

**CITY OF ALBERTVILLE  
COUNTY OF WRIGHT**

**ORDINANCE NO. 2019-\_\_\_\_\_**

**AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC D/B/A CHARTER COMMUNICATIONS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF ALBERTVILLE, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING MEASURES FOR THE VIOLATION OF ITS PROVISIONS.**

The City Council of the City of Albertville ordains:

**STATEMENT OF INTENT AND PURPOSE**

- A. The City of Albertville, pursuant to applicable law, is authorized to grant one or more non-exclusive Franchises to construct, operate, maintain, and reconstruct Cable Television Systems within the Franchise Area.
  
- B. The City Council finds that the development of a Cable Television System has the potential of having great benefit and impact upon the residents of Albertville. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the City or its designees. It is the intent of this Franchise and subsequent amendments to provide for and specify the means to attain the best possible Cable Service for the public, and to grant CC VIII Operating, LLC d/b/a Charter Communications (“Grantee”) a cable television Franchise pursuant to the terms and conditions of this Franchise.

**FINDINGS**

Upon review of the renewal request by Grantee, and as a result of a public hearing, the City Council makes the following findings:

- I. Grantee’s technical ability, legal qualifications, and operation of the System are adequate;

- II. The Franchise complies with applicable federal and state law including but not limited to Minn. Stat. §238.01 et. seq., and;
- III. The Franchise is non-exclusive.

## **SECTION 1. DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings ascribed to them by the Cable Communications Policy Act of 1984, as amended (“Cable Act”) unless otherwise defined herein as may be amended from time to time by applicable law. “Herein,” “hereof,” and “herewith,” refer to the entire Franchise. When not inconsistent with the context, words in the singular number include the plural number, and vice versa. The word “shall” is mandatory and not merely directory. The word “may” is directory and discretionary, not mandatory.

### 1.1 “Affiliate”

Any Person controlling, controlled by or under common control of Grantee.

### 1.2 (intentionally omitted)

### 1.3 (intentionally omitted)

### 1.4 “Bona Fide Offer”

A written offer to purchase the Cable System which has been accepted by Grantee subject to City’s rights under this Franchise.

### 1.5 “Cable Act”

The Cable Communications Policy Act of 1984, as amended and as may be further amended from time to time, codified at 47 U.S.C. § 521-611.

### 1.6 “Cable Service”

- (i) The one-way transmission to Subscribers of video programming or other programming service; and (ii) Subscriber interaction, if any,

which is required for the selection or use of such video programming or other programming service.

1.7 “Cable Television System,” “Cable System or “System”

A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- B. A facility that serves Subscribers without using any Public Rights-of-Way;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System to the extent, pursuant to applicable federal law, such facility whether on a common carrier basis or otherwise is used in the transmission of video programming directly to Subscribers; or
- D. A facility of any electric utility used solely for operating its electric utility system.

1.8 “Channel”

A portion of the electromagnetic spectrum which is used in a Cable System and which is capable of delivering one (1) television channel.

1.9 “City”

The City of Albertville, a municipal corporation in the State of Minnesota, acting by and through its City Council.

1.10 “City Council”

The City Council of Albertville, Minnesota.

1.11 “Class IV Channel”

A signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

1.12 “Complaint”

Any written inquiry, allegation, or assertion made by any Person related to Cable Service subject to the jurisdiction of the City.

1.13 “Controlling Interest”

Majority equity ownership of Grantee.

1.14 “Converter”

An electronic device which converts signals to a frequency acceptable to a Subscriber’s television receiver and by an appropriate selector permits a Subscriber to view Cable Service Channels.

1.15 “Drop”

The cable that connects the ground block on a Subscriber’s residence or business to the nearest distribution point of the System.

1.16 “Effective Date”

The date described in section 13.2 herein.

1.17 “FCC”

The Federal Communications Commission and its lawful agents and/or successor.

1.18 “Franchise”

This Franchise and the regulatory and contractual relationship established hereby.

1.19 “Franchise Area”

The area within the corporate boundaries of the City as now constituted or may in the future be constituted.

1.20 “Franchise Fee”

Any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee solely because of its status as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or Subscribers); (ii) capital costs which are required by the Franchise to be incurred by Grantee for construction of PEG Access facilities; (iii) requirements or charges incidental to the award or enforcement hereof, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

1.21 “Grantee”

CC VIII Operating, LLC d/b/a Charter Communications and its lawful successors, transferees, or assignees.

1.22 “Gross Revenues”

Any revenue, as determined in accordance with generally accepted accounting principles (“GAAP”), received by Grantee or any Affiliate of Grantee from the operation of the Cable System to provide Cable Service in the Franchise Area, including but not limited to, the lowest cost level of Service monthly fees, pay cable fees, installation and reconnection fees, leased Channel fees, converter rentals, and advertising revenues. The term does not include: (i) any revenue derived from the delivery of data or other telecommunications services; or (ii) taxes on services furnished by Grantee and imposed directly upon any Subscriber or user by federal, state, or local law and collected by Grantee on behalf of such governmental unit; (iii) programming revenues of any Affiliate or third party whose programming is carried on the System where such revenues are paid to said Affiliate or third party by the Grantee and recovered by the Grantee through charges to

