

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Complaint of Charter Communications, Inc.)	
Against Frontier Communications Corporation,)	
Citizens Telecommunications Company of New York, Inc.,)	
Frontier Telephone of Rochester, Inc.,)	
Frontier Communications of New York, Inc.,)	Case 15-M-0388
Frontier Communications of AuSable Valley, Inc.)	
Frontier Communications of Sylvan Lake, Inc.,)	
Frontier Communications of Seneca-Gorham, Inc., and)	
Ogden Telephone Company for Failure to Provide)	
Lawful Access to Utility Poles)	

VERIFIED COMPLAINT OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter”), on behalf of itself and its affiliates, respectfully brings this Complaint, pursuant to Section 96(3) of the New York Public Service Law, against Frontier Communications Corporation, Citizens Telecommunications Company of New York, Inc., Frontier Telephone of Rochester, Inc., Frontier Communications of New York, Inc., Frontier Communications of AuSable Valley, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of Seneca-Gorham, Inc., and Ogden Telephone Company (collectively, “Frontier”) due to Frontier’s unlawful constructive denial of access to its utility pole facilities. Frontier’s refusal to provide access to poles on nondiscriminatory terms violates Public Service Law §§ 97 and 119-a, and the Commission’s regulations and orders implemented thereunder, including its Order in Case 03-M-0432, *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments (Aug. 6, 2004) (“Pole Attachment Order”). Frontier’s unlawful actions have frustrated Charter’s ability to meet the initial milestone in the Commission-imposed buildout condition to expand the availability of broadband in New York, despite Charter’s efforts toward meeting that milestone. Charter’s

ability to promptly deploy additional infrastructure to expand broadband availability in the State has been a subject of significant recent interest and attention from both the Commission and the Department of Public Service (“Department”). In the absence of action by the Commission to remedy Frontier’s unreasonable conduct and failure to comply with its obligations under New York pole attachment rules and this Commission’s orders, Charter will be unable to meet future milestones in the buildout condition, and more unserved and underserved New Yorkers will be denied timely access to broadband.

PARTIES

1. Charter Communications, Inc. is a Delaware corporation, headquartered in Stamford, Connecticut. Charter is the ultimate parent of several affiliates holding cable franchises in communities throughout the State of New York, and through which Charter provides video, broadband Internet, voice, and business services to New York customers.

2. Frontier Communications Corporation (“Frontier Corporation”) is a Delaware Corporation, headquartered in Norwalk, Connecticut. Frontier Corporation is the ultimate parent of several facilities-based, certificated telecommunications carriers in New York State, through which Frontier Corporation provides video, broadband Internet, voice, and business services to New York customers. In many markets, subsidiaries of Frontier Corporation and Charter compete directly against one another for the same customers.

3. Citizens Telecommunications Company of New York, Inc. (“Citizens”) is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in areas of the State that overlap with Charter’s buildout. As a “telephone corporation” under the New York Public Service Law, Citizens is

obligated to provide competitors,¹ such as Charter, with non-discriminatory access to such facilities.

4. Frontier Telephone of Rochester, Inc. is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in areas of the State that overlap with Charter’s buildout. As a “telephone corporation” under the New York Public Service Law, Frontier Telephone of Rochester, Inc. is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

5. Frontier Communications of New York, Inc. is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in the State. As a “telephone corporation” under the New York Public Service Law, Frontier Communications of New York, Inc. is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

6. Frontier Communications of AuSable Valley, Inc. is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in the State. As a “telephone corporation” under the New York Public Service Law, Frontier Communications of AuSable Valley, Inc. is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

7. Frontier Communications of Sylvan Lake, Inc. is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in the State. As a “telephone corporation” under the New York Public Service Law, Frontier Communications of Sylvan Lake, Inc. is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

¹ N.Y. Pub. Serv. Law § 2(17).

8. Frontier Communications of Seneca-Gorham, Inc. is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in the State. As a “telephone corporation” under the New York Public Service Law, Frontier Communications of Seneca-Gorham, Inc. is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

9. Ogden Telephone Company is a subsidiary of Frontier Corporation and a certificated telecommunications carrier in the State of New York, which owns utility pole facilities in the State. As a “telephone corporation” under the New York Public Service Law, Ogden Telephone Company is obligated to provide competitors, such as Charter, with non-discriminatory access to such facilities.

JURISDICTION

10. The Commission has the power of “general supervision” over telephone corporations in New York, which includes the power to examine their “compliance with all provisions of law.”² Moreover, the Commission is authorized by statute to hear and resolve complaints involving violations of the Public Service Law or Orders of the Commission,³ and has the express power to address “unjust or unreasonable” practices of any telephone company and to determine “the just, reasonable, adequate, efficient and proper regulations [and] practices” of telephone companies.⁴

² *Id.* § 94.

³ *Id.* § 96(3).

