

CABLE FRANCHISE AGREEMENT

BETWEEN

TOWN OF CHEEKTOWAGA

AND

SPECTRUM NORTHEAST, LLC

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed by and between the Town of Cheektowaga, a Town located in Erie County, New York (hereinafter referred to as the “Town”) and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. (“Charter”).

WHEREAS, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and the rules and regulations of the New York State Public Service Commission, the Town is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the Town’s jurisdiction; and

WHEREAS, Charter currently holds a cable franchise from the Town by virtue of a cable franchise agreement granted to Time Warner NY Cable, LLC, Charter’s predecessor-in-interest, and such franchise agreement is now expired; and

WHEREAS, Charter has requested that the Town renew Charter’s franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid Public Rights-of-Way for use by the Town’s residents; and

WHEREAS, the aforesaid Public Rights-of-Way used by Charter are public properties acquired and maintained by the Town on behalf of the citizens of the Town, and the right to use said Public Rights-of-Way is a valuable property right; and

WHEREAS, the Town desires to protect and manage the aforesaid Public Rights-of-Way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Charter’s use of the Town’s Public Rights-of-Way as provided by federal law, provide legal protections for the Town and Charter, and meet the current and future cable-related needs and interests of its residents; and

WHEREAS, the Town has held a public hearing on the subject of cable franchise renewal, including reviewing Charter’s past performance and identifying the Town’s future cable-related community needs and interests; and

WHEREAS, the Town, after affording the public notice and opportunity for comment, has determined that Charter has the technical ability, financial condition, and character to operate and maintain a Cable System, and its plans for operating such System are adequate and feasible; and

WHEREAS, the Town has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations, including the franchise standards of the New York State Public Service Commission; and

WHEREAS, the Town, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Charter’s non-exclusive franchise

according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Town and Charter agree as follows:

SECTION 1
DEFINITIONS

The following terms used in this franchise shall have the following meanings:

1.1 Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Charter.

1.2 Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and, to the extent required by applicable law, any Public, Educational and Governmental (“PEG”) access channel.

1.3 Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

1.4 Cable Service - The one-way transmission to Subscribers of Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Programming or other programming service.

1.5 Cable 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 Town but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video Programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.6 Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

1.7 Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

1.8 Complaint - Written correspondence received by Charter via email, U.S. mail or courier from a Subscriber in the Town expressing dissatisfaction with the operation of the Cable System or expressions of dissatisfaction with Charter's Cable System from a Subscriber in the Town that are communicated by the Town (either in writing or otherwise) to Charter's contact person identified pursuant to Section 9.3.

1.9 Drop - The connection between a home or building and the Cable System.

1.10 Educational and Governmental (EG) Channel - An access channel that consists of local educational and/or governmental programming.

1.11 Effective Date – The date upon which the New York State Public Service Commission issues an order approving this Agreement.

1.12 Emergency - A condition that either: (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

1.13 FCC – The Federal Communications Commission and any successor governmental entity thereto.

1.14 Force Majeure - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State of New York or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of labor, materials or equipment; and partial or entire failure of utilities to service, maintain or monitor their poles or facilities to which Charter's Cable System is attached.

1.15 Franchise - The right granted by the Town to construct, operate and maintain a Cable System within the corporate limits of the Town as embodied in the terms and conditions of this Agreement.

1.16 Franchise Fee - The fee that Charter remits to the Town for the use of the Town's Public Rights-of-Way pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

1.17 Gross Revenues - All revenue received directly or indirectly by Charter arising from, attributable to, or in any way derived from the operation of Charter's Cable System in the Town to provide Cable Services as calculated in accordance with Generally Accepted Accounting Principles ("GAAP"). Gross Revenues shall include the following:

- (1) Basic Service fees;
- (2) Fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) Fees charged for premium Cable Services;
- (4) Fees charged to Subscribers for any optional, per-channel, or per-program Cable Services;
- (5) Fees charged for video-on-demand;

