

BAY CITY ORDINANCE # 606

AN ORDINANCE GRANTING A CABLE FRANCHISE TO FALCON TELECABLE, A CALIFORNIA LIMITED PARTNERSHIP, DBA CHARTER COMMUNICATIONS, SETTING RULES FOR USE OF PUBLIC STREETS FOR FRANCHISE PURPOSES AND SETTING STANDARDS FOR THE OPERATION OF A CABLE TELEVISION COMMUNICATIONS SYSTEM WITHIN THE CITY AND REPEALING BAY CITY ORDINANCE #462

The City of Bay City Ordains as follows:

SECTION 1 Definition of Terms

1.1 Definitions. For the purpose of this Franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, 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. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Basic Cable" shall mean the lowest priced tier of Cable Service that includes the delivery of broadcast signals and any public, educational and governmental access channels.

B. "City" shall mean the City of Bay City.

C. "Council" shall mean the City Council, the governing body of the City of Bay City.

D. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.

E. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming services, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

F. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

G. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.

H. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct and operate a Cable System along the public ways within all or a specified area in the Service Area.

I. "Grantee" shall mean Falcon Telecable, a California Limited Partnership d/b/a Charter Communications or its lawful successor, transferee or assignee.

J. "Gross Revenue" means any revenue received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, *provided, however,* that such phrase shall not include: (1) any taxes, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee; (2) unrecovered bad debt; and (3) any PEG or I Net amounts recovered from Subscribers which are attributable to PEG or I Net services offered in the City pursuant to subsection 13.4 of this Franchise.

K. "Installation" shall mean the connection of the Cable System from feeder cable to Subscribers' terminals.

L. "PEG channels" means the public channels, educational channels, and government channels.

M. "Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

N. "Public School" shall mean any school at any educational level operated within the Service Area by any public, private or parochial school system, but limited to, elementary, junior high school, and high school.

O. "Reasonable notice" shall be written notice addressed to the Grantee or to the City pursuant to Sec. 15.4 of this Franchise.

P. "Service Area" shall mean the geographic boundaries of the City, and shall include any additions thereto by annexation or other legal means.

Q. "Service Interruption" shall have the meaning described in the Customer Service Standards set forth in Exhibit B attached hereto and hereby made a part of this Franchise.

R. "State" shall mean the State of Oregon.

S. "Street" shall include each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or

by others and located within the Service Area: streets, roadways, highways, bridges, land paths, 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, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the City in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

T. "Subscriber" shall mean any person lawfully receiving Cable Service from the Grantee.

SECTION 2 Grant of Franchise

2.1 *Grant.* The City by this Franchise hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

2.2 *Term.* The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in subsection 15.10, unless otherwise lawfully terminated in accordance with the terms of this Franchise. Within thirty (30) days after the date of final approval of this Franchise by the Grantee, the Grantee shall file with the City its acceptance of the Franchise.

2.3 *Franchise Requirements For Other Franchise Holders.* In the event that the City grants one (1) or more franchise(s) or similar authorizations, for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Cable System it shall not make the grant on more favorable or less burdensome terms. If said other franchise(s) contain provisions imposing lesser obligations on the company(s) thereof than are imposed by the provisions of this Franchise, Grantee may petition the City for a modification of this Franchise. The Grantee shall be entitled, with respect to said

lesser obligations to such modification(s) of this Franchise as to insure fair and equal treatment by this Franchise and said other agreements.

2.4 *City Control over Streets Not Limited.* Grantee acknowledges that the franchise granted by this Franchise does not establish any priority for use of the

Streets by Grantee or by any present or future recipients of franchises or permits. In the event of any dispute as to the priority of use of the Streets, the first priority shall be to the public generally, the second priority to the City, the third priority to the State and its political subdivisions in the performance of their official functions, and thereafter as between the various applicable franchisees and permittees, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred upon the City by the State.

Grantee acknowledges that by this Franchise, Grantee obtains no rights to or further use of the Streets other than those expressly granted herein. Grantee acknowledges and accepts as its own risk that the City may make legal use in the future of the Streets in which the Cable System is located in ways which are inconsistent with Grantee's use of such Streets, and in that event Grantee shall not be entitled to compensation from the City, except as may be otherwise provided under Federal, State or local law.

2.5 *Police Powers and Conflicts with Franchise.* In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general franchises necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and franchises enacted by the City pursuant to such power. Subject to its lawful police powers, the City may not, by franchise or otherwise, alter any of the Grantee's material rights, benefits, obligations or duties as specified in this Franchise. In the event of a conflict between any City ordinance and this Franchise, this Franchise shall control, provided, however that Grantee agrees that it is subject to the lawful police power of the City.

2.6 *Other Permits.* This Franchise does not relieve Grantee of the obligation to obtain permits, licenses and other approvals from the City or from other units of government which are required for the construction, reconstruction, repair or maintenance of the Cable System or provision of Cable Services, or from compliance with generally applicable City ordinances, including but not limited to those governing zoning and land use, pavement and curb cuts, subdivisions, and building permits, provided said permits, licenses and other approvals from the City are equally required by all other licensees engaging in construction, reconstruction, repair or maintenance in the City's right of way and that the enforcement of said generally applicable City ordinances are equally applied.

