para. 81 (2013).

<sup>57</sup> *Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463, para. 30 (2008); see also *AT&T/DIRECTV Order*, 30 FCC Rcd at 9233, para. 264; *Domestic Section 214 Application Filed for the Transfer of Control of Hawaiian Telcom, Inc. & Hawaiian Telcom Servs. Co., Inc., Debtors-in-Possession*, WC Docket No. 10-41, Public Notice, 25 FCC Rcd 13149, 13151 (Wireline Comp. Bur. 2010); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Time Warner Inc., and its Subsidiaries, to Time Warner Cable Inc., and its subsidiaries*, MB Docket No. 08-120, WC Docket No. 08-157, Memorandum Opinion and Order, 24 FCC Rcd 879, 887, para. 13 (Media Bur., Wireline Comp. Bur., Wireless Telecom. Bur., International Bur. 2009) ("[T]he Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are reasonably related to the Commission's responsibilities under the Communications Act and related statutes").



## 2. Potential Benefits

19. The Commission applies several criteria in deciding whether a claimed benefit should be considered in assessing a proposed transaction.<sup>58</sup> First, the benefit must be transaction-specific.<sup>59</sup> Second, the benefit must be verifiable.<sup>60</sup> Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit to allow the Commission to verify its likelihood and magnitude. Third, “the magnitude of benefits must be calculated net of the cost of achieving them.”<sup>61</sup> Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.<sup>62</sup> Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>63</sup> Conversely, where potential harms appear unlikely or less likely and less substantial, the Commission will accept a lesser showing of claimed benefits.<sup>64</sup>

20. Applicants assert that the transaction will serve the public interest because it will result in increased investment and improved broadband services in the Suddenlink service territory. In support of these claimed transaction benefits, Applicants focus on Suddenlink’s efforts to enhance its broadband offerings, which Altice states it will expand and continue, and Altice’s history of investing in and accelerating the existing broadband network plans of the service providers acquired by Altice.<sup>65</sup>

21. Applicants state that Suddenlink is committed to investing in and enhancing its broadband offerings, which includes service to many rural areas. Applicants explain that almost half of its current existing network serves rural areas, and approximately 85 percent of Suddenlink’s nearly 900 cable franchises have fewer than 2,000 customer homes per franchise.<sup>66</sup> Applicants state that Suddenlink offers a high speed data product to more than 97.5 percent of its homes passed on a nationwide basis: 80 percent of these homes have speeds of 150 Mbps or faster, and another 10 percent have access to speeds of at least 50 Mbps.<sup>67</sup> According to Applicants, approximately 90 percent of homes passed by Suddenlink

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<sup>58</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 273; *AT&T/BellSouth Order*, 22 FCC Rcd at 5760, para. 200.

<sup>59</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 273; *Applications for Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23310, para. 165 (2002) (disregarding purported harms that are speculative and not merger specific).

<sup>60</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 274.

<sup>61</sup> See *id.* at 9237-38, para. 275.

<sup>62</sup> See *id.* at 9238, para. 276.

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See, e.g., Applicants’ Sept. 28 Supplement at 2-4; Applications at 6-8; Applicants’ Reply at 5.

<sup>66</sup> Applicants’ Sept. 28 Supplement at 2. Applicants state that “over 43 percent of Suddenlink homes passed are located in rural areas – i.e., outside of urban areas in communities with populations of less than 25,000 persons.” *Id.* (citing *Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15594-95, paras. 140-41 (2015) (defining areas with populations of less than 25,000 as “rural,” as adjusted by Census Bureau data, for purposes of E-rate disbursements)).