- (6) Revenue from the provision of any other Cable Service;
- (7) Fees for service calls related to Cable Service;
- (8) Convenience fees;
- (9) Fees for installation, additional outlets, relocation, disconnection, and reconnection for Cable Services;
- (10) Inside wire maintenance fees;
- (11) Change-in-service fees for video programming;
- (12) Service plan protection fees related to Cable Service;
- (13) Fees for payments made to customer service representatives directly;
- (14) Fees for Leased Access Channels;
- (15) Rental of any and all Cable Services equipment, including converters and remote control devices;
- (16) Any and all locally-derived advertising revenues less commissions paid to third parties that are not Affiliated Entities;
- (17) Revenues or commissions from locally-derived home shopping channels;
- (18) Broadcast retransmission fees;
- (19) Regional sports fees;
- (20) Billing fees;
- (21) Late payment fees related to Cable Service; and
- (22) Franchise Fees.

Gross Revenues shall not include program launch fees, bad debts, investment income, refunded deposits, or any taxes on services furnished by Charter and imposed directly upon any Subscriber or user by the Town, state, federal or other governmental unit.

1.18 Leased Access Channel - Any Channel on Charter's Cable System designated for use by any entity that is unaffiliated with Charter pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

1.19 Normal Business Hours - Those hours during which most similar businesses in the community are open. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

1.20 Normal Operating Conditions - Service conditions within Charter's service department which are within the control of Charter. Those conditions that are not within the control of Charter include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

1.21 Outlet - An interior receptacle that connects a television set or converter box to the Cable System.

1.22 Person - An individual, partnership, association, organization, corporation, trust or governmental entity.

1.23 Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

1.24 Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses, as the same now or may thereafter exist, which are under the jurisdiction or control of the Town.

1.25 Service Interruption - The loss of picture or sound on one or more channels resulting from a Cable System network disruption or malfunction.

1.26 Standard Installation - Installations to residences and buildings that are located up to 150 feet from the point of connection to Grantee's existing distribution system.

1.27 Subscriber – Any Person who is billed for and is authorized to receive Cable Service from Charter.

SECTION 2 **GRANT OF FRANCHISE**

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act, the regulations of the FCC and the rules and regulations of the New York Public Service Commission, the Town hereby grants a non-exclusive and revocable franchise to Charter. Subject to the terms and conditions contained herein, the Town hereby grants to Charter the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the Town has a sufficient easement or right-of-way. Nothing in this Franchise shall be construed to prohibit Charter from offering any service over its Cable System that is not prohibited by federal or state law.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 REPRESENTATIONS AND WARRANTIES

(a) Charter represents, warrants and acknowledges that, as of the Effective Date:

(1) Charter is duly organized, validly existing and in good standing under the laws of the State of New York;

(2) Charter has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by

resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date, to enter into and legally bind Charter to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

(3) This Agreement is enforceable against Charter in accordance with the provisions herein, subject to applicable state and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against Charter that would interfere with its performance or its ability to perform the requirements of this Agreement.

2.4 NON-EXCLUSIVITY

(a) The Franchise granted herein is non-exclusive. The Town specifically reserves the right to grant, at any time, additional franchises for a Cable System in accordance with state and federal law. The parties acknowledge the Level Playing Field rule set forth in 16 NYCRR Section 895.3 which provide that “No municipality may award or renew a franchise for Cable Service which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchise operating in the same franchise area.” The Town agrees that any grant of additional franchises by the Town to any other entity to provide Cable Service shall be in compliance with that provision.

(b) If the Town grants a cable television franchise or other right to provide Cable Service to another Person and Charter believes that its terms, when taken as a whole, provide greater benefits or impose lesser burdens to the other Person than provided herein, then Charter may request in writing a specific amendment or amendments to this Agreement to provide Charter with competitive equity. The Town shall respond to Charter in writing within thirty (30) days of receiving Charter’s request as to whether the Town accepts, rejects, or wishes to modify Charter’s proposed amendment(s). If the Town rejects or wishes to modify the proposed amendment(s), then the parties shall have sixty (60) days to negotiate in good faith amendment(s) to the Agreement that are acceptable to both the Town and to Charter.

2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal and state laws and regulations. This Franchise is further subject to all generally applicable local laws and regulations of the Town to the extent they are not inconsistent with the terms of this Franchise. Without waiving any of its powers, the Town agrees that, to the extent any terms of this Agreement are inconsistent with the terms of any Town local laws or regulations, except for any generally applicable and non-discriminatory ordinances or regulations pursuant to the Town’s police powers, this Franchise Agreement shall control.

