

FRANCHISE AGREEMENT

BETWEEN

CITY OF ROANOKE RAPIDS
NORTH CAROLINA

AND

HELICON PROPERTIES I ACQUISITION COMPANY, LLC

October, 2005

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ORDINANCE NO. 2005.39

AN ORDINANCE TO GRANT A FRANCHISE AGREEMENT
TO HELICON PROPERTIES I ACQUISITION COMPANY, LLC
PURSUANT TO NCGS 160A-76

WHEREAS, the City of Roanoke Rapids desires to enter into a franchise agreement with Helicon Properties I Acquisition Company, LLC;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROANOKE RAPIDS, NORTH CAROLINA, that the Mayor of the City of Roanoke Rapids is authorized to execute a franchise agreement with Helicon Properties I Acquisition Company, LLC following two required readings, in the following form:

CABLE TELEVISION
FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____ 2005, by and between the City of Roanoke Rapids, hereinafter referred to as "City" and Helicon Properties I Acquisition Company, LLC, locally known as Charter Communications, hereinafter referred to as "Franchisee."

WHEREAS, the City is authorized to grant one or more nonexclusive, revocable, franchises to construct, operate and maintain a cable television system within the City;

WHEREAS, Franchisee's franchise will be renewed and Franchisee will continue to operate and maintain a cable television system as set forth herein;

WHEREAS, the City, after due evaluation, has determined that it is in the best interest of the City and its residents to grant a Franchise to Franchisee for a ten (10) year term.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

I. GRANTED TO HELICON PROPERTIES I ACQUISITION COMPANY, LLC

- A. Purpose. The purpose of this section is to award a Franchise to Franchisee for a cable television system to provide cable television services to residents of the City. Franchisee shall use its best efforts to provide a cable television system and offer cable television services that meet industry standards.
- B. Enactment. Franchisee is hereby granted a nonexclusive Franchise to operate a cable television system solely to provide cable services within the City in accordance with the Cable Television Ordinance ("Cable Ordinance"), this Franchise, the rules and regulations adopted by the City Council, all ordinances of the City and all applicable rules and regulations of the Federal Communications Commission. The Cable Ordinance may be amended by the City, provided, however, that any amendment to the Cable Ordinance binding on the Franchisee shall be confined to changes which do not materially alter the rights and obligations of the Franchisee under this Franchise Agreement and the Cable Ordinance as it exists on the date of this Franchise Agreement, unless Franchisee agrees in writing to be bound by such amendment. Further, in the event of conflict between the City's rules, regulations or ordinances and the provisions of this franchise, or the FCC or federal cable law, the ordinance, FCC provisions and federal cable law shall prevail,

provided however that the Franchise Agreement shall prevail over any conflicting amendments to the city's cable ordinance enacted after the effective date of the Franchise Agreement. Nothing in this Franchise shall be construed to prohibit the Franchisee from offering any service over its cable system that is not prohibited by federal, state or local law.

- C. **Effective Date.** This Franchise Agreement shall become effective sixty (60) days after execution by the parties. Immediately upon the taking effect of this Franchise Agreement, the prior Franchise granted to Franchisee shall be superseded and of no further force and effect; except for vested rights and issues relating to billings and the City's rights to franchise fees or other taxes, fees, bonds or insurance.
- D. **Public Right of Way.** For the purpose of operating and maintaining a cable television system in the City, Franchisee may erect, in, over, under, or upon, across, and along the public right of way within the City such wires, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other equipment as are necessary and appurtenant to the operation of the cable television system in the City and in accordance with this Franchise Agreement and the Cable Ordinance.

II. RIGHT OF CITY TO ISSUE FRANCHISE

Franchisee acknowledges and accepts the legal right of the City to issue this Franchise Agreement.

III. TERM

The term of this Franchise Agreement shall be for a period of ten (10) years from the effective date, unless sooner revoked as provided for in the Cable Ordinance, at which time it shall expire and be of no further force and effect.

