

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET AND TECHNOLOGY

In the Matter of

THE PEOPLE OF THE STATE OF NEW YORK, by
BARBARA D. UNDERWOOD, Attorney General of the
State of New York,

Plaintiff,

-against-

CHARTER COMMUNICATIONS, INC. and
SPECTRUM MANAGEMENT HOLDING
COMPANY, LLC (f/k/a TIME WARNER
CABLE, INC.),

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into effective as of this 17th day of December 2018, by and between the People of the State of New York, by Attorney General Barbara D. Underwood (the “OAG”), on the one hand, and Charter Communications, Inc. and Spectrum Management Holding Company, LLC (f/k/a Time Warner Cable Inc.) (collectively, “Charter”), on the other hand. The OAG and Charter are referred to collectively as the Parties.

RECITALS

WHEREAS the OAG conducted an investigation between October 2015 and January 2017 (the “Investigation”), pursuant to New York State Executive Law § 63(12) and General Business Law §§ 349–50, of the internet marketing practices of Charter Communications, Inc.

and Spectrum Management Company, LLC (f/k/a Time Warner Cable Inc.) (collectively “Charter”), New York State’s largest provider of residential internet services; and

WHEREAS, on February 1, 2017, the OAG filed a complaint (the “Complaint”) against Charter in Supreme Court, New York County (“Supreme Court”) (Sherwood, J.) (Index No. 450318/2017) alleging, *inter alia*, that Time Warner Cable Inc., before it merged with Charter in May 2016, failed to deliver promised internet speeds to certain New York subscribers and made false and misleading claims related to the quality of video streaming over its network, in violation of Executive Law § 63(12) and GBL §§ 349–50 (the “Litigation”); and

WHEREAS, Charter has filed an Answer and Affirmative Defenses denying the allegations in the Complaint and any liability in the Litigation and Investigation; and

WHEREAS, the Parties wish to enter into this Agreement to resolve all issues relating to the Investigation and the Litigation;

NOW THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties, upon the consent of the undersigned, and in consideration of the mutual covenants and agreements set forth herein, that:

DEFINITIONS

For the purposes of this Agreement, the following definitions apply:

1. “Clearly and conspicuously” means, consistent with generally applicable law, that the statement, representation or term being disclosed is of such size, color, contrast and/or audibility and is so presented as to be readily noticed by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed. In addition to the foregoing, in interactive

online media, the disclosure shall be presented prior to the consumer incurring any financial obligation.

2. “Consistent Speed Metric” means the 80/80 speed consistency metric, as described in the 2016 FCC Measuring Broadband America Report, which is the minimum actual speed that was experienced by at least 80% of panelists during at least 80% of the peak usage period, or a comparable industry-standard metric.

3. “Substantiate” means to verify the accuracy of a statement or claim through industry-established methodology.

STIPULATION OF DISCONTINUANCE AND RELEASES

4. Not later than seven (7) days from the execution of this Agreement, the Parties shall inform the Court before which the Litigation is pending, that they have entered into a settlement of the Litigation, and shall seek an adjournment of all outstanding dates.

5. Not later than seven (7) days after full satisfaction by Charter of the restitution obligations set forth in paragraphs **31-32** below, the OAG shall deliver to counsel for Charter an executed Stipulation of Discontinuance with Prejudice of the Action (the “Stipulation of Discontinuance”), which the Parties shall file with the Court.

6. In consideration of the restitution obligations set forth in paragraphs **31-32** below, the OAG releases and discharges Charter, and all of its partners, directors, principals, officers, employees, subsidiaries, affiliates, divisions, predecessors, successors, assigns, attorneys, stockholders, accountants, auditors, advisors, trustees, administrators, fiduciaries, consultants, representatives, insurers, and agents in their respective capacities from all claims that (a) arise

from or relate to the subject matter of the Investigation or the Litigation, and (b) are based on conduct that occurred prior to the execution of this Agreement. The releases set forth above shall become effective upon the filing of the Stipulation of Discontinuance.

