

**CITY OF COOS BAY CITY COUNCIL**  
**Agenda Staff Report**

<b>MEETING DATE</b> September 6, 2016	<b>AGENDA ITEM NUMBER</b>
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TO: Mayor Shoji and City Councilors  
FROM: Susanne Baker, Finance Director  
THROUGH: Rodger Craddock, City Manager  
ISSUE Charter Communications Franchise Ordinance

**BACKGROUND**

In 2011, the City of Coquille along with eighteen other cities around Oregon jointly agreed it would be advantageous to band together to hire an attorney to assist in negotiating a new franchise agreement with Charter Communications. The group agreed to share the billing expenses of the Portland attorney, Beery, Elsner, and Hammond equally, and for the attorney to address the needs of the various cities jointly. The process has been slow, largely due to the complexity of Charter Communications and the attempted merger/sale of Charter Communications that occurred during this time period.

Recently, the negotiations between Charter Communications and the cities were concluded which resulted in a new ten-year franchise agreement. A copy of the red-lined franchise agreement is attached for reference. The new franchise agreement does not change the franchise fee it remains at 5%. The majority of the changes involves the public access channel and now requires Charter to provide two channels for non-commercial, video programming for public, education, and government access instead of one.

Franchise agreements are enacted through the ordinance process and this ordinance has been properly noticed.

**ADVANTAGES**

Enacting the ordinance will set forth the contract with Charter Communications to continue remittance of the 5% in franchise fees to the City at approximately \$168,000 each year.

**DISADVANTAGES**

None.

**BUDGET**

The franchise fees were included in the FYE 17 during the budget process.

**RECOMMENDATION**

At the Council's direction, hold a public hearing for public input and enact the Charter Communications franchise agreement through the ordinance process.

**ORDINANCE NO. ###**

**AN ORDINANCE REPEALING ORDINANCE NO. 136, AS AMENDED BY ORDINANCE NO. 150, GRANTING TO FALCON CABLE SYSTEMS, A FRANCHISE FOR THE USE OF STREETS, ALLEYS AND PUBLIC EASEMENTS WITHIN THE CITY OF COOS BAY FOR THE OPERATION OF A CABLE TELEVISION COMMUNICATIONS SYSTEM**

WHEREAS, this Franchise Agreement (“**Franchise**”) is between the City of Coos Bay, OREGON, a municipal corporation, hereinafter referred to as “**Grantor**” and Falcon Cable Systems Company II, L.P., d/b/a Charter Communications, hereinafter referred to as “**Grantee.**”

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a Cable System on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

**Article I. Title & Purpose**

**Section 1.1** The purpose of this Franchise is to create and renew a binding, enforceable Franchise contract between Grantor and Grantee that establishes the terms and conditions under which Grantee may construct, operate and maintain a Cable System within Coos Bay, Oregon (hereinafter referred to as “CITY” and/or “GRANTOR”).

**Article II. Definitions**

**Section 2.1** For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning defined herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. Words used in this Franchise which are not defined hereunder but defined in the Cable Act shall have the meaning specified in the Cable Act definition.

- a. **Affiliate.** As set forth in the Cable Act.
- b. **Cable Act.** The Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521, *et seq.*, as it may be amended, or superseded.
- c. **Cable System, Cable Service and Basic Cable Service.** As set forth in the Cable Act.
- d. **FCC.** The Federal Communications Commission and any successor governmental entity thereto.
- e. **Franchise.** The non-exclusive authorization granted hereunder of a franchise, privilege, permit, license or to otherwise construct, operate and maintain a Cable System within the Service Area.

- f. **Grantee.** Falcon Cable Systems Company II, L.P., d/b/a Charter Communications.
- g. **Grantor.** The City of Coos Bay, Oregon.
- h. **Gross Revenues.** All amounts derived by the Grantee or any Affiliate, in whatever form and from all sources, from the operation of Grantee's Cable System to provide Cable Services within the Service Area including but not limited to amounts for all Cable Services, premium services, advertising, Franchise Fees, home shopping channels and other such revenue-sharing arrangements, installations, and all leased access payments. Grantor acknowledges and agrees that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP").

Gross Revenues shall not include, to the extent consistent with GAAP: (1) any taxes, fees or assessments imposed on Subscribers but collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee; (2) bad debt, provided, however, that bad debt recoveries shall be included in Gross Revenues during the period collected or as soon as practicable; (3) credits, refunds and deposits paid to Subscribers; and (4) any Public, Education and Government (PEG) Capital Fee (as described in Section 7.2). Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.