⁴ *Id.* § 97.

STATUTORY AND REGULATORY BACKGROUND

11. Section 119-a of the New York Public Service Law provides that “[t]he commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits.”⁵

12. In 2004, in order to resolve issues concerning pole attachments and to “streamline the process by which attachments to utility poles are made in order to promote the deployment of competitive telecommunications networks[,]” the Commission issued an order adopting a Policy Statement on Pole Attachments.⁶ Although the Pole Attachment Order permits individual pole owners and attachers to enter into agreements and operating procedures to govern pole attachments, such “agreement[s] and operating procedures must be consistent with the Policy Statement on Pole Attachments” adopted in the Pole Attachment Order.⁷

13. Under the Commission’s Pole Attachment Order and Policy Statement on Pole Attachments, pole owners such as Frontier are required to process Charter’s applications for pole attachment permits within five business days of receipt.⁸ After receiving a complete application, pole owners have 45 days from the date of the application’s receipt to complete a preconstruction survey.⁹

⁵ *Id.* § 119-a.

⁶ Pole Attachment Order, at 1.

⁷ *Id.* at 9.

⁸ Pole Attachment Order, Appendix A, Policy Statement on Pole Attachments, at 2 (“Policy Statement”).

⁹ Pole Attachment Order, at 3; Policy Statement, at 3.

14. Within 14 days of completing the survey, the pole owner must send a make-ready work estimate to the applicant—in this case, Charter.¹⁰ The applicant has 14 days from receipt of the estimate to accept and pay for the make-ready work, and the pole owner must then perform the make-ready work within 45 days of receiving payment.¹¹

15. If a pole owner is unable to meet these deadlines, the Pole Attachment Order expressly authorizes the applicant to “hire an outside contractor to do the survey or perform make-ready work, if the contractor is approved by the Owner [in this case, Frontier].”¹² Moreover, the Order makes clear that a pole owner may not withhold such approval on the grounds that it is contractually prohibited from doing so by its own collective bargaining agreements:

Some Owners and the Unions object to this procedure [i.e., the use of outside contractors for survey and make-ready work], arguing that their collective bargaining agreements may not allow hiring outside contractors. Since time is the critical factor in allowing Attachers to serve new customers, it is reasonable to require the utilities either to have an adequate number of their own workers available to do the request work, to hire outside contractors themselves to do the work, or to allow Attachers to hire approved outside contractors.¹³

16. In addition, the Pole Attachment Order expressly authorizes applicants to use various alternative attachment methods to facilitate the timely completion of their buildout. For example, recognizing that speed is of the essence to an attacher and that temporary attachments can “compensate for delays in make-ready and other impediments to accessing poles[.]”¹⁴ the Pole Attachment Order requires that “[t]emporary attachments to poles should be used if they meet all

¹⁰ Pole Attachment Order, at 3; Policy Statement, at 4.

¹¹ Pole Attachment Order, at 3; Policy Statement, at 4.

¹² Pole Attachment Order, at 3; Policy Statement, at 3.

¹³ Pole Attachment Order, at 3.

¹⁴ Policy Statement, at 5.

safety requirements and if a utility is unable to meet the make-ready work timeline.”¹⁵ The Order likewise contemplates that “[e]xtension arms may be an appropriate method of attachment for both permanent installations, when make-ready costs are exorbitant and/or on a temporary basis when make-ready work cannot be performed in a timely manner.”¹⁶

17. Beyond the specific obligations identified in the Commission’s Pole Attachment Order, telephone corporations have a general obligation under Public Service Law Section 97 not to utilize “rules, regulations or practices” that are “unjust, unreasonable or unjustly discriminatory.” This prohibition extends to and includes telephone corporations’ rules, regulations, and practices governing access to their poles. Notably, the Commission’s power to regulate pole attachments is delegated under the Federal Pole Attachment Act of 1978,¹⁷ which Congress enacted, in part, to prevent pole owners from using their monopoly power to impede customers’ access to competitors’ services. As the FCC has noted, the Act, as amended in 1996, “seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields.”¹⁸

FACTUAL BACKGROUND

I. Charter’s Commission-Ordered Buildout.

18. Charter’s pole attachment dispute with Frontier arises in the broader context of a large buildout project that Charter is undertaking in the State of New York in connection with

¹⁵ Pole Attachment Order, at 5.

¹⁶ Policy Statement, at 6.

¹⁷ 47 U.S.C. § 224(c)(1).

