

**ORDINANCE NO. 1227**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE TELEVISION  
FRANCHISE TO FALCON COMMUNITY VENTURES I, LP, dba CHARTER  
COMMUNICATIONS**

**WHEREAS**, the City of Warrenton has the authority to regulate and franchise cable television services; and

**WHEREAS**, under federal law, a cable operator must have a franchise to provide cable services within the City; and

**WHEREAS**, Falcon Community Ventures I, LP dba Charter Communications (“Charter”) has requested a renewal of a cable franchise agreement from the City to provide cable services within the City; and

**WHEREAS**, the City finds that the terms and conditions in the proposed franchise are reasonable to meet the future cable-related community needs and interest and are in the best interest of the City.


**NOW, THEREFORE**, the City of Warrenton ordains as follows:

- Section 1. The City hereby grants Falcon Community Ventures I, LP dba Charter Communications a non-exclusive franchise substantially in the form attached as Exhibit A.
- Section 2. In accordance with the terms of Section 15 of the proposed franchise, this Ordinance shall be void and of no effect in the event Charter fails to file with the city recorder its unconditional written acceptance of the franchise within sixty days after the effective date of this Ordinance.
- Section 3. This Ordinance supersedes and replaces in its entirety existing Ordinance 595-A, Ordinance 791-A, and any other conflicting ordinance.
- Section 4. This Ordinance will take effect 30 days after its adoption by the Warrenton City Commission.

ADOPTED by the City Commission of the City of Warrenton this 22 day of January 2019.

First Reading: January 8, 2019  
Second Reading: January 22, 2019

  
Henry Balensifer, Mayor

Attest:   
Dawne Shaw, City Recorder

**FRANCHISE AGREEMENT  
WARRENTON, OREGON**

**This Franchise Agreement** (“Franchise”) is between the City of Warrenton, Oregon, hereinafter referred to as the “Grantor” and Falcon Community Ventures I, Limited Partnership, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

**1. Definitions:**

- a. “Cable Act” means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- c. “Franchise” means the authorization granted hereunder of a privilege, to construct, operate and maintain a Cable System to provide Cable Service within the Service Area.
- d. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee, but not including franchise fees, which shall be included in “Gross Revenue”; (2) bad debt; and (3) credits, refunds and deposits paid to Subscribers.
- e. “Service Area” shall mean the geographic boundaries of the Grantor.
- f. “Streets” shall mean and include, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other Grantor property not generally open to the public for travel. This definition applies only to the extent of the Grantor’s right, title, interest and authority to grant a franchise to occupy and use such areas for a Cable System.
- g. “Subscriber” means any person lawfully receiving any Cable Service from the Grantee.

- 2. Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the Streets within the Service Area for the construction, operation and maintenance of the Cable System to provide Cable Service in the Service Area, upon the terms and conditions set forth herein. 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, nor does this Franchise authorize the Grantee to offer

such services, and Grantor reserves the right to exercise its lawful authority with respect to Grantee's offering of such services. This Franchise is subject to the laws of the United States and the State of Oregon, and to the lawful, generally applicable ordinances, adopted pursuant to the Grantor's police powers, of the Grantor whether now existing or hereinafter enacted. Grantee agrees that, unless otherwise expressly set forth herein, it will comply with generally applicable requirements of WMC Chapter 12.32, "Public Rights-of-Way," as amended from time to time, as if fully set forth herein. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law.

3. **Term.** The Franchise shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 15.

4. **Use of the Streets.**

Grantee is authorized to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System to provide Cable Service in the Service Area, including the right to repair, replace and enlarge and extend the Cable System, subject to Section 2, above.

5. **Maintenance of the System.**

a. Grantee shall design, construct and operate the Cable System 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 they may, from time to time, be amended, regardless of the transmission technology utilized.

6. **Service.**

a. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

b. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as

set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 12 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

- c. The Grantor hereby adopts, and reserves the right to enforce, the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended from time to time by the FCC, and the notice requirements set forth in Part 76, Subpart T (Notices) of the FCC's rules and regulations, as amended from time to time by the FCC. Grantee shall comply with the customer service and notice requirements.
- d. Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, or persons on the basis of race, color, religion, national origin, sex, age, disability, or, except as otherwise provided herein, the area in which such person lives. Charter shall not deny access to Cable Service to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides.
- e. 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.
- f. The Grantee shall be subject to 47 U.S.C §551 (Section 631 of the Cable Act), as amended from time to time, regarding subscriber privacy.
- g. Grantee agrees at all times to comply with federal and state EAS rules as required in 47 C.F.R. Part 11 or as amended. Grantor shall hold the Grantee harmless from any third party claims for injury, damage, loss, liability, cost or expense arising as a result of use of the EAS by the Grantor, its employees or officers, including, but not limited to, reasonable attorneys' fees and costs.

7. **Insurance/Indemnity.**

- a. The Grantee shall maintain throughout the term of the Franchise insurance as required in WMC 12.32.140 in amounts at least as follows:
  - (1) Comprehensive general liability insurance with limits not less than:
    - i. \$3,000,000.00 for bodily injury or death to each person;
    - ii. \$3,000,000.00 for property damage resulting from any one accident; and
    - iii. \$3,000,000.00 for all other types of liability.
  - (2) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident.

- (3) Worker's compensation within statutory limits and employer's liability with limits of not less than \$1,000,000.00.
  - (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.00.
  - (5) Grantee may comply with the limits above using a combination of primary and umbrella limits.
- b. The Grantor, including its officers, agents, employees, shall be added as additional insureds, to the coverage set forth herein. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled without 30 days prior written notice first being given to the City. If the insurance is canceled or materially altered, the Grantee shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required. The Grantee may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
  - c. The Grantee shall maintain on file with the Grantor a certificate of insurance, or proof of self-insurance acceptable to the Grantor, certifying the coverage required above.
  - d. Grantee hereby agrees to defend, indemnify and hold the Grantor and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the Grantee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering services over the Cable System, whether such acts or omissions are authorized, allowed, or prohibited by the Warrenton Municipal Code or this franchise agreement. Grantor shall give Grantee notice of its obligation to indemnify the City after receipt of a complaint or written demand pursuant to this section no later than ten (10) days before any response by Grantee is due, if the Grantee's duty to indemnify is readily apparent from the allegations of the complaint or written demand, and in all other cases, within sufficient time for Grantee to preserve its rights. Grantee shall also indemnify the Grantor for any damages, claims, additional costs or expenses assessed against or payable by the Grantor arising out of or resulting, directly or indirectly, from the Grantee's failure to remove or relocate any of its facilities in the rights-of-way or easements in a timely manner, unless the Grantee's failure arises directly from the Grantor's negligence or willful misconduct.

**8. Revocation.**

M. The following procedures shall be in lieu of and supersede the WMC 12.32.060 Section

- a. Revocation or Termination of Franchise. The Grantor may terminate or revoke this franchise for any of the following reasons:
  - (1) Violation of any of the provisions of WMC 12.32;
  - (2) Violation of any provision of this franchise;
  - (3) Misrepresentation in a franchise application;
  - (4) Failure to pay taxes, compensation, fees or costs due the Grantor after final determination of the taxes, compensation, fees or costs;
  - (5) Failure to restore the rights-of-way after construction as required by WMC 12.32, this franchise, or other applicable State and local laws, ordinances, rules and regulations;
  - (6) Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
  - (7) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by State or Federal law for the placement, maintenance and/or operation of the Cable System.
- b. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
  - (1) The egregiousness of the misconduct;
  - (2) The harm that resulted;
  - (3) Whether the violation was intentional;
  - (4) The Grantee's history of compliance; and/or
  - (5) The Grantee's cooperation in discovering, admitting and/or curing the violation.
- c. Notice and Cure. The Grantor shall give the Grantee written notice of any apparent violations before terminating the franchise. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the Grantee to respond. Grantee's response shall be in writing and may demonstrate that Grantee has remained in compliance, that it has cured or is in the process of curing any violation or noncompliance, that it is excused from compliance, or that it would not be in the public interest to revoke the franchise. If the Grantee is in the

process of curing a violation or noncompliance, the Grantee must demonstrate that it acted promptly and continues to actively work on compliance. If the Grantee does not respond or if the City Manager or designee determines that the Grantee's response is inadequate, the City Manager or designee shall refer the matter to the City Commission, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked. Such hearing shall be on the record and shall provide Grantee with an opportunity to present evidence and examine witnesses. The decision of the Grantor shall be made in writing and shall be delivered to the Grantee.

9. **Additional Franchises.** If any other provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully and expressly authorized by the Grantor to use the Streets to provide such services, the Grantor shall, to the extent permitted by applicable law, within sixty (60) days of a written request from Grantee, (i) modify this Franchise to insure that the material obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider, or (ii) dispute that the requested modification is required by this Section. "Material obligations" are limited to: franchise fees; insurance; indemnification; security instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; enforcement or revocation provisions; and notice and opportunity to cure breaches. In the event the Grantor disputes that the requested modification is required by this Section, Grantee may bring an action in federal or state court for a determination as to whether the requested modification is required by this Section. If the parties cannot agree on modifications to the Franchise, to the extent permitted by the Cable Act and related FCC rules and regulations, the Grantee may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor and take in its place the same franchise of the competing provider of Cable Services or video services authorized by Grantor. Notwithstanding the foregoing, the remedies provided in this Section may be invoked by Grantee only by providing written notice to the Grantor within the ninety (90) day period commencing upon the effective date of the Grantor's grant of authority to the other provider of cable services or video service as described in this Section, provided that Grantor provides written notice to Grantee within ten (10) days after Grantor's grant of such authority. In the event Grantor fails to provide such notice, the ninety (90) day period shall commence upon Grantee's actual notice of Grantor's grant of authority.
10. **Confidentiality.** To the extent permitted by law, the Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee marks such books, records or maps as "confidential" or "proprietary" prior to providing them to the Grantor. 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 including compliance with the Oregon Public Records Law, 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; provided, however, that the Grantor shall not be required to incur any costs to

protect such books and records or maps, other than the Grantor's routine internal procedures for complying with the Oregon Public Records Law. The provisions of this Section 10 shall apply in addition to all requirements of WMC 12.32.160.

11. **Service to Public Schools and Libraries.** Grantee may, on a voluntary basis, provide one outlet of free Basic and Expanded Basic Cable Service to public school classroom buildings and to public libraries within the Service Area.

12. **Notices, Miscellaneous.**

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. 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:

City of Warrenton  
222 S. Main Street  
PO Box 250  
Warrenton, OR 97146

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

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

With a copy to:

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

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns. Transfer of this Franchise shall be governed by the provisions for transfer of licenses in WMC 12.32.060.K, as in effect on the Effective Date, and applicable provisions of the Cable Act and FCC rules and regulations. 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. In addition, no such consent shall be required for a transfer to an entity controlling, controlled by, or under common control with the Grantee, however notice of such transfer must be provided to the Grantor within 60 days of such transfer.

- c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

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

14. **Franchise Fee.**

- a. Grantee shall pay to the Grantor an annual amount equal to five percent (5%) of Gross Revenues for such calendar year.
- b. The franchise fee shall be paid quarterly, in arrears, for each quarter during the term of the Franchise, within forty-five (45) days after the end of each calendar quarter, and shall be accompanied or followed by an accounting of Gross Revenues and a calculation of the amount payable. Grantee shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date. Payment shall be subject to audit or review pursuant to WMC 12.32.130, as of the Effective Date of this Franchise.

15. **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 Franchise, provided that such acceptance is delivered to Grantor within sixty (60) days of the date the Franchise is considered and approved by the Grantor. If acceptance is not delivered as required in this Section, this Franchise shall be null, void and of no force or effect. This Franchise shall expire ten (10) years from the Effective Date unless extended by the mutual agreement of the parties.


16. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 22 day of January 2018 2019

City of Warrenton

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

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

  
Henry Balensifer, Mayor

Accepted this 6<sup>th</sup> day of Feb. 2019, 2018, subject to applicable Federal, State and Local law.

Falcon Community Ventures I, Limited Partnership, I/k/a Charter Communications

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



Paul D. Abbott  
Vice President, Local Government Affairs and Franchising  
Charter Communications