Subscribers that are included in Gross Revenues; and (iv) revenues of any Affiliate or third party from the sale of merchandise, including subscriptions to periodicals, as a result of or due to advertising on the System, so long as all advertising and home shopping revenue received by the Grantee or its Affiliates are imputed to the Grantee and included in Gross Revenues. The term shall also not include fees for the sale, leasing or servicing of equipment and network capacity used solely for the provision of non-cable services (voice or data), tower rent, refunded deposits, bad debt, or taxes, fees, any PEG Fees or PEG Grants or assessments of general applicability assessed by a governmental authority provided, however, that franchise fees are included in “gross revenues” and are not such a tax, fee or assessment of general applicability. Discounts for Cable Services bundled or packaged with non-Cable Services shall be apportioned fairly to each service in accordance with GAAP..

1.23 “Installation”

The connection of the System from distribution point to the point of Subscriber connection, including Standard Installation and custom Installations.

1.24 “Lockout Device”

An optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program or channel.

1.25 “Normal Business Hours”

“Normal Business Hours” must include some evening hours at least one (1) night per week, or some weekend hours. Cable System Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. § 76.309(d).

1.26 “Normal Operating Conditions”

Those service conditions which are within the reasonable control of Grantee. Conditions which are not within the reasonable control of Grantee include, but are not limited to, acts of God, natural disasters, civil emergencies, civil disturbances, power outages, acts of governmental or legislative bodies, the effect of which is to render Grantee’s performance of

its obligations under this Franchise illegal or commercially impractical, telephone network outages, severe or unusual weather conditions, and labor unrest or strikes. Conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, regular peak or seasonal demand periods, and maintenance or upgrade of the System. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. § 76.309(d).

1.27 “Pay Television”

The delivery over the System of pay-per-Channel or pay-per-program audio-visual signals to Subscribers for a fee or charge.

1.28 “PEG Access”

Channel capacity designated, pursuant to the terms of applicable law and this Franchise, for non-commercial public, educational, or governmental use; and (ii) facilities and equipment necessary for the use of such Channel capacity in accordance with the terms of applicable law and this Franchise.

1.29 “Person”

Any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not.

1.30 “Rights-of-Way”

The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, drive, way, or place, easement or right-of-way now or hereafter held by City or other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City.

1.31 “Service Interruption”

The loss of picture or sound on one (1) or more Channels for at least twenty-four (24) consecutive hours.

1.32 “Standard Installation”

Any residential Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

1.33 “Subscriber”

Any Person in the City lawfully subscribing to a Cable Service provided by the Grantee by means of or in connection with the Cable System.

**SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS**

2.1 Franchise Required

It shall be unlawful for any Person to provide Cable Service or to construct, operate, or maintain a Cable System in the Franchise Area without a Franchise.

2.2 Grant of Non-Exclusive Franchise

The City hereby grants to Grantee, on the terms and conditions contained herein, a non-exclusive Franchise to construct and operate a Cable System and offer Cable Service within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, operate, or retain in, on, over, under, upon, across, or along any Right-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the maintenance and operation of the Cable System. Subject to the terms of Section 2.3 of this Agreement and Minn. Stat. § 238.08, subd. 1, as may be amended from time to time, the City may grant a similar use of Public Rights-of-Ways to any Person at any time.

2.3 Additional Providers.

- A. The Franchise granted herein shall be nonexclusive.
- B. The City acknowledges that, under Minn. Stat. §238.08, Subd. 1(b), it may only grant additional franchises to provide Cable Service within the City on terms and conditions no more favorable or less

burdensome than those in this Franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. Additionally, and beyond the requirements of Minn. Stat. Section 238.08, the City agrees that Grantee's obligations under this Franchise with regard to complimentary services to public institutions, ROW access and responsibilities, penalties and security, sale or transfer of ownership, or any other material obligations shall not be more burdensome or less favorable than those imposed on any such competing provider.

- C. If any other provider of Cable Services is lawfully authorized after the Effective Date of this Franchise to provide such services using facilities located wholly or partly in the Rights-of-Way of the City, the City shall, within thirty (30) days of a written request from Grantee, modify this Franchise to ensure that the obligations imposed by Section 2.3. B. have been met.
- D. If the City fails to make modifications consistent with Section 2.3. B., Grantee shall have the right to initiate an action in the state or federal district court for breach of contract or other appropriate claims and seek any and all appropriate relief, including specific performance.
- E. Nothing in this Franchise shall impair the right of the City or Grantee to seek other remedies available under law.
- F. In the event City initiates the franchising process pursuant to Minn. Stat. §238.081, then the City shall notify Grantee in writing of (i) its intent to initiate the franchising process.
- G. Grantee shall have the right to terminate this Franchise and operate the Cable System under the terms and conditions established by applicable state or federal law to the extent provided in any future amendment to such law.

#### 2.4 Compliance with Applicable Law.

This Franchise is a contract and the terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City. The Grantee

shall comply with the lawful, nondiscriminatory provisions of the City Code including any generally applicable requirements related to use of Rights-of-Way. Except as otherwise provided herein, this Franchise shall govern in the event of a conflict between the terms herein and the City Code. City reserves its rights to lawfully exercise all of its police powers or eminent domain powers and Grantee reserves all rights to challenge any such action as being beyond the City's lawful powers. Grantee's obligations herein shall at all times be subject to applicable law.

