

# Council Business Meeting

November 1, 2022

<b>Agenda Item</b>	Public Hearing and Approval of renewal of the cable television franchise agreement with Charter Communications, Inc.	
<b>From</b>	Douglas M. McGeary	Acting City Attorney
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## **SUMMARY**

Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, under that name, has provided cable television services in the City of Ashland pursuant to a franchise agreement with the City for over 20 years. Recent extensions of the term of that franchise agreement have expired, but in the meantime, the City and Charter have reached complete agreement terms for a full renewal of the franchise agreement.

## **POLICIES, PLANS & GOALS SUPPORTED**

N/A

## **PREVIOUS COUNCIL ACTION**

N/A

## **BACKGROUND AND ADDITIONAL INFORMATION**

Under the Federal Telecommunications Act of 1996 and subsequent laws, cities are restricted in their regulation of telecommunication services but are also allowed certain local authority to manage and charge for the use of their rights-of-way by representatives of the industry. The City must permit and manage reasonable access to the public rights-of-way of the City for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights-of-way held in trust by the City. [AMC Chapter 16.] The City operates with clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of telecommunications carriers and services. *Id.*

Under the Federal Telecommunications Act of 1996, cable television services may not be offered by private providers without a franchise agreement from the local governing body. The franchise agreement between the City and a grantee grants a privilege to use public right-of-way and utility easements within the City for a dedicated purpose and for specific compensation. Charter Communications (“Charter”) has maintained a franchise agreement in good standing with the city under this regulatory environment for over 20 years and has had extensions of its last agreement for almost 10 of those years. Charter requests the City of Ashland to renew its franchise to provide telecommunications services in the community with an updated agreement.

All telecommunications franchises granted by the City allow use of the City’s rights-of-way, and this right is non-exclusive. The attached Franchise Agreement provides Charter with a ten-year agreement to operate and provide a cable service with the City’s rights of way. The Agreement

provides that the area of service availability will require expansion to all areas within the city as well as those annexed. All Charter facilities will be constructed according to all legally applicable standards. The Agreement addresses construction, restoration, and relocation of facilities within the city's rights of way and removal if necessary.

Among other contractual terms, the city retains the right to exercise rate regulation to the extent authorized by law. Annual franchise fee for Charter will equal 5% of its annual gross revenue as determined in accordance with generally accepted accounting principles. This percent is dictated by federal law and preempts the City's specified fee under its ordinance. Charter shall provide \$0.38 per month, per subscriber for support for public, education and government (PEG) access programming that the city will use to pay capital costs for such access. The City has the right to inspect and examine documentation of gross revenues to determine that the calculation of fees under the Franchise Agreement by Charter is correct.

### **FISCAL IMPACTS**

The City's franchise agreement with Charter generates about \$135,000 in franchise fees and \$40,000 in PEG fees annually.

### **STAFF RECOMMENDATION**

Staff recommends approval of the proposed month-to-month extension.

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

I move approval of the City of Ashland amendment to the Cable Television Franchise with Charter Communications, as submitted.

### **REFERENCES & ATTACHMENTS**

- Consent and Approval of City of Ashland, Oregon, to Amend Cable Television Franchise
- Resolution 2022-31 renewing the Charter Franchise agreement with Spectrum Pacific West

## FRANCHISE AGREEMENT

**This Franchise Agreement (“Franchise”)** is between the City of Ashland, an Oregon municipal corporation, hereinafter referred to as the “City,” and Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as “Charter.”

**WHEREAS**, the City finds that Charter has substantially complied with the material terms of its current franchise with City, and that the financial, legal, and technical ability of Charter 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, City desires to enter into this Franchise with Charter for the construction, maintenance, and operation of a cable system on the terms set forth herein; and

**WHEREAS**, the City and Charter have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

**NOW, THEREFORE**, the City and Charter agree as follows:

### SECTION 1 Definition of Terms

**1.1 Definitions.** For the purposes 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. “Access Channel,” means any Channel designated for Access purposes or otherwise made available to facilitate or transmit PEG Access Programming.
- B. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- C. “Council” shall mean the governing body of the City.
- D. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- E. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- F. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of Charter’s Cable System.

