

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 15, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

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 ADOPTING 2024 SETTLEMENT AGREEMENT

(Issued and Effective August 15, 2024)

BY THE COMMISSION:

INTRODUCTION

By this Order, the Commission adopts the Settlement Agreement dated August 1, 2024, and executed by Charter Communications, Inc. (Charter or the Company) and the Department of Public Service Staff (Department or DPS) (the 2024 Settlement Agreement). The settlement addresses certain disputes by and between Charter and the Department over the Low-Income Broadband

Condition imposed by the Commission in its January 8, 2016 Merger Order and Section II.B.2 of Appendix A thereof.¹

The Low-Income Broadband Condition contained in the 2016 Merger Order required that Charter offer a low-income broadband program with speeds of at least 30 Megabits per second (Mbps) download, and 4 Mbps upload (30/4 Mbps), at a cost of \$14.99 per month.² On April 5, 2024, the Department of Public Service's Office of Investigations and Enforcement issued a Notice of Apparent Violation (or NOAV) to Charter alleging that it had increased the price of the low-income program in violation of the Merger Order.³ On April 30, 2024, Charter filed its response to the NOAV, arguing that the company did not violate the Merger Order because the Low-Income Broadband Condition had expired prior to any change in price.⁴

The 2024 Settlement Agreement (attached hereto as Appendix A) resolves this dispute and the NOAV. Generally, it requires, among other things, that Charter offer a low-income broadband program at a speed of at least 50 Mbps download and 10 Mbps upload (50/10 Mbps) for four years from the "Modification Date" set forth in paragraph 2 of the 2024 Settlement Agreement (see Appendix A). That program will be offered at a rate of \$15

¹ 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) (2016 Merger Order).

² Merger Order, Appendix A, p. 4. At the time of the Merger Order, the FCC defined broadband to mean speeds of 25 Mbps download and 3 Mbps upload. Earlier this year, the FCC updated the definition of broadband to mean speeds of 100 Mbps download and 20 Mbps upload.

³ See DPS Notice of Apparent Violation (dated April 5, 2024).

⁴ See Charter Response to NOAV (dated April 30, 2024).

per month, subject to annual price adjustments for inflation as measured by the Bureau of Labor Statistics' Consumer Price Index beginning in second year of the program. And the program must be available to both (1) new subscribers within Charter's New York service territory, and (2) Charter's existing New York Spectrum Internet Assist (SIA) subscribers who verify that they meet the eligibility criteria for one or more of the following programs: the United States Department of Agriculture's National School Lunch Program (including the Community Eligibility Provision) (NSLP); or Supplemental Security Income (SSI) for the Aged, Blind, and Disabled under Title 42 of the U.S. Code and its implementing regulations. At the conclusion of the four-year term, the Low-Income Broadband Condition of the Merger Order, as modified by this Order, shall be considered satisfied and will end.

The proposed 2024 Settlement Agreement is a reasonable resolution to the dispute by and between Charter and DPS Staff. Accordingly, through this Order, pursuant to Public Service Law (PSL) §§12, 25, 26, 94, 216, and 227-a, the Commission adopts the 2024 Settlement Agreement in full as a means of resolving the dispute.

BACKGROUND

On January 8, 2016, the Commission approved the Joint Petition of Time Warner Cable, Inc. and Charter (the Petitioners) seeking approval of the merger of the two companies. In approving the transaction, the Commission stated that, for the transaction to meet the enumerated statutory "public interest" standard, the Petitioners needed to demonstrate that the transaction yielded positive net benefits, after balancing expected benefits properly attributable to the transaction

against any risks or detriments that would remain after applying reasonable mitigation measures.⁵

The Commission 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.

Accordingly, given the public interest standard, the Commission explicitly conditioned its approval on a host of conditions designed to yield incremental net benefits and made clear that without Charter's unconditional acceptance of these conditions the Joint Petition would be rejected.⁶

Among those conditions was the Low-Income Broadband Condition, which required a program with broadband speeds of at least 30/4 Mbps at \$14.99 be available to households eligible for the NSLP and seniors eligible for SSI. Charter was required to report to the Commission on customer enrollment in the program for four years.⁷

In compliance with the Low-Income Broadband Condition, Charter began offering the SIA program in 2017, which provided 30/4 Mbps internet service at a price of \$14.99 per month to eligible customers. Subsequent to Charter's SIA program, other State and federal programs were introduced. Unfortunately, those programs have ended and have not been reintroduced or have been in a stayed or suspended status, all to the detriment of qualifying low-income customers.

In April 2021, the New York State Affordable Broadband Act (N.Y. Gen. Bus. Law §399-zzzzz, *et seq.*) was enacted, requiring, among other things, that internet service providers

⁵ 2016 Merger Order, p. 19.

⁶ Id., p. 49.

