

VILLAGE OF ELLSWORTH (ANTRIM COUNTY)
CABLE SYSTEM FRANCHISE ORDINANCE
Ordinance No. 14 of 2005

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
CC VIII OPERATING, LLC, DBA CHARTER COMMUNICATIONS
IN **ELLSWORTH VILLAGE** TO USE LOCAL PUBLIC WAYS AND TRANSACT A
LOCAL CABLE SYSTEM BUSINESS IN THE VILLAGE.

THE VILLAGE OF ELLSWORTH ORDAINS:

Section 1. Definitions. As used in this Ordinance,

“Basic Service” means those audio and visual signals carried on the service tier of the Cable System which includes local off-air television signals.

“Cable Act” means the Cable Communications Policy Act of 1984, P.L. 98-549 U.S.C. § 521 Supp., as it may be amended or superseded.

“Cable Service” means (1) the one-way transmission to Subscribers of (a) video programming, or (b) of the programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Services but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves only subscribers in 1 or more multiple unit dwellings unless such facility uses any public right of way, (iii) a facility of a common carrier which is subject in whole or in part to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of Section 621(c) of such Act, 47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (v) any facilities of any electric utility used solely for operating its electric utility system.

“Franchise” means the authorization granted under this Ordinance of a privilege, permit, license or other authority to construct, operate, and maintain a Cable System within the jurisdictional limits of the Grantor.

“Grantee” means CC VIII Operating, L.L.C., d/b/a Charter Communications and its permitted successors and assigns.

“Grantor” or “Village” means the Village of ELLSWORTH (Antrim County).

“Public Ways” means public streets, roadways, highways, boulevards, concourses, bridges, tunnels, parkways, alleys, and other rights-of-way and through easements, including but not limited to public utility easements or dedicated utility strips, now or hereafter held by the Grantor or dedicated for compatible uses as provided by 47 U.S.C. 541, as amended.

“Subscriber” means any person who lawfully receives Cable Service from the Grantee.

Section 2. Grant of Non-Exclusive Right.

- a) Term. The Grantor grants to Grantee, subject to the terms and conditions set forth below, the non-exclusive right, power and authority to install, maintain and operate a Cable System within the entire territorial limits of the Village on, along, across and under the Public Ways and to operate a local cable system business and all other matters incidental thereto in the Village for a period of ten (10) years unless and until revoked or terminated by the Village pursuant to Section 15 hereunder.
- b) Renewal. Grantee shall be entitled to renew the franchise granted by this Ordinance under terms and conditions mutually acceptable to the parties, if the Grantee has substantially complied with the material terms of this Ordinance and with applicable law.
- c) Location in Public Ways. To the maximum extent possible, Grantee shall use existing utility facilities in the Public Ways.

Section 3. Consideration; Costs; Future Ordinances.

- a) Consideration. In consideration of the rights, power and authority granted by the Grantor, Grantee shall faithfully perform all duties required by the terms of this Ordinance.
- b) Costs. In further consideration of the rights, power and authority granted by the Grantor, Grantee agrees to compensate the Grantor for the amount of its actual expenses incurred in the publication of this ordinance.
- c) Future Ordinances. During the term this Ordinance remains in effect, the Grantor shall not amend this Ordinance in a manner that has the effect of limiting the benefits or expanding the obligations of the Grantee granted by the franchise without the prior written consent of the Grantee. However, except as provided in this section, the Grantee shall comply with the terms of any lawfully adopted generally applicable ordinance enacted by the Grantor, but only to the extent that the provisions of such ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee under the franchise granted by this Ordinance.

Section 4. Use of Public Rights-of-Way by Grantee.

- a) No Burden on Public Ways. Grantee and its contractors, subcontractors agree that the Cable System shall not unduly burden or interfere with the present or future use of any of the Public Ways within the Village. Grantee shall erect and maintain its Cable System so as to cause minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners. No Public Way shall be obstructed longer than necessary during the construction of or repair to the Cable System. The Cable System, including but not limited to cables, wires, house connections, structures and equipment shall be constructed and maintained in accordance with the provisions of the National Electrical Safety Code. If the Grantor in its reasonable judgment determines that any portion of the Cable System constitutes an undue burden or interference, Grantee at its expense shall modify its Cable System or take such other actions as the Grantor may reasonably determine is in the public interest to remove or alleviate the burden, and the Grantee shall do so within the reasonable time period established by the Grantor.
- b) Restoration of Public Ways. Grantee and its contractors and subcontractors shall immediately restore, at Grantee's sole cost and expense and in a manner approved by the Grantor, any portion of the Public Ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Cable System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractor or subcontractors fail to make such repair within the reasonable time specified by the Grantor, the Grantor shall be entitled to complete the repair and Grantee shall pay the costs of the Grantor for such repair.

