

Before the
Federal Communications Commission
Washington, DC 20554

| | | |
|---|---|----------------------------|
| In the Matter of |) | |
| |) | Acct. No.: MB-201641410003 |
| Charter Communications, Inc. |) | |
| |) | FRN: 0003746468 |
| Investigation of Compliance with Rules Relating |) | |
| to Navigation Devices |) | |

ORDER

Adopted: April 25, 2016

Released: May 10, 2016

By the Chief, Media Bureau:

1. The Media Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Charter Communications, Inc. (Charter or Company) prevented the connection of customer-owned cable modems to its network without determining that they posed a threat of harm to the Charter network or theft of Charter service.

2. Section 629 of the Act, as implemented by Section 76.1201 of the Rules, prohibits MVPDs from “prevent[ing] the connection or use of navigation devices” on their network. It provides an exception from this prohibition only “where electronic or physical harm would be caused by the attachment or operation” of a navigation device, or when the device could be, or is intended or designed to be, used for “the unauthorized receipt of service.”¹ “Navigation devices” include cable modems, which are used to access “other services” (namely, broadband Internet access) offered over a cable system. “Electronic or physical harm,” as described in the *Navigation Devices Order*, includes “harmful interference,” “injury to the system,” or “compromise of system security”; that is, harm to the network facilities beyond the premises of the individual connecting a navigation device.²

3. In July 2015, the Bureau began an investigation into Charter after Zoom Telephonics, Inc. alleged that Charter had, over an extended period of time, infringed the right of Charter subscribers to attach and use non-harmful cable modems.³ The Bureau’s investigation found that for a period of approximately two years beginning in 2012, Charter informed subscribers that they would no longer be permitted to attach new customer-owned modems. Charter later provided a list of authorized customer-owned modems, but new modems were only added to the list after passing a number of tests, many of which did not relate to harm to the network or theft of service. To settle this matter, Charter will adopt a three-year compliance plan with reporting requirements. As described in the attached, Charter has also revised its cable modem testing regime, including performing only three weeks of limited testing. Finally, Charter will also make a settlement payment of \$640,000.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the

¹ 47 C.F.R. § 76.1201.

² *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775, paras. 29, 32, 35-39 (1998) (*Navigation Devices Order*).

³ Zoom also raised these issues in the context of Charter’s pending merger proposal. Zoom Telephonics, Inc. Petition To Deny, Or In The Alternative, For Conditional Grant, Docket No. 15-149 (filed October 13, 2015; revised October 14, 2015).

referenced investigation regarding Charter's compliance with Section 629 of the Act and Sections 76.1201 and 76.1202 of the Commission's rules.⁴

5. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Charter possesses the basic qualifications to be a Commission licensee.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act⁵ and the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,⁶ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Charter related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Hunt Brown, Associate General Counsel, Charter Communications, Inc., 12405 Powerscourt Dr., St. Louis, MO 63131.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau

⁴ 47 U.S.C. § 549; 47 CFR §§ 76.1201, 76.1202.

⁵ 47 U.S.C. § 154(i).

⁶ 47 CFR §§ 0.61, 0.283.

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CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Charter Communications, Inc. (Charter or the Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into whether Charter violated Section 629 of the Communications Act of 1934, as amended,¹ and Sections 76.1201 and 76.1202 of the Commission’s rules,² in connection with Charter’s policies and practices regarding the attachment of navigation devices to its systems.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.³
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Media Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Charter is subject by virtue of its business activities.
 - (f) “Charter” or “the Company” means Charter Communications, Inc.; a direct or indirect wholly-owned subsidiary of Charter Communications, Inc. (including CCH I, LLC which in the event of the consummation of the proposed acquisition of Time Warner Cable Inc. will become new Charter Communications, Inc. (“New Charter”)); or an entity that is (i) majority-owned directly or indirectly by Charter Communications, Inc. or New Charter and (ii) controlled by Charter Communications, Inc. or New Charter, a direct or indirect wholly-owned subsidiary of Charter Communications, Inc. or New Charter, or an entity that is majority-owned directly or indirectly by Charter Communications, Inc. or New Charter.
 - (g) “Effective Date” means the date by which both the Bureau and Charter have signed the Consent Decree.
 - (h) “Investigation” means the investigation into Charter’s apparent violations of Section 629 of the Act and Sections 76.1201 and 76.1202 of the Rules, commenced by the Bureau’s Letter of Inquiry dated July 2, 2015.
 - (i) “Navigation Device Rules” means Section 629 of the Act and Part 76, Subpart P, of the Rules.