<sup>67</sup> Applicants’ Sept. 28 Supplement at 2.

have speeds available that are at least double the Commission's current definition of "advanced telecommunications capability."<sup>68</sup>

22. Altice, Applicants contend, has a proven track record of successfully investing in, and improving the broadband offerings of, the companies it acquires. Applicants provide recent examples where Altice acquired control of (or acquired) companies in France, Belgium, Luxembourg, Israel, and Portugal, and invested in the networks to ensure their "long-term viability and growth."<sup>69</sup> Applicants claim that Altice's capital expenditures for these companies surpassed those of the incumbents with which it competes.<sup>70</sup> Applicants also assert that Altice has enhanced its broadband networks to increase speeds and the number of subscribers that can benefit from its services.<sup>71</sup> For example, Applicants claim that after Altice acquired control of Numericable, a European cable operator, in 2013, the network in France was upgraded from being able to deliver 1 Mbps in 2013 to between 100-200 Mbps today, and in Belgium and Luxembourg from 4 Mbps in 2013 to between 50-200 Mbps today.<sup>72</sup> Applicants assert that Altice has also built out its networks to increase its broadband reach. For example, Applicants claim that since acquiring control of Numericable, Altice added approximately 100,000 "passings" in France and approximately 100,000 in Belgium and Luxembourg (combined).<sup>73</sup>

23. We find nothing in the record leading us to conclude that Altice will deviate from what Applicants describe as a "demonstrated track record" of investing in the service providers Altice acquires, while improving its offerings and competitive position in the market, to the benefit of consumers.<sup>74</sup> Applicants contend that the transaction would not alter the Applicants' existing incentives to improving Suddenlink's broadband Internet access services in its service territories.<sup>75</sup> Although we acknowledge Suddenlink's pre-existing efforts toward its broadband improvement goals, we are persuaded that the likelihood of reaching these goals is improved with the support and financial backing of Altice's global resources. For example, in the context of Project Gigaspeed, a four year investment program aimed at making 1 Gbps service available to the vast majority of Suddenlink customers, Applicants explain that Suddenlink spent over \$35 million in 2014, and forecasts spending an additional \$80 million or more in 2015 and more than \$90 million in 2016 and 2017 (combined) to realize the program's objectives.<sup>76</sup>

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<sup>68</sup> *Id.*; see also *Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-186, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1377, para. 3 (2015) (finding that having "advanced telecommunications capability" requires access to actual download speeds of "at least 25 Mbps and actual upload speeds of at least 3 Mbps").

<sup>69</sup> Applicants' Sept. 28 Supplement at 4.

<sup>70</sup> *Id.*

<sup>71</sup> Applications at 7 (stating that Altice has "considerable" experience of successfully investing in broadband service providers "through investments in network infrastructure, which has resulted in higher broadband speeds for subscribers . . . accelerations in existing planned network investment and deployment, bringing improved services to market faster . . . [a]nd in still other cases, it has resulted in the expansion of service offerings, thereby expanding consumer choices and enhancing competition").

<sup>72</sup> Applicants' Sept. 28 Supplement at 4. Applicants note that Altice also had similar outcomes in other recent acquisitions such as Hot in Israel (upgraded the network to deliver download speeds from 3-7 Mbps in 2011 to 30-200 Mbps today) and another company, Cabovisão in Portugal (upgraded 94 percent of its network to deliver speeds of up to 360 Mbps).

<sup>73</sup> Applicants also note that, since Altice acquired it in 2011, the number of homes passed in Israel for Hot increased by approximately 100,000. *Id.* at 5.

<sup>74</sup> *Id.* at 4.

<sup>75</sup> Applicants' Reply at 5.

<sup>76</sup> Applicants' Sept. 28 Supplement at 3.

Applicants state that Project Gigaspeed will result in the conversion to an all-digital video network in virtually all of the company's service areas affected by the project.<sup>77</sup> Applicants further state that the transaction will "ensure that Suddenlink has access to sufficient resources to realize Project Gigaspeed's objectives."<sup>78</sup> Applicants contend that without additional investment from Altice, Suddenlink's ability to complete Project Gigaspeed is "not assured."<sup>79</sup> We disagree with the speculative concerns of County of Humboldt and Access Humboldt that Altice's investment and operating experience in distant locations will not inform its ability to improve Suddenlink's operations.<sup>80</sup> Altice has acquired and invested in companies in multiple countries, and the record does not contain any evidence that Altice will fail to undertake the proposed transaction in a manner that requires it to be knowledgeable, responsive, and accountable to the local community. Further, there is no evidence in the record that the level of debt Altice would incur as a result of these transactions would likely diminish Altice's ability to invest in the Suddenlink service territory.<sup>81</sup> We are persuaded, after careful consideration of the record, that the transaction will facilitate Suddenlink's efforts to improve broadband and other services to its consumers, many of whom are in rural areas. For these reasons, we find that the transaction is likely to result in benefits to consumers by improving broadband service and investment, thereby serving the public interest.<sup>82</sup>