⁷ Id., pp. 27-29.

in New York offer income-eligible households broadband service with a download speed of at least 25 Mbps for \$14.99 per month or a download speed of 200 Mbps for \$19.99 per month. The Affordable Broadband Act is the subject of ongoing litigation.

In May 2021, the Federal Communications Commission (FCC) established the Emergency Broadband Benefit (EBB) program, which was later modified and renamed the Affordable Connectivity Program (ACP) pursuant to the federal Infrastructure Investment and Jobs Act.⁸ The ACP provided income-eligible households with discounts on internet service of up to \$30 per month, until it expired on June 1, 2024.⁹

In February 2024, DPS Staff began researching broadband service options for low-income customers to prepare for the expiration of the FCC's ACP. This research revealed that Charter had raised the price of its SIA Program to \$19.99 per month for new enrollees in November 2022 and for existing SAI customers in January 2023. Thereafter, in January 2024, Charter again increased the price to \$24.99 per month and increased the speed to 50/10 Mbps.

On April 5, 2024, the Department's Office of Investigations and Enforcement issued an NOAV to Charter alleging that Charter increased the price of the low-income program in violation of the 2016 Merger Order.¹⁰ On April 30, 2024, Charter responded to the NOAV, arguing that the Low-Income

⁸ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf>

⁹ FCC, Affordable Connectivity Program Consumer FAQ, available at [https://www.fcc.gov/affordable-connectivity-program-consumer-faq#:~:text=The%20ACP%20was%20a%20\\$14.2,Affordable%20Connectivity%20Program%20\(ACP\)?](https://www.fcc.gov/affordable-connectivity-program-consumer-faq#:~:text=The%20ACP%20was%20a%20$14.2,Affordable%20Connectivity%20Program%20(ACP)?)

¹⁰ DPS Notice of Apparent Violation (April 5, 2024).

Broadband Condition had expired and any changes to price and speed were not in violation of the 2016 Merger Order.¹¹

After extensive discussion, on August 1, 2024, DPS Staff and Charter signed the proposed 2024 Settlement Agreement for the Commission's consideration.

SUMMARY OF SETTLEMENT

In order to resolve the dispute, Charter and DPS Staff negotiated the proposed 2024 Settlement Agreement (Appendix A). As part of the 2024 Settlement Agreement, Charter, among other things, explicitly agrees to the following:

Charter will offer a Low-Income Broadband Program at speeds of no less than 50/10 Mbps to eligible households. Charter will offer the Low-Income Broadband Program for a period of four years from the "Modification Date" set forth in paragraph 2, after which such condition shall conclude and the Low-Income Broadband Condition of the Merger Approval Order, as modified by this Order, shall be deemed satisfied.

Charter will make its Low-Income Broadband Program available at a rate of \$15.00 per month. In each subsequent year of the Term, Charter may increase the price of the Low-Income Broadband Program for inflation at a rate no greater than the increase in the Bureau of Labor Statistics' Consumer Price Index over the twelve months preceding the month two months prior to the anniversary of the Effective Date.

Charter will make its Low-Income Broadband Program available to both (1) eligible new subscribers within New York Charter's service territory, and to (2) Charter's existing SIA subscribers who verify that they meet the eligibility criteria for one or more of the following programs: the United States

¹¹ Charter Response to Notice of Apparent Violation (April 30, 2024).

Department of Agriculture's National School Lunch Program (including the Community Eligibility Provision); or Supplemental Security Income for the Aged, Blind, and Disabled under Title 42 of the U.S. Code and its implementing regulations. Charter will promptly notify its existing SIA customers of the availability of the new Low-Income Broadband Program, and, if they request to enroll in the new program, Charter will promptly determine their eligibility. If existing SIA customers are not eligible for the Low-Income Broadband Program, they will be allowed to stay enrolled in the existing SIA program.

Finally, the agreement requires that Charter will annually submit a report on the number of customers in the Low-Income Broadband Program. Charter will file that report with the Secretary on or before October 15 each year and the report shall be current through August 31 of that year.

Alternatively, to all these conditions, the 2024 Settlement Agreement stipulates that Charter's compliance with the New York State Affordable Broadband Act (N.Y. Gen. Bus. Law §399-zzzzz, *et seq.*) shall be deemed compliance with the Low-Income Broadband Condition.

LEGAL AUTHORITY

The Commission is generally empowered to issue orders regarding regulated telephone and cable companies doing business in the State of New York and to interpret and enforce its orders pursuant to PSL §5 and Articles 5 and 11. The Commission is also specifically empowered to examine the practices and facilities of telephone corporations under PSL §94, and to issue, amend, or rescind orders regarding cable companies pursuant to PSL §216.

