

IN THE CIRCUIT COURT OF LINCOLN COUNTY, WEST VIRGINIA

**Michael Sheridan
PO Box 204
Maxwelton, WV 24957,**

**April Morgan
RT 2 Box 128
Rivesville, WV 26588,**

**Trisha Cooke
HC 37 Box 966
Frankford, WV 24938,**

**Richard Bennis
226 Sand Lick Road,
Myra, WV 25544.**

**Plaintiffs for Themselves
and All Others Similarly Situated,**

vs.

Case No. 14-C-115

**Citizens Telecommunications Company of West Virginia d.b.a.
Frontier Communications of West Virginia,
Frontier West Virginia, Inc.**

Defendants:

FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

Initial Statement

Plaintiffs bring this putative class action against Frontier, the sole internet service provider to most rural West Virginians, because Frontier's practice of overcharging and simultaneously failing to provide the high-speed, broadband level of service it advertises has created high profits for Frontier but left West Virginia internet users in the digital dark age. Frontier's deceptive scheme is compounded by the fact that it has used enormous sums of public

money to promote its own ends without regard to the needs of its customers, the citizens of West Virginia.

Frontier is an enormous company with vast resources and both the technology and infrastructure to provide the internet services it advertises, but has shown that it has no intention of providing these vital services for which its customers have paid. Instead, Frontier has placed its own profits ahead of providing a functional public internet utility to our communities. With the use of public money intended for this purpose, Frontier installed telecommunications hardware that allegedly had the capacity to provide the promised level of broadband service to West Virginia customers. Frontier then throttled or “provisioned” its customers to 5 or 10% of advertised internet speeds. By providing consumers speeds representing only a tiny fraction of what they purchased, Frontier saves a fortune in the data it purchases from its own internet backbone providers, while pocketing both the monthly charges it extracts from customers for the use of equipment as well as the enormous public funds it received to provide these services. This unfair and deceptive scheme presents a double whammy to West Virginia customers and high profits to Frontier.

Frontier’s acceptance of public funds to create this monopolistic exploitation of rural West Virginians is a violation of our public trust. In addition to their financial losses, many West Virginians have little or no other choice for an internet service provider, as Frontier has a monopoly on internet services in most of West Virginia. As a result, students are prevented from being able to do their homework, and rural consumers are unable to utilize the internet in a way that gives them an equal footing with those in urban environments. As demonstrated further below, this deceitful conduct is not only in breach of Frontier’s contracts with the Plaintiffs, but violates the West Virginia Consumer Credit and Protection Act.

Background and Regulatory Structure

1. Plaintiffs' internet and telephone is provided via two West Virginia corporations operating only in West Virginia, specifically, Frontier West Virginia, Inc. and Citizens Telecommunications of West Virginia, d.b.a. Frontier Communications of West Virginia. Frontier's two West Virginia corporations are referred to only as "Frontier" throughout the Complaint as they act in concert and refer to themselves as only "Frontier" in all advertisements and representations to the public and its customers.

2. Frontier, acting in its capacity to sell internet in West Virginia, is an Internet Service Provider, or "ISP". An ISP is a retailer of internet services purchased from a wholesale provider at a PoP.

3. The West Virginia Code relies on the Federal Communications Commission (herein "FCC") to set upload and download speeds. In 2010, the FCC defined broadband as internet speeds with a downstream speed of "at least 4 Mbps" and an upload speed of "at least 1 Mbps."

4. Frontier agreed to provide broadband at these speeds.

5. Upon information and belief, Frontier purchases internet wholesale from larger backbone service providers at terminal points referred to as a "point of presence" or simply "PoP" (hereinafter "PoP"). Upon information and belief, a PoP is a collection of high capacity routers and aggregators which act much like a switching station and moves internet traffic from an ISP like Frontier, to a wholesale backbone provider, often a large corporation such as Sprint, AT&T, or Level 3.

6. Upon information and belief, Frontier pays for wholesale internet access from larger backbone internet providers at PoPs on a per gigabyte metered basis, thus, the more internet Frontier uses, the higher the cost from the PoP.

7. Upon information and belief, ISPs purchase their internet from a backbone provider at a PoP in fashion similar to consumer water purchases from a public utility, specifically, internet is sold by a wholesale provider to the ISP on a per gigabyte basis, and costs range from 1 cent to about 10 cents per gigabyte.