2.5 Franchise Term

The term of this Franchise shall commence on the Effective Date given in Section 13.2, and expire on \_\_\_\_\_, 2033 ("Term").

2.6 Previous Franchises

Upon acceptance by Grantee as provided herein, this Franchise shall supersede and replace all previous ordinances, amendments, or agreements granting a Franchise to Grantee or any predecessor cable operator to own, operate, and maintain a Cable System within the Franchise Area and any ordinances, resolutions, or portions of ordinances and resolutions in conflict with this Franchise.

2.7 Rules of Grantee

The Grantee may promulgate such terms and conditions of service governing its business as may be reasonably necessary, provided, however, that any such terms and conditions shall fully comply with this Franchise and applicable law.

2.8 Territorial Area Involved

This Franchise authorizes Service throughout the City. Grantee shall construct and maintain the Cable System in a commercially reasonable manner and shall not abandon any portion of the System except as provided in Section 9.5 herein.

2.9 Non-Standard Installations

Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation at Grantee's published rate or charge, provided that Cable Service can be delivered over such connection in accordance with applicable FCC technical specifications.

#### 2.10. Sales Procedures

The Grantee may market door-to-door during reasonable hours in accordance with applicable City Code, ordinances and regulations.

#### 2.11 Drops to Public Buildings

- A. Grantee shall provide the lowest cost level of Service to a single Drop, with one (1) Converter (if required to receive basic cable TV service) to one (1) outlet, free of charge, at each elementary and secondary school building that currently receives complimentary Cable Service as of the Effective Date of this Franchise, on the school's request on a voluntary basis for as long as Grantee participates in the industry supported Cable in the Classroom program.
- B. Grantee shall provide (or continue to provide, if Grantee is currently providing such service), free of charge, the lowest cost level of Service, including one (1) Converter (if necessary to receive basic cable TV service), to one (1) Drop at each of the public buildings listed in Appendix A hereto.

### **SECTION 3. CONSTRUCTION STANDARDS**

#### 3.1 System Construction and Maintenance Requirements

- A. Grantee shall strictly adhere to any generally applicable, non-discriminatory City ordinance governing use of Rights-of-Way.
- B. Prior to any construction or maintenance of the System, Grantee shall obtain all necessary permits from the City and strictly adhere to all applicable laws.
- C. Consistent with any generally applicable, non-discriminatory City ordinance governing use of Rights-of-Way, no poles, conduits, or

other wire holding structures shall be erected or installed by Grantee on or along any Rights-of-Way without prior written approval from the City.

- D. Nothing contained in this Franchise shall be construed to give Grantee the authority to enter upon private property in areas not encumbered with compatible use easements; without the permission of the property owner.
- E. In those areas where telephone and electric service facilities are constructed or relocated underground, Grantee shall place and maintain the System underground in accordance with any generally applicable law. Certain of Grantee's equipment such as pedestals, amplifiers, power supplies, or similar equipment normally placed above-ground may remain above-ground provided that such equipment shall be fully enclosed or of a design, size and location so as not to be unsightly or unsafe.
- F. In event Grantee must relocate its Cable System to accommodate any public or private project, such relocation, including responsibility for relocation costs, shall be completed in accordance with the Rights-of-Way ordinance.

### 3.2 Use of Rights-of-Way; Repair of Rights-of-Way and Property

- A. Any public or private property disturbed or damaged by Grantee or its agents during construction, reconstruction, operation or maintenance of the System shall be promptly restored in accordance with the generally applicable provisions of the City's Rights-of-Way Ordinance. Restoration of Rights-of-Way and City property shall be approved by the City in accordance with the City's Rights-of-Way ordinance. The City may complete restoration, as necessary, in accordance with the Rights-of-Way ordinance.
- B. Grantee shall furnish strand maps regarding the Cable System in accordance with the Rights-of-Way ordinance.
- C. Grantee shall have the authority to trim any trees upon and overhanging Rights-of-Way to prevent tree branches from coming into contact with the System.

- D. Nothing contained herein shall relieve any Person from liability arising out of its failure to exercise reasonable care to avoid injuring Grantee's facilities.

### 3.3 Residential Developments

In cases where property is being subdivided for residential development, and utilities will be constructed underground in such development, the City will endeavor to require the developer to give notice to the Grantee at least thirty (30) days prior to the opening of any trench in such development for utility installation so that Grantee may seek to coordinate installation of the Cable System with other utilities.

### 3.4 Safety Requirements

Grantee shall employ ordinary and reasonable care in the operation and maintenance of the System, and shall maintain the Cable System in good condition, order and repair, and shall use accepted methods in accordance with industry standards to prevent damage, injury, or nuisance to the public. Grantee shall install and maintain its Cable System in substantial compliance with the requirements of the National Electric Safety Code (NESC) and generally law.

## **SECTION 4. DESIGN PROVISIONS**

### 4.1 System Design

Grantee currently operates and maintains a 750 MHz hybrid fiber-coax Cable System providing at least one hundred ten (110) programmed video Channels.

