BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments	)	**MB Docket No. 07-51**

To the Commission:

REPLY COMMENTS OF THE CITY OF REEDSBURG

The City of Reedsburg, Wisconsin (the "City") hereby submits these reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding. Specifically, the City files these reply comments in support of the Commission taking steps to ensure the availability of competitive multichannel video services in multiple dwelling units and other real estate developments (collectively "MDUs") by prohibiting all forms of exclusivity arrangements.

I. BACKGROUND

The City of Reedsburg is a community with a population of about 9,200, located in south central Wisconsin. In addition to owning and operating municipal electric, water, and wastewater utilities, Reedsburg owns and operates a state-of-the-art fiber to the home ("FTTH") communications network that offers a "triple play" of telephone, high-speed Internet access, and cable television services. In fact, Reedsburg is currently the only provider in Wisconsin that operates a fully deployed and operational FTTH system on a city-wide basis. The City provides cable television service to over 1,800 customers. In addition, Reedsburg has 2,510 telephone lines in service and 1,528 Internet customers. Further, unlike its incumbent competitors, Verizon North and Charter Communications

("Charter"), Reedsburg offers "super" high-speed Internet services: residential and business customers can choose to receive a 10 Mbs (symmetrical) service and business customers can choose to take a WAN service with speeds of up to 100 Mbs for point-to-point customers.

From the time that the City entered the communications market it has faced vigorous opposition from the incumbent providers, including a long and costly legal battle with the Wisconsin State Telecommunications Association, as the City pursued certification from the Public Service Commission of Wisconsin to become the first municipal local exchange carrier in the state.

Having overcome all such obstacles to its entry into the market, the City continues to face anticompetitive behavior in the form of exclusive arrangements its incumbent competitor has proposed to MDU owners that potentially hinder the City's ability to offer many consumers competitive choice in video service offerings.

II. PRELIMINARY STATEMENT

The City believes that the Commission's MDU decision of November 13, 2007 in this proceeding[1] is an important first step, but it is one that will inevitably fail to achieve the Commission's pro-competitive goals unless the Commission expands and refines the decision in certain critical respects.

The Commission determined in its November 13 Decision that incumbent cable operators widely use exclusive arrangements at MDUs across the United States, and that such arrangements are anti-competitive, preventing consumers from obtaining access to satellite video programming, and

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1 *In the Matter Of Exclusive Service Contracts For Provision Of Video Services In Multiple Dwelling Units And Other Real Estate Developments; Report and Order and Further Notice of Proposed Rulemaking*, MB Dkt. No. 07-51, FCC 07-179, 2007 WL 3353544 (F.C.C.) ("*November 13 Decision*").

violative of Section 628 and various other provisions of the Communications Act. *Report & Order*, ¶¶ 16-26, 50-60. In the *Report & Order*, the Commission went only so far as to ban "building exclusivity clauses" that "absolutely deny new entrants access to MDUs." *Id.* at 2 n.2. At the same time, the Commission issued a Further Notice of Proposed Rulemaking to determine whether to invalidate other forms of exclusivity that have the same practical effect.

The City agrees with commenters, such as the Lafayette Utilities System ("LUS") and Marco Island Cable, who maintain that Section 628(b) does not on its face apply solely to exclusivity arrangements that "absolutely" deny entrants to MDUs. Rather, Section 628(b) applies to practices "the purpose *or effect* of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers." Communications Act § 628(b) (emphasis added).

As discussed below, the City has experienced first-hand the variety of subtle and not-so-subtle techniques that cable operators use to obtain exclusivity or de facto exclusivity. The City, therefore, believes that the Commission should eliminate all forms of exclusive arrangements in which incumbent cable operators engage. As several commenters have observed, cable operators engage in a variety of anticompetitive practices at MDUs that go beyond merely seeking building exclusivity agreements. Accordingly, the Commission's rules need to be sufficiently broad so as to prohibit all such anticompetitive exclusionary practices.

III. RESPONSES TO THE COMMISSION'S SPECIFIC INQUIRIES

In the following sections, the City responds to specific questions that the Commission posed in its Further Notice of Proposed Rulemaking.

