

APPENDIX 2

CABLE TV FRANCHISE

[Amended 9/2004; Ord. No. 04-1034]

AN ORDINANCE GRANTING TO FALCON CABLE MEDIA, A CALIFORNIA LIMITED PARTNERSHIP D/B/A CHARTER COMMUNICATIONS PERMISSION TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM UPON, ALONG, ACROSS, OVER, AND UNDER THE STREETS AND PUBLIC RIGHTS OF WAY OF THE TOWN OF WILBURTON, OKLAHOMA

WHEREAS, the Town of Wilburton, Oklahoma (“Grantor”) desires to make available to its residents a cable system subject to certain terms and conditions the Grantor believes to be necessary and appropriate; and

WHEREAS, Falcon Cable Media, a California Limited Partnership d/b/a Charter Communications (“Grantee”) desires to continue to construct, install and maintain a cable system within the jurisdictional limits of the Grantor, now, therefore

BE IT ORDAINED by the Town Council of the Town of Wilburton, Oklahoma that the following Ordinance is adopted and approved.

Section 1. Definitions.

- A. “Basic Service” means those audio and visual signals carried on the service tier of the Cable System which includes local off-air television signals. Basic Service shall not include any other tier of service or any premium or pay-per-view channels or services.
- B. “Cable Act” means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. Section 521 Supp., as it may be amended or superseded.
- C. “Cable Service” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. “Cable System” or “System” means a system of antennas, cables, wires, lines, towers, microwaves, waveguides, laser beams or any other conductors, converters, equipment or facilities designed, constructed, or operated for the purpose of producing, receiving, amplifying, modifying and distributing audio, video, and other forms of communication or electronic signals for the purpose of providing Cable Services to and from residential and business subscribers and locations within the jurisdictional limits of the Grantor.
- E. “Council” means the governing body of the Grantor.

- F. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the jurisdictional limits of the Grantor.
- G. "Grantee" means Falcon Cable Media, a California Limited Partnership d/b/a Charter Communications, and its permitted successors and assigns.
- H. "Grantor" means the Town of Wilburton, Oklahoma.
- I. "Gross Revenues" means any revenue received by the Grantee from the operation of the Cable System to provide Cable Services within the jurisdictional boundaries of the Grantor, provided, however, that such phrase shall not include any taxes, fee or assignment of general applicability collected by the Grantee from Subscribers for pass-through to government agency, including the FCC User Fee, franchise fees or unrecovered bad debt.
- J. "School" means at any educational level operated within the Town by any accredited public, private or parochial school system, but limited to elementary, junior high school, and high school (K-12).
- K. "Streets and dedicated easements" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the jurisdictional boundaries of Grantor.
- L. "Subscriber" means a lawful purchaser of any Cable Service delivered over the Cable System.

Section 2. Granting of Franchise.

The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the streets and dedicated easements within the Grantor for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein.

Section 3. Term of Franchise and Periodic Performance Evaluations.

- A. The term of the franchise granted herein shall be for a period of fifteen (15) years from and after the effective date of this Ordinance as hereinafter provided, and subject to the conditions and restrictions as provided herein.
- B. The City may hold performance evaluation sessions within sixty (60) days of the third, sixth, ninth, and twelfth anniversary dates of the effective date of this Ordinance. Such evaluation sessions shall be conducted by the City. The evaluation sessions shall be open to the public and announced at least one week in advance in the newspaper of general circulation in the Franchise Area.

- C. Topics which may be discussed at the evaluation session may include, but are not limited to, cable service rates, franchise fees, new technologies, system performance, cable services provided, programming offered, customer satisfaction, amendments to the Ordinance, judicial and FCC rulings, line extensions and City or Company's rules, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Agreement.
- D. During this evaluation, Company shall fully cooperate with the City and shall provide such information and documents as City may require to perform its evaluation. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information, which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate, which is not providing Cable Service in the Franchise.
- E. If, during the mid-term evaluation, the City determines that system performance does not meet the needs of Company subscribers, the City may request that changes be made to the Company system that will correct the alleged under performance within thirty (30) days of notice to the Company. If such changes are not feasibly correctable for technical or economic reasons, the Company may, within the thirty (30) day cure period a plan to the City to correct such issues.
- F. Subsequent renewals shall be pursuant to the renewal provisions of the Cable Act as it shall provide.

Section 4. Use of the Streets and Dedicated Easements.

Grantee shall have the right to use the streets and dedicated easements of the grantor for the construction, operation and maintenance of the Cable System.