With regard to cable companies specifically, the Commission's jurisdiction is broad. Under PSL §215(c), the Commission is required "... to prescribe standards by which the franchising authority shall determine whether an applicant possesses (i) the technical ability, (ii) the financial ability, (iii) the good character, and (iv) other qualifications necessary to operate a cable television system in the public interest[.]" Pursuant to PSL §216(1), "[t]he commission may promulgate, issue, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the purposes of this article. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the commission and prescribe different requirements for different classes of persons or matters." And, PSL §216(5) states that the Commission "shall have and may exercise all other powers necessary or appropriate to carry out the purposes of this article."

The Commission's jurisdiction over telephone companies is similarly broad. PSL §4(1) provides that the Commission "shall possess the powers and duties hereinafter specified, and also all powers necessary or proper to enable it to carry out the purposes of this chapter." Under PSL §99(2), "[n]o telegraph corporation or telephone corporation hereafter formed shall begin construction of its telegraph line or telephone line without first having obtained the permission and approval of the commission and its certificate of public convenience and necessity..."

Additionally, PSL §94(2) provides that the Commission "general supervision of all ... telephone corporations ... within its jurisdiction ... and shall have the power to ... examine ... their franchises, and the manner in which their lines and property are leased, operated or managed, conducted and operated with respect

to the adequacy of and accommodation afforded by their service and also with respect to the safety and security of their lines and property, and with respect to their compliance with all provisions of law, orders of the commission, franchises and charter requirement."¹²

Under PSL §12, "[i]t shall be the duty of counsel to the commission, subject to the direction of the chairman, to represent and appear for the people of the state and the commission in all actions and proceedings involving any question under this chapter, or within the jurisdiction of the commission, and, if directed to do so to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized, and to expedite in every way possible final determination of all such actions and proceedings; and generally to perform all duties and services delegated to or required of him." Pursuant to PSL §§25, 26, and 227-a, Counsel's duties include bringing actions to enforce the Public Service Law, as well as regulations and orders adopted by the Commission under it.

DISCUSSION

The Merger Order noted that the Low-Income Broadband Condition was "specifically designed to encourage increased

¹² Additionally, PSL §91(1) requires that telephone corporations' facilities be "adequate and in all respects just and reasonable," and PSL §94(2) requires that the Commission review the safety of and manner in which telephone plants are operated. Similarly, PSL §220 requires that facilities installed by cable companies be adequate and conform with the Commission's construction standards, including the National Electric Safety Code (NESC), and PSL §221 requires that cable companies comply with the requirements contained in any franchise agreement confirmed by the Commission.

availability and adoption in those areas of the State and among those customer groups in which broadband adoption has lagged.”¹³ While the State of New York continues to make progress in physically expanding broadband service throughout New York, the cost of broadband services continues to be a barrier to broadband access for many households, at a time when the role of broadband in society has only become more essential.¹⁴

For approximately six years after the 2016 Merger Order, Charter offered SIA at a download speed of 30 Mbps for \$14.99 per month, consistent with the Low-Income Broadband Condition, and many low-income households in New York benefitted by enrolling in this program. In 2020, the COVID-19 pandemic caused unprecedented disruptions to the economy and millions of households were forced to work and learn remotely from home, making an affordable broadband internet connection more important than ever. Congress and the FCC responded by creating the ACP’s discount of up to \$30, which was sufficient to cover the entire cost of Charter’s SIA, and effectively resulted in a free internet option for eligible Charter customers between mid-2021 and June 1, 2024. The New York Legislature also responded to the urgent need to address broadband affordability by passing the Affordable Broadband Act, but litigation has delayed its implementation.

As noted in the NOAV, Charter increased the price of SIA for new customers in November 2022, and for existing customers in January 2023. Charter increased the price of SAI

¹³ Merger Order, p. 57.

¹⁴ See generally Case 22-M-0313, In the Matter of the Commission’s Broadband Study and Mapping Pursuant to the Broadband Connectivity Act, Order Authorizing the Release of the 2024 Report on the Availability and Cost of High-Speed Broadband Services in New York State (issued June 20, 2024).

again in January 2024 to \$24.99 per month.¹⁵ With the expiration of the ACP on June 1, 2024, the delayed implementation of the Affordable Broadband Act due to ongoing litigation, and these price increases, it is likely that SIA customers went from paying potentially nothing for broadband to paying \$24.99 per month. The DPS Staff submits that the Low-Income Broadband Condition had no expiration date, and that Charter should have sought Commission approval before increasing the price of SIA, which it did not do.

In its response, Charter argued that it would not be reasonable to assume the Low-Income Broadband Condition would continue indefinitely, and that this condition expired after a four-year duration (at the same time as the reporting requirements for the condition ended). Charter further argued that in the 2016 Merger Order the Commission quantified the benefits assuming a five-year timeline for the program, and it presses its contention that it is therefore logical to assume the Commission intended the condition to last four years after a six-to-fifteen-month rollout period. In addition, Charter argued that the Low-Income Broadband Condition was in connection with a nationwide commitment made by the Company that was adopted by the FCC with a four-year duration in FCC's parallel review of the merger.