If Cable Services and non-Cable Services are bundled together and offered to Subscribers for one price, then in accordance with GAAP, Grantee shall account for the revenue from such packages using the retail rate methodology, which allocates the bundled discount by the proportion of the total retail rate each billing component represents. Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose of evading or reducing its Franchise Fee obligations.

- i. **Person.** An individual, partnership, association, organization, corporation, trust or governmental entity.
- j. **Public School.** Any accredited public school operated within the Service Area and limited to elementary, junior high and high school.
- k. **Service Area.** The geographic boundaries of the Grantor as they now exist and any changes thereto, by annexation or other legal means.
- l. **Standard Installation.** Installations of Cable Service to a location within one hundred fifty feet (150') from the existing Cable System.
- m. **State.** The State of Oregon.
- n. **Streets.** The area across, in, over, along, upon and below the surface of public streets, roadways, highways, bridges, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, utility strips or rights-of-way dedicated for compatible uses, now or hereafter held by Grantor within the Service Area, which are under the jurisdiction or control of Grantor, and only to the extent Grantor has the right, title, interest and/or authority to grant a franchise to occupy and use such areas for a Cable System and Cable Service.
- o. **Subscriber.** Any Person lawfully receiving any Cable Service from Grantee.

## Article III. Grant of Franchise

### **Section 3.1 Grant of Franchise.**

- a. Subject to the terms and conditions of this Franchise, Grantor hereby grants to Grantee a non-exclusive authorization to erect, construct, operate and maintain a Cable System within the Streets for a ten (10) year term for the purpose of providing Cable Service within the Service Area.
- b. Nothing in this Franchise shall be construed to authorize, prohibit or condition Grantee from offering any service over its Cable System that is not prohibited by Federal or State Law.
- c. Nothing in this Franchise shall be construed to prohibit Grantor from granting to other Persons rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets by franchise, permit or otherwise, subject to Section 3.2.

### **Section 3.2 Equal Protection.**

The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Service Area. If any other provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully and expressly authorized by the Grantor to use the Streets to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider, then upon thirty (30) days prior written notice to the Grantor, the Grantee shall have the right and may choose, to the extent consistent with applicable State and Federal laws and orders and rules adopted pursuant thereto:

- A) to modify this Franchise to the mutual satisfaction of Grantor and Grantee; or
- B) to deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
- C) to terminate this Franchise and take in its place the same franchise agreement of a competing provider of Cable Services or video services authorized by the Grantor

The Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor shall be subject to the provisions of Section 626 of the Cable Act (47 U.S.C. § 546) or any such successor statute. Nothing in this Franchise shall impair the right of the Grantor or Grantee to seek other remedies available under law.

### **Section 3.3 Police Powers.**

Notwithstanding any other provision of this Franchise, Grantee's rights are subject to the police powers of Grantor to adopt and enforce ordinances necessary for the safety, health and welfare of the public ("Police Powers"). Grantee agrees to comply with all applicable laws, ordinances and regulations adopted under the Police Powers of Grantor. This Franchise is a contract and except as to those changes that are the result of the Grantor's lawful exercise of

its Police Powers, the Grantor may not take unilateral action that materially changes the explicit mutual promises in this contract. All changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between an explicit mutual promise of this Franchise and an explicit provision of any Grantor ordinance or regulation, this Franchise shall control. Grantee specifically reserves the right to challenge any terms, conditions or provisions of local law if Grantee believes such are in conflict with its contractual rights under this Franchise, or are not a lawful exercise of the Grantor's Police Power. For purposes of this paragraph, a "conflict" shall exist only to the extent the Grantor ordinance or regulation has the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise.

#### **Section 3.4 Transfer/Assignment.**

Subject to Section 617 of the Cable Act (47 U.S.C. § 537), the Franchise granted hereunder shall not be assigned, other than to an Affiliate of the Grantee, without the prior written consent of the Grantor, and such consent shall not be unreasonably withheld or delayed. Grantor may condition its consent upon terms and conditions relating to the legal, financial and technical qualifications of the proposed transferee. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer as required in the Cable Act and related FCC rules and regulations, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request and all information required by the Grantor pursuant to this Section 3.4, and the Cable Act, consent by the Grantor shall be deemed granted.

