

# LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: October 18, 2016

2. AGENDA ITEM: ☐ Appointments ☐ Bids/Purchases ☐ Claims  
☒ Contracts/agreements/leases ☐ Grants ☐ Land Use: Variances/Board App/Plats  
☐ Proclamations ☐ Public Hearings/Rules & Reg's ☐ Reports & Public Petitions  
☐ Resolutions ☐ Other

3. DEPARTMENT: Laramie County Commissioners

APPLICANT: Charter Communications AGENT: Erik Rasmussen

4. DESCRIPTION: Consideration of a franchise agreement between Laramie County and Charter Communications.

Amount \$ From To

5. DOCUMENTATION: 2 Originals

RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
LARAMIE COUNTY ATTORNEY



Commissioner

Clerks Use Only:

Signatures

Ash \_\_\_\_\_

Heath \_\_\_\_\_

Holmes \_\_\_\_\_

Kailey \_\_\_\_\_

Thompson \_\_\_\_\_

Action \_\_\_\_\_

Postponed/Tabled \_\_\_\_\_

Co Attny \_\_\_\_\_

Assist Co Attny \_\_\_\_\_

Grants Manager \_\_\_\_\_

Outside Agency \_\_\_\_\_

## **FRANCHISE AGREEMENT**

**This Franchise Agreement ("Franchise") is between the County of Laramie, State of Wyoming, hereinafter referred to as the "Grantor" and Bresnan Communications, 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Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.**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.     **"Gross Revenues" means any revenue, as determined in accordance with generally accepted accounting principles, received by Grantee from operation of the Cable System 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 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; (4) any exclusions available under applicable state law.**
- e.     **"Service Area" shall mean the geographic boundaries of the Grantor.**
- f.     **"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.**
- 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 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. The parties will renew the Franchise in accordance with the procedures set forth in the federal Cable Act.

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 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 or its affiliates. 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. 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 a format that will allow Grantee to change its billing system. 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 11 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.

**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. 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:

Grantor:

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E-mail:

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Grantee:

Bresnan Communications, LLC  
VP/GM, KMA  
1860 Monad Road  
Billings, MT 59102

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Copy to: Charter Communications  
Attn: Vice President of Government  
Affairs  
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.
  - 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, 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 unavailability of materials and/or qualified labor to perform the work necessary.
13. **Franchise Fee.**
- a. Grantee shall pay to the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year. Transmitted by electronic funds transfer to a bank account designated by Grantor.
  - b. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section, together with a financial statement showing total Gross Revenues derived from the Cable System during such year. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.
14. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantor recorded on the signature page of this Franchise. This Franchise shall expire on \_\_\_\_\_, \_\_\_\_ unless extended in accordance with Section 3 of this Franchise or by the mutual agreement of the parties.
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. 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.

16. **Governmental Immunity.** Laramie County does not waive its sovereign immunity by entering into this Franchise, and fully retains all immunities and defenses provided by the law with respect to any action based on or arising out of this Franchise.
17. **Customer Service.** 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.

Considered and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

[Grantor]

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

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

Accepted this 10 day of Oct 2016, subject to applicable federal, state and local law.

Bresnan Communications, LLC,

By Charter Communications Inc., its Manager

Signature: Mark S. Ba

Name/Title: V P GOVERNMENT AFFAIRS

Date: 10/10/16