- G. “Facility” means any tangible component of Charter’s Cable System.
- H. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- I. “Franchise” means this franchise agreement, as fully executed by the City and the Charter.
- J. “Franchise Area” shall mean the geographic boundaries of the City, and shall include any additions thereto by annexation or other legal means.
- K. “Gross Revenue” means all revenues of Grantee, as determined in accordance with generally accepted accounting principles (GAAP), derived from the operation of the Cable System to provide Cable Services in the Agreement Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any Basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; from rentals or sales of converters or other equipment; advertising sales revenues; revenues from program guides; and revenues from home shopping channels. The term "Gross Revenues" also includes franchise fees passed through by Grantee to Subscribers, except that the term does not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt. Gross Revenues 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; and 2. any PEG or I-Net amounts recovered from Subscribers.
- L. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- M. “ Service Area” shall mean the area described in subsection 6.1 hereto.
- N. Standard Installation” shall mean installations to residences and buildings that are located up to 125 feet from the point of connection to Charter’s existing distribution system.
- O. “State” shall mean the State of Oregon.
- P. “Street” shall include each of the following located within the Franchise 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 Franchise Area, which shall entitle Charter to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.

- Q. “Subscriber” means a member of the general public who receives Cable Service distributed by a Cable System and does not further distribute it.

## **SECTION 2** **Grant of Franchise**

**2.1 Grant.** The City hereby grants to Charter a nonexclusive franchise to construct, operate, and maintain a Cable System to provide Cable Services in the Streets of the City.

**2.2 Term.** This Franchise and the rights, privileges and authority hereby granted shall be for a term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 15.12. The parties agree to proceed under Section 626 of the federal Cable Act renewal procedures.

**2.3 Police Powers.** Charter agrees to comply with the terms of any lawfully adopted 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 Charter 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 mutual promises in this contract.

**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 Franchise Area or be allowed to operate without a Cable System Franchise.

## **SECTION 3** **Franchise Renewal**

**3.1 Procedures for Renewal.** The City and Charter agree that any proceedings undertaken by the City that relate to the renewal of Charter’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.**

A. If the City is named as a defendant in a complaint, demand, claim or action (“Action”) that alleges that Charter’s actions or omissions or the Cable System was a cause of injury identified in the Action, the City may tender the defense thereof to Charter, and in such case shall, within ten (10) business days of receipt of such Action, give Charter written notice of its obligation to defend the City. Charter shall have the right to defend, settle or compromise such Actions and the City shall cooperate fully with Charter in such defense. Notwithstanding the foregoing, if Charter believes in good faith that a tendered Action has little or no merit with respect to Charter’s liability, Charter may refuse the defense of such Action, in which case the City will in good faith defend the Action and Charter shall cooperate fully with the City in such defense and may participate in such defense Charter’s

option; provided that if Charter is determined to be liable in such Action, Charter shall be responsible for indemnifying the City as set forth in subsection 4.1B. If the City believes that any such Action should be settled or compromised in any manner that will result in liability or other obligation for or restraint on Charter under this Agreement or otherwise, such settlement or compromise shall only be done with the prior written consent of Charter.

- B. The Charter shall indemnify and hold the City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities or judgments for injury to any Person or property to the extent caused by the negligent construction, repair, extension, maintenance, operation, relocation or removal of the Charter’s wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System. If the Charter does not accept the defense of the Action on behalf of City, as provided in subsection 4.1A, and it is determined at the conclusion of the action that Charter has an obligation to indemnify City, such indemnification shall include City’s reasonable expenses, including reasonable attorney’s fees. Notwithstanding the foregoing, the Charter shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or gross negligence of the City or for the City’s use of the Cable System, including any PEG Channel.

**Insurance.**

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

Workers’ Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$4,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$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, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. Charter shall furnish the City with current certificates of insurance evidencing such coverage upon request.

**SECTION 5**  
**Service Obligations**

**5.1 No Discrimination.** Charter 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, marital status, sex, sexual orientation, gender identity, or source of income.

**5.2 Privacy.** The Charter 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.** Subject to applicable law, Charter shall continue to provide Cable Service to all residences within the Franchise Area where Charter currently provides Cable Service (the “Service Area”). Charter shall have the right, but not the obligation, to extend the Cable System into any other portion of the Franchise Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Charter having legal access on reasonable terms and conditions to any such Subscriber’s dwelling unit or other units wherein such Cable Service is provided.

**6.2 New Development Underground.** In cases of new construction where utilities are to be placed underground, the City will make best efforts 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 Charter 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 Charter’s installation of conduit, pedestals and/or vaults, and laterals to be provided at Charter’s expense. Charter 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 Charter fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) 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 fifteen day period, the cost of new trenching is to be borne by Charter.

**6.3 Annexation.** The City shall promptly provide written notice to the Charter of its annexation of any territory which is being provided Cable Service by the Charter 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 Charter in writing of all new street address assignments or changes within the Franchise Area. Charter 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 Franchise Area in an Excel format or in a format that will allow Charter to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Charter 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 15.7 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise,

Charter shall not be liable for franchise fees on annexed areas unless and until Charter has received notification and information that meets the standards set forth in this section.