8. Upon information and belief, ISPs then resell internet services provided to the customer, which is sold not on metered usage basis, but on a contracted for pipe size, for example 12 Mbps.

9. Thus, consumers contract for access to a particular pipe size (for example 12 Mbps), whether they use the capacity available to them or not.

10. In or about 2010, the State of West Virginia's Department of Treasury, part of the State's Department of Commerce, initially granted Frontier \$42 million dollars to lay the necessary fiber optic cables in order to bring broadband internet to West Virginia.

11. As part of Frontier's May 2010 agreement with West Virginia Public Service Commission, Frontier agreed to provide "broadband" to 85% percent of households within four years.

12. Upon information and belief, Frontier has installed a significant amount of internet hardware infrastructure in West Virginia.

13. Frontier advertises its "High Speed Internet Max" as having speeds up to 12 Mbps downstream.

14. However, upon information and belief, only 12% of the customers in the state of West Virginia paying for “high speed internet” or “broadband” from Frontier are receiving true broadband.

15. The other two internet providers in West Virginia with more than 10,000 tests on the Broadband Development Counsel’s Report, Suddenlink Communications and Comcast Cable, both had more than 80% of their customers reaching broadband speeds.

16. In one of Frontier West Virginia, Inc.’s recent petitions for the release of funds held in public escrow pursuant to the transfer of Verizon’s West Virginia holdings to Frontier West Virginia, Inc., Frontier falsely stated in interrogatory responses to the Public Service Commission of West Virginia that “all of the broadband projects constructed since July 2010 have complied with the FCC’s 4/1 speed requirement.”

17. As of May 1, 2012, Frontier was offering High Speed Internet Max for \$35.99 a month, but the price has subsequently increased, and is now at least \$40.00 a month.

18. Upon information and belief, internet speeds for cable internet in areas serviced by cable companies, such as Comcast, cost approximately \$29.99 plus tax for internet speeds up to 25 Mbps down. Cable internet providers in West Virginia generally and consistently provided downstream and upstream data rates at close to advertised speeds.

19. Upon information and belief, “up to” in internet advertising typically means that the internet speeds offered by the advertising internet service provider will occasionally or often hit the up to speed, with some minor variation in speed on a day-to-day basis. “Up to” is not mere puffing or salesmanship. It has a real meaning in commerce.

20. Broadband internet access has become a necessity in modern society in order for individuals and businesses to do commercial or school work, communicate, gather information

and stream standard definition video. Further, businesses of every nature now require access to true broadband internet to be competitive regionally, nationally, and internationally, specifically at least 4 Mbps downstream and 1 Mbps upstream.

21. Satellite internet is not a viable alternative to properly installed and maintained broadband over telephone lines due to, *inter alia*, significant delays between connections and very low data caps on usage.

22. Most of the consumers and residents of the state of West Virginia do not have access to internet services through a cable company like Suddenlink or Comcast and must turn to Frontier as their only useful alternative for true “broadband” internet without significant data caps. Upon information and belief, Frontier is the sole provider of non-satellite high speed internet in the rural areas it services, creating a monopoly.

23. Frontier uses a device called a digital subscriber line access multiplexer or (“DSLAM”) (pronounced DEE-slam) to provide internet service to individual digital subscriber lines or DSL customers’ individual DSL modems.

24. Upon information and belief, Frontier intentionally throttles the internet speeds of DSL customers, including Plaintiffs and all other similarly situated West Virginia DSL customers, at the DSLAM units to ensure they do not exceed a particular upstream and downstream speed. Frontier refers to this throttled speed in communication with the Plaintiffs as the “provisioned speed” or the “up-to speed.”

Plaintiff Michael Sheridan

25. Plaintiff Michael Sheridan is a resident of Maxwelton, Greenbrier County, West Virginia.

26. Plaintiff Michael Sheridan contracts for internet services with the Defendant Citizens Telecommunications Company of West Virginia, d.b.a. Frontier Communications of America, for his home internet service.

27. Mr. Sheridan does not recall signing any written contracts or agreements with Frontier.

28. Frontier also advertises the phrase “no contract” in its mailers and advertisements.

29. Frontier does not advise customers of any terms of service in its mailers and advertisements.

30. The lack of a contract coupled with confusing and ever-shifting “terms and conditions” make it impossible for Frontier customers to know what terms, if any, they may be perceived as agreeing to by purchasing Frontier service. The lack of a contract means that Frontier customers have not agreed to be bound to any of Frontier’s “terms and conditions.”