¹ 47 U.S.C. § 549.

² 47 C.F.R. §§ 76.1201, and 76.1202.

³ 47 U.S.C. § 151 *et seq.*

- (j) “Parties” means Charter and the Bureau, each of which is a “Party.”
- (k) “Retail Cable Modem” means a navigation device that is intended to be used to access Internet access service via DOCSIS and is intended to be sold at retail.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 629 of the Act, as implemented by Section 76.1201 of the Rules, prohibits MVPDs from “prevent[ing] the connection or use of navigation devices” on their network. It provides an exception from this prohibition only “where electronic or physical harm would be caused by the attachment or operation” of a navigation device, or when the device could be, or is intended or designed to be, used for “the unauthorized receipt of service.”⁴ “Navigation devices” include cable modems, which are used to access “other services” (namely, broadband Internet access) offered over a cable system. “Electronic or physical harm,” as described in the *Navigation Devices Order*, includes “harmful interference,” “injury to the system,” or “compromise of system security”; that is, harm to the network facilities beyond the premises of the individual connecting a navigation device.⁵

4. In meetings with Commission staff in early 2015, Zoom Telephonics, Inc. alleged that Charter had, over an extended period of time, infringed the right of Charter subscribers to attach and use non-harmful cable modems.⁶ The Bureau opened an investigation into these allegations and on July 2, 2015, sent a Letter of Inquiry to Charter to seek additional information; Charter responded, and supplemented its response after discussions with the Bureau. The Bureau also sent Letters of Inquiry to manufacturers of Retail Cable Modems.

5. In the course of the Investigation, the Bureau made the following findings of fact. Although not part of Charter’s terms and conditions of service, for a period of approximately two years beginning in 2012, Charter’s website indicated that, for new and plan-switching customers, Charter would “no longer allow customer-owned modems” on its network. During this period, customer service representatives were instructed to inform subscribers and potential subscribers that Charter would no longer allow customer-owned cable modems on its network. During this period, notwithstanding this messaging, Charter did on occasion allow customers to attach customer-owned modems. Accordingly, during this period several thousand new Retail Cable Modems owned by Charter Internet access customers were attached to Charter’s network. In late 2014, Charter updated its website to reflect that Charter subscribers could use Retail Cable Modems if the modem was on Charter’s approved list. Beginning on or around this time, Charter’s process to determine whether to include a Retail Cable Modem on the approved list included a number of tests. Many of these tests did not directly relate to harm to Charter’s network or unauthorized receipt of service, but were directed at ensuring a positive subscriber experience.

6. After review of Charter’s response and supplements, Charter and the Bureau engaged in settlement negotiations. The Bureau and Charter agree to the following terms and conditions of settlement and hereby enter into this Consent Decree as provided herein.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

⁴ 47 C.F.R. § 76.1201.

⁵ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775, paras. 29, 32, 35-39 (1998) (*Navigation Devices Order*).

⁶ Zoom also raised these issues in the context of Charter’s pending merger proposal. Zoom Telephonics, Inc. Petition To Deny, Or In The Alternative, For Conditional Grant, Docket No. 15-149 (filed October 13, 2015; revised October 14, 2015).

