

Having previously been introduced at the **February 12, 2024**, council meeting, Council Member _____ moved the adoption of the following Ordinance, which was seconded by Council Member _____:



ORDINANCE 24-195

AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO SPECTRUM SOUTHEAST, LLC d/b/a CHARTER COMMUNICATIONS, INC, FOR THE PURPOSE OF PROVIDING SERVICES, FACILITIES AND EQUIPMENT NECESSARY TO MEET THE CURRENT AND FUTURE CABLE-RELATED NEEDS OF THE COMMUNITY WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF ALABASTER, ALABAMA

WHEREAS, Spectrum Southeast, LLC d/b/a Charter Communications, Inc. (hereinafter referred to as the “the Company”) desires to continue to provide services, facilities and equipment necessary to meet the current and future needs of the community, and on public rights-of-way within the City of Alabaster, Alabama; and

WHEREAS, the Company agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Alabaster in order to construct and maintain the transmission lines within the corporate limits of the City of Alabaster; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant a right-of-way use agreement for the provision of cable services to the community in accordance with the terms and conditions contained herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALABASTER AS FOLLOWS:

The City Council of the City of Alabaster does hereby grant Spectrum Southeast, LLC dba Charter Communications, Inc., at execution of this Ordinance by the Company, a non-exclusive right-of-way use agreement granting the limited authority to construct and maintain cable transmission lines in the City of Alabaster in and along the rights-of-way of the City, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

THIS AGREEMENT (“Agreement”) dated February 26, 2024 is made by and between Spectrum Southeast, LLC d/b/a Charter Communications, Inc. (“Charter”), a Delaware corporation and Alabaster, Alabama, (“City”) and applies to subscribers within the City.

RECITALS

WHEREAS, the City recognizes that Charter has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of Charter is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, the City and Charter have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and

WHEREAS, the Parties believe that the system and services that Charter will use in the City to provide Cable Services as defined in 47 U.S.C. 522 (6) are subject to Title VI of the Communications Act of 1934, as amended ("Title VI"); and

WHEREAS, the Parties acknowledge and agree that by entering into this Agreement the City reserves all rights it may have to regulate Charter's use of the right-of-way to the maximum extent permissible under the law and the City does not, in any way, waive or surrender any of its regulatory rights in the right-of-way by virtue of executing this Agreement.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the City and Charter agree as follows.

1. **Terms.** Words used in this Agreement which are not defined shall have the meaning ascribed to them in the Cable Communications Act of 1984, as amended by the Cable Communications Policy Act of 1992, the Telecommunications Act of 1996 and as amended from time to time. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. As used herein, the term "Video Cable" shall mean "Cable Service" as defined in the foregoing acts.
2. **Requirements.** The City hereby grants to Charter a nonexclusive Franchise which authorizes Charter to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.
 - a. **Police Powers and Conflicts with Franchise.** Charter agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of Charter that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by Charter and the City. In the event of any conflict between this Franchise and any City ordinance or regulation, this Franchise will prevail.