IV. FRANCHISE NONEXCLUSIVE

This Franchise Agreement shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time during the term of this Franchise Agreement or extension thereof, if any, such additional Franchises for a cable television system as it deems appropriate. In the event the Franchising Authority grants one or more franchises or similar authorizations for the construction, operation and maintenance of any communication facility, or if the City so constructs and operates such, which shall offer services substantially equivalent to services offered by the Franchisee, it may not make the grant on less burdensome terms. If the Franchisee believes the said other franchises contain provisions imposing less burdensome terms than are imposed on the Franchisee, the Franchisee may petition the Franchising Authority for a modification of this Franchise as to insure fair and equal treatment by this Franchise and said other agreements and to provide all other parties equal treatment under the law. In requesting such modifications, the Franchisee shall file a petition seeking to amend the Franchise. Such petition shall:

1. Indicate the presence of a franchised competitor;
2. Identify the basis for Franchisee's belief that certain provisions of the Franchise place the Franchisee at a competitive disadvantage;
3. Identify the burdens to be amended or repealed in order to eliminate the competitive disadvantage.

The Franchising Authority may not unreasonably withhold granting the Franchisee's petition.

V. INCORPORATION OF THE CABLE ORDINANCE BY REFERENCE AND RESOLUTION OF CONFLICTS

All terms, conditions and provisions of the Cable Ordinance shall be deemed to be embodied in this Franchise Agreement, and the express terms of said Cable Ordinance shall prevail over conflicting or inconsistent provisions of this Franchise Agreement; provided however that the Franchise shall prevail over conflicting amendments to the Cable Ordinance enacted after the execution of this Franchise Agreement.

VI. DEFINITIONS

All definitions set forth in the Cable Ordinance pertain to this Franchise Agreement and shall be relevant to the purposes and meaning of this Franchise Agreement.

VII. SERVICE AREA

- A. Service Area. The service area of Franchisee shall be the entire corporate boundaries of the City and include any areas annexed to the City in the future.
- B. Service to Residents. Franchisee shall make cable television service available to all residents of the City that received cable service on the effective date of this Agreement. Additional areas will be constructed as specified below.

Franchisee shall extend service within seven (7) days of a request to all new dwelling units that are passed by the existing cable system and require a standard one hundred and twenty-five feet (125') drop. New dwelling units requesting service that are passed by the existing cable distribution system and requiring a non-standard drop will be served within fourteen (14) days of a request; provided, however, that all non-wired dwelling units which require plant extensions will be served within thirty (30) days, weather permitting, following the later of: 1) a request for services by a subscriber; or 2) completion of any necessary pole or trench permitting process and following procurement of all necessary easements and/or access from developer. Franchisee shall use its best efforts to provide service as soon as possible and Franchisee shall request all permits, easements, and/or access in a timely manner. Franchisee shall construct the cable system, at its cost, to all areas that have twenty-five (25) unserved dwelling units per mile. In other cases, the cost of construction shall be allocated based on the following formula. If a request for extension of service into an area requires the construction of cable plant which does not pass at least twenty-five (25) unserved dwelling units per plant mile, or twenty (20) subscribers per plant mile who have committed to purchase a minimum of one year of cable service, Franchisee and subscribers will each bear their proportionate share of construction costs. For example, using the twenty-five (25) dwelling units per mile formula, if there are twenty (20) dwelling units per mile, Franchisee's share will equal one half of the construction cost. The remaining cost will be shared equally by each subscriber served by the plant extension. This line extension formula shall also be applied to a portion of a mile meeting proportionate density requirement. The cost sharing plans described above would be utilized if there were less than the proportionate share of dwelling units or subscribers per the portion of a mile needed to reach the dwelling units.

- C. Subscriber Drops. Franchisee agrees to provide subscribers with a standard drop of one hundred and twenty-five feet (125'). Service in excess of one hundred and twenty-five feet (125') shall be charged to the customer as such cost exceeds the normal cost of a standard drop. Upon request, Cable Service shall be made available to new residents passed by Grantee's distribution cable within seven (7) days after occupancy. City shall use reasonable efforts to notify Franchisee of new developments. Franchisee shall use its best efforts to construct in new developments at the same time as the utilities.