- c) Easements. Any easements over or under private property necessary for the construction or operation of the Cable System shall be arranged and paid for by Grantee. Any easements other than a Public Way shall be separately negotiated with the Grantor.
- d) Tree Trimming. Grantee may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the Cable System. Grantee shall adhere to tree trimming standards set by the Rural Utilities Service. Grantee shall use its best efforts to notify Grantor prior to trimming trees in the Public Ways.
- e) Marking. Grantee shall mark its Cable System pursuant to the guidelines established by the Rural Utilities Service.
- f) Compliance with Laws. Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Cable System whether federal or state, now in force or which hereafter may be promulgated. Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, Councils or commissions of the Grantor or other governmental entity as may be required by law, including, without limitation, all utility lines and highway permits. Grantee shall comply in all respects with applicable codes.
- g) Compliance with FCC Regulations. Grantee shall comply with all applicable rules and regulations of the Federal Communications Commission. Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect of any matters directly affecting the Cable System operations authorized pursuant to this Ordinance, shall be submitted to the Village upon request.
- h) Street Vacation. If the Grantor vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, Grantee agrees, as a condition of this Ordinance, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Grantor or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the Grantor, acting reasonably and in good faith, shall designate.
- i) Relocation. If the Grantor requests Grantee to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, Grantee shall relocate, protect, support, disconnect, or remove its facilities in the Public Ways, at its sole expense, to such alternate route as Grantor, acting reasonably and in good faith, shall designate. Grantee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building permit. Expenses associated with raising and lowering the wires or equipment shall be paid by the person requesting the same (except in cases where Grantee is required to bear the costs under other provisions of this Ordinance) and the Grantee may require advance payment. Grantee shall be entitled to require that it be given up to ten (10) business days advance notice by the person requesting the movement.
- j) Miss Dig. If eligible to join, Grantee shall subscribe to and be a member of "MISS DIG", the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701. et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- k) Use of Existing Facilities. Grantee shall utilize existing poles, conduits, and other facilities within the Public Ways wherever practicable.
- l) Employee Identification. All personnel of Grantee or its contractors or subcontractors who have as part of their normal duties contact with the general public shall carry adequate personal

identification bearing their name and photograph. Every service vehicle of Grantee, its contractors or subcontractors shall be clearly identified as such to the public, where possible.

Section 5. No Grantor Liability; Indemnification.

- a) Grantor Not Liable. With the exception of willful misconduct or gross negligence, the Grantor, its officers, employees, departments, Councils and commissions shall not be liable to Grantee or Grantee's customers for any interference with or disruption in the operation of Grantee's Cable System, or the provision of service over or through the Cable System, or for any damages arising out of Grantee's use of the Public Ways.
- b) Indemnification. As part of the consideration for of this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, employees, departments, Councils and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.
- c) Notice, Cooperation and Expenses. The Grantor shall promptly notify Grantee of the making of any claim or the commencement of any actions suit or other proceeding covered by the provisions of this Section, and shall permit the Grantee to assume the defense of any claim or action. Nothing herein shall be deemed to prevent the Grantor from cooperating with Grantee and participating at its expense in the defense of any litigation by Grantor's own counsel. Grantee shall pay all expenses incurred by Grantee in defending itself with regard to any such actions, suits or proceedings.

Section 6. Insurance.

- a) Policies and Limits Required. Grantee shall obtain and maintain in full force and effect the following insurance coverages:

<u>Workers' Compensation</u>	<u>Statutory Limits</u>
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage	1,000,000 per occurrence C.S.L. on all owned, non-owned and hired autos
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

Certificate; Notice of Amendment. Grantee shall provide the Village with a certificate of insurance evidencing such coverage and thereafter shall maintain a current certificate on file with the Village. All insurance certificates maintained pursuant to this Section 6 shall contain the following wording:

"Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will mail 30 days written notice to the certificate holder named herein."

- b) Village as Additional Insured. The Village shall be named as an additional insured in all applicable insurance policies. Grantee agrees to indemnify and hold harmless the Village from

and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

Section 7. Franchise Not Exclusive; Franchise Required; Requirements for Other Franchise Holders; Amendments; Exclusive Contracts Prohibited.