31. Mr. Sheridan is under the belief that he signed up for Frontier services over the telephone.

32. Frontier Internet was installed for the first and only time in Mr. Sheridan’s residence in or about 2005 or 2006.

33. Mr. Sheridan was not home when the technician from Frontier installed Internet in Mr. Sheridan’s home.

34. The technician had Mr. Sheridan’s live-in partner, Ms. Kellen Leef, sign a verification that the installation project was completed, but did not provide her with a contract or a copy of any terms of service. The technician did not call her attention to any written or online documents, rather telling her that “this just shows that I was actually here and did the work.”

35. Mr. Sheridan first learned of the Frontier “terms of service” and accompanying arbitration clause from a Facebook post in or about July of 2014 and does not believe the “terms of service” were incorporated into the agreement or discussed at the time he accepted Frontier’s offer of 12 Mbps downstream.

36. Mr. Sheridan does not accept nor did he ever agree to Frontier’s arbitration clause contained in their terms of service. Mr. Sheridan believes Frontier may have attempted to unfairly and unconscionably impose this arbitration clause on him in an attempt to prevent him from using the court system to vindicate his rights after he signed up for services.

37. Plaintiff Michael Sheridan purchased Frontier’s “High Speed Internet Max” product from the Defendants, and pays \$40.00 a month plus tax in consideration. Plaintiff Michael Sheridan uses his home internet service for personal consumer uses.

38. Plaintiff Michael Sheridan never received internet services from Frontier that even remotely approached Frontier’s “High Speed Max” advertised speed, specifically 12 Mbps downstream.

39. 4 Mbps downstream would be 1/3 or 33% of Frontier’s “High Speed Internet Max” advertised downstream speed of 12 Mbps.

40. Plaintiff Michael Sheridan, until two weeks after mailing the 20 day notice cure, never received internet services from Frontier that meet the FCC and West Virginia statutory definition of broadband, specifically 4 Mbps downstream and 1 Mbps upstream.

41. Approximately two weeks after mailing the 20 day notice to cure, Mr. Sheridan’s internet speeds met the FCC definition of “broadband” for the first time, however they are still short of the 12 Mbps downstream and 1 Mbps upstream contracted for.

42. In addition to the slow internet speeds, Plaintiff Michael Sheridan suffers innumerable outages of service and is constantly having to physically reset the power to his DSL modem despite the modem having been replaced by Frontier many times, just to maintain a basic connection to the internet.

43. Upon information and belief, Frontier has oversold its DSL capacity and does not purchase enough capacity from regional backbone providers and/or is not making upgrades to its systems in order to provide its customer, Michael Sheridan, and similarly situated customers with downstream and upstream speeds that meet the West Virginia statutory and FCC definition of “broadband.”

44. In email communications between Plaintiff Michael Sheridan and Dana Waldo, Vice President and General Manager of West Virginia Operations of Frontier, Mr. Waldo stated, in response to numerous complaints from Mr. Sheridan, that Mr. Sheridan was receiving 3 Mbps down because he was given a higher “provisioned speed” than other customers served in the area.

45. Mr. Waldo stated, “If, as you suggest, we “opened up the throttle” for every served customer it could create congestion problems resulting in a degradation of speed for all customers...”, implying that Frontier did not have the required capacity to provide all of their DSL internet customers with the contracted-for internet speeds.

46. Frontier concealed the fact that it could or not or would not provide Plaintiff Michael Sheridan and similarly situated West Virginians internet speeds up to and including 12Mbps downstream.

47. For most of 2010 through 2012, Michael Sheridan’s internet speed was approximately 0.35Mbps (350 Kbps) downstream and 0.15Mbps (150 kbps) upstream. This

equates to about 1/34 or 3% of the 12 Mbps downstream offered by Frontier's High Speed Internet Max and 1/11 or 9% of the FCC's 2010 definition of broadband download being 4 Mbps down.

48. Currently, Michael Sheridan, because of his complaints, enjoys speeds faster than his neighbors at approximately 3 Mbps downstream and 0.37Mbps (370 Kbps) upstream, but that is still only about 25% of the 12 Mbps downstream Frontier advertised. It is also less than the 4 Mbps downstream and 1 Mbps upstream definition of broadband prescribed by West Virginia code and the FCC. In or about January of 2010, Mr. Sheridan filed a complaint with the West Virginia Public Service Commission (Herein "PSC") about the poor quality of internet service, but Mr. Sheridan was informed that the PSC does not regulate internet service providers.

