

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”), dated the 19<sup>th</sup> day of June, 2017, is by and among the New York State Department of Public Service (“Department”), New York State Public Service Commission (“Commission”), and Charter Communications, Inc. (Charter) (collectively the “Parties”).

**BACKGROUND**

The discussions leading to this Agreement were initiated in anticipation of Charter not meeting the requirement to complete 25% of the required extension of its network to pass an additional 145,000 unserved and/or underserved residential housing units or businesses (36,250) by May 18, 2017 (the “Event”) under the Commission Order.<sup>1</sup>

On January 8, 2016, the Commission approved the Joint Petition of Time Warner Cable, Inc. (Time Warner) and Charter (together the “Petitioners”). In its Approval Order, the Commission stated that for the transaction to be approved it must meet the statutory “public interest” standard, which requires a demonstration of the transaction’s positive net benefits after balancing the expected benefits properly attributable to the transaction offset by any risks or detriments that would remain after applying reasonable mitigation measures.<sup>2</sup>

The Commission further stated that based upon a review of the Joint Petition it found no discernable net benefits associated with the proposed transaction. However, it identified several potential detriments, including potential negative impacts to customer service in New York, network expansion and upgrades focused outside of New York, job losses in New York, and the issuance of substantial debt. The Commission concluded that without additional “enforceable and concrete conditions,” the Petitioners could not satisfy their burden under the enumerated standard of review and the Joint Petition should otherwise be denied.<sup>3</sup>

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<sup>1</sup> Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016) (Approval Order). Television, Internet and Voice services are now provided in New York under the name “Spectrum.”

<sup>2</sup> Id., p. 19.

<sup>3</sup> Id., p. 41.

Accordingly, the Commission explicitly conditioned its approval on a host of conditions, stating that the measures put forward by the Petitioners lacked “sufficient specificity and enforceability,” and that without Charter’s acceptance of these conditions the Joint Petition would be rejected.<sup>4</sup> Among those established conditions, was a “Network Expansion” requirement wherein the Commission noted its “significant concern that there are areas of the State that have no network access even though they are located within current Time Warner/Charter franchise areas.”<sup>5</sup> To mitigate this concern, and to demonstrate net benefits, the Commission required, among other things, the extension of Charter’s network to pass an additional 145,000 homes and businesses across the State by building out: 36,250 premises by May 18, 2017, 72,500 by May 18, 2018, 108,750 by May 18, 2019 and 145,000 by May 18, 2020. As a threshold requirement, the Approval Order was conditioned upon receipt by the Commission within seven days of the issuance of the Approval Order of certification by Charter that Charter and its successors in interest unconditionally accept and agree to comply with the commitments set forth in the body of the Approval Order and Appendix A. On January 19, 2016, Charter submitted a written certification letter accepting the imposed commitments, stating:

“In accordance with the Commission’s Order Granting Joint Petition by Time Warner Cable Inc. (“Time Warner Cable”) and Charter Communications, Inc. (“Charter”) dated January 8, 2016, Charter hereby accepts the Order Conditions for Approval contained in Appendix A, subject to applicable law and without waiver of any legal rights.”

Charter’s initial four-year build-out plan was filed with the Commission on July 6, 2016, with a subsequent revision filed July 26, 2016, and additional updates on November 18, 2016 and February 17, 2017. As of the February 17, 2017 status report, Charter had only built-out 10,125 of the required 36,250 Year 1 passings. Subsequently, Charter stated that as of May 18, 2017 it completed 15,164 passings.

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<sup>4</sup> Id., p. 49.

<sup>5</sup> Id., pp. 52-53.

**TERMS OF THE SETTLEMENT**

In lieu of a potential penalty action, or other potential remedies in connection with the Event, the Parties agree to settle this matter at a cost to Charter of \$13,000,000, with a series of performance requirements with financial consequences to ensure Charter completes its build-out as defined herein that provide the right for Charter to earn back up to \$12,000,000 based on future performance as set forth in paragraphs “1” through “16” below in this section of the Agreement, and in exchange for additional commitments by Charter set forth in paragraphs “17” through “19” below in this section of the Agreement. The Parties further agree that the sole remedy against Charter for the failure of Charter to meet build-out “Passings Targets” as defined herein shall be the financial consequences set forth in paragraphs “1” through “16” below in this section of the Agreement except where specifically noted therein to the contrary (hereinafter “Sole Remedy”).