PROSPECTIVE RELIEF

I. EFFECT AND DURATION OF TERMS

7. Unless a term limit for compliance is otherwise specified within this Agreement, Charter's obligations under this Agreement will remain in effect for forty-eight (48) months from the date of this Agreement. Thereafter, Charter will continue to comply with all applicable federal and state laws. Nothing in this Agreement shall relieve Charter of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

8. Charter's obligations under paragraphs **11-21** go into effect only if, within seventy five (75) days after the execution of this Agreement the OAG has reached agreements with Verizon, Frontier, and Altice (the "Other ISPs") that contain substantially the same terms. If the OAG reaches agreements with the Other ISPs within the time allowed, the obligations set forth in paragraphs **11-21** will take effect one hundred and twenty (120) days after the execution of this Agreement. If the OAG fails to reach agreements with the Other ISPs within the time allowed, the obligations set forth in paragraphs **11-21** will not take effect to the extent they impose requirements beyond applicable state or federal law.

9. Charter's remaining obligations set forth in paragraphs **22-32** take effect one hundred and twenty (120) days after the execution of this Agreement, unless otherwise specified.

10. All terms are expressly limited to New York State residential subscribers of Charter's wireline broadband internet access service.

II. ADVERTISING PROHIBITIONS

11. Charter shall not make representations about speed requirements for online activities and applications unless it can substantiate such claims.

12. Charter shall not advertise its internet service as "without buffering," "buffer-free," having "no lag time," with "no interruptions," without "downtime" or other similar phrases, unless it can substantiate such claims.

13. Charter shall not advertise access to particular online content and services, unless it has made and continues to make commercially reasonable efforts to deliver such access.

14. Charter shall not advertise its internet service in a manner that suggests that consumers can receive the advertised speed over WiFi, unless it can substantiate that Charter-owned wireless routers are capable of delivering that speed.

15. Charter shall not advertise its internet service as allowing multiple devices to share the connection with no effect on speed, "without slowdowns," or using other similar phrases, unless it can substantiate such claims, provided that Charter may explain that faster speeds allow subscribers to use more devices simultaneously.

16. Charter shall not use the term "consistent" to describe internet speeds unless it can substantiate such claims with the FCC Consistent Speed Metric.

III. AFFIRMATIVE OBLIGATIONS

A. Advertising Internet Speeds

17. In advertising internet speeds associated with particular internet plans or subscriptions, Charter shall:

- a. disclose online (at the same link referenced below in subsection d of this paragraph) how the advertised speed is substantiated (e.g., based on FCC SamKnows median test with link to explanatory webpage);
- b. describe speeds as “wired,” including at the point of sale (e.g., any contract, webpage or other customer interaction where subscribers select a particular internet plan);
- c. clearly and conspicuously disclose that wireless speeds may vary; and
- d. provide a link or disclose a website location describing why actual experience might vary depending on the following factors (e.g., “See www.spectrum.com/yourspeed for information on factors that could cause speeds to vary”):
 - i. Effect of WiFi;
 - ii. Multiple users;
 - iii. Device limitations; and
 - iv. Network congestion.

B. Substantiation of Internet Speeds

18. In offering or advertising internet speeds, Charter shall substantiate its advertisement or offer based on speed test results performed using industry-accepted testing methodologies (e.g. SamKnows median peak-period speed test) to a Charter demarcation point (e.g., a cable modem).

19. Substantiation, if based on the SamKnows median peak-period speed test, means that (a) the median speed determined through network-wide representative test results obtained within six months of launching a new service tier is at least as high as the speed offered by Charter for that tier, and (b) the median speed determined through annual test results is at least as high as the speed offered by Charter for that tier.

20. Charter will use SamKnows or another industry-standard testing methodology designed to be representative across Charter's network.

21. If Charter cannot substantiate internet speeds for a plan as described in paragraphs **18-20** above, it shall cease offering that plan and offer subscribers on that plan the option to select a lower speed plan that can be substantiated at Charter's price for that lower speed plan.