#### **Section 3.5 Violations of Franchise; Procedures, Notice & Cure.**

- a. If Grantor believes that Grantee has failed to perform any obligation under this Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, Grantor shall follow the procedures set forth herein:
  1. Grantor shall notify Grantee in writing of any alleged violation ("Violation Notice") which notice shall include the exact nature of any alleged violation (the "Violation Notice") and a request for cure of such violation.
  2. Grantee shall have thirty (30) days from the date of receipt of the Violation Notice to respond in writing, indicating that Grantee:
    - a. Has cured the alleged violation, providing reasonable documentation or detailed explanation demonstrating that the alleged violation has been cured;
    - b. Has commenced, or will commence actions to cure the alleged violation, but that the alleged violation cannot reasonably be cured immediately, describing the steps taken or to be taken to cure the alleged violation; or

- c. Contests the Violation Notice, stating the reasons therefore, and requesting a public hearing in accordance with this Franchise.
3. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, determine whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor. Grantor may, in its sole discretion, extend Grantee's cure period upon request by Grantee.
4. In the event that the Grantor contends that the Grantee has failed to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to this Franchise, the Grantor shall set a public hearing to determine whether the Grantee has committed a violation. The public hearing shall be within sixty (60) days of the end of the cure period.
  - a. In the case of any public hearing pursuant to this Section, Grantor shall provide the Grantee at least twenty (20) days prior written notice of such public hearing, which specifies the time, place and purpose of such public hearing. Grantor shall provide general notice of the public hearing in the same manner as it publishes other notices of the Grantor.
  - b. At the public hearing, Grantee shall be provided an opportunity for full participation, including the right to be represented by legal counsel and to state its position on the matter. The public hearing shall be on the record. If Grantee provides the Grantor written notice at least fifteen (15) business days prior to the public hearing, Grantor shall make a written transcript available to the Grantee within ten (10) business days after the public hearing and the cost of the transcript shall be the sole responsibility of the Grantee.
5. Within fifteen (15) days following a public hearing on an alleged violation, Grantor shall issue a written report to Grantee on Grantor's decision and any showing that the Grantee has committed a violation and Grantor shall make written findings of fact relative to its determination, which Notice shall be sent to the Grantee according to this Franchise. If a violation is found, the Grantee may petition for reconsideration before any competent court having jurisdiction over such matters.
6. If, after the public hearing and any subsequent reconsideration, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
  - a. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor determines; and/or
  - b. Commence an action at law or other equitable remedy available under this Franchise or any applicable law; and/or
  - c. To the extent provided in Section 3.6, Grantor may begin the process of revocation of Franchise in accordance with the provisions contained within this Franchise.

### **Section 3.6 Revocation of Franchise**

- a. Prior to revocation or termination of the Franchise, Grantor shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances 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 the Grantor has not received a satisfactory response from Grantee, it 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, Grantor shall give 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, if Grantee provides the Grantor written notice at least fifteen (15) business days prior to the hearing, Grantor will make a written transcript available to the Grantee within ten (10) business days after the hearing, and the cost of the transcript shall be the sole responsibility of the Grantee. The decision of the Grantor shall be made in writing and shall be delivered to Grantee. Grantee may appeal such determination to an appropriate court. Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- c. Notwithstanding the above provisions, Grantee does not waive any of its rights under Federal law or regulation.
- d. In the event of a revocation of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

### **Section 3.7 Minor Violations.**

The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. It is in the Grantor's sole discretion to determine when a violation is a good faith error and/or to determine the hardship versus benefit.

### **Section 3.8 Retention & Inspection of Records.**

- a. Subject to the requirements of Section 631 of the Cable Act (47 U.S.C. § 551), all records that are legally permissible for release and that are reasonably necessary to ensure Grantee's compliance with the Franchise shall be made available by Grantee to Grantor or Grantor's representative, who has signed Grantee's Non-Disclosure Agreement, upon advance written notice to examine during normal business hours and on a nondisruptive

basis. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. To the extent permitted by law, 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 by marking each page as "confidential". If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason including compliance with the Oregon Public Records laws, 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, including the district attorney, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantor shall have no obligation to pursue or defend an appeal of a decision by a court or agency of competent jurisdiction, including the district attorney, ordering the disclosure of any books and records.

- b. Financial Records. Grantee shall maintain financial records of its Gross Revenues and Grantee fee payments for audit purposes for a period no less than four (4) years.
- c. Service Calls/Complaints. Grantee shall maintain a record of all service calls and/or complaints for a minimum period of one (1) year.
- d. Other Records. Grantee shall maintain a full set of its plans, records and maps detailing the location of its Cable System within the Franchise Service Area.

