



Legislation Text

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AN ORDINANCE AMENDING AND EXTENDING CABLE TELEVISION FRANCHISE AGREEMENT WITH CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS FOR TERM OF TEN YEARS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Ordinance No. 9775 on file in the office of the city clerk as File No. 06-013-O, titled " AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF DULUTH SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISION HEREIN" is hereby amended as follows:

Section 2. That Ordinance No. 9775 Section 1(e), Definitions, is hereby repealed and replaced as follows:

(e) Channel, or cable channel, means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel;

Section 3. That Ordinance No. 9775 at Section 1(l), Definitions, is hereby repealed and replaced as follows:

(l) Grantee is CC VIII Operating, LLC, I/k/a Charter Communications, its lawful successors, transferees or assignees;

Section 4. That Ordinance No. 9775 Section 1(m), Definitions, is hereby repealed and replaced as follows:

(m) Gross revenue means any and all revenue derived by grantee from the operation of its cable system to provide cable service within the city including, but not limited to:

- (1) All cable service fees;
- (2) Franchise fees;
- (3) Late fees;
- (4) Installation and reconnection fees;
- (5) Upgrade and downgrade fees;
- (6) Local, state and national advertising revenue;
- (7) Home shopping commissions;
- (8) Equipment rental fee; and
- (9) Guide revenue.

The term gross revenue shall not include bad debts or any taxes or fees on services furnished by grantee imposed upon subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from subscribers for deposits, PEG fees or PEG support. City and grantee acknowledge and agree that grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP);

Section 5. That a new Ordinance No. 9775 Section 3(e), Non-exclusivity of grant, is hereby created as follows:

(e) Equal Protection. If any other wireline provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the City to provide such services using facilities located in the Streets, the City shall within sixty (60) days of a written request from Grantee, modify this Franchise to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the City disagrees with the Grantee and chooses not to make the requested modifications consistent with this requirement, Grantee may seek de novo review by a court to both determine what modifications are appropriate and impose such modifications. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the City be deemed expired sixty (60) days after written notice to the City. Nothing in this Section 3(e) shall be deemed a waiver of any remedies available to City or Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

Section 6. That Ordinance No. 9775 Section 4, Duration of franchise, is hereby repealed and replaced as follows:

4. Duration of franchise. The initial term of this franchise shall be for a term of ten years following the date of adoption of this franchise by the council, unless said franchise is terminated prior to its date of expiration by the city in the manner hereinafter provided ("Term"). The Term shall be extended for a period of ten (10) years from and after January 1, 2018, by adoption of this Ordinance.

Section 7. That Ordinance No. 9775 Section 8, Location of grantee's properties, is hereby repealed and replaced as follows:

8(a) The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City provided that such requirements and regulations are of general applicability and are uniformly and consistently applied by the City as to other public utility companies and other entities operating in the Franchise Area. In the event Applicable Laws permit the Grantee to offset permit fees or other right-of-way fees required by the City against franchise fee payments required under this Franchise, nothing in this Franchise shall be read to waive the Grantee right to assert such an offset under Applicable Laws nor City's right to contest such offset under Applicable Laws.

8(b) Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

8(c) In those areas and portions of the City where both the transmission and distribution facilities of the public utility providing telephone service and those of the utility providing electric service are underground, or hereafter may be placed underground, then the Grantee shall likewise construct, operate and maintain all of its transmission and, distribution facilities underground. Amplifiers in Grantee's transmission and distribution lines and other equipment that may be unreasonably costly or adversely affected by underground placement may be in metal or concrete pedestals or vaults upon the surface of the ground. The Franchise at Section 10, Change required by public improvement, and Section 11, Failure to perform street work, are hereby deleted in their entirety.

Section 8. That Ordinance No. 9775 Section 13, Indemnification of the city, is hereby repealed and replaced

as follows:

- 13(a) The grantee shall indemnify the city, its officers and its employees, against all claims, demands, actions, suits and proceedings by persons including agents or employees of grantee against all liability to others, and against any loss, cost and expense resulting therefrom including reasonable attorney's fees, arising out of the exercise or enjoyment of its franchise, irrespective of the amount of the comprehensive liability insurance policy required hereunder, provided that the city shall give the grantee written notice of its obligation to indemnify the city within ten business days of receipt of a written claim or action (e.g. summons and complaint or demand letter) pursuant to this Section. In the event any such claim arises, the city shall tender the defense thereof to the grantee and the grantee shall have the right to defend, settle or compromise any claims arising hereunder and the city shall cooperate fully herein. If the city determines in good faith that its interest cannot be represented by the grantee, the grantee shall be excused from any obligation to represent the city. Notwithstanding the foregoing, the grantee shall not be obligated to indemnify the city for any damages, liability or claims resulting from the willful misconduct or gross negligence of the city or for the city's use of the cable system, including any PEG channels.
- (b) At all times during the term of this franchise, the grantee shall maintain in full force and effect (at its own cost and expense) a commercial general liability insurance policy, including contractual liability coverage in a form satisfactory to the city attorney, protecting against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of grantee under such franchise, with minimum liability limits of \$2,000,000 per occurrence or combined single limit and \$3,000,000 for excess liability coverage. Grantee shall furnish to city a certificate of insurance evidencing such coverage within thirty (30) days of the effective date of this Franchise, and at any time thereafter upon written request.
- (c) The certificate of insurance mentioned in the foregoing paragraph shall name the city, its officers, boards, commissions, agents and employees, as additional insured. Grantee shall notify the City thirty (30) days prior to the cancellation of such insurance policy if an equivalent policy will not be substituted and a new certificate of insurance provided to the City. Nothing herein shall relieve Grantee of the obligation to maintain uninterrupted insurance coverage for the duration of the Franchise.
- (d) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

Section 9. That Ordinance No. 9775 Section 15, Reports to the city, is hereby repealed and replaced as follows:

15. Grantee shall, upon thirty (30) days request, file with the City the following information regarding the previous year's operations.

- (a) A copy of each document filed with all federal, state and local agencies not previously filed with City with respect to the ownership and operation of System.
- (b) A copy of its most recent Annual Notice to Subscribers.
- (c) A current copy of its rules and policies.
- (d) A current copy of its Subscriber service contract, if any.

(e) Results of any performance tests, required by the FCC.

Section 10. That Ordinance No. 9775 Section 17, Consumer service requirements, is hereby repealed and replaced as follows:

17. Subject to applicable law, Grantee shall maintain a convenient local customer service and bill payment location in the city for matters such as receiving subscriber payments, handling billing questions, equipment replacement and customer service information. The grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this franchise. Upon One Hundred Twenty (120) days prior written notice to the City, the Grantee may close the local customer service office.

Section 11. That Ordinance No. 9775 Section 21, Service to institutions, is hereby repealed and replaced as follows:

21(a). Subject to applicable law, Grantee shall provide free of charge throughout the term of this franchise, standard installation of one network drop, one cable outlet and one converter, if necessary, and basic cable service without charge to the institutions identified in Exhibit C.

(b) The cable service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public, (i.e. open display). The city shall take reasonable precautions to prevent any use of the grantee's cable system that results in the inappropriate use thereof or any loss or damage to the cable system. Grantee shall provide city with reasonable advance written notice if grantee becomes aware of any open display in violation of this Section 21(b). The city shall hold the grantee harmless from any and all liability or claims by programmers arising out of the open display of cable service in violation of this Section 21 (b).

Section 12. That Ordinance No. 9775 Exhibit C, Service to public and private buildings, is hereby repealed and replaced as follows:

Exhibit C
Service to Public and Private Buildings

<u>1.</u>	<u>Duluth City Hall</u>	<u>411 W. 1st Street</u>
<u>2.</u>	<u>St. Louis County Board Room</u>	<u>515 W. 1st Street</u>
<u>3.</u>	<u>Duluth Entertainment and Convention Center</u>	<u>50 Harbor Drive</u>
<u>4.</u>	<u>St. Louis County Community Education Center</u>	<u>506 W. Michigan Street</u>
<u>5.</u>	<u>Portman Community Education Center</u>	<u>4601 McCulloch Street</u>
<u>6.</u>	<u>Woodland Community Education Center</u>	<u>3211 Allendale Ave.</u>
<u>7.</u>	<u>Central Hillside Community Education Center</u>	<u>12 E. 4th Street</u>
<u>8.</u>	<u>Morgan Park Community Education Center</u>	<u>1242 88th Ave. W.</u>
<u>9.</u>	<u>City Center West (fire, parks, police, & library)</u>	<u>5830 Grand Ave.</u>
<u>10.</u>	<u>Washington Community Education Center</u>	<u>310 N. 1st Ave. W.</u>
<u>11.</u>	<u>Public Works & Utilities - Operations Center</u>	<u>520 Garfield Ave.</u>
<u>12.</u>	<u>Library - Mount Royal</u>	<u>105 Mt. Royal Shopping Center</u>
<u>13.</u>	<u>Library - Main</u>	<u>520 W. Superior Street</u>
<u>14.</u>	<u>Bay View Elementary</u>	<u>8708 Vinland St.</u>
<u>15.</u>	<u>Congdon Park Elementary</u>	<u>3116 E. Superior Street</u>
<u>16.</u>	<u>Homecroft Elementary</u>	<u>4784 Howard Gnesen Road</u>