C. Record Keeping

22. Charter or its agents shall retain representative samples of all distinct television, radio, print and digital advertisements that target New York internet service subscribers for four (4) years from the date the advertisement is last disseminated, and shall make such records available to OAG upon reasonable request.

23. Charter shall retain test results (for testing performed pursuant to paragraphs **14** (WiFi equipment), **18-20** (speeds), and **24** (modem testing)) for four (4) years from the date of testing, and shall make such records available to OAG upon reasonable request.

D. Equipment Practices

24. Equipment provided to subscribers at the time of subscription must be capable of delivering the advertised speed as substantiated in paragraphs **18-20** above and field-tested for such capability prior to being deployed for the first time.

25. Charter shall complete a comprehensive audit of the modems, routers, and gateways it has supplied to New York internet subscribers by no later than ninety (90) days after execution of this Agreement, consistent with Charter's current business practices for auditing equipment deployment. The audit will:

- a. identify all subscribers who are using modems, routers, or gateways provided by Charter that are incapable of reaching the speeds subscribed to by subscribers;
- b. be conducted using the company's existing analyses of the capabilities of each device, though Charter may not be able to verify that WiFi equipment, such as routers and gateways, are actually in use by the subscriber but will only be able to assess whether a device was issued to the subscriber.

26. Charter shall provide OAG with a copy of the results of the audit within fifteen (15) business days of the completion of the audit described in paragraph **25**.

27. Charter shall promptly take steps to replace equipment identified in paragraph 25 as incapable of reaching the speeds offered to subscribers. Charter must (a) attempt to notify affected subscribers using at least three different methods of contact (e.g., postcard, email, or bill insert) that their equipment fails to provide the subscribed-to speed; (b) offer to ship or install upgraded devices for subscribers, free of charge, and (c) offer access to free technical assistance with replacement; except that Charter shall not be required to undertake such additional subscriber outreach with respect to any subscriber to whom Charter has provided upgraded equipment or offers of upgraded equipment at no charge (based on the methods of contact identified in this paragraph) since January 1, 2017.

28. For subscribers who utilize or will utilize Charter-provided modems or routers, Charter shall implement training, rules, policies, or controls designed to (a) prevent new subscribers from initiating service and existing subscribers from upgrading service until the subscriber has the proper company-owned equipment for the chosen speed tier, and (b) contact any subscribers who inadvertently are provided company-owned equipment inconsistent with subsection (a) of this paragraph within 30 days of becoming aware of the issue and provide service credit to such subscribers for the period spanning the time from when the improper equipment was provided to the time when they were informed that they had improper equipment.

E. Sales and Customer Service Training

29. Charter shall reasonably train subscriber-facing customer service representatives, field technicians, and other sales personnel to take reasonable steps to reasonably inform consumers about the factors that can affect internet speeds, including those described in subsection d of paragraph 17.

30. Charter shall maintain on its website a video designed to educate consumers about: (i) the fact that WiFi speeds may be lower than wired speeds; (ii) factors that cause WiFi speed degradation; and (iii) steps consumers can take to minimize speed degradation over WiFi. Charter shall include a link (which may be the same link referenced in subsection **d** of paragraph **17**) to a website with WiFi information (including the educational video) in its terms of use, subscriber agreement, and new subscriber welcome kit.

IV. SUBSCRIBER REFUNDS

31. As consideration for this Agreement, Charter shall issue \$62,500,000 in refunds to current subscribers according to the methodology described in Schedule A to this Agreement. Charter shall provide notice to subscribers describing the relief, including that such relief is restitution pursuant to this Agreement. Charter shall inform the OAG about when it plans to notify subscribers and provide the OAG with a copy of planned notices to subscribers pursuant to this paragraph at least ten (10) days prior to transmission and provide the OAG prompt notification of any modifications to such notices. The refunds shall be issued within one hundred and twenty (120) days of the execution of this Agreement (the "Refund Deadline"). Within ten (10) days of the Refund Deadline, Charter shall provide the OAG an accounting of all subscriber bill credits or refunds issued in accordance with this Agreement. In the event that Charter has issued bill credits or refunds totaling less than \$62,500,000 by the Refund Deadline, Charter shall pay by wire transfer to the State of New York the sum of \$62,500,000 minus the total amount of credits that Charter issued pursuant to this Agreement within twenty (20) days of the Refund Deadline and such funds shall be retained by the OAG as penalties and costs or, at the