The timing of this matter is notable, given the uncertainty about the future of federal and State broadband affordability policy. Before ACP's expiration on June 1, more than one million households in New York participated in the program, receiving up to \$30 per month to offset the cost of

¹⁵ In 2024, Charter also increased the speed of SIA to 50/10 Mbps, but this change was permitted by the terms of the Low-Income Broadband Condition, which required a minimum speed of 30/4 Mbps. See 2016 Merger Order, Appendix A, p. 4.

broadband service.¹⁶ Many of the households that recently lost their ACP discount are now likely searching for affordable broadband alternatives before school starts in September. Internet service providers are not offering a product compliant with the Affordable Broadband Act due to ongoing litigation, so this is not among the alternatives households can choose from at this time. The four-year term of the proposed 2024 Settlement Agreement should provide sufficient time for federal funding to be reinstated for ACP and/or for the litigation delaying the Affordable Broadband Act to be resolved.

The proposed 2024 Settlement Agreement compares favorably to the original Low-Income Broadband Condition and the State's Affordable Broadband Act requirements, especially given the cost increases that have likely occurred since 2016. Under the proposed Settlement, the price for the Low-Income Broadband program would effectively roll back to the original price established in the 2016 Low-Income Broadband Condition, but at a higher speed of 50/10 Mbps. Eligibility is slightly expanded under the 2024 Settlement Agreement to include all SSI households (compared to only seniors in the original Low-Income Broadband Condition). Given the significant inflation that has occurred since 2016, it is not unreasonable to allow an inflation adjustment to the price offering in years two through four and to allow for installation charges to be incurred consistent with such charges for all other customers. Customers enrolled in the SIA program at \$24.99 per month will need to prove eligibility to enroll in the new \$15 per month Low-Income

¹⁶ Press Release, Governor Hochul Announces More Than 1 Million Households Enrolled in Federal Affordable Connectivity Program (October 5, 2022), available at <https://www.governor.ny.gov/news/governor-hochul-announces-more-1-million-households-enrolled-federal-affordable-connectivity>.

Broadband Program, but they will be allowed to stay in the SAI program if they do not meet the eligibility requirements. To avoid customer confusion, Charter's compliance with the State law will be deemed compliance with the 2024 Settlement Agreement.

For the reasons stated herein, the Commission determines that the proposed 2024 Settlement Agreement should be adopted in full. The 2024 Settlement Agreement is a reasonable resolution to the dispute that arose in this proceeding and will result in the prompt reinstatement of a \$15 per month low-income broadband internet service product for eligible households.

EMERGENCY ADOPTION

This Order is issued on an emergency basis pursuant to the State Administrative Procedure Act (SAPA) §202(6) because the Commission finds that delaying the approval of the Settlement Agreement to comply with the requirements of SAPA §202(1) is contrary to the public interest. Not authorizing the agreement on an emergency basis would prevent the offering of an affordable, low-income broadband product for eligible households as the school year is fast approaching. Such an outcome benefits no one and threatens the welfare of eligible households within Charter's service territory who currently may not have access to an affordable product. This emergency rulemaking shall take effect on August 15, 2024, and shall expire on November 12, 2024.

As required by SAPA §202(6), the Department of Public Service will provide for publication of a Notice of Proposed Rulemaking in the State Register and an opportunity for public comment after issuance of this Order and prior to confirmation of the Commission's permanent adoption of the rule. The notice of adoption and proposed rulemaking shall constitute notice of

proposed rulemaking in accordance with SAPA §202(1). This Order constitutes the full text of this rulemaking.

CONCLUSION

The Commission finds that the proposed 2024 Settlement Agreement is a reasonable resolution to the dispute by and between Charter and DPS Staff. The Commission further finds that the exigencies counsel in favor of rulemaking on an emergency basis to ensure the availability of low-income broadband internet service to customers within Charter's New York service territory for the upcoming school year.

The Commission orders:

1. The 2024 Settlement Agreement proposed for adoption by Department of Public Service Staff and Charter Communications, Inc. is adopted in full, and all parties thereto shall abide by, and comply with, its terms.

2. The Commission's Low-Income Broadband Condition in "Appendix A - Conditions of Approval" of the 2016 Merger Order is modified and, as modified, shall require Charter to provide a low-income broadband program for eligible low-income New Yorkers (the "Modified Low-Income Broadband Program") as set forth in this order and more fully described in Exhibit A of the 2024 Settlement Agreement, which is incorporated by reference to this Order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

APPENDIX A

2024 Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is made by and between Charter Communications, Inc. (“**Charter**”), on the one hand, and the New York State Department of Public Service (the “**Department**”) and the New York State Public Service Commission (the “**Commission**”), on the other hand (Charter, the Department, and the Commission, collectively, the “**Parties**”). This Agreement shall be dated, and shall be fully effective as to Charter and the Department, as of the date on which it has been executed by Charter and the Department, that is, the 1st day of August, 2024 (the “**Effective Date**”); and this Agreement shall be effective as to the Commission on the Modification Date, as that term is defined in Paragraph 2 below. Certain portions of this Agreement shall be effective as to the Commission as of the Effective Date as set forth in Paragraph 18, below.