- D. **Commercial Service.** Franchisee shall, upon request, make service available to all commercial/industrial establishments that are located within one hundred and twenty-five feet (125') of the system at Franchisee's standard commercial installation rate expense. For commercial/industrial establishments served underground or for aerial extensions beyond one hundred and twenty-five feet (125'), Franchisee shall, upon request of a commercial/industrial establishment, make service available on the basis of a capital contribution from the requestor in aid of construction, including cost of material, labor, and easements. It is herein acknowledged that certain programming service may not be available to commercial establishments pursuant to applicable law or the Franchisee's agreements with its program suppliers and that certain other programming shall be available to non-residential Subscribers at commercial rates only.
- E. **House Moving.** Franchisee shall, upon the request of the City, move and replace its facilities to accommodate house moves conducted on behalf of the City. Franchisee, within fourteen (14) days of receipt of the written request of a City permit holder or property owner, shall move and replace its facilities to accommodate house moves or other structural changes at a reasonable cost to the property owner or permit holder.

VIII. SYSTEM AND CAPACITY

- A. **System.** Franchisee will maintain the cable system that will deliver a minimum of 100 channels and provide cable television signals processed at 750 MHZ or higher, utilizing a fiber to the node design or better.
- B. **Construction Oversight.** During construction, Franchisee shall inspect one hundred percent (100%) of all fiber and coaxial cable to insure that it meets specifications of the Cable Ordinance, this Franchise Agreement, and the Federal Communications Commission. During construction, Franchisee shall designate an employee to act as a company representative by responding to public service complaints on a daily basis and provide the City with the person's name and telephone number. Franchisee shall use its best efforts to minimize traffic disruption during construction and coordinate construction scheduling with the City
- C. **Compliance with Applicable Law.** In constructing, operating and maintaining the system, Franchisee shall at all times comply with this Franchise, the Cable Ordinance, the rules and regulations of the FCC and all applicable laws and regulations.
- D. **Drop Audit.** All Franchise's drops shall meet National Electric Code and the National Electric Safety Code. Drops not meeting such standards shall be replaced when found to be substandard. Franchisee shall check subscriber drops for compliance with this section during repair calls. Upon subscriber request, Franchisee shall check to ensure that a subscriber's tap meets the appropriate signal strength level.
- E. **Equipment Quality.** Equipment used for the distribution system, head end and reception facilities shall be of good and durable quality and be serviced and repaired on a regular basis.
- F. **Emergency Alert.** Franchisee shall comply with the requirements of the Federal emergency alert system as specified by the FCC (47 CFR Part 11.1, et seq.)
- G. **Parental Control Devices.** Franchisee shall provide to subscribers, upon request, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the audio portion of such channels to the extent that both are unintelligible. In accordance with the Cable Act [47 U.S. C. Section 569], Franchisee agrees to block the video and audio portions of all primarily adult programming services.

H. Performance Testing.

1. Franchisee shall perform all system tests and maintenance procedures as required by and in accordance with: the FCC; this Franchise Agreement; and Franchisee's standards of good operating practice. Upon request by the City in advance of any test(s), Franchisee shall notify the City, at least three (3) working days prior to the date of the test(s), of the time and place of the test(s) so that the City may arrange for the presence of an expert consultant acceptable to the Franchisee at the test locations. Upon the request of the City, Franchisee shall provide the results of all such tests to the City no later than fourteen (14) days after completion of the testing.
2. Whenever requested by the City, Franchisee shall test, analyze, and report on the performance of its cable television system at specific sites within the City that the City has identified as having service quality problems. Franchisee shall initiate corrective action on any problems found through the testing within twenty-four (24) hours and shall use its best efforts to correct the problem in forty-eight (48) hours, it being recognized some corrections may take longer. The City may require additional tests, full or partial repeat tests, or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the City no later than ten (10) business days after completion of the test(s). The City or its designees shall have the right to be present and make professional testing requests of Franchisee's personnel who will perform the testing, in said testing. The report shall include the following information: the nature of the complaints which precipitated the special tests; what cable television system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and the methods by which said complaints were resolved. Said tests and analyses shall be conducted by a qualified technician who shall sign all records of the special tests and forward same to the City with a report interpreting the results of the tests and recommending what actions should be taken. If requested by the City, Franchisee shall have a qualified engineer to review such test results. All such tests shall be at the expense of Franchisee. The City shall bear the costs of the tests if no problem is found after sufficient testing as agreed by both parties.

