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**STATE OF WASHINGTON
CHELAN COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC,

Defendant.

NO.

CONSENT DECREE

[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

- | | | |
|-----|----------------------------------|--|
| 1.1 | Judgment Creditor | State of Washington |
| 1.2 | Judgment Debtors | Charter Communications, Inc. |
| 1.3 | Principal Judgment Amount | \$995,060 |
| 1.4 | Post Judgment Interest Rate: | 12% per annum |
| 1.5 | Attorneys for Judgment Creditor: | Daniel Davies
Seann Colgan
Assistant Attorneys General |
| 1.6 | Attorneys for Judgment Debtor: | Harold Malkin
Lane Powell PC |

1.7 Plaintiff, the Attorney General of the State of Washington, by and through its attorneys, Robert Ferguson, Attorney General, and Daniel Davies and Seann Colgan, Assistant Attorneys General, conducted an investigation and commenced this action pursuant to

1 Revised Code of Washington (RCW) 19.86 and 19.86.080, the Consumer Protection Act (CPA).

2 1.8 Without admitting liability for any alleged unlawful activity, Defendant Charter
3 Communications, Inc. cooperated fully with Plaintiff's investigation and took prompt steps to
4 inquire into and address any consumer concerns relating to Plaintiff's investigation. Plaintiff
5 further acknowledges that Charter Communications, Inc. has worked promptly and
6 cooperatively with Plaintiff to resolve this matter comprehensively.

7 1.9 To accomplish a full, fair, and comprehensive resolution of this matter, Charter
8 Communications, Inc. has entered into this Consent Decree for settlement purposes only, without
9 the taking of any proof, without trial or adjudication of any issues of law or fact herein, and
10 without this Consent Decree constituting any form of evidence against or admission by Charter
11 Communications, Inc..

12 The Court finds no just reason for delay.

13 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
14 follows:

15 II. PARTIES AND JURISDICTION

16 2.1 Plaintiff is the Attorney General of the State of Washington.

17 2.2 Defendant is Charter Communications, Inc., a Delaware corporation based in
18 Stamford, Connecticut.

19 2.3 This Court has jurisdiction of the subject matter of this action, jurisdiction over
20 the parties to this action, and venue is proper in this Court pursuant to RCW 4.12.

21 2.4 Jurisdiction is proper because Defendant transacted business within Washington,
22 including Chelan County, and has provided video services to Washington residents at all times
23 relevant to the claims at issue.

24 2.5 Entry of this Consent Decree is in the public interest and reflects a negotiated
25 agreement between the parties.

26 2.6 This Consent Decree is entered pursuant to and subject to RCW 19.86 *et seq.*

1 4.2 Charter and any of its subsidiaries and affiliates operating in Washington shall
2 comply with the following terms and provisions:

3 4.3 In connection with online sales of its video services, Charter shall, clearly and
4 conspicuously disclose any and all material terms or conditions of its offers to Washington
5 consumers prior to Washington consumers submitting their orders. This disclosure shall include
6 the existence and amount of the Broadcast TV Surcharge that Charter is charged by broadcast
7 programming entities to carry their programming and passes on to consumers.

8 4.4 Plaintiff acknowledges that Charter, in connection with online sales of its video
9 services, has taken steps to address Plaintiff's concerns regarding disclosure to consumers of
10 applicable taxes, fees, and surcharges. Charter shall continue to address these online disclosures
11 and, by February 1, 2021, Charter shall disclose the estimated amount of each tax, fee, or
12 surcharge charged for the service(s) a consumer purchases, in addition to the monthly base price,
13 prior to Washington consumers submitting their orders.

14 4.5 For purposes of paragraphs 4.3 and 4.7 of this Consent Decree, Charter's online
15 disclosures of the pricing of its video services, including its disclosures related to the Broadcast
16 TV Surcharge and to increases in the Broadcast TV Surcharge during promotional periods, in
17 effect as of the Effective Date of this Decree are deemed "clear and conspicuous" and any
18 substantially similar, future disclosures shall also be deemed "clear and conspicuous."