17.	<u>Laura MacArthur Elementary</u>	<u>727 Central Ave.</u>
18.	<u>Lester Park Elementary</u>	<u>315 N. 51st Street</u>
19.	<u>Lincoln Park Elementary</u>	<u>2427 W. 4th Street</u>
20.	<u>Lowell Elementary</u>	<u>2000 Rice Lake Road</u>
21.	<u>Miller-Dwan School</u>	<u>215 N. 1st Ave. E.</u>
22.	<u>Northwood School</u>	<u>714 1/2 W. College Street</u>
23.	<u>Piedmont Elementary</u>	<u>2827 Chambersburg Road</u>
24.	<u>Stowe Elementary</u>	<u>715 101st Ave W.</u>
25.	<u>North Star School</u>	<u>110 West Redwing Street</u>
26.	<u>Ordean Middle School</u>	<u>301 N. 40th Ave. E.</u>
27.	<u>Denfeld Senior High School</u>	<u>4405 W. 4th Street</u>
28.	<u>Duluth Alternative Learning Center</u>	<u>2 E. 2nd Street</u>
29.	<u>East Senior High School</u>	<u>2900 E. 4th Street</u>
30.	<u>Northwood School</u>	<u>4000 W. 9th Street</u>
31.	<u>Edison School</u>	<u>1450 Kenwood Ave.</u>
32.	<u>Harbor City International School</u>	<u>332 W. Michigan Street</u>
33.	<u>Raleigh Primary/Elementary School</u>	<u>5905 Raleigh Street</u>
34.	<u>Holy Rosary School</u>	<u>2802 E. 4th Street</u>
35.	<u>Lakeview Christian School</u>	<u>155 W. Central Entrance</u>
36.	<u>Duluth Montessori School</u>	<u>313 Mygatt Ave.</u>
37.	<u>St. James Elementary School</u>	<u>715 N. 57th Ave. W.</u>
38.	<u>St. John Elementary School</u>	<u>1 W. Chisholm Street</u>
39.	<u>St. Michael's Lakeside School</u>	<u>4628 Pitt Street</u>
40.	<u>Summit School</u>	<u>1600 N. 8th Ave. E.</u>
41.	<u>Arrowhead Juvenile Learning Center</u>	<u>1418 Arlington</u>
42.	<u>City Public Safety Building</u>	<u>2030 Arlington Ave N</u>
43.	<u>DTA Police Center</u>	<u>213 W. Michigan Street</u>
44.	<u>Myers-Wilkins Elementary</u>	<u>1027 N. 8th Avenue East</u>
45.	<u>City Fleet Operations Center</u>	<u>4825 Mike Colalillo Drive</u>
46.	<u>City Property and Facilities Management Center</u>	<u>1532 West Michigan Street</u>
47.	<u>City Fleet Operations Center</u>	<u>1123 Mesaba Ave</u>
48.	<u>City Fleet Operations Center</u>	<u>105 N 40th Ave W</u>
49.	<u>City Parks Maintenance Center</u>	<u>110 N 42nd Ave W</u>
50.	<u>Lakewood Water Treatment Operations Office</u>	<u>8130 Congdon Blvd</u>
51.	<u>Endion Station Community Education Center</u>	<u>200 Lake Place Drive</u>
52.	<u>Weiland Police Center</u>	<u>26 E Superior St</u>
53.	<u>Lincoln Park Police Center</u>	<u>2012 W Superior St</u>
54.	<u>Aerial Lift Bridge Operations Center</u>	<u>601 South Lake Ave</u>
55.	<u>Chester Bowl Community Education Center</u>	<u>1801 E Skyline Pkwy</u>
56.	<u>Duluth Heights Community Education Center</u>	<u>33 W Mulberry Street</u>
57.	<u>Gary New Duluth Community Education Center</u>	<u>801 101st Ave W</u>
58.	<u>Lower Chester Community Education Center</u>	<u>1417 E 5th St</u>
59.	<u>Merritt Community Education Center</u>	<u>4017 W 7th St</u>
60.	<u>Norton Park Community Education Center</u>	<u>Coleman & 81st Ave W</u>
61.	<u>Piedmont Heights Community Education Center</u>	<u>2302 W 23rd St</u>
62.	<u>Riverside Community Education Center</u>	<u>55 Cato Ave</u>

<u>63.</u>	<u>Park Point Community Education Center</u>	<u>5000 Minnesota Ave</u>
<u>64.</u>	<u>Bayfront Community Recreation and Education Center</u>	<u>700 Railroad Street</u>
<u>65.</u>	<u>Lake Park Community Recreation and Education Center</u>	<u>3525 Riley Road</u>