- b. The City shall maintain its police powers in a nondiscriminatory manner over installation of facilities in the public rights of way.
- c. Charter agrees that it must locate its Cable Service equipment in the right-of-way so as not to cause unreasonable interference with the rights of the traveling public on public rights of way, not to unreasonably limit the visibility of vehicular and/or pedestrian traffic, and not to cause unreasonable interference with the rights, if any, of property owners who adjoin any of the said streets, alleys or other public ways.
- d. Charter shall comply with the lawful application of all generally applicable provisions of the Code of Ordinances of the City, state and federal law with respect to the location of Charter's Cable Service equipment and facilities in the right-of-way. If the location selected by Charter for a specific Cable Service cabinet raises a reasonable public health, safety, and welfare concern, the City and Charter agree to work together to identify alternative locations, if available, to satisfy any technical specifications or limitations of the facilities or equipment to be placed in the right-of-way and that are acceptable to the City.
- e. Charter shall comply with the same terms and conditions as are applicable under its existing authorizations for Charter's facilities and equipment in the right-of-way with respect to all work involved in the construction, maintenance, repair and upgrade of the Cable System. Nothing in this Agreement shall in any way reduce or expand the City's authority over the right-of-way to the maximum extent permitted by law.
- f. The City agrees to subject the construction and installation of the Video Cable System to the same process and review as it subjects the installation and construction of Charter's existing communications infrastructure consistent with applicable provisions of the City ordinances, rules and regulations, state and federal law.
- g. In accordance with the City Ordinances, rules and regulations, the City agrees to process any and all applicable permits for the installation and construction of Cable System facilities in a timely and prompt manner consistent with reasonable City practices. City agrees not to unreasonably block, restrict, or limit the construction and installation of the Cable System.
- h. With respect to the Cable System of Charter located in the right-of-way and utilized to provide Cable Service:
- i. All construction practices for Cable System facilities shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended.
 - ii. All installation of electronic Cable System equipment shall be installed in accordance with the provisions of the National Electrical Safety Code.
 - iii. Antennas and their supporting structures (towers) used exclusively for the provision of Cable Service shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state and City directives, codes and regulations.
 - iv. All of Charter's Cable System equipment and facilities shall be installed, located, erected, constructed, reconstructed, replaced, relocated, or removed in accordance and in compliance with all generally applicable City Resolutions, rules and regulations, including the Uniform Regulations Pursuant to Authorization of *Ala. Code §11-88-14* Concerning Location of Utilities on City Rights-Of-Way. All such work must be performed so as not to unreasonably interfere with road improvements the City may deem appropriate to make, or unlawfully hinder or obstruct the rights of the traveling public. All cables and other Cable System equipment shall be properly installed and shall not be left unburied, unstrung, or otherwise in an incomplete state so as to interfere with the health, safety and welfare of the City or the public. In the event of a required pole relocation, Charter shall make any and all necessary adjustments within sixty (60) days of being notified by its pole provider of the completion of said pole relocations. Nothing in this Section shall be construed to limit Charter's rights to access and make use of its own or general utility easements in accordance with the terms of such easements so long as such use is consistent with applicable law.

v. Charter shall at all times employ ordinary care and shall use commonly accepted methods and devices.

vi. Charter shall comply with the provisions of the City Resolutions, rules and regulations regarding tree trimming on public rights of way.

3. Compensation to City.

3.1 During the term of this Agreement, Charter shall pay to the City a franchise fee equal to 5% of the Gross Revenue, as defined herein, which fee shall be paid quarterly and transmitted by electronic funds transfer to a bank account designated by City. Such fees shall be paid to the City within 45 days after the end of the preceding calendar quarter for which payment is made. Charter may designate that portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

3.2 Payment shall be accompanied by a written statement setting forth the Gross Revenue for the quarter for which the payment is submitted. In the event that a Franchise Fee or other sum due is not received by the City on or before the date due, Charter shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the prime rate plus one percent (1%) as of the date upon which the payment was due.

3.3 Gross revenues shall mean all revenues, calculated in accordance with generally accepted accounting principles (GAAP), derived from the operation of the cable system for the provision of cable services within the City. This gross revenue definition will exclude non-subscriber based revenue sources, such as advertising and home shopping network fees. Gross revenues shall include the following:

- a. Recurring charges for cable or video service.
- b. Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges.
- c. Rental of cable boxes and other services or video service equipment required to receive cable or video Service.
- d. Service charges related to the provision of cable service or video service including but not limited to activation, installation and repair charges.
- e. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
- f. Late payment fees or charges.
- g. In the case of video service or cable Service that is bundled or integrated functionally with other services, capabilities or applications, the portion of the video provider's revenue attributable to the other services, capabilities or applications shall be included in the gross revenue unless the cable provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

3.4 For purposes of this Agreement, Gross Revenues do not include:

- a. uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, less expenses of collection, shall be included in Gross Revenues in the period collected;
- b. discounts, refunds, and other price adjustments that reduce the amount of compensation received by Charter;
- c. Any tax, fee, or assessment of general applicability imposed on the consumer or the transaction by a Federal, State, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes, and utility user taxes;

d. revenue from the sale or rental of capital assets to non-subscribers; or

e. any revenues received by Charter for the provision of information services, or the provision of directory or Internet advertising (including yellow pages, white pages, banner advertisement, and electronic publishing).

4. Public, Educational and Governmental Programming

4.1 Upon written notice by the City to Charter to provide capacity for the City's public, educational and governmental ("PEG") programming through Charter's Cable System, the City and Charter will meet to discuss construction, equipment and costs associated with launching a PEG channel for the City, provided, however, that all costs associated with the operation of the PEG channel and the transmission of PEG programming from the City's origination point to Charter's headend or hubsite shall be the responsibility of the City. Following discussions between the City and Charter, if technically feasible, within one hundred twenty days (120) days Charter will provide one (1) downstream PEG access channel on the Cable System for use by the City for non-commercial, video programming for PEG access programming. The PEG channel may be placed on any tier of service available to subscribers in compliance with applicable law.