#### **D. National Security, Law Enforcement, Foreign Policy, and Trade Concerns**

24. When analyzing a transfer of control or assignment application, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch Agencies.<sup>83</sup> On December 11, 2015, the Executive Branch Agencies submitted a Petition to

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Applications at 8 ("Cequel, for its part, will continue to be operated by highly experienced, well-qualified management, operational and technical personnel. But, at the same time, Cequel will have access to the operational and managerial resources of Altice. Post-Transaction, management will be able to share best practices and draw upon the substantial combined experience of their respective management teams."). *Id.*

<sup>80</sup> Comments of County of Humboldt at 1 ("We fail to see how [Altice's] experience in Europe and the Dominican Republic provides adequate assurance of their compliance with local ordinances in California."). Similarly, Access Humboldt states "Altice's purchase of controlling interest in Suddenlink will transfer private ownership for essential communications infrastructure in Humboldt County to even more distant owners, which is against the public interest." Reply Comments of Access Humboldt at 1.

<sup>81</sup> Although MFRConsulting raises issues regarding the "consequences of high debt load" it alleges will result from the transaction, it offers no support for the assertion that the debts incurred in financing the transaction will imperil Altice's future ability to invest in improvements or new technologies to the benefit of all customers. See Comments of MFR Consulting at 1-4. To the contrary, we find nothing in the record evidence to support a finding that Altice is not financially qualified to hold the Commission authorizations it seeks in the Applications.

<sup>82</sup> We also recognize that the transaction has the potential to benefit consumers, as a general matter, because of synergies that may result from Altice acquiring control of Suddenlink. However, Applicants have not presented record evidence of verifiable, tangible benefits resulting from synergies (other than improving broadband service and investment, discussed *supra* Section III.C.2) and we therefore do not rely upon a general finding of synergies in this order.

<sup>83</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997); see also *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, 28 FCC Rcd 5741, 5792, para. 95 n.255 (2013) ("The Commission has previously held that, regardless of the applicability of Sections 310(a) and 310(b), the Commission considers, pursuant to Sections 308 and 310(d) of the Act, national security, law enforcement, foreign policy and trade policy concerns when analyzing an application in which foreign ownership is involved.").

Adopt Conditions to Authorizations and Licenses.<sup>84</sup> The Petition states that the Executive Branch Agencies have no objection to grant of the Applications provided that the Commission conditions its approval on the “assurance of Altice N.V. (Altice) (f/k/a Altice S.A.) and Cequel Corporation (Cequel) (d/b/a Suddenlink Communications) abiding by the commitments and undertakings” in the National Security Agreement between Altice, Cequel, and DOJ. We find that grant of the Applications, subject to compliance with the National Security Agreement, will serve the public interest, convenience, and necessity.

#### **IV. CONCLUSION**

25. We conclude that granting the Applications serves the public interest. Based on our careful review of the record, we find the transaction is unlikely to result in any significant public interest harms. We find that the transaction is likely to result in some public interest benefits of increased investment in local networks facilities and broadband services in the Suddenlink’s service territory. Accordingly, we grant the proposed assignments and transfers subject to compliance by Altice and Cequel with the terms of the National Security Agreement.