2.7 *Cable System Franchise Required.* No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3 Franchise Renewal

3.1 *Procedures for Renewal.* The City and the Grantee agree that any proceedings undertaken by the City that relates to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

3.2 *Assessment of Needs.* In addition to the procedures set forth in Section 626(a) of the Cable Act, the City agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The City further agrees that any such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

3.3 *Informal Renewal.* Notwithstanding anything to the contrary set forth in this subsection, the Grantee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

3.4 *Terms Consistent with Law.* The City and the Grantee consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

SECTION 4 Indemnification and Insurance

4.1 *Indemnification.* The Grantee shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the

negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, *provided* that the City shall give the Grantee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. 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 negligence of the City or for the City's use of the Cable System, including any PEG channels.

4.2 Insurance.

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

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

B. The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The Grantee shall furnish the City with current certificates of insurance evidencing such coverage.

SECTION 5
Service Obligations

5.1 *No Discrimination.* 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 or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations.

5.2 *Privacy.* The Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in applicable Federal or State law.

5.3 *Rates.* Grantee shall establish rates that are nondiscriminatory within the same general class of Subscribers. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling Subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for Subscribers who have multiple services; or (iv) discounted rates in those portions of the Service Area subject to competition.

5.4 *Customer Service Standards.* Grantee shall fully comply with the customer service standards set forth in Exhibit B to this Franchise.

SECTION 6
Service Availability

6.1 *Service Area.* The Grantee shall make Cable Service distributed over the Cable System available to every dwelling unit within the Service Area reaching the minimum density of at least thirty (30) dwelling units per mile at its published rates for installation. The Grantee may elect to provide Cable Service to areas not meeting the above standards.

6.2 *Service to New or Previously Unserved Single Family Dwellings.* The Grantee shall offer Cable Service to all new homes or previously unserved single dwellings located within 150 feet of Grantee's feeder cable at its published rates for standard Installation.

6.3 *Service to New Subdivisions.* Grantee shall extend Cable Service to all occupied residences within new single-family subdivisions in which the density of homes is at least 30 homes per mile within six (6) months of a request by a resident of the development.

6.4 *Service to Annexed Areas.* Grantee shall offer Cable Service to any area described in any annexation which occurs after the Effective Date of this Franchise, within one (1) year after the effective date of such annexation, except that Cable Service shall not be required if similar existing Cable Service is in place or if the density of homes is less than that required in Section 6.1.

6.5 *Additional Service.* Grantee may elect to offer Cable Service to areas not meeting the above standards. The Grantee may impose an additional charge in excess of its regular installation charge for any Cable Service Installation requiring a service drop in excess of the above standards. This additional charge shall be computed on a time plus materials basis to be calculated on that portion of the Installation that is above and beyond 150 feet.

6.6 *New Development Underground.* In cases of new construction or property development where utilities are to be placed underground, the City agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least 30 days prior notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable Federal, State and local codes and industry standards, including, but not limited to, those applicable sections of the Occupational Safety and Health Act of 1970 and the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be operated so that it is capable of continuous twenty-four (24) hour daily operation, capable of meeting or exceeding all applicable federal technical standards, as they may be amended from time to time, and operated in such a manner as to comply with all applicable FCC rules and regulations.

7.5 Performance Monitoring. Grantee shall test the Cable System as required in paragraph 76.609, Subpart K of the FCC Rules and Regulations. To the extent that

the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the City shall accept such combined reports.

The City may require additional tests, full or partial repeat tests, and/or different test procedures when there is evidence which casts doubt upon the reliability or technical quality of Cable Service on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance and such tests will be limited to the particular matter in controversy. The City will endeavor to so arrange

its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the Subscriber.

SECTION 8 Conditions on Street Occupancy

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new,

different, or additional poles, conduits, or other facilities whether on public property or on privately owned property until the written approval of the City is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee whenever the City reasonably determines that the public convenience would be enhanced thereby. The costs for such removal or modification shall be paid by Grantee, *provided* that the City equally requires that other users of the streets pay for the cost of said removal of or modification to their facilities.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.

8.3 Permits. The City shall cooperate with the Grantee in granting any permits required, provided such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets and that proposed construction shall be done in accordance with the pertinent provisions of the franchises of the City. Grantee is responsible for notifying City of any work being done in Streets by Grantee or a third party under contract to Grantee, including notices pursuant to "one-call"

statutes and regulations. Such third parties performing work in the City under contract to Grantee shall be required to obtain City business licenses as required by City ordinance.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable

barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to the original condition of the Streets immediately prior to such damage or disturbance.

8.6 *Removal in Emergency.* Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the City to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the City for restoration and repair, unless such acts amount to gross negligence (as that term is defined in the Oregon Tort Claims Act) by the City.