A. The Commission Should Ban Exclusive Marketing Agreements

The Commission invites comment on whether it should ban exclusive marketing arrangements. The City strongly concurs with those commenters who argue that the Commission should prohibit exclusive marketing arrangements. The City has encountered such exclusive marketing agreements as it has attempted to serve MDUs within its service area. For example, attached hereto as Exhibit A is a sample agreement that the incumbent cable operator, Charter, has proposed to MDUs in the City's service area. As can be seen, the proposed Charter agreement provides for exclusive use of cable wiring throughout the ten-year term of the agreement and "exclusive on-property marketing rights for video and high speed internet products." In exchange for these exclusive rights, Charter is offering to pay the MDU owner $16,000.

As LUS notes, there can be no rational basis for making it difficult for residents of MDUs to learn about their competitive options or for making it unduly difficult or costly for a competitor to communicate with MDU residents. The combination of the exclusive marketing rights and exclusive use of the cable wiring for a term of ten years in the Charter agreement amounts to a de facto exclusive agreement and should be prohibited as contrary to Section 628(b) of the Communications Act and the other sources of authority that the Commission cites in its *Report & Order*.

B. The Commission Should Ban Take-or-Pay Bulk Billing Arrangements

While Section 623(d) of the Cable Act recognizes that certain bulk billing arrangements may have benefits for cable operators, MDU owners, and residents alike, the Commission should, nevertheless, ban the kinds of bulk billing arrangements that are far more harmful than beneficial. Specifically, the Commission should prohibit take-or-pay bulk billing arrangements that effectively compel all residents of an MDU to pay for service whether or not they want or take it. Such take-or-

pay bulk billing arrangements pose significant barriers to competition by requiring residents of MDUs to pay twice for service if they choose to take service from another provider. As one court has found,

> Although it is possible for a ... resident to pay for two competing cable services, it is unreasonable to suppose that any but the strongest willed of them will do so. *The monthly charge levied by the homeowner's association is the functional equivalent of a prohibition on the use of plaintiff's services.*

Princeton Cablevision, Inc. v. Union Valley Corp., 195 N.J. Super. 257, 273 (Ch. Div. 1983) (emphasis in the original). The Commission should ban such arrangements.

C. The Commission Should Expand the Scope of Its Cable Wiring Rules

Access to cable home run wiring is also of critical importance to the development of meaningful competition in video services. As can be seen from the attached Charter agreement, incumbent cable operators often seek broad exclusive access to virtually all cable wiring within MDUs. Such exclusive agreements effectively stifle competition and should be prohibited. The City, therefore, concurs with LUS that the Commission should take the following actions with regard to its cable wiring rules: (1) expand 47 C.F.R. § 76.801 to apply to home run wiring as well as to home wiring; (2) amend the rules generally to apply not only to inside wiring owned by the cable operator but also to inside wiring over which a cable operator exercises control through any form of exclusive arrangement; and (3) remove the limitations in 47 C.F.R. §§ 804 (a) and (b) that exempt cable operators from the home run wiring rules if they have a legally enforceable right to remain on the premises after their right to provide service has ended, or alternatively, preempt any contractual provisions, mandatory access laws, or other state laws that would give cable operators such a right to remain on the premises. Any such rules should also clarify that competitors that have a right to utilize home run cable wiring also have a reasonable right of access to the lock boxes where such

wiring terminates in those circumstances where access is necessary to connect their cable wiring to the home run cable wiring.

IV. CONCLUSION

For the reasons discussed above, the City submits that the Commission should bar all forms of exclusivity within MDUs, including, but not limited to exclusive marketing and take-or-pay bulk service agreements; and further that the Commission should amend the existing cable wiring rules as described above in order to foster competition for video services within MDUs.

Respectfully submitted,

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March 5, 2008

EXHIBIT A

SAMPLE MDU AGREEMENT PROPOSED BY CHARTER COMMUNICATIONS

December 11, 2007

VIA MAIL

Reedsburg, WI 53959

Re: – Charter Communications – $16,000

Dear

Charter Communications ("Charter") currently provides high-quality broadband communication (cable television) services to the residents of your community. Charter would like a right-of-entry agreement to continue to provide broadband services to your residents. **This agreement does not obligate you or your residents to subscribe to Charter's services.**

The advantages of a Charter service agreement are numerous such as: providing specific customer commitment, mutual indemnification, maintaining insurance to cover property damage and liability for your properties, providing causes for termination and recourse for disputes. And perhaps most importantly, **properties that do not have current agreements are not guaranteed to get the technical upgrades** and enhancements that will deliver future products and services.