SECTION 3
SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) Charter shall operate, maintain, construct, and extend the Cable System so as to offer Cable Services to all Subscribers throughout the Town where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, and any other applicable laws and regulations and constructions standards of the New York Public Service Commission and the generally applicable laws, local laws and construction standards of the Town, subject to Section 2.5 of this Agreement.

(b) Charter shall provide adequate standby power at the Cable System headend and on its Cable System to the extent consistent with Charter's normal operating standards. Standby power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) Charter shall make Cable Service available to every dwelling occupied by a person requesting Cable Service, provided that Charter is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Charter shall extend the Cable System into all areas within the Town where there is a minimum of twenty (20) dwelling units per cable mile of aerial cable as measured from Charter's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area").

(b) Any dwelling unit within one hundred fifty (150) feet aerial distance from the main distribution line shall be entitled to a Standard Installation rate. However, if an area does not meet the density requirements of this Section, Charter shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System in accordance with the applicable provisions of Section 895.5 of the regulations of the New York Public Service Commission. Charter may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the main distribution line to the residence.

(c) Charter shall not deny access to Cable Service to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(d) The Town has the right to require Charter to place wires and/or equipment underground, provided that the Town imposes such requirement on all similarly situated entities (i.e. telephone and electric utilities). All installations of wires and/or equipment by Charter shall be underground in those areas of the Town where the wires and/or equipment of all similarly situated entities (i.e. telephone and electric utilities) are all underground; provided, however, that such underground locations are capable of accommodating Charter's facilities without technical

degradation of the Cable System's signal quality. Charter shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals. In the event the Town or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Charter shall be similarly reimbursed.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) Charter has designed, constructed and shall maintain a Cable System that has been built for digital television standards with the capability of no fewer than one hundred fifty (150) video channels. The Cable System shall be capable of transmitting digital television services and signals and shall meet or exceed the technical performance standards of the FCC.

(b) Charter reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

(c) Charter shall construct and maintain its Cable System using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

3.4 EMERGENCY ALERT SYSTEM

Charter shall comply with the Emergency Alert System requirements of the FCC.

3.5 REPAIRS AND RESTORATION

(a) Whenever Charter or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any Public Rights-of-Way, the same shall be replaced and the surface restored to a condition reasonably comparable to the condition that existed before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. If Charter fails to repair, replace or otherwise correct a Public Right-of-Way following (10) days' written notice by the Town, the Town may complete any repair, replacement, restoration or other correction and invoice Charter for the documented, reasonable cost of such repair, replacement, restoration or other correction and be reimbursed for the same.

(b) Whenever Charter or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, and improvements in and along the routes authorized by the Town. If required for the proper installation, operation and maintenance of such equipment, cable, or wires Charter shall promptly repair and restore any public property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Charter's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Charter's operation, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal, state and generally applicable local laws and regulations, including the NESC. Charter shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Town or any public utility serving the Town.

(d) Whenever Charter or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the New York One Call System (www.digsafelynewyork.com) prior to any such disturbance. Charter shall adhere to any additional undergrounding requirements which the State of New York may establish in the future. Charter shall adhere to all requirements of 16 NYCRR Part 753, Protection of Underground Facilities.

(e) All structures and all lines, equipment and connections in, over, under, and upon Public Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

3.6 SERVICE AREA MAPS

Within thirty (30) days of a written request, Charter shall make available to the Town for inspection a complete set of Charter service area maps of the Town on which shall be shown those areas in which its facilities exist and the location of all streets. Charter shall make such maps available to the Town for inspection within thirty (30) days of a written request and after execution of an appropriate non-disclosure agreement. All information provided shall be exclusive of Drops. The Town agrees to treat such maps as confidential because they constitute proprietary information.

3.7 DISCONNECTION AND RELOCATION

(a) Charter shall, upon receipt of reasonable advance written notice not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Charter when lawfully required by the Town pursuant to its police powers. Charter shall be responsible for any costs associated with these obligations to the same extent all other users of the Town's Public Rights-of-Way are responsible for the costs related to the relocation of their facilities.