8.7 *Tree Trimming.* Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. Grantee shall be responsible for the prompt removal of all debris resulting from tree trimming.

8.8 *Relocation for the City.* The Grantee shall, upon receipt of reasonable advance written notice, to be not less than fifteen (15) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of public structure or improvements which are not used to compete with the Grantee's services. Grantee shall be responsible for any costs associated with these obligations. The City may temporarily disconnect, remove

or relocate any of Grantee's facilities, which have not been disconnected, removed or relocated within a reasonable period of time after a request from the City, and Grantee shall reimburse the City its actual and reasonable expenses incurred. Neither the City nor any agent, contractor or employee thereof shall be liable to Grantee, its customers or third parties for any damages caused them or the Cable System due to any activities described in this subsection.

8.9 *Relocation for a Third Party.* The Grantee shall, on the request of any person holding a lawful permit issued by the City, 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 any such person benefiting from the relocation and the Grantee is give 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 day in the event of a temporary relocation and no less than one hundred twenty days (120) for a permanent relocation.

8.10 *Reimbursement of Costs.* If funds are available to any person using the Streets for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Grantee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee.

8.11 *Emergency Use.* When the Grantee provides an Emergency Alert System (“EAS”), then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment of Grantee and shall take reasonable precautions to prevent any use of the Grantee’s Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorney’s fees and costs.

8.12 *Use of Grantee Facilities.* The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the current or future system operations of the Grantee. This right shall not apply to any facilities used by the City to compete with Grantee.

8.13. *Discontinuance and Removal of the System.* Upon the revocation, termination, or expiration of this Franchise, either (a) by mutual agreement of City and Grantee, (b) by Grantee’s acquiescence or failure to challenge same, or (c) by a final

order of a court which Grantee either does not appeal or from which there is no further right of appeal, then the following shall occur: Grantee shall, at the direction of City, cease the provision of Cable Services and shall remove its Cable System, including all supporting structures, poles, transmission and distribution portions of the system and other appurtenances, fixtures or property from the Streets and public ways, in, over, under, along, or through which they are installed, within six (6) months of the revocation, termination, or expiration, *except* that (a) Grantee may abandon its facilities in place with the City’s consent, and (b) Grantee shall not remove underground facilities without City’s advance consent, which consent shall not be unreasonably withheld. Prior to any removal Grantee shall notify City and persons owning property abutting Streets where removal shall occur. Grantee shall also restore any property, public or private, to a condition equal to or better than the condition prior to installation, erection or construction of the Cable System, including any improvements made to such property subsequent to the construction of the Cable System.

Restoration of Streets and City property shall be in accordance with the directions and specifications of the City, and all applicable laws, ordinances, and regulations, and at the sole expense of Grantee. If such removal and restoration is not completed within six (6) months following the revocation, termination or expiration, all of Grantee’s property remaining in the affected Streets shall, at the option of the City, be deemed abandoned and shall, at the option of the City, become the City’s property or the City may obtain a court order compelling the removal of same.

In the event Grantee fails or refuses to remove its Cable System or to satisfactorily restore all areas to a condition equal to the condition that existed prior to the original construction of the Cable System, the City may, at its option, perform such work and if such

work is performed within eighteen (18) months of the revocation, termination or expiration of this Franchise, collect the costs thereof from Grantee. No surety on any performance bond shall be discharged until the City has certified to Grantee in writing that the Cable System has been dismantled, removed, and all other property restored, to the satisfaction of the City.

SECTION 9 Service and Rates

9.1 Customer Service Standards. Grantee shall comply with the terms set forth in the Customer Service Standards in EXHIBIT B attached hereto and hereby made a part of this Franchise.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth

information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the City thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the Cable System, or the City gives notice of intent to terminate or fails to renew this

Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System.

SECTION 10 Franchise Fee

10.1 Amount of Fee. Grantee shall pay to the City on a quarterly basis a franchise fee in an amount equal to percent (5%) of the Gross Revenue. Such payment shall be in addition to any other taxes or permit fees of general applicability owed to the City by the Grantee that are not included as franchise fee under federal law. In the event that the Federal or State government, or the FCC, or the courts in the future permit the City to receive a franchise fee greater than five percent (5%), either by changing the percentage rate or the definition of gross revenues to which it is applicable, the City shall have the right to increase the franchise fee (or definition of gross revenues to which said fee is applicable) to take full advantage thereof.

10.2 Payment of Fee. The fee due the City shall be remitted on a quarterly basis, within thirty (30) days of the close of each calendar quarter. The payment period shall commence as of the Effective Date of the Franchise. In the event of a

dispute, the City, if it so requests, shall be furnished a statement of said payment, by a Certified Public Accountant, reflecting the Gross Revenues and the applicable charges, deductions and computations for the period covered by the payment.