49. Mr. Sheridan filed the same complaint with the West Virginia Attorney General's office.

Plaintiff April Morgan

50. Plaintiff April Morgan is a resident of Rivesville, Marion County, West Virginia.

51. Ms. Morgan contracts for internet services with Frontier for her home Internet service. Ms. Morgan primarily uses her Internet service from Frontier at her residence for consumer home purposes, and also uses it for business purposes.

52. Plaintiff April Morgan does not recall signing any written contracts or agreement with Frontier.

53. Ms. Morgan purchased the Defendants' "High Speed Internet Max" product from the Defendants, for which the Plaintiff pays \$35.99 a month plus tax in consideration.

54. Plaintiff April Morgan kept a detailed log of her speed test results from July of 2011 until July 25, 2014 using a popular internet speed testing site, www.speedtest.net.

55. According to Ms. Morgan's speed test results her internet speeds ranged from a high of about 1.57 Mbps downstream and 0.37 Mbps (370Kbps) upstream in May of 2013 to a low of 0.13Mbps (130Kbps) downstream and 0.13 Mbps (130Kbs) upstream on July 26, 2012.

56. On July 25, 2014, April Morgan tested her speed twice and both times received a downstream rate of 1.03 Mbps and 0.36 Mbps (360Kbps) upstream.

57. April Morgan's internet speed is intentionally throttled by Frontier to a max of approximately 1.5 Mbps downstream and .4 Mbps (400Kbps) upstream.

58. This is despite April Morgan paying \$35.99 a month for "High Speed Internet Max," which advertises internet speeds of up to 12 Mbps, a speed Ms. Morgan has never approached. In point of fact, Ms. Morgan's internet speed is approximately 1/8 or 12% of 12 Mbps down at its peak performance and within the last year has run as low as .17 Mbps (170Kbps) down and .35 Mbps (350Kbps) up or approximately 1/70th or about 1% of the 12 Mbps advertised in the "High Speed Internet Max" advertisements.

59. In the Defendants' response to the Plaintiff's notice to cure, Frontier stated Ms. Morgan was provisioned with an "up to" speed of 1.6 Mbps downstream and was in fact receiving 1.6 Mbps downstream. Plaintiff was never advised that this was her "up to" speed and was under the impression she was paying for "up to" 12 Mbps downstream and 1 Mbps upstream.

60. Upon information and belief, this statement is inconsistent with Frontier's statement to the PSC that it can provide speeds of 4 Mbps downstream and 1 Mbps upstream within 18,000 feet of a DSLAM.

61. Plaintiff April Morgan relied on the Defendant's assurances of much greater speed in purchasing "High Speed Internet Max" when making the decision to purchase.

62. Plaintiff April Morgan has never received, during her three years of service with Frontier, internet downstream and upstream speeds that approach the West Virginia State Code and FCC's definition of broadband of 4 Mbps down and 1 Mbps up.

63. In order to maintain connectivity to the internet, Ms. Morgan has to restart her DSL modem five to ten times a day.

64. Frontier has made no less than twelve trips to the Ms. Morgan's house attempting to fix the connectivity issues with her internet connection, but have been unable to do so.

65. Plaintiff April Morgan started her DSL internet service with Verizon and her account was taken over by Frontier after Frontier acquired Verizon's accounts in West Virginia.

66. Plaintiff April Morgan does not recall signing any form of agreement with Frontier when Frontier took over from Verizon.

67. Approximately one year after receiving Frontier services, April Morgan recalls signing up for a bundled internet and telephone service over the telephone, but she does not recall ever signing any written contract of any kind with Frontier.

68. Ms. Morgan first learned of Defendant Frontier's "terms of service" and arbitration clause through Frontier's response to her 20 day notice to cure letter.

69. Ms. Morgan does not accept nor did she ever agree to Frontier's arbitration clause contained in their "terms of service." Ms. Morgan believes Frontier may have attempted to unfairly and unconscionably impose this arbitration clause on her in an attempt to prevent her from using the court system to vindicate her rights.