8. **Jurisdiction.** Charter agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Charter agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action on its own motion against Charter concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or to set for hearing the question of Charter's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁷

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Charter shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Charter complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Navigation Device Rules prior to assuming his or her duties.

12. **Compliance Plan.** Charter agrees that it shall within sixty (60) calendar days after the Effective Date, develop, implement, and maintain a Compliance Plan that is designed to ensure future compliance with the terms and conditions of this Consent Decree, including the following:

- (a) Charter will permit the attachment of Retail Cable Modems except as set forth in this paragraph. Except as provided in paragraph 12(g), Charter may prohibit the attachment of a Retail Cable Modem only in the following circumstances:
 - i. The Retail Cable Modem does not support DOCSIS 3.0 (or higher);
 - ii. The Retail Cable Modem does not support 802.11i-based encryption (WPA2-PSK [AES]);
 - iii. The Retail Cable Modem has integrated Multi-Media over COAX (MoCA) capability;
 - iv. The Retail Cable Modem has not obtained FCC certification under Class B, Part 15 Rules (47 C.F.R. Part 15), and as a result cannot be legally marketed in the United States; or
 - v. The Retail Cable Modem cannot serve as a Navigation Device under Subpart P of Section 76 of the Commission's Rules, because it is effectively inoperable, is technologically incompatible with Charter's systems, or will not boot.

⁷ See 47 C.F.R. § 1.93(b).

- (b) Charter agrees not to prohibit attachment or operation of any Retail Cable Modem that has been submitted for compliance testing, unless one or more of the criteria in paragraph 12(a) applied, or paragraph 12(g) has been invoked. Charter further agrees that, unless one or more of criteria i-iii in paragraph 12(a) is met by a Retail Cable Modem, or paragraph 12(g) has been invoked with respect to that Retail Cable Modem, Charter has no reason to believe that the attachment or operation of that Retail Cable Modem will (i) cause electronic or physical harm, or (ii) be used to assist, or be intended or designed to assist, in the unauthorized receipt of service.
- (c) Any testing by Charter to determine compliance with paragraph 12(a) will take no more than three weeks per Retail Cable Modem, not including the time it takes the manufacturer of the Retail Cable Modem to respond to concerns identified by Charter during the testing process, or delays caused by force majeure events (i.e., acts of God, natural disasters, riots, national emergency, or other like events beyond Charter's reasonable control).
- (d) Any testing by Charter to determine compliance with paragraph 12(a) will not exactly replicate testing performed by CableLabs.
- (e) Within 14 calendar days of a compliant Retail Cable Modem being approved by Charter, Charter will add such device to its website listings and relevant subscriber communications identifying compliant cable modems for use on Charter's network.
- (f) If Charter wishes to make any changes to the criteria in paragraph 12(a), it will do so only in accordance with the following conditions:
- i. Charter will submit proposed changes to the Bureau in electronic format to the Chief, Policy Division, Martha Heller at Martha.Heller@fcc.gov, copying Lyle Elder at Lyle.Elder@fcc.gov.
 - ii. In reviewing such requests, the Bureau shall not unreasonably withhold approval of any requested change, and shall be guided in its determinations by the Commission's Rules and the *Navigation Devices Order*.⁸
 - iii. If the Bureau does not reject any proposed change within 30 calendar days of submission by Charter, the proposed change will be deemed accepted/approved, and Charter will be permitted to implement the proposed change.
 - iv. If the Bureau does reject a proposed change, Charter will not implement the change, but may resubmit a revised proposal to the Bureau at any time.
- (g) Charter may prohibit the attachment of a Retail Cable Modem only if (i) the device has not been submitted to Charter for compliance testing under paragraph 12(a), (ii) the device has been submitted for such testing and one or more of the criteria in paragraph 12(a) for prohibiting the attachment of a modem applied, or (iii) Charter has actual knowledge that "electronic or physical harm would be caused by the attachment or operation of such device[] or such device[] may be used to assist or [is] intended or designed to assist in the unauthorized receipt of service."
- (h) If Charter prohibits the attachment of any Retail Cable Modem for any reason at any time, Charter will notify the Bureau within 14 calendar days by electronic submission to the Chief, Policy Division, Martha Heller at Martha.Heller@fcc.gov, copying Lyle Elder at

⁸ See *supra* note 5.