RECITALS

WHEREAS, by Joint Petition of Charter and Time Warner Cable Inc. (“**TWC**”) for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements (the “**Joint Petition**”), filed on July 2, 2015, TWC and Charter commenced Case 15-M-0388 before the Commission, in which TWC and Charter sought, among other things, Commission approval to transfer control over TWC’s New York operations to Charter (the “**Merger Proceeding**”);

WHEREAS, on January 8, 2016, the Commission issued the Order Granting Joint Petition Subject to Conditions (the “**Merger Approval Order**”), approving the Joint Petition, subject to certain conditions;

WHEREAS, the Merger Approval Order required Charter, among other things, to make available a low income broadband offering at \$14.99 per month to qualifying New York Residents, which program Charter has offered under the name “Spectrum Internet Assist” or “SIA” (the “**Low-Income Broadband Condition**”);

WHEREAS, Charter and the Department have disagreed regarding the duration of, and Charter’s compliance with, the requirements of the Low-Income Broadband Condition (the “**Dispute**”); and

WHEREAS, the Parties now wish to resolve the Dispute, without any admissions or findings of liability, on the terms and conditions specified herein;

NOW THEREFORE, in consideration of the agreements, promises, and representations set forth in this Agreement, the receipt and sufficiency of which are hereby agreed to and acknowledged, the Parties, intending to be bound, agree as follows:

TERMS

- (1) **Modification of Spectrum Internet Assist Condition.** Exhibit A hereto, which is incorporated by reference herein, sets forth the terms and conditions of a proposed modification of the Low-Income Broadband Condition (the “**Proposed Modified**”

Low-Income Broadband Condition”). Charter confirms that it voluntarily assents to this Agreement and its terms. Charter and the Department shall propose to the Commission that it confirm this Agreement through an order adopting this Agreement (the “**Modified Low-Income Broadband Condition Order**”).

(2) **Effectiveness of Modified Low-Income Broadband Order.**

- a. If the Commission issues the Modified Low-Income Broadband Condition Order, the Modified Low-Income Broadband Condition Order, and all of its terms and conditions, shall become effective upon Charter’s filing of its written agreement, no later than ten (10) business days after the issuance of the Modified Low-Income Broadband Condition Order, agreeing that the Modified Low-Income Broadband Condition Order is consistent with the terms of this Agreement (the “**Modification Date**”).
- b. If the Commission rejects the Modified Low-Income Broadband Condition Order, or adopts terms and conditions that differ from the terms and conditions contained in this Agreement, including, without limitation the Proposed Modified Low-Income Broadband Condition (an “**Alternative Modified Low-Income Broadband Condition Order**”), Charter will have ten (10) business days from the issuance of the Alternative Modified Low-Income Broadband Condition Order to file with the Commission, in writing, its decision to accept or not to accept that Alternative Modified Low-Income Broadband Condition Order.
- c. If Charter accepts the Alternative Modified Low-Income Broadband Condition Order, the date of Charter’s acceptance shall be the Modification Date, and the Alternative Modified Low-Income Broadband Condition Order, and all of its terms and conditions, shall become effective on that date.

- (3) **Termination.** The Parties acknowledge that the expected adoption of the Proposed Modified Low-Income Broadband Condition Terms through a Modified Low-Income Broadband Condition Order or (as the case may be) an Alternative Modified Low-Income Broadband Condition Order (a “**2024 Settlement Order**”) is a material and integral part of this Agreement, absent which Charter would not have entered into this Agreement. Accordingly, if the Commission (a) declines unconditionally to issue a Modified Low-Income Broadband Condition Order, or (b) issues an Alternative Modified Low-Income Broadband Condition Order, and Charter rejects such Alternative Modified Low-Income Broadband Condition Order pursuant to Paragraph 2(b) hereof, then, on the date of such rejection (the “**Termination Date**”), this Agreement shall terminate, no Modification Date (and therefore no modification of the Merger Order) shall occur, no provision of this Agreement tied to the Modification Date shall be triggered, this Agreement and all negotiations and proceedings related thereto and the termination thereof in accordance with this Paragraph 3 will be without prejudice to the rights of any Party, and all Parties will be restored to their respective positions as of the day before the Effective Date; *except that* the provisions of Paragraphs 4(b) and 6 of this Agreement shall survive the Termination Date. In

addition, no Party shall offer the fact that a Party has executed this Agreement, or exercised any right under this Agreement, in any enforcement or judicial proceeding that may proceed following the Termination Date, as evidence of an admission of liability or waiver of any rights by that Party.