Upon the City demonstrating that the first channel is substantially utilized as defined below, and that upon activation of a second channel it will also be substantially utilized. The City may request, and Charter shall provide, a second PEG Channel upon 180 days advance written notice by the City. "Substantially Utilized" shall be defined as 15 continuous hours each calendar day with at least seventy-five percent (75%) of this block must be original, non-duplicated content. The second channel must also be substantially utilized in order for the City to have access to this second PEG channel. The City may be required to support a change in or addition to current City equipment now in use for PEG programming to make it compatible with Charter's cable technology.

Any operation of any PEG access channel by City shall be the responsibility of the City, and Charter's only obligation, if any, is the responsibility for the downstream transmission of such channel from its headend or hubsite to subscribers. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by Charter in the future, if any, are provided or submitted to Charter, at the Charter designated connection point, in a manner or form that is capable of being accepted and transmitted by Charter, without requirement for additional alteration or change in the format or content by Charter, over the network of Charter, and which is compatible with the technology or protocol utilized by Charter to deliver Cable Service.

4.2 If the City elects to activate a PEG Channel in accordance with Section 4.1 above, Charter shall pay the City a PEG fee determined by the City as reasonable to meet the needs and interests of the cable-related community, taking into account the costs of meeting those needs and interests, and following a public hearing, which fee shall not exceed one percent of Charter's Gross Revenues as defined by paragraph (3.3) of this Agreement for PEG. The City shall provide Charter written notice forty-five (45) days in advance of the date on which it seeks to start collecting the fee setting forth the percentage it seeks to collect. All fees paid to the City under this section shall be paid in accordance with 47 U.S.C. Section 531 (a) (4) (B) and may be used by the City as allowed by 47 USC 542 (g); further, the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by Section 3 of this Agreement provided that this PEG fee is being used in accordance with federal law. Payments made for PEG support shall be collected and paid in the same manner as outlined in Section 3 of this Agreement. The provider may designate that portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

5. Emergency Message If Charter provides access to an Emergency Alert System ("EAS") to the City, then the City shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of Charter's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The City shall hold

Charter, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys’ fees and costs.

- 6. Customer Service Standards. The City acknowledges that presently there are two or more wireline providers offering service within the City. In the event Charter is the only wireline provider offering service within the City, the City will require that Charter comply with the customer service requirements set forth in 47 C.F.R. Section 76.309 (c) as a condition of this Franchise. If Charter customers contact City with a complaint or request for assistance of any kind pertaining to Cable Service, including but not limited to billing, installation, repair or service inadequacies, City will contact Charter’s customer service representative to address the customer complaint or request. Charter will address and resolve or attempt to resolve the complaint or request as soon as possible and communicate the planned actions to the City within 24 hours of Charter’s notice of the complaint if reasonably possible. The City may contact the FCC at any time regarding concerns about Charter’s customer performance.
- 7. Removal. Upon abandonment, Charter will, at the City’s written request and within a reasonable amount of time, remove from the City rights-of-way any visible equipment that Charter used exclusively for video services and restore the property at Charter’s cost. In the event that Charter fails to timely remove any such equipment, the City shall have the right to remove said equipment and restore the property at Charter’s expense.

8. Insurance.

8.1 Charter shall maintain throughout the term of the Agreement insurance in amounts at least as follows:

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

- b. The City shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. Charter shall furnish the City with current certificates of insurance evidencing such coverage within thirty (30) days of the Effective Date, and thereafter upon request and naming the City as an additional insured on all such policies.

8.2 Self-Insurance. Charter maintains the option, at the Effective Date of this Agreement and at any time throughout the term of this Agreement, to self-insure any or all of the types and/or limits of insurance coverage described in this Section 8 and shall provide the City with a statement certifying such self-insurance, which self-insurance must be approved by the City. Consent by the City shall not be unreasonably withheld.

8.3 Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by Charter through the term of this Agreement. A thirty (30) day notice of cancellation will be provided to the contact name and email address provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact name and email address. A notice of cancellation for nonpayment of premium is not provided.