Additionally, Charter is offering a financial incentive for a short time to the Owner of the property as follows:

PROPERTY	UNITS	COMPENSATION OFFERED
		$16,000

The compensation is predicated on executing the proper agreements that have the following conditions:

- Charter has exclusive use of the cable wiring throughout the term.
- Charter has exclusive on-property marketing rights for video and high speed internet products.
- Ten year contract term.

Individual residents will have the right to install a satellite dish within their unit in accordance with current laws and the terms set forth by the property owner, and will have the right to subscribe to traditional internet dial-up or DSL services.

We need your response by **January 11, 2008**. If you would like to take advantage of this offer, please **call me at 608-669-6514**. We will then prepare a set of agreements for your review.

Thank you.

Sincerely,

Todd Thorpe

Todd Thorpe
MDU Account Executive
Charter Communications
608.669.6514
todd.thorpe@chartercom.com

This proposal is for discussion purposes only and is not intended to give rise to binding obligations for either party. Any contractual relationship between the parties will be the result of formal negotiations and will only become effective upon execution of the contract by representatives of the parties authorized to enter into such agreements. During any negotiations, each party will bear its own costs and will not be responsible for any costs or expenses of the other party, unless separately agreed to in writing. Terms and conditions under this proposal shall become null and void upon 30 days from the date of this proposal.

NONEXCLUSIVE INSTALLATION AND SERVICE AGREEMENT
(Existing Property/Charter Prewire)

This Nonexclusive Installation and Service Agreement ("Agreement") is dated this _____ day of _____ 2008 ("Effective Date").

1. BASIC INFORMATION:

OWNER:	OPERATOR: *CC VIII Operating, LLC*
Office: Street Address: _____ City/State/Zip: _____ Telephone Number: _____ Facsimile Number: _____	**Corporate Office:** 12405 Powerscourt Drive St. Louis, Missouri 63131 Attention: Legal Dept.- Operations **Local Office:** Street Address: 2702 Daniels St. City/State/Zip: Madison, WI 53718 Telephone Number: 608-274-3822 Facsimile Number: 608-274-1436

Premises (or Property):
Premises Name: _____
Street Address: _____
City/State/Zip: _____
Telephone Number: _____
Property Type: _____
Number of units: _____

Agreement Term: The period starting on the Start Date and ending on the Expiration Date. The Agreement Term shall automatically be renewed for additional successive terms of 3 years unless either party provides written notice of termination not less than 6 months prior to the end of the Agreement Term then in effect.

Start Date: _____	Expiration Date: _____

Services: Services shall mean all lawful communications services which Operator may provide including, without limitation, all multi-channel video and audio programming services (specifically, "Video Service") and Internet access services, and/or voice services.

Equipment: All above-ground and underground coaxial cables, fiber optic lines, internal coaxial wiring conduit, amplifiers, converters and/or any and all other equipment or facilities necessary for, installed, and/or used by Operator (as originally installed in the Premises and as otherwise modified by Operator thereafter) to provide the Services pursuant to the provisions of this Agreement. The Equipment extends from the external boundary lines of the Premises up to and including the outlets in each unit.

Service Area: The territory in which the Premises are located, for which Operator holds a franchise or other legal authority to provide Video Service and/or the Services to subscribers as of the Start Date and thereafter during the Agreement Term.

2. **GRANT.** For and in consideration of the mutual promises, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Owner hereby grants Operator the (i) right to install, route, operate, improve, remove, service, repair and/or maintain its Equipment within the Premises, and (ii) the nonexclusive

right to provide the Services within the Premises (including without limitation any buildings constructed on the Premises hereafter) subject to the provisions in Section 4Capitalized terms used in this Agreement shall have the same meaning as specified in the "Basic Information" section above. The agreements of the Owner and Operator are set forth herein.

