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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1269-19**

**IN THE MATTER OF THE  
ALLEGED FAILURE OF ALTICE  
USA, INC. TO COMPLY WITH  
CERTAIN PROVISIONS OF THE  
NEW JERSEY CABLE  
TELEVISION ACT, N.J.S.A.  
48:5A-1 ET SEQ., AND THE NEW  
JERSEY ADMINISTRATIVE  
CODE, N.J.A.C. 14:18-1.1 ET SEQ.**

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Argued September 20, 2021 – Decided October 15, 2021  
Remanded by the Supreme Court April 3, 2023  
Resubmitted June 7, 2023 – Decided June 30, 2023

Before Judges Currier and Mayer.

On appeal from the New Jersey Board of Public  
Utilities, Docket No. CS18121288.

Schenck, Price, Smith & King, LLP, and Howard J.  
Symons (Jenner & Block LLP) of the District of  
Columbia bar, admitted pro hac vice, and Matthew S.  
Hellman (Jenner & Block LLP) of the District of  
Columbia bar, admitted pro hac vice, attorneys for  
appellant Altice USA, Inc. (Jeffrey T. LaRosa, Howard  
J. Symons, and Matthew S. Hellman, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Board of Public Utilities (Michael L. Zuckerman, Deputy Solicitor General, of counsel; Viviana M. Hanley and Meliha Arnautovic, Deputy Attorneys General, on the brief).

Brian O. Lipman, Director, attorney for respondent New Jersey Division of Rate Counsel (Brian O. Lipman and Emily F. Smithman, on the brief).

## PER CURIAM

On April 3, 2023, the New Jersey Supreme Court remanded this matter to consider whether the New Jersey Board of Public Utilities (BPU) failed to follow proper procedures in its enforcement action against Altice USA, Inc. (Altice) for violating N.J.A.C. 14:18-3.8.<sup>1</sup> In re Alleged Failure of Altice USA, Inc. to Comply with Certain Provisions of the New Jersey Cable Television Act and the New Jersey Administrative Code, 253 N.J. 406, 411 (2023). We issued an April 20, 2023 order allowing the parties to submit supplemental briefs limited to the remand issue. After reviewing the briefs, we are satisfied the BPU followed proper procedures in its enforcement action against Altice.

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<sup>1</sup> N.J.A.C. 14:18-3.8, entitled "Method of billing," requires cable companies to refund or not fully charge customers who cancel cable service prior to the end of a billing cycle. This practice is known as "proration."

We incorporate the procedural history and facts set forth in the Court's April 3, 2023 opinion. Id. at 411-15. We summarize the facts relevant to the remand issue.

Altice is a cable television service provider. Its predecessor, Cablevision Systems Corporation (Cablevision), petitioned the BPU for relief from various cable television regulations so it could remain competitive with other cable television service providers and offer flexible billing to its customers. Id. at 412. In 2011, the BPU issued a relief order (2011 Relief Order) "expressly conditioned on Cablevision's continuing to 'prorate its bills pursuant to the requirements' of state law." Ibid. The 2011 Relief Order relied on sample bills provided by Cablevision, evidencing the company's proration of cable television bills, and Cablevision's representation that consumers would not be harmed by the requested relief. Id. at 426.

In 2016, Altice requested the BPU approve its merger with Cablevision. Id. at 412. As part of the BPU's approval of the merger (2016 Merger Order), Altice "agreed to 'abide by applicable [regulations] as delineated under N.J.A.C. Title 14,' which was in accord with Cablevision's 2011 Relief Order." Ibid. (alteration in original). The 2016 Merger Order required Altice to comply with

N.J.A.C. 14:18-3.8 as Cablevision had done prior to the merger with Altice. Ibid.

Altice initially prorated bills for its cable television customers who cancelled service prior to the end of a billing cycle. Ibid. In October 2016, Altice ceased prorating customer bills. Ibid. Altice never notified the BPU about the change in billing practice. When Altice stopped prorating customer bills, the BPU received hundreds of customer complaints. Ibid.