10.3 Information Provided with Fee Payment. Grantee shall provide to the City, simultaneous with the quarterly franchise fee payment, a written statement with information as to the following: Gross revenue for the quarter generated within the franchise service area, itemized deductions from gross revenue for each category set forth in Section 1.1(J) when applicable (i.e., pursuant to this franchise, only itemized deductions for bad debt shall be applicable) and the net revenue on which the franchise fee is based.

10.4 Accord and Satisfaction. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Franchise or for the performance of any other obligation of the Grantee.

10.5 Limitation on Recovery. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of one percent per month. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years.

10.6 Internet Services. Pursuant to current FCC Rules and Regulations, the City shall be restricted from requiring that the Grantee obtain a separate franchise for, or pay franchise fees on high speed Internet services provided over Grantee's cable system. In the event that the City is no longer prohibited by FCC Rules and Regulations or if the aforementioned FCC Rules and Regulations are superceded by federal law, nothing in this Franchise shall preclude the City from requiring the Grantee to obtain a separate franchise or pay franchise fees on cable modem services when the same are provided to the City by

Grantee. Any such requirements must be placed on all other companies using the City's public rights of way which are providing same or similar data services within the City.

10.7 Audit. City (by itself or in combination with other municipalities served by Grantee) may audit Grantee (or any entity affiliated with Grantee) to verify the accuracy of franchise fees paid City. All records reasonably necessary for such audit shall be made available by Grantee at a location in City. Any additional amount due City shall be paid within thirty (30) days of City's submitting an invoice for such sum, and if such sum shall exceed twelve percent (12%) of the total franchise fee which the audit determines should have been paid for any calendar year,

Grantee shall pay City's cost of auditing that calendar year as well. Notwithstanding the above, if Grantee's auditor disagrees with City's determination that the additional amount due exceeds twelve percent (12%), City's auditor and Grantee's auditor shall choose a neutral auditor who shall make a determination which is final and binding on both parties as to whether the twelve percent (12%) amount was exceeded.

SECTION 11 Transfer of Franchise

11.1 Franchise Transfer. The Franchise granted hereunder shall not be sold, transferred, leased or assigned, including but not limited to, by forced or voluntary sale, receivership, or other means without the prior consent of the City, such consent not to be unreasonably withheld or delayed. 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, the City 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 City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given.

11.2 Transfer Without Consent Deemed Violation. By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer of the Franchise occurring without prior approval of the City shall constitute a violation of this Franchise by the Grantee.

11.3 Transfer to Affiliates. The foregoing requirements shall not apply to any sale, assignment or transfer to any Person that is owned or controlled by the Grantee, or any Person that owns or controls the Grantee. Grantee shall notify the City thirty (30) days prior to any such sale, assignment or transfer.

SECTION 12 Records, Reports and Maps

12.1 *Reports Required.* The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the City upon request.

12.2 *Records Required.* The Grantee shall at all times maintain:

A. A record of all complaints received regarding interruptions or degradation of Cable Service during the term of this Franchise which shall be maintained for one (1) year.

B. A full and complete set of "as-built" maps and records showing the location of the Cable System and shall provide to the City a paper copy of the maps and records described herein, as well as a digital copy of the as-built maps in *.dwg, *.dgn or *.shp format, at no charge. The term "as-built maps" as used herein shall refer to City Service Area information and shall not include any proprietary design information nor any personally identifiable information related to Subscribers which Grantee may not release to Grantor as proscribed by Federal Law. Grantee shall provide the City at no charge a copy of any new or revised "as-built" or comparable drawings as and if they are generated for portions of Grantee's facilities within the City, within 90 days following construction (or reconstruction) and activation of such facilities. Upon request by the City in an emergency, Grantee shall inform City within not more than one business day of any changes from such maps and records previously supplied and shall mark up any maps provided by the City so as to show the location of the Cable System. Further, Grantee shall provide updated "as-built" maps and digital disks to the City upon Grantee's receipt of a written request from Grantor requesting such, but in any event no more than once every three (3) years.

12.3 *Inspection of Records.* Grantee shall permit any duly authorized representative of the City, upon receipt of advance written notice to examine during normal business hours and on a non-disruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. 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 City. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints which shall be retained for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City agrees to treat as confidential any books, records or maps that constitutes proprietary or confidential information to the extent Grantee makes the City aware of such confidentiality and the City further agrees to treat as confidential any additional information that the Grantee specifically requests to be kept confidential, except as may be otherwise provided by law, including the Oregon Public Record laws. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the

City 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.

12.4. Performance Evaluation Sessions. At the City's request, but no more than once annually beginning from the anniversary date of Grantee's award of this Franchise, City and Grantee may hold scheduled performance evaluation sessions.

A. All evaluation sessions shall be open to the public and shall be advertised in a newspaper of general circulation within City at least ten (10) days prior to each session. Grantee shall notify its subscribers of all evaluation sessions by announcement displayed prominently on at least two (2) channels of its Cable System during prime time, for five (5) consecutive days preceding each session.