#### **Article IV. Street Occupancy**

##### **Section 4.1 Occupancy.**

- a. Nothing in this Franchise shall be construed to prevent any public work of the Grantor or other utility occupying the Streets of the Grantor.
- b. Safety. Grantee shall at all times employ the standard of care attendant to the risks involved and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.
- c. Damage or Disturbance. Grantee shall, at its own expense and promptly after discovery or notice from Grantor or other Person, restore any damage or disturbance caused to the Streets as a result of its operation, construction or maintenance of its Cable System to a condition at least as good as the condition of the Street immediately prior to such damage or disturbance.
- d. Existing Poles & Conduits. Grantee shall utilize existing poles, manholes, conduits and other like facilities whenever possible. Grantee may not construct or install new, different, or additional conduits or other underground or underground-related facilities within the Street without obtaining all legally required permits of the Grantor. Grantee may install in the Streets new or additional poles necessary for its Cable System in areas where there are no existing underground cable, telephone or electric facilities upon separate written permission from the Grantor.
- e. Underground Construction. The facilities of the Grantee shall be installed underground in those areas of the Service Area where existing telephone and



electric services (other than high voltage electric lines) are both underground at the time of system construction, or where there is insufficient space on existing poles for Grantee's facilities. Grantee shall, in cases of new Street construction where all other utilities (except high voltage electric lines) are required by Grantor to be placed underground, place its facilities underground. Grantee shall install its facilities prior to the completion of any new or to be reconstructed or resurfaced Streets to avoid damage to the newly constructed/reconstructed Streets when Grantor has afforded reasonable advance notice.

- f. Minimum Interference. All transmission lines, equipment and structures of Grantee's Cable System shall be installed and located so as to cause reasonably minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin any Street and at all times shall be kept and maintained in a safe condition and in good order and repair.
- g. Vegetation Removal. Grantee may trim or remove any vegetation within the Streets, at its expense, as may be necessary to protect its wires and facilities, subject to any permit required by Grantor and local codes and ordinances.

#### **Section 4.2 Work by Grantor; Cable System Relocation**

- a. Relocation for Grantor. Grantee shall, at its own expense, temporarily or permanently disconnect, relocate or remove any portion of its Cable System, including relocation from aerial to underground locations, when required by Grantor by reason of Street construction, widening or repair, including sidewalks; traffic conditions; public safety; Street vacations; installation or repair of public facilities or utilities, or any other public purpose as determined by the Grantor pursuant to its police power. In the event of a request for a permanent relocation, disconnection or removal, Grantor shall advise Grantee in writing as soon as reasonably possible, but not less than forty-five (45) days prior to the date for relocation, disconnection or removal. In the event of a request for a temporary relocation, disconnection or removal, Grantor shall give Grantee no less than ten (10) business days advance written notice.
- b. Failure to Remove or Relocate. Should Grantee fail to remove or relocate any facilities as required in this Section 4.2, the Grantor may cause such work to be done by a qualified contractor and the costs thereof, including reasonable costs and expenses incurred due to Grantee's delay, shall be paid by Grantee, subject to any reimbursement required in Section 4.2d.
- c. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by the permit holder and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.
- d. Reimbursement of Costs. If Grantor reimburses any Person that owns facilities in the Streets used to provide services in competition with Grantee's

services provided pursuant to this Franchise for the cost of any of the foregoing, to the extent Grantee is required by the Grantor to relocate for the same project, the Grantor shall reimburse the Grantee in the same manner. If any Federal, State, and/or other funds become available for relocating purposes concerning a qualifying public project, and if such funds are available to Cable Operators, the Grantor will assist the Grantee with the application for such funds to the extent Grantor assists other utilities that own facilities in the Streets used to provide services in competition with Grantee's services provided pursuant to this Franchise with the application for such funds. Notwithstanding the immediately preceding sentence, the Grantor has no obligation to seek or locate Federal, State, and/or other funds for relocating purposes.

### **Section 4.3 Construction & Technical Standards**

- a. Grantee shall obtain all legally required permits and pay all required permit fees before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area.
- b. Grantee shall adhere to the terms of the permits and all Grantor codes, ordinances, rules and regulations currently or hereafter applicable to Grantor Streets and/or construction, operation or maintenance of the Cable System within the Service Area, provided that such codes are of general applicability pursuant to Grantor's Police Powers.
- c. Grantee shall be responsible for ensuring that its Cable System is designed, installed and operated in accordance with good engineering practices and to meet the technical standards adopted by the FCC relating to Cable Systems contained in Part 76 of the FCC's rules and regulations as same may be amended. Grantee shall be at all times prepared to show, on advanced request by an authorized representative of the Grantor, that its Cable System complies with those applicable rules.
- d. Grantee shall conduct complete performance tests of the Cable System required by the FCC, and shall maintain the resulting test data on file for the duration of time required by the FCC. The test data shall be made available for inspection by the Grantor, upon advance notice.