Plaintiff Trisha Cooke

70. Plaintiff Trisha Cooke is a resident of Frankford, Greenbrier County, West Virginia.

71. Ms. Cooke contracts for internet services with the Defendant Citizens Telecommunications Company of West Virginia, d.b.a. Frontier Communications of America, for her home internet service. Ms. Cooke uses her Frontier internet service at her residence for personal purposes.

72. Ms. Cooke also does not recall signing any written contracts or agreement with Frontier.

73. Ms. Cooke is also under the belief that she signed up for Frontier services over the telephone.

74. Ms. Cooke purchased the Defendant's "Broadband Max" product from the Defendant, for which the Plaintiff pays \$39.99 a month plus tax in consideration.

75. Ms. Cooke has, to the best of her knowledge, never received speeds that meet the state statutory definition of broadband or the definition set by the FCC, specifically 4 Mbps downstream and 1 Mbps upstream.

76. Ms. Cooke receives internet speeds of approximately 0.5 Mbps downstream (approximately 500 Kbps), and 0.16 Mbps upstream (approximately 160 Kbps).

77. 0.49 Mbps downstream is 1/8 or 12% of the FCC and West Virginia Code definition of broadband, specifically, 4 Mbps downstream.

78. 0.16 Mbps upstream is approximately 1/6 or 16% of the FCC and West Virginia Code definition of broadband, specifically, 1 Mbps.

79. The internet speeds provided by Frontier to Plaintiff Trisha Cooke are insufficient to view YouTube videos, Netflix, or any other streaming video service.

80. Ms. Cooke's internet is constantly cutting out and she has to reset her DSL modem on an almost daily basis to maintain an internet connection.

81. In the Defendant's response to the Plaintiff's notice to cure, the Defendant stated Ms. Cooke was provisioned with an "up to" speed of 1.344 Mbps downstream and was in fact receiving 1.792 Mbps downstream. Plaintiff was never advised that this was her "up to" speed and was under the impression she was paying for "up to" 12 Mbps downstream and 1 Mbps upstream.

82. Upon information and belief, this statement is inconsistent with Frontier's statement to the PSC that they can provide downstream speeds of 4 Mbps downstream and 1 Mbps upstream within 18,000 feet of a DSLAM.

83. Ms. Cooke has complained numerous times to Frontier about her internet speed and connection issues and no improvements have been made.

84. Ms. Cooke is not receiving "broadband" nor has she ever received "broadband" from Frontier despite a contract with Frontier to provide "Broadband Max."

85. Ms. Cooke first learned of Defendant Frontier's "terms of service" and arbitration clause through Frontier's response to her 20 day notice to cure letter.

86. Ms. Cooke does not accept nor did she ever agree to Frontier's arbitration clause contained in its "terms of service." Ms. Cooke believes Frontier may have attempted to unfairly and unconscionably impose this arbitration clause on her in an attempt to prevent her from using the court system to vindicate her rights.

Plaintiff Richard Bennis

87. Plaintiff Richard Bennis is a resident of Lincoln County, West Virginia.

88. Mr. Bennis contracts for internet services with the Defendant Citizens Telecommunications Company of West Virginia, d.b.a. Frontier Communications of America,

for his home internet service. Mr. Bennis uses Frontier internet service at his residence for personal purposes.

89. Mr. Bennis also does not recall signing any written contracts or agreement with Frontier.

90. Mr. Bennis purchased the Defendant's "High Speed Internet Max" product from the Defendant.

91. Mr. Bennis has, to the best of his knowledge, never received speeds that meet the state statutory definition of broadband or the definition set by the FCC, specifically 4 Mbps downstream and 1 Mbps upstream.

92. Mr. Bennis receives internet speeds of approximately 1 Mbps downstream (approximately 500 Kbps), and 0.2 Mbps upstream (approximately 160 Kbps) when his internet is running well.

93. The internet speeds provided by Frontier to Mr. Bennis are insufficient to view YouTube videos, Netflix, or any other streaming video service.

94. Mr. Bennis' internet is constantly cutting out and he has to reset his DSL very often to maintain an internet connection.

95. Mr. Bennis has complained numerous times to Frontier about his internet speed and connection issues and no improvements have been made.

96. Mr. Bennis is not receiving "broadband" nor has he ever received "broadband" from Frontier despite a contract with Frontier to provide "High Speed Internet Max."

97. Mr. Bennis does not accept nor did he ever agree to Frontier's arbitration clause contained in its "terms of service." Mr. Bennis believes Frontier may have attempted to unfairly

and unconscionably impose this arbitration clause on him in an attempt to prevent him from using the court system to vindicate his rights.