3. **SERVICES.** Operator shall have the right to offer and market directly to (and contract with) residents of the Premises who meet Operator's standard customer qualification standards, those Services that it may provide to the Premises. Operator will arrange for installations with and bill the residents directly for Services provided to such customers. The rates Operator charges the residents of the Premises will be consistent with the residential rates Operator generally charges in the Service Area, as the same may change from time to time. Owner acknowledges that the Operator reserves the right to make changes to the programming comprising the Video Services as Operator may deem necessary. The signal quality of the Video Services will meet or exceed any applicable standards prescribed by the Federal Communications Commission (the "FCC"). Operator shall have the sole discretion in the selection of programming that comprises part of the Video Service offered to residents located in the Service Area (including residents of the Premises) in accordance with applicable law.

4. **ACCESS.** With respect to the Services, Owner hereby grants and conveys to Operator the right of access to, across, under and over the Premises as necessary or desirable to route, install, maintain, improve, service and/or operate the Equipment and any of Owner's facilities and equipment used in connection with the provision and marketing of Services . Without limiting the foregoing, such rights of access to the Premises granted to Operator hereunder shall extend and apply to all common areas of the Premises. In addition to the other rights granted by Owner hereunder but without creating any additional termination rights, Owner hereby grants and conveys to Operator the right to enter the Premises upon termination of this Agreement in order to remove the Equipment from the Premises in accordance with and subject to the conditions and limitations set forth in Section 6.

Owner agrees that Operator may from time to time enter into various agreements or arrangements with its approved designees, agents or authorized vendors (collectively, the "Agents") and that access to the Premises granted by Owner pursuant to this Section will extend to such Agents.

For and in consideration of the mutual promises, covenants and agreements set forth in this Agreement, Owner represents that it has not granted and agrees that it will not (i) grant any other easements or rights that will physically interfere with the Operator's delivery of the Services signals and/or the operation of Equipment on and within the Premises or (ii) use or enable any other person/third party to use any portion of the Equipment to provide services to the residents. Notwithstanding, both parties acknowledge and agree that such commitment of Equipment-use exclusivity is not intended to limit the rights of the Premises residents to obtain services to the extent that they elect to do so (a) from a competing multi-channel video provider transmitting its signals directly to the residents *via* microwave or satellite without making use of the Owner's private property, the common areas of the Premises or the Equipment; (b)from any competing multi-channel video provider that is granted access to the Premises to provide services in competition with Operator's Services by the use of distinct facilities separate from the Equipment (subject to Section 17 "Marketing Privileges"); or (c) to the extent that such resident of the Premises has the right under applicable law to install the facilities of such competing provider within the boundaries of his/her property interest (provided that Owner shall in no event participate in or encourage the installation, provisioning, hook-up, or marketing of such competing services). For purposes of clarification, nothing in this Agreement shall be deemed to

prevent Owner from granting another provider of Video Services the right of access to the Premises to provide its services to residents of the Premises by use of distinct facilities separate from the Equipment.

5. **EASEMENT.** Simultaneously with the execution of this Agreement Owner will sign before a notary an easement in the form of Exhibit A attached hereto and incorporated herein by reference. Owner agrees that the easement may be recorded at any time. This easement is in addition to the other access rights granted by this Agreement.

6. **EQUIPMENT.** Operator will install, route, maintain, improve, repair, service, remove from, and/or operate any Equipment it is using on the Premises in accordance with applicable law. To the extent any of the Equipment is owned by Owner in accordance herewith, Owner shall reimburse Operator for any maintenance thereof to the extent that the same necessitates full replacement of Equipment components and/or repairs of any component to the extent the cost of such repairs exceeds 30% of the value of such component(s). Any Equipment that is installed by Operator or Operator's predecessor(s)-in-interest (and for purposes of clarification, excluding Internal Wiring to the limited extent the same is conveyed to the Owner under Section 5), shall always be owned by and constitute the personal property of the Operator and shall not become a fixture of the Premises. Owner hereby agrees that Operator shall have and maintain exclusive use of all Equipment during the Term hereof and any renewal term or period thereafter, and Owner (i) shall not grant any other provider of Video Services or like services, rights of access to or use of such Equipment and (ii) shall prohibit such other providers from accessing or using the same. Neither Owner nor any resident of the Premises shall have any right, title or interest in the Equipment. Within ninety (90) days after the expiration or earlier termination of this Agreement (but without creating any additional termination rights hereunder), Operator shall be entitled to either remove the Equipment (in its entirety or in part) or leave the Equipment in place (in its entirety or in part). Any Equipment left in place beyond the expiration of aforementioned 90-day period shall be considered abandoned, and title thereto shall revert to the Owner. In the event that Operator removes all or any part of the Equipment, Operator shall restore the Premises to as near as is reasonably possible to its condition prior to the removal, normal wear and tear excepted.