(4) **Release of Charter.**

- a. Effective on the Modification Date, the Department and the Commission shall release and forever discharge Charter and its parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and each of their respective current and former officers, executives, directors, shareholders, partners, members, employees, fiduciaries, agents, representatives, attorneys, insurers, and assigns, from any and all Claims, whether known or unknown, based on any legal or equitable theory of recovery, direct or indirect, fixed or contingent, determined or determinable, that the Department and the Commission have as of the Effective Date, that arise out of the provision of discounted broadband services to low-income persons within the State of New York, including but not limited to any claims related to previous price increases of the SIA program; *except* that this Agreement shall not apply to any right, claim, defense, obligation or duty created by or arising out of, or any right to enforce the terms and conditions of, this Agreement or the Modified Low-Income Broadband Condition Order. This release includes a release of the Department's and the Commission's rights to seek from Charter any payment, penalty, forfeiture, refund, or fine that has accrued in connection with the Low-Income Broadband Condition as of the Effective Date and that continued to accrue through the Modification Date.
- b. Alternatively, in the event of termination of this Agreement pursuant to Paragraph 3 hereof, the Department and the Commission shall release all of their rights to seek from Charter any payment, penalty, forfeiture, refund, or fine that has accrued in connection with the Low-Income Broadband Condition during the period commencing on the Effective Date and concluding on the date five (5) business days after the Termination Date.

(5) **No Admission of Liability.** Charter expressly denies any liability to any other Party, and nothing in this Agreement shall be construed or deemed to be an admission of liability by or of Charter. This Agreement is not, and should in no way be construed or represented as, a Commission finding or an admission by Charter of a violation or breach of any law, regulation, condition, or order. Any services or discounts offered by Charter pursuant to this Agreement are not and should not be construed or represented as a penalty or forfeiture as those terms are used in the Public Service Law.

(6) **Non-Disclosure/Non-Use/Confidentiality.** All settlement negotiations leading to this Agreement, and each non-final draft of this Agreement and the exhibits thereto (collectively, the "**Settlement Matters**"), are and remain confidential, and shall not be admissible as evidence in any proceeding, including, but not limited to, uses as

evidence prohibited by Fed. R. Evid. 408 and CPLR 4547, except as set forth in this Paragraph.

- a. Notwithstanding the foregoing, nothing herein shall prohibit any Party from making disclosures of Settlement Matters (i) to that Party's attorneys, auditors, accountants, lenders or putative lenders (and their respective advisors), tax advisors, or insurers, or such other persons as are mutually agreed, provided such persons agree to keep said information confidential and not to disclose it to others except as required by law or regulatory inquiry; (ii) as may be necessary for purposes of tax, securities or other disclosure required by law, regulation or stock exchange rule, or regulatory disclosures to any government agency; (iii) in response to a court order, administrative order, subpoena or other formal legal process (subject to the provisions of subparagraph (b) of this Paragraph); (iv) in connection with any dispute concerning, or any action or proceeding to enforce, this Agreement; and/or (v) with the written permission of Charter (for the Department and the Commission) or of the Department and the Commission (for Charter).
 - b. In the event that a Party concludes that it must disclose Settlement Matters pursuant to subparagraph (a)(iii) of this Paragraph, then, except as prohibited by law, that Party shall, as soon as reasonably practicable after reaching that conclusion, and with sufficient time to allow the other Parties to seek judicial or administrative measures to prevent such disclosure, provide written notification to the other Parties that such disclosure will be made. In the event a Party seeks relief from such disclosure, whether from a Court, administrative agency, or otherwise, each Party shall cooperate promptly to assist such request.
 - c. Charter has submitted or will be submitting to the Department and the Commission certain information related to its low-income and discounted broadband offerings in the State of New York, which information Charter deems to be trade secret and/or otherwise confidential. Charter may seek confidential treatment of such information pursuant to the Public Officers Law.
- (7) **Authorization.** The execution, delivery and performance of this Agreement by each Party is within its corporate or statutory powers, as applicable, has been duly authorized by all necessary corporate or statutory action, and does not and will not (a) require any additional consent or approval except the entry and effectiveness of the 2024 Settlement Order, (b) contravene its organizational documents or enabling legislation, or (c) violate applicable law.
- (8) **Entire Agreement and Amendment to this Agreement.** This Agreement and its exhibits constitute the entire understanding of the Parties with respect to the resolution of all outstanding issues relating to the Low-Income Broadband Condition and the Dispute. This Agreement may be amended only by a written amendment that refers to this Agreement and is executed by all of the Parties, *except that* the Commission may issue an order modifying the terms of this Agreement and the Proposed Modified Low-Income Broadband Condition pursuant to the terms and conditions in Paragraph 2(b)

of this Agreement, provided that no such order may modify Charter's right to accept or reject the Proposed Modified Low-Income Broadband Condition in accordance with Paragraph 2(b) of this Agreement.

