

BAY CITY ORDINANCE #659

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 AND DECLARING AN EMERGENCY

The City Council of the City of Bay City Ordains as follows:

SECTION 1 Definition of Terms

- 1.0. **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.
- 1.1 "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- 1.2 "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- 1.3 "City" is the City of Bay City, Tillamook County, State of Oregon.
- 1.4 "Council" shall mean the City Council of the City of Bay City.
- 1.5 "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- 1.6 "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- 1.7 "Grantee" shall mean Falcon Telecable, a California Limited Partnership dba Charter Communications or its lawful successor, transferee or assignee.
- 1.8 "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles 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, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, franchise fee, or sales or utility taxes; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusion available under applicable state law.

1.9 "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.

1.10 "Service Area" shall mean the geographic boundaries of the City, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.2 hereto.

1.11 "State" shall mean the State of Oregon.

1.12 "Street" and "Rights of Way" shall include each of the following located within the Service Area: public 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.

1.13 "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2 Grant of Franchise

2.1 **Grant.** City 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 shall be for a term of five (5) years, commencing on June 10, 2014 and ending on May 31, 2019.

2.3 **Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the City. In the event of any conflict between this Franchise and any City ordinance or regulation that is not generally applicable, this Franchise shall control.

2.4 **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. 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.

2.5 City Control over Streets Not Limited. Grantee acknowledges that 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. Grantee acknowledges that by this Franchise, Grantee obtains no rights to or further use of the Streets other than those expressly granted herein or pursuant to federal law. Pursuant to City's Police Powers, 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. If funds are available to any person using the street 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.

2.6 Other Permits. Subject to Section 2.4, this Franchise does not relieve Grantee of the obligation to obtain permits, licenses and other approvals from the City 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.

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 or rule.

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 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. In the event any such claim arises, the City shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If

the City determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System.

4.2 Insurance.

4.2.1 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.

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

4.2.3 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.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 Service Availability

6.1 Service Area. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this

Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

6.2 **Service to Annexed Areas.** The City shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days written notice from the City, subject to the conditions set forth below and Section 6.1 above. The City shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the City franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the City if the City has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.5 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

6.3 **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 thirty (30) days prior written notice of such construction or development, and of the particular dates 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 written 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 sections of 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 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 designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

7.5 **Performance Monitoring.** Grantee shall test the Cable System consistent with the FCC regulations.

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 on public property without obtaining all legally required permits of the City.

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. In the event that any telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8.3 **Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The City shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the City as to other public utility companies and other entities operating in the Service Area. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the City related to the Grantee's use of City rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

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 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 a condition reasonably comparable to the 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 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.

8.8 **Relocation for the City.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the City pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to the relocation of their facilities.

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 days in the event of a temporary relocation and no less than one hundred twenty (120) days 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.** If the Grantee provides an Emergency Alert System ("EAS"), then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment 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. The City shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 9 Service and Rates

9.1 **Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

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.** City 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, 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, and subject to Grantee's rights under this Franchise.

SECTION 10

Franchise Fee

10.1 **Amount of Fee.** Grantee shall pay to the City an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the City by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

10.2 **Payment of Fee.** Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by City. The payment period and the collection of the franchise fees that are to be paid to the City pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.10. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 **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 additional sums payable as a franchise fee under this Franchise.

SECTION 11

Transfer of Franchise

11.1 **Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, 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.

SECTION 12

Records, Reports and Maps

12.1 **Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its 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:

12.2.1 A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.

12.2.2 A full and complete set of plans, records and strand maps showing the location of the Cable System.

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 of Grantee's records maintained by Grantee 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 kept 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 constitute proprietary or confidential information to the extent Grantee make the City aware of such confidentiality. 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.

SECTION 13

Community Programming

13.1 **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.

13.2 **Free Drops and Cable Service.** On a voluntary basis, Grantee may provide, without charge, one (1) activated outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary public school buildings and public libraries within the Service Area and located within one hundred twenty five (125) feet of Grantee's feeder cable.