### 4.2 Technical Standards

Grantee shall operate the Cable System in compliance with the FCC's technical standards in 47 C.F.R. §§ 76.601 to 76.630, as amended from time to time, which are expressly incorporated herein by reference.

### 4.3 Special Testing

The City may require special testing of the Cable System if it is the subject of alleged non-compliance herewith, unresolved complaints, or unresolved controversy. The tests shall be limited to the particular non-compliance, controversy, or complaint, and shall be scheduled to minimize hardship or inconvenience to Grantee and Subscribers. Grantee shall be given notice of the problem and shall meet with the City to discuss the problem. If Grantee has not corrected the problem within thirty (30) days of its receipt of such notice or presented evidence that no such problem exists, the City may cause the tests to be conducted by a qualified engineer mutually-selected by the City and Grantee based on a mutually agreed upon scope of work. The City shall bear the reasonable costs if the testing demonstrates that the System is in compliance with the FCC technical performance standards set forth in this Franchise, and Grantee shall bear the reasonable costs if the testing demonstrates that the System is not in compliance with the FCC technical performance standards set forth in this Franchise.

## **SECTION 5. SERVICE PROVISIONS**

### **5.1 Programming Decisions**

Programming decisions are within the sole discretion of Grantee subject to applicable federal law, as may be amended from time to time. Grantee shall provide notice to the City and Subscribers regarding any programming or Channel changes in accordance with applicable law. Grantee shall make available at least the broad categories of programming set forth in Appendix B attached hereto.

### **5.2 Regulation of Rates**

- A. The City may regulate rates for the provision of Cable Service and related equipment to the extent allowed under federal and state law.
- B. A list of Subscriber rates and charges shall be maintained on file with the City, or available online on Grantee's website.

### **5.3 Sales Procedures**

Grantee shall not use deceptive sales practices.

#### 5.4 Cable Customer Service Standards

- A. Grantee shall comply with the FCC's customer service standards (47 CFR § 76.309) as may be modified by the requirements in this Section 5.4. In the event of a conflict between the provisions and any future amendments to the FCC's customer service standards, the FCC's customer service standards shall control.
- B. Grantee shall maintain a toll-free or collect call telephone access line which shall be available to respond to Subscriber telephone inquiries twenty-four (24) hours per day, seven (7) days per week. Grantee shall maintain a repair service with trained technicians and Grantee shall respond to Subscriber Complaints or requests for service within twenty-four (24) hours after receipt of a Complaint or request. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- C. Under Normal Operating Conditions, a Subscriber shall receive a busy signal less than three percent (3%) of the time, and telephone answer time by a Subscriber service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- D. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

#### 5.5 Installations, Outages, and Service Calls Under Normal Operating Conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis:

- A. Standard Installations shall be performed within seven (7) business days after an order has been placed.

- B. Grantee shall begin working on Service Interruptions promptly, and in no event later than twenty-four (24) hours after the Service Interruption becomes known. Grantee must begin actions to correct other service problems the next business day after notification of the problem.
- C. At a Subscriber's request, the "appointment window" alternatives for Installations and service calls shall be within a four (4)-hour time block during Normal Business Hours. (Grantee may schedule service calls and Installations outside of Normal Business Hours for the express convenience of the Subscriber.)
- D. Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the appointment.
- E. If Grantee's representative is running late for a Subscriber appointment and will not be able to keep the appointment as scheduled, the Subscriber shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the Subscriber.

#### 5.6 Communication Between Grantee and Subscribers

- A. Grantee shall provide written information on each of the following topics at the time of Installation, at least annually to all Subscribers, and at any time upon request:
  - i. Products and services offered;
  - ii. Prices and options for programming services and conditions of subscription to programming and other services;
  - iii. Installation and service maintenance policies;
  - iv. Instructions on how to use the Cable Service;
  - v. Channel positions for programming carried on the System; and

vi. Billing and complaint procedures, including the address and telephone number of the City's cable office.

B. Grantee shall notify the City and Subscribers of any changes in rates, programming services, or Channel positions in accordance with applicable law.

#### 5.7 Billing

Consistent with 47 CFR § 76.1619, bills shall be clear, concise, and understandable; shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges; and shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, Grantee must respond to a Subscriber's Complaint within thirty (30) days.

#### 5.8 Refunds

Refund checks shall be issued promptly, but no later than either:

- A. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
- B. If service is terminated, thirty (30) days following the return of the equipment supplied by Grantee.

#### 5.9 Credits

Credits for service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

#### 5.10 Service Calls

Upon request, Grantee shall provide the City with a summary of service calls, identifying the number, general nature and disposition of such calls. This summary shall be submitted to the City within thirty (30) days of its request. Service call records shall be maintained by the Grantee for a period of three (3) years. .

#### 5.11 Subscriber Contracts

Grantee shall file with the City a copy of any Subscriber contract utilized, or shall maintain a current version of any such contract on its website. If no written contract exists, Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered to Subscribers, including the length of the Subscriber contract.

#### 5.12 Emergency Alert System

Grantee shall provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ('EAS') rules and consistent with any applicable state and regional EAS plans adopted in response thereto.

#### 5.13 Additional Customer Service Requirements

The City may enact and enforce additional consumer protection laws or requirements to the extent not specifically preempted by applicable law.