1. \$1,000,000 will be paid by Charter into an escrow account within 30 days of the adoption of this Agreement by the Commission. Within 6 months of the adoption of this Agreement by the Commission, Charter shall pay the \$1,000,000 from the escrow account to third-party beneficiaries unaffiliated with Charter in the form of grants to pay for equipment to provide computer and internet access to low-income users. Before making the grants, Charter must demonstrate to the satisfaction of the Department of Public Service that the grants are truly incremental to any similar support Charter provides to unaffiliated beneficiaries in the ordinary course of business.

2. Charter commits to the following revised build-out requirements:

<b>Date</b>	<b>Passings Target</b>
12/16/2017	36,771
6/18/2018	58,417
12/16/2018	80,063
5/18/2019	101,708
11/16/2019	123,354
5/18/2020	145,000



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3. For each and every six-month target not met, and where Charter's performance in attempting to meet the target does not establish Good Cause Shown (as detailed herein), Charter will forfeit its right to earn back \$1,000,000.

4. For each and every six-month target not met, and where Charter's performance in attempting to meet the target does establish Good Cause Shown, and:

- a. the target is missed by 15% or more, Charter will forfeit its right to earn back \$500,000;
- b. the target is missed by less than 15%, Charter will forfeit its right to earn back \$250,000.

5. If, three months after any six-month target is not met, the six-month passing target has still not been met, and Charter's performance in attempting to meet the target does not establish Good Cause Shown, Charter will forfeit its right to earn back \$1,000,000.

6. If, three months after any six-month target is not met, the six-month passing target has still not been met, and Charter's performance in attempting to meet the target does establish Good Cause Shown, and;

- a. the target is missed by 15% or more, Charter will forfeit its right to earn back \$500,000;
- b. the target is missed by less than 15%, Charter will forfeit its right to earn back \$250,000.

Note: This paragraph applies if Charter misses the May 18, 2020 target of 145,000 passings, and three months after the May 18, 2020 target, the 145,000 passings has still not been met.

7. If, during any period covered by the performance incentives, any two consecutive six-month targets are missed by more than 15% and (a) Charter's performance in attempting to meet those two consecutive targets does not pass the Good Cause Shown test, or (b) Charter has not provided documentation to the Department demonstrating that it has filed the requisite number of pole permit applications necessary to meet the enumerated targets at least 200 days in advance of the corresponding target deadline, the performance incentives will continue and, in addition, the "Sole Remedy" provisions shall not apply and the Commission reserves the right to assert that such failure is in violation of a Commission order and to utilize all the rights and remedies available to the Commission to enforce such violation.

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8. The performance requirements with financial consequences and the “Sole Remedy” provisions shall not apply to Charter’s performance subsequent to three months after the May 18, 2020 target.

9. To secure these obligations, Charter shall provide a \$12,000,000 Letter of Credit in a form satisfactory to Department Staff. The Letter of Credit shall be drawable by the Chair of the Commission or his/her designee at a drawing location in New York State. The Letter of Credit may be drawn upon in the amount of a respective forfeiture whenever the right to earn back a portion of the \$12,000,000 has been forfeited, provided that with respect to any forfeiture the amount of which is to be determined by whether or not Charter has established Good Cause Shown, no drawdown shall occur as to any disputed amount until such dispute has been finally resolved, including any rehearing or judicial review. The Letter of Credit by its terms will be automatically renewed on an annual basis, unless the Department of Public Service has received a Notice of Non-Extension at least 60 days prior to the then current expiration date. If the Department of Public Service has received a Notice of Non-Extension and Charter has not replaced the letter of credit at least 30 days prior to the then current expiration date, then Charter will forfeit any remaining balance on the Letter of Credit. Any amounts drawn will go to the State Treasury and will not be recallable. Charter may from time to time provide a replacement Letter of Credit or an amendment to the Letter of Credit reflecting the then-remaining obligation amount in a form satisfactory to Department Staff, except that no replacement or amendment will be effective until accepted in writing by the Chair of the Commission or his/her designee. The Letter of Credit will be maintained until all forfeitures have been paid and all potential forfeitures have expired.

