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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
WINDSTREAM HOLDINGS, INC., et al.,)	Case No. 19-22312 (RDD)
)	
Plaintiffs.)	(Jointly Administered)
)	
WINDSTREAM HOLDINGS, INC., et al.,)	
)	
Plaintiffs,)	Adv. Pro. No. 19-08246
)	
vs.)	
)	
CHARTER COMMUNICATIONS, INC. and)	
CHARTER COMMUNICATIONS OPERATING,)	
LLC,)	
)	
Defendants.)	
)	

**DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE
INADMISSIBLE AND INCOMPLETE DEPOSITION TESTIMONY**

Defendants Charter Communications, Inc. and Charter Communications Operating, LLC
(collectively, Defendants) submit the following Motion *in Limine* to Exclude Inadmissible and



Incomplete Deposition Testimony under the Federal Rules of Evidence. In support of their motion, Defendants state as follows:

On March 2, 2020, the parties exchanged deposition designations for Counts I through VII in this Adversary Proceeding. On April 21, 2020, the District Court (Case No. 19-09354) withdrew the reference on Counts I through V. Because it is unclear which of Plaintiffs' designations only relate to Counts VI and VII, Defendants reserve their right to object to any designations under Federal Rule of Evidence 402.

I. INADMISSIBLE DEPOSITION TESTIMONY

The following designated deposition testimony is inadmissible and should be excluded for the specific reasons described below:

A. Designations from Deposition of Kelly Atkinson (May 1, 2019)

1. The designated testimony of Kelly Atkinson at 82:4-83:19 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.
2. The designated testimony of Kelly Atkinson at 89:16-21 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.

B. Designations from Deposition of Keith Dardis (May 1, 2019)

1. The designated testimony of Keith Dardis at 48:16-50:1 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.
2. The designated testimony of Keith Dardis at 50:13-14 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.
3. The designated testimony of Keith Dardis at 51:24-53:10 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.

4. The designated testimony of Keith Dardis at 58:20-60:19 is not admissible under FRE 802 because the testimony is hearsay. The testimony is also protected by the attorney-client privilege.
5. The designated testimony of Keith Dardis at 65:2-67:7 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.

C. Designations from Deposition of Matthew Kardos (September 12, 2019)

1. The designated testimony of Matthew Kardos at 24:18-25:12 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.
2. The designated testimony of Matthew Kardos at 25:17-26:12 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.
3. The designated testimony of Matthew Kardos at 26:22-28:22 is not admissible under FRE 602 because the witness does not have personal knowledge of the matter.

D. Designations from Deposition of Lewis Langston (May 1, 2019)

1. The designated testimony of Lewis Langston at 135:1-137:3 is not admissible under FRE 602 and FRE 802 because the witness does not have personal knowledge of the matter and the testimony is hearsay.
2. The designated testimony of Lewis Langston at 137:10-153:25 is not admissible under FRE 602 and FRE 802:
 - a. Testimony at 137:14-24 is inadmissible under FRE 602 and 802 because it is hearsay and the witness does not have personal knowledge of the matter;
 - b. Testimony at 143:24-144:25 is inadmissible under FRE 802 because it is hearsay;
 - c. Testimony at 147:21-148:4 is inadmissible under FRE 802 because it is hearsay;
and

- d. Testimony at 149:24-150:10 is inadmissible under FRE 602 because the witness does not have personal knowledge of the matter.
3. The designated testimony of Lewis Langston at 162:20-166:25 is not admissible under FRE 602 and FRE 802:
- a. Testimony at 163:13-20 is inadmissible under FRE 602 because the witness does not have personal knowledge of the matter;
 - b. Testimony at 164:20-165:14 is inadmissible under FRE 802 because it is hearsay; and
 - c. Testimony at 166:15-24 is inadmissible under FRE 802 because it is hearsay.
4. The designated testimony of Lewis Langston at 169:10-179:23 is not admissible under FRE 602, 802 and 1002:
- a. Testimony at 170:18-21 is inadmissible under FRE 802 because it is hearsay and is also inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;
 - b. Testimony at 171:12-19 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;
 - c. Testimony at 172:15-173:1 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;

- d. Testimony at 173:24-174:7 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;
 - e. Testimony at 175:1-14 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;
 - f. Testimony at 175:25-176:24 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content;
 - g. Testimony at 177:20-178:9 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content; and
 - h. Testimony at 179:4-23 is inadmissible under FRE 802 because it is hearsay, is inadmissible under FRE 602 because the witness has no personal knowledge of the matter, and is inadmissible under FRE 1002 because it is not the original writing or recording and is being offered to prove its content.
- E. Designations from Deposition of Peter Maguire of RAPP Worldwide Inc. (September 12, 2019)**
- 1. The designated testimony of Peter Maguire at 36:16-36:20 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.