I. Technical Standards. The cable television system permitted to be operated hereunder shall be installed and operated in conformance with the Cable Ordinance, this Franchise Agreement and FCC rules and regulations. Any FCC technical standards or guidelines related to the cable television system and facilities shall be deemed to be regulations under this Franchise Agreement.

J. Employee Identification. Franchisee shall provide a standard photographic identification document to all employees, including employees of subcontractors, who shall be in contact with the public. In addition, Franchisee shall use its best efforts to identify all field personnel and vehicles that are operating under the authority of Franchisee.

K. Stereo and Embedded Signals. The system shall have the capability and shall pass Broadcast Television Systems Committee (BTSC) stereo signals or other stereo signals for those broadcast, satellite, and locally originated services that transmit them. As required by the Federal Communications Commission, Franchisee shall retransmit whole channels (except advertising inserts) received by the system (including, but not limited to, signals embedded in the vertical blanking interval).

L. Outage Reports. Upon request, Franchisee shall provide reports to the City of service outages, persistent maintenance problems, and customer complaint resolution. Franchisee shall notify the City if there are any systems or service interruption problems

that involve a node outage or affect fifteen percent (15%) or more of the subscribers in service area for more than twenty-four (24) hours except for force majeure.

M. Mid-Term Technical Review. Notwithstanding anything to the contrary, the City may amend the Franchise so as to require the Franchisee to incorporate technological enhancements to the system (Enhancements).

- (a) The City may conduct a Mid-Term Technical Review of the Grantee's Cable System once at any time, but not prior to the beginning of the fifth year of the Franchise. The Grantee shall fully cooperate and assist the City in conducting such review.
- (b) Purpose: The Grantee and the City acknowledge that the technology of cable television systems is an evolving field. Therefore, in addition to the rights of the Grantee under Section 625 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Sec. 545), the City may, within one hundred eighty (180) days from the commencement of the Mid-Term Technical Review, institute public proceedings upon not less than thirty (30) days written notice to the Grantee and the public, to review the state of technology in the cable television industry and the status of Grantee's cable system in particular.
- (c) To the extent that such proceedings disclose possible system improvements which appear to the City to be reasonable and appropriate for possible implementation, the Grantee shall, within ninety (90) days of a written request from the City to consider such system improvements, provide to the City an analysis of the estimated costs and potential benefits from the provision of such system improvements. If the City and Grantee determine that such improvements are economically and technically feasible, the Grantee and the City agree to enter into good faith discussions to determine how such improvements will be implemented. The City hereby acknowledges that an extension of the franchise may be required as a condition to implementing any such improvements to the cable system in order to provide the Grantee with an ample opportunity to recoup its investment in such improvements.

IX. CONSTRUCTION

- A. Construction Methods. Franchisee shall construct the system in accordance with Franchisee's construction practices. The Franchisee shall follow the permitting process as specified by the City. Internal wiring shall comply with the City's electrical code. Within six (6) months of the effective date of the Franchise Agreement, Franchisee shall provide the City with a highlighted map of the cable system that shows the location of the cable system facilities in the Franchise Area. Updates of the map shall be provided upon request.
- B. Underground Construction. Franchisee shall participate in and use the local utility identification service (e.g. ULOCO). Franchisee shall participate in the area's utility committee and send a representative to meet regularly with the committee to discuss issues related to utilities, rights of way and service coordination.
- C. Consumer Compatibility. Franchisee shall comply with FCC consumer compatibility rules and guidelines and shall use its best efforts to provide subscriber friendly technology.