Except as otherwise provided in this Agreement, neither party shall be responsible for the maintenance or repair of cable, electronics, structures, equipment or other materials owned by the other party, provided, however, that subject to the terms set forth in Section 13, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct. Without limiting the foregoing, neither party will be liable for loss of or damage to the property of the other which occurred as a result of the occurrence of any Force Majeure Event, natural disaster or other casualty loss over which such other party has no control. Owner shall:

i Safeguard the Equipment against others;

ii Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment (excluding the Internal Wiring);

iii Not hire nor permit anyone other than personnel authorized by Operator acting in their official capacity to perform any work on the Equipment (excluding the Internal Wiring); and

iv Not move nor relocate Equipment (excluding the Internal Wiring) to another location or use it at an address other than the Premises without the prior written consent of Operator.

Owner is prohibited from making or enabling any unauthorized connection to (*i.e.* without Operator's written authorization) or other tampering with the Services or Equipment (excluding the Internal Wiring), any of which shall be cause for (a) immediate disconnection/suspension of Services, (b) termination of this Agreement and/or (c) legal action in Operator's sole discretion, and Operator shall be entitled to recover from Owner any resulting damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this provision in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees and court costs.

Without limiting Operator's exclusive use of the Equipment, should either (A) an antenna, or signal amplification system for use in connection with communication equipment (now installed or hereafter installed on the Premises) or (B) any Owner modification, move, disturbance, relocation of, and/or work on the Internal Wiring interfere with the Services provided by Operator hereunder, Owner acknowledges and agrees that Owner has the affirmative obligation to completely and permanently eliminate such interference immediately upon knowledge thereof or notice from Operator. Operator shall not be obligated to distribute a quality signal to the Premises better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Owner or a third party.

Owner agrees that violation of this Section 7 will result in irreparable damage to Operator and that in the event of such violation, Operator shall have a right to injunctive or other appropriate equitable relief, in addition to any remedies available to Operator at law (including without limitation those available for breach of this contract by Owner).

7. **INSTALLATION REVIEW; SUBSEQUENT INSPECTION.** Operator may perform an installation review of the Premises prior to installation of the Equipment or activation of the Services. Owner may be required to provide Operator with accurate site and/or physical network diagrams or maps of the Premises prior to the installation review. Operator may directly or through its agents inspect the Premises before beginning installation, and shall satisfy itself that safe installation and proper operation of the Equipment and the Services are possible in such location. If Operator, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to Operator's personnel or the Equipment and/or cause technical difficulties to Operator or its customers, Operator may terminate this Agreement effective upon prior written notice to Owner or may require the Owner to correct the situation before proceeding with installation or activation of the Services.

In the event (i) proper operation of the Equipment and/or unhindered provision of the Operator's Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Owner, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to Operator's personnel or the Equipment and/or cause technical difficulties to Operator or its customers, as Operator may determine in its sole discretion, Operator may terminate this Agreement without liability upon written notice to Owner.

8. **OWNER'S AGREEMENTS.** Owner shall provide without charge to Operator adequate space and services for placement of the Equipment (in locations mutually acceptable to the parties), right of access to the Equipment, electricity for the Equipment, and such additional rights of access, space and services as are necessary for Operator to provide the Services and to carry out the terms of this Agreement. Operator will have the right to make use of all existing poles, conduits, wiring and other facilities and equipment on the Premises that Owner owns or controls. At Operator's request, Owner, or a representative designated by Owner, will accompany Operator's employees or agents into any unoccupied residential unit for the purpose of installing Services and/or removing the Equipment.