2. The designated testimony of Peter Maguire at 64:3-67:24 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
3. The designated testimony of Peter Maguire at 86:18-87:6 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
4. The designated testimony of Peter Maguire at 95:4-22 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.

F. Designations from Deposition of Andrew Sites (September 10, 2019)

1. The designated testimony of Andrew Sites at 19:13-20:23 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
2. The designated testimony of Andrew Sites at 27:3-13 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
3. The designated testimony of Andrew Sites at 38:19-39:8 is not admissible under FRE 407 because it is evidence of subsequent measures taken that, if taken previously, would have made the injury or harm less likely to occur, and is not admissible to prove culpability in connection with the allegations.

G. Designations from Deposition of Paul Strickland, Jr. (September 20, 2019)

1. The designated testimony of Paul Strickland at 45:21-47:16 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
2. The designated testimony of Paul Strickland at 81:24-86:7 is not admissible under FRE 602 because the witness has no personal knowledge of the matter. The testimony is also inadmissible under FRE 802 because it is hearsay.

3. The designated testimony of Paul Strickland at 86:21-88:2 is not admissible under FRE 602 because the witness has no personal knowledge of the matter. The testimony is also inadmissible under FRE 802 because it is hearsay.

H. Designations from Deposition of Emmitt Walker (September 11, 2019)

1. The designated testimony of Emmitt Walker at 21:6-15 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
2. The designated testimony of Emmitt Walker at 22:11-22 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
3. The designated testimony of Emmitt Walker at 24:5-9 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
4. The designated testimony of Emmitt Walker at 24:18-24 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.
5. The designated testimony of Emmitt Walker at 25:16-28:10 is not admissible under FRE 602 because the witness has no personal knowledge of the matter. The testimony is also inadmissible under FRE 802 because it is hearsay.
6. The designated testimony of Emmitt Walker at 84:3-85:5 is not admissible under FRE 602 because the witness has no personal knowledge of the matter.

II. MISLEADING AND/OR INCOMPLETE DEPOSITION TESTIMONY

Plaintiffs have designated the following deposition testimony that is incomplete and misleading unless it is considered in conjunction with other non-designated testimony. Defendants therefore respectfully submit that the following testimony should be excluded under FRE 106.

A. Designations from Deposition of Kelly Atkinson (May 1, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 35:4-22 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 34:15-36:3 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 42:2-43:2 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 44:5-25 must be admitted and considered at the same time.
3. The part of the recorded statement Plaintiffs propose to introduce at 58:24-59:14 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 59:24-60:5 must be admitted and considered at the same time.
4. The part of the recorded statement Plaintiffs propose to introduce at 70:23-72:24 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 73:2-9 must be admitted and considered at the same time.
5. The part of the recorded statement Plaintiffs propose to introduce at 75:16-76:2 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106

mandates that the other part of the recorded statement transcript at 75:12-15 must be admitted and considered at the same time.

6. The part of the recorded statement Plaintiffs propose to introduce at 86:15-24 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 86:25-87:22 must be admitted and considered at the same time.
7. The part of the recorded statement Plaintiffs propose to introduce at 122:15-123:14 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 125:4-9 must be admitted and considered at the same time.
8. The part of the recorded statement Plaintiffs propose to introduce at 127:19-128:14 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 127:5-15 and 130:17-131:8 must be admitted and considered at the same time.

B. Designations from Deposition of Kelly Atkinson (September 19, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 78:6-79:22 of the transcript of the September 19, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 79:23-80:19 must be admitted and considered at the same time.

2. The part of the recorded statement Plaintiffs propose to introduce at 117:4-118:24 of the transcript of the May 1, 2019 deposition of Kelly Atkinson is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 162:4-164:3 must be admitted and considered at the same time.

C. Designations from Deposition of Keith Dardis (taken May 1, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 33:16-35:5 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 35:6-37:2 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 48:16-50:1 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 50:2-12 and 51:16-23 must be admitted and considered at the same time.
3. The part of the recorded statement Plaintiffs propose to introduce at 50:13-14 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 49:4-50:12 and 51:16-23 must be admitted and considered at the same time.
4. The part of the recorded statement Plaintiffs propose to introduce at 51:24-53:10 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the

foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 49:4-50:12, 51:16-23 and 53:11-13 must be admitted and considered at the same time.

5. The part of the recorded statement Plaintiffs propose to introduce at 58:20-60:19 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 58:14-19 must be admitted and considered at the same time.
6. The part of the recorded statement Plaintiffs propose to introduce at 65:2-67:7 of the transcript of the May 1, 2019 deposition of Keith Dardis is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 61:21-65:1 and 67:8-12 must be admitted and considered at the same time.