Based on those complaints, in March 2017, the BPU notified Altice that its billing practice was inconsistent with the BPU's regulations and the 2011 Relief Order. Around the same time, a BPU representative contacted Altice and requested justification for the changed billing practice. Altice responded to the BPU's inquiry on September 13, 2017, claiming the 2011 Relief Order did not require it to conform to N.J.A.C. 14:18-3.8.

The BPU and Altice spent the next several months attempting to resolve the billing issue. After Altice refused to resume prorating customer bills, the BPU issued a December 18, 2018 order to show cause why Altice should not be ordered to cease-and-desist its practice of not prorating customer bills; why the BPU should not find Altice's failure to prorate customer bills from October 2016 through December 2018 constituted a violation of the 2011 Relief Order; why a

monetary penalty should not be assessed against Altice; and why the BPU should not order Altice to issue a refund to affected customers.

On January 31, 2019, Altice filed an answer to the BPU's order to show cause, claiming it never represented it would continue prorating customer bills indefinitely. It also challenged the BPU's authority to compel refund payments to customers and impose a monetary penalty.

On November 13, 2019, after informal efforts to resolve the matter were unsuccessful, the BPU concluded Altice violated N.J.S.A. 14:18-3.8, the 2011 Relief Order, and the 2016 Merger Order. As a result, the BPU issued a cease-and-desist order. In re Altice, 253 N.J. at 412. The BPU also ordered Altice to issue refunds to affected customers and contribute \$10,000 toward a low-income internet access program.

Altice challenged the BPU's cease-and-desist order before this court. Id. at 413. We reversed, finding the Federal Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 to -573, preempted N.J.A.C. 14:18-3.8. In re Alleged Failure of Altice USA, Inc. to Comply with Certain Provisions of the New Jersey Cable Television Act and the New Jersey Administrative Code, No. A-1269-19 (App. Div. Oct. 15, 2021) (slip op. at 12).

The New Jersey Supreme Court granted Altice's petition for certification. 252 N.J. 60 (2022). The Court reversed, finding N.J.A.C. 14:18-3.8 is not preempted by federal law. In re Altice, 253 N.J. at 426. The Court also rejected Altice's argument that the BPU waived any obligation regarding its compliance with N.J.A.C. 14:18-3.8. Id. at 426-27. The Court found that Altice, as part of the BPU's approval of the merger between Altice and Cablevision, expressly agreed to "abide by . . . N.J.A.C. Title 14, . . . including . . . requirements related to billing practices and termination." Id. at 427. The Court reinstated the BPU's cease-and-desist order "without prejudice, subject to remand proceedings in the appellate court to resolve Altice's argument that the BPU failed to follow proper procedures in its enforcement action." Ibid.

On remand, Altice argues the BPU "lacked the authority to require refunds" to affected cable television customers. Additionally, even if the BPU had the authority to award refunds, Altice contends the BPU failed to adhere to administrative procedures in assessing refunds and penalties. We disagree.

We first address whether the BPU lacked authority to require Altice to issue refunds to affected customers. "[T]he BPU's authority over utilities, like that of regulatory agencies generally, extends beyond the powers expressly granted by statute to include incidental powers that the agency needs to fulfill

its statutory mandate." In re Valley Road Sewerage Co., 154 N.J. 224, 235 (1998). The BPU's authority "is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities." N.J. State League of Municipalities v. Dep't of Cmty. Affs., 158 N.J. 211, 223 (1999).

In enacting the New Jersey Cable Television Act (Act), N.J.S.A. 48:5A-1 to -53, the Legislature declared it is the policy of this State "to provide fair regulation of cable television companies in the interest of the public," N.J.S.A. 48:5A-2(b), and "to provide just and reasonable rates and charges for cable television system services without . . . unfair or destructive competitive practices," N.J.S.A. 48:5A-2(c). Importantly, nothing in the Act "limit[s] or otherwise reduce[s] the protection afforded to cable television customers." N.J.S.A. 48:5A-2(h).

The BPU is vested with enforcing the Act. N.J.S.A. 48:5A-2(d). The Legislature granted to the BPU the "full right, power, authority and jurisdiction to . . . [i]nstitute all proceedings and investigations" and "issue all process and orders, and render all decisions necessary to enforce the provisions of [the Act and], of the rules and regulations adopted thereunder." N.J.S.A. 48:5A-9(c).