9. **OWNER'S REPRESENTATIONS.** Owner represents and warrants to Operator that Owner is the legal owner of and the holder of fee title to or the owner of the controlling interest in the Premises; that no other person has or will be granted any rights in the Premises that conflict with Operator's rights under this Agreement, that there is no litigation pending or threatened pertaining to whether Owner has the right and/or authority to execute or enter into this Agreement or any like instrument, that Owner has the authority to execute, deliver and carry out the terms of this Agreement and that no additional consent, filing, notification, or approval (including approval of unit owners) is required in connection with the grant of rights set forth in this Agreement. The person signing this Agreement on behalf of Owner represents and warrants that he/she is Owner's authorized agent and has full authority to bind Owner to the terms and conditions of this Agreement. .

10. **OPERATOR'S REPRESENTATIONS.** Operator shall maintain and service its Equipment and provide Services to the residents of the Premises as set forth herein. Operator represents and warrants that the Operator and its affiliates have all the necessary approvals, consents and governmental authorizations, licenses and permits to provide the Services and shall comply with all federal, state and municipal laws, orders rules and regulations applicable to the Equipment and the provision of Services. Operator will repair at its expense any damage to the Premises to the extent caused by the negligence or willful misconduct of Operator, its employees or Agents, normal wear and tear excepted.

11. **MANAGING AGENT OR HOMEOWNERS/CONDOMINIUM ASSOCIATION.** If this Agreement is executed by a managing agent, homeowners association, or other entity other than the Owner, such entity hereby represents and warrants that it has the full authority to execute this Agreement on behalf of the underlying owner of the Premises.

12. **INDEMNITIES.** Each party shall indemnify, defend and hold harmless the other (and its employees, representatives and agents) against all liabilities, claims, losses, costs, damages and expenses resulting from its breach of any provision of this Agreement and from any injury to or death of any person (including injury to or death of their employees) or loss of or damage to tangible real or tangible personal property or the environment, but only to the extent that such liability, loss, damage or expense arises from any negligent act or omission, willful misconduct, breach of any representation or warranty made hereunder or violation of a third party's rights or applicable law on the part of the party from whom indemnity is sought. Each party seeking such indemnification shall use reasonable efforts to promptly notify the other of any situation giving rise to an indemnification obligation hereunder, and neither party shall enter into a settlement that imposes liability on the other without the other party's consent, which shall not be unreasonably withheld.

13. **UNAUTHORIZED USE.** In the event that Owner becomes aware of any unauthorized receipt of the Service on the Premises or any tampering with the Equipment (or any part thereof) by any individual or entity other than Operator, Owner shall promptly notify Operator and shall cooperate with Operator to promptly end such unauthorized receipt or tampering.

In the event that Operator becomes aware of any unauthorized receipt of the Service on the Premises or any tampering with the Equipment (or any part thereof) by any individual or entity other than Owner, Operator shall promptly notify Owner and shall cooperate with Owner to promptly end such unauthorized receipt or tampering.

14. **ASSIGNMENT.** This Agreement shall be binding upon the parties and their respective successors, transferees, and assigns and, in the case of Owner (and its successors, transferees and assigns) shall also be binding upon any managing agent or homeowners association or other authorized representative duly empowered to act on behalf of Owner. This Agreement may be assigned by either party without the consent of the other party. An assignment by Owner shall not be valid hereunder nor release Owner from any obligations arising after such assignment unless and until the assignee in any such transaction assumes this Agreement in writing and Owner provides Operator with a copy of such written assumption by the transferee.

15. **NOTICES.** Any notice to be given under this Agreement shall be in writing sent by nationally recognized overnight courier service or postage prepaid by U.S. certified mail, return receipt requested, to the each address for the affected party as set forth in the "Basic Information" section above or to such other addresses as the parties may designate in writing by notice sent in accordance with this Section. Delivery of any notice shall be effective five (5) days after mailing *via* U.S. certified mail or on the date delivered or the date on which delivery is refused, declined, or attempted, if sent by overnight courier service. Neither party may change its address for purposes of receiving notice under this Agreement except by providing notice in accordance with this Section.

