

First Reading: 1/15/2013

Second Reading: 2/5/2013

ORDINANCE NO. 916

**AN ORDINANCE OF THE CITY OF BENTON CITY,
WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE
FRANCHISE AGREEMENT WITH FALCON VIDEO
COMMUNICATIONS, L.P. d/b/a CHARTER COMMUNICATIONS**

WHEREAS, the City of Benton City, Washington (the "City") and Falcon Video Communications, L.P. d/b/a Charter Communications ("Grantee"), conducted significant negotiations regarding a franchise to construct, operate and maintain a cable system in the City (the "Franchise"); and

WHEREAS, Grantee was successor in interest to a previous franchise and cable system owned and operated by Cequel III Communications I, LLC; and

WHEREAS, the City desires to maintain and improve the current level of cable television services to the citizens of Benton City and provide for the continued provision of such services without interruption; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the original Franchise Agreement with Falcon Video Communications, L.P. d/b/a Charter Communications, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required to complete this transaction.

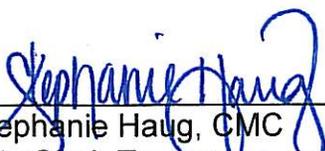
Section 2. This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 5 day of February, 2013.



Lloyd R. Carnahan
Mayor

Attest:



Stephanie Haug, CMC
City Clerk-Treasurer

Approved as to Form:



Leland B. Kerr
City Attorney.

CHARTER FRANCHISE AGREEMENT

This Franchise Agreement is between the City of Benton City, Washington, hereinafter referred to as the "Grantor" and Falcon Video Communications, L.P., locally known as Charter Communications and hereinafter referred to as the "Grantee."

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

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

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

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

SECTION 1 Definition of Terms

1.1 Terms. 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. "Cable System," "Cable Service," "Cable Operator" and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- B. "Council" shall mean the governing body of the Grantor.
- C. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- E. "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.

- F. "Gross Revenue" shall mean all revenue, as determined in accordance with generally accepted accounting principles, actually received by the Grantee from Subscribers in the operation of the Cable System and the provision of Cable Services in the Service Area. Gross Revenues shall include home shopping commissions. Items specifically excluded from Gross Revenue include any taxes or fees collected by the Grantee from Subscribers for pass-through to a government agency, unrecovered bad debt, credits, refunds, deposits paid to Subscribers, and any exclusions available under applicable State or Federal law, and any PEG amounts recovered from Subscribers. Notwithstanding the foregoing, the following categories of revenue will not be included in Gross Revenue for purposes of calculating franchise fees paid under Section 10 hereto: advertising revenue, utility fee, the FCC user fee, and any franchise fees collected from subscribers.
- G. "Person" shall mean an individual, partnership, association, organization, corporation, trust or government entity or any lawful successor, transferee or assignee of said individual, partnership, association, organization, corporation, trust or government entity.
- H. "Public School" shall mean any school at any educational level operated within the Service Area by any accredited public school system, but limited to, elementary, junior high school and high school.
- I. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions set forth in subsection 6.1 herein.
- J. "State" shall mean the State of Washington.
- K. "Street" 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 Grantor 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.
- L. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2 Grant of Franchise

- 2.1 Grant.** The Grantor 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 the term of this Franchise, 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 or State law.

- 2.2 **Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an term of fifteen (15) years, commencing on the Effective Date of this Franchise as set forth in subsection 15.10.
- 2.3 **Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, 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 Grantor's lawful exercise of its general police power, the Grantor 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 Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise shall prevail.
- 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.

SECTION 3 **Franchise Renewal**

- 3.1 **Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate 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.

SECTION 4 **Indemnification and Insurance**

- 4.1 **Indemnification.** Grantee shall defend, indemnify and hold Grantor, its elected officials, managers, agents, and employees harmless from any and all liabilities, claims, demands, or judgments relating to any injury to any Person or property arising out of the Grantee's 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 Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the

defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder

4.2 **Insurance.** The Grantee shall maintain throughout the term of the Franchise insurance in 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	\$2,000,000 per occurrence C.S.L.

- A. The liability insurance policies required by this Subsection shall be maintained by the Grantee throughout the term of this franchise agreement, extension thereof or during Procedures for Renewal under Section 3.1 herein. Grantee's insurance carriers shall endeavor to provide thirty (30) days prior written notice of policy cancellation to the Grantor. Cancellation notice will be provided for any reason other than non-payment of premium and requires the Grantor to provide Grantee a valid contact name and e-mail address (with any changes to the contact name or e-mail address being the responsibility of the Grantor).
- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage within sixty (60) days of the Effective Date of this Franchise Agreement.