- D. **Quality of Construction.** Construction, installation, operation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner, in accordance with then-current technological standards and the Cable Ordinance.
- E. **Right of Inspection of Construction.** The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Franchise Agreement and the Cable Ordinance and to have such tests performed and only Grantee's representatives will manipulate the plant for such tests upon reasonable notice, as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and the Cable Ordinance and other pertinent provisions of law.

X. **SYSTEM SERVICES**

- A. **Residential Subscriber Services.** Franchisee shall provide the same general mix, level, and quality of programming as provided on the effective date of this Franchise Agreement.
- B. **Cable Drops and Monthly Service.** Franchisee shall provide free cable drop(s) and free, basic and expanded services, excluding premium services and pay-per-view, to all public schools, City owned or leased buildings (when such buildings are leased for municipal purposes), libraries, police stations and fire and rescue stations within one hundred and twenty five (125) feet of Franchisee's distribution cable. Free drops will be provided to those buildings receiving such service on the effective date of the Franchise. Franchisee shall also provide such drops and service to the Roanoke Canal Museum and the City fire station, which will be built in the southern portion of the City. Additional buildings, meeting the above criteria, will receive free drops up to one hundred and twenty-five feet (125') in length. For new drops in excess of one hundred and twenty five feet (125') the City or the affected institution shall reimburse the Franchisee for the additional drop footage at the Franchisee's own cost of construction. Franchisee shall also provide, at no cost, any converters or other equipment necessary to view such services. Franchisee shall internally wire any new, staffed municipal building at its own cost. Franchisee will be notified during any municipal building construction of the opportunity to prewire such building during the construction phase. Franchisee will not be required to install free wiring if Franchising Authority fails to notify and afford Franchisee reasonable time to install wiring during the construction of new buildings or offices.
- C. **Educational Services.** Franchisee shall provide "Cable in the Classroom" and guides to the schools in City served by Franchisee, free of charge, to the extent available to Franchisee.
- D. **Internal Wiring.** Franchisee shall connect its service to subscribers who have installed internal wiring not owned or installed by Franchisee, providing such wiring meets FCC leakage standards. Franchisee shall make technical specifications for such installation available upon request of subscribers.

XI. **ACCESS NETWORK**

In order to develop and promote access programming for the system, Franchisee hereby agrees to provide the following:

- A. **Access Channels.** Franchisee shall within six months, upon the written request of the City, provide access channels as specified below:
 - 1. No less than one (1) downstream channel for educational access for the City.
 - 2. No less than one (1) dedicated downstream channel solely for government access for the City.

- B. Access Channels on Basic. All access channels shall be placed on the basic tier of service. The Franchisee shall use its best efforts to maintain the cable channel positions of the access channels throughout the term of this Franchise Agreement. Franchisee shall not move or otherwise relocate access channels without providing thirty (30) days prior written notice to the City.
- C. Government Access Equipment and Support. Within sixty (60) days of the effective date of this Franchise Agreement, the Franchisee agrees to provide the City with modern character generation equipment and related software. The Franchisee agrees to provide the City with training in character generation equipment use and program planning to persons designated by the City. Franchisee shall provide a high-speed link from City Hall for delivery of the character generator signal to the headend and the equipment necessary to distribute such signal on the government access channel.
- D. Publicity. Franchisee agrees to provide the following publicity services at its own expense:
 - 1. If the Franchisee offers an electronic or written guide to subscribers, then a generic listing of the type of access programming being provided will be listed free of charge throughout the term of the Franchise Agreement.
 - 2. When provided by the City, Franchisee shall include written information about educational and government access programming and activities in its customer information materials given to new subscribers. The City shall coordinate the type and size of such information with the cable system government relations representative.
- E. Signal Quality. Franchisee shall assure that the access channel delivery system from the origination site specified herein meet the same technical standards as the remainder of the system as set forth herein. Franchisee shall use its best efforts to respond to any signal quality problems on the access channels or origination line as soon as possible. The signal quality from the character generator site at City Hall and/or the site selected by the schools shall be tested upon request and the results shall be promptly provided to the City or the schools.
- F. Origination Equipment. In the event that Franchisee changes its cable format, size or technical requirements, or transmits digital signals, and at the election of the City and/or the schools, Franchisee shall make any necessary adjustments to facilities and equipment to allow the origination site and character generation from City Hall to continue programming given Franchisee changes, at no cost or expense to the City or the schools, so that Franchisee shall be able to transmit clearly on the channels reserved for access use.