#### **V. ORDERING CLAUSES**

26. Accordingly, having reviewed the Applications and the record in this matter, IT IS ORDERED that, pursuant to Sections 4(i)-(j), 5(c), 214, 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 155(c), 214, 303(r), 309, 310(d), and Sections 0.51, 0.61, 0.91, 0.131, 0.261, 0.283, 0.291, and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.51, 0.61, 0.91, 0.131, 0.261, 0.283, 0.291, and 0.331, the Applications to assign and transfer control of domestic and international Section 214 authorizations, wireless licenses, and cable television relay service station licenses ARE GRANTED subject to the condition specified herein.

27. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security and the U.S. Department of Defense, IS GRANTED. Grant of the Applications IS CONDITIONED UPON the compliance by Altice N.V. and Cequel Corporation (d/b/a Suddenlink Communications) with the commitments set forth in the December 11, 2015 National Security Agreement. A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses, and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

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<sup>84</sup> Petition to Adopt Conditions to Authorizations and Licenses filed by of the U.S Department of Justice, WC Docket No. 15-135 (filed Dec. 11, 2015), attaching National Security Agreement (Petition).

28. IT IS FURTHER ORDERED, pursuant to Section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this Memorandum Opinion and Order IS EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of public notice, i.e., within thirty days of the release date, of this Memorandum Opinion and Order.

## FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief, Wireline Competition Bureau

Mindel De La Torre  
Chief, International Bureau

William T. Lake  
Chief, Media Bureau

Roger C. Sherman  
Chief, Wireless Telecommunications Bureau

## APPENDIX

## SECTION 214 AUTHORIZATIONS

## A. International

The applications for consent to the transfer of control of certain international Section 214 authorizations from Cequel to Altice are granted.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20150603-00138	Cebridge Telecom Limited, LLC	ITC-214-20051216-00526
ITC-T/C-20150603-00139	Cebridge Telecom TX, L.P.	ITC-214-20060330-00173

## B. Domestic

The application for approval to transfer control of domestic Section 214 authorizations is granted.

## SECTION 310(d) WIRELESS APPLICATIONS

The applications for consent to the assignment of licenses under Section 310(d) of the Act are granted.

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0006818013	Cequel III Communications I, LLC	WQKL824
0006821045	Cequel III Communications II, LLC	WQDI918
0006820236	Classic Cable of Oklahoma Inc. dba Cebridge Connections	WQ3H315
0006820246	Friendship Cable of Texas, Inc.	WQLN547
0006820257	NPG Cable, LLC	WQHJ681
0006820287	Universal Cable Holdings, Inc.	WQTT821

**PART 78 -- CABLE TELEVISION RELAY SERVICES (CARS)**

<b><u>File Number</u></b>	<b><u>Licensee</u></b>	<b><u>Lead Call Sign</u></b>
CAR-20150617AA-09	Cebridge Acquisition, L.P.	WBC-783
CAR-20150617AB-09		WHA-63
CAR-20150617AC-09		WLY-810
CAR-20150617AD-09	Cebridge Acquisition, LLC	WLY-869
CAR-20150617AE-09	Cequel II Communications I, LLC	WGV-972
CAR-20150617AF-09		WGV-973
CAR-20150617AG-09		WGZ-480
CAR-20150617AH-09		WHZ-401
CAR-20150617AI-09		WHZ-690
CAR-20150617AJ-09		WLY-228
CAR-20150617AK-09		WLY-605
CAR-20150617AL-09		WLY-856
CAR-20150617AM-09		WLY-862
CAR-20150617AN-09		WLY-867
CAR-20150617AO-09		WLY-868
CAR-20150617AP-09		WLY-884
CAR-20150617AQ-09		Classic Cable of Oklahoma, Inc.
CAR-20150617AR-09	WLY-567	
CAR-20150617AS-09	Friendship Cable of Texas, Inc.	WHZ-951
CAR-20150617AT-09		WLY-352
CAR-20150617AU-09	NPG Cable, LLC	WLY-268
CAR-20150617AV-09		WLY-534
CAR-20150617AW-09		WLY-733
CAR-20150617AX-09		WLY-736
CAR-20150617AY-09		WLY-853
CAR-20150617AZ-09		WLY-910
CAR-20150617BA-09		WLY-911
CAR-20150617BB-09		WLY-912