- a) Franchise Not Exclusive. The rights, power and authority granted herein are not exclusive.
- b) Franchise Required. No Cable System shall be allowed to occupy or use the Public Ways within the Village or be allowed to operate a local cable system business in the Village without first obtaining a franchise from the Village.
- c) Requirements for Other Franchise Holders. In the event the Village grants one (1) or more franchise(s) or similar authorization(s), for the construction, operation and maintenance of any Cable System(s) which offers services substantially equivalent to the services offered by the Grantee, the Village shall not make the grant on more favorable or less burdensome terms than the provisions of this Ordinance. If Grantee reasonably believes that another franchise(s) contains provisions imposing lesser obligations on the other franchise holder than are imposed by the provisions of this Ordinance, then Grantee may request that the Village Council amend this Ordinance. If the Village Council agrees with Grantee's position, it shall amend this Ordinance as deemed necessary to reflect the lesser obligations to insure fair and equal treatment of the Grantee and the other franchise holder.
- d) Amendments. In the event that a non-franchise multichannel video programming distributor provides service to the residents of the Village, the Grantee shall have a right to request amendments to this Ordinance that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. The Village shall not unreasonably deny the Grantee's requested amendments. In requesting amendments, the Grantee shall file a petition seeking to amend this Ordinance. Such petition shall:
 - I. Indicate the presence of a non-franchised competitor(s);
 - I. Identify the basis for Grantee's belief that certain provisions of this Ordinance place Grantee at a competitive disadvantage;
 - I. Identify the provisions of this Ordinance proposed to be amended or repealed in order to eliminate the competitive disadvantage.

Section 8. Rate Regulation.

To the extent that federal or state law or regulation may now, or as the same may hereafter be amended, authorize the Village to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Grantee, the Village shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Village. If and when exercising rate regulation, the Village shall abide by the terms and conditions set forth by the FCC.

Section 9. Equal Opportunity Compliance.

Grantee shall comply at all times with applicable federal, state and local laws and all executive and administrative orders relating to nondiscrimination, equal employment and affirmative action.

Section 10. Extension of Service Area.

- a) Service Area; Standards for Extensions. Grantee shall extend its distribution system to serve additional subscribers in any unserved areas of the Village as of the effective date of this

Ordinance whenever the number of unserved homes passed by such extensions exceed forty (40) homes per mile; provided that such extensions are technically and economically feasible to the Grantee.

- b) Installation of Feeder Cable; Costs. When an individual resident requests service from the Grantee and the length of a drop cable required to serve that new subscriber would exceed 150 feet, the Grantee may require the new subscriber to pay the reasonable cost of installing a feeder cable to a point where the new subscriber will receive a signal without degradation of picture quality or reliability.

Section 11. Customer Service.

- a) Privacy Protection. Grantee shall comply with applicable federal, state and local laws for the protection of privacy of cable subscribers.
- b) Repair and Service Standards. Grantee shall render efficient repair service, and interrupt service only for good cause and for the shortest time possible. A toll-free telephone number shall be maintained so that complaints and repair requests may be received by Grantee at any time. All non-emergency service requests and complaints shall be responded to within five (5) days of receipt. All emergencies and/or system outages shall be responded to within twenty-four (24) hours.
- c) Complaint Log. Grantee shall maintain a file of all written subscriber complaints and their disposition. Grantee shall also maintain a file or an electronic record of service interruptions of more than forty-eight (48) hours in duration which affect five (5) or more subscribers. Grantee shall keep these files current for a period of one year.
- d) Performance Review Hearings. During the term of the franchise granted by this Ordinance, the Village, at its sole discretion, may hold no more than once each year a franchise performance review hearing. The Village shall give Grantee thirty (30) days written notice of any such review hearing. All such review hearings shall be open to the public, and notice shall be given by advertisement in a newspaper of general circulation at least one week before the review hearing. The topics for discussion at the review hearings may include, but shall not be limited to, services, free or discounted services, the application of new technologies, system performance, services provided, programming, and subscriber complaints. Either the Village or Grantee may select additional topics for discussion at any review hearing, provided that the other party is notified of such additional topics thirty (30) days prior to the review hearing.
- e) Billing Disputes. In case of a written billing dispute with a subscriber, Grantee shall respond to that written complaint within thirty (30) days. Where applicable, refunds or credits necessary to resolve the billing dispute shall be issued within sixty (60) days of resolution of the billing inquiry, the return of equipment supplied by Charter if cable service is terminated, or the termination of the cable service.
- f) Notice of Rate or Service Changes. Grantee shall give the Village and its subscribers within the Village no less than thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.
- g) Notice of Contact Procedures. The Grantee shall by appropriate means, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and toll-free telephone number of the Grantee.
- h) Equipment to Remain Grantee's Property. The equipment installed by the Grantee in the subscriber's home shall remain the property of the Grantee, shall be subject to reasonable

inspection and service by the Grantee at reasonable hours, and shall be subject to removal upon non-payment or termination of the service.

Section 12. Public Records.

The Village shall have access to records and other like materials of the Grantee upon reasonable prior notice as mutually agreed upon by the Village and Grantee.

