City of Yakima

Cable

Communications

Franchise

Ordinance

#2024-___

TABLE OF CONTENTS

ORDINANCE NO. 2024-_____

AN ORDINANCE granting a non-exclusive Franchise to Spectrum Pacific West, LLC, l/k/a Charter Communications to operate and maintain a Cable Communications System throughout the City of Yakima; setting forth provisions, terms and conditions of the grant of Franchise; providing for City regulation and use of the Cable Communications System; prescribing penalties for violation of Franchise provisions; and terminating Ordinance No. 93-115.

BE IT ORDAINED BY THE CITY OF YAKIMA, herein “City” that a Franchise is hereby granted to Spectrum Pacific West, LLC, l/k/a Charter Communications, herein “Charter” to operate and maintain a Cable Communications System in the City of Yakima upon the following express terms and conditions:

SECTION 1. DEFINITIONS. For the purposes of this Franchise Ordinance the following terms, phrases, words, and their derivations shall have the meaning given 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, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise Ordinance is not defined in this Section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise Ordinance which are not defined in this Section shall be given their common and ordinary meaning.

1.1 “**Affiliate**” means another person who owns or controls, is owned by or controlled by, or is under common ownership or control with, Charter.

1.2 **“Applicable Law”** means any local, State or federal statute, law, regulation, or decision of a court of competent jurisdiction governing any of the matters addressed in this Franchise Ordinance.

1.3 **“Basic Service” or "Basic Cable Service"** means any service tier which includes the retransmission of local television broadcast signals. Nothing in this definition shall be deemed to limit the rights of Charter or the City with respect to the regulation of rates and charges as permitted by applicable law.

1.4 **“Cable Act”** means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 521 (Supp.)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996 and as further amended or superseded.

1.5 **“Cable Communications System” or “Cable System” or “System”** shall have the meaning specified for "Cable Communications System" in the Cable Act. Unless otherwise specified it shall in this document refer to the Cable Communications System constructed and operated in the City under this Franchise Ordinance.

1.6 **“Cable Service”** means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interactions, if any, which is required for the selection or use of such video programming or other programming service.

1.7 **“Channel”** means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as television Channel is defined by the FCC).

1.8 **“Charter”** shall mean Spectrum Pacific West, LLC, l/k/a Charter Communications, and its agents, successors and assignees.

1.9 **“City”** shall mean City of Yakima of the State of Washington and all the incorporated territory within its present and future boundaries.

1.10 **“FCC”** means the Federal Communications Commission or any successor agency.

1.11 "Franchise" or "Franchise Ordinance" shall mean the right granted by this Franchise Ordinance and conditioned as set forth herein by which the City authorizes Charter to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the City. The Franchise granted herein shall be a non-exclusive Franchise.

1.12 "Franchise Area" means the area within the jurisdictional boundaries of the City including any areas annexed by City during the term of this Franchise.

1.13 "Franchise Fee" shall include any tax, fee, or assessment of any kind imposed by the City on a cable operator or cable subscriber, or both, solely because of their status as such. The term Franchise Fee does not include (a) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); (b) capital costs which are required by the Franchise to be incurred by Charter for Public, Educational, or Governmental Access; (c) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (d) any fee imposed under title 17, United States Code.

1.14 "Generally Accepted Accounting Principles" or "GAAP" means those Generally Accepted Accounting Principles as promulgated and defined by the Financial Accounting Standards Board (FASB), Emerging Issues Task Force (EITF), and/or the Securities and Exchange Commission (SEC). Notwithstanding the foregoing, the City reserves its right to challenge Charter's calculation of Gross Revenues, including the use or interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.15 "Gross Revenues" means any and all revenue as determined in accordance with Generally Accepted Accounting Principles ("GAAP") received by Charter from the operation of Charter's Cable System to provide Cable Services within the City, by Charter or by any affiliate which is a cable operator and only to the extent such amounts are earned from the operation of Charter's Cable System within the City to provide Cable Services. Gross Revenues shall include, without limitation, amounts for the Basic Cable Service, any other programming service tiers, Pay Services, audio services, subscriber installations and transactions, Leased Access programming fees, advertising, equipment rentals and all other revenues derived from the operation of Charter's Cable System to provide Cable Services within the City. Charter shall report to the City Gross Revenues as determined in accordance with GAAP. To the extent revenues are received by Charter for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Charter shall calculate revenues to be included in Gross Revenues using a methodology in accordance with GAAP. Currently, such methodology allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the most recent published rate card for the components, except it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. Gross Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to Systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. Gross Revenues, however, shall not be double counted. Gross Revenues of both Charter and an affiliate that represent a transfer of funds between Charter and the affiliated entity, and that would otherwise constitute Gross Revenues of both Charter and the affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of Charter which are payable from Charter's revenue to an affiliate and which may otherwise constitute revenue of the affiliate, shall not constitute additional Gross Revenues for purposes of this Franchise. Gross Revenues shall include amounts earned by an affiliate only to the extent that Charter could, in concept, have earned such types of revenue in connection with the operation of Charter's Cable System and recorded such types of revenue in its books and records directly but for the existence of an affiliate. Gross Revenues shall not include sales or other similar taxes imposed by law on subscribers which Charter is not obligated to collect, nor shall they include unrecovered bad debt or credits, refunds and deposits paid to subscribers. Gross revenues shall not include utility taxes collected from subscribers. Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period.