XII. INTERCONNECTION

Within six (6) months of a request by the City, or such longer period as designated by the City, Franchisee will make a good faith effort to negotiate an interconnection of its cable system with systems of other franchised cable operators, feasibility and fiscal costs allowing, or allow other franchised cable operators to interconnect with the Franchisee's cable system for the purpose of distributing access programming. Such other franchised cable operators or other entities shall bear the reasonable costs associated with such interconnection. An interconnection should be implemented at the closest technically feasible location on Franchisee's cable system with the result that access channels of high signal quality may be transmitted between such cable systems for the least cost. Franchisee will not be required to interconnect with an overbuilder.

XIII. NON-DISCRIMINATION

Franchisee agrees that it shall not discriminate in providing service to the public or against any employee or applicant for employment because of race, color, creed, religion, sex, disability, national origin, age, or marital status. In the employment of persons, Franchisee shall fully comply with applicable local, state and federal law, and shall take appropriate action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, disability, national origin, age, or marital status.

XIV. RATES

The City shall have the ability to regulate in accordance with Federal law. Franchisee agrees to provide a senior citizen rate discount of ten percent (10%) to senior citizens during the term of the Franchise Agreement that receive and show proof of an Annual Entitlement Letter from the Social Security Administration.

XV. FRANCHISE RENEWAL

Subject to Section 626 of the Cable Act [47 U.S.C. Section 546] as amended, this Franchise Agreement may or may not be renewed for due cause, it being understood that incumbent operators have a presumptive right to a renewal process.

XVI. POLICE POWERS

In accepting this Franchise Agreement, Franchisee acknowledges that its rights hereunder are subject to the general ordinance making powers of the City to adopt and enforce ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power. This franchise is a contract and except as to those changes which are the result of the City's exercise of its general ordinance making authority, the City may not take any action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise Agreement must be made in writing by the Franchisee and the City.

XVII. FRANCHISE FEE AND PERFORMANCE BOND

- A. Franchise Payments. Franchisee shall pay to the City a franchise fee of five percent (5%) of gross revenues or the maximum amount permitted by law; whichever is higher, during the period of its operation under the Franchise, pursuant to the provisions of the Cable Ordinance. Franchisee shall use its best efforts to inform the City of any increase in the Franchise Fee. In no event shall Franchisee pay a franchise fee greater than the maximum permitted by law. Such increase shall take effect on the next billing cycle in which the higher fee shall be placed on subscriber's bill after notification by the Franchising Authority by written notice to the Franchisee, but no less than sixty (60) days following receipt of notice. If franchise fee payments are late, Franchisee shall pay the City interest on any such late payment at an annual rate of the prime rate percentage at the time of the late fee penalty each month or part thereof that the payment is late.
- B. Bonds. Franchisee shall furnish construction bonds to City as specified in the Cable Ordinance. Within thirty (30) days of the effective date of this Franchise Agreement, Franchisee shall furnish a performance bond of ten thousand (\$10,000) dollars. The performance bond shall be replenished within thirty (30) days of use by the City. The performance bond shall be maintained during the life of the Franchise, to guarantee the faithful performance of all its obligations under this Franchise Agreement and the Cable Ordinance. The Franchisee shall have the right to cure any material compliance issue as provided for in Section 19(B) before a City claim is made against a bond.