## **Article V. Franchise Fees**

### **Section 5.1 Franchise Fees**

- a. Grantee shall pay to Grantor an annual Franchise Fee in an amount equal to five percent (5%) of Grantee's annual Gross Revenues. Payment of the Franchise Fee shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. If agreed to in writing by the Grantor, which agreement may be revoked upon thirty (30) days notice by the Grantor, payment shall be transmitted by electronic funds transfer to a bank account designated by Grantor. Each franchise fee payment shall be followed, within forty-five (45) days, by a report from Grantee showing the basis for the computation of the Franchise Fees paid during that period.
- b. The payment of the Franchise Fee shall be in addition to taxes or fees of general applicability owed to Grantor by Grantee that is not included as a Franchise Fee under Federal law.

- c. No acceptance of any payment by Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as Franchise Fees under this Franchise, or of any tax or other fee owed to Grantor by Grantee.
- d. The payment period and the collection of Franchise Fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the effective date of the Franchise. Grantee shall continue to pay Franchise Fees under the former agreement (Grantor Ordinance No. 136) in the interim period.
- e. In the event the Cable Act is amended to modify the current cap on Franchise Fees to an amount other than five percent (5%) of Gross Revenues required here, Grantee agrees to and shall pay the new maximum amount consistent with federal law. Such increased fee shall take effect on the next available billing cycle in which the higher fee may be placed on Subscribers' bills.
- f. In the event that a Franchise Fee payment or recomputation amount is not made by the Grantee to the Grantor on or before the due date, or is underpaid, Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the lesser of (i) the commercial prime interest rate of the Grantor's primary depository bank during the period such unpaid amount is owed or (ii) nine percent (9%) per annum, but in no event less than five percent (5%).

**Section 5.2 Audit of Franchise Fees**

- a. Grantor may review and/or audit Grantee's records to ensure the correct calculation of Gross Revenues and application of Franchise Fees payable under this Franchise. Grantee shall provide such records to Grantor or its designee in the Service Area, subject to Grantor and/or designee signing an agreed upon Non-Disclosure Agreement, upon thirty (30) days prior written request at no charge to the Grantor.
- b. In the event that any Franchise Fee is underpaid, Grantee shall pay interest as required in this Franchise. The period of limitation for recovery of any Franchise Fee payable hereunder shall be four (4) years from the date on which payment was due. Subject to applicable law, if the audit discloses an underpayment by an amount in excess of five thousand dollars (\$5,000), Grantee will reimburse Grantor for reasonable audit costs.

**Article VI. Service**

**Section 6.1 Nondiscrimination; Privacy**

- a. Grantee shall not deny service, deny access or otherwise discriminate against Subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or any other basis precluded by law.
- b. Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act.

**Section 6.2 Extension of Cable Service**

- a. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of

cable as measured from Grantee's closest trunk line or distribution cable that is capable of delivering Cable Service as of the date of such request for service. If such residence is located within one hundred fifty (150) feet of Grantee's trunk line or distribution cable, the Cable Service will be provided at Grantee's published rate for Standard Installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service and into any annexed area which is not contiguous to the present Service Area of the Grantee as long as said circumstance does not constitute a violation under the Cable Act to assure that access to Cable Services is not denied to any group of potential residential cable Subscribers because of the income of those residents.

- b. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.2 above, the Grantee shall only be required to extend the Cable System to Subscriber/Customer(s) in that area if the Subscribers are willing to pay the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any installation charges to extend the Cable System from the tap to the residence. However, the connection charge shall not exceed Grantee's actual costs for the distance exceeding one hundred fifty (150) feet for each potential Subscriber, and each potential Subscriber shall only be required to pay their proportionate share of construction costs related to the provision of Cable Services to their property.

### **Section 6.3 Customer Service**

- a. Customer Service Standards. Grantee shall comply with customer service standards required by the FCC as set forth in Part 76 of Title 47 of the Code of Federal Regulations.
- b. Continuous Service.  
It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to Grantee are honored, subject to the terms and conditions of this Franchise.

### **Section 6.4 Subscriber Bills and Notices**

Grantee shall comply with the notice requirements in Subpart T of Part 76 of the FCC's rules and regulations, as such may be amended from time to time.