19 4.6 Within one business day after a consumer orders or changes video services online,
20 Charter shall send the consumer an Order Confirmation via regular mail, email, or other
21 acceptable electronic communication that sets forth the pricing and material terms and
22 conditions, including taxes, applicable to the consumer's service order. The requirements in this
23 paragraph and paragraph 4.3 shall take effect within sixty days of entry of this Consent Decree.

24 4.7 In connection with online sales of its video services, Charter agrees to: 1) clearly
25 and conspicuously disclose to consumers, as part of Charter's sales process and before a
26 consumer submits a service order, that it may increase the Broadcast TV Surcharge during a

1 promotional period; 2) continue, as part of its sales process and before a consumer submits a
2 service order, to disclose impending increases to the Broadcast TV Surcharge of which Charter
3 has been notified by local broadcasters; and 3) limit the Broadcast TV Surcharge increase to an
4 amount not to exceed the amount of the broadcast fee increase imposed upon Charter by
5 broadcasters.

6 4.8 Charter shall not be deemed to have violated any of the terms of this Consent
7 Decree if: (i) Charter has implemented reasonable and appropriate policies and procedures to
8 ensure compliance with this Consent Decree; (ii) the alleged violation is the result of an isolated
9 or inadvertent error related to technical or coding issues, the disclosure of impending increases
10 to the Broadcast TV Surcharge contemplated by the immediately preceding paragraph, and/or
11 systems errors; (iii) Charter has reasonable safeguards in place to monitor for, discover, and
12 prevent these types of errors from happening; and (iv) Charter takes appropriate steps to
13 investigate and remedy errors identified by Charter or otherwise brought to its attention. For a
14 period of 90 days following entry of this Consent Decree, Charter shall be deemed to be in
15 compliance with subparagraph (i) of this paragraph 4.8 if Charter is in the process of
16 implementing reasonable and appropriate policies and procedures to ensure compliance with this
17 Consent Decree.

18 4.9 Charter shall be bound by this Consent Decree so as to accomplish the full relief
19 contemplated herein. Charter shall not effect any change in its form of doing business,
20 organizational identity, organizational structure, affiliations, ownership, or management
21 composition as a method or means of attempting to avoid the requirements of this Consent
22 Decree.

23 V. MONETARY PAYMENT

24 5.1 No later than thirty business days after the Court enters this Consent Decree,
25 Defendant shall pay a total of \$739,400 to the Attorney General's Office for recovery of its costs
26 and attorneys' fees incurred in investigating this matter, future monitoring and enforcement of

1 this Consent Decree, future enforcement of RCW 19.86, or for any lawful purpose in the
2 discharge of the Attorney General's duties at the sole discretion of the Attorney General. No
3 part of any payment shall be designated as a civil penalty, fine, and/or forfeiture.

4 5.2 The payment referenced in paragraph 5.1 shall be made by wire transfer to the
5 Washington State Attorney General's Office in accordance with wire transfer instructions
6 provided by the Attorney General's Office to Defendant no later than five business days prior to
7 the above-referenced payment date. Defendant's failure to timely make such payment shall be
8 a material breach of this Consent Decree.

9 5.3 No later than one hundred and twenty days after the Court enters this Consent
10 Decree, Defendant shall pay a total of \$255,660 to current subscribers who subscribed online to
11 Charter's video services since January 1, 2012. Charter shall make the payment via pro rata
12 direct bill credits to each eligible current subscriber.

13 VI. RELEASE

14 6.1 Upon payment of the amount due under paragraph 5.1 of this Consent Decree,
15 the Plaintiff releases and discharges Charter and Charter's current and former officers, directors,
16 agents, employees, subsidiaries, affiliates, representatives, successors, assigns, and all persons,
17 parties or entities acting in concert or participation with Charter, jointly and severally, from all
18 civil claims, causes of action, or proceedings, including but not limited to civil claims, causes of
19 action or proceedings that the Attorney General has or could have brought under the Consumer
20 Protection Act, RCW 19.86, and all injunctions, restitution, damages, penalties, fines,
21 forfeitures, payments, attorneys' fees or costs of any kind that the Attorney General has or could
22 have sought, arising out of Charter's conduct related to, and the Attorney General's investigation
23 of: (1) whether Charter adequately disclosed taxes, fees, and surcharges when offering video
24 services online, in-person at Charter stores, or over the telephone; (2) whether Charter changed
25 the prices, fees, or surcharges without adequate notice to or consent by customers who did not
26 have term agreements with Charter; and (3) all other claims and allegations alleged in the

1 Complaint up to and through the Effective Date of this Consent Decree. Nothing contained in
2 this paragraph shall be construed to limit the ability of the Attorney General to enforce the
3 obligations that Charter has under this Consent Decree.