XVIII. REGULATION AND REPORTS

- A. **Regulatory Authority.** The City shall exercise appropriate regulatory authority under the provisions of the Cable Ordinance and this Franchise Agreement. Regulation may be exercised through the City Manager or his designee.
- B. **Acceptance.** Franchisee, by accepting the rights hereby granted, agrees that it shall perform and keep all acts and obligations imposed, represented or promised by the provisions of this Franchise Agreement, and the Cable Ordinance.
- C. **City Council Meetings.** Upon request, a representative of the Franchisee shall attend meetings of the City Council.
- D. **Reports to the City.** Franchisee shall timely file with the City Clerk all reports required by the Cable Ordinance, including but not limited to the following:
 - 1. Franchisee shall maintain, for at least three (3) years, an annual summary of all written requests for service calls and letters of complaint that generate a work order or written response. Such summary shall include the number and nature of problems and their disposition. Upon request by the City for such summary or summaries, Franchisee shall provide to the City, within fourteen (14) calendar days following such request, a summary.
 - 2. At the time of payment of the quarterly franchise fee, Franchisee shall file a summary of franchisee fees, also known as a franchise fee statement, itemized by source or category of revenue, of all gross revenue derived within the City during the period for which the quarterly franchise fee payment is made. Franchisee will provide such franchise fee statements for the previous three year period in accordance with the North Carolina statute of limitations. The franchise fee statement shall be verified by a financial representative of the Franchisee and shall cover the following periods and be due on a quarterly basis as follows:

<u>Quarter</u>	<u>Due Date</u>
January 1 - March 31	May 15
April 1 - June 30	August 15
July 1 - September 30	November 15
October 1 - December 31	February 15
 - 3. Once a year, due on February 15, Franchisee shall furnish the City Clerk a Corporate annual statement of income certified by a financial officer of Franchisee or Certified Public Accountant.
- E. **Insurance and Indemnification.** Franchisee shall maintain insurance and provide indemnification as provided for in the Cable Ordinance.
- F. **Standards.** Franchisee shall meet the FCC's Customer Service Obligations [47 C.F.R. 76.309]. Upon request, Franchisee shall provide to the City quarterly management data, including data from any service centers used by the Franchisee related to compliance with the customer service standards of this Franchise Agreement, the Cable Ordinance and the FCC's Customer Service Standards. At such time as the FCC no longer promulgates consumer service obligations, the FCC standard in effect on the effective date of this Franchise Agreement will remain in force.
- G. **Franchisee Contacts.** Within thirty days of the effective date of this Franchise Agreement, Franchisee shall provide the City with the Franchisee's e-mail address and contact persons and telephone numbers for Franchisee employees that the City should notify regarding customer compliance, general performance and the emergency alert system. Franchisee

shall keep the City informed of any changes in the contact persons and telephone numbers.

