

ORDINANCE NO. 167

An ordinance granting a nonexclusive Franchise for the maintenance and operation in the City of Dunes City, OR. of a cable system.

Dunes City ordains as follows:

Section 1. Grant of Non-Exclusive Franchise.

There is hereby granted by the City of Dunes City, OR and assigned a non-exclusive Franchise to Falcon Cable Systems Company II, L.P. d/b/a Charter Communications, hereinafter referred to as the "Franchisee," to operate and maintain a cable system for a period of ten (10) years subject to the terms set forth in Section 17 herein.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

1. "City" shall mean the City of Dunes City.
2. "Board" shall mean the governing body of the City of Dunes City.
3. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming services, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
4. "Franchise" shall mean the authorization to operate a cable television system, including all mutual rights, duties and obligations of the Franchisee and the City as contained in this Ordinance.
5. "Franchisee" shall mean Falcon Cable Systems Company II, L.P. d/b/a Charter Communications, its successor or any affiliated company in accordance with the provisions of this Ordinance.
6. "Gross Revenue" means any revenue received by the Franchisee 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, free or assessment of general applicability collected by the Franchisee from Subscribers for pass-through to a government agency, including the FCC User Fee; (2) unrecovered bad debt; and (3) any PEG or I-Net amounts recovered from Subscribers.

7. "Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

8. "Service Area" shall mean the geographic area within Franchise territory having forty (40) dwellings per cable mile.

9. "System" shall mean those antennas, cables, wires, lines towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed within the City for the purpose of producing, providing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronics or directional duplex signals.

Section 3. Grant of Authority

Franchisee shall be given the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways now laid out or dedicated and in compatible easements, and all extensions, thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other equipment and fixtures necessary for the maintenance and operation of a cable system.

Franchisee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building permit. Expenses associated with raising and lowering the wires or equipment shall be paid by the person requesting the same (except in cases where Franchisee is required to bear the costs under other provisions of this Franchise) and the Franchisee may require advance payment. Franchisee shall be entitled to require that it be given up to ten (10) days advance notice by the person requesting the movement.

Section 4. Compliance with Applicable Laws.

Franchisee, shall, at all times during the life of this Franchise, be subject, when not inconsistent with this Franchise, to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

Section 5. Compliance with FCC Regulation.

Franchisee shall comply with all applicable rules and regulations of the Federal Communications Commission.

Copies of all petitions, applications and communications submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect of any matters directly affecting Cable System operations authorized pursuant to the Franchise, shall be submitted to the Board upon request.

Section 6. Compliance with Electrical Standards.

Construction and maintenance of the transmission and distribution system including house connections, shall be in accordance with the provisions of the National Electrical Safety Code of the National Board of Fire Underwriters, and such safety codes as now exist or which may be established in the future. In the event of a conflict among safety codes, the strictest standard shall apply.

Section 7. Franchise Requirements for Other Franchise Holders.

In the event that City grants one (1) or more Franchise(s) or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Franchisee it shall not make the grant on more favorable or less burdensome terms. If Franchisee finds that the agreement(s) granting said other Franchise(s) contain provisions imposing lesser obligations on the Company(s) thereof than are imposed by the provisions of this Franchise, Franchisee may petition City for a modification of this Franchise. The Franchisee shall be entitled, with respect to said lesser obligations to such modification(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

In the event that a non-Franchise multichannel video programming distributor provides service to the residents of the City, the Franchisee shall have a right to request Franchise amendments that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise. Such petitions shall:

1. Indicate the presence of a non-Franchised competitor(s);
2. Identify the basis for Franchisee's belief that certain provisions of the Franchise place Franchisee at a competitive disadvantage;
3. Identify the regulatory burdens to be remanded or repealed in order to eliminate the competitive disadvantage.

The City shall not unreasonably withhold granting the Franchisee's petition and so amending the Franchise.

Section 8. Cable System Franchise Required

No cable system shall be allowed to operate or use the streets or public right-of-way within the City without a non-exclusive cable Franchise.