B. The purpose of the scheduled evaluation session shall be for the Grantee to provide the Council and the public a report of measurable progress on the Grantee's development of high-speed Internet services in the City, and shall address both residential and business applications. Such reports shall be deliverable at each evaluation session until such time as either (1) high-speed Internet service is available from Grantee at the same penetration rate as Grantee's Cable Services, or (2) the City determines that the service is available from an alternative provider at equivalent penetration rates.

C. Other topics which may be discussed at any evaluation session may include, but not be limited to, service rate structures; franchise fees, liquidated damages; free or discounted services; the creation of PEG channels, application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and City or Grantee rules.

D. The City may coordinate its scheduled performance evaluation session with other cities in Tillamook County whose franchise agreements contain provisions identical to the requirements of this Section.

SECTION 13 Community Programming

13.1 Service to Schools and Buildings. The Grantee shall maintain, without charge, one outlet to those schools and municipal locations set forth in EXHIBIT A attached to and hereby made a part of this Franchise, and will provide free Basic Cable, for so long as the Cable System remains in operation in the Service Area. Any school identified in EXHIBIT A may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee's Cable System, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all local, State and Federal laws and regulations. The City may request additional

outlets for new municipal and school locations that may arise over the term of this Franchise, and Grantee shall comply so long as the building to be served is within 150 feet of Grantee's existing cable plant.

13.2 Limitations on Use. 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 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. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by subsection 13.1 above. The Grantee shall not be required to provide an outlet to any such building where a standard drop of more than 150 feet is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

13.3 Emergency Alert System. Grantee shall provide without charge to City an Emergency Alert System ("EAS") consisting of both of the following:

A. An all channel alert system so as to allow audio announcements and video crawls by City on all subscriber channels, provided technically feasible and in compliance with Federal law and Federal Communications Commission regulations. The video crawl shall be superimposed on existing programming. In the event of an emergency the City may use either the audio announcement or the video crawl, at its option. City's use of such system shall at all times be in compliance with Federal law and Federal Communications Commission regulations and shall be in accordance with Municipal codes, ordinances and policies for same, as from time to time in effect.

B. An EAS or successor to that system complying with all requirements imposed from time to time by the FCC including without limitation the requirement currently set forth in the FCC regulations that a cable television systems transmit a visual EAS message on at least one channel and that cable systems also provide video interruption and audio EAS message on all channels with the video further stating which channel is carrying the visual message. In establishing its EAS system, Grantee shall, in accordance with FCC or other applicable regulations, cooperate with City on the use and operation by City of the Emergency Alert System.

13.4 PEG Channels. Grantee acknowledges its obligation under Federal law to provide one public, educational, and government (PEG) channel on the Cable System specifically for the use of the public, school, and governmental bodies in the Service Area. The City, for its part, reserves the right to request a channel for PEG use, and to do so jointly with one or more of the following cities Rockaway Beach, Tillamook, Manzanita and Garibaldi (hereinafter referred to as the "Tillamook County Area"). Grantee will provide at Grantee's expense such PEG channel as requested by the City within twelve (12) months of the City's request. When first run or first re-run original programming from the Tillamook County Area occupies seventy percent (70%) of the hours between 11:00 am and 11:00 pm for any twelve (12) consecutive weeks, then the City may request one additional PEG

channel and when first run or first re-run original programming from the Tillamook County Area (different programming from the first channel) occupies seventy percent (70%) of the hours between 11:00 am and 11:00 pm for any twelve (12) consecutive weeks for the second channel the City may request a third PEG channel. The City agrees that its request for additional PEG channel(s) shall include a report, which shall include a programming schedule as verification that the City has met the programming utilization levels and criteria set forth herein. In the event that the programming levels as set forth hereinabove are not maintained, the channels will return to the Grantee in reverse order. In addition, the Grantee may use the designated channels during the hours that the City or other governmental, public or educational entity is not using them. The City shall agree to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the aforementioned PEG channel(s) by the City.

SECTION 14 Enforcement or Revocation

14.1 Notice of Violation. If the City believes that the Grantee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem or a determination that the alleged noncompliance of the Franchise was a result of good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise territory, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance of the Franchise stating with reasonable specificity the nature of the alleged noncompliance.

14.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 14.1 to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

14.3 Public Hearing. If the Grantee fails to respond to the notice received from the City pursuant to the procedures set forth in subsection 14.2, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing before the City Council if it intends to continue its investigation into the default. The City shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the City Administrator or his or her designee in a newspaper of general circulation within the City in accordance with subsection 15.5 hereof.

14.4 Enforcement. Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the City may:

A. Order Grantee to correct or remedy the violation within a reasonable time frame as determined by generally accepted business standards (i.e., standards set forth by applicable Federal State and local rules and regulations as well as by FCC Rules and Regulations); or

B. Impose penalties pursuant to subsection 14.5 hereof; or

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.6 below; or

D. Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

14.5. Penalties. After the completion of procedures described in subsection 14.1 through 14.3 above, the City may assess penalties in amounts not exceeding those set forth in this subsection. Such assessment by the City shall be a monetary obligation of Grantee to the City in the amount determined by the City and shall be paid in full by Grantee within fifteen (15) business days of the date of assessment by the City.