8.4 Alteration of Minimum Limits. The City may, following the Effective Date, request in writing, increasing the minimum limitation(s) of the self-insurance or insurance policy(ies) required under this

Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Birmingham Metropolitan Statistical Areas as of the Effective Date.

8.5 No Limit of Liability. The legal liability of Charter to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

9. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.
10. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall, prior to any court action, make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and the parties may use a mediator when such discussions have failed.
11. Non-discrimination. Charter shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.
12. Indemnification. Charter shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Charter in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold City, 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 Charter 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 City shall give Charter written notice of its obligation to indemnify the City within fifteen (15) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to Charter and Charter shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by Charter, Charter shall be excused from any obligation to represent the City. Notwithstanding the foregoing, Charter shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System.

12.1 Charter shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by Charter for which Charter is legally responsible, subject to any and all defenses and limitations of liability provided at law. The City shall not be required to indemnify Charter for the above acts of Charter, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

12.2 The City shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided at law. Charter shall not be required to indemnify the City for the above acts of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

13. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered either personally, by facsimile, by nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below or by U.S. certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

City of Alabaster
 1953 Municipal Way
 Alabaster, AL 35007Alabaster
 City Clerk Email: mfrey@cityofalabaster.com

Alabaster City Attorney Email: jbrumlow@brumlowlegal.com

If to Charter:

Charter Communications
Attn: Legal Department
601 Massachusetts Avenue NW
Suite 400 West
Washington, DC 20001

With copies to:

Charter Communications
Attn.: Director, Government Relations
151 London Parkway
Birmingham, AL 35211
Email: taylor.vice@charter.com

14. Compliance with Local and other Laws. Charter shall comply with all applicable laws, ordinances, and codes of the U. S. Government and the State of Alabama, and any relevant generally applicable, laws, codes and ordinances of the City. Furthermore, by signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
15. Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551). Charter will comply with all applicable state and local privacy laws during the term of this Agreement, to the extent such laws apply to Charter and to its obligations under this Agreement.
16. Taxes. Nothing contained in this Agreement shall be construed to exempt Charter’s Cable Service from any tax, levy or assessment which is or may later be properly authorized by law; provided any tax, levy or assessment on any Charter product is equally applicable to all other businesses in the City.
17. Employment. Charter hereby agrees that it shall not refuse to hire or employ, nor will it 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, handicap, religious faith or sex.
18. Books and Records City’s Right of Inspection and Audit
 - 18.1 Charter shall maintain books of account and records adequate to enable Charter to demonstrate that it is in compliance with the obligation to pay the fees described in Section 3.1 of this Agreement with respect to the Cable Service. Charter shall also maintain books and records to demonstrate Charter’s compliance with all other terms of this Agreement. Charter shall not be required to maintain books and records for compliance purposes under this Agreement for a period longer than three (3) years.
 - 18.2 The City shall have the right to audit Charter within three (3) years from which the fee payment was due. The City may recompute any amounts determined to be payable in satisfaction of the fees described in Section 3 of this Agreement with respect to Cable Service. Any additional and valid amount due the City as a result of the audit shall be paid by Charter within thirty (30) days after Charter receives a written notice from the City. The notice that the City sends to Charter shall include a complete copy of the audit report. The City may not retain any person or entity for compensation that is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.
 - 18.3 In the event that payment of any valid fees as described in Section 3.1 of this Agreement with respect to Cable Service that has been recomputed pursuant to Section 18.2 above is not made on or before the expiration of thirty (30) days following written notice by the City, Charter shall be charged

and shall pay on amounts actually owed, but not disputed amounts, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred (200) basis points of interest compounded daily from the due date for payment of the recomputed amount until paid in full. The prevailing prime rate shall be the prime rate as published by the Regions Bank of Birmingham.

18.4 Upon reasonable notice to Charter, the City or its designated representative shall have the right to examine books and records, at Charter offices or in a mutually agreeable location, directly related to Charter's compliance with its obligations under this Agreement, including the fees described in Section 3 of this Agreement. The City shall have no right to examine any aspect of the books and records that does not directly relate to Charter's obligations under this Agreement.

18.5 City acknowledges that some of the records which may be provided by Charter may be classified as confidential and therefore may subject Charter to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Charter which are not required to be made public pursuant to applicable laws. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

19. Furnishing of Information. Each party shall cooperate to make available or cause to be made available information requested by the other Party relating to this Agreement and each Party's obligations under this Agreement to the extent such information may be requested in writing by a Party and is in the possession or the control of the other Party. Any disputes between the Parties as to any information requested pursuant to this Section shall be subject to the dispute resolution process described in Section 11 of this Agreement.