Section 9. Service Territory.

Franchise shall include the entire area of the City.

Franchisee's distribution system shall be capable of providing service to all potential subscribers requesting service within the incorporated limits of the City and shall extend its distribution system to serve additional subscribers in any unserved areas of the City as of the effective date of this Ordinance whenever the number of unserved homes passed by such extension would exceed forty (40) homes per mile; provided that such extensions are technically and economically feasible to the Franchisee.

Where the length of a drop cable required to serve an individual resident would exceed 150 feet, the subscriber served by such a drop cable shall pay the cost of installing a feeder cable to a point where the subscriber will receive a signal without degradation of picture quality or reliability.

Section 10. Customer Service.

Franchisee shall comply with applicable Federal, State and local laws for the protection of privacy of cable subscribers, including, but not limited to, the customer service provisions set forth on the attached Exhibit A.

Section 11. Community Programming.

Franchisee shall reserve one local access/PEG (Public, Education, Government) Channel.

Section 12. Service to City.

Franchisee shall provide and maintain one free connection of basic cable service to each City building, fire stations, and to all public and parochial primary and secondary schools located in the City. The cost of any internal wiring shall be borne by the institution.

Such connections shall be provided at such times as service can be provided from the Franchisee's existing distribution plant. If a distribution plant extension of the system is required which imposes an undue economic hardship, the Franchisee shall have the right to petition the City for relief from the service commitments of this Section. Service shall be provided to newly constructed City facilities under the same terms and conditions and as soon as practical, but in no event later than two (2) years from the date of occupancy.

Section 13. Fee to City.

Franchisee shall pay to the City for the privilege of operating a cable system under this Franchise five percent (5%) of its gross basic service receipts, in accordance with the Cable Act. Such percentage shall be payable to the City on a quarterly basis due no later than ninety (90) days following the end of the period.

City shall have the right to inspect for up to three (3) previous years the Franchisee's records showing its gross receipts for all services from which its contracted payouts are computed. No acceptance of any payout by the City shall be construed as a release of or an

accord or satisfaction of any claim the City might have for further or additional sums payable under the terms of this Franchise.

Section 14. Conditions on Street Use.

Franchisee shall endeavor to obtain rights to use facilities belonging to other Franchise holders within the City. Approval of the assignment of such rights to the Franchisee by such other Franchise holders is hereby expressly given by the City, it being the intention of the City that the Franchisee will utilize public utility facilities where feasible.

All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places, and not to interfere with existing public utility installation.

If the Franchisee disturbs any pavements, sidewalks, driveways or other surfacing, it shall, at its own expense, and in the manner provided by the City, replace and restore all such pavings, sidewalks, driveways or other surfaces of any streets or alleys thus disturbed.

If at any time during the period of this Franchise, the City shall lawfully elect to alter, or change the grade or alley, or other public ways, the Franchisee shall upon reasonable notice by the City, remove and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense, and in each instance comply with the requirements of the City.

Section 15. Indemnification and Insurance.

<u>Workers' Compensation</u>	<u>Statutory Limits</u>
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 and hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

The City shall be added as an Additional Insured to the above Commercial General Liability and Auto Liability Insurance Coverage.

The Franchisee shall furnish the City with current Certificates of Insurance evidencing such coverage.

Section 19. Public Records.

The City shall have access to records and other like materials of the Franchisee upon reasonable prior notice as mutually agreed upon by the City and Franchisee.

Section 20. Forfeiture of Franchise.

(a) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the Franchisee hereunder in the event that the Franchisee:

- (1) Violates any provision of this Franchise.
- (2) Becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt;
- (3) Practices any fraud or deceit upon the City.

(b) Such termination and cancellation shall be by Ordinance duly adopted after thirty (30) days written notice to the Franchisee and shall in no way affect any of the City's rights under this Franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the Board or its representative. Before this Franchise may be terminated and canceled under this Section, the Franchisee must be provided with an opportunity to be heard before the Board and an opportunity to cure any condition leading to termination or cancellation. If the Franchisee has corrected the condition leading to termination or cancellation within the thirty (30) days written notice of termination or cancellation, or, if such correction requires more than thirty (30) days, has begun to correct any such condition, this Franchise shall remain in effect.