¹⁸ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15,499, 16,059-60 ¶ 1123 (1996).

conditions imposed by the Commission in approving Time Warner Cable Inc.'s (TWC's) transfer of control to Charter of several cable and telecommunications provider affiliates offering services within the state. Specifically, the Commission's order requires Charter to extend its network to pass an additional 145,000 unserved or underserved premises within four years of closing its transaction with TWC (*i.e.*, by May 18, 2020), with 25% completed in the first year and an additional 25% completed in each successive year ("Buildout Condition").¹⁹

19. In addition to the Buildout Condition imposed by the Commission, Charter is also subject to national broadband buildout commitments in connection with the Federal Communications Commission's ("FCC") approval of the national transaction involving Charter and TWC, of which the transfers of control of TWC's New York affiliates approved by the Commission was a component. Although Charter's national buildout commitments to the FCC are not specific to New York, Charter's completion of its network buildout commitments in New York is an important component of its plans for satisfying its national commitments to the FCC.

¹⁹ Charter's Verified Complaint should not be construed in any way as a waiver or a concession by Charter with respect to the Commission's jurisdiction to regulate Charter, impose conditions on the Merger, or otherwise compel Charter to act (or refrain from acting) with respect to any activities Charter conducts in New York that are beyond the scope of the Commission's limited jurisdiction, including but not limited to Charter's activities in New York related to broadband service or infrastructure which are outside of the jurisdiction of the Commission.

Charter's Verified Complaint should also not be construed in any way as a waiver or a concession by Charter that any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, is lawful or valid under the New York Constitution, the Federal Constitution, or any applicable New York or federal statutes, caselaw and regulations.

Charter reserves all of its rights, including its right to challenge any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, in a state or federal court of competent jurisdiction on the basis that the provision or condition is invalid because the Commission lacked statutory authority or jurisdiction to impose the condition, that enforcement of the provision or condition and any associated penalty violates the Due Process or Commerce Clauses of the New York Constitution or the Federal Constitution, or that the provision or condition is preempted by or otherwise contravenes state or federal law.

20. Charter has worked towards meeting its buildout obligations in New York. It filed with the Commission on July 5, 2016 (and revised on July 26, 2016) a Network Expansion Implementation Plan and 45-Day Report detailing the Company's plans to expand service in compliance with this condition (collectively, the "Network Expansion Plan" or "Plan"). Charter has since submitted a summary of the activities, expenditures, and schedules related to its Network Expansion Plan on August 16, 2016 as part of its 90 Day Report and Implementation Plan, along with subsequent updates on November 18, 2016, February 17, 2017 and May 18, 2017.

II. Delays in Pole Attachment Process.

21. Charter's ability to complete its Network Expansion Plan depends upon its ability to access poles owned by third parties—which, in turn, depends upon those third parties' meeting their contractual and regulatory obligations to grant such access in a timely manner. As Charter's implementation of its Network Expansion Plan has progressed, however, the principal barrier Charter has encountered—again and again—is the failure of pole owners to process and respond to Charter's applications in a timely manner.

22. Charter has prepared and submitted to various pole owners applications for approximately 180,164 poles within the State of New York since May 2016 (when Charter's transaction with TWC closed and the Buildout Condition became effective) in order to obtain access to poles needed under its Network Expansion Plan, and has paid approximately \$4.1 million in fees to pole owners in connection with those applications. However, New York pole owners have come nowhere close to meeting their obligations under this Commission's rulings to process those applications in a timely manner, and have granted approval for only approximately 6,472 of those poles, *i.e.*, fewer than 4% of those that Charter has submitted. The Commission's 2004 Pole Attachment Order requires pole owners to process applications and complete initial surveys within 45 days. Yet pole owners are consistently and systematically disregarding this requirement—

statewide, over 76% of Charter's applications have been pending without approval for more than 45 days; 62% of Charter's applications have been pending without approval for more than 90 days, and over 61% of Charter's applications (covering 110,213 poles) have been pending for more than 100 days.

23. Charter has sought in good faith to work with pole owners to mitigate these issues. As Charter explained in its February 14, 2017, letter to the Commission,²⁰ Charter has engaged in regular joint calls with its three largest pole partners, Verizon New York Inc. ("Verizon"), National Grid USA Service Company, Inc. ("National Grid"), and New York State Electric and Gas Corporation ("NYSEG"), at the state and regional levels to discuss the pole attachment process, including answering specific questions or concerns regarding specific Charter pole attachment applications, providing ideas and opportunities to expedite and improve work-flow, identifying potential resolutions to barriers encountered, as well as assisting with general housekeeping and other agenda items. In addition, Charter's local construction managers have sought, albeit with mixed results, to communicate with their counterparts at Frontier and other of Charter's pole partners in an attempt to gather information about the status of Charter's permit applications and the source of delays.

24. Charter has also sought the assistance of the Department in facilitating resolution of these recurring delays. In a February 14, 2017 letter, Charter outlined a number of pole attachment issues that have been delaying Charter's ability to complete its Network Expansion

²⁰ CASE 15-M-0388 - *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, ProForma Reorganization, and Certain Financing Arrangements*, Letter from Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. to Karen Geduldig, Director, Office of Telecommunications, Department of Public Service (Feb. 14, 2017) (Filing No. 140).