10. If Charter achieves the December 16, 2018 target of 80,063 passings, the performance incentives herein will end and Charter commits to revised targets established on the following six-month basis, otherwise subject to the terms of the Approval Order, and in such case if the targets below are not met the performance requirements with financial consequences and the



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“Sole Remedy” provisions shall not apply to Charter’s performance subsequent to December 16, 2018:

<b>Date</b>	<b>Passings Target</b>
5/18/2019	108,750
11/16/2019	126,875
5/18/2020	145,000

11. The test for establishing Good Cause Shown is contained in Appendix A to this Settlement Agreement.

12. All information provided by Charter to establish Good Cause Shown must include sufficient detail and support for all statements and representations so that it may be evaluated and must not be mere conclusory statements or representations such that if the presentation is insufficient, the Commission shall be entitled to reject the claim for failure to meet the burden of proof.

13. Within 21 days of each six-month target date, or if such 21<sup>st</sup> day is not a business day, upon the next business day following, Charter will report its actual passings for that six-month period. If Charter did not meet the target and wishes to make a Good Cause Shown claim, it will file its claim on the same date as the report.

14. If Charter misses any six-month target, within three months and 21 days of the six-month target date, or if such 21<sup>st</sup> day is not a business day, upon the next business day following, Charter will report its actual passings for the three-month period after the six-month target date. If three months after the six-month target date Charter has still not met the target and wishes to make a Good Cause Shown claim, it will file its claim on the same date as the report.

15. All information will be examined and presented to the Commission as follows: Charter will hire an independent auditor acceptable to DPS Staff (such acceptance not to be unreasonably withheld) to be available whenever a need for an audit report is triggered to audit Charter’s performance on the “Good Cause Shown” test and to prepare an audit report. Within seven days of receiving a Good Cause Shown claim pursuant to paragraph “13” above, the Chief Executive Officer (CEO) of the Department, in its sole discretion, shall determine whether an independent audit report is required to support the Good Cause Shown claim. If an

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independent audit report is not required, the Good Cause Shown claim filed by Charter shall constitute Charter's full presentation on the matter. If an independent audit report is required, the auditor shall have authority to audit the supporting documentation and back-up materials and other documents and information of Charter relating to the Good Cause Shown claim reasonably necessary to audit Charter's achievement of the performance measures set forth in Appendix A and any additional claims made by Charter in its Good Cause Shown claim. The audit report will be filed with the Secretary to the Commission within 60 days of Charter making a claim of "Good Cause Shown". The Commission will make a determination as to whether Charter has passed the "Good Cause Shown" test in each instance. Any such decisions by the Commission are reviewable in an Article 78 proceeding in Court. No amounts related to such a "Good Cause Shown" demonstration will be drawn on the letter of credit until any such Article 78 remedies have been exhausted.

16. The Department Staff and Charter will meet one time per month pursuant to a pre-determined schedule regarding the status of Charter's progress in meeting the targets (including a quantification of confirmed passings) contained in this term sheet. These meetings will include the exchange of information regarding the status of Charter's pole attachment applications, including the type of information related to the "Good Cause Shown" test detailed in Appendix A, and any other relevant information reasonably deemed appropriate by either DPS Staff or Charter. At the monthly meeting Charter will provide to DPS Staff monthly metrics on all build out information in an excel format.

17. Charter has submitted a confidential trade-secret protected summary of its Deployment Plan and on the representations made by Charter in such Deployment Plan and by this Agreement, Charter represents that it has sufficient resources, including out-sourced contracted work, to timely achieve the passings contemplated by the revised targets and Charter represents that it will take all commercially reasonable actions necessary to implement the Deployment Plan as contemplated in the plan. Within 60 days of the execution of this Agreement, Charter will prepare and implement a communications plan to assist residents and businesses in identifying if and when they can expect passings to occur in their locations.