- (9) **Disputes Arising Under this Agreement.** The Parties agree to work cooperatively to resolve any future dispute arising under or in connection with this Agreement. During such time as the Parties work under this Paragraph to resolve any dispute, any Party statement regarding the dispute shall be considered non-final and any statute of limitations for bringing such dispute to a court for resolution pursuant to Article 78 of the CPLR or otherwise shall not accrue, provided, however, that any Party may notify the other Parties in writing that it has elected to terminate the tolling of such statute of limitations regarding such dispute for any reason as of a date specified in such writing, which shall not be earlier than two (2) business days following the delivery of such writing.
- (10) **Assistance of Counsel.** The Parties acknowledge that each of them is represented by competent counsel in connection with the negotiation of this Agreement, and that they enter into this Agreement with knowledge of its contents and of their own free will. The Parties acknowledge that they have had ample opportunity to confer with counsel prior to the execution hereof and sufficient time to review this Agreement. Each Party acknowledges, represents, and warrants to the others that no promises, commitments, or agreements except as expressly set forth in this Agreement have been made to induce such Party to sign this Agreement.
- (11) **Rights and Duties of the Commission and the Department.** Neither any provision contained herein, nor the Commission's adoption of this Agreement, shall be deemed in any way to abrogate or to limit the Commission's statutory authority under the New York Public Service Law. With the exception of the resolution of the Dispute via this Agreement (and any rights, responsibilities, and/or obligations created hereunder), the Parties recognize that any Commission adoption of the terms of this Agreement does not waive the Commission's ongoing rights and responsibilities to enforce its orders and to effectuate the goals expressed therein, nor the rights and responsibilities of the Department to conduct investigations or to take other actions in furtherance of its duties and responsibilities.
- (12) **Scope of Charter's Agreement Hereunder.** Neither Charter's entry into this Agreement, nor its confirmation pursuant to Paragraph 2(a) of this Agreement or its acceptance pursuant to Paragraph 2(b) of this Agreement, is intended to, does, or shall be deemed, in any manner, to waive, limit, impair, or restrict its ability to protect and preserve its rights, remedies, defenses, and interests, so long as such actions are not inconsistent with its obligations set forth in this Agreement. No Party shall use (expressly, by inference, or otherwise) Charter's acknowledgment of the enforceability of the terms of this Agreement to affect Charter's other rights or any previous reservation of rights by Charter in this proceeding regarding matters not covered by the terms of this Agreement.

- (13) **Construction of Agreement.** The Parties acknowledge that this Agreement is the product of negotiation by their respective counsel and that the language of this Agreement shall not be presumptively construed either in favor of or against any of the Parties.
- (14) **Headings.** The headings contained in this Agreement are for convenience of reference only and do not form a part of this Agreement and/or limit or affect the meaning hereof.
- (15) **Governing Law and Jurisdiction.** This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws thereof.
- (16) **Illegality or Unenforceability of Provisions.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held in whole or in part to be invalid, illegal, or unenforceable in any respect, (a) the Parties shall negotiate in good faith to replace such invalid, illegal, or unenforceable term with a valid, legal and/or enforceable term reflecting to the maximum extent achievable the mutual intentions of the Parties, and, (b) if no such agreement is reached, the Parties agree that a court in any action to enforce this Agreement may substitute a term reflecting to the maximum extent achievable the mutual intentions of the Parties at the time of this Agreement.
- (17) **Notices.** Unless a Party provides otherwise in writing, all notices required or desired to be given pursuant to this Agreement shall be given by Federal Express (or other similar overnight delivery service) and also by electronic mail, addressed as follows:

a. **To Charter:**

Attn: Adam E. Falk
Senior Vice President, State Government Affairs
Charter Communications, Inc.
601 Massachusetts Ave, N.W.
Suite 400W
Washington, DC 20001-4412
Email: adam.falk@charter.com

Copy to:

Luke C. Platzer
Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900, Washington, DC 20001-4412
Email: LPlatzer@jenner.com

b. To the Commission:
Attn: Robert Rosenthal
General Counsel
Office of General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: robert.rosenthal@dps.ny.gov


c. To the Department:
Attn: John J. Sipos
Office of General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: john.sipos@dps.ny.gov

Copy to:
Attn: Brian Ossias
Deputy Director
DPS Office of Telecommunications
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350
Email: brian.ossias@dps.ny.gov