The financial penalty provisions of this Franchise are intended as a reasonable forecast of compensation to the City for the harm caused by violation of this Franchise, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided for in this Franchise. Violations arising out of a single event shall constitute a single violation for purposes of assessing penalties under this Section.

For violating aggregate performance customer service standards for a quarterly measurement period, the penalty shall be \$250 for the first such violation; \$1,000 for the second such violation, unless the violation has been cured; and \$1,500 for any and all subsequent violations, unless the violation has been cured. A cure is defined as meeting the customer service standard for two (2) consecutive quarterly measurement periods.

For violation of applicable subscriber service standards where violations are not measured in terms of aggregate performance standards, the penalty shall be \$25.00 per violation multiplied by the number of affected subscribers.

For all other violations of this Franchise, except as otherwise provided herein, the penalty shall be \$200.00 per day for each violation for each day the violation continues, with a cap of ten thousand dollars (\$10,000).

Grantee shall not be: (1) obligated to pay these penalties; or (2) held to violations if the noncompliance is "beyond the control" of Grantee, as that term is defined in Section 15.2 herein.

The collection of penalties by the City shall in no respect affect (1) compensation owed to Subscribers, or (2) the Grantee's obligation to comply with all of the provisions of this Franchise.

14.6 *Revocation.*

A. Prior to revocation or termination of the Franchise, the City shall give written notice to the 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 ninety (90) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. If the City has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise following a public hearing before the City Council. The Grantee shall be given at least ten (10) days prior written notice of such public hearing, specifying the time and place of such hearing and purpose of such hearing.

B. At the hearing, the City Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council shall be made in

writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City Council *de novo*.

C. The City Council shall hear any persons interested therein, and shall reasonably determine whether or not any default, failure, refusal or neglect by the Grantee was with just cause.

14.7 *Conditions of Sale After Revocation or Termination.*

A. If Grantee's Franchise is lawfully terminated or revoked and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

B. The Grantee and the City agree that in the case of a final determination of a lawful revocation or termination of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third

party. The Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System during such time that is reasonably acceptable

to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or State law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

C. At the termination or revocation of the Franchise, as provided herein, Grantee shall, upon notice by the City, remove at its own expense the Cable System from all Streets within the Service Area. Notwithstanding the foregoing, the Grantee may abandon any property in place in the public rights-of-way or public property upon written notice to the City. If, within ninety (90) days of the receipt of such notice, the City determines that the safety, appearance, or use of the public rights-of-way would be adversely affected, the property must be removed by the Grantee by a date reasonably specified by the City in light of the amount of work to be performed.

14.8 Relationship of Remedies. The remedies provided for in this Franchise are not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of either party at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed. The recovery of amounts under the insurance, indemnity or penalty provisions of this Franchise shall not be construed as any of the following: (a) an election of remedies, (b) a limit on the liability of either party under this Franchise for penalties or otherwise; or (c) an excuse of faithful performance by either party.

SECTION 15 Miscellaneous Provisions

15.1 Compliance with State and Federal Laws. Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and federal government or any administrative agencies thereof which relate to the conduct of Grantee's business.

15.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control ("force majeure"). This provision includes 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 unavailability of materials and/or qualified labor to perform the work necessary. Other examples of force majeure shall include, but shall not be limited to, alleged defaults caused by strike, riot, war, earthquake, flood, tidal wave, severe rain or snow, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, judicial or administrative order or regulation, acts of God or acts of terrorism.

15.3 Action of Parties. In any action by the City or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and

timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

15.4 Notices. All notices pursuant to this Franchise shall be given by certified mail (return receipt requested) as follows:

If to the City, addressed to:

City Recorder
City of Bay City
P.O. Box 3309
Bay City, OR 97107

With a copy to:

Regional Cable Commission
c/o Lane Council of Governments,
99 E. Broadway #400
Eugene, OR 97401-3111

If to Grantee, addressed to:

General Manager
Charter Communications
1344 NE Highway 101
Lincoln City, OR 97367

With a copy to:

VP Franchising
Charter Communication
Charter Plaza
12405 Powerscourt Drive
St. Louis, MO 63131-3674

Either party may change the address(es) to which notices are sent at any time during the term of this Franchise by notifying the other party in writing not less than thirty (30) days in advance by certified mail.

15.5 Public Notice. Minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting, posting at the administrative buildings of the City and by announcement on at least one (1) channel of the Grantee's Cable System for five (5) consecutive days prior to the meeting.

15.6 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of

competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

15.7 *No Waiver.* No failure by either party to insist upon the strict performance of any provision of this Franchise, or to exercise any right upon a breach thereof, shall constitute a waiver of any such right or alter or affect this Franchise. Each and every provision of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15.8 *Entire Agreement.* This Franchise and EXHIBITS A & B hereto sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and 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 superseded hereby and thereby.