OAG's discretion, be distributed as additional restitution. The OAG will provide Charter bank wire instructions for all payments to the OAG made pursuant to this Agreement. Separately, Charter has previously issued more than \$6 million in refunds to subscribers who were provided with equipment that could not support the plan to which they had subscribed.

V. IN-KIND VIDEO SERVICE COMPENSATION

32. Charter shall offer to existing New York internet subscribers in-kind restitution consisting of access to a choice of video services (including video streaming capabilities inside and outside the home) agreed to by the Parties and described in Schedule B to this Agreement, which offer will remain open no less than sixty (60) days from the date of notification. Charter shall provide notice to subscribers describing the relief, including that such relief is restitution pursuant to this Agreement. Charter shall inform the OAG about when it plans to notify subscribers and provide the OAG with a copy of planned notices to subscribers pursuant to this paragraph at least ten (10) days prior to transmission and provide the OAG prompt notification of any modifications to such notices. Within twenty (20) days of closing of the offer, Charter shall provide the OAG a reporting of its administration of the in-kind restitution that shall include the number of subscribers that received such restitution and the particular in-kind restitution received.

VI. POST-MERGER NETWORK INVESTMENTS

33. The OAG acknowledges Charter's substantial investments in improving internet service in New York since acquiring Time Warner Cable in May 2016, including investments for network infrastructure enhancements, modem replacements, and upgraded WiFi routers.

VII. MISCELLANEOUS TERMS

34. Charter must comply with the open internet and settlement-free peering provisions of the FCC's Order approving Charter's merger with TWC, as those provisions are interpreted by the FCC, for as long as those provisions remain in effect.¹

35. After the execution of this Agreement, the parties shall continue to adhere to the provisions in the Litigation's Stipulation and Order for the Production and Exchange of Confidential Information (NYSCEF Doc. No. 86). The OAG further agrees, pursuant to New York Public Officers Law sections 87(2)(d) and 89(5)(a), to maintain the confidentiality of statements, documents, or other materials produced or provided by Charter related to the Investigation or Litigation at any time prior to or after the date of this Agreement, to the extent permitted by law. Should OAG receive a Freedom of Information Law request for materials produced by Charter during the Investigation or Litigation, the OAG shall promptly (prior to the disposition of the request) inform Charter of the existence and substance of that request.

36. For forty-eight (48) months from the date of this Agreement, if the OAG believes that Charter has materially violated a provision of this Agreement, prior to taking legal action to enforce the Agreement as a result of the alleged violation, the OAG shall notify Charter, identifying the alleged violation and the applicable provision of this Agreement. Charter shall have thirty (30) days ("Cure Period") to take actions to cure the alleged violation and provide the OAG with a written explanation of the corrective actions taken. In the event the OAG contends

¹ See Memorandum Opinion and Order, *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, 31 FCC Rcd. 6327, (rel. May 10, 2016) (Appendix B, section III).

that the alleged violation has not been cured within the Cure Period, the OAG may seek judicial enforcement of this Agreement, without Charter having waived any defenses to any alleged breach.

37. If a court of competent jurisdiction determines that Charter has violated the Agreement, Charter agrees that any statute of limitations or other time-related defenses applicable to the subject of the Agreement, and any claims arising from or relating thereto are tolled from and after the date of this Agreement. In the event that a court of competent jurisdiction determines that the Agreement has been breached, Charter expressly acknowledges that this Agreement shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Agreement, against Charter.

38. This Agreement is not intended for use by any third party in any other proceeding. Neither the settlement of the Investigation and Litigation nor any acts performed or documents executed in furtherance of this Agreement shall be deemed an admission of or evidence of any alleged wrongdoing, liability, commission or omission by Charter, in any civil, criminal, administrative or arbitration proceeding.