(b) In requiring Charter to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Town shall treat Charter the same as, and require no more of Charter than, any similarly situated entity. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

(c) Charter shall, at the request of any Person holding a lawful permit issued by the Town, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Rights-of-Way as necessary any property of Charter, provided that the expense of such action is

paid by any such Person benefiting from the relocation and Charter is given reasonable advance written notice to prepare for such changes. Charter may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

(d) Reimbursement of Costs. If funds are available to any Person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, Charter shall be included by the Town for such funds in the same manner in which other Persons affected by the requirement are included. If the funds are controlled by another governmental entity, the Town shall cooperate with any efforts by Charter to make application for such funds on behalf of Charter.

3.8 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the Town, it shall be necessary, in the reasonable judgment of the Town or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Town shall have the right to do so without cost or liability, provided that, wherever possible, the Town shall give Charter notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the Town shall treat Charter the same as, and require no more of Charter than, any other similarly situated entity. Charter shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

3.9 TREE TRIMMING

Charter, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Charter. Charter shall comply with any generally applicable, non-discriminatory tree trimming and/or tree removal local laws enacted by the Town, if any.

3.10 CHANNEL CAPACITY

Charter shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

3.11 BROADCAST CHANNELS

To the extent required by federal law, Charter shall provide all Subscribers with Basic Service. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

3.12 SIGNAL SCRAMBLING

Charter shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

3.13 CONTINUITY OF SERVICE

Subscribers shall continue to receive Cable Service from Charter provided their financial and other obligations to Charter are honored. Subject to Force Majeure provisions in Section 9.1, Charter shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service. For the purpose of construction, routine repair or testing of the Cable System, Charter shall use its best efforts to interrupt service only during periods of minimum use. Such periods shall, where reasonably practicable, be scheduled from midnight to 6 a.m., unless in the case of Emergency.

3.14 PARENTAL CONTROL CAPABILITY

Pursuant to Section 641 of the Cable Act, Charter shall allow Subscribers the use of parental control devices.

SECTION 4 **SUBSCRIBER SERVICE STANDARDS**

Charter shall comply with the customer service standards as set forth in Chapter VIII, Part 890 of the Rules and Regulations of the New York Public Service Commission (“NYPS”), as amended, and Title 47, Section 76.309 of the Regulations of the FCC, as amended.

SECTION 5 **REGULATION BY THE TOWN**

5.1 RESPONSIBILITY OF ADMINISTRATION

The Mayor, or his or her designee, shall be responsible for the continuing administration of this Franchise.

5.2 RIGHT TO INSPECT

(a) The Town shall have the option to inspect, all documents, records and other pertinent information maintained by Charter which relate to the terms of this Agreement and which are reasonably necessary to ensure compliance with the terms therein. Upon thirty (30) business days of a written request, and execution of a non-disclosure agreement if documents and records are confidential in nature, Charter shall provide the Town with copies of such documents and records.

(a) In addition, Charter shall maintain for inspection by the public and the Town all records required by the FCC and as specified in 47 C.F.R. § 76.1700 in the manner specified therein.

5.4 RESERVED AUTHORITY

The Town reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the Town's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

5.5 POLICE POWERS

Charter's rights under this Agreement are subject to the police powers of the Town to adopt and enforce general laws and regulations necessary for the safety and welfare of the public, provided such regulations are reasonable, are not materially in conflict with the privileges granted in this Agreement and are consistent with all federal and state laws, rules, regulations and orders.

5.6 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the Town to impose any lawful tax, fee or assessment of general applicability. Subject to applicable law, such taxes, fees or assessments shall be in addition to Franchise Fees to the extent consistent with applicable law.

5.7 PERMITS

Charter shall apply to the Town for all generally-applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the Town and shall be administered in a competitively neutral and non-discriminatory manner. Charter shall not be required to obtain permits for Cable Service Drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Subject to applicable law, Charter shall pay any and all required permit fees.