### **Section 6.5 Rate Regulation**

Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, in Grantor's sole discretion. If and when exercising rate regulation, Grantor shall abide by the terms and conditions set forth by the FCC.

### **Section 6.6 Annexation by Grantor**

The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee, which

notice shall include each site address to be annexed as recorded on county assessment and tax rolls. Such annexed area will be subject to the provisions of this Franchise upon written notice from the Grantor. Any identified Subscriber addresses shall be included in Grantee franchise fee calculations within thirty (30) days after Grantee's receipt of the annexation notice. All notices due under this Section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 9. Upon request and if reasonably available, Grantor will also provide addresses and maps of annexed areas in a digital format. In any audit of Franchise Fees due under this Agreement, Grantee shall not be liable for Franchise Fees on annexed areas unless and until Grantor has provided the notice by certified mail that meets the standards set forth in this Section.

### **Section 6.7 Emergency Alert System**

Grantee agrees at all times to comply with Federal and State EAS rules as required in 47 C.F.R. Part 11 or as amended.

## **Article VII. Service to Public Buildings; Community Programming**

### **Section 7.1 Service to Public Buildings**

Grantee shall provide, without charge, one (1) outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary Public School instructional buildings and public library buildings within the Service Area and located within one hundred twenty-five (125) feet of Grantee's distribution plant. Additionally, upon written request from Grantor, Grantee shall provide, without charge, one (1) activated outlet and equipment of Basic Cable Service to up to five (5) publicly owned or publicly operated buildings, provided that the buildings are located within one hundred twenty-five aerial feet (125') of the existing distribution Cable System that is actively delivering Cable Service, or if the Grantor agrees to pay the additional cost for non-Standard Installation. Nothing in the preceding sentence shall require Grantor to make any request to Grantee to continue to receive, without charge, any Basic Cable Service provided to publicly owned or operated buildings as of the effective date of this Franchise. 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. The Grantor shall take reasonable precautions to prevent any inappropriate use of or loss or damage to the Grantee's Cable System.

### **Section 7.2 Public Education & Government (PEG) Channel**

- a. Grantee shall continue to provide two (2) channel[s] on the Cable System for use by Grantor for non-commercial, video programming for Public, Education and Government access ("PEG").
- b. The PEG channel(s) shall, to the extent required by law, be placed on Franchisee's lowest cost level of Cable Service available to Subscribers. Throughout the term of the Franchise, all Subscribers shall be able to view the PEG channel(s) without additional equipment, fees or charges, other than equipment, including converters, required of all Subscribers at additional cost to view the non-PEG programming on the Subscriber's selected level of service.

- c. Programming shall be produced in the Service Area, by those who reside in the Service Area or be of interest to Subscribers in the Service Area as reasonably determined by the Grantor.
- d. For a period of two (2) years from the effective date (as provided in Section 11.1), the Grantor shall not be required to maintain any minimum programming on the PEG Channel. Thereafter, the Grantor shall provide at least one (1) hour of local programming on the PEG Channel in any six (6) month period. For the purposes of the above calculation: a) a program may not be repeated more than three (3) times in any consecutive six (6) month period; and b) time allocated to character-generated or similar programming shall not be included. In the event the programming levels set forth herein are not maintained, the Grantee may have the underutilized PEG Channel returned to the Grantee for the Grantee's use. The Grantee may utilize the PEG Channel only after giving the Grantor not less than ninety (90) days notice and the Grantor fails to maintain the minimum programming levels set forth herein during those ninety (90) days. The Grantor may request return of the PEG Channel used by the Grantee at any time, which request for return shall be accompanied by a showing that the Grantor's intended use for the PEG Channel will, or is reasonably likely to, meet the programming requirements set forth in this Section. The Grantee shall, within ninety (90) days of the date of the written request, cease use of and return the PEG Channel to the Grantor.
- e. When the PEG channel(s) required pursuant to this Section is utilized seventy percent (70%) of the time, five (5) days per week, Monday through Friday, for a consecutive twelve (12) hour block during the hours from 11:00 AM to 11:00 PM, during ten (10) consecutive weeks, Grantee shall make available an additional PEG channel upon the same conditions as the original PEG channel within ninety (90) days of a written notice from Grantor. For the purposes of the above percentage calculation: a) a program may not be repeated more than three (3) times in any consecutive ten (10) week period; and b) time allocated to character-generated or similar programming shall be excluded.
- f. Grantee shall not be responsible for operating and managing the PEG channel(s) including approving any or all PEG programming and/or for obtaining any necessary releases from programmers or another Person to show such content on the PEG channel(s). Grantee shall not exercise any editorial control over the PEG channel(s), except as permitted in Section 611(e) of the Cable Act (47 U.S.C. § 531(e)).
- g. Grantor reserves the right to permit a third party to operate and/or manage the PEG channel(s) on Grantor's behalf. The PEG channel(s) shall not be used for commercial purposes, including but not limited to leasing capacity or advertising.
- h. Grantee shall continue to provide all existing connection(s) of the PEG access channel(s) from Grantee's headend to the location designated by Grantor, in place as of the effective date of this Franchise at no cost to Grantor. After the effective date, any connections to the Grantee's headend to enable transmission of PEG access programming shall be requested in writing by the Grantor and shall be provided by Grantee as soon as reasonably possible. The cost for such connections shall be paid by the Grantor and may be paid for with the PEG fee set forth below. Grantee shall,