4 **VII. ENFORCEMENT**

5 7.1 Any violation of any injunction contained in this Consent Decree, as determined
6 by the Court, shall constitute a violation of an injunction for which civil penalties may be sought
7 by the Attorney General pursuant to RCW 19.86.110 and/or such other remedies as may be
8 provided by law.

9 **VIII. RECORDKEEPING**

10 8.1 For a period of four years following entry of this Consent Decree, Charter must
11 create or retain the following records in connection with the offering and sale of video services
12 to Washington consumers:

- 13 A. All records necessary to demonstrate full compliance with each provision
14 of this Consent Decree, including all submissions to the State; and
15 B. A copy of each unique online offer to Washington consumers for video
16 services.

17 **IX. ADDITIONAL PROVISIONS**

18 9.1 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
19 retained by the Court for a period of four years from the Effective Date for the purpose of
20 enabling any party to this Consent Decree with or without the prior consent of the other party to
21 apply to the Court at any time for enforcement of or compliance with this Consent Decree, to
22 punish violations thereof, or to modify or clarify this Consent Decree.

23 9.2 Under no circumstances shall this Consent Decree, or the name of the State of
24 Washington, this Court, the Office of the Attorney General, the Consumer Protection Division,
25 or any of their employees or representatives (collectively the “Washington persons”) be used by
26 Charter or any of its respective owners, members, directors, successors, assigns, transferees,

1 officers, agents, servants, employees, representatives, and all other persons or entities in active
2 concert or participation with Charter, in connection with any selling, advertising, or promotion
3 of products or services, or as an endorsement or approval of Charter's acts, practices, or conduct
4 of business, that are subject to this Consent Decree.

5 9.3 Nothing in this Consent Decree shall grant any third-party beneficiary or other
6 rights to any person who is not a party to this Consent Decree.

7 9.4 Nothing in this Consent Decree shall be construed as relieving Defendant of the
8 obligation to comply with all state and federal laws, regulations, and rules, nor shall any of the
9 provisions of this Consent Decree be deemed to be permission to engage in any acts or practices
10 prohibited by such laws, regulations, and rules.

11 9.5 This Consent Decree in no way limits the Plaintiff from conducting any lawful
12 non-public investigation to monitor Defendant's compliance with this Consent Decree or to
13 investigate other alleged violations of the CPA, which may include but, is not limited to,
14 interviewing customers or former employees of Defendant.

15 9.6 This Consent Decree shall be binding upon and inure to the benefit of Defendant's
16 successors and assigns. For four years after entry of this Consent Decree, Defendant and its
17 successors and assigns shall notify the Plaintiff within thirty business days after any change in
18 control of Defendant that would change the identity of the corporate entity responsible for this
19 Consent Decree; including, but not limited to, dissolution, assignment, sale, merger, or other
20 action that results in the emergence of a successor corporation; the creation or dissolution of a
21 subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the filing
22 of a bankruptcy petition; or a change in the corporate name or address.

23 9.7 If any portion of this Consent Decree is held invalid by operation of law, the
24 remaining terms of this Consent Decree shall not be affected and shall remain in full force and
25 effect.
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1 9.8 Any notice or other communication required or permitted under this Consent
2 Decree shall be in writing and delivered to the following persons or any person subsequently
3 designated by the parties:

4
5 For the Plaintiff:

6 Office of the Attorney General
7 Consumer Protection Division
8 Attention: Daniel Davies
9 Assistant Attorneys General
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104-3188

For the Defendants:

Office of the General Counsel
Charter Communications, Inc.
400 Atlantic Avenue
Stamford, CT 06901

12 9.9 The Clerk of the Court is ordered to immediately enter the foregoing Consent
13 Decree.