- A. Grantee, at its own costs, shall have the right pursuant to the provisions of this Ordinance to construct, erect, suspend, install, renew, maintain and otherwise own and operate throughout the streets and dedicated easements of the Grantor, as now laid out or dedicated and all extensions thereof and additions thereto in the Grantor, the Cable System, either separately or in conjunction with any public utility operating within the Grantor. The Franchise shall further include the right, privilege, easement and authority to construct, erect, suspend, install, lay, renew, repair, maintain and operate such poles, wires, cable, underground conduits, manholes, ducts, trenches, fixtures, appliances and appurtenances for the purpose of distribution to inhabitants within the jurisdictional limits of the Grantor. Without limiting the generality of the foregoing, the Franchise shall and does hereby include the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
- B. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in the and along the streets and dedicated easements of the

Grantor, provided that in the exercise of such right, the Grantee shall not, cut remove, trim or otherwise injure such trees to any greater extent than is necessary for the installation, maintenance and use of the Cable System.

- C. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any street or dedicated easement or sewer, electric facility, water main, fire alarm, police communication or traffic control.

Section 5. Maintenance of the System.

- A. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor. The Cable System shall at all times be kept in good repair and in a safe and acceptable condition.
- B. Grantee shall install and maintain the Cable System so as not to interfere with the equipment of any utility of the Grantor or any other entity lawfully and rightfully using the streets and dedicated easements of the Grantor.
- C. All conductors, cables, towers, poles and other components of the Cable System shall be located and constructed by Grantee so as to reasonably minimize interference with access by adjoining property owners to the streets and dedicated easements shall interfere with the usual travel on such public way.

Section 6. Service.

- A. Grantee shall provide to its Subscribers broad categories of video programming services.
- B. Grantee shall extend the Cable System to new developments within the jurisdictional limits of the Grantor, subject to a minimum density requirement of forty (40) homes per cable mile.
- C. Grantee shall provide Basic Service and one free outlet to each of the following public facilities located within one hundred twenty-five (125) feet of existing service lines of the Grantee and within the jurisdictional limits of the Grantor. Town Hall, each fire station and police station, public libraries and Schools. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Service to new construction hereafter for similar public facilities; provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee.

Section 7. Insurance/Indemnity.

- A. From and after the effective date of this Ordinance, Grantee shall maintain in full force and effect at all times for the full term of the Franchise, at the expense of the Grantee, a comprehensive general liability insurance policy, written by a company authorized to do business in the state, protecting against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the Cable System by Grantee in the following minimum amounts:

One Million Dollars (\$1,000,000) for property damage in any one occurrence.

One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for general liability insurance.

Worker's compensation coverage in accordance with state law.

- B. The Grantor and its officials and employees shall be named as additional insureds on said policy. The Grantor shall be notified by the insurance company at least thirty (30) days prior to the expiration or cancellation of such insurance policy or policies.
- C. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

Section 8. Cancellation and Expiration.

- A. Unless earlier terminated in accordance with this Ordinance, the Franchise shall expire fifteen (15) years after the effective date of this Ordinance.

Prior to revocation or termination of the Franchise, the Council 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

- B. Council 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.

- C. At the hearing, the Grantor 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 Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor *de novo*.
- D. Upon termination of the Franchise, Grantee agrees to remove the Cable System from the streets and dedicated easements of the Grantor.

Section 9. Enforcement of Terms and Conditions.

Either the Grantor or Grantee may institute proceedings in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance.

Section 10. Equal Protection.

The Grantor shall not authorize or permit any person providing video programming services and/or Cable Services to enter into any part of the Grantor's Streets on terms or conditions more favorable or less burdensome to such persons than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Section 11. Notices, Miscellaneous.

- A. Every notice served upon the Grantor shall be delivered or sent by certified mail, return receipt requested, to:

Town of Wilburton
Attn: Town Clerk
300 W Main
Wilburton, OK 74578

and every notice served upon Grantee shall be delivered or sent by certified mail, return receipt requested, to:

Charter Communications
Attn: General Manager
707 W Saratoga
Shawnee, Oklahoma 74804

With a copy to:

Charter Communications
Attn: Corporate Government Affairs
12405 Powerscourt Drive, 4th Floor
St. Louise, Missouri 63131

B. All provisions of this Ordinance shall apply to the respective parties, their successors and assigns.

C. If any particular section of this Ordinance shall be held invalid, the remaining provisions and their application shall not be affected thereby.

Section 12. 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 vandalism, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, and the unavailability of materials and supplies

Section 13. Franchise Fee.

Grantee shall pay to the Grantor, within ninety (90) days after each calendar year, an amount equal to two percent (2%) of the Gross Revenues for such calendar year, together with a financial statement showing total Gross revenues derived from the Cable System during such year. The Grantor shall have the right to review the previous year's books of the Grantee to ensure proper payment of the fees payable hereunder.

Section 14. Effective Date.

This Ordinance shall take effect sixty (60) days after adoption by the Council.

Passed by the Council of the Town of Wilburton, Oklahoma, on the 9th day of September, 2004