The Notice to Cure

98. All four class representatives sent a 20 day notice to cure on behalf of themselves and all other similarly situated pursuant to West Virginia Code § 46A-6-106.

99. The Defendants failed to cure the violations of the West Virginia Consumer Credit and Protection Act by failing to provide internet speeds that were advertised to customers or even close.

100. Defendants further failed to cure by failing to provide refunds for the many years of inadequate service provided to class representatives.

101. Defendants further failed to cure by either providing “broadband” internet or refunds to the rest of their customers in the state.

The Proposed Class

102. The named Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated individuals pursuant to Rule 23 of the West Virginia Rules of Civil Procedure. The class is presently defined as:

All West Virginia citizens at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action through the date of class certification, had or have high speed internet or broadband services from the Defendants collectively referred to as Frontier.

103. The requirements of Rule 23 are satisfied as follows:

- (a) The class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law and fact common to all members of the class; and
- (c) The named Plaintiffs’ claims are typical of those of the class as a whole.

104. Plaintiffs have displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interests of the class, and are represented by skillful and knowledgeable counsel. The relief sought by the named Plaintiffs will inure to the benefit of the class generally.

105. The common questions of law and fact predominate over individual questions, and the class action device is superior to other available methods for the fair and efficient adjudication of the controversy.

106. Additionally, the Defendants have acted or refused to act on grounds generally applicable to the entire class.

Count I

VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT

107. Plaintiffs incorporate the previous and preceding paragraphs as if fully set forth herein.

108. Through the above described false advertising, omissions, concealment and deception, Defendants have engaged in repeated and numerous violations of West Virginia Code § 46A-6-104 as defined by § 46A-6-102 (7) (G), (I), (J), (L) and (M).¹

109. In their advertisements affecting all of the Plaintiffs and all individuals similarly situated, Defendants deceived customers by falsely advertising they could provide internet speeds up to 12 Mbps, when in fact the Defendants concealed from customers that they did not

¹ West Virginia Code § 46A-6-102 (7) (G), Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another; (I) Advertising goods or services with intent not to sell them as advertised; (J) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity; (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; and (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby...

have the capability or willingness to provide that speed and that the Plaintiffs' "up to" speed would actually be much lower than 12 Mbps.

110. In their advertisements and the names of its services affecting all of the Plaintiffs and all individuals similarly situated, the Defendants deceived customers by falsely advertising that they provided "broadband internet" and "high-speed internet" (terms the Defendants use interchangeably), when in fact the Defendants could not and/or had no intention to provide broadband as defined by West Virginia Code §31-15C-2 and the FCC, specifically, 4 Mbps downstream and 1 Mbps upstream.

111. Defendants deceived the Plaintiffs and all individuals similarly situated in West Virginia into purchasing their services by concealing from those individuals that they would receive speeds which would be throttled to just a small fraction of the internet speeds the Defendants advertised, in their online, television, radio, and print advertisements.

112. Defendants deceived customers by falsely advertising the ability to provide broadband internet to the Plaintiffs and all individuals similarly situated in the state of West Virginia, and were unable to provide reliable service. Instead, that service is constantly dropped and fails to connect properly, resulting in significant connectivity issues for the Plaintiffs and all other individuals similarly situated in West Virginia.

113. Plaintiffs and all other individuals similarly situated in West Virginia were damaged by the Defendants' unfair and deceptive acts and practices in that they paid for internet services every single month, but received only a tiny fraction of those services.

114. Plaintiffs and all other individuals similarly situated in West Virginia were damaged by the Defendants' unfair and deceptive acts and practices in that they have not been

able to reliably, efficiently, or sometimes at all utilize their DSL internet for the projects, life necessities, and consumer purposes for which the product was intended.

115. Frontier claims in their response to Plaintiffs' 20 day notice to cure letter that the Defendant unilaterally imposed in their terms and conditions an arbitration clause on the Plaintiffs and those similarly situated. Upon information and belief, Defendant did so without first getting informed written consent from the Plaintiffs and those similarly situated.

116. The arbitration clause in the Defendants' "Terms of Service" document, available only on the internet and thus inaccessible to those who are purchasing the internet until after they obtain the internet, and only recently imposed, attempts to remove all of Frontier's customers' Seventh Amendment state constitutional right to a jury trial without obtaining consent from its customers or providing them with reasonable consideration in exchange for giving up those rights.