at no cost to the Grantor, provide and maintain the equipment necessary for transmission of PEG programming to Subscribers on the PEG channel(s). Grantee may recover from Subscribers such equipment costs in accordance with Section 7.2.(i). For the purposes of this subsection, "connections" means the physical connection between the PEG access origination point and the Grantee's headend, including cable, fiber (if used) and conduits. For purposes of this subsection, "equipment" means any equipment necessary to transport the PEG signal from outside the Grantor's building demarcation point to the Grantee's headend, as well as any equipment in the Grantee's headend necessary to transmit the programming to Subscribers, and the maintenance of all the foregoing.

[At any time during the term of this Franchise, the Grantor and Grantee may meet to discuss providing capital support for PEG access equipment and facilities as provided in this Section and consistent with federal law [47 U.S.C. §§ 542 (g)]. The provision of PEG capital support from Grantee or its Subscribers is subject to the written agreement between the parties and at the discretion of the Grantee, whose consent shall not be unreasonably denied. PEG funds shall be for the exclusive use of the Grantor and shall not be used for purposes other than as prescribed by federal law. Grantor shall conduct a public proceeding to determine the level of PEG capital support that is reasonable to meet the demonstrated cable-related needs of the community, considering the cost to provide those needs. The Grantor shall notify the Grantee in writing at least thirty (30) days prior to such proceeding and of the amount of capital support requested, not to exceed what is actually needed for capital support and what is practicable considering the number of Subscribers in the Service Area. Grantor shall also provide a business plan to Grantee demonstrating that the Grantor will provide adequate operating support to utilize the equipment purchased. The Grantee shall be permitted to recover such capital costs from Subscribers with individual account records, if allowed by law.

### **Section 7.3 Access and Community Support Not Franchise Fees**

Subject to applicable law, the Grantee agrees that any PEG capital support provided pursuant to this Section shall in no way modify or otherwise affect the Grantee's obligations to pay Franchise Fees to the Grantor. The Grantee agrees that although the sum of Franchise Fees and PEG capital support as set forth in this Section may total more than five percent (5%) of the Grantee's Gross Revenues in any twelve (12) month period, PEG capital support shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise, subject to applicable law. In the event Grantee deducts from any Franchise Fee payment any amounts or costs required in this Section, Grantee shall make best efforts to provide the Grantor written notice at least 30 days prior to implementing the deduction.

## **Article VIII. Insurance & Indemnification**

### **Section 8.1 Insurance Requirement**

- a. Grantee shall maintain, throughout the Term of this Franchise, insurance in amounts no less than the following:

#### Workers Compensation – Statutory Limits

Commercial General Liability: \$2,000,000 per occurrence, Combined Single Liability (CSL); \$2,000,000 General Aggregate

Auto Liability including coverage on all owned, non-owned hired autos: \$1,000,000 per occurrence, CSL

Umbrella Liability: \$2,000,000 per occurrence, CSL

- b. Grantor shall be added as an additional insured arising out of work performed by Charter to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. Grantee's insurance carrier will endeavor to provide advance written notice of cancellation to the Grantor for any reason other than non-payment of premium. Notice of cancellation to the Grantor may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the Grantor. Upon policy expiration or change of insurance carrier, Certificates of Insurance will be provided within thirty (30) days after policy renewal or replacement.
- d. The limits of the insurance as provided herein shall be subject to any changes as to the maximum limits of tort liability imposed on municipalities of the State of Oregon during the term of this Franchise. Upon notice from Grantor of such changes, which must be made in writing and signed by the Grantor and Grantee, the Grantee shall increase the limits required in this Section 8.1 to at least the maximum limits within thirty (30) days.
- e. Grantee shall furnish Grantor with current certificates of insurance within ninety (90) days of the effective date of this Franchise.