Section 13. Service to Public Institutions.

Grantee shall upon request and free of charge provide and maintain from Grantee's existing distribution system a connection consisting of basic and extended basic tiers of cable service to the Village Hall, Village fire stations, public libraries, and to all public and parochial primary and secondary schools located in the Village. The cost of installing and maintaining any internal wiring shall be borne by the Village or public institution receiving the service, and internal wiring will comply with all appropriate regulations. If an expansion of the distribution system is required to comply with this section, the appropriate recipient of the service shall reimburse Grantee for the cost of such extension. The service required by this section shall be provided to newly constructed public institution facilities under the same terms and conditions upon request to the Grantee and as soon as practical, but in no event later than two (2) years from the date of the request.

Section 14. Emergencies; "As-built" Plans.

- a) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Village to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Village for restoration and repair, unless such acts amount to gross negligence by the Village.
- b) Grantee shall provide an Emergency Alert System (EAS) that complies with state and federal regulations. Only appropriately authorized persons may operate the EAS equipment. Any person operating the EAS equipment shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System.
- c) Upon request, Grantee shall provide to the Village route maps showing the location of the Cable System, access to "as-built" maps, and updated route maps to reflect any changes. The Village shall give Grantee a minimum of 48 hours notice of a request to view "as-built" maps, unless there exists an emergency situation requiring earlier viewing.
- d) Grantee's Local Office and Engineering Contact information (engineering drawings/"as-built" map address) is listed below. This information also applies to 24-hour emergencies:

Technical Operations Manager:
Rob Nowak
701 South Airport Road West
Traverse City, Michigan 49686
Telephone: (231) 941-3766
Fax: (231) 947-1626
email: rnowak@chartercom.com

Section 15. Revocation of Franchise.

- a) Notice of Violation. If the Village believes that the Grantee has not complied with the terms of this Ordinance, the Village shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Village shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

- b) Grantee's Right to Respond or Cure. Grantee shall have thirty (30) days from receipt of the notice described in subsection A. above to take one or more of the following actions: (i) respond to the Village contesting the assertion of noncompliance, (ii) cure such noncompliance, or (iii) if, by the nature of the noncompliance, compliance cannot be achieved within the thirty (30) day period, initiate reasonable steps toward compliance and notify the Village of the steps being taken in the projected date that compliance will be achieved.
- c) Public Hearing. If the Grantee fails to respond to the notice provided pursuant to subsection A. above or if the Grantee fails to cure the noncompliance within thirty (30) days or fails to initiate reasonable steps toward compliance as provided in subsection B. above, the Village shall schedule a public hearing if it intends to continue its investigation into the noncompliance. The Village shall provide Grantee no less than twenty (20) days prior written notice of such public hearing, which notice shall specify the time, date, place, and purpose of the public hearing. A notice of the public hearing shall be published by the Village in a newspaper of general circulation within the Village no less than ten (10) days prior to the public hearing.
- d) Enforcement. Subject to applicable federal and state law, in the event the Village, after the public hearing held pursuant to subsection c) above, determines that Grantee is not in compliance with any provision of this Ordinance, the Village may do one or more of the following:
1. Seek specific performance of any provision of this Ordinance, which reasonably lends itself to such a remedy, or seek other equitable relief.
 2. Commence an action at law for monetary damages.
 3. Revoke the franchise granted by this Ordinance.

Section 16. Notice.

Except for the notices provided under Section 14 d), any notices to be sent to the parties hereto shall be sent to the following addresses, unless either party notifies the other in writing of another address:

Village Address: ELLSWORTH VILLAGE
 % SUPERVISOR
 P.O. Box 265
 Ellsworth, MI 49729

Local Charter Address:
 Charter Communications
 Attention: Government Relations
 701 South Airport Road West
 Traverse City, Michigan 49686

With a Copy to Charter Address:

 Charter Communications
 Attn: Vice President Government Relations
 12444 Powerscourt, 4th Floor
 St. Louis, MO 63131

Section 17. Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with the provisions of this Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability

of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of this Ordinance for violations of this Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Village, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

Section 18. Severability.

If any section, provision or clause of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not effect any remaining portions or application of this Ordinance, which can be given effect without the invalid portion or application.

Section 19. Effective Date.

This Ordinance shall be effective sixty (60) days after enactment, or after payment by the Grantee of the Grantor's actual expenses incurred in the publication of this Ordinance as required by Section 3 b), whichever is later.

VILLAGE OF ELLSWORTH

By: _____
Hugh

Campbell, President

By: _____
Hellen Allen, Clerk

ACCEPTED BY:

CC VIII OPERATING, LLC, d/b/a
CHARTER COMMUNICATIONS

By: _____

Its: _____
----- (title)