SECTION 5
Service Obligation

- 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, sex, or disability.
- 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 make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty five feet (125') of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service or into any annexed area that is not contiguous to the present Service Area of the Grantee. Grantee shall not be obligated to provide service to any area where the provision of such service would be financially or technically infeasible.
- 6.2 **Subscriber Charges for Extensions of the Cable Service.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 6.1 hereinabove, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.
- 6.3 **New Development Underground.** In cases of new construction or property development, Grantee shall be allowed to participate in the development. Grantee should work with developers to install conduit while trenches are already opened for other purposes. Grantee shall keep Grantor informed of the appropriate contact for development review. Where utilities are to be placed underground, the Grantor 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 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 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.
- 6.4 **Annexation.** The Grantor shall provide Notice (in compliance with Section 15.5 herein) to the Grantee of its annexation of any contiguous territory which is being provided Cable Service by the Grantee or its affiliates. Grantee shall pay the Grantor franchise fees

on Gross Revenue received from the operation of the Cable System to provide Cable Services in the Service Area commencing ninety (90) days after Grantee's receipt of Grantor's notice.

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, from time to time, be amended.
- 7.5 **Performance Monitoring.** Grantee shall test the Cable System consistent with 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 Grantor.
- 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 Grantor, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor 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 Grantor 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 Grantor 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 Grantor related to the Grantee's use of the rights of way against the Franchise Fee payments required under Section 10.1 of this Agreement.
- 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 Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.
- 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 Grantor.** 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 Grantor 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 Grantor rights-of-way are responsible for the costs related to 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 Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty 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 Grantor shall reimburse the Grantee in the same manner in which other Person(s) affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor 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 Grantor 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 Grantor 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 attorney's 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 telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.
- 9.3 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor 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 Section 15 of this Franchise Agreement.

SECTION 10
Franchise Fee

- 10.1 **Amount of Fee.** Grantee shall pay to the Grantor 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 Grantor by the Grantee that are not included as franchise fee 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 franchise fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to this Franchise shall commence sixty (60) days after the Effective Date of the Franchise. In the event of a dispute, the Grantor, 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 Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.
- 10.4 **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 over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

SECTION 11
Transfer of Franchise

- 11.1 **Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior consent of the Grantor, and such consent shall not 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 Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the

Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

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 Grantor upon written 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 shall be maintained for one (1) year.
 - B. 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 Grantor, upon receipt of advance written notice to examine during normal business hours and on a non-disruptive basis any and all records that are legally permissible for release and which are reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the section or subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to 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 Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, 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 Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review.

SECTION 13
Community Programming

- 13.1 Service to Schools and Buildings.** The Grantee may provide on a voluntary basis one free outlet of Basic Service to each state accredited Public School and Library listed on Exhibit A. Any such Public School may install, at its expense, 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 outlets shall have been approved by the Grantee and shall comply with all local, State and Federal laws and regulations.
- 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 Grantor 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 Grantor 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 one hundred twenty five feet (125') is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

SECTION 14
Enforcement Or Revocation

- 14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Noncompliance Notice").
- 14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Noncompliance Notice described in subsection 14.1 to (i) respond to the Grantor, 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 Grantor 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 Noncompliance Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Grantor shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter 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 Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.5 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a noncompliance and shall make written findings of fact relative to its determination. If a non-compliance is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters. Notwithstanding the above provisions, Grantee does not waive any of its rights under Federal law or regulation.

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

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; 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 14.5 below.

14.5 Revocation

- A. Prior to revocation or termination of the Franchise, the Grantor 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 Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- B. At the hearing, 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 novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under Federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.
- E. The Grantee shall notify the Grantor within thirty (30) days of its intent to remove the Cable System. The Cable System shall be removed within one hundred twenty (120) days of the date of revocation. In removing the Cable System, the Grantee shall comply with all State and Federal laws, and local laws as it relates to the Grantor's police powers, shall bear the full cost of removal, and shall ensure that all affected facilities are returned to as good of condition as existed prior to removal.

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 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.
- 15.2 **Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for noncompliance of the Franchise where the noncompliance was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area.
- 15.3 **Action of Parties.** In any action by the Grantor 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 Grantor 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 Grantor, the Grantor 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 any competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial Notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have

this Franchise with the Grantor deemed expired thirty (30) days after written notice to the Grantor. 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 or by 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 Grantor shall be delivered or sent to”

If to the Grantor, addressed to:

Attn: Mayor
City of Benton City
PO Box 70
Benton City, WA 99320

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

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

And with an additional copy to:

Attn: Vice President, Government Affairs
Charter Communications
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.

- 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 Grantor 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 Grantor.

Grantor shall provide written notice within ten (10) days of Grantor'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 exemptions 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 the first paragraph of Section 15.6 hereinabove.

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 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. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise shall prevail.

15.9 Administration of the 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 Grantor and the Grantee.

15.10 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement. This Franchise shall expire on the 1st day of January, 2028, unless extended by the mutual agreement of the parties.

Considered and approved this 13 day of 2013, Feb

City of Benton City, Washington

Signature: Lloyd Carnahan

Print Name: Lloyd Carnahan

Title: Mayor

EXHIBIT A

On a Voluntary Basis, This is a List of Public Schools and library locations that may receive one (1) free Basic Service outlet in the Service Area pursuant to Section 13.1 herein

- *Benton City High School*
- *Benton City Middle School*
- *Benton City Elementary School*
- *Benton City Library*

*