

ORDINANCE NO. 1306

AN ORDINANCE AMENDING THE CODE OF THE CITY OF TILLAMOOK (CCT) TITLE IX: TABLE OF SPECIAL ORDINANCES AND ADOPTING A CABLE SERVICES FRANCHISE AGREEMENT BETWEEN FALCON TELECABLE, A CALIFORNIA LIMITED PARTNERSHIP AND THE CITY OF TILLAMOOK

WHEREAS, the City of Tillamook ("City") had all City Ordinances codified in 2013 for easier reference; and

WHEREAS, Falcon Telecable, a California Limited Partnership ("Franchisee" or "Charter") is the duly authorized holder of a valid but expired franchise authorizing Franchisee to operate and maintain a cable system to serve the City; and

WHEREAS the existing Franchise Agreement, memorialized as City Ordinance 1193, between the Franchisee and the City expired on August 5, 2014 and was extended on December 22, 2014 by mutual agreement to enable the Parties to negotiate a successor agreement; and

WHEREAS, negotiations for a franchise agreement between Charter and the City of Tillamook have been completed; and

WHEREAS, the City of Tillamook's attorney of record has reviewed the proposed franchise agreement for legal sufficiency; and

WHEREAS, the Tillamook City Council has reviewed the proposed franchise agreement terms;

NOW THEREFORE, the City of Tillamook ordains as follows:

Section 1: Amendment of the Code of the City of Tillamook (CCT).

The Table of Special Ordinances, Table II of the CCT is hereby amended to include the newly established franchise between the City of Tillamook and Charter. The newly established franchise agreement is appended as Exhibit A, which is attached hereto and by this reference incorporated within this Ordinance.

Section 2: Codification.

Provisions of this Ordinance shall amend the Code of the City of Tillamook, and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word and the sections of the Ordinance may be renumbered, or re-lettered, the City Recorder is authorized to correct any cross-references and any typographical errors.

Section 3: Effective Date.

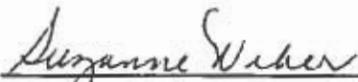
This Ordinance shall take effect 30 days from the date of adoption.

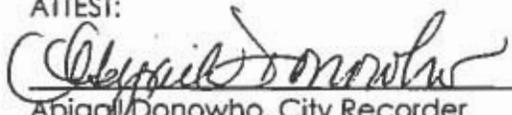
Passed 1st reading by the Tillamook City Council on this 7th day of December, 2015.

Passed 2nd reading by the Tillamook City Council on this 14th day of December, 2015.

Adopted by the Common Council this 14th day of December, 2015.

Approved by the Mayor this 14th day of December, 2015.


Suzanne Weber, Mayor

ATTEST:

Abigail Donowho, City Recorder



FRANCHISE AGREEMENT
CITY OF TILLAMOOK, OREGON

This Franchise Agreement (“Franchise”) is between the City of Tillamook, Oregon, hereinafter referred to as the “Grantor” and Falcon Telecable, a California Limited Partnership, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

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

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

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

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

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Board/Council” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, *et. seq.*
- D. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- E. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.

- F. "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, without limitation, the FCC user fee, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusions available under applicable State law.
- G. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- H. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6 hereto.
- I. "State" shall mean the State of Oregon.
- J. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- K. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2
Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. This Franchise neither authorizes nor restricts telecommunications or other non-Cable services.

2.2 Equal Protection. Nothing in this Franchise shall be construed to prohibit Grantor from granting to other Persons rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Streets by franchise, permit or otherwise, except as expressly limited in this Section 2.2. Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor 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 Parties to seek other remedies available under law. The Parties agree that, notwithstanding any provision of this Section, the Grantor shall not be

obligated to comply with the provisions of this Section to the extent doing so would cause the Grantor to violate applicable laws or FCC rules. The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider, then upon thirty (30) days prior written notice to the Grantor, the Grantee shall have the right and may choose, to the extent consistent with applicable state and federal laws and orders and rules adopted pursuant thereto:

- A. to modify this Franchise to the mutual satisfaction of Grantor and Grantee; or
- B. to deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
- C. to terminate this Franchise and take in its place the same franchise agreement of a competing provider of Cable Services or similar wireline video services authorized by the Grantor.

In determining whether the material obligations of this Agreement more burdensome or less favorable than the material obligations of a competing Cable Service provider's Agreement, a court of competent jurisdiction shall consider the comparative material obligations in their totality. The Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor 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 Grantor or Grantee to or seek other remedies available under law.

2.3 Term. The 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 16.8.

2.4 Police Powers and Conflicts with Franchise. The Grantee agrees to comply with the terms of any generally applicable local ordinance which is lawfully adopted under Grantor's general police power authority, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor will not take any unilateral action which materially changes the mutual promises in this contract. Any amendments to this Franchise must be made in writing signed by the Grantee and the Grantor. Subject to the foregoing, in the event of any conflict between this Franchise and a Grantor ordinance or regulation pertaining to Cable Services that is not generally applicable, this Franchise shall control.

2.5 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend, indemnify and hold harmless the Grantor, its officers, boards, commissions, agents, and employees for all claims, liabilities, damages and penalties including but not limited to attorney fees for injury to any Person or property arising as a result of the construction, operation or maintenance of the Cable System. Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. However, if the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any PEG channels.

4.2 Insurance.

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

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5
Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

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

SECTION 6
Service Availability

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

6.2 New Developments Underground. In cases of property development where utilities are to be placed underground, to the extent that Grantor issues a permit for open trenching to any developer, Grantor agrees to use reasonable efforts to require as a condition of issuing the permit for open trenching that such developer give all utilities in the Right of Way, including Grantee, at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense.

6.3 Annexation. 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 Section 6.1, above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the 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 in an Excel format or in another mutually-agreeable format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses, 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 16 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this Section.

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 and Grantor's generally-applicable ordinances, rules and regulations pursuant to its lawful police powers.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

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

SECTION 8
Conditions on Street Occupancy

8.1 General Conditions. Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. Notwithstanding the above, Grantee shall install its facilities underground even if electric facilities are installed aerially, if the sole reason for the aerial installation of the electric facilities is public safety.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, provided such permitting and subsequent construction by the Grantee shall comply with Grantor rules and regulations pursuant to the Grantor's police powers, and shall not unduly

interfere with the use of such Streets or pose a threat to public safety. The Grantee shall adhere to all building and zoning codes or regulations currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes or regulations are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities using the Streets and operating in the Service Area.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, promptly (or as soon as practicable in the event weather or other events beyond Grantee's control prevent such prompt restoration) and at its own expense, restore any damage or disturbance caused to the Streets or public way as a result of its operation, construction, or maintenance of the Cable System to a condition at least as good as the condition prior to such damage or disturbance. The work hereby required shall be done in strict compliance with the generally applicable rules, regulations and ordinances, pursuant to Grantor's police powers.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such fire or disaster was caused by gross negligence by the Grantor.

8.7 Tree Trimming. In an emergency that threatens the safety or integrity of Grantee's facilities, Grantee or its designee shall have the authority to trim trees on public property at its own expense, as may be necessary to protect its wires and facilities. In all other circumstances, Grantee shall provide Grantor with ten (10) days' written notice prior to such trimming.

8.8 Removal or Relocation for the Grantor. The Grantee shall, upon receipt of advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its general police power authority. Grantee shall be responsible for any costs associated with these obligations to the same extent all other non-public entities occupying the right of way are responsible for the costs related to the relocation of their facilities, subject to Section 2.2. Should Grantee fail to remove or relocate as required by this Section, Grantor may cause such work to be done by a mutually agreeable contractor after providing thirty (30) days written notice to Grantee, and the costs thereof shall be paid by Grantee, subject to any reimbursement required in Section 8.10.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this Section, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. In the event that Grantor reimburses any telephone or electric utilities for undergrounding, relocation or removal of facilities required by Grantor, Grantor shall also reimburse Grantee for similar undergrounding, relocation or removal required by Grantor under this Section 8, contingent upon the following conditions: 1) such reimbursement is mandated by State or federal law; or 2) such reimbursement is not limited or prohibited by a fund, loan, or grant used to fund the reimbursement.

8.11 Emergency Use. 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.

SECTION 9 **Service and Rates**

9.1 Phone Service. The Grantee shall provide either a staffed office within the Service Area or shall maintain a staffed, toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are satisfied and provided that Grantee may discontinue or refuse to provide Cable Service to any person that is abusive and/or exhibits threatening behavior toward the Grantee's employees or representatives. Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as such may be amended from time to time.

SECTION 10
Franchise Fee

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of Grantee's annual Gross Revenues. Such payment shall be in addition to taxes or fees of general applicability owed to the Grantor by the Grantee if such taxes or fees are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. Grantee shall not allocate revenue between Cable Services and non-Cable Services where such services are bundled together in a discounted package offered to Subscribers for the purpose of evading its franchise fee obligations.

10.2 Payment of Fee. Payment of the fee due the Grantor 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 Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 16.8. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenue amounts and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which the payment was due. In the event that a franchise fee payment owed under this franchise agreement is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment or sum due, interest from the due date at the annual rate equal to the commercial prime interest rate, plus one percent during the period such unpaid amount is owed.

10.5 Audit. Grantor may review and/or audit Grantee's records to ensure the correct calculation of Gross Revenues and payment of Franchise Fees. Grantee shall provide such records to Grantor or its designee, upon request by and at no charge to Grantor, subject to Grantor and/or designee signing Grantee's non-disclosure agreement. If there is a dispute as to whether a particular item of revenue is within the scope of the term "Gross Revenues" and Grantee withholds revenue records on the ground that the revenues are not subject to the franchise fee, Grantee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld. Said audit shall be conducted no more often than annually, and the audit period shall not be any greater than the previous five (5) years. The audit shall not last longer than six (6) months. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the Grantor, which notice shall include a copy of the audit findings. Subject to applicable law, if the audit discloses an underpayment by an amount in excess of ten thousand dollars (\$10,000), Grantee will reimburse Grantor for reasonable audit costs.

SECTION 11
Transfer of Franchise

11.1 Franchise Transfer. Subject to Section 617 of the Cable Act (47 U.S.C. Section 537), no transfer of the Franchise or change in control of Grantee shall occur without the prior written consent of Grantor, provided that such consent shall not be unreasonably withheld or delayed. No transfer of control will be deemed to have taken place if the transfer is to an entity owned or controlled by Grantee including affiliates under common control with Grantee. Grantee shall provide Grantor with at least sixty (60) days' notice prior to any sale or transfer. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. All successor affiliates, assignees or transferees shall be subject to the same terms, conditions and performances of this Franchise for the remainder of its term. Grantor may condition its consent upon terms and conditions relating to the legal, financial and technical qualifications of the proposed transferee. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.

SECTION 12
Records, Reports and Maps

12.1 Reports Required. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine at a mutually-agreeable location during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the Section of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in

violation of Section 631 of the Cable Act. Subject to Oregon's public records law, the Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. Grantee agrees to pay costs incurred by Grantor due to the foregoing denial of books and records, including reasonable attorney fees, in responding to public record requests for Grantee's books and records and/or defending a denial of such public records requests.

SECTION 13

Public, Education and Government (PEG) Channel

13.1 Use of Public, Education and Government (PEG) Channel. Grantee shall provide one (1) channel on the Cable System, for the use by Grantor or its designees for locally-produced, non-commercial, video programming for Public, Education and Government ("PEG") access programming. Grantee has the option to air the PEG channel in analog, digital or other format, so long as the content is available to all Subscribers.

13.2 Management and Control of PEG Channel. Grantor reserves the right to permit a third party to operate and manage the PEG channel on the Grantor's behalf. Grantor retains sole and exclusive responsibility for operating and managing the PEG channel.

13.3 Programming Requirements. The Grantor shall provide programming on the PEG Channel to occupy at least sixty percent (60%) of the hours between 12:00 p.m. and 8 p.m. for any eight (8) consecutive week period.

13.4 Annual Report to Grantee. Upon Grantee's request and no more than once annually, Grantor agrees to provide Grantee with a written report detailing PEG Channel usage and efforts to increase the quality and quantity of programming. The annual report shall contain, at a minimum, the average percent of PEG programming on any consecutive eight (8) week period consistent with the terms provided herein.

13.5 Grantee's Use. In the event the PEG programming levels set forth herein are not being maintained, the Grantee reserves the right to have the underutilized channel returned to the Grantor for the Grantee's use. The Grantee may utilize the PEG Channel only after giving the Grantor sixty (60) days' written notice and Grantor fails to maintain the minimum programming levels set forth herein during those sixty (60) days. The Grantor may request return of the PEG Channel used by the Grantee at any time, which request for return shall be accompanied by a showing that the Grantor's intended use for the PEG Channel will, or is reasonably likely to, meet the programming requirements set forth in this section. The Grantee shall, within ninety (90) days of the date of the written request, cease use of and return the PEG Channel to the Grantor.

SECTION 14
Free Drops and Cable Service

Grantee shall provide, without charge, one (1) activated outlet and equipment for Basic and Expanded Cable Service to all elementary and secondary public school instructional buildings and public library buildings within the Service Area and located within one hundred twenty-five (125) feet of Grantee's distribution plant. Additionally, Grantee shall provide, without charge, one (1) activated outlet and equipment for Basic Cable Service to publicly-owned or publicly-operated buildings within the Service Area, up to a maximum of three (3) total locations. The locations identified in Exhibit A shall be within one hundred and twenty-five (125) feet of Grantee's feeder cable. The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any inappropriate use of or loss or damage to the Grantee's Cable System.

SECTION 15
Enforcement or Revocation

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

15.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

15.3 Hearing. If Grantee contests Grantor's assertion of noncompliance, Grantee may request in writing a hearing with the City Manager. The purpose of the hearing shall be to determine whether Grantee has been or is noncompliant with the express terms of the Franchise Agreement. Notice of the hearing shall be sent in writing to Grantee. The hearing shall be held within thirty (30) days of the Grantee's written request. At the hearing, Grantee may provide testimony and other appropriate evidence. The hearing shall be recorded and minutes of the hearing shall be made available to the Grantee within ten (10) business days. Grantee may request and purchase, at Grantee's sole cost, a written transcript of the meeting. Within fifteen (15) days of the hearing, the City Manager shall issue his or her findings in writing. If the City Manager determines that the Grantee has been or is non-compliant and such non-compliance remains uncured by Grantee for seven (7) days after the City Manager issues his or her finding, then Grantor may cure the violation consistent with all of the the technical and related requirements of the Franchise and may charge Grantee with the reasonable costs to cure and/or may seek enforcement as provided in Sections 15.4 and 15.5. Notwithstanding the foregoing, the Grantee may appeal or petition such determination to a court of competent jurisdiction, which shall have the power to review the decision of the Grantor, applying a review standard that is consistent with federal and Oregon law.

15.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the process set forth in Section 15.3. above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, revoke the Franchise in accordance with Section 15.5 below.

15.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then revoke the Franchise after considering the revocation at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- B. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter and to present testimony and other appropriate evidence, after which it may determine whether or not the Franchise shall be revoked. The public hearing shall be recorded and minutes of the hearing shall be made available to the Grantee within ten (10) business days. Grantee may request and purchase, at Grantee's sole cost, a written transcript of the meeting. The decision of the Grantor shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to a court of competent jurisdiction, which shall have the power to review the decision of the Grantor, applying a review standard that is consistent with federal and Oregon law. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- C. Notwithstanding the above provisions, neither the Grantee nor Grantor waives any of its rights under applicable federal or state law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or may abandon the Cable System in place.

SECTION 16
Miscellaneous Provisions

16.1 Force Majeure. Neither Grantor or Grantee shall 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 Grantor or 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 if such delays were reasonably beyond the ability of the Grantor or Grantee to foresee or control, as well as unavailability of materials and/or qualified labor to perform the work necessary.

16.2 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Grantor or on Subscribers within the Service Area.

16.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

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

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

City of Tillamook
City Manager's Office
210 Laurel Ave.
Tillamook, OR 97141

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

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

With a copy to:

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

16.5 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.

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

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

16.8 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. The term of this Franchise shall expire ten (10) years from the Effective Date defined herein, unless extended by the mutual agreement of the parties.

Considered and approved this 14 day of December, 2015.

City of Tillamook, Oregon

Signature: Suzanne Weber

Name/Title: Mayor

Accepted this 15th day of January, 2016, subject to applicable federal, State and local law.

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

By: Mark E. Brown
Mark E. Brown
Vice President, Government Affairs
Charter Communications

Charter Free Cable Services

SCHOOLS:

- 1) Tillamook High School - 2605 12th Street – Tillamook OR 97141
- 2) Tillamook Junior High School - 3906 Alder Lane – Tillamook OR 97141
- 3) Liberty Elementary School - 1700 9th Street – Tillamook OR 97141
- 4) East Elementary School - 3905 Alder Lane – Tillamook OR 97141
- 5) South Prairie Elementary School - 6855 South Prairie Rd – Tillamook OR 97141
- 6) Wilson River School - 2515 3rd Street – Tillamook OR 97141
(alternative public school)
- 7) Trask River High School - 6700 Officers' Row – Tillamook OR 97141
(alternative public school)

LIBRARY:

- 8) Tillamook County Central Library – 1716 3rd Street – Tillamook OR 97141

OTHERS:

- 9) Tillamook County Emergency Communications 911
– 2311 3rd Street – Tillamook OR 97141
- 10) Tillamook County Health Department – 801 Pacific Ave. – Tillamook OR 97141
- 11) Tillamook Bay Community College – 4301 3rd Street – Tillamook OR 971