14 DONE IN OPEN COURT this ____ day of _____, 2020.

15 _____
JUDGE/COURT COMMISSIONER

16 Presented by:

17 ROBERT W. FERGUSON
18 Attorney General

Notice of Presentment Waived and
Approved as to Form by:

19 

20 DANIEL DAVIES, WSBA #41793
21 SEANN C. COLGAN, WSBA #38769
22 Assistant Attorneys General
23 800 Fifth Avenue, Suite 2000
24 Seattle, WA 98104
25 (206) 442-4482
26 Attorneys for Plaintiff State of Washington



HAROLD MALKIN, WSBA #30986
Lane Powell PC
1420 Fifth Avenue. #4200
Seattle, WA 98101
(206) 223-7277
Attorneys for Defendants

1 **II. JURISDICTION AND VENUE**

2 2.1 Plaintiff files this Complaint and institutes these proceedings pursuant to the
3 Consumer Protection Act (“CPA”), RCW 19.86. The Attorney General has statutory authority
4 to commence this action pursuant to RCW 19.86.080 and RCW 19.86.140.

5 2.2 This Court has personal jurisdiction over Charter pursuant to RCW 4.28.180,
6 RCW 4.28.185, and RCW 19.86.160 because Charter has engaged in the conduct set forth in this
7 Complaint in Chelan County and elsewhere in the State of Washington.

8 2.3 Venue is proper in Chelan County pursuant to RCW 4.12.020 and 4.12.025, and
9 Court Rule 82 because Charter transacts business in Chelan County and engaged in the conduct
10 set forth in this Complaint in Chelan County and elsewhere in the State of Washington.

11 **III. FACTS**

12 3.1 Between 2012 and the present, Charter has provided cable or internet services to
13 over 130,000 Washington consumers.

14 3.2 Charter has charged Washington video customers a monthly Broadcast TV
15 Surcharge (“BTVS”) since at least 2012.

16 3.3 The BTVS is a pass-through fee reflecting charges assessed to Charter by the
17 owners of local broadcast or local “network-affiliated” television stations.

18 3.4 The BTVS is not associated with any taxes or fees assessed by a government
19 entity.

20 3.5 Charter periodically increases the BTVS to reflect increased charges it must pay
21 to local broadcast and network-affiliated television stations.

22 3.6 Charter sometimes offers Washington consumers promotional offers, in which
23 they will receive a lower rate for television services over an extended period of time.

24 3.7 When Charter increases its BTVS amount in Washington, it increases the amount
25 for all video consumers, including ones who are receiving services at a promotional price.

26 3.8 Charter did not clearly and conspicuously disclose that it would increase the

1 5.1 That the Court adjudge and decree that Charter has engaged in the conduct
2 complained of herein;

3 5.2 That the Court adjudge and decree that the conduct complained of constitutes
4 unfair and/or deceptive acts and practices in trade or commerce in violation of the Consumer
5 Protection Act, RCW 19.86;

6 5.3 That the Court issue a permanent injunction enjoining and restraining Charter,
7 and its representatives, successors, assigns, officers, agents, servants, employees, and all other
8 persons acting or claiming to act for, on behalf of, or in active concert or participation with
9 Charter, from continuing or engaging in the conduct complained of herein;

10 5.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two
11 thousand dollars (\$2,000) per violation against Charter for each and every violation of
12 RCW 19.86.020 caused by the conduct complained of herein;

13 5.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems
14 appropriate to provide for restitution to consumers of money or property which may have been
15 acquired by Charter by means of the conduct complained of herein;

16 5.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that the
17 Plaintiff State of Washington recover from Charter the costs of this action, including reasonable
18 attorneys' fees; and

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1 5.7 For such other relief as the Court may deem just and proper.

2 DATED this 21st day of July, 2020.

3
4 ROBERT W. FERGUSON
5 Attorney General

6 

7 _____
8 DANIEL DAVIES, #41793
9 SEANN COLGAN, WSBA #38769
10 Assistant Attorneys General
11 Attorneys for Plaintiff State of Washington
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