39. This Agreement may not be amended except by an instrument in writing signed on behalf of all parties to the Agreement.

40. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns. Charter shall be responsible for the failure of any of its agents, representatives, employees and any corporation, subsidiary or

division through which Charter hereafter acts, to comply with the terms of this Agreement. Neither Charter nor the OAG may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without prior written consent of the other party.

41. Any failure by the OAG to insist upon the strict performance by Charter of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by Charter.

42. In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

43. All notices, reports, requests and other communications to any party pursuant to this Agreement shall be in writing and directed as follows:

If to the OAG, to:

New York State Office of the Attorney General
Bureau of Internet & Technology
Attn: Bureau Chief
28 Liberty Street
New York, NY 10005
Telephone: (212) 416-8433

If to Charter:

Charter Communications, Inc.
Attn: General Counsel
400 Atlantic St.
Stamford, CT 06901
Telephone: (203) 905-7800

44. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Charter or the OAG in agreeing to this Agreement.

45. Charter represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved. Charter further represents and warrants that the signatory to this Agreement is a duly authorized officer acting at the direction of the Board of Directors of Charter.

46. This Agreement was negotiated in good faith between the Parties, and reflects a settlement that was reached voluntarily, after full investigation, arm's length negotiation, and consultation with experienced legal counsel.


47. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

48. This Agreement may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the effective date of this Agreement. For purposes of this Agreement, copies of signatures

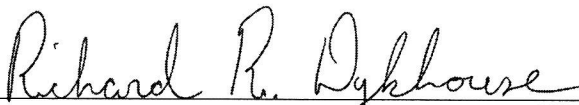
shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

49. The effective date of this Agreement shall be December 17, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Mihir Kshirsagar, Esq.
Assistant Attorney General
Bureau of Internet & Technology

CHARTER COMMUNICATIONS, INC., AND
SPECTRUM MANAGEMENT HOLDING COMPANY,
LLC (f/k/a TIME WARNER CABLE INC.)

By: 
Richard R. Dykhouse, Esq.
Executive Vice President, General Counsel and
Corporate Secretary

SCHEDULE A – SUBSCRIBER REFUNDS

Eligible subscribers will receive a one-time refund or bill credit of \$75.00.¹

Eligibility will be determined based on:

- Leasing a Charter-owned DOCSIS 2.0 modem on a tier of 20 Mbps or higher;
- Leasing a Charter-owned 802.11n wireless router on a tier of 200 Mbps or higher; or
- Subscribing to Time Warner Cable's legacy 100, 200, or 300 Mbps tiers prior to the commencement of the Litigation.²

Subscribers who leased covered modems for at least 24 months will receive an additional credit amount of approximately \$75.00.³

¹ The refund amount, prior to distribution, is subject to change at the OAG's discretion.

² Consistent with Paragraph 38 of this Agreement, refunds with respect to these speeds and equipment do not reflect any admission that the Charter-owned equipment does not function properly or that the speeds indicated above are not achievable or have not been achieved.

³ See note 1, above.

SCHEDULE B – IN-KIND COMPENSATION

Subscriber Eligibility	Subscriber Restitution
Video and broadband subscription current as of eligibility determination.	Subscriber choice of one of the following: <ul style="list-style-type: none"> • Six (6) months subscription to Showtime video service (including video streaming capability); <p align="center">OR</p> <ul style="list-style-type: none"> • three (3) months subscription to the HBO video service (including video streaming capability). <p>(See note)</p>
Broadband subscription (without video) current as of eligibility determination.	One (1) month subscription to Spectrum Choice; <p align="center">AND</p> one (1) month subscription to the Showtime video service (including video streaming capability). <p>(See note)</p>

Note: Any renewal of services elected by subscribers requires express subscriber opt in and no subscriber shall incur financial liability for services associated with in-kind restitution without express opt in. Nor shall the receipt of in-kind restitution impact a subscriber’s eligibility for any promotional offers.

