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OPTIMUM COMMUNICATIONS: WELCOME TO THE SCORCHED EARTH ERA OF ANTI-COOPERATION

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2025

Research Date: December 2, 2025

Optimum Communications: Welcome to the Scorched Earth Era of Anti-Cooperation

The Bottom Line™:

- Anti-cooperation provisions in debt agreements are designed specifically to prevent creditors from forming blocs or otherwise organizing with each other when negotiating with a debt issuer. Such provisions have gained notoriety in recent months as a potential tool to allow debt issuers to control liability management negotiations.
- Optimum Communication's unrestricted subsidiary credit facility, dated November 25, 2025, includes such a provision.
- Optimum's anti-cooperation provision goes further in a number of respects than prior iterations obtained by Covenant Review, particularly in terms of the potential consequences to creditors.
- In this report, we review and analyze the language included in Optimum's new credit agreement and compare it to prior known examples of anti-cooperation provisions.

Overview

The rise to prominence of cooperation agreements is one of the major themes to emerge in the past few years with respect to liability management transactions (LMTs). These agreements bind creditors together when negotiating with a debt issuer—ostensibly offering protection in numbers or inhibiting "creditor-on-creditor" violence. The terms of cooperation agreements are known to vary widely and can require, among other things, that any deal struck with the debt issuer be with the approval of the signatories to the cooperation agreement, that any resultant deal with the borrower or issuer be on a pro rata basis, and/or that signatories will not "deal away" from the rest of the group. In response to such agreements, sponsors and debt issuers have begun to implement language prohibiting cooperation agreements—so called "anti-cooperation" provisions.

Covenant Review has written several reports on anti-cooperation language in recent months, including Market Alert: Anti-Cooperation Language Debuts in the US BSL Market, Warner Bros. Discovery Exchange: The "Non-Boycott" Covenant, and Market Alert: It's Baaaaack – Anti-Cooperation Returns to BSL Syndication.

On November 25, 2025, Optimum Communications (FKA Altice USA) ("Optimum") publicly disclosed a complex transaction that involved the taking out of its restrictive B-6 term loan.[1] As part of the transaction, Optimum issued $2 billion of new term loan debt out of Cablevision of Litchfield, LLC ("Cablevision Litchfield") under a Credit Agreement, dated November 25, 2025 (the "UnSub

[1] See Optimum Communications: The B-6 Domino Falls.

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Credit Agreement").[2] Cablevision Litchfield is an unrestricted subsidiary of CSC Holdings, LLC ("CSC," which is the borrower under the Credit Agreement, dated October 9, 2015, which previously governed the B-6 term loan[3]). Included in the UnSub Credit Agreement is an iteration of anti-cooperation language. In this report, we assess this new provision, compare it with prior formulations (which have largely not survived the syndication process), and discuss how the language is significantly more punitive towards lenders than those prior iterations.

For purposes of this report, we will focus primarily on the anti-cooperation language and not on Optimum's concurrent lawsuit (the "Complaint") against creditors party to the existing cooperation arrangement.[4] As the Complaint touches on questions of antitrust law, a discussion of the arguments brought to bear by Optimum in the litigation is beyond the scope of the current report.

Optimum's Anti-Cooperation Provision

The anti-cooperation provision in Optimum's UnSub Credit Agreement is located in Section 9.23, titled *Prohibition Regarding Cooperation Agreements* (the "ACP"). The ACP can be broken up into three main components: the Prohibition, the Consequences, and the Reporting Requirement.

The Prohibition

The ACP starts off in Section 9.23(a) by broadly prohibiting lenders in the UnSub Credit Agreement from entering into "Cooperation Agreements," with each lender (1) representing "to the Borrowers that no Restricted Party of such Lender is party to or, directly or [other than in respect of regulated banks] indirectly, subject to a Cooperation Agreement" and (2) agreeing "on behalf of its Restricted Parties, that such Lender's Restricted Parties shall not, directly or indirectly, enter into or become subject to any Cooperation Agreement."

"Restricted Party" generally refers to the lenders themselves and, other than for regulated banks, controlled affiliates or investment managers.

The term "Cooperation Agreement" is defined in the UnSub Credit Agreement to mean: (1) a specific cooperation agreement entered into by CSC's creditors represented by Akin Gump LLP and PJT Partners with respect to debt of CSC and its subsidiaries whereby:

> "holders party thereto agree not to execute, approve, vote to accept or approve, or otherwise participate in, negotiate, facilitate, consent to agree to consent to, support and/or agree to support any transaction (or any material transaction) with CSC and/or its Subsidiaries other than a transaction approved or supported by all or a portion of such holders"

and (2) any subsequent or similar cooperation agreement.