13.3 **PEG Channels.** The City reserves the right to request a channel for public, educational or governmental (PEG) use. Consistent with federal law, Grantee shall provide, one (1) PEG channel for original, locally-produced non-commercial programming, as requested by the City within twelve (12) months of the City's request. The City shall provide first run or first rerun original programming for twenty (20%) of the hours between 11:00 a.m. and 11:00 p.m. for any twelve (12) consecutive weeks. When first run or first re-run original programming 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 a second additional PEG channel. For the purposes of the above percentage calculation: a) a program may not be repeated more than three (3) times in any twelve (12) consecutive week period; and b) time allocated to character-generated or similar programming shall be excluded. Upon written request from the Grantee no more than once annually, the City agrees to provide Grantee with a written report detailing the average percent of programming on any consecutive twelve (12) week period consistent with the terms provided herein.

In the event that the programming levels as set forth hereinabove are not maintained, the PEG channel(s) shall return to the Grantee. The Grantee may utilize the PEG channel(s) only after giving the City sixty (60) days advance notice and City fails to maintain the minimum programming levels set forth herein during those sixty (60) days. The City may request return of any PEG channel used by the Grantee at any time, which request for return shall be accompanied by a showing that the City'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(s) to the City. In addition, the Grantee may use the designated PEG channel(s) during the hours that the City 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. The PEG channels may be placed on any tier of service available to all subscribers, at no cost to the City. Grantee has the option to air the PEG channels in analog, digital or other format, provided that the channels shall be kept in analog format if Grantee has a tier of service in analog format.

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, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

14.2 **Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice 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 Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing 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 Clerk of the City in a newspaper of general circulation serving the area. The Grantee shall have the right to present evidence and to question witnesses. The City shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

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:

14.4.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

14.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

14.4.3 In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

14.5 Revocation.

14.5.1 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 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 City 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.

14.5.2 At the hearing, the Board 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 Board 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 Board de

novi. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

14.5.3 Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.

14.5.4 Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the City, or abandon the Cable System in place.

SECTION 15

Miscellaneous Provisions

15.1 **Force Majeure**. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15.2 **Minor Violations**. Furthermore, the parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, 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 City and/or Subscribers.

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 **Equal Protection**. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the City or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the City, the City shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the City fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the City be deemed expired thirty (30) days after written notice to the City. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

15.5 **Notices**. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return

receipt requested, nationally or internationally recognized courier service such as Federal Express. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means.

As set forth above, notice served upon the City shall be delivered or sent to:

City of Bay City
5525 B Street
PO Box 3309
Bay City, OR 97107

And every notice served upon Grantee shall be delivered or sent to:

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

With a copy to:

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

15.6 **Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the City to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way 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 and a posting at the administrative buildings of the City.

City shall provide written notice to Grantee within ten (10) days of City's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.6 above.

15.7 **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.

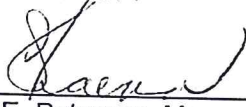
15.8 **Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the City and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

15.9 **Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and the Grantee.

15.10 **Effective Date.** The City Council declares an emergency to exist for continued existence of a franchise agreement and for the peace, health and safety of the City and declares that this Ordinance shall become immediately effective on June 10, 2014.

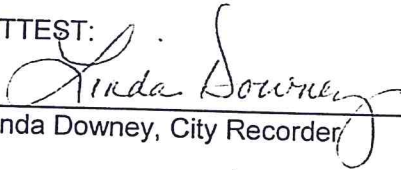
PASSED AND ADOPTED by the City Council this 17th day of June, 2014 and APPROVED by the Mayor this 17th day of June, 2014.

CITY OF BAY CITY



Shaena E. Peterson, Mayor

ATTEST:



Linda Downey, City Recorder

First Reading: JUNE 10, 2014
Second Reading: JUNE 10, 2014
Adoption: JUNE 17, 2014


Ayes: 3

Nayes: 1

Abstentions: 1

Accepted this 3rd day of July, 2014, subject to applicable federal, state and local law.

Falcon Telecable, a California Limited Partnership, a/k/a Charter Communications

Signature: 

Mark E. Brown
Vice President, Government Affairs
Charter Communications