Section 13. That Ordinance No. 9775 Section 22, Live broadcast facilities and two-way network, is hereby repealed and replaced as follows:

- (a) Grantee shall, at no cost to city unless otherwise specified herein, provide a return connection to facilitate the exchange of programming, including live cablecasting of programming from those locations identified in Exhibit D.
- (b) The city shall be responsible for all terminal equipment at City Hall/PACT and at each location listed in Exhibit DI including any optical transmitters within the city facilities and all necessary production equipment the city may choose to utilize. Grantee shall be responsible to construct, operate and maintain the fiber paths from the specified locations (City Hall/PACT and the locations listed in Exhibit D) back to grantee's headend, including any headend equipment necessary to permit the signals transmitted from the city to be cablecast to subscribers on the system. The grantee shall have all rights under federal law to pass through and collect from subscribers its costs associated with providing the two-way capability as well as any headend equipment which grantee may be required to purchase to permit the transmission of the signal on to the system for viewing by subscribers. Any and all payments or costs incurred by grantee to provide the two-way live cablecasting requirements specified in this Section 22 shall not be deemed franchise fees within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). Any recovery by grantee shall be in addition to and not by way of offset against the PEG capital access fee established by Section 28 of this franchise.

Section 14. That Ordinance No. 9775 Exhibit D, Additional two way connections to public institutions, is hereby repealed and replaced as follows:

Exhibit D

Two-way Connections to public institutions:

1. Library - main;
2. Duluth Entertainment Convention Center - Harborside and Lake Superior ballrooms.

Section 15. That new Ordinance No. 9775 Section 28(d), Special channel and access requirements, is hereby created as follows:

- (d) On or after January 1, 2018, the City may provide a written request to Grantee that one (1) SD PEG Channel be converted to a high definition ("HD") Channel. Grantee shall have ninety (90) days from the date of receipt of the City's request to implement the HD PEG access Channel. The HD PEG access Channel provided under this section will replace one (1) PEG access Channel described in Section 28(a)(1) of this Franchise, and will not be deemed as a requirement to carry an additional PEG access Channel. The City shall only be responsible for the production costs associated with the provision of an HD Channel, any and all costs associated with any modification of the PEG access Channels or signals, after the PEG access Channels/signals leave the City's currently designated playback facility shall be provided free of charge by Grantee. The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services provided by Grantee. A Subscriber to the Basic Cable Service tier only who has Grantee's HD capable set-top box will be able to receive the HD PEG access

Channel on that outlet without any additional cost.

Section 16. That new Ordinance No. 9775 Section 29(a), Notice and default, is hereby repealed and replaced as follows;

(a) City shall give Grantee written notice specifying in detail the nature of any default if City determines that Grantee has:

- (1) Violated any material provision of this Franchise or the acceptance hereof, or any Applicable Law directly relating to its operations under the Franchise and not in conflict with this Franchise;
- (2) Attempted to evade any provision of this Franchise or the acceptance hereof;
- (3) Practiced any fraud or deceit upon City or Subscribers; or
- (4) Made a material misrepresentation of fact in the application for or negotiation of the Franchise.

Grantee shall have the option to appeal any decision of the chief administrative officer to the City Council unless the City Council has already directed the action of the chief administrative officer.

Section 17. Pursuant to section 82 of the Home Rule Charter of the city of Duluth, this ordinance shall be published verbatim in the official paper of the city of Duluth once a week four successive weeks after its passage and shall take effect thirty (30) days from and after its last publication; provides however, that this ordinance shall not become effective unless Charter Communications has filed a signed written acceptance of the terms and conditions of this ordinance with the city clerk and city attorney prior to such effective date.

STATEMENT OF PURPOSE: This ordinance extends the City's nonexclusive cable franchise agreement with Charter Communications ("Charter") for an additional ten years from January 1, 2018. The franchise is retroactive to January 1, 2018 because there are no changes in fees to be collected by or charged to Charter. Charter will continue to pay the City 5% of its gross revenue. 5% of gross revenue is the maximum amount a municipality may charge a cable television provider for a franchise pursuant to Minnesota and federal law. Charter shall also continue to collect \$0.37 per month per subscriber fee for the City to use exclusively for Public, Education, and Government (PEG) access capital related expenditures. This franchise provides for additional government and education locations where Charter will provide free basic cable service. This franchise agreement adds a requirement that Charter will broadcast one City Public, Education, and Government (PEG) Channel in high definition (HD); one standard definition PEG Channel will be converted to HD.