Additionally, N.J.S.A. 48:5A-51 authorizes the BPU to impose penalties for violations of the Act. Specifically, the statute allows the BPU to enforce

penalties of not "more than \$10,000 for a third and every subsequent offense."  
N.J.S.A. 48:5A-51(b).<sup>2</sup>

Altice contends the BPU is required to institute an action in the Superior Court to impose a penalty. However, nothing in N.J.S.A. 48:5A-51 requires the BPU to file an action in the Superior Court. Rather, the statute expressly provides the "[t]he penalties . . . may be enforced by summary proceedings instituted by the [BPU] in the name of the State in accordance with the 'Penalty Enforcement Law of 1999.'"<sup>3</sup> While the statute allows the BPU to seek relief in a judicial forum to collect penalties from those who violate the Act, the BPU is not required to proceed in the Superior Court to either impose or collect penalties.

Regarding the BPU's requirement that Altice contribute \$10,000 toward low-income internet access, we note there were hundreds of cable customers affected by Altice's violation of N.J.A.C. 14:18-3.8. The maximum penalty the BPU could lawfully impose against Altice for its regulatory violations under the

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<sup>2</sup> N.J.S.A. 48:5A-51(b) allows imposition of a penalty for violation of the Act "of not more than \$1,000 for a first offense, not less than \$2,000 nor more than \$5,000 for a second offense, and not less than \$5,000 nor more than \$10,000 for a third and every subsequent offense."

<sup>3</sup> See N.J.S.A. 2A:58-10 to -12.



statute was \$10,000. Had the BPU not been limited by the statute, the amount would likely have been greater given the significant number of customers adversely impacted by Altice's improper billing practice. Additionally, N.J.S.A. 48:5A-9(c) allows the BPU to issue orders as necessary to enforce the Act. Thus, we are satisfied the \$10,000 contribution was permitted under the statute.

We also reject Altice's argument that the BPU lacked authority to compel the payment of refunds to aggrieved customers. The Act is intended to protect cable television customers against deceptive and unfair practices. The BPU's order compelling Altice to refund money to those customers who were harmed by the company's violation of N.J.A.C. 14:18-3.8 is consistent with the agency's duty to enforce the Act and the regulations adopted thereunder to ensure cable television customers in this State are protected. N.J.S.A. 48:5A-9 and N.J.S.A. 48:5A-2(h). The Legislature vested the BPU with the tools necessary to protect cable television consumers from harm stemming from cable companies who violate the law.<sup>4</sup>

We next consider Altice's argument that the BPU failed to follow proper procedures in assessing penalties and ordering customer refunds. Altice claims

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<sup>4</sup> We agree with Altice that customer refunds should be calculated as of December 18, 2018, the date of the BPU's order to show cause.

the BPU failed to comply with the deadlines set forth in N.J.A.C. 14:18-16.8 in pursuing its enforcement action. Specifically, Altice asserts the BPU failed to provide written notice of the enforcement action within ninety days of learning of Altice's billing violations. N.J.A.C. 14:18-16.8(a). After serving written notice, Altice contends any enforcement action must be resolved within 180 days of the notice. N.J.A.C. 14:18-16.8(e) (allowing a ninety-day extension "if additional time will serve the public interest").

Altice argues the BPU did not provide written notice until the December 18, 2018 order to show cause, twenty months after it learned Altice ceased prorating customer bills in March 2017. It further claims the BPU failed to resolve the matter within the 180-day deadline. The matter did not resolve until November 2019, nearly a year after the BPU issued its order to show cause and well beyond the 180-day deadline. Altice contends BPU's enforcement action must be set aside because it failed to provide both timely notice of the violation and timely resolution of the enforcement proceeding.

Altice also claims it suffered prejudice as a result of BPU's failure to follow procedures governing enforcement actions. Altice asserts that had the BPU followed the proper procedures, "there would have been no doubt about

the [BPU]'s position on the matter and Altice's future actions would have been undertaken in full knowledge of the risks." We reject these arguments.