16. **MARKETING PRIVILEGES.** Operator shall have the exclusive right to promote the Services and any comparable services on the Premises by means of distribution of advertising materials, contacts, demonstrations of services, and direct sales presentations. Owner shall cooperate with Operator in all such promotions on an exclusive basis (including, without limitation, supplying, at Operator's request, current lists of the names and mailing addresses of the residents of the Property and allowing, at Operator's request, the display of advertising materials in common areas of the Property). Operator shall at all times conduct such promotional activities at reasonable times and in accordance with any applicable municipal ordinance. Owner shall use reasonable efforts to make available in the clubhouse or rental office or other similar location all current marketing publications pertaining to the Services, if such publications are provided to Owner by Operator and approved by Owner, such approval not to be unreasonably withheld or delayed, and Owner shall not permit the distribution or publication of marketing materials promoting alternative competitive services offered by other providers.

17. **TERMINATION.** Neither party may terminate this Agreement prior to the expiration of the then-current term except as otherwise stated herein. If either party fails to comply with the terms of this Agreement and such non-compliance is material, such non-compliance shall constitute a default by such party hereunder. In the event of a default by a party hereunder, the non-defaulting party may (i) terminate the Agreement on thirty (30) days prior written notice, unless the other party cures or

commences to cure such breach during such thirty (30) day period and diligently proceeds with such cure (exercising commercially reasonable efforts); and/or (ii) bring an action against the defaulting party for damages or any other available legal or equitable remedies. Both parties acknowledge that damages resulting from any material breach by the other party of any of its obligations under this Agreement may be difficult to determine in any action at law and that any such default under this Agreement by a party shall cause the other irreparable injury and damage; and therefore, each party expressly agrees that in the event of a default under this Agreement, the non-defaulting party shall be entitled to injunctive and other equitable relief against the defaulting party, including without limitation, specific performance. If legal action is necessary to enforce any provision of this Agreement or any agreement relating hereto, the prevailing party in such action shall be entitled to recover its costs and expenses of prosecuting or defending against such action, including reasonable attorneys' fees and court costs. The rights and remedies herein shall be cumulative, and the exercise of one shall not preclude or act as a waiver of any other right or remedy. Resort to equitable relief shall not be construed as a waiver of any other rights or remedies which Operator may have for damages or otherwise. In the event of a termination by Operator in accordance with this provision, such termination shall not constitute a termination of the Operator's rights to have access to the Premises for the purpose of providing services to the residents thereof.

18. **WARRANTIES; LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, OPERATOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVISIONED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.. Notwithstanding anything to the contrary stated hereunder, Operator will not be liable for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, revenues, profits or business opportunities.

19. **FORCE MAJEURE.** Neither party shall be liable to the other party for any delay or its failure to perform any obligation under this Agreement if such delay or failure is caused by the occurrence of any event beyond such party's reasonable control (a "Force Majeure Event"), including (but not limited to) the following to the extent they are beyond the control of the applicable party: acts of God, weather, acts of public authority, war, riot, strike, work stoppages or failure or delays of utilities, suppliers or carriers, but in any event such nonperformance will be excused only for so long as such condition exists.

20. **MISCELLANEOUS PROVISIONS.** This Agreement supersedes any prior agreement between the parties with respect to the specific subject matter of this Agreement as applies to the Premises, and may not be amended except by a written agreement signed by the parties. This Agreement shall be governed by federal law and the laws of the state in which the Premises are located (excluding said state's choice of law provisions).

21. **SEVERABILITY.** If any one or more of the provisions (or portion thereof) of this Agreement are found to be invalid, illegal or unenforceable in any respect, such invalid provision (or portion thereof) shall be severed from this Agreement to the limited extent of such invalidity/unenforceability, and the validity, legality and enforceability of the remaining provisions of this Agreement will not be affected or impaired in any way.

22. **EFFECTIVENESS.** This Agreement shall not be considered an offer and shall not be binding upon Operator until it is duly signed by both parties where indicated below.

23. **ADDENDA AND EXHIBITS.** This Agreement shall consist of this document and any schedules, and exhibits or addenda (upon execution thereof by the parties), all of which are incorporated herein and made a part hereof.

24. **GOVERNANCE.** Subject to Section 21 hereof, each provision of this Agreement shall be given full force and effect.

25. **NO THIRD PARTY BENEFICIARIES.** The parties agree that the terms of this Agreement and the parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each party under this Agreement only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

26. **WAIVER.** Any waiver by any party of any breach of any kind or character whatsoever by any other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement on the part of the other party or parties. No course of dealing or performance between the parties, nor any delay in exercising any rights or remedies or otherwise, shall operate as a waiver of any of the rights or remedies of any party.