5.8 SUBSCRIBER COMPLAINT REPORTS

Within thirty (30) days of a written request, Charter shall submit to the Town a report showing the number of complaints relating to Cable Service originating from the Town and received during the previous 12-month reporting period, the dates they were received, and summary description of the complaints.

5.9 CONFIDENTIALITY

To the extent permitted under New York law, the Town shall maintain as confidential any information provided to it by Charter under the terms of this Franchise that Charter has designated

in writing as confidential. In the event that the Town believes at any time that it is required by law to disclose such information to a third party, the Town will so notify Charter at a time prior to such disclosure that affords Charter a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

SECTION 6 **COMPENSATION TO THE TOWN**

6.1 FRANCHISE FEES

Charter shall pay to the Town an annual amount equal to five percent (5%) of the annual Gross Revenues derived from the operation of its Cable System to provide Cable Service in the Town. Charter shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability unless allowed by applicable law, unless allowed by applicable law.

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the Town under this provision shall be computed at the end of each calendar quarter, transmitted by electronic funds transfer to a bank account designated by the Town. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any undisputed Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the Town. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Town may have for additional sums payable under this Agreement.

6.3 QUARTERLY REPORTS

Within ten (10) days of the Franchise Fee payment, Charter shall provide a written report containing an accurate statement of Charter's Gross Revenues received for Cable Services for each calendar quarter and showing the basis for the computation of fees. Upon request, Charter shall provide a more detailed report containing line items for sources of revenue received and the amount of revenue received from each source.

6.4 FRANCHISE FEE REVIEW

(a) Not more than once every three (3) years, the Town shall have the right to conduct a Franchise Fee review or audit of Charter's records reasonably related to the sources, amounts, and computation of Gross Revenues. Any such review or audit shall occur within seventy-two (72) months from the date the Town receives such payment, after which period any such payment

shall be considered final. Within forty-five (45) days of a written request, Charter shall provide the Town with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the Town shall provide Charter with a written statement indicating the basis for the alleged underpayment. Charter shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the Town with any written objection to the results of the Franchise Fee review, including any substantiating documentation. Based on this exchange of information, the Town and Charter shall confer to attempt to determine the amount of the underpayment, if any. If the Town and Charter are unable to agree on an amount of the underpayment, then either party may submit the dispute to mediation, arbitration, or litigation.

(c) Any undisputed Franchise Fee payment due to the Town as a result of the Franchise Fee review shall be paid to the Town by Charter within forty-five (45) days of the date the parties agree on the amount of the underpayment, in accordance with the terms set forth in a separate settlement agreement executed by Charter and the Town. If the matter is submitted to mediation, arbitration, or litigation Charter shall pay any underpaid amount plus interest within sixty (60) days from the final disposition of such action.

6.5 BUNDLED SERVICES

If Cable Services subject to the Franchise Fee required by this Agreement are provided to Subscribers in conjunction with non-Cable Services for a single aggregate price, the Franchise Fee shall be applied to the portion of the aggregate price attributed to Cable Services. It shall be the obligation of Charter to maintain its books and attribute the revenues to Cable Services consistent with GAAP and Charter shall not make such attribution to avoid Franchise Fees.

SECTION 7 **FREE SERVICES TO THE COMMUNITY**

7.1 SERVICES TO COMMUNITY FACILITIES

Upon the Effective Date, Charter will offer, without charge and on a voluntary basis, one cable service Drop and Basic Cable Service (or equivalent) with any necessary equipment for viewing to one outlet at each Town facility listed on Exhibit A, provided that the locations are located up to one hundred fifty (150) feet from Charter's existing distribution system.

7.2 PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNEL

The Town reserves the right to obtain, within one year of a written request, channel capacity from Charter for non-commercial, video programming for public, educational and governmental ("PEG") access use in accordance with Section 611 of the Cable Act and Section 895.4 of the NYPSC regulations and will comply with the minimum standards set forth therein. The tier of service on which such PEG Channel(s) may be placed shall be determined by Charter in accordance with applicable law. The Town shall be responsible for the content, scheduling, and

administration of the PEG Channel(s), and may delegate such functions, or a portion of such functions, to a designated access provider.