15.9 *Authority.* Grantee represents and agrees to warrant that it has the corporate authority to accept into this Franchise, and that the persons signing on its behalf have received all necessary authorizations and approvals to execute this Franchise on behalf of Grantee. The City represents that this Franchise, codified as Ordinance No. 606, has been approved by the City Council on and that the persons executing this Franchise have been duly authorized by the City Council to do so on behalf of the City.

15.10 *Effective Date.* The effective date of this Franchise is June 1, 2004 pursuant to the provisions of applicable law. This Franchise shall expire on May 31, 2014, unless extended by the mutual agreement of the parties.

15.11 *Repeal.* Bay City Ordinance 462 is hereby repealed in its entirety. Furthermore, all resolutions and motions setting rates, fees, charges or procedures pertaining to the cable system within the City are hereby repealed.

PASSED AND ADOPTED by the City Council this 13th day of April, 2004 and APPROVED by the Mayor this 13th day of April, 2004.

/s/ Shaena E. Peterson
Shaena E. Peterson, Mayor

ATTEST:

/s/ Linda M. Dvorak
Linda M. Dvorak, City Recorder

First Reading: 03/09/04
Second Reading: 04/13/04
Adoption: 04/13/04

Ayes: 5
Nays: 1 (Gettman)
Abstentions: 0

Accepted by Falcon Telecable, a California Limited Partnership d/b/a Charter Communications this _____ day of _____, 2004.

Signature of Authorized Official

Name/Title

EXHIBIT A

MUNICIPAL/SCHOOL LOCATIONS RECEIVING FREE SERVICE PURSUANT TO
SECTION 13.1

- (1) Bay City Hall
- (2) Bay City Fire Department
- (3) Bay City Public Works Building
- (4) Tillamook Bay Community College

EXHIBIT B

CUSTOMER SERVICE STANDARDS

Grantee shall adhere to these customer service standards throughout the term of this Franchise as follows:

Office Hours and Telephone Availability

- The Grantee shall make available to customers the Charter toll free customer service telephone number which shall have trained Charter customer service representatives available twenty-four (24) hours per day, seven (7) days per week where customers can request a service call, equipment pick-up, make a payment by phone, question their bill or request additional services.
- A call to a cable system must be answered -- including wait time -- within 30 seconds after the connection is made. If the call is transferred, the transfer time may not exceed 30 seconds. These standards must be met at least 90 percent of the time, measured quarterly, under "normal operating conditions." However, if Grantee makes trained company representatives available on a 24 hour basis, these standards must be met at least 75% of the time under "normal operating conditions." Also under normal operating conditions, cable system customers may receive a busy signal no more than three percent of the time.
- Normal operating conditions are those which are within the control of the cable operator. These conditions include special promotions and normal system maintenance and upgrades, but do not include natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.
- Grantee shall not be required to use special equipment to measure telephone answering and hold time. However, if complaints indicate that Grantee's Cable System is failing to comply with these standards, Grantor, after notice and providing the Grantee a reasonable opportunity to cure, may require Grantee to acquire equipment or to conduct surveys to measure compliance. Otherwise, Grantee must use its best efforts to document compliance.
- Grantee shall at a minimum agree to maintain a local payment reception facility which may include a third party payment center or a local drop box in the City limits that will be used for receiving customer bill payments.

Installations, Outages and Service Calls

- Standard installations -- which are those located up to 150 feet from the existing distribution system -- must be performed within five days after an order has been placed, except for circumstances beyond Grantee's reasonable control.
- Except during conditions beyond its reasonable control, Grantee must begin working on a service interruption no later than 24 hours after being notified of the problem. A service interruption has occurred if picture or sound on one or more channels has been lost. Grantee must begin to correct other service problems the next business day after learning of them.
- Grantee may schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. At its discretion, Grantee may schedule service calls outside of normal business hours for the convenience of the customer.
- Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If Grantee's installer or technician is running late and will not meet the specified appointment time, he or she must contact the customer and reschedule the appointment at the convenience of the subscriber. However, this later contact will not excuse the missed appointment.
- Grantee shall establish internal programs to work with and promote customer satisfaction in the event that Grantee cannot meet these standards in a particular circumstance. One example of such a program that Grantee may elect to implement is the NCTA's "On-Time Guarantee."
- These standards concerning installations, outages and service calls must be met under normal operating conditions at least 95 percent of the time, measured quarterly.

Billing Practices

- Grantee shall provide at least thirty days advance notice must be given to subscribers of any changes in rates, programming services or channel positions, if the change is within the control of the cable operator. Notice shall be in writing by any means reasonably available to Grantee.
- Grantee's bill shall be clear, concise and understandable, with full itemization of services and charges. The bill should indicate charges for basic and premium service, any equipment charges, and a summary of all activity during the billing period, including optional charges, rebates and credits.
- Grantee shall respond to written complaints about billing matters within 30 days.