## **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 Charter's Equipment 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.** Charter 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.

## **SECTION 8** **Conditions on Street Occupancy**

**8.1 General Conditions.** Charter 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 provided Charter is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

**8.2 Underground Construction.** The facilities of Charter 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, Charter 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, Charter shall likewise place its facilities underground. In the event City or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Charter shall be similarly reimbursed.

**8.3 Construction Codes and Permits.** Charter shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the City as to other public utility companies and other entities operating in the Franchise Area. The City shall cooperate with Charter in granting any permits required, providing such grant and subsequent construction by Charter shall not unduly interfere with the use of such Streets. Notwithstanding the above, Charter may set off any administrative permit fees or other fees

required by the City related to Charter's use of City rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise. Charter shall comply with all applicable state and federal laws, statutes, regulations and orders including ORS 453.005(7) concerning hazardous substances.

**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. Charter 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 Charter shall be placed in such a manner as not to interfere with the usual travel on such public way

**8.5 Restoration of Streets.** Charter shall, at its own expense, restore any damage or disturbance caused to the Streets as a result of its operation, construction, or maintenance of the Cable System to a serviceable condition that is as near as practicable to the condition of the Streets immediately prior to such damage or disturbance

**8.6 Tree Trimming.** In an emergency that threatens the safety or integrity of any of Charter's facilities, Charter 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. Charter is aware of City's tree ordinance, and will obtain a permit for any trimming of branches over 2 inches in diameter and will not top any trees. In all other circumstances, Charter shall provide City with three (3) days' written permission prior to such trimming.

**8.7 Relocation for the City.** Charter 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 Charter when lawfully required by the City pursuant to its police powers. Charter 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.

**8.8 Relocation for a Third Party.** Charter 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 Charter, provided that the expense of such is paid by any such Person benefiting from the relocation and Charter is given reasonable advance written notice to prepare for such changes. Charter 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.

**8.9 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 Charter 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 Charter.

**8.10 Emergency Use.** Charter shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”). If Charter provides an 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 Charter’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 Charter, 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 Customer Service.** Charter shall comply with the customer service standards set forth in 47 C.F.R. § 76.309 of the Federal Communications Commission’s Rules and Regulations, as such may be amended from time to time. **Notification of Service Procedures.** Charter 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 Charter’s name, address and local telephone number. Charter shall give the City thirty (30) days prior notice of any rate increases, Channel lineup or other substantive service changes.

**9.2 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. Nothing herein shall be construed to limit Charter’s ability to offer or provide bulk rate discounts or promotions.

**9.3 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to Charter are honored, and subject to Charter’s rights under Section 15.2 of this Franchise.

## **SECTION 10** **Franchise Fee**

**10.1 Amount of Fee.** Charter shall pay to the City an annual franchise fee in an amount equal to five percent (5 %) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Charter chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by City. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Charter’s obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

**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 15.12. 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.

**10.4 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Charter was due.

**10.5 Audits/Reviews.** All amounts paid under this Section 10 shall be subject to an independent audit or review by the City, provided that such audit or review is completed within **five (5) years** of the date that any payment subject to the audit or review is due. If no audit or review is conducted within the **five (5) year** period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. Upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the re-computation and confirmation, and provided that Charter does not dispute the amount indicated on the invoice, Charter agrees to reimburse the City for the reasonable costs of such audit or review if the audit discloses that Charter has underpaid the franchise fee amount due by more than five percent (5%) of the amount due.. Notwithstanding such reimbursement requirements, the City's costs which may be reimbursed under this subsection shall not exceed five thousand U.S. dollars (\$5,000.00) audit or review.

**10.6** If the City determines that Charter made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Charter shall pay interest compounded monthly at the rate of one percent (1%) over the prime rate published in the Wall Street Journal as of the date. Interest shall be due on the entire undisputed amount of any underpayment from the date on which payment was due until the date on which full payment is received.

**10.7** The City, its employees, agents, and representatives shall have the authority to inspect, review and audit Charter's books, maps, and records, relevant to determine whether Charter has properly remitted the Franchise Fee amounts due under this Franchise, upon no less than thirty (30) days written notice to Charter. Charter shall keep all books, maps, and records so as to accurately show the same. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Charter provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Charter fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Charter fails to provide, or fails to cause to be provided, such requested information.

## **SECTION 11**

### **Reports**

**11.1** Upon request, Charter shall submit to the City a written report detailing its Gross Revenues showing the basis for the computation of the franchise fee.