The Consequences

[2] Available here: https://www.sec.gov/Archives/edgar/data/1702780/000110465925115874/tm2532088d1_ex10-2.htm.
[3] See research on CSC's existing credit facilities, available here: Optimum Communications Credit Facilities - Loan Covenant Review (Amended Terms - Fourteenth Amendment).
[4] See US Special Situations: Altice USA launches antitrust litigation against 'illegal cartel' lender co-op over 'conspiracy' to lock it out of US credit market.

Clause (b) of Section 9.23 sets forth the consequences in the event a lender violates the prohibition set forth in clause (a). These are severe with lenders acknowledging that the borrowers will be due liquidated damages in the form of a complete forfeiture of each lender's "right to receive payment from the Borrowers on all Obligations held by such Lender…and such Obligations shall be treated as no longer outstanding for all purposes under this Agreement." To wit: violate the anti-cooperation agreement and your debt is cancelled with no hope for repayment.

The Reporting Requirement

Clause (c) of Section 9.23 provides Optimum with the ability to request that all lenders to the UnSub Credit Agreement confirm that they are not party to a Cooperation Agreement up to two times per calendar year (as well as upon any occasion on which lender consent or action is sought or upon any other action taken by, or on behalf of, any lender). Failure to provide this "Compliance Representation" will result in "payments" under the UnSub Credit Agreement (ostensibly inclusive of amortization and interest payments) no longer being paid to the subject lender until such Compliance Representation is received. The obligation to provide Compliance Representations notably survives through maturity of the facility, even if the "Lender" in question is no longer a lender of record.

Note that the requirement does not extend to certain Qualified Marketmakers.[5]

Key Differences from Prior Formulations

A retroactive anti-cooperation provision

Optimum's ACP is unique among similar anti-cooperation provisions obtained by Covenant Review in that it is both retroactive and prospective in nature (most are just the latter). Specifically, the ACP explicitly prohibits lenders under the UnSub Credit Agreement from being party to the reported cooperation agreement *already entered into* by creditors to CSC.[6] In short, the ACP here is designed not only to prevent lenders from entering into *future* cooperation agreements, but it is also very much designed to prohibit lenders who are party to the *current* cooperation agreement from becoming a lender under the UnSub Credit Agreement. Or perhaps, equally likely, it is intended to incentivize creditors to withdraw from the existing cooperation agreement so as to be able to participate in the new UnSub Credit Agreement.

In other respects, the "Cooperation Agreement" definition does broadly mirror prior examples of anti-cooperation language in substance, if not in form. The name of the game is to define cooperation agreements as expansively as possible. For Optimum, a "Cooperation Agreement" encompasses not just the extant cooperation agreement, but also any agreement that amends, restates, replaces, succeeds, or *has the same or substantially similar effect*" (emphasis added) as the existing agreement—that is, whether the agreement requires signatories to approve (in whole or in part) any

[5] Defined as a:

> "Person that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers of the Term Loans, in its capacity as a dealer or market maker in the Term Loans and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt)."

[6] Per the Complaint, the extant cooperation agreement allegedly encompasses 99% of CSC's existing creditors. See Section 6 of the Complaint.

transaction with CSC and its subsidiaries. In prior examples of anti-cooperation provisions, the term "cooperation agreement" is usually self-referentially defined as "any cooperation agreement, support agreement, lock-up agreement, coordination agreement, or other similar voting agreement with respect to the Borrower's indebtedness, securities, or equity interests" (or similar language).

The main outlier in this line of provisions is in Warner Brothers Discovery ("WBD") June 2025 exchange offer, where cooperation agreements are more narrowly confined to those agreements that prohibit the signatories from (1) purchasing for cash any debt or securities from the issuer or (2) loaning debt for borrowed money to the issuer.[7]

A broader universe of affected parties

The ACP has a significantly broader reach than in other anti-cooperation provisions reviewed, as it applies not just to the lenders themselves but in many cases to the lenders' affiliates, investment managers, and other Restricted Parties. This is similar to the anti-boycott clause in WBD (which extends not just to the "beneficial owner[s] of interests" in the relevant notes, but also to certain affiliates of those noteholders). Relatedly, parties that are simply "subject to" a Cooperation Agreement can also trigger the ACP (i.e., individual affiliates of lenders that have become party to a cooperation arrangement can still trigger the ACP, even if the specific legal entity is not a signatory to that agreement).

In contrast, other anti-cooperation language reviewed has largely been aimed at only the lenders themselves.

Punitive remedies

The remedy provision of the ACP is likely to elicit the most clutching of pearls. Indeed, before Optimum, there had been no known examples of anti-cooperation agreements that seek to effectively *cancel* the debt held by breaching lenders. Such cancellation appears to be permanent (i.e., obligations owed to the affected lender are not restored upon withdrawal from a cooperation agreement).