18. As part of the communications plan, Charter will:

- a. Provide to DPS Staff and the Broadband Program Office (BPO) within 60 days of the execution of this Agreement, in excel format, address level data for each



passing for each twelve-month period of this Agreement, to be updated every six months based on deployment changes made from time to time by Charter:

- i. the first twelve-month period must show a completion date by May 18, 2018;
  - ii. the second twelve-month period must show a completion date by May 18, 2019;
  - iii. the last twelve-month period may state a completion date prior to May 18, 2020; and
  - iv. the data in aggregate plus completions to date shall equal or exceed 145,000 passings.
- b. DPS Staff and the BPO may share the bulk data for any particular affected municipality with that municipality if the municipality executes an agreement to maintain the confidentiality of the bulk data to be shared.
- c. The bulk data shall not be available on Charter's website, but a public information portal shall be made available on Charter's website in the form of an interactive website for the use of residents and businesses to obtain information for their own individual properties or tenancies at a street address level along with specific intended completion dates. An inquiry into the portal will yield one of the following results:
- i. if Charter is planning to complete a passing of the address within the next twelve months, a statement will be provided that Charter is planning to complete a passing of the address within the next twelve months;
  - ii. if Charter is not planning to complete a passing of the address within the next twelve months, but is planning to complete a passing of the address on or before May 18, 2020, a statement will be provided that Charter is planning to complete a passing of the address on or before May 18, 2020;
  - iii. if Charter is not planning to complete a passing of the address on or before May 18, 2020, a statement will be provided that Charter is not planning to complete a passing of the address as part of its current deployment plan; and



- iv. all information provided will be accompanied by a disclosure in plain language that the information is not a guaranteed commitment to build and that the build-out plan and completion dates are subject to revision and change.
- d. BPO and/or DPS may post on their websites seamless links to Charter's public information portal;
- e. Identify "Priority Counties" for Year 1 and a breakdown of monthly metrics on the build out status for those counties;
- f. Agree to cooperate/timely respond to requests for data or information regarding the build commitment in the Commission's Approval or the Broadband Program Office's programs;
- g. Agree to make Charter representatives available for community status meeting; and
- h. Draft a call center script acceptable to Department Staff that clearly answers whether a resident or business is in Charter's build out plan.
- i. A Project Management (PM) team will be formed by DPS Staff including other state agency stakeholders to monitor Charter's progress in meeting the deadlines established in this Agreement. Charter agrees to participate in progress and problem-solving calls with the PM team as needed.

19. Within 30 days Charter shall amend its Deployment Plan and identify all known State or municipal agencies from which it will need permits through the next year of the Deployment Plan, to be updated annually, and set forth a plan for obtaining those respective permits.

20. In order to facilitate the timely completion of the buildout project, the Department and/or the Commission will timely act on all complaints between Charter and pole owners and shall take all measures the Department and/or the Commission, as applicable, deem, in their discretion, appropriate to enforce the 2004 Pole Order or otherwise enable Charter to gain access to poles.

21. Nothing herein is intended to, does, or shall be deemed, in any manner, to waive, limit, impair, or restrict the ability of either party hereto to protect and preserve its rights, remedies, and interests, so long as such actions are not inconsistent with such party's obligations

under the express terms of this Agreement. Neither party shall use (expressly, by inference, or otherwise) the other party's acknowledgement of the enforceability of the express terms of this Agreement to otherwise affect such other party's other rights or any previous reservation of rights by such other party in this proceeding regarding matters outside the express terms of this Agreement.

### GENERAL PROVISIONS

1. This Agreement fully and finally resolves all the issues and concerns raised and/or asserted, or that could properly have been raised and/or asserted with regard to the Event. Accordingly, in consideration of this Agreement after it has been ratified or approved by the Commission, except as otherwise stated herein, the Commission and the Department will not institute or cause to be instituted against Charter, its directors, officers, employees or agents, or shareholders or affiliates, a penalty action under the Public Service Law, or under any other statute or regulation or Commission order, with respect to Charter's actions, inactions or practices, directly or indirectly related to the Event, nor shall the Commission entertain a request by another person seeking penalties or other administrative remedies against Charter with respect to Charter's actions, inactions or practices, directly or indirectly related to the Event under the Public Service Law or under any other statute or regulation or Commission order.