SECTION 8
ENFORCEMENT, INSURANCE AND INDEMINIFICATION

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the Town has reason to believe that Charter violated any material provision of this Agreement, it shall notify Charter in writing of the nature of such violation, the section(s) of this Agreement that it believes has been violated and the details relating thereto. Subject to applicable law, if the Town does not notify Charter of any violation of this Agreement, it shall not operate as a waiver of any rights of the Town hereunder or pursuant to applicable law.

(b) Charter shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully or reasonably cured within thirty (30) days, the period of time in which Charter must cure the violation shall be extended in writing for such additional time necessary to complete the cure, provided that Charter shall have promptly commenced to cure and is diligently pursuing its efforts to cure or other remedies available under applicable law.

8.2 LIQUIDATED DAMAGES

(a) Because Charter's failure to comply with material terms of this Agreement may result in harm to the Town, and because it will be difficult to measure the extent of such injury, the Town may assess liquidated damages against Charter in the amount of Two Hundred Dollars (\$200.00) per day for each day the violation continues, provided Charter has had notice and an opportunity to cure in accordance with Section 8.1 and the Town is not pursuing other penalties or remedies. Before the Town may impose any liquidated damages set forth above, it must provide Charter notice and an opportunity to cure the alleged violation in accordance with Section 8.1. The Town shall provide Charter with written notice that it intends to assess liquidated damages as a remedy. Such damages shall be an exclusive remedy for the time period in which they are assessed; provided, however, they shall not be a substitute for specific performance by Charter or legal action by the Town once assessment of liquidated damages ceases, but shall be in addition to such specific performance or legal action. Nothing herein is intended to allow duplicative recovery from or payments by Charter or its surety.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the date after the end of the applicable cure period, including any extension of the cure period granted by the Town. Liquidated damages may not be assessed for a time period exceeding one hundred twenty (120) days per violation. The Town may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages.

(c) The amount of all liquidated damages per annum shall not exceed twenty-four thousand dollars (\$24,000) in the aggregate. With respect to liquidated damages, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or failure may only be assessed under any one material term.

8.3 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the Town under this Agreement, the Town reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Charter practiced any fraud or deceit upon the Town in the operation of its Cable System or any other activities pursuant to this Agreement; or

(2) Charter repeatedly violates, after notices and opportunities to cure, one or more of the material terms or conditions of this Agreement.

(b) A violation of a material term or condition of the Franchise shall not be grounds for revocation if the violation occurs without the fault of Charter or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Charter shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the Common Council after an appropriate public hearing that shall afford Charter due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of New York. All notice requirements shall be met by providing Charter at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Town, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Charter of mitigating circumstances or good cause for the existence of such grounds. The Town shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Charter. Charter may appeal such determination to an appropriate court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Agreement, including the enforcement provisions set forth in this Section 8.2, shall prevent Charter from filing at any time a legal action in any permissible court seeking a declaration or enforcement of Charter's rights or obligations under the Franchise. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

8.4 INSURANCE

(a) Charter shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in New York and which has an A.M. Best rating (or equivalent) no less than A-minus VII, insuring the Town from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction,

installation, reconstruction, operation, maintenance or removal of the Cable system by Charter in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death per occurrence shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The Town, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.4.

(c) Charter shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.4 and without submitting insurance certificates to the Town verifying that Charter has obtained such alternative insurance. Charter shall provide the Town with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Charter shall deliver to the Town Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, upon request by the Town.

8.5 INDEMNIFICATION

(a) Charter shall indemnify, defend, save and hold harmless the Town, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense to the extent caused by or connected with the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Charter. The Town shall give Charter timely written notice of its obligation to indemnify and defend the Town within fifteen (15) days of receipt of a claim or action pursuant to this section. The obligation to indemnify, defend, save and hold the Town harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, and penalties. If the Town determines that it is necessary for it to employ separate counsel, in addition to that provided by Charter, the cost for such separate counsel shall be the responsibility of the Town. Charter shall not indemnify the Town for any claims, damages or liability to the extent resulting from acts of willful misconduct or negligence on the part of the Town or its officials, officers, agents and employees.

