

- Item # 8A

**City of Carson City
Agenda Report**

Date Submitted: December 12, 2006

Agenda Date Requested: December 21, 2006

Time Requested: 20 minutes

To: Linda Ritter, City Manager

From: Mayor and Supervisors

Subject Title: Action to approve an Agreement to Extend Cable Franchise with Falcon Cable Systems II, L.P., locally known as Charter Communications, for a period of five (5) years

Staff Summary: The franchise agreement that was approved in 1987 expired on July 7, 2002. The City is currently working under the old and outdated agreement. This agreement extends the current franchise for an additional five (5) years.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance - First Reading
☒ (XXX) Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes (XXX) No

Recommended Board Action: I move approve an Agreement to Extend Cable Franchise with Falcon Cable Systems II, L.P., locally known as Charter Communications, for a period of five (5) years.

Explanation for Recommended Board Action:

Carson City's existing cable television franchise is a 15-year agreement that was approved by the Board of Supervisors in 1987 and expired on July 7, 2002. This extension was negotiated in a regulatory environment where localities' authority rapidly diminished over the course of the last 12 months. The California Legislature recently passed an omnibus bill providing for a statewide franchise and placed substantial restrictions on Cities and Counties to regulate cable services. Congress is considering similar legislation and the State will likely address the issue next year. Considering these circumstances, the City's team insisted on terms that, while not as progressive as those initially sought by the team or gained by Cities ten years ago, still protect the City's revenue stream, improve local programming, and are otherwise supportive of the community and ensure quality service to the City for five years.

After numerous hours of negotiation, the City team is ready to present a proposal to the Board for their consideration.

Highlights of the proposed franchise include the following:

- * The term of the agreement is five years.
- * The effective date of the agreement shall be December 21, 2006 and shall be in effect until December 21, 2011.
- * The franchise fee shall be 5% of gross revenues.
- * One Government Access and one Public Access channel shall continue to be provided, and in the future should channel space become available, a "Nevada" channel will be provided as part of the Basic Cable Service Tier.
- * Grants totaling \$200,000 by Charter to support Public, Education and Government (PEG) Access facilities and equipment. Subscribers will compensate Charter for these payments throughout the term of the extension.

Applicable Statue, Code, Policy, Rule or Regulation: Cable Communications Act of 1984, as amended by the Cable Television Act of 1992.

Fiscal Impact: Retention of the five percent franchise fee. An additional \$200,000 from Charter Communications for PEG.

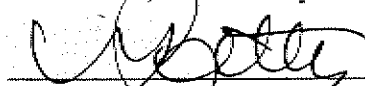
Funding Source: Revenues from the franchise fee will be paid to the General Fund.

Alternatives: Do not approve and continue under the current franchise agreement approved in 1987.

Supporting Material: Attached is a letter from Charter requesting the extension and the draft agreement.

Prepared By: L. Teixeira, Community Relations

Reviewed By:


(City Manager)

Date: 12/12/06


(District Attorney)

Date: 12-12-06


(Finance Director)

Date: 12-12-06

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)



December 11, 2006

Ms. Linda Ritter
City Manager
City of Carson City
201 North Carson Street, Suite #2
Carson City, NV 89701

Dear Ms Ritter:

Falcon Cable Systems Company II, L.P., locally known as Charter Communications ("Charter") has provided service over its Cable System for many years to the businesses and residents of your community under a franchise with the City of Carson City, NV. It is the intention of both parties to extend the existing franchise for a period of five (5) years based upon the terms as set out in the attached Agreement to Extend the Franchise Document.

Charter has provided many benefits and protections to your community through its franchise with Carson City, including quality cable service and high speed internet and data services throughout the term of the franchise and would like to continue to provide services over our cable system to residents of Carson City. Through the franchise, we have paid franchise fees of 5% on Charter's gross revenues derived from the provision of cable services over the cable system within the franchise service area. We have protected your community by providing insurance and indemnification for Charter's operations in the community in accordance with the terms of the franchise and have benefited your community by providing two (2) public, education and government access channels, free cable service to public schools, libraries, fire and police stations and municipal buildings and excellent customer service

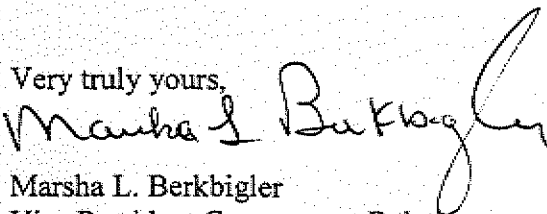
Charter would like to continue to provide all of the benefits and protections under its franchise to Carson City and respectfully requests that you extend our franchise for a period of five (5) years. This extension document, once approved, will set out the entire agreement between Charter and Carson City. Both parties have agreed that the franchise and this extension will be subject to the City's police powers but not to any cable specific ordinances.

Page 2
Ms. Linda Ritter
December 11, 2006

Enclosed, for your convenience is a form agreement that extends our franchise for a period of five (5) years and insures the continuation of the many benefits and protections provided by the franchise to Carson City. It is our understanding that this extension of the existing franchise will comprise the entire agreement between the City of Carson City and Charter and that the City will repeal the master cable ordinance in its entirety.

Thank you for working with Charter to complete this extension.