#### **Section 8.2 Indemnification**

Grantee shall, by acceptance of the Franchise granted herein, defend, indemnify and hold harmless Grantor, its officers, agents and employees, from and against all claims, liabilities, damages and penalties, including but not limited to attorney fees, arising as a result of construction, operation and maintenance of the Cable System within the Service Area, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the Grantor for claims, damages and penalties caused by the negligence, gross negligence or willful misconduct of Grantor, its officers, agents and employees, including any use of any Public, Education and Government (PEG) channels, funding and facilities. Grantor shall give Grantee written notice within ten (10) days of receipt of any claim or lawsuit subject to this Franchise, and Grantor may retain its own separate counsel at its sole cost and expense.



**Article IX. Notices**

**Section 9.1 Notice to Grantor**

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, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice.

City of Coos Bay  
500 Central Avenue  
Coos Bay, Oregon 97420

**Section 9.2 Notice to Grantee**

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 Persons at the addresses set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. Changes in names and addresses may be made at any time with proper notice. Grantee shall provide thirty (30) days written notice to Grantor of any changes in rates, programming services or channel positions using any reasonable written means.

Attn: Director, Government Relations  
Charter Communications  
222 NE Park Plaza Drive, Suite #231  
Vancouver, WA 98684

With a copy to:

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

**Article X. Miscellaneous Provisions**

**Section 10.1 Compliance with Local, State & Federal Law.**

Grantee shall at all times comply with all applicable State and Federal laws, and local laws pursuant to Section 3.3, Section 4.3.b, or as otherwise expressly provided herein, and the applicable rules and regulations of administrative agencies. Grantor and Grantee reserve all rights they each may possess under law, unless expressly waived herein.

**Section 10.2 Severability.**

If any Section, term, word, phrase or part of this Franchise, or any other portion thereof, is held invalid by a court of competent jurisdiction, all remaining

Sections, terms, words, phrases or other parts shall remain in full force and effect.

### **Section 10.3 Force Majeure.**

In the event either party is prevented or delayed in its performance of any of its obligations under this Franchise by reason of fires, hurricanes, tornadoes, earthquakes or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, act or omission or delays by utility companies upon whom that party is dependent for pole attachments or easement use, that party shall not be held in default or noncompliance with the provisions of this Franchise nor shall it suffer any penalty relating thereto. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Grantee to foresee or control.

### **Section 10.4 Descriptive Headings.**

The captions to Articles and Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

### **Section 10.5 Legal Action.**

The venue of any legal action brought against one party by the other arising out of this Franchise shall be within Coos County, Oregon or the United States District Court for the District of Oregon. This Franchise shall be governed by the laws of the State of Oregon and by federal law.

### **Section 10.6. Entire Agreement.**

This Franchise sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

### **Section 10.7 Public Notice.**

The Grantor shall provide public notice of any public meeting relating to this Franchise or any such grant of additional franchises by the Grantor to any other Person(s) to provide Cable Services consistent with Oregon law relating to public meetings.

**Article XI. Term & Renewal**

**Section 11.1 Effective Date & Term**

- a. This Franchise shall take effect and be in full force on September 6, 2016, provided that Grantee returns an executed original version of this Franchise to the Grantor not more than sixty (60) days from the date the Grantor executes this Franchise. If Grantee does not accept this Franchise as required in this Section, the Franchise shall be null and void.
- b. This Franchise shall expire ten (10) years from the effective date, unless extended by the mutual written consent of both parties.
- c. Grantee may seek renewal of this Franchise in accordance with the provisions of Section 626 of the Cable Act, or any such successor statute. In the event of a denial of renewal of this Franchise, Grantee shall remove its Cable System from the Streets of Grantor, or abandon the Cable System in place if permitted in writing by the Grantor.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this \_\_\_\_\_ day of September 2016.

Yes:

No:

Absent:

\_\_\_\_\_  
 Crystal Shoji  
 Mayor of the City of Coos Bay  
 Coos County, Oregon

ATTEST:

\_\_\_\_\_  
 Susanne Baker  
 Recorder of the City of Coos Bay  
 Coos County, Oregon

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2016, subject to applicable Federal, State and local law:

Falcon Cable Systems Company II, L.P.  
 By: Charter Communications VII, LLC its General Partner  
 By: Charter Communications Inc., its Manager

By: \_\_\_\_\_  
 Printed Name: Mark E. Brown  
 Title: Vice-President, Government Affairs, Charter Communications