

Alleghany County, NC  
Lizabeth Reeves Roupe  
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ALLEGHANY COUNTY  
LIZABETH REEVES ROUPE  
REGISTER OF DEEDS

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**Effective Date**

Date 10-3-16

**Expiration**

**FRANCHISE ORDINANCE AGREEMENT**

AN ORDINANCE BY THE COUNTY OF ALLEGHANY  
NORTH CAROLINA CONSENTING TO THE CABLE  
TELEVISION FRANCHISE AGREEMENT BETWEEN  
THE COUNTY AND CHARTER COMMUNICATIONS

A Franchise Agreement between the County and Charter, granting a franchise to construct, maintain, and operate a cable television system, as defined under applicable federal, state and local law, throughout the County of Alleghany and setting forth terms and conditions herein.

**WITNESSETH**

WHEREAS, the County of Alleghany, North Carolina ("County"), pursuant to the police powers of the County of Alleghany, North Carolina, is authorized to grant one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a cable television system within the unincorporated areas of the County; and

WHEREAS, the County seeks to promote the development of advanced communications capabilities on a competitive basis within the County, while at the same time ensuring customer service; and

WHEREAS, the County's does not have a Cable Television Franchise Agreement with Charter Communications and desires to establish said Franchise;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY THAT THE CABLE SERVICE FRANCHISE AGREEMENT BETWEEN THE COUNTY AND CHARTER IS APPROVED AS FOLLOWS:

**SECTION 1: GRANT OF FRANCHISE**

1.1 Grant

Charter Communications ("Grantee") is hereby granted a franchise to construct, reconstruct, operate and maintain a Cable Television System within the Streets and Rights-of-Way of the County, subject to the terms and conditions of this Franchise Agreement ("Franchise"). Grantee shall provide and operate a Cable Communications System within the Franchise Area, which shall include all unincorporated areas of Alleghany County, as established in this Franchise Agreement.

1.2 Right of County to Issue and Renew Franchise

Grantee acknowledges and accepts the right of County to issue a Franchise Agreement subject to applicable federal and state law.

1.3 Franchise Term and Renewal

(a) This Franchise Agreement shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Grantee as provided by the Ordinance and the same shall continue in full force and effect for a period of ten (10) years beginning with the date of acceptance.

(b) Any renewal of this Franchise Agreement shall be done in accordance with applicable, state and federal law.

1.4 Effective Date

The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement.

1.5 Written Notice

All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, by regular mail or registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight courier addressed to the party to which notice is being given, as follows:

If to County: County Manager  
County of Alleghany  
90 South Main Street  
Sparta, North Carolina 28675-9643

If to Grantee: Charter Communications  
216 Moore Avenue  
Suffolk, VA 23434

With a copy to: Charter Communications  
Attn: Vice President of Government\_Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131

Charter Communications  
Attn: Vice President of Government\_Affairs  
11 Commerce Road  
Newtown, CT 06470

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

1.6 Additional Franchises

Any additional franchise agreements adopted by the County shall not contain terms and conditions more favorable or less burdensome than the terms hereof.

1.7 Binding Contract

This Franchise shall constitute a legally binding contract between the County and Grantee, and as such, cannot be amended, modified or changed by the County without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the County from the proper exercise of its police powers and/or its powers of eminent domain.

1.8 Controlling Document

This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

1.9 Grantee's Representations and Warranties

- (a) Grantee has examined all of the provisions of this Franchise Agreement and agrees to all of the provisions of this Franchise Agreement, as it exists as of the effective date of the Grantee's Franchise Agreement except:
- (b) Grantee recognizes, unless otherwise agreed herein the right of the County to adopt such additional regulations of general applicability, as it shall find necessary in the exercise of its police power.

1.10 Equal Protection

If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, as Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

## **SECTION 2: GENERAL REQUIREMENTS**

### **2.1 Franchise Fee.**

- (a) Grantee shall pay to the County on a quarterly basis in accordance with the terms of this Franchise, a Franchise Fee totaling five percent (5%) of Grantee's Gross Revenues.

*“Gross Subscriber Revenues” shall include those revenues derived from cable services including basic, extended, premium, digital, and pay-per-view movie and special event program service. Gross receipts from providing cable service do not include receipts from advertising, commissions, program carriage fees, billing and collection services, charges for bad checks, late fees, uncollected debts, information services, or internet access charges To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions herein shall be so amended.*

- (b) Payments due Grantor under this section shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a Grantee showing the basis for the computation and shall be certified as correct by an officer of the Grantee. Payments shall begin on June 1, 2006 (payment for June 2006 due August 15, 2006).