117. The Defendants claim in their response to their 20 day notice to cure letter that they unilaterally imposed arbitration on the Plaintiffs and those similarly situated by changing their online only terms and conditions and adding an arbitration clause.

118. The Defendants' unilateral change of the terms and conditions without obtaining consent of the Plaintiffs and all those similarly situated is an unconscionable practice.

Count II

UNJUST ENRICHMENT

119. Plaintiffs incorporate the previous and preceding paragraphs as if fully set forth herein.

120. Defendants offered to the Plaintiffs, and all similarly situated individuals in West Virginia, broadband internet services, which Defendants advertised as either broadband or high-

speed internet. Defendants use the terms broadband and high speed internet interchangeably in documentation and advertisements.

121. Defendants advertised their services as up to 12 Mbps and up to 6 Mbps depending on the timeframe, market, and particular advertisement seen.

122. Plaintiffs and those similarly situated provided consideration in the form of monthly access fees to Frontier for “broadband” services up to 12 Mbps or 6 Mbps downstream.

123. Plaintiffs did not receive 6 Mbps downstream at any point or anywhere close.

124. As a result Defendants were unjustly enriched in that the Defendants received compensation for services that were never provided to Plaintiffs.

125. As a result of Defendants’ unjust enrichment, the Plaintiffs were harmed by a loss of financial resources which were delivered to Frontier in the form of monthly payments for services which were never provided to the Plaintiffs.

Count III

DECLARATORY JUDGMENT

126. Plaintiffs incorporate the previous and preceding paragraphs as if fully set forth herein.

127. Under the West Virginia Declaratory Judgments Act, this Court has the power to declare rights and status with respect to contracts. W. Va. Code § 55-13-1 et seq.

128. Frontier claims in their response to Plaintiffs’ 20 day notice to cure letter that the Defendant unilaterally imposed in their terms and conditions an arbitration clause on the Plaintiffs and those similarly situated by changing their online only terms and conditions. Upon information and belief, Defendant did so without first getting informed written consent from the Plaintiffs and those similarly situated.

129. Upon information and belief, the arbitration clause referenced in the Defendant's 20 day notice to cure letter was imposed on customers of Frontier without first getting their informed written consent or written agreement.

130. The manner in which Frontier attempts to impose its terms and conditions, including the arbitration clause, is insufficient to give rise to constructive notice that could bind users to the terms of use.

131. The arbitration clause in the Defendants' "Terms of Service" document, available only on the internet and thus inaccessible to those who are purchasing the internet until after they obtain the internet, and only recently imposed, attempts to remove all of Frontier's customers' Seventh Amendment state constitutional right to a jury trial without obtaining consent from its customers or providing them with reasonable consideration in exchange for giving up those rights.

132. Plaintiffs respectfully request that the Court grant a declaratory judgment as follows:

A declaration with respect to any and all agreements between Plaintiffs and Frontier that Plaintiffs did not agree to arbitrate any claims arising from any services provided by Frontier, and that the claims brought in this lawsuit are therefore not subject to arbitration.

Demand for Relief

Plaintiffs demand from Defendants:

- a. Actual and statutory damages set forth in West Virginia Code § 46A-6-106(a), plus attorneys' fees and costs;

- b. Actual damages for the violations of the West Virginia Uniform Commercial Code, plus attorneys' fees and costs;
- c. Actual damages for unjust enrichment;
- d. Injunctive relief; and
- e. Such other relief as the Court shall deem just and proper under the attendant circumstances.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE

**Michael Sheridan,
April Morgan,
Trisha Cooke,
Richard Bennis, &
All Others Similarly Situated**

PLAINTIFFS
BY COUNSEL



Jonathan R. Marshall (# 10580)
Bailey Glasser LLP
209 Capital Street
Charleston, WV 25301
(304) 340-2295
Fax: (304) 342-1110
jmarshall@baileyglasser.com
Counsel for Plaintiffs and Those Similarly Situated

Benjamin Sheridan (# 11296)
Mitchell Lee Klein (# 2071)
Hoyt Glazer (# 6479)
Klein, Sheridan, & Glazer, LC
3566 Teays Valley Road
Hurricane WV 25526
(304) 562-7111
Fax: (304) 562-7115
bsheridan@ksgwv.com
Counsel for Plaintiffs and Those Similarly Situated