## **SECTION 12**

### **Transfer of Franchise**

**12.1** **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 Charter, 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 Charter in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the City shall notify Charter 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 Charter's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given.

## **SECTION 13**

### **Records**

**13.1** **Inspection of Records**. Charter 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 Charter's records maintained by Charter as is reasonably necessary to ensure Charter's compliance with the material terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that Charter may organize the necessary books and records for easy access by the City. Charter shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Charter 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 Charter makes the City aware of such confidentiality. If the City believes it must release any such confidential books, records, or maps in the course of enforcing this Franchise, or for any other reason, it shall advise Charter in advance so that Charter 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 Charter's books, records, or maps marked confidential, as set forth above, to any Person.

## **SECTION 14**

### **Public Education and Government (PEG) Access**

**14.1** **PEG Access**. Charter shall provide not less than four (4) Channels on the Cable System for use by the City for non-commercial, video programming for public, education and government ("PEG") access programming.

**14.2 PEG Fee.** Charter shall provide \$0.38 per month, per Subscriber for support for PEG Access. The PEG Fee shall be allocated to provide support for Capital Costs related to PEG Access. The City shall provide Charter with a report annually describing the allocation of the PEG Fee, containing sufficient detail to demonstrate that the funds are being used in compliance with the terms of this Franchise. The City shall submit the report to Charter no later than December 31.

**14.3 Technical Quality.** The PEG Access Channel, to the extent permitted by the Signal provided to the Franchisee, shall function with the same picture and sound quality level as other like Channels.”

**14.4 PEG Competitive Neutrality.** If any new or renewed franchise agreement contains obligations that are lesser in amount than the obligations imposed in this Section 13, Franchisee’s aggregate obligations under this Section 13 shall be reduced to an equivalent amount. To the extent such a reduction is not sufficient to make the total obligations of this Franchise equivalent to the new or renewed franchise, Franchisee may deduct from future franchise fee payments an amount sufficient to make the obligations of this Franchise equivalent to the new or renewed franchise.

## **SECTION 15** **Enforcement or Revocation**

**15.1 Notice of Violation.** If the City believes that Charter has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Charter. If these discussions do not lead to resolution of the problem, the City shall notify Charter in writing of the exact nature of the alleged noncompliance (the “Violation Notice”).

**15.2 Charter’s Right to Cure or Respond.** Charter 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.

**15.3 Public Hearing.** If Charter 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 Council shall schedule a public hearing if it intends to continue its investigation into the default. The City shall provide Charter 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 within the City in accordance with subsection 15.8 hereof. At the hearing, the Council shall give Charter 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 Charter within ten (10) business days. The decision of the Council shall be made in writing and shall be delivered to Charter. Charter may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council de novo. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

**15.4 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 Charter is in default of any provision of the Franchise, the City 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.

**15.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Charter, 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. Charter 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 Charter, it may then seek to revoke the Franchise at a public hearing. Charter 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. The public hearing shall be conducted in accordance with the requirements of Section 14.3 above.
- B. Notwithstanding the above provisions, Charter reserves all of its rights under federal law or regulation.
- C. Upon revocation of the Franchise, Charter may remove the Cable System from the Streets of the City or abandon the Cable System in place.

**SECTION 16**  
**Miscellaneous Provisions**

**16.1 Compliance with Laws.** City and Charter shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Charter shall also conform with all generally applicable City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between City ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

**16.2 Force Majeure.** Charter 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 Charter 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 Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**16.3 Minor Violations.** Furthermore, the parties hereby agree that it is not the City's intention to subject Charter to 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 Franchise Area, or where strict performance would result in practical difficulties or hardship to Charter which outweighs the benefit to be derived by the City and/or Subscribers.

**16.4 Action of Parties.** In any action by the City or Charter 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.

**16.5 Equal Protection.** If any other provider or carrier 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 Streets, and if the material obligations applicable to Charter with respect to [(1) the area served; (2) public, educational, or governmental access requirements; (3) franchise fees (4) customer service, (5) complimentary service to public buildings, (6) dispute resolution or (7) records and reports] are more burdensome or less favorable than those imposed on the competing operator, then upon thirty (30) days prior written notice to the City, Charter shall have the right to elect, to the extent consistent with applicable law to either:

- (i) modify this Franchise to incorporate the less burdensome or more favorable material terms or condition imposed by City on any competitive operator; or
- (ii) to notify the City that the Charter elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months; or
- (iii) to terminate this Franchise and take in its place the same franchise agreement of the competing operator authorized by the City.