2. The execution, delivery and performance of this Agreement by each Party hereto is within its corporate or statutory powers, as appropriate, has been duly authorized by all necessary corporate or statutory action, and does not and will not (i) require any governing or governmental consent or approval except as required in Paragraph 6 below, (ii) contravene its organizational documents or enabling legislation, or (iii) violate applicable law.

3. The Agreement has been entered into voluntarily by the Parties. The Parties have determined the Agreement constitutes a resolution of all outstanding issues relating to the Event. The Agreement is not, and should in no way be construed as, a Commission finding or an admission by Charter of a violation of any law or regulation or order; or a Commission finding or an admission by Charter that Charter's actions or inactions caused or constituted a contributing factor to the Event; or a Commission finding or an admission by Charter that these events are amenable to suit under Sections 24 and 25 of the Public Service Law. In addition, this Agreement is not and should not be construed as an assessment of a fine or penalty.



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4. The Agreement may be executed by original, facsimile or electronic signature, each of which shall be equally binding.

5. The Parties recognize that the provisions of the Agreement include a proposal to change the build-out targets that requires a rulemaking by the Commission and that therefore the Commission will not be able to consider approving the Agreement until it decides whether to make the proposed rulemaking after following the rulemaking procedures of the State Administrative Procedure Act.

6. The Agreement is subject to ratification or approval by the Commission and will have no effect in the absence thereof. If the Commission does not approve this Agreement in its entirety, without modification, Charter may withdraw its acceptance of this Agreement by serving written notice on the Commission, and shall be free to pursue its position without prejudice. If the Commission approves this Agreement or modifies it in a manner acceptable to Charter, the parties intend that this Agreement thereafter be implemented in accordance with its terms.

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IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the day and year first written above.

STATE OF NEW YORK PUBLIC SERVICE COMMISSION  
STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

By: 

BRIAN OSSIAS  
Managing Attorney

CHARTER COMMUNICATIONS, INC.

By: 



Appendix A

In making any claim for Good Cause Shown for any reason, Charter shall provide a sufficient showing for the Commission to determine that Good Cause Shown has been established. Such a demonstration shall include, but need not be limited to, affidavits of witnesses, detailed descriptions of the events that led to the delay(s), and supporting documentation for any factual claims. If applicable, Charter may provide any other information with respect to Acts of God or other conditions beyond its or other pole owners' control with respect to delays in meeting the targets contained in the Agreement. If Charter is claiming Good Cause Shown due to pole owner delay, its claim will not be accepted unless Charter can demonstrate that it achieved the following objective metrics, consistent with the Commission's August 6, 2004 Order in Case 03-M-0432:<sup>1</sup>

- a. That Charter completed the verification and design of sufficient incremental passings to meet the target at least 230 days in advance of the target deadline;
- b. That Charter approved for construction sufficient incremental passings to meet the target at least 210 days in advance of the target deadline;
- c. That Charter notified pole owners of all new applications for pole attachments to pole owners in advance of submitting pole applications.
  - i. This shall include where each build-out project is located, when Charter intends to file pole applications, when it expects to begin construction, and the order in which pole applications should be prioritized.
  - ii. This shall include all information required by pole owners in order for an application to be deemed complete and processed and the keeping of records as to when Charter filed such complete applications.
- d. That Charter submitted applications for pole attachments for sufficient incremental passings to meet the target at least 200 days in advance of the target deadline;
- e. That Charter paid all fees and other payments required by pole owners in order to effectuate a pole attachment, including:

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<sup>1</sup> Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Adopting Policy Statement on Pole Attachments (issued August 6, 2004) (Pole Order).

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- i. Payments for any additional resources required by the pole owner in order to satisfy permitting of the poles related to the project.
  - ii. Payments of any application fees and/or survey fees at the time it submitted the pole applications.
  - iii. Make ready fees in the 14-day timeframes established by the Pole Order.
- f. That Charter hired a contractor to conduct survey work (as allowed by the Pole Order) if necessary to avoid delay in meeting the targets.
- g. That Charter requested permission to use temporary attachments if doing so would avoid delay in meeting its obligations. To the extent Charter pursues temporary attachments or other solution to avoid delays, the status of any proposed solution must be reported.
- h. That Charter completed construction and verification of all necessary passings within 45 days of receiving licenses for pole attachments.