Plan, as well as its mitigation strategy to expedite approvals.²¹ As part of this letter, Charter also identified specific areas in which the Department's active engagement would be necessary to facilitate resolution of the pole impediments and mitigate further delays.

25. Charter has also regularly met with Staff over the past year to discuss these issues—including in several meetings held throughout early 2017 and in a joint meeting on March 22, 2017, which included Charter, pole owners (including Frontier), and Department Staff. The Department shares Charter's interest in swiftly obtaining pole attachment rights to facilitate the joint goal of expanding broadband availability in unserved and underserved areas of the State, and has committed to effectuate approvals and prompt the pole owners to take necessary actions to accomplish that goal.²² Charter welcomes those efforts; however, since the March 22, 2017 meeting, the same delays by pole owners have persisted. Frontier's various operating subsidiaries, for instance, have only approved an additional 8 pole permits.

26. In light of the challenges it has faced in obtaining access to utility poles, Charter on May 17, 2017 submitted to the Commission a request for an extension of the four-year line extension build-out provision, as well as an extension of the requirement that one quarter of the commitment be completed one year after the close of the transaction.²³ On June 19, 2017, Charter and the Department reached a settlement agreement for consideration by the Commission. Under the terms of that agreement, Charter stands to forfeit as much as \$13 million if it is unable to meet

²¹ *Id.*

²² See CASE 15-M-0388, Letter from Karen Geduldig, Director, Office of Telecommunications, Department of Public Service, to Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. (Feb. 8, 2017) (Filing No. 139).

²³ CASE 15-M-0388, Request of Charter Communications, Inc. for an Extension of Time in Which to Comply with the Merger Order's Buildout Provisions and Reserving the Right to Supplement (May 17, 2017) (Filing No. 143).

certain targets set forth in the agreement. Absent approval by the Commission of the proposed extension agreement, Charter could be threatened with other penalties. Immediate action by the Commission is required if Charter is to meet its commitments to the Commission and bring broadband services to unserved and underserved New Yorkers.

27. On July 12, 2017, the Department again convened a meeting of all stakeholders, including Frontier, to discuss the current backlogs of pole attachment applications with several New York pole owners, as well as mechanisms for addressing them. Charter appreciates the Department Staff's continued engagement, and is committed to working cooperatively with Department Staff to resolve the pole attachment application backlog. Charter also is hopeful that this meeting will prompt pole owners to implement or accelerate process reforms, and/or to hire additional staff or contractors, to remediate the existing delays and prevent them from recurring in the future. However, as the need for July 12 meeting itself attests, informal efforts by the Department to facilitate pole attachments in the state have not led to meaningful action by the pole owners to reduce their backlogs and process new applications in a timely fashion. Formal action by the Commission is still required.

III. Frontier's Failure to Comply with the Pole Attachment Order and the Commission's Rules.

28. As one of Charter's pole partners in New York, Frontier's cooperation is important to Charter's ability to meet its Commission-ordered buildout targets. Frontier's persistent failure to meet its legal and regulatory obligations to grant timely access to poles has caused significant harm to Charter and impeded Charter's ability to meet these initial targets.

29. Frontier is responsible, either in whole or in part, for a significant portion of the poles for which Charter has not been granted approval to access for attachments as set forth in Paragraphs 21-27 above. Since the Buildout Condition took effect in May 2016, Charter has

submitted 241 pole attachment applications to Frontier, requesting permits to attach to 16,561 poles—a meaningful portion of the poles that Charter needs to access in order to meet its buildout requirements. To date, however, Frontier has approved only 32 of those applications and has released only 402 poles to Charter—a mere 2.4% of poles for which Charter has submitted applications to Frontier. Frontier has not conducted any preconstruction surveys for 85% of Charter’s applications (representing 97% of the poles), despite accepting Charter’s payment of application fees to pay for such work.

30. Charter separately tracks Frontier’s compliance with the requirements of the 2004 Pole Attachment Order by Citizens and by Frontier’s affiliates operating under the “Frontier” brand, such as Frontier Communications of New York, Inc. and Frontier Telephone of Rochester, Inc. (collectively, “Legacy Frontier”). The tables below show the delays by Legacy Frontier and Citizens in the processing the Charter pole attachments applications that remain pending.