Very truly yours,



Marsha L. Berkbigler
Vice President Government Relations

Enclosure

Cc: Marv Teixeira, Mayor
Liz Teixeira, Admin Assistant Carson City
Manny Martinez, VPGM
Scott Dockery, GM

AGREEMENT TO EXTEND CABLE FRANCHISE

WHEREAS, Falcon Cable Systems Company II, L.P., locally known as Charter Communications ("Charter") currently holds a cable franchise with the City of Carson City, granted by Ordinance No. 1987-21 ("Franchise"), on July 7, 1987; and

WHEREAS, Charter and the City of Carson City wish to extend the Franchise.

WHEREAS, it is in the public interest to extend the current Franchise for an additional period of five (5) years so that cable service to the public will not be interrupted.

NOW, THEREFORE, in consideration of the foregoing, Charter and the City of Carson City agree as follows:

Section 1: Section 2.2 of the Franchise is hereby amended to reflect an extension of the term of the Franchise for five (5) years. The expiration date of the Franchise shall be December ___, 2011.

Section 2: Section 3.13.5 of the Franchise is hereby amended to affirm that Charter will continue to provide two (2) PEG channels for use by the City of Carson City to provide public, educational and government access programming to the residents of Carson City. In the event future channel space becomes available, Charter will work with the City of Carson City to establish a "Nevada Channel" to allow the State of Nevada Legislature and Interim Committees to be broadcast throughout the cable viewing area.

Section 3: Section 4.1 of the Franchise is hereby amended to allow for the payment of franchise fees on a quarterly basis, due and payable to the City thirty (30) days after the last month of each quarter.

Section 4: Charter agrees to provide capital access grants in the amount of \$100,000 during the first quarter of 2007 and an additional capital access grant in the amount of \$100,000 during the first quarter of 2008. Effective January 2007, throughout the term of the extension, Charter may institute a PEG pass-through in the amount of \$0.15 per Subscriber per month. The pass-through shall be used to reimburse Charter for the capital access grants.

Section 5: Charter agrees to provide a two-way fiber optic connection, including all necessary terminal equipment up to and including the demark point, to the primary PEG access center, the Brewery Arts Center (BAC). The interconnection shall be designed so that the access center can send analog or digital (as necessitated by Grantee's headend requirement) signals to the headend on both channels simultaneously, receive signals simultaneously, and control signals to allow for smooth breaks, transitions, and insertion of station ID's. To accommodate the potential for a future "Nevada Channel", Charter will provide a two-way fiber optic link including all necessary terminal equipment from the legislative Council Bureau (LCB), the BAC and Charter's headend.

Section 6: Charter and the City of Carson City agree that any grant of additional franchises, licenses, certificates or other authorizations by the City to any other entity to provide Cable Services, Video Services or other television services located wholly or partly in the public rights of way (without regard to the technology used to deliver such services), shall not be on terms and conditions (including, without limitation, the franchise fee and PEG obligations) more favorable or less burdensome to Charter for any such additional franchises, licenses, certificates or other authorizations, than those which are set forth herein.

Additionally, if any other State or federal governmental entity lawfully authorizes a franchise, license, certificate or other authorization to any other entity to provide cable services, video services or other television services located wholly or partly in the public rights of way in the service area, (without regard to the technology used to deliver such services), the City of Carson City shall within thirty (30) days of a written request from Charter, modify Charter's franchise to insure that the obligations applicable to Charter are no more burdensome than those imposed on the new provider.

In the event the City of Carson City issues a franchise, license, certificate or other authorization to any other entity to provide cable services, video services or other television services located wholly or partly in the public rights of way in the service area, (without regard to the technology used to deliver such services), the new provider shall be required to make an additional \$200,000 PEG grant to the City of Carson City or provide Charter compensation for a pro rate portion of all costs and unrecovered grant monies provided to the City of Carson City associated with this franchise extension. If the City of Carson City fails to make modifications consistent with this requirement, Charter's franchise shall be deemed so modified thirty (30) days after Charter's initial written notice. As an alternative to the franchise modification request, Charter shall have the right and may choose to have this franchise extension deemed expired thirty (30) days after written notice to the City of Carson City.

In the event federal, state or local law, rules or regulations are amended, modified or created that have the lawful effect of modifying the terms and conditions of the franchise or this extension during the term of this extension or that authorizes the provision of cable services, video services or other television services wholly or partially within the right-of-way, then the parties shall modify the franchise extension in such a way that is mutually agreeable to both parties or Charter shall have the right to terminate this extension upon a sixty (60) day notice to the City of Carson City.

Section 7: Section 9.7 Complaints – Effective with passage of this extension, Section 9.7 is waived and will no longer be a requirement pursuant to the franchise or this extension.

Section 8: Charter and the City of Carson City hereby reserve all rights they may have under applicable provisions of the Cable Act (47 U.S.C. § 521, et seq.). Nothing herein shall be deemed or construed as a waiver, release or surrender of any right that either party may have under the Cable Act or any applicable law.

All other terms and conditions of the Franchise shall continue in full force and effect, subject to applicable law. This extension and Ordinance No. 1987-21, shall be the full and complete agreement for the provision of cable services between the parties and any amendments shall be mutually agreed between the parties.

PASSED AND APPROVED this ____ day of _____, 20__

Carson City, NV

By: _____

Name/Title: _____

ACCEPTED THIS ____ day of _____, 2006

Falcon Cable Systems Company II, L.P.
/k/a Charter Communications

By: _____

Name/Title: _____