



PRIVILEGED ATTORNEY-
CLIENT COMMUNICATION

August 23, 2024

Joe Wetmore
Town Board
Town of Lansing
29 Auburn Road
Lansing, NY 14882

RE: Town of Lansing: Executive Summary of Cable Franchise Agreement with Charter

Dear Joe:

I am pleased to inform you that we have reached tentative agreement with Charter regarding a cable franchise for the Town of Lansing. The following is an executive summary of the major provisions of the Cable Franchise Agreement (the "Agreement") negotiated with Amanda Lanham, Director of Franchising for Charter. While there are many other important provisions contained in the Agreement, I have limited this summary to the major items outlined herein. The Agreement is, of course, subject to the approval of the Town Board.

1. Franchise Fees (Sections 1.16 and 6)

Municipalities are entitled under federal and state law to assess a franchise fee of up to five percent (5%) of the cable operator's "gross revenues" for cable services provided within the municipality. The Town currently assesses a two percent (2%) fee on Charter. This fee has been increased to the maximum five percent (5%) franchise fee permitted under law in the Agreement, per our discussions with the Town Board. The definition of "gross revenues" in the Agreement includes an itemized list of 22 separate revenue sources that will maximize the Town's franchise fee revenue. This list includes all current eligible revenue sources as well as all foreseeable future sources and a "catch all" item to capture any other future revenue sources that are not currently foreseeable. The Town's previous cable franchise agreement with Charter did not enumerate any revenue sources.

While several relevant variables such as rate changes, subscriber activity, subscriber penetration, and related issues can and will impact the Town's franchise fees, the increased franchise fee percentage and expanded definition of "gross revenues" should amount to a considerable increase in the Town's franchise fee revenues during the term of the Agreement. Please note that all franchise fees are passed through to Charter cable subscribers as a separate line item on their bills. Franchise fees will be paid to the Town on a quarterly basis.

The Agreement also requires that Charter submit a franchise fee report within ten (10) days of each quarterly franchise fee payment. The report must contain line items for sources of revenue

received by Charter and the amount of revenue received from each source. If Charter fails to make its franchise fee payments on time, interest will accrue at a rate equal to the then-current prime rate as published by the *Wall Street Journal*.

In addition to franchise fee revenue, the Agreement ensures franchise fee accountability. Section 6.4 of the Agreement permits the Town to conduct an independent review or audit of Charter's records to determine whether Charter has paid franchise fees accurately to the Town over the previous six (6) years. This is an improvement over the Town's previous cable franchise agreement, under which the Town was permitted to review only three (3) years of franchise fees. Section 6.4 further provides for the means by which Charter and the Town will resolve any disputes regarding franchise fee underpayments uncovered in the course of such a franchise fee review or audit. Should the franchise fee review or audit uncover any underpayment, Charter must pay the Town the underpaid amount plus interest as described above.

2. Right-of-Way Protections (Sections 3 and 5)

The Agreement provides many protections of the Town's public rights-of-way. For example, Charter agreed to repair any damage to public or private property by Charter or any of its contractors or subcontractors within 10 business days. The Town's previous cable franchise agreement with Charter did not include a timeframe for repair, instead requiring repair to be made "as soon as reasonably possible." In addition, the Agreement includes safety standards, the provision of Charter's service area maps to the Town upon request, requirements for disconnection and relocation of Charter's wires and equipment, removal of equipment in the event of an emergency, and the need for Town approval for cutting down any trees in the public rights-of-way.

3. Cable System Requirements and Service Area (Sections 3 and 5)

The Agreement provides technical requirements for the cable system serving the Town. It requires the system to be built for digital television standards and meet or exceed all technical performance standards of the Federal Communications Commission ("FCC"), the National Electric Code and the National Electrical Safety Code. It also requires that Charter perform tests on the cable system in accordance with the requirements of the FCC or any other governmental body.

Furthermore, the Agreement requires that Charter make cable service available to every area in which there is a minimum of 20 residential dwelling units per linear aerial plant mile, subject to certain conditions, which is consistent with the Town's previous cable franchise agreement with Charter. Any dwelling unit within 150 feet aerial distance of Charter's main distribution line is entitled to a standard installation rate. For any unit beyond 150 feet, Charter is required to provide service if the subscribers requesting service agree to share the costs of the extension in accordance with the regulations of the New York Public Service Commission ("NYPSC").

4. Services to Community Facilities (Section 7.1 and Exhibit A)

Charter agrees to provide, without charge and on a voluntary basis, a cable service drop and basic cable service with any necessary equipment for viewing to each Town facility designated in Exhibit A of the Agreement. Exhibit A includes seven Town facilities. Such facilities must be within 150 feet of Charter's main distribution line in order to be eligible to receive service. Currently, the Town does not receive any such complimentary services.

5. Customer Service Standards (Section 4)

The Agreement includes a set of comprehensive and enforceable customer service standards. These standards adopt the recommendations of the FCC and the regulations of the NYPSC. They are enforceable through the assessment of liquidated damages (monetary fines). See Section 7 below.

6. Public, Educational and Governmental (“PEG”) Channel (Section 7.2)

Federal law grants municipalities the right to dedicated public, educational and governmental (“PEG”) channels. In the Agreement, Charter agrees to make available channel capacity to be used for PEG access. Charter must provide this channel capacity within one year of written request by the Town, in accordance with the requirements of the federal Cable Act and NYPSC regulations. The Town or its designee would have complete control over the content, scheduling, and administration of the PEG channel and may delegate these functions to a designated access administrator.

7. Liquidated Damages for Violations (Section 8.2)

It is critical that the Agreement have practical mechanisms to enforce the obligations described in this summary and the other obligations contained in the Agreement. Section 8.2 of the Agreement allows for monetary fines, also known as “liquidated damages,” in the amount of \$200 per day for each violation of the Agreement. The Town may assess such monetary fines after providing Charter with written notice and allowing Charter thirty (30) days to correct the violation, unless the violation is such that it cannot be cured within thirty (30) days, in which case the cure period may be extended. Such monetary fines can be assessed for a maximum time period of 120 days. The inclusion of liquidated damages is an improvement over the Town’s previous cable franchise agreement with Charter, under which the Town’s only enforcement mechanism was revocation of the franchise.

8. Length of Franchise Term (Section 2)

Due to the fact that cable technology is constantly changing and we cannot predict the state of this technology in the future, we recommend the shortest possible length of term for the Agreement. For Charter, this is 10 years from the date on which the Agreement is approved by the NYPSC.

This concludes the executive summary of the major items contained in the Agreement. There are many other provisions in the Agreement, but we have highlighted the major items. Thank you for your cooperation in this effort. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me directly.

Sincerely yours,

Michael D. Roberts

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