D. Designations from Deposition of Fredrick Gunzel (September 19, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 16:17-17:17 of the transcript of the September 19, 2019 deposition of Fredrick Gunzel is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 19:18-20:7 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 22:6-28:20 of the transcript of the September 19, 2019 deposition of Fredrick Gunzel is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence

106 mandates that the other part of the recorded statement transcript at 28:21-30:12 must be admitted and considered at the same time.

3. The part of the recorded statement Plaintiffs propose to introduce at 41:7-11 of the transcript of the September 19, 2019 deposition of Fredrick Gunzel is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 41:12-43:20 must be admitted and considered at the same time.

E. Designations from Deposition of Matthew Kardos (September 12, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 12:4-17 of the transcript of the September 12, 2019 deposition of Matthew Kardos is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 10:4-11:25 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 13:15-18 of the transcript of the September 12, 2019 deposition of Matthew Kardos is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 10:4-11:25 must be admitted and considered at the same time.

F. Designations from Deposition of Lewis Langston (May 1, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 166:15-24 of the transcript of the May 1, 2019 deposition of Lewis Langston is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106

mandates that the other part of the recorded statement transcript at 166:25-167:7 must be admitted and considered at the same time.

G. Designations from Deposition of Andrew Sites (September 10, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 19:13-20:23 of the transcript of the September 10, 2019 deposition of Andrew Sites is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 20:24-21:3 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 27:3-13 of the transcript of the September 10, 2019 deposition of Andrew Sites is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 23:12-20, 23:23-24:10 and 25:9-26:13 must be admitted and considered at the same time.
3. The part of the recorded statement Plaintiffs propose to introduce at 31:24-32:21 of the transcript of the September 10, 2019 deposition of Andrew Sites is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 32:23-33:2 must be admitted and considered at the same time.

H. Designations from Deposition of Paul Strickland, Jr. (September 20, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 9:12-10:4 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of

Evidence 106 mandates that the other parts of the recorded statement transcript at 10:5-11:4 and 11:22-12:23 must be admitted and considered at the same time.

2. The part of the recorded statement Plaintiffs propose to introduce at 45:21-47:16 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 47:17-48:14 must be admitted and considered at the same time.
3. The part of the recorded statement Plaintiffs propose to introduce at 49:11-50:17 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 50:18-22 must be admitted and considered at the same time.
4. The part of the recorded statement Plaintiffs propose to introduce at 50:23-51:14 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 52:6-20 must be admitted and considered at the same time.
5. The part of the recorded statement Plaintiffs propose to introduce at 52:1-5 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 52:6-20 must be admitted and considered at the same time.

6. The part of the recorded statement Plaintiffs propose to introduce at 86:21-88:2 of the transcript of the September 20, 2019 deposition of Paul Strickland, Jr. is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 88:3-90:1 must be admitted and considered at the same time.

I. Designations from Deposition of Emmitt Walker (September 11, 2019)

1. The part of the recorded statement Plaintiffs propose to introduce at 24:5-9 of the transcript of the September 11, 2019 deposition of Emmitt Walker is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 22:23-24:4 and 24:10-17 must be admitted and considered at the same time.
2. The part of the recorded statement Plaintiffs propose to introduce at 24:18-24 of the transcript of the September 11, 2019 deposition of Emmitt Walker is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 24:25-25:15 must be admitted and considered at the same time.
3. The part of the recorded statement Plaintiffs propose to introduce at 15:16-28:10 of the transcript of the September 11, 2019 deposition of Emmitt Walker is misleading. To the extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other part of the recorded statement transcript at 28:10-29:1 and 24:10-17 must be admitted and considered at the same time.
4. The part of the recorded statement Plaintiffs propose to introduce at 61:3-63:12 of the transcript of the September 11, 2019 deposition of Emmitt Walker is misleading. To the

extent the foregoing part of the recorded statement is admitted, Federal Rule of Evidence 106 mandates that the other parts of the recorded statement transcript at 60:13-61:2 and 63:13-64:4 must be admitted and considered at the same time.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enter an order excluding the inadmissible and incomplete deposition testimony discussed above.

Dated: April 22, 2020

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ John Kingston

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2020, I served a true and correct copy of the foregoing ***Defendants' Motion in Limine to Exclude Inadmissible and Incomplete Deposition Testimony*** via operation of the Court's Electronic Filing System upon all counsel of record in the adversary proceeding.

Undersigned counsel will send a true and correct copy of ***Defendants' Motion in Limine to Exclude Inadmissible and Incomplete Deposition Testimony*** via email to the following:

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