### **SECTION 6. PEG ACCESS PROVISIONS**

[Omitted]

### **SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS**

#### 7.1 Franchise Fee

A. The City agrees to impose identical Franchise Fee obligations (including but not limited to the Franchise Fee percentage and the Gross Revenue definition on which the Franchise Fee is paid) on all competing providers of Service in the City. To the extent City fails to do so, Grantee shall have the right to pursue Franchise modification pursuant to Section 2.3 herein. If City and Grantee fail to agree on modifications pursuant to the process established in Section 2.3.C., Grantee shall have the right to eliminate or reduce any Franchise Fee obligations to an amount equivalent to that imposed on a competing provider to make Grantee's Franchise Fee financial obligations equivalent to that imposed on a competing provider.

- B. Grantee shall pay to City a Franchise Fee equal to five percent (5%) of its Gross Revenues, within sixty (60) days of the end of each calendar quarter. Payments shall be accompanied by a completed Franchise Fee calculation worksheet in substantially the form attached hereto as Appendix C, and shall be subject to audit and recomputation by the City. Acceptance of any payment shall not be construed as an accord by the City that the amount paid is in fact the correct amount.
- C. Grantee shall pay interest on overdue Franchise Fee payments, and on payments to correct underpayment of Franchise Fees, in addition to the compensation due at an annual rate equal to the prime lending rate plus one and one-half percent (1-1/2%) computed from the due date until the date of payment.

## 7.2 Open Books and Records

Subject to the privacy provisions of the Cable Act, the City, at its sole cost and expense, may upon thirty (30) days prior written notice inspect all non-proprietary and non-confidential records, maps, accounting and financial statements, Complaint logs, performance test results, or similar materials reasonably necessary to monitor compliance with the terms hereof.

## 7.3 Additional Reports

Grantee shall submit to the City, within thirty (30) days of a written request, copies of reports and documents filed with the FCC, including any tests of System performance, to the extent permitted by Applicable Law. Grantee shall file with the City, within thirty (30) days of a written request, such additional reports pertaining to the System only with respect to the System's operation, affairs, transactions, or property, as are mutually agreed upon and reasonably necessary for the administration and enforcement hereof. Upon request, Grantee shall file with the City an annual report which shall include a summary of the nature and number of Subscriber Complaints received by the City and forwarded to Grantee for resolution and the resolution of such Complaints.

## 7.4 Periodic Evaluation

- A. The City may require evaluation sessions no more frequently than three times during the term of the Franchise. Topics at an evaluation session may include Channel capacity, System technical performance, programming, access, municipal uses of cable, Complaints, judicial rulings, FCC rulings, and other topics deemed relevant by City or Grantee.
- B. During an evaluation session, Grantee shall cooperate with the City and shall provide, without cost to the City, such information and documents as the City may reasonably request and which are not proprietary in nature.
- C. As a result of an evaluation session held pursuant to this section, the City and Grantee may mutually determine that a change in the terms hereof is appropriate, that the System or Franchise requirements should be updated or changed, and/or that additional services should be provided.

#### 7.5 Administration of Franchise

Subject to applicable federal and state law, the City shall have continuing regulatory jurisdiction and supervision over the System and Grantee's operation thereof. The City Administrator shall be responsible for administering the Franchise and monitoring Grantee's compliance with its terms and conditions; provided however that the Council retains sole enforcement authority hereunder.

### **SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

#### 8.1 Performance Bond

Within thirty (30) days of Grantee's execution of this Franchise Grantee shall provide Grantor with a Ten Thousand and No/100 (\$10,000) performance bond in a form and with such sureties as are mutually acceptable to the Parties. The performance bond shall ensure compliance with the Franchise.

#### 8.2 Performance Bond as Remedy

- A. In the event this Franchise is canceled by reason of default of the Grantee or revoked, the City shall be entitled to collect from the

performance bond that amount which is attributable to any damages sustained by the City pursuant to said default or revocation.

- B. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to the performance bond shall affect any other right the City may have.

### 8.3 Waiver

At any time during the term of Franchise, the City may waive the requirements set forth in Section 8.1 and/or 8.2 of this Franchise.

### 8.5 Liquidated Damages.

Upon discovery of a material violation of this Franchise, the City shall notify Grantee thereof in writing pursuant to Section 12.15 herein, and Grantee shall have the opportunity to cure or dispute the violation as provided in Section 9.2 herein.

### 8.6 Indemnification of the City.

- A. Except as otherwise provided herein, Grantee shall indemnify, defend and hold harmless the City and all its officers, employees, agents, and representatives for all damages and penalties resulting from the actions and omissions of Grantee, its officers, employees, or agents, and subcontractors of Grantee and said subcontractor's officers, employees, or agents, except with respect to any claim caused by or arising from, in whole or in part, the acts or omissions of the City, its officers, boards, commissions, agents, and employees. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, errors and omissions, theft, fire, and all other damages arising out of the construction, operation, maintenance, or reconstruction of the System authorized herein caused by the Grantee whether or not any act or omission complained of is authorized, allowed, or prohibited by this

Franchise. Nothing in this provision shall exculpate the City's malfeasance, negligence, or violation of law.