- Refunds must be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated. Uncontested refunds or Credits must be issued no later than the billing cycle following the determination that a credit is warranted.
- Grantee shall administer late fees in a manner consistent with Oregon state law.

Communications Between Cable Operators and Subscribers

- Grantee shall provide the following information to customers at the time of installation, at least annually to all subscribers, and at any time, upon request:

- (1) products and services offered;
- (2) prices and options of programming services and conditions of subscription to programming and other services;
- (3) installation and service maintenance policies;
- (4) instructions on how to use cable service;
- (5) channel positions of programming carried on the system; and
- (6) billing and complaint procedures, including the address and telephone number of the local franchise authority's office.

- The cable operator must give 30 days notice in advance of any significant changes in this information.

Lockout Device

- Grantee shall provide all subscribers with the option of obtaining a device by which the subscriber can prohibit the viewing of a particular cable service during periods selected by the subscriber. Grantee may charge a reasonable fee for materials and installation of a lockout device.

Blocking

- Upon request by a subscriber, Grantee shall entirely block such subscriber from receiving both the audio and video portion of any channel such as by (a) scrambling both the audio and visual portions of the signal, or (b) (if scrambling is insufficient to totally prevent reception or as requested by a subscriber) with devices such as a notch filter which prevent the frequencies containing a specific channel or channels from being transmitted into the subscriber's premises. Grantee may charge a reasonable fee for blocking audio and/or video signals.

Pay Per View

- Subscribers shall be given the options of (a) not having pay per view or per program service available at all, or (b) only having such service provided upon the subscriber providing a security number selected by an adult representative of subscriber.

Privacy

- Grantee shall adhere to standards established by federal law for protecting subscriber privacy and the confidentiality of personally identifiable subscriber information.

Negative Options

- Grantee shall not engage in the practice of “negative option” marketing, and shall not charge a subscriber for any service which the subscriber has not affirmatively requested.

Truth In Advertising

- Grantee’s bills, advertising and communications to its current or potential subscribers shall be truthful and shall not contain any false or misleading statement. For the purposes of the preceding, a statement is false or misleading if it contains an untrue statement of any material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Disconnection

- Grantee shall only disconnect a subscriber for failure to pay if at least forty-five (45) days have elapsed after the due date for payment of the subscriber’s bill and Grantee has provided at least ten (10) days written notice separate from the monthly bill to the subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection, and a follow-up written notice or telephone call.
- Grantee shall not disconnect a subscriber for failure to pay amounts that are legitimately in dispute during a billing dispute.
- Grantee may disconnect a subscriber at any time if Grantee in good faith believes that the subscriber has tampered with or abused Grantee’s equipment, that there is a signal leakage problem (or other non-compliance with FCC rules or other standards which poses a risk to lives or property) on the subscriber’s premises, or that the subscriber is or may be engaged in the theft of Cable Services.
- Grantee shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service shall be required of subscribers by Company. No charge shall be imposed upon the subscriber for or related to disconnection or for any Cable Service delivered after the effective date of the disconnect request (unless there is a delay in returning Grantee’s equipment). If the subscriber fails to specify an effective date for disconnection, the effective date shall be deemed to be the day following the date the disconnect request is received by Grantee.
- Grantee after terminating service shall remove or secure its Drop.

- The term “disconnect” shall include customers who elect to cease receiving Cable Service from Grantee and to receive Cable Service or other multi-channel video service from another person or entity.

Reports

- Company shall have on file reports as follows:
 - The reports shall disclose on a consistent basis, fairly applied the matters set forth below so as to measure Company’s compliance with the standards of the referenced sections and such other matters as City shall from time to time specify. Such reports shall show Company’s performance excluding periods of abnormal operating conditions, and if Company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of conditions and show Company’s performance both including and excluding the time periods Company contends such conditions were in effect.
 - Grantee’s reports shall be representative of the phone service provided to subscribers within all areas served by the Grantee’s call center, such as where Grantee’s call center receives calls from numerous municipalities with no ability to distinguish between or give preference to calls from one area or City over another.

FCC Technical Standards

- The following shall apply to Company’s implementation of and compliance with the rules and regulations relating to cable television technical standards for signal quality, currently set forth at 47 CFR § 76.601 and following, and subsequent amendments thereto: Upon City’s written request, Company shall notify City in advance of testing for compliance with FCC standards. City may have a representative present to observe such tests and may designate one location to be tested. Company shall provide City with a report of testing for compliance with such standards annually or upon request (but not more than twice a year). Such report shall state, in pertinent part, that the person doing the testing has been provided a copy of and reviewed the rules and regulations of the FCC, the FCC order(s) adopting such rules and regulations, and all industry standards and other materials referenced therein; and that such testing when done fairly, in substantial compliance with the FCC rules and regulations shows substantial compliance with such rules and regulations; or in the alternative setting forth with specificity and in detail all areas of non-compliance, their actual or likely scope and causes, and Company’s professional recommendation of the best corrective measures to immediately and permanently correct the non-compliance.