

RIGHT OF WAY USAGE FRANCHISE AGREEMENT

This Right of Way Usage Franchise Agreement ("Franchise") is between the City of Wellington, Kentucky, hereinafter referred to as the "Grantor" and Insight Kentucky Partners II, L.P., locally known as Charter Communications, hereinafter referred to as the "Grantee."

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

1. Definitions:

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- c. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. "Franchise Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means.
- e. "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, franchise fee, or sales or utility taxes; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusion available under applicable state law.
- f. "Service Area" shall mean the geographic boundaries of the Grantor.
- g. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parkways, waterways, alleys, all other rights-of-way and easements, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter, and the public grounds, places or water within the geographic boundaries of Grantor.
- h. "Subscriber" means any person lawfully receiving any Cable Service from the Grantee.

2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee 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, antennae, underground conduits, manholes, and other conductors, fixtures, and other equipment used for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. 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 or state law.
3. **Term.** The Franchise shall be for a term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 16. In accordance with applicable law, Grantor and Grantee acknowledge and agree that if this Franchise expires before they enter into a franchise renewal, the rights and obligations of this Franchise shall continue until: (i) the parties enter into a franchise renewal, or (ii) the Grantor determines the Franchise should not be renewed, and Grantee has exhausted all rights to seek review of Grantor's determination under applicable law.
4. **Use of the Streets and Dedicated Easements.**
 - a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities when available on reasonable terms and conditions.
 - b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction, and in areas where electric services are underground and there are no telephone service facilities present. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.
 - c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.
5. **Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets.

6. Maintenance of the System.

- a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may, from time to time, be amended.

7. Service.

- a. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.
- b. The Grantor shall make a good faith effort to 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 and subsection (a) above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service 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 Service 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 Service 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. On or after the fifth (5th) anniversary of the Effective Date, and only in the event Grantee is required to pay a franchise fee in accordance with Section 16 below, Grantee shall upon written request from the Grantor conduct a review to ensure its records of the Service Area boundaries are accurate. Grantor

shall, if requested to do so by Grantee, provide records necessary to assist Grantee in the conduct of its review.

8. Insurance/Indemnity.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$3,000,000 General Aggregate (of which limits may be satisfied by an umbrella liability policy)
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 Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor at least ten (10) calendar prior to the deadline for responding to the claim or action, and if no such deadline exists, within thirty (30) days of Grantor's receipt of the claim or action. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

9. Revocation.

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the

Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
 - c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.
10. **Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.
11. **Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.
12. **Confidentiality.** The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books, records, or maps in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books, records, or maps marked confidential, as set forth above, to any Person.
13. **Notices, Miscellaneous.**

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: Michael Newton, Mayor
City of Wellington
2402 Manchester Rd
Louisville, KY 40205

E-mail:

Grantee: Ellen Call, Director of Government Affairs
Charter Communications
10168 Linn Station Rd, suite 120
Louisville, KY 40223
Ellen.Call@charter.com

Copy to: Charter Communications
Attn: Vice President, Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

- b. Grantee shall designate a representative to serve as the primary point of contact between Grantee and the Grantor.
- c. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- d. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- e. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.
14. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility

providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15. Franchise Fee.

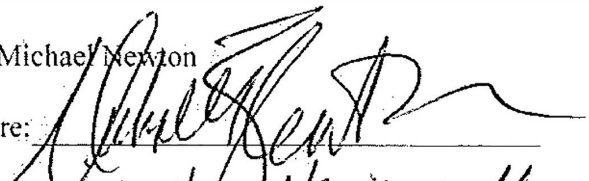
- a. Grantee shall continue to make payments in conformance with KRS 136.600-136.660, unless Grantor provides notice as set forth in this subsection. Specifically, Grantor may provide written notice to Grantee of its intent to begin collecting franchise fees under this section. The franchise fee shall be in an amount equal to three percent (3 %) of Grantee's annual Gross Revenues. The first payment period for the franchise fee to be paid under this section shall commence ninety (90) days after Grantee's receipt of Grantor's written notice. Grantee shall, if permitted by law, offset any franchise fee paid to Grantor pursuant to this franchise against any taxes paid to the Commonwealth pursuant to KRS 136.600-136.660. Grantee shall be permitted to pass through and itemize on subscriber bills the amount of the franchise fee and/or any net taxes paid pursuant to KRS 136.600-136.660, so that in no event shall the amounts of franchise fees and net taxes charged to subscribers exceed the amounts paid or remitted by Grantee to Grantor and/or the Commonwealth.
- b. "Gross Revenues" shall mean all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including the franchise fee and the FCC user fee; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- c. . If Grantor imposes a lesser franchise fee obligation upon any other Cable Service and/or video service providers (provided Grantor has the ability to impose a franchise fee on that entity), or if all other Cable Service and/or video service providers are required to pay a fee that is greater than the obligation in this Section 15, Grantor and Grantee shall agree to negotiate in good faith to achieve the franchise fee parity anticipated under this section.
- d. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.

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

17. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 26th day of Sep, 2017

Mayor Michael Newton

Signature: 

Name/Title: Michael B. Newton, Mayor

Accepted this ____ day of ____, 20__, subject to applicable federal, state and local law.

Insight Kentucky Partners II, LP

By: Insight Kentucky Partners I, LP, its General Partner

By: Insight Communications of Kentucky, LP, its General Partner

By: Insight Midwest Holdings, LLC, its General Partner

By: Charter Communications, Inc., its Manager

Signature: _____

Name/Title: _____

**CITY OF WELLINGTON
JEFFERSON COUNTY, KENTUCKY**

RESOLUTION NO. _____, SERIES 2017

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
AGREEMENT RELATING TO COMMUNICATION SERVICES.**

WHEREAS, the City of Wellington will enter into a Right of Way Usage Franchise Agreement with Insight Kentucky Partners II, L.P., locally known as Charter Communications

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Mayor is authorized to take all steps necessary to enter into an agreement with Charter Communications as advised by the City Attorney.

INTRODUCED, SECONDED, READ AND ADOPTED by the City of Wellington on the 26 day of September 2017, and on the same occasion signed by the Mayor of the City of Wellington and declared to be in full force and effect.



**MICHAEL B. NEWTON
CITY OF WELLINGTON,
MAYOR**

DATE: September 26, 2017

ATTEST:



LOIS, CITY CLERK