- B. In order for City to be indemnified, defended and held harmless, City must promptly notify Grantee of any claim or legal proceeding subject to indemnification and defense, fully cooperate in Grantee's defense of such claim or proceeding, and afford Grantee the opportunity to participate in any compromise, settlement, or other disposition of any such claim or proceeding.

#### 8.7 Liability Insurance.

- A. Throughout the term of this Franchise, Grantee shall maintain a policy of liability insurance covering Grantee and the City, its officers, directors, boards, commissions, elected officials and employees with regard to all damages mentioned in section 8.6(A), in the minimum amounts of:

Commercial General Liability for Bodily Injury, Death and Property Damage in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate of which limits may be satisfied by an Umbrella Liability Policy.

An umbrella policy in the amount of One Million Dollars (\$1,000,000) per occurrence.

- B. Grantee shall provide a certificate of insurance evidencing any required Worker's Compensation insurance coverage.
- C. Upon the effective date of this Franchise, Grantee shall furnish to the City certificates of insurance evidencing the required coverage.
- D. The City shall be additionally insured and Grantee's carrier will endeavor to provide prior notice of cancellation. Cancellation notice will be provided for any reason other than non-payment of premium and material alteration and requires the City to provide the Grantee a valid contact name and e-mail address (with any changes to the contact name or e-mail address being the responsibility of the City).

## **SECTION 9. REVOCATION OR TRANSFER OF FRANCHISE**

## 9.1 Notice of Violation

If the City believes Grantee is not in compliance with the material terms hereof, it shall notify Grantee in writing of the nature of the perceived default.

## 9.2 Grantee's Right to Cure or Respond

Grantee shall have thirty (30) days from receipt of such notice to:

- A. Respond to the City contesting the assertion of default. Such notice shall specify with particularity the matters disputed by Grantee and shall toll as provided in the running of the cure period and the accrual of liquidated damages provided herein until completion of a hearing required by Section 9.3 herein;
- B. Cure such default, or;
- C. Initiate reasonable steps to remedy such default and notify the City of such steps and the projected completion date.

## 9.3 Public Hearing; Liquidated Damages

If Grantee contests the violation, the City shall schedule a public hearing to evaluate the disputed violation within six (6) months of the Grantee's response contesting the violation. The City shall give Grantee at least twenty (20) days' written notice of the time and place of the hearing, and shall give Grantee an opportunity to be heard. At the conclusion of the hearing, the City shall determine if Grantee has violated the Franchise. Such determination shall be in writing.

- A. If the City finds a material, uncorrected violation, the City may impose liquidated damages in the maximum amount of Two Hundred Dollars (\$200) for each violation. Liquidated damages may not exceed \$10,000 in a calendar year.
- B. In the event the City finds that no material violation occurred or that Grantee has corrected the violation, no liquidated damages shall be imposed.

#### 9.4 Revocation

If the City wishes to consider revocation of the Franchise at the hearing pursuant to Section 9.3, the City shall provide specific written notice of its intent to revoke the Franchise on the basis of one or more instances of substantial noncompliance with a material provision of the Franchise which Grantee has failed to cure. The notice shall set forth the exact nature of the noncompliance. The City shall ensure that the hearing afforded in accordance with Section 9.3 herein is recorded such that either party may prepare a transcript as desired. The City shall further give Grantee the opportunity to present evidence and question and cross-examine witnesses. If the City determines that Grantee is in default of any material provision of this Franchise, the City may revoke the Franchise. The Grantee may appeal such determination to any court of competent jurisdiction, and may continue to operate the Cable System until all legal appeals procedures have been exhausted.

#### 9.5 Abandonment of System

- A. Grantee may not abandon the System or any portion thereof except on three (3) months' written notice to the City. The Grantee shall be liable to the City for the full amount of any damages or losses incurred by the City as result of abandonment.
- B. Except for force majeure events, or unless permission to abandon the System is granted by the City, or unless otherwise provided herein, City may provide written notice requiring Grantee to remove all or any portion of the System from all Rights of Way in City associated solely with the provision of Cable Service within two (2) years of receipt of written notice; provided, however, that if Grantee is providing services other than Cable Services or pursuant to Minnesota Statutes, Section 237.01 et seq., City shall not require the removal of the System. In removing its facilities, Grantee shall not materially interfere with any utility wires, poles, or attachments. The City may inspect and approve the condition of the Rights-of-Way, cables, wires, attachments, and poles prior to and after removal. The liability, indemnity, security fund, and insurance provisions hereof shall continue in full force and effect during the

period of removal and until full compliance by Grantee with the terms and conditions of this section.

- C. If Grantee discontinues its use of any property of Grantee in the Franchise Area for a continuous period of twelve (12) months, it shall be deemed to have abandoned such property.

#### 9.6 Removal After Revocation or Termination

- A. Subject to applicable federal, state, and local law, upon revocation of the Franchise or abandonment of the System, the City may require Grantee to remove, at Grantee's expense, any portion of the System from the Rights-of-Way. The provisions of Section 9.5(B) shall apply to such removal.
- B. Subject to applicable law, if Grantee has failed to commence removal of the System, or such part thereof as was designated by the City within two (2) years of the City's demand for removal, the City may:
  - i. Declare all right, title, and interest to the System to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate or transfer the System; or
  - ii. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at Grantee's cost. The reasonable cost of said removal shall be recoverable from the security fund and indemnity provisions of this Franchise or from Grantee directly.
- C. Nothing herein shall be deemed to require Grantee to remove any portion of the System which is used to provide services other than Cable Service.