IN WITNESS WHEREOF, the parties have set their hands on the date indicated in their respective acknowledgments.

OPERATOR:
CC VIII Operating, LLC
By: Charter Communications, Inc., its Manager

By:_____
(Signature)

Printed Name:_____
Title:_____
Date:_____

OWNER:

By:_____
(Signature)

Printed Name:_____
Title:_____
Date:_____

EXHIBIT "A"

GRANT OF EASEMENT
(attached)

GRANT OF EASEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
Drafted by and return to: Sue E. Weiske
Charter Communications Central Division
Attn: Legal Department
Address:8413 Excelsior Dr., Suite 120
Madison, WI 53717

Above for recorders use only

THIS GRANT OF EASEMENT is made effective as of _____, 2008, by and between ("Owner") and CC VIII Operating, LLC ("Operator"). The parties agree as follows:

1. **PREMISES.** Owner's property, including the improvements thereon (the "Premises"), is located at the street address of: with a legal description as set forth on Attachment 1 to this Exhibit.

2. **GRANT OF EASEMENT.** For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner grants and conveys to Operator a perpetual, irrevocable, non-exclusive easement across, under, over, within and through the Premises (and the improvements now or hereafter located thereon), as necessary or desirable, for the routing, installation, maintenance, improvement, service, operation and removal of wiring and equipment used in the provision of multi-channel video television programming and other communication services that Operator may lawfully provide to the Premises, and of the marketing and provision of such services. Such easement shall be for the additional use and benefit of Operator's designees, agents, successors and assigns.

3. **BINDING EFFECT.** The benefits and burdens of this GRANT OF EASEMENT shall run with the land and shall bind and inure to the benefit of the parties and their respective successors and assigns.

4. **SUPPLEMENT.** This Grant of Easement shall serve to supplement the terms and conditions of that certain Nonexclusive Installation and Service Agreement between the parties with an Effective Date of _____, 2008 ("Agreement").

OPERATOR:
CC VIII Operating, LLC
By: Charter Communications, Inc., its Manager

By:_____
(Signature)

Printed Name:_____
Title:_____
Date:_____

OWNER:

By:_____
(Signature)

Printed Name:_____
Title:_____
Date:_____

Attachment 1 to Grant of Easement
[Owner to insert legal description of Premises.]

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Fee Addendum
One-Time Flat Fee Payment

This Addendum between:

Owner:

and

Operator: CC VIII Operating, LLC

This Addendum is executed simultaneously with and shall operate to modify the Nonexclusive Installation and Service Agreement (the "Agreement") with an Effective Date of _____2008 between Owner and Operator. Except as specifically modified herein, all other terms and conditions of the Agreement shall remain unamended and in full force and effect. All capitalized terms shall have the same meaning as set forth in the Agreement.

Fees:

In consideration of the exclusive Equipment use and marketing rights granted by Owner to Operator under the Agreement, Operator shall pay to Owner a one-time payment in the amount of $16,000 ("Exclusivity Payment"). Operator shall make the Exclusivity Payment to the Owner within ninety (90) days following full execution of the Agreement by both parties. In the event that any of Operator's exclusive rights under the Agreement are no longer valid or enforceable as a matter of law (because of subsequent legislation, litigation, administrative action, or otherwise), then Owner shall refund to Operator an amount ("Reimbursement Payment") calculated as follows:

Reimbursement Payment = Exclusivity Payment X (# of months remaining in term of the Agreement / total # of months in term of the Agreement)

The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the agreement to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as

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restrictive as those set forth herein, or (v) as necessary to enforce its rights pursuant to this Agreement. All parties shall be directed to abide by the confidentiality provisions of this Addendum. Any disclosure of the terms of this section by Owner shall render null and void the terms of this Addendum but not the Agreement, and owner shall pay to Operator the Reimbursement Payment. This Addendum shall not be recorded.

The parties hereto, intending to be legally bound, have executed this Fee Addendum on the same date as the Agreement.

OPERATOR
CC VIII Operating, LLC
By: Charter Communications, Inc., its Manager

By:_____
Printed Name:_____
Title:_____
Date:_____

OWNER

By:_____
Printed Name:_____
Title:_____
Date:_____