Notwithstanding any other provision of this Agreement, if a change in state or federal law eliminates the requirements for any entity desiring to construct, operate or maintain a Cable System in the Franchise Area to obtain a Franchise from the City, Charter shall have the right to terminate this Agreement and operate the Cable System under the terms and conditions established by applicable state or federal law. The City and Charter agree that any undertakings that relate to the renewal of the Charter's Franchise with the City under Section 15.5(ii) above shall be subject to the provisions of Section 626 of the Cable Act or any such successor statute. Nothing in this Franchise shall impair the right of the City or Charter to seek other remedies available under law.

**16.6 Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the City, then Charter shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Charter chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

**16.7 Notices.** Unless otherwise provided by federal, State or local law, all notices 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 or electronic mail communication to the designated electronic mail address provided below. Charter 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: City Administrator  
City of Ashland  
20 E. Main St.  
PO Box 220  
Ashland, OR 97520

With a copy to: City Attorney  
City of Ashland  
20 East Main St.  
Ashland, OR 97520

And every notice served upon Charter shall be delivered or sent by U.S. certified mail, return receipt requested, to:

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

Copy to: Charter Communications  
Attn: Vice President, Government Affairs  
601 Massachusetts Ave NW, Ste. 400 W  
Washington, DC 20001

**16.8 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.

**16.8.1** City shall provide written notice to Charter 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 15.8 above.

**16.9 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.

**16.10 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Charter 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.

**16.11 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and Charter. Any determination by the City regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

**16.12 Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Charter recorded on the signature page of this Franchise. If any fee or grant that is passed through to Subscribers is required by this Franchise, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**16.13 No Third Party Beneficiaries.** Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this \_\_\_ day of \_\_\_\_\_, 2022.

City of Ashland, Oregon

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

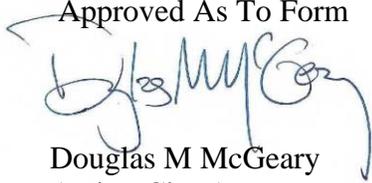
Accepted this \_\_\_ day of \_\_\_\_\_, 2022 subject to applicable federal and State law.

Spectrum Pacific West, LLC  
By: Charter Communications, Inc., its Manager

Signature: \_\_\_\_\_

Printed Name: Paul D. Abbott  
Title: Vice President, Local & Government Affairs  
& Franchising, Charter Communications

Approved As To Form

A handwritten signature in blue ink, appearing to read 'D. M. McGeary', with a large, sweeping flourish extending to the right.

Douglas M McGeary  
Acting City Attorney

1 **RESOLUTION NO. 2022-31**

2  
3 A RESOLUTION RENEWING THE FRANCHISE AGREEMENT WITH SPECTRUM  
4 PACIFIC WEST, LLC, ALSO KNOWN AS CHARTER COMMUNICATIONS, INC.  
5 FOR A PERIOD OF TEN (10) YEARS.

6 **RECITALS:**

- 7  
8 A. No person may be granted a franchise without having entered into a franchise  
9 agreement with the City pursuant to this chapter.
- 10  
11 B. A cable franchise shall be a privilege that is in the public trust and personal to the  
12 original franchisee.
- 13  
14 C. The City finds that Charter has substantially complied with the material terms of its  
15 current franchise with City, and that the financial, legal, and technical ability of  
16 Charter is sufficient to provide services, facilities and equipment necessary to meet  
17 the future cable-related needs of the community; and
- 18  
19 D. Having afforded the public adequate notice and opportunity for comment, City  
20 desires to enter into this Franchise with Charter for the construction, maintenance,  
21 and operation of a cable system on the terms set forth herein; and
- 22  
23 E. The City and Charter have complied with all federal and State-mandated procedural  
24 and substantive requirements pertinent to this franchise renewal;

25 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,**

26 **RESOLVES AS FOLLOWS:**

27 SECTION 1. The City Council consents to the renewal of the cable television franchise  
28 agreement with Spectrum Pacific West, LLC, locally known as Charter Communications, herein  
29

30 attached, and permits the City Manager to execute the same.

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SECTION 2. This resolution is effective upon adoption.

ADOPTED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

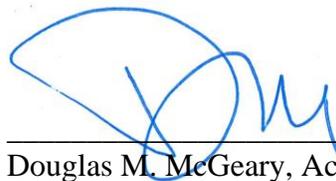
ATTEST:

\_\_\_\_\_  
Melissa Huhtala, City Recorder

SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Julie Akins, Mayor

Reviewed as to form:

  
\_\_\_\_\_  
Douglas M. McGeary, Acting City Attorney