(b) In order for the Town to assert its right to be indemnified and held harmless pursuant to subsection (a) above, the Town must (1) timely notify Charter of any claim or legal proceeding which gives rise to such right as specified in subsection (a) above; (2) afford Charter the

opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and (3) fully cooperate in the defense of such claim and make available to Charter all such information under its control relating thereto.

SECTION 9 **MISCELLANEOUS**

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Charter is unable in whole or in part to carry out its obligations hereunder, Charter shall not be deemed in violation of this Agreement during the continuance of such inability. Charter shall inform the Town within thirty (30) days after receipt of a request from the Town as to whether Charter has determined that a condition of Force Majeure exists.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement, Charter shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the Public Rights-of-Way in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful denial of renewal or revocation, the Town or property owner may deem any property not removed as having been abandoned and the Town may remove it at Charter's cost.

(b) During the term of the Agreement, if Charter decides to abandon or no longer use all or part of its Cable System, it shall give the Town written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. Upon abandonment of the Cable System by Charter, the Town shall have the right to require i) Charter to remove the property, ii) leave the property in place, iii) remove the property itself and charge Charter with the costs related thereto, or iv) transfer ownership of the property to the Town's designee, provided fair market value is paid to Charter.

(c) Notwithstanding the above, Charter shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Charter from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

9.3 NOTICES

Every notice or payment to be served upon or made to the Town shall be sent to:

Town of Cheektowaga
Town Hall - 3301 Broadway Street
Cheektowaga, NY 14227
Attention: Town Clerk

The Town may specify any change of address in writing to Charter. Every notice to be served upon Charter shall be sent to:

Charter Communications
20 Century Hill Drive
Latham, NY 12110
Attn: Director, Government Affairs

With a copy to:

Charter Communications
601 Massachusetts Ave., NW, Suite 400W
Washington, DC 20001
Attention: VP, Local Government Affairs & Franchising

Charter may specify any changes of address in writing to the Town. Each delivery to Charter or the Town shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Charter is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment. Additionally, Charter shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

9.5 CAPTIONS

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

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State of New York. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New York, County of Erie, or in the United States District Court for the Western District of New York.

9.7 TRANSFER OR ASSIGNMENT

The ownership or control of the Franchise granted hereunder shall not be transferred or assigned without the prior written consent of the Town, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for: 1) a transfer to an entity controlling, controlled by, or under common control of Charter; or 2) a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Charter in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for review covered by this Section, the Town shall notify Charter in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Town has not taken action on Charter's request for approval of the transfer within one hundred twenty (120) days after receiving such information, consent by the Town shall be deemed given.

9.8 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Town and Charter. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein. This Agreement may be amended only by the mutual consent of the Town and Charter and in accordance with the regulations of the New York Public Service Commission. Any amendment must be in writing and executed by the Town and Charter.

9.9 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.10 NO WAIVER OF RIGHTS

No course of dealing between the Town and Charter, nor any delay on the part of the Town in exercising any rights hereunder, shall operate as a waiver of any such rights of the Town or acquiescence in the actions of Charter in contravention of such rights, except to the extent expressly waived by the Town.

9.11 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Town and Charter shall, upon the written request of either party, agree to amend this Agreement to comply with the change in statute or regulation.

9.12 COMPLIANCE WITH LAWS

Charter shall comply with all federal and state laws and regulations.

9.13 APPROVAL OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

All terms and conditions contained herein are subject to the approval of the New York State Public Service Commission.

9.14 FILING OF FRANCHISE WITH NEW YORK STATE PUBLIC SERVICE COMMISSION

Charter shall file this Agreement and other requisite information with the New York State Public Service Commission requesting operating authorization within sixty (60) days of the Town’s acceptance.

9.15 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.16 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Charter, the Town and their respective successors and assigns. This Agreement is authorized by Resolution No. _____ dated _____, 2023 of the Town.

WITNESS our hands and official seals to this Cable Franchise Agreement.

TOWN OF CHEEKTOWAGA

By: _____

Name: _____

Title: _____

Date: _____

SPECTRUM NORTHEAST, LLC
By: Charter Communications, Inc., Its Manager

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

TOWN LOCATIONS FOR CABLE TELEVISION SERVICE