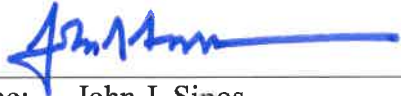
- (18) **Approval of the Commission.** This Agreement is subject to approval by the Commission as set forth in Paragraph 2 of this Agreement, and the Parties recognize that provisions of this Agreement pertaining to the Proposed Modified Low-Income Broadband Condition contained in Exhibit A hereto will not become effective as to or binding upon the Commission until the occurrence of the Modification Date; *provided, however, that* notwithstanding anything else in this Paragraph or in Paragraph 2 of this Agreement, the Chair of the Commission, on behalf of the Commission, will be bound by the terms and conditions of Paragraphs 4(b), and 6 of this Agreement as of the Effective Date.
- (19) **Agreement Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. This Agreement may be executed by original or electronic signature, each of which shall be equally binding.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

By: 
Name: Debra LaBelle
Title: Director, Office of Telecommunications
Date: August 1, 2024

NEW YORK STATE PUBLIC SERVICE COMMISSION

By: 
Name: John J. Sipos
Title: Deputy General Counsel
Date: August 1, 2024

CHARTER COMMUNICATIONS, INC.

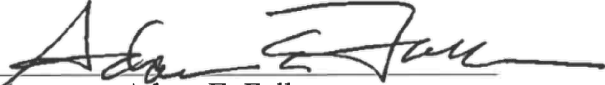
By: 
Name: Adam E. Falk
Title: Senior Vice President, State Government Affairs
Date: August 1, 2024

Exhibit A
Proposed Modified Low-Income Broadband Condition

- (1) **Modified Low-Income Broadband¹ Requirement.** The Low-Income Broadband Condition in “Appendix A – Conditions of Approval” of the Merger Approval Order is modified to commit Charter to provide a broadband program for eligible low-income New Yorkers (the “Low-Income Broadband Program”) as set forth herein.
- (2) **Performance Requirements.** The Low-Income Program Broadband Program offered by Charter will offer speeds of no less than 50 Mbps download and no less than 10 Mbps upload. Download and upload speeds shall be measured by Charter using the same methods used to calculate speeds displayed on the Federal Communications Commission’s Broadband Consumer Label. *See* 47 C.F.R. § 8.1(a).
- (3) **Equipment.** The Low-Income Broadband Program offered by Charter will include a modem at no charge.
- (4) **Term.** Charter will offer the Low-Income Broadband Program described herein for a period of four years from the Effective Date, after which such condition shall conclude and the Low-Income Broadband Condition of the Merger Approval Order shall be deemed satisfied (the “**Term**”).
- (5) **Pricing.**
 - a. Charter will make its Low-Income Broadband Program available at a rate of \$ 15.00 per month.
 - b. In each subsequent year of the Term, Charter may increase the price of the Low-Income Broadband Program by the increase in the Bureau of Labor Statistics’ Consumer Price Index over the twelve months preceding the month two months prior to the anniversary of the Effective Date.
 - c. Charter may charge subscribers to its Low-Income Broadband Program additional fees for installation no greater than those it charges under its broadband offerings available to all subscribers.
- (6) **Qualifications.**
 - a. Charter will make its Low-Income Broadband Program available to (1) eligible new subscribers within Charter’s service territory in New York, and to (2) Charter’s existing SIA subscribers in New York, where such new or existing

¹ Defined terms used, but not defined, in this Exhibit A shall have the same meanings ascribed to them in the Settlement Agreement to which this Exhibit is annexed (herein, the “**Settlement Agreement**”).

subscribers verify that they receive benefits from one or more of the following programs:

- i. the United States Department of Agriculture’s National School Lunch Program, including the Community Eligibility Provision; or
 - ii. Supplemental Security Income for the Aged, Blind, and Disabled under Title 42 of the U.S. Code and its implementing regulations.
 - b. Charter will administer a verification process to confirm the eligibility of prospective subscribers for the Low-Income Broadband Program. Charter may require enrolled customers to reverify eligibility annually and may require customers currently enrolled in its existing SIA program to verify eligibility prior to enrollment in the Low-Income Broadband Program governed by this Exhibit A.
 - i. Charter will directly notify all customers who are enrolled in the existing SIA program of the availability of the Low-Income Broadband Program within 30 days of the Effective Date.
 - ii. Charter will enroll existing SIA customers in the Low-Income Broadband Program within 30 days of receiving required documentation confirming their eligibility.
 - iii. In the event a customer enrolled in the existing SIA program is deemed ineligible for the Low-Income Broadband Program, such customer will be allowed to remain in the existing SIA program.
- (7) **Annual Report.** Charter will file a submission once a year reporting on the number of customers in the Low-Income Broadband Program. Charter shall file the report with the Secretary on or before October 15 each year and the report shall be current through August 31 of that year.
- (8) **Alternative Compliance Path.** Charter’s compliance with the New York State Affordable Broadband Act (N.Y. Gen. Bus. Law § 399-zzzzz, *et seq.*) shall be deemed compliance with the Low-Income Broadband Condition and any other requirements set forth in this Settlement Agreement.