Legacy Frontier		
Days Application Pending	Applications	Poles
0-45	26	1,582
46-90	77	7,674
91-120	24	1,305
121-150	31	2,494
151-180	27	1,427
181 or more	16	1,295
Total	201	15,777

Citizens		
Days Application Pending	Applications	Poles
0-45	0	0
46-90	0	0
91-120	5	339
121-150	0	0
151-180	2	40
181 or more	1	3
Total	8	382

31. Unlike other pole owners in the State, Frontier does not provide routine status updates regarding the status of Charter’s permit applications, further frustrating Charter’s efforts to mitigate delays in Frontier’s processing of such applications.²⁴ Charter has compiled the following summary demonstrating the delays in Frontier’s performance from internal data—which Charter is regularly updating during the course of its build—based on information that Charter’s construction coordinators have been able to glean piecemeal from their counterparts at Frontier. As above, these data separately show performance by Legacy Frontier and by Citizens:

Legacy Frontier	
Application Processing and Surveys	
Applications Charter Has Submitted to Frontier	221
Poles Encompassed by Charter Applications to Frontier	15,949
Poles for which Frontier has Performed Preconstruction Survey	183
Poles for which Frontier has Provided Make-Ready Estimate	11

²⁴ Charter recognizes that Staff, in an effort to help address such lack of transparency, is working on a proposal to require the major pole partners to collect and share granular, comprehensive data with one another and with the Department. Timely and complete responses by the parties will be important to the effectiveness of these efforts. Because the challenges and delays Charter faces with pole owners extend well beyond information-sharing issues, however, the Department’s efforts in this area should not delay or preclude its assistance in resolving the other difficulties set forth in this Complaint.

Make-Ready Work	
Poles for which Frontier has Provided Make-Ready Estimate	11
Frontier Poles for which Charter Has Remitted Payment for Make-Ready Work	8
Poles for which Frontier Has Completed Make-Ready Work	0
Frontier Poles Awaiting Make-Ready	8
Frontier Poles Awaiting Make-Ready Outside 45-Day Window	8

Citizens	
Application Processing and Surveys	
Applications Charter Has Submitted to Citizens	20
Poles Encompassed by Charter Applications to Citizens	612
Poles for which Citizens has Performed Preconstruction Survey	233
Poles for which Citizens has Provided Make-Ready Estimate	0
Make-Ready Work	
Poles for which Citizens has Provided Make-Ready Estimate	0
Citizens Poles for which Charter Has Remitted Payment for Make-Ready Work	0
Poles for which Citizens Has Completed Make-Ready Work	0
Citizens Poles Awaiting Make-Ready	0
Citizens Poles Awaiting Make-Ready Outside 45-Day Window	0

IV. Frontier’s Failure to Take Adequate Steps to Mitigate Its Noncompliance.

32. Charter brings this Verified Complaint only after trying without success to obtain Frontier’s cooperation in mitigating the failures described above.²⁵ Frontier’s unwillingness to address these deficiencies has, in turn, frustrated Charter’s ability to take necessary measures to do so.

33. Charter has been unable to obtain much visibility into the causes of Frontier’s delays or work towards resolutions of them. Since submitting its first round of applications in 2016, Charter’s local personnel have repeatedly attempted to raise these delays in Frontier’s pole

²⁵ Charter reserves all rights to seek additional remedies against Frontier beyond those available in a pole attachment complaint before the Commission, including without limitation its rights to seek any appropriate legal and equitable relief in a court of law.

attachment process with their counterparts at Frontier, and to inquire about what can be done to address them. However, Frontier's responsiveness to these inquiries has been uneven, with Frontier's personnel in numerous instances failing to communicate regarding its progress, and in one critical region repeatedly failing to respond to Charter's inquiries at all. The resulting lack of visibility into what is causing Frontier's delays, and inability to meaningfully or consistently communicate with Frontier about the status of Charter's applications and what can be done to advance them, has thwarted Charter's abilities to take remedial measures.

34. Due to this continued lack of progress by Frontier in addressing its deficiencies, Charter on June 20, 2017, submitted a letter requesting that Frontier take certain immediate actions, required under the Pole Attachment Order, to address its delays ("Demand Letter").²⁶ Specifically, Charter requested Frontier's immediate consent to hire approved outside contractors for the following functions:

- On poles where preconstruction surveys have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both the electric and Frontier/Citizens) to perform preconstruction surveys in electric and communications space at the same time, rather than sequentially.
- On poles where electric make-ready work and telco make-ready work have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both the electric and Frontier/Citizens) to perform Frontier/Citizens and electric make-ready at the same time, rather than sequentially.
- On poles where the electric has already conducted the pre-construction survey, and Frontier/Citizens has failed to perform the pre-construction survey within 45 days of the application, allow Charter to hire an approved contractor to perform the pre-construction survey.

²⁶ See Letter from Terence Rafferty, Regional Vice President, Northeast Region Field Operations, Charter Communications, to Paul Quick, Senior Vice President—Operations CT/NY/PA, Frontier Communications (June 20, 2017) (attached as Exhibit 1). The original Exhibits B(1) and B(2) to Exhibit 1 have been omitted from this filing as containing trade secret information. Charter will separately file Exhibits B(1) and B(2) to Exhibit 1, together with a request for confidential treatment.

- On poles where the electric has already conducted make-ready, and Frontier/Citizens has failed to perform the make-ready within 45 days of Charter's estimate payment, allow Charter to hire an approved contractor to perform any necessary Frontier/Citizens make-ready.