#### 9.7 City's Right to Purchase System

The City shall have a right of first refusal of any Bona Fide Offer to Grantee to purchase the System. Within sixty (60) days of the City's receipt of a copy of a Bona Fide Offer, it shall notify Grantee of its decision

whether to purchase the System from Grantee on the terms and conditions of the Bona Fide Offer.

## 9.8 Sale or Transfer of Franchise

- A. If the City does not exercise its right of first refusal to purchase the System pursuant to 9.7, Grantee nevertheless shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale; or by ordinary sale, consolidation, or otherwise, this Franchise or the Cable System or any of the rights or privileges under the Franchise, without the prior consent of the City Council which consent shall not be unreasonably denied, conditioned, or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under this Franchise.

No consent shall be required for sales of property or equipment in the ordinary course of business or for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a transfer to an entity controlling, controlled by, or under common control with Grantee.

- B. Except as specifically excluded in section 9.8(A), the following events shall be deemed a sale, assignment, or other transfer of the Franchise or Cable System requiring the City's consent: (i) the sale, assignment, or other transfer of all or a majority of Grantee's assets; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in Grantee by one (1) or more of its existing shareholders, partners, members, or other equity owners so as to create a new Controlling Interest in Grantee; (iii) the issuance of additional capital stock or partnership, membership, or other equity interest by Grantee so as to create a new Controlling Interest in Grantee; and (iv) the entry by Grantee into an agreement with respect to the management or operation of Grantee or the System, by a party other than Grantee.
- C. In the case of any sale or transfer of ownership of the Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer, including

the consideration of any information required by FCC regulations and the financial information necessary to determine whether the proposed transferee has the financial ability to operate the System in compliance with this Franchise. The City shall also comply with applicable state and federal law. If Grantee fails to provide the City with all required information, the City may extend the one hundred twenty (120)-day review in accordance with federal law. If the City fails to render a final decision on the request within one hundred twenty (120) days of receipt of a transfer application, or within such additional time as may be provided by federal law, the request shall be deemed granted unless Grantee and the City agree otherwise.

- D. Any financial institution having a pledge of Grantee's assets for the advancement of money for the construction of facilities or the operation of the Franchise may, upon Grantee's default in its financial obligations, notify the City that it or its designee acceptable to the City will take control of and operate the System. The financial institution may petition the City for consent to transfer the Franchise to another cable operator.

## **SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS**

### 10.1 Discriminatory Practices Prohibited

Grantee shall comply with all applicable laws relating to nondiscrimination. Access to Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the area in which such group resides.

### 10.2 Subscriber Privacy

- A. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber unless done so in connection with an attempt to detect unauthorized reception of service. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. No penalty shall apply to a Subscriber's revocation' of or failure to provide or renew such authorization. The authorization shall be

revocable at any time by the Subscriber without penalty of any kind whatsoever.

- B. Grantee will comply with all federal, state, and local laws regarding privacy rights of Subscribers.
- C. Written permission from the Subscriber shall not be required for System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity, monitoring, billing, or collection information, or in connection with efforts to detect unauthorized reception of service.

## **SECTION 11. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

### **11.1 Unauthorized Connections or Modifications Prohibited**

Without the express consent of Grantee, it shall be unlawful for any Person, with the exception of law enforcement, to make or possess, or assist another Person in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically, or otherwise, with or to any segment of the System.

### **11.2 Removal or Destruction Prohibited**

It shall be unlawful for any Person to willfully interfere, tamper with, remove, obstruct, or damage any part or segment of the System for any purpose whatsoever. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system, provided, however, that Grantee's facilities have been installed in accordance with the City's Right of Way Ordinance. The City may, but shall not be obligated to, prosecute any violation of this Section 11.2.

### **11.3 Penalty**

In addition to any other penalties provided for under federal and state law, any Person found guilty of violating this section shall, upon conviction thereof, be punished by a fine, not to exceed five hundred dollars (\$500) or

be imprisoned in jail for not more than three (3) months, or both. Each day of such violation constitutes a separate offense.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

### **12.1 Franchise Renewal**

Any renewal of this Franchise shall be in accordance with applicable laws.

### **12.2 Work Performed by Others**

The provisions of this Franchise shall apply to any subcontractor or others performing work or services pursuant hereto. Grantee shall provide the City with the name and address of any Person, other than Grantee, which performs substantial services for Grantee pursuant to this Franchise.

### **12.3 Amendment of Franchise**

Grantee and the City may agree in writing to amend this Franchise following an evaluation and review session or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if required due to changes in law. Any amendments hereto must be approved by the City Council.

### **12.4 Compliance with Federal, State, and Local Laws**

The City and Grantee shall conform to applicable federal laws and regulations as they become effective. The City and Grantee shall comply with applicable state laws and rules not later than one (1) year after such laws or rules become effective, unless otherwise stated.