In Heidrick & Struggles' anti-cooperation provision, the primary consequence for lenders (beyond a potential breach of contract claim levied against them by the borrower) was that breaching lenders would be disenfranchised from the credit agreement (specifically, subject lenders would have been "deemed" to have voted in any matter requiring lender consent in the same proportion as those lenders who were not party to a cooperation agreement). Note that Heidrick's provision was ultimately flexed out during syndication.[8]

Other formulations have been somewhat more expansive than Heidrick, but still less severe than Optimum's ACP. Formulations that were floated in the broadly syndicated loan market in early 2025, for example, treated breaching lenders as "disqualified." This would have had both a disenfranchising effect as well as giving the borrower the option to "yank" such lenders or force the offending lender to assign its interests to other creditors.[9] While yanked lenders could suffer economically (depending on the deal, disqualified lenders may be paid out at the price they bought

[7] See Section 3.04 of Annex A to the Twenty-Third Supplemental Indenture, dated June 13, 2025 (the "WBD Indenture"), available here http://sec.gov/Archives/edgar/data/1437107/000143710725000151/a2025-06x16ex41dclindentur.htm.
[8] See US New Issue: Heidrick & Struggles widens pricing to S+400/98.5 on LBO TLB, rolls out doc changes nixing anti-coop language; recommits due 15:00 ET.
[9] See Covenant Primer: Explaining the Yank-A-Bank in US Leveraged Loans.

into the transaction, at par, or at market value), they would not face the wholesale cancellation of the obligations owed to them, as is the case in Optimum.

WBD's formulation, meanwhile, indicated only that breaching creditors were liable for whatever "damages at law or in equity" the company may have suffered on account of such breach.[10]

In short, Optimum's remedies are significantly more punitive to lenders than any formulation previously encountered.

Report or face our wrath

The ACP's reporting requirement also goes further than most. In fact, besides Heidrick & Struggles, which imposed a similar reporting requirement at the borrower's request, none of the other known examples of anti-cooperation provisions have required compliance reporting from the lenders. Optimum's reporting requirement is at best unclear. Besides the twice per annum requirement, the company also may require that a Compliance Representation be delivered with respect to any amendment request (even when amendments are likely to be something that Optimum would be requesting). Moreover, it is also not clear if the request for a Compliance Representation can be made simply in conjunction with an amendment request and not as a condition to the amendment. Most concerning, however, is that Optimum can also request a Compliance Representation upon "any action taken under any Loan Document by, or on behalf of, any Lender." This language is incoherent—or, at least, overly vague. What kinds of "actions" are contemplated here? What kinds of actions would be considered as being taken "on behalf" of a lender? Would the latter cover any agent action?

The consequences for failing to provide a Compliance Representation are also unsurprisingly punitive (particularly as Optimum can seemingly request a Compliance Representation in all manner of situations). While the debt is not outright cancelled, lenders who fail to provide the requisite Compliance Representation will give up any payments under the UnSub Credit Agreement (which we presume to include fees, interest, and principal payments) until the Compliance Representation is delivered. Further, the language in the ACP is silent as to whether affected lenders will be grossed up when the Compliance Representation is delivered (or if missed payments are lost forever). The fact that the provision survives the lender's status *as a lender* is also unusual (though the presumed intent is to withhold any payments owed to such entities that have not yet paid, even as those entities have ceased to be a lender on record).

Conclusion

Optimum's ACP, together with its Complaint filed against its creditors, represents a full-on assault on the very concept of cooperation amongst lenders.

How Optimum's lawsuit (as well as how a similar lawsuit arising from Selecta's LMT[11]) will play out is, of course, still an open question and will likely take months, if not years, to resolve. As we wait for this potential sea change in LMT practice, the ACP and similar provisions will be the primary tool to inhibit cooperation among creditors. That said, as of the date of this report, we have yet to see an

[10] See *Section 3.04(b)* of the WBD Indenture.
[11] See Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT.

anti-cooperation provision clear the new issue market, with provisions in WHP Global, Avalara, and Heidrick & Struggles all flexed out during syndication. The two cases where an anti-cooperation provision made it into definitive documentation are both outliers: Optimum's formulation was part of an ongoing LMT and was negotiated outside of the usual parameters of the broadly syndicated loan market, while WBD's anti-boycott covenant was part of an investment grade exchange offer.

Optimum's ACP nevertheless represents a new stage in anti-cooperation provisions, one which is explicitly and unapologetically punitive. On the one hand, we consider it unlikely that the Optimum model will meet with much success in the new issue market, at least in the near term. On the other hand, the ACP gives aggressive sponsors a new model to follow when proposing anti-cooperation language. Indeed, we think it likely that some borrowers may propose language similar to the ACP, with the *expectation* that it will be pared back (but not altogether eliminated). If such an approach is successful, the proverbial horse may be out of the barn for anti-cooperation, even for new issuances.

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