Charter also requested Frontier's consent to utilize several standard alternative attachment methods, including temporary attachments and bracketing, to accelerate the make-ready and construction process.²⁷ Three weeks have now passed and yet to date, Frontier still has not responded to Charter's Demand Letter, or any of the requests contained therein.

35. Frontier's consistent failures to meet the timeframes required under the Pole Attachment Order, and refusal to take adequate, reasonable steps to mitigate those failures, have adversely affected Charter and the 145,000 New Yorkers who stand to benefit from the expanded broadband service contemplated by the Network Expansion Plan. In the face of Frontier's intransigence, Charter has been unable to satisfy the milestones in the Buildout Condition. It is also thereby deprived of the opportunity to use its network buildout in New York State as a means of partially satisfying its buildout commitments to the FCC.²⁸

36. Frontier's constructive refusal to provide timely access to its poles is further unjust and unreasonable because it is anticompetitive. The cumulative effect of Frontier's conduct has been to frustrate Charter's ability to bring its services to additional areas in the state and offer competitive alternatives to "bottleneck" providers—including competing against Frontier itself. The inability of Charter to expand its footprint caused by Frontier's delays also inflicts commercial harm on Charter by depriving it of the opportunity to provide service to new customers. And, as

²⁷ The use of temporary attachments and brackets are methods expressly contemplated by the Pole Attachment Order for the purpose of reducing make-ready delays and cost, and do not require separate agreement of the parties to implement. *See Pole Attachment Order*, at 5-6.

²⁸ CASE 15-M-0388, Charter Communications, Inc. Annual Update (May 18, 2017) (Filing No. 145).

noted above, Frontier's delays are also subjecting Charter to the continued risk of regulatory sanctions based on circumstances entirely within Frontier's control.

COUNT I – VIOLATION OF PUBLIC SERVICE LAW § 119-a

37. Charter realleges and incorporates by reference Paragraphs 1 through 36 as though fully set forth herein.

38. As described above, Frontier has, in numerous instances, failed: (a) to conduct a preconstruction survey of poles within 45 days of receiving a complete application from Charter to attach to Frontier's utility poles; or (b) to perform make-ready work within 45 days of receiving payment from Charter for such work.

39. Despite being unable to meet these timelines, Frontier has refused to take actions to mitigate delays and accelerate processing times, or even (in many instances) communicate meaningfully with Charter's personnel regarding the delays or what can be done to remedy them.

40. Frontier's failure to meet the above timeframes required for performing preconstruction surveys and make-ready work, and failure to constructively engage with Charter to remedy those delays, violates Public Service Law § 119-a and the Commission's orders implemented thereunder, including its 2004 Pole Attachment Order.

COUNT II – VIOLATION OF PUBLIC SERVICE LAW § 97

41. Charter realleges and incorporates by reference Paragraphs 1 through 40 as though fully set forth herein.

42. As described above, Frontier has, in numerous instances, failed to meet required deadlines for the processing of Charter's applications to attach to Frontier's poles.

43. Despite being unable to meet these timelines, Frontier has refused to take actions to mitigate delays and accelerate processing times, or even (in many instances) communicate meaningfully with Charter's personnel regarding the delays or what can be done to remedy them.

44. Frontier's failure to meet the above timeframes required for performing preconstruction surveys and make-ready work, and failure to constructively engage with Charter to remedy those delays, constitute "unjust and unreasonable" practices in violation Public Service Law § 97(2).

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth herein, Charter Communications, Inc. respectfully requests that the Commission initiate an expedited dispute resolution proceeding to resolve the outstanding pole attachment issues between Charter and Frontier.

To the extent the Commission's further intervention fails to produce a resolution, Charter requests that the Commission order Frontier to take immediate steps to do the following, backed up, if necessary, by the Commission's enforcement and penalty provisions contained in Public Service Law sections 25 and 26:

1. Implement measures as needed to enable Charter to meet its Commission-ordered deadlines with respect to its Network Expansion Plan, including, without limitation;
 - a. Ensuring that an adequate number of Frontier's own workers are available to process Charter's pole attachment application with the timeframes required under the 2004 Pole Attachment Order; and/or
 - b. Hiring outside contractors to perform the necessary survey and make-ready work to timely process such applications; and/or