If any term, condition, or provision of this Franchise or the application thereof to any Person or circumstance shall be held to be invalid or unenforceable to any extent, the remainder hereof and the application of such term, condition, or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all terms, provisions, and conditions hereof shall, in all other respects, continue to be effective so long as the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. If the law, rule, or regulation

causing the invalidity or unenforceability is subsequently repealed, rescinded, amended, or otherwise changed so that the provision which had been held invalid or unenforceable is no longer in conflict therewith, the previously invalid provision shall thereupon return to full force and effect and be binding on Grantee and the City.

#### 12.5 Nonenforcement by the City

Grantee shall not be relieved of its obligations to comply with the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. Any waiver by the City of a breach or violation of any provision of this Franchise shall not operate or be construed as a waiver of any subsequent breach or violation.

#### 12.6 Rights Cumulative

Except as otherwise provided in this Franchise, all rights and remedies given to the City by this Franchise shall be in addition to and cumulative of all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but every right and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by the City, and the exercise of one (1) or more rights or remedies shall not be deemed a waiver of any other right or remedy.

#### 12.8 Continuity of Service Mandatory

Upon expiration or the lawful termination of this Franchise, the City may request and Grantee may agree to continue to operate the System for not more than six (6) months after such termination. Upon such agreement, Grantee shall operate the System under the terms and conditions of this Franchise; provided, however, that neither party shall be deemed to waive any rights as a result of such continued operation. Subject to applicable law, in the event Grantee does not so operate the System, the City may take such steps as it deems necessary to assure continued service to Subscribers.

#### 12.9 Force Majeure

In the event the performance of any obligation under this Franchise is prevented or impaired due to any cause not reasonably foreseeable or that is beyond the reasonable control of either party to this Franchise, such inability to perform shall be excused by the other party and shall not constitute a violation of any provision of this Franchise. Such causes shall include, but not be limited to, those listed in the definition of Normal Operating Conditions as set forth in section 1.24 as beyond the control of Grantee.

#### 12.10 Captions

The captions to sections throughout this Franchise are intended solely to facilitate reading and reference and shall not affect the meaning or interpretation of this Franchise.

#### 12.11 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to act nor shall act in any manner toward any Person which would indicate any such relationship.

#### 12.12 Entire Agreement

This Franchise and all attachments represent the entire understanding and agreement between the City and Grantee and supersede all prior franchises and agreements between them.

Unless otherwise expressly provided herein, this Franchise and the attachments hereto may be modified only by an amendment adopted in accordance with section 12.3.

#### 12.13 Interpretation

This Franchise shall be construed and enforced in accordance with the substantive laws of the state of Minnesota.

#### 12.14 Calculation of Time

Where a period of time for the performance of any act, duty, matter, or payment required hereunder is prescribed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed period. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

#### 12.15 Written Notice

All written notices, reports, or demands required hereunder shall be deemed given when delivered personally or upon receipt, after being deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:                      City Administrator  
    City of Albertville  
    5959 Main Avenue  
    PO Box 9  
    Albertville, MN 55301

If to Company:                      Charter Communications  
    16900 Cedar Avenue S  
    Rosemount, MN 55068  
    Attn: Senior Manager, Government Affairs

With copy to:                      Charter Communications  
    601 Massachusetts Ave NW, Suite 400W  
    Washington, D.C. 20001  
    Attn: Vice President,  
    Local Government Affairs and Franchising

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

#### 12.16 Severability

If any provision herein is, for any reason, held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not invalidate the remaining provisions of this Franchise.

**SECTION 13. PUBLICATION; ACCEPTANCE; EFFECTIVE DATE**

13.1 Publication

This Franchise shall be published in accordance with applicable Minnesota law.

13.2 Acceptance

Grantee shall accept this Franchise by properly executing and acknowledging it, and delivering it to the City with any required insurance certificates not previously delivered within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by the City. Such acceptance by Grantee shall be deemed the date of the grant of this Franchise for all purposes (“Effective Date”). Upon such acceptance, Grantee shall be bound by the terms and conditions contained herein. If Grantee does not accept this Franchise, this Franchise and any and all rights previously granted to Grantee by the City shall be null and void.

**SECTION 14. REPEALER**

14.1 Repealer

Appendix B-3 of the Albertville City Code is hereby amended to delete ordinance 2003-9 in its entirety and such ordinance within Appendix B-3 is hereby replaced with the text of this ordinance as adopted herein.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

CITY OF ALBERTVILLE, MINNESOTA

By: \_\_\_\_\_  
Its: City Clerk

By: \_\_\_\_\_  
Its: Mayor

ACCEPTED: The undersigned Grantee accepts this Franchise and agrees to be bound by its terms and conditions.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

**APPENDIX A—LIST OF PUBLIC BUILDINGS**

City Hall	5959 Main Ave NE
Fire Hall	11350 57 <sup>th</sup> St NE
STMA Arena	5898 Lachman Ave NE
Park Depot	5803 Main Ave NE
FYCC Building	5975 Main Ave NE
STMA Primary School	5836 Main Ave NE
STMA Middle School West	11343 50 <sup>th</sup> St NE
Public Works Building*	11822 63 <sup>rd</sup> St NE
Wastewater Treatment Facility*	11728 63 <sup>rd</sup> St NE

\*These buildings shall only receive complimentary service if within one hundred fifty (150) feet of the Grantee’s System, as measured from the closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of the request.