(c) Prevention or delay of any performance under the Franchise due to circumstances beyond the control of Franchisee or City including, but not limited to, natural disaster, employee strikes (i.e., employee strikes that occur only after all attempts to reasonably negotiate and settle with employees have been exhausted), acts of terrorism or war shall not be deemed noncompliance with or a violation of this Franchise.

Section 21. Equal Employment Opportunity Compliance.

Franchisee shall comply at all times with applicable Federal, State and local laws and all executive and administrative orders relating to nondiscrimination, equal employment and affirmative action.

Section 22. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unconstitutional or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

Section 23. Integration.

This Agreement sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations and warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

Section 24. Rate Regulation.

To the extent that Federal or State Law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Franchisee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

Section 25. Transfer.

A. The Franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said Franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall, however, not be unreasonably withheld or delayed.

B. The Franchisee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Franchisee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition by any person or group of persons of ten percent (10%) of the voting shares of the Franchisee. Every change, transfer, or acquisition of control of the Franchisee shall make the Franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control the Franchise, the City may inquire into the qualification of the prospective controlling party, and the Franchisee shall assist the City in any such inquiry.

C. By its acceptance of this Franchise, the Franchisee specifically grants and agrees that any such sale, assignment or transfer of the Franchise occurring without prior approval of the City Board shall constitute a violation of this Franchise by the Franchisee.

D. The foregoing requirements shall not apply to any sale, assignment or transfer to any Person which is owned or controlled by the Franchisee, or any Person which owns or controls the Franchisee. Franchisee shall notify the City thirty (30) days prior to any sale, assignment or transfer. Dated this 11 day of March, 2004.

City of Dunes City

Joanne Hickey

Witness

Joanne Hickey
(Print Name)

By: [Signature]
Mayor/Executive

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

By: [Signature]
Senior Vice President Operations

Dated: March 31, 2004

Exhibit A

Customer Service Provisions

Franchisee shall adhere to these customer service standards throughout the term of this Franchise as follows:

Office Hours and Telephone Availability

- The Franchisee shall make available to customers the Charter toll free customer service telephone number which shall have trained Charter customer service representatives available twenty-four (24) hours per day, seven (7) days per week where customers can request a service call, equipment pick-up, make a payment by phone, question their bill or request additional services.
- A call to a cable system must be answered, including wait time, within 30 seconds after the connection is made. If the call is transferred, the transfer time may not exceed 30 seconds. These standards must be met at least 90 percent of the time, measured quarterly, under "normal operating conditions." However, if Franchisee makes trained company representatives available on a 24 hour basis, these standards must be met at least 75% of the time under "normal operating conditions." Also under normal operating conditions, cable system customers may receive a busy signal no more than three percent of the time.
- Normal operating conditions are those which are within the control of the cable operator. These conditions include special promotions and normal system maintenance and upgrades, but do not include natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.
- Franchisee shall not be required to use special equipment to measure telephone answering and hold time. However, if complaints indicate that Franchisee's Cable System is failing to comply with these standards, City, after notice and providing the Franchisee a reasonable opportunity to cure, may require Franchisee to acquire equipment or to conduct surveys to measure compliance. Otherwise, Franchisee must use its best efforts to document compliance.

Installations, Outages and Service Calls

- Standard installations (i.e., installations which are those located up to 150 feet from the existing distribution system) must be performed within five (5) days after an order has been placed, except for circumstances beyond Franchisee's reasonable control.
- Except during conditions beyond its reasonable control, Franchisee must begin working on a service interruption no later than 24 hours after being notified of the problem. A service interruption has occurred if picture or sound on one or more channels has been lost. Franchisee must begin to correct other service problems the next business day after learning of them.