### **2.2 Indemnification**

The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction and operation of the Cable System and in the event of a determination of liability shall indemnify and

hold Grantor , its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, *provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section.* In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor.

Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any PEG channels.

### 2.3 Compliance with Applicable Laws and Ordinances

- (a) Grantee shall conform to all generally applicable laws, rules and regulations of the United States and the State of North Carolina in the construction and operation of its Cable System and all generally applicable rules and regulations of the FCC.
- (b) Grantee shall not refuse to hire or employ or bar nor discharge from employment nor discriminate against any person in compensation or terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.
- (c) Any right, power, protection, privilege or immunity which is provided, granted or imposed on Grantee under or by virtue of the federal Cable Acts or the federal Telecommunications Act of 1996, as may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Grantee notwithstanding any contrary provision of this Franchise, and the acceptance of the terms and conditions of this Franchise shall not be construed as a waiver or release by Grantee or County of any right, power, protection, privilege, immunity or obligation under the above Acts, the laws or Constitution of the United States or the laws and Constitution of the State of North Carolina.

### 2.4 Extension of Service

Grantee may build cable plant and serve any unincorporated area of the County where economically feasible and in accordance with the Grantee's business plan.

### 2.5 Inspection of Records

Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a non-disruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. *The Grantor agrees to treat as confidential any books; records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.*" The Grantee shall maintain an office conveniently located to serve the County subscribers.

### **SECTION 3: SUPPORT FOR LOCAL CABLE RELATED NEEDS**

- 3.1 Access Channel In accordance with Section 611 of the Cable Act (47 U.S.C. Section 531) the Grantee agrees to provide to the County the following access channels when providing the channel has been solely determined to be economically feasible by the cable operator.:
- (a) Community Access Channel which is defined as a channel for use by the local community which may include, but not limited, to local sports, local news, religious programming, school projects and other programming that may be determined beneficial to the community by the non-profit Board of Directors.
  - (b) The Community Access Channel will be administered by a non-profit Board of Directors selected by the County Board of Commissioners.
  - (c) The Community Access Channel will be physically located at the discretion of the non-profit Board of Directors.
  - (d) Grantee may participate in the Community Access Channel and interconnect with Alleghany Cablevision when economically feasible and in accordance with a mutually agreeable interconnection plan negotiated with the County.

3.2 Emergency Use of System

The Grantee shall comply with Section 624 of the Communications Act of 1934 (47 USC 544) as may be amended from time-to-time.

### 3.3 Federal Rights

Any right, power, protection, privilege or immunity which is provided, granted or imposed on Grantee under or by virtue of the Federal Cable Acts, as may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Grantee notwithstanding any contrary provision of this Franchise, and the acceptance of the terms and conditions of this Franchise shall not be construed as a waiver or release by Grantee or County of any right, power, protection, privilege, immunity or obligation under the above Acts, the laws or Constitution of the United States or the laws and Constitution of the State of North Carolina.

## **SECTION 4: REGULATION**

### 4.1 Transfers

The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. *No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness.* Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given."

### 4.2 Due Process

- (a) "Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").
- (b) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.
- (c) Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it

intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with this Franchise Agreement. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

(d) Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may: (i) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or (ii) Commence an action at law for monetary damages or seek other equitable relief; or (iii) In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 4.2 (e) below.

(e) Revocation. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation. ”

4.3 Customer Service Standards Grantee shall at all times comply with the the customer service and consumer protection provisions of the Federal Communications Commission.

4.4 Technical Standards The technical standards used in the operation of a System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to the FCC's rules and regulations found in Title 47, Sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4.5 Compliance with Laws The construction, installation, and maintenance of the Cable System shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and construction standards of the State of North Carolina, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the County's lawful police power.

4.6 Insurance shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and standards of the State of North Carolina.

4.7 Force Majeure

The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, 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.

4.8 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

4.9 Entire Agreement

This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of

the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

IN WITNESS WHEREOF, County and Grantee have executed this Franchise the 20th day of April, 2006 after having read and adopted this Franchise at two regularly scheduled meetings of April 17, 2006 and April 20, 2006.

FOR THE COUNTY OF ALLEGHANY, NORTH CAROLINA

(sig: Eldon Edwards)  
Eldon Edwards, Chairman

ATTEST:

(sig: Karen Evans)  
Clerk to the Board

(county seal)

FOR CHARTER COMMUNICATIONS

(sig: Joshua Jamison)  
Joshua L. Jamison, President of Operations, East Division

Date: 10/4/06