The BPU notified Altice in March 2017 that it received hundreds of customer complaints regarding the company's failure to prorate cable television bills. The BPU first made an informal overture to Altice to resolve the issue amicably. The informal discussions continued over the course of the next six months. However, the discussions did not result in any agreement between the BPU and Altice. Meanwhile, Altice customers continued to levy complaints with the BPU about Altice's failure to prorate cable television bills.

Because there was no resolution of the billing issue, on December 18, 2018, the BPU issued an order to show cause. Altice requested an extension of time to respond to the BPU's order to show cause, which the BPU granted. Altice eventually responded to the BPU's order to show cause on January 31, 2019.

The BPU has the power to relax its procedural rules if no substantial rights are prejudiced. See SMB Assocs. v. Dep't of Env'tl. Prot., 264 N.J. Super. 38, 59 (App. Div. 1993), aff'd, 137 N.J. 58 (1994). Informal procedures, such as those employed by the BPU in this case, may satisfy due process requirements provided the parties have adequate notice of the agency's action, an

understanding of the evidence supporting the agency's action, and an opportunity to present contrary evidence and arguments in opposing the agency's enforcement action. In re Public Serv. Elec. & Gas Co's. Rate Unbundling, 330 N.J. Super. 65, 120 (App. Div. 2000).

We are satisfied the BPU had the power to relax the procedural deadlines for pursuing an enforcement action against Altice. The BPU first attempted to resolve the billing dispute with Altice informally. That process spanned from March 2017 through December 2018. During that time, Altice actively participated in discussions with the BPU to resolve the billing violations amicably. On this record, there is no doubt that Altice had notice the BPU intended to take action to protect cable television consumers in the event the matter could not be resolved informally.

Nor did Altice demonstrate it suffered prejudice based on the timing of the BPU's enforcement action. Only after the Court issued its decision in April 2023 did Altice address refunds to aggrieved customers as a result of its improper billing. From October 2016, when it first changed its customer billing practice, until April 2023, when the Court issued its decision, Altice earned interest on money that rightfully belonged to its overbilled cable television customers. Altice took a calculated risk that it would succeed on its appeal

from the BPU's enforcement action rather than issue refunds to its customers. Thus, Altice cannot demonstrate it suffered prejudice.

Moreover, Altice does not argue that it would have refunded money to customers sooner if, in March 2017, it received written notice of the BPU's position regarding proration of customer bills. Altice only agreed to issue refunds to customers after the Court's April 2023 opinion. Because Altice retained customers' money for more than six years, it cannot establish prejudice.

We are satisfied the method the BPU employed in enforcing N.J.A.C. 14:18-3.8 did not jeopardize any important policy considerations or affect any due process rights. The BPU notified Altice of its violation of the 2011 Relief Order and applicable regulations after receiving hundreds of customer complaints about Altice's failure to prorate cable television bills. The BPU made an informal inquiry regarding billing practices in March 2017. Although the BPU initially provided verbal notice of the violations instead of written notice, Altice did not deny receiving notice from the BPU regarding the regulatory violations. Nor did Altice assert it failed to understand the issues related to its billing practices and customer complaints about those practices.

Moreover, in issuing the December 18, 2018 order to show cause, the BPU accorded Altice an opportunity to present information regarding its billing

practices. Through the BPU's order to show cause, Altice received notice, understood the issue, presented evidence, and defended against the charge. The BPU's relaxation of the procedures governing the timing and resolution of its enforcement action did not deprive Altice of any substantial right resulting in prejudice.

On this record, we are satisfied Altice knew about the customer complaints made to the BPU related to the company's billing practice and the BPU acted diligently in affording Altice an opportunity to present evidence, defenses, and arguments why it was not in violation N.J.A.C. 14:18-3.8 and the 2011 Relief Order. As part of its obligation to protect aggrieved cable television consumers from unfair or destructive practices, the BPU had the statutory authority to pursue the enforcement action despite the passage of more than ninety days after receiving notice of violation and more than the 180-day period for resolving the enforcement matter.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION