

## Town of Windsor

### Memorandum

July 14, 2015

**TO:** The Honorable Mayor and Town Council  
**FROM:** Michael Stallings, Town Manager *MS*  
**SUBJECT:** Charter Franchise Agreement

As you know, Charter Communications supplies telephone, television, and internet services to residents of the Town of Windsor. I have recently renegotiated the franchise agreement for these services. The agreement mirrors the agreement in Smithfield.

This new agreement provides some new services to the Town. First, the agreement provides the Town with a public, educational, and governmental (PEG) channel. This channel will be available for the Town to program with any content that we see fit. This channel will be provided at no cost to the Town. We will be provided a PEG channel capital fee to help offset the cost of any equipment that we may have to purchase to run the PEG channel. This fee will be no less than \$.04 per customer per month, paid quarterly.

The Town will also be provided one location with free basic cable service.

A copy of the franchise agreement has been attached to this memorandum.

I recommend that Council authorize and direct the Town Manager to execute the franchise agreement with Charter Communications.

#### **Recommended Motion**

Move that Town Council authorize and direct the Town Manager to execute the franchise agreement with Charter Communications

## FRANCHISE AGREEMENT

**This Franchise Agreement** (“Franchise”) is between the **Town of Windsor, Virginia** hereinafter referred to as the “Grantor” and Charter Communications VI, LLC, locally known as **Charter Communications**, hereinafter referred to as the “Grantee.”

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

### 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Act” means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.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 franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. “Service Area” shall mean the geographic boundaries of the Grantor.
- e. “Streets” 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 geographic boundaries of Grantor.
- f. “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 and dedicated easements within the Service Area for the construction, operation and maintenance of the Cable System, 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.

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 14. This Franchise will be automatically extended for an additional term of *five (5)* years from such effective date, unless either

party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

**4. Use of the Streets and Dedicated Easements.**

- a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
- b. 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.
- c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.
- d. 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 sewer, electric facility, water main, fire alarm, police communication or traffic control.

**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
- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may, from time to time, be amended.

**6. Service.**

- a. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the

date of such request for service. If such residence is located within 125 feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rates for standard installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, or into any annexed area which is not contiguous to the present Service Area of the Grantee. Grantee shall not be obligated to provide Cable Service into any area which is financially or technically infeasible.

- b. The Grantor shall provide prior notice to the Grantee of its annexation of any contiguous territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of the franchise which previously covered that area throughout the term of this Franchise, although the Grantor will replace the previous franchise authority. Grantee shall pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in the Service Area and in any area annexed by the Grantor if the Grantor has provided written notice to the Grantee prior to the date of such annexation.

**7. Insurance/Indemnity.**

- 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 Liability (C.S.L.) [\$2,000,000] General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	[\$1,000,000] per occurrence C.S.L.
Umbrella Liability	[\$1,000,000] per occurrence C.S.L.

- b. The Grantor 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. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. 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.

**8. 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 Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the 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 and a certified copy of the findings 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*.
- c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

- 9. Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

10. **Confidentiality.** If Grantee provides any books and records to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. 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 to any person.

11. **Notices, Miscellaneous.**

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

Town Manager  
Town of Windsor  
P.O. Box 307  
Windsor, VA 23487

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

Attention: Area Vice President  
Charter Communications  
2 Digital Place  
Simpsonville, SC 29681

With a copy to: Charter Communications  
VP, Counsel - Government Affairs  
1099 New York Ave, Suite 650  
Washington, DC 20001

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- 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.

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 work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
13. **Communications Sales and Use Tax.** The Grantee shall comply with the terms of 2006 Virginia House Bill 568.
14. **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. This Franchise shall expire or be extended in accordance with Section 3 of this Franchise.
15. **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.
16. **Public, Educational, and Governmental (PEG) Channel.**
  - a. Grantee shall provide one (1) channel on the Cable System for use by the Grantor for non-commercial public, educational and governmental ("PEG") access programming use. The Grantor or its designee shall assume responsibility for management, operation, and programming of such channel subject to applicable federal and State law.
  - b. If the Grantor substantially utilizes its initial PEG channel provided in Section 16(a), it may by ordinance, after a public hearing to ascertain community need, and by notice to the Grantee as set forth in Section 11, require one (1) additional PEG channel. For purposes of this subdivision, an initial PEG channel shall be considered "substantially utilized" when its content consists of locally produced, non-duplicative, non-automated (or character-generated) programming on a continuous basis for at least six (6) consecutive weeks exceeding an average of seventy percent (70%) of all viewable hours, Any such ordinance must apply equally to all providers of Cable Service and/or video service providers within the Service Area.
  - c. The additional PEG channel provided pursuant to such an ordinance that is not substantially utilized by the Grantor, as defined in Section 16(b), shall no longer be made available to the Grantor, but may be programmed at the Grantee's discretion. At such time as the Grantor can provide written certification to the Grantee of a schedule that meets the substantially utilized definition, the Grantee shall restore the previously allocated channel.

**17. PEG Channel Capital Fee.**

- a. Grantee shall pay Grantor a quarterly recurring PEG capital fee to reimburse Grantor for capital costs it incurs for the purchase of PEG access equipment, facilities and for other lawful purposes. This amount shall be not less than four cents (\$0.04) per basic customer per month during the term of the Franchise. The initial PEG capital fee payment shall be made no later than sixty (60) days from the effective date of the Franchise, and thereafter on a calendar quarter basis no later than forty-five (45) days after the end of the calendar quarter.
- b. The Grantor will be responsible for installing, operating, maintaining, and replacing all PEG related equipment purchased. As provided under federal law, PEG capital fee funds shall not be used for operating costs. The Grantor shall provide to Grantee copies of invoices of capital purchases no later than thirty (30) days after the Grantor's receipt of the invoice. Said copy of the invoice shall be provided to Grantee in the manner specified in Section 11.

**18. Service to Certain Facilities.**

- a. Upon the request of the Grantor, by written notice to the Grantee as required in Section 11, and subject to the conditions in Section 18(b) and 18(c), the Grantee shall provide, without charge, for connection or service, one (1) complimentary connection activated for Limited Basic Cable Service to one (1) location within the Grantee's Service Area. Any services and equipment to this location other than Limited Basic Cable Service will be charged at Grantee's prevailing commercial prices, including appropriate fees and taxes, Service to this location will be activated within ten (10) calendar days after receipt by the Grantee of notice from the Grantor requesting service, subject to the provisions of Section 18(b) and 18(c).
- b. The Grantee shall be required to make one (1) standard installation at one (1) point reasonably convenient to use at a location specified by the Grantor pursuant to Section 18(a) and shall not be required to wire the entire building or facility at that location or to provide more than one (1) outlet on a complimentary basis.
- c. The Limited Basic Cable Service provided pursuant to Section 18(a) 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 the Cable System that results in loss or damage to the Grantee, The Grantee shall not be required to provide a connection of service if a distance of more than one hundred twenty-five (125) feet (a "standard installation" or "standard drop") exists from the Grantee's terminating service point to the requested location until the Grantor pays in advance the cost of any plant extension or construction necessary to permit a standard installation.



Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 2015

TOWN OF WINDSOR, VIRGINIA

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted by Town of Windsor this \_\_\_\_ day of \_\_\_\_\_, 2015, subject to applicable federal, state and local law.

Charter Communications VI, LLC, locally known as CHARTER COMMUNICATIONS

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

Name: Mark E. Brown

Title: VP, Counsel - Government Affairs

Date: \_\_\_\_\_