- c. Allowing Charter to hire outside contractors to perform the necessary survey and make-ready work to timely process such application; and/or
 - d. Allowing the use of standard alternative measures, including temporary attachments and bracketing, to further facilitate the timely completion of the request make-ready work; and
 - e. Providing Charter, on a weekly basis, with real-time information regarding the status of all Charter pole attachment applications, including, at minimum²⁹:
 - i. the date preconstruction survey work is completed by Frontier for each application/pole set;
 - ii. the date the make-ready check is received by Frontier for each application/pole set;
 - iii. the date make-ready work is submitted to Frontier for completion for each application/pole set; and
 - iv. the date make-ready work is completed for each pole/set of poles; and
 - f. Performing each of the above in a manner that, in combination, addresses the backlog of Charter's pending pole attachment applications to Frontier and enables Charter to meet its Commission-ordered buildout obligations; and
2. Refund to Charter:
- a. Charter's application fees in connection with any applications for which Charter retains contractors to perform pre-construction survey work due to Frontier's inability to do so in a timely manner; and
 - b. Any fees already paid to Frontier for make-ready work with respect to any applications for which the Commission authorizes Charter to retain contractors to

²⁹ Any such remedy can be coordinated with or subsumed within, as appropriate, the data collection and reporting obligations Staff is requiring for pole owners more generally.

perform make-ready work due to Frontier's inability to do so in a timely manner;
and

3. Grant any such further relief as the Commission deems appropriate.

Dated: July 17, 2017

Respectfully Submitted,

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EXHIBIT 1



Terence Rafferty
RVP, Northeast Region
Field Operations

June 20, 2017

Via E-mail and U.S. Mail

Mr. Paul Quick
Senior Vice President—Operations CT/NY/PA
Frontier Communications
310 Orange Street
New Haven, CT 06510

Re: Charter Communications - New York State Buildout Requirements

Dear Mr. Quick:

My name is Terence Rafferty. I am the Regional Vice President of Operations for Charter Communications (“Charter”), responsible for supervision of all field-related activity, including network construction for the Northeast Region, which includes Upstate, New York. As you likely are aware, Charter is in the process of a very large buildout project in New York, as a result of conditions imposed by the New York Public Service Commission (“Commission”) in approving the merger of Charter and Time Warner Cable last May. Specifically, Charter is required to build-out to 145,000 unserved or underserved premises over a four year period, which began with the merger closing in May 2016.

The key to meeting the buildout timeframes required by the Commission is the cooperation of New York’s pole owners, including Frontier (and Citizens). To that end, I would like to discuss the issues raised herein at your earliest convenience. Indeed, as one of our largest pole partners in New York, Frontier/Citizens is vital to this effort. While Charter appreciates that this project places an unprecedented demand on Frontier/Citizen’s resources, Frontier/Citizens owns the infrastructure necessary for Charter to meet its targets for this buildout and has a legal obligation to process Charter’s pole attachment permits and conduct make-ready work within the timeframes set forth in the Commission’s 2004 Pole Order, Case 03-M-0432 – Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues (Issued and Effective Aug. 6, 2004) (hereinafter “2004 Pole Order”).”

Timeframes for Processing Pole Attachment Applications

Since May, 2016, Charter has submitted (a) 142 pole attachment applications, containing a total of 10,502 poles, to Frontier; and (b) 115 pole attachment applications, containing a total of 7,333 poles, to Citizens. But because neither Frontier nor Citizens is meeting the application processing and/or make-ready performance timeframes in the 2004 Pole Order, (a) only 18 applications, containing a total of 103 poles, have been released by Frontier to Charter to date; and (b) only 10 applications, containing a total of 58 poles, have been released by Citizens to Charter to date. Indeed, as you can see from **Exhibits A(1) and A(2)**, attached hereto, of the applications submitted (as of June 13, 2017), Frontier has failed to conduct preconstruction surveys for 61% of the applications (and 67% of the poles), and Citizens has failed to conduct preconstruction surveys for 44% of the applications (and 45% of the poles), within the 2004 Pole Order's 45 day timeframe. Of those applications for which surveys have been completed and make ready estimates have been paid by Charter, neither Frontier nor Citizens has completed make-ready on a single pole. As a result of Frontier/Citizen's failure to meet the 2004 Pole Order timeframes, Charter is missing its buildout targets and the Commission is pressuring both Charter and all pole owners in the State to come up with a process that will help Charter meet its goals.

In order to successfully meet the targets required for this project, a range of between 2,714 to 4,019 Frontier poles per month (over the next six months), and 1388 (in June) and 1727 (in July) Citizens poles, need to be released to Charter, as prioritized on **Exhibits B(1) and B(2)**, attached hereto. While these priorities may change over time based on field or other conditions, we will communicate with you about these projects and provide updated priorities, as necessary.

Charter will provide the resources necessary to support Frontier/Citizens, as specifically provided in the 2004 Pole Order, but there are a number of steps Frontier/Citizens can immediately take that will enable Charter to assist Frontier/Citizens in meeting its legal obligations under the 2004 Pole Order, which will in turn enable Charter to meet its buildout targets. While our companies' construction coordinators have had several discussions about permit status and the need to expedite the process, little progress has been made and time is running short.