Lyle.Elder@fcc.gov, and it will explain the reasons for its decision to prohibit the attachment of the modem.

- (i) Charter may provide recommendations to its subscribers regarding approved Retail Cable Modems, so long as those recommendations are based on objective criteria related to consumer experience.

13. **Acts or Omissions of Contractors and Agents.** Charter acknowledges that the act, failure to act, or omission by any independent contractor, subcontractor, or third-party agent of Charter, acting in such capacity, that results in a violation of the Navigation Device Rules or this Consent Decree, constitutes an act, failure to act, or omission by Charter.

14. **Reporting Noncompliance.** Charter shall report any noncompliance with the Navigation Device Rules or with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Charter has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Charter has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Martha Heller, Chief, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A766, Washington, DC 20554, and submitted electronically to Martha Heller at Martha.Heller@fcc.gov and Lyle Elder at Lyle.Elder@fcc.gov.

15. **Compliance Reports.** Charter shall file confidential Compliance Reports with the Commission six (6) calendar months after the Effective Date and every six (6) months thereafter, with a final report to be submitted one week after the termination date of the Compliance Plan.

- (a) Each Compliance Report shall include a detailed description of Charter's efforts during the relevant period (ending one week before the filing date of each report) to comply with the terms and conditions of this Consent Decree and the Navigation Device Rules. It will also include a chart listing all devices submitted for Retail Cable Modem testing or which were at any stage in the testing process during the relevant period. The chart shall identify each device by name or unique identifier and manufacturer, provide the date on which it was submitted to Charter for testing, provide detailed information regarding its status as of the date of the Compliance Report, and provide any other information necessary to explain the status of all Retail Cable Modems submitted for testing, tested, in a pause in testing, approved, or rejected during the relevant period.
- (b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Charter, stating that the Compliance Officer has personal knowledge that Charter has established, implemented, and is maintaining the Compliance Plan and is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.
- (c) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must be in the form set forth in Section 1.16 of the Rules⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Charter, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Charter has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Charter has

⁹ 47 C.F.R. § 1.16.

taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

- (e) All Compliance Reports shall be submitted to the Chief, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A766, Washington, DC 20554, and submitted electronically to Martha Heller at Martha.Heller@fcc.gov, copying Lyle Elder at Lyle.Elder@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11-15 shall expire thirty-six (36) months after the Effective Date.

17. **Settlement Payment.** Charter will make a settlement payment to the United States Treasury in the amount of six hundred forty thousand dollars (\$640,000) within 30 calendar days after the Effective Date (Settlement Payment). Charter acknowledges and agrees that upon execution of this Consent Decree, the Settlement Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹⁰ Charter shall send electronic notification of payment to Martha Heller at Martha.Heller@fcc.gov, copying Lyle Elder at Lyle.Elder@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **Waivers.** As of the Effective Date, Charter waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Charter shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Charter nor the Commission shall contest the validity of the

¹⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

¹¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Consent Decree or the Adopting Order, and Charter shall waive any statutory right to a trial *de novo*. Charter hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹² relating to the matters addressed in this Consent Decree.

19. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

20. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Charter does not expressly consent), that provision will be superseded by such Rule or Order.

22. **Successors and Assigns**. Charter agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

23. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

24. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

27. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

William T. Lake
Chief
Media Bureau
Federal Communications Commission

Jay Rolls
Senior Vice President and
Chief Technology Officer
Charter Communications, Inc.

Date: _____

Date: _____

¹² See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.