XIX. REMEDIES

- A. **Schedule of Liquidated Damages.** Because Franchisee's failure to comply with certain material provisions of this Agreement and the Cable Ordinance shall result in injury to the City or to subscribers, and because it shall be difficult to estimate the extent of such injury, the City and Franchisee hereby agree that the liquidated damages stated below represent both parties' best estimate of the damages resulting from the specified injury.
- B. **Violations.** For the violation of any of the following, the City shall notify Franchisee in writing, certified mail-return receipt requested of the violation. The City shall provide Franchisee with a detailed written notice of any Franchise violation upon which it proposes to take action, and there shall be a sixty (60) day period within which Franchisee may demonstrate that a violation does not exist or cure an alleged violation or, if the violation cannot be corrected in sixty (60) days, submit a plan satisfactory to the City to correct the violation. If an alleged violation exists, and no cure or action on a plan acceptable to the City has been received by the City within sixty (60) days, such liquidated damages shall be chargeable to the performance bond, if not tendered by Franchisee within thirty (30) days. Franchisee may petition the City Council for relief from any assessed damages. The imposition of liquidated damages shall not preclude the City from exercising the other enforcement provisions of the Cable Ordinance, including revocation, or other statutory or judicially imposed penalties. Liquidated damages may be imposed as follows:
1. For failure to extend service in accordance with Franchise: \$50/day for each day the violation continues;
 2. For failure to comply with requirements for access and the institutional network: \$50/day for each day the violation continues;
 3. For failure to submit reports, maintain records, provide documents or information: \$50/day for each day the violation continues;
 4. For continuing violation of customer service standards (after notice) required by this Franchise Agreement, the Cable Ordinance, or by FCC regulation: \$50/day per standard violated;
 5. For violation of the books and financial records provisions of this Franchise Agreement and the Cable Ordinance: up to \$50/day for each day the violation continues; and
 6. For violation of other material provisions of this Franchise Agreement, the Cable Ordinance, or FCC technical standards: up to \$50/day for each day the violation continues.
- C. **Force Majeure.** If, by reason of force majeure, Franchisee in whole or in part, is unable to carry out its obligations hereunder, Franchisee shall not be deemed in violation or default during the continuance of such inability. The term "Force Majeure", as used herein, shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or the State of North Carolina or of any of their departments, agencies, political subdivisions or officials of any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; and circumstances beyond the control of Franchisee and any affiliates.

XX. COOPERATION

The parties recognize that it is within their mutual best interest for the cable television system to be operated as efficiently as possible in accordance with the requirements set forth in this Franchise Agreement. To achieve this, parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise Agreement. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the person or agents specified herein. The person or agent thus notified shall use its best effort to facilitate the particular action requested.

XXI. WAIVER

The failure of the City at any time to require performance by Franchisee of any provision hereof shall in no way affect the right of the City thereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself, unless the waiver so specifies.

XXII. CUMULATIVE PROVISION

The rights and remedies reserved to the City by this Franchise Agreement are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Franchise Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

XXIII. NO LIABILITY

Nothing herein shall be deemed to create civil liability by one party for the action, omissions or negligence of the other party, or of a party's agents, employees, officers or assigns. Each party shall be solely liable for claims against it by third parties, whether arising under the Cable Act or under any other provision of law.

XXIV. NOTICES

All notices from Franchisee to the City pursuant to this Agreement shall be sent to the following address for the conduct of matters related to the Franchise.

All notices to the City should be sent to:

CITY CLERK
City of Roanoke Rapids
P.O. Box 38
Roanoke Rapids, NC 27870.

All notices to Franchisee shall be sent to the following:

Charter Communications
Attn: Government Relations
12405 Powerscourt Drive
St. Louis, MO 63131

With copies to:

Charter Communications
Attn: Government Relations
216 Moore Avenue

Suffolk, VA 23434

Charter Communications
Attn: VP Government Affairs/Franchise Relations
11 Commerce Road
Newton, CT 06470

XXV. CAPTIONS

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

XXVI. NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public, in any manner that would indicate any such relationship with the other.

XXVII. ENTIRE AGREEMENT

This Franchise Agreement and all attachments hereto, and the Cable Ordinance between the parties represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only as provided in this Franchise Agreement and the Cable Ordinance.

XXVIII. SEVERABILITY

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

IN WITNESS WHEREFORE, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF ROANOKE RAPIDS

City Clerk

Mayor

Approved as to form and correctness:

City Attorney

HELICON PROPERTIES I
ACQUISITION COMPANY LLC
D/B/A CHARTER COMMUNICATIONS

WITNESS

Title: Northeast Division Senior VP

First Reading: **Passed by Council on October 11, 2005.**

Second Reading: **Passed by Council on October 25, 2005.**

FINAL READING, PASSAGE AND APPROVAL at the regular meeting of the Roanoke Rapids City Council this 25th day of October, 2005.

Drewery N. Beale, Mayor

ATTEST: _____
Lisa B. Vincent, City Clerk