20. Termination and Revocation of this Agreement.

20.1 Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Charter, 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. Charter 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 City has not received a satisfactory response from Charter, it may then seek to revoke the Franchise at a public hearing. Charter 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.

20.2 At the hearing, the City shall give Charter 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 Charter within ten (10) business days. The decision of the City shall be made in writing and shall be delivered to Charter. Charter may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

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

20.4 Upon revocation of the Franchise, Charter may sell the Cable System, remove the Cable System from the Streets of the City, or abandon the Cable System in place.

21. Inspection Rights

21.1 The City shall have the right to inspect, upon reasonable prior written notice, and at its expense, all construction and installation work performed by Charter of Cable Service specific facilities on the public rights-of-way as it shall find necessary to ensure compliance with a specified permit. Any such inspection shall be solely for the benefit of the City.

22. Amendment of this Agreement. Either Charter or the City shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the other Party, if (a) Charter concludes in its reasonable business judgment that Cable Service in the City is no longer technically,

economically or financially consistent with Charter's business objectives; or (b) a change in state or federal law permits the City to obtain greater compensation from Charter than the compensation provided for under the terms of this Agreement.

23. Assignment

23.1 Subject to applicable law, Charter may not assign or transfer this Agreement or any interest therein, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

23.2 A change in the actual working control of Charter shall be considered a transfer and shall not take place without the prior written consent of the City. Such consent shall not be unreasonably withheld or delayed.

23.3 Notwithstanding anything to the contrary, no consent shall be required, however, for (1) a transfer of an agreement or any interest therein to another party owned by or under common control with Charter, or (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of Charter in this Agreement or the system in order to secure indebtedness.

23.4 Any request for consent to a transfer of this Agreement or change in control of Charter shall be handled by the City in accordance with applicable federal and state law.

23.5 In the event of a transfer of this Agreement the transferee or assignee must agree, in writing, to be bound by the terms of this Agreement subject to applicable law.

24. Entire Agreement. This Agreement constitutes the entire agreement between the City and Charter with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and Charter regarding the subject matter hereof.

25. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

26. Miscellaneous.

26.1 Charter and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

26.2 The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

26.3 Charter and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

26.4 Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

26.5 If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.

27. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

28. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

29. Compliance with this Agreement. Charter shall not be excused from complying with any of the terms, conditions, and provisions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms, conditions, or provisions.
30. Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by a force majeure event, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
31. Severability. If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.
32. Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.
33. Choice of Law. This Agreement shall be construed and interpreted according to the Federal law and the laws of the State of Alabama.
34. Term. The Agreement shall be for a term of five (5) years, commencing on the Effective Date of this Agreement as set forth in Section 35. This Agreement will be automatically extended for an additional term of five (5) years from such effective date, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least one hundred eighty days (180) before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.
35. Effective Date. The Agreement will take effect and be in full force from such date of acceptance by Charter recorded on the signature page of this Agreement. This Agreement shall expire on February 25, 2029 unless extended in accordance with Section 34 of this Franchise or by the mutual agreement of the parties.
36. Other Agreements. 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 City 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 City, the City shall, within thirty (30) days of a written request from Charter, modify this Agreement to insure that the obligations applicable to Charter are no more burdensome than those imposed on the new competing provider. If the City fails to make modifications consistent with this requirement, City's Agreement shall be deemed so modified thirty (30) days after Charter's initial written notice. As an alternative to the Agreement modification request, Charter shall have the right and may choose to have this Agreement with the City deemed expired thirty (30) days after

written notice to the City. Nothing in this Agreement shall impair the right of the Charter to terminate this Agreement and, at Charter’s option, negotiate a renewal or replacement agreement, license, consent, certificate or other authorization with any appropriate government entity.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this 26th day of February, 2024.

Spectrum Southeast, LLC
By: Charter Communications, Inc., Its Manager

By: _____ Date: _____
Name: Paul Abbott
Title: Vice President, Government Affairs

THIS ORDINANCE IS ADOPTED AND APPROVED AND EXECUTED THIS 26TH DAY OF FEBRUARY 2024.

ATTEST:

CITY OF ALABASTER

J. Mark Frey, City Clerk

Sophie Martin, Council President

APPROVED

Scott Brakefield, Mayor