Given the challenge this project presents to Frontier/Citizens and its inability to complete work on a timely basis to date, Charter requests that Frontier/Citizens immediately take the following specific actions:

Use of Outside Contractors

The 2004 Pole Order requires that if either pre-construction surveys or make-ready work is not completed in the timeframes specified therein, then the pole owner must either hire an outside contractor or allow the attacher to hire an approved contractor.¹

Charter, therefore, hereby seeks immediate consent to utilize outside/approved contractors for the following functions:

¹ See 2004 Pole Order, Order Adopting Policy Statement on Pole Attachments, p. 3.

- On poles where preconstruction surveys have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both the electric and Frontier/Citizens) *to perform preconstruction surveys in electric and communications space at the same time, rather than sequentially.*
- On poles where electric make-ready work and telco make-ready work have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both the electric and Frontier/Citizens) *to perform electric and Frontier/Citizens make-ready work at the same time, rather than sequentially.*
- On poles where the electric has already conducted the pre-construction survey, and Frontier/Citizens has failed to perform the pre-construction survey within 45 days of the application, allow Charter *to hire an approved contractor to perform the pre-construction survey.*
- On poles where the electric has already conducted make-ready, and Frontier/Citizens has failed to perform the make-ready within 45 days of Charter's estimate payment, allow Charter *to hire an approved contractor to perform any necessary Frontier/Citizens make-ready.*

Alternative Attachment Methods

Charter also requests that Frontier/Citizens immediately allow standard alternative attachment methods as envisioned by the 2004 Pole Order:

- Temporary attachments – Throughout the 2004 Pole Order, the Commission emphasizes that “speed is of the essence to attachers.” Temporary attachments can “compensate for delays in make-ready and other impediments to accessing poles.”² For this reason, the Commission requires that “[t]emporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline.”³ Since it is evident that Frontier/Citizens cannot generally meet the make-ready work timeline, *Frontier/Citizens must permit the use of temporary attachments.*
- Brackets – Extension arm brackets are another expedited attachment technique that the Commission sanctioned in its 2004 Pole Order. The Commission recognized that “[e]xtension arm brackets are commonly used in many areas of the State. Extension arms may be an appropriate method of attachment for both permanent installations, when make-ready costs are exorbitant and/or on a temporary basis when make-ready work cannot be

² 2004 Pole Order, Appendix A, p. 5.

³ 2004 Pole Order, Order Adopting Policy Statement on Pole Attachments, p. 5.

performed in a timely manner.”⁴ *Frontier/Citizens must, therefore, permit the use of brackets.*⁵

Need for Real Time Project Information

Given the scope of this project, Charter needs better, real time information about the status of projects that have been submitted to Frontier/Citizens at each stage of the process. As a point of reference, National Grid has been providing this information to Charter *via* their permit status website throughout this project. *Specifically, the following is needed on a statewide and municipality-specific basis going-forward:*

- A weekly status update on each permit submitted by Charter;
- The date preconstruction survey work is completed by Frontier/Citizens for each application/pole set;
- The date the make-ready check is received by Frontier/Citizens for each application/pole set;
- The date make-ready work is submitted to Frontier/Citizens for completion for application/pole set;
- The date make-ready work is completed for each pole/set of poles.

Charter’s ability to meet its buildout requirements cannot be achieved without the partnership of New York’s pole owners, including Frontier and Citizens, and their commitment to adhere to the 2004 Pole Order. Please contact me at your earliest convenience to set up a date to discuss these issues so that we may arrive at a mutually workable solution that will allow Charter to meet its buildout targets.

Sincerely,



Terence Rafferty
Regional Vice President of Operations, Northeast
Charter Communications

⁴ 2004 Pole Order, Appendix A, p. 6.

Exhibit A(1) - Frontier

Charter Exhibit A(1)—Frontier ⁶	
Permits Submitted	142
Poles Submitted	10502
Approved Permits	18
Approved Poles	103
Unapproved Permits past 45 day SLA	87
Unapproved Poles past 45 day SLA	7012
% Unapproved Permits past 45 day SLA	61%
% Unapproved Poles past 45 day SLA	67%
Poles With Paid Make Ready	8
Poles With Completed Make Ready	0
Poles Awaiting Make Ready	8
Poles Awaiting Make Ready Past 45 Day SLA	0

⁶ As of June 13, 2017.

EXHIBIT B(1) Omitted

Exhibit A(2) - Citizens

Charter Exhibit A(2)--Citizens ⁷	
Permits Submitted	115
Poles Submitted	7333
Approved Permits	10
Approved Poles	58
Unapproved Permits past 45 day SLA	51
Unapproved Poles past 45 day SLA	3313
% Unapproved Permits past 45 day SLA	44%
% Unapproved Poles past 45 day SLA	45%
Poles With Paid Make Ready	0
Poles With Completed Make Ready	0
Poles Awaiting Make Ready	0
Poles Awaiting Make Ready Past 45 Day SLA	0

⁷ As of June 13, 2017.

EXHIBIT B(2) Omitted