1.16 "Leased Access" shall mean the use on a fee-for-service basis of the Cable System by business enterprises (whether profit, non-profit or governmental) to provide cable programming to the citizens of the City pursuant to Section 612 of the Cable Act.

1.17 "Master Control Center" or "Control Center" means the facility operated by the City to provide public and/or governmental access, including acquisition and maintenance of equipment and facilities as necessary to create and develop PEG access programming and included therein such personnel as may be required for the operation and maintenance of the Master Control Center.

1.18 "Pay Service" or "Premium Service" means programming (such as non-advertiser-supported movie Channels or pay-per-view programs) offered individually to subscribers on a per-Channel, per-program or per-event basis.

1.19 "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.20 "Public, Educational or Government (PEG) Access Channel" means any Channel or portion of a Channel designated pursuant to this Franchise for Public, Educational or Governmental use by various agencies, institutions, organizations, groups and individuals, including the City and its designated access providers, to acquire, create and distribute video programming, not under Charter's editorial control, as permitted under Applicable Law.

1.21 "Street" shall mean the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all incorporated areas of the City.

1.22 "Subscriber" means any Person who legally receives any one (1) or more of the cable services provided by the Cable Communications System.

SECTION 2. FRANCHISE.

2.1 Grant of Franchise. The City hereby grants to Spectrum Pacific West, LLC l/k/a Charter Communications, a non-exclusive Franchise which authorizes Charter, subject to the terms of this Franchise Ordinance, to construct, maintain, and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under, or in any matter connected with the Streets located in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across or along any Street or extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, utility access covers, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Said Franchise shall constitute a right to provide the services of a Cable Communications System as required by the provisions of this Franchise Ordinance.

2.2 Franchise 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 Ordinance as set forth in Section 12.9, unless extended in accordance with the provisions in Section 2.7 or terminated sooner in accordance with this Franchise Ordinance.

2.3 Franchise Area. The Franchise Area shall be that area within the present or future corporate limits of the City. Service shall be provided to all persons whose homes are within the line extension policy set forth in Section 10 of this Franchise Ordinance and to such further homes or businesses as agreed to by Charter.

2.4 Franchise Non-exclusive. The Franchise granted herein shall be non-exclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable Communications System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Charter. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Charter.

2.5 Franchise Required. No Cable System shall be allowed to occupy or use the Streets of the Franchise Area or be allowed to operate without a franchise.

2.6 Equal Protection.

(a) City acknowledges and agrees that City may be required by federal law, and reserves the right, to grant one (1) or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by City to provide video programming in Charter's Franchise Area pursuant to the Cable Act, which franchise is for an area where services have been extended by Charter and which contains material terms and conditions that are more favorable or less burdensome than the terms or conditions of this Franchise Ordinance, then, City agrees that it shall amend this Franchise to the mutual satisfaction of City and Charter. The parties agree that this provision may not require a word for word identical franchise or authorization for a competitive entity. The parties agree that, notwithstanding any provision of this subsection, the City may not be obligated to comply with the provisions of this subsection to the extent doing so would cause the City to violate applicable laws or FCC rules. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as City does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

(b) In the event that a competitive franchise is granted by City as described in Section 2.6(a) above which contains material terms and conditions that are more favorable or less burdensome than the terms of this Franchise, and notice thereof is duly provided to Charter within a reasonable timeframe not to exceed twenty (20) days from execution, Charter shall submit to City in writing (1) the basis for Charter's belief that certain provisions of its Franchise place Charter at a competitive disadvantage; (2) the provisions of this Franchise to be amended; and (3) specific language modifying any such Franchise provisions. City and Charter shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation and the other agrees to participate in mediation in good faith. Each party shall bear its own cost for mediation. In the event the parties are not able to reach agreement in informal negotiations or mediation, Charter may exercise its rights under Subsection (c) below or Charter may choose to terminate this Franchise and take in its place the same Franchise of a competing provider of video service authorized by the City.

(c) Charter's notice to City under this Subsection (c) shall be deemed to be Charter's renewal notification pursuant to Section 626 of the Cable Act (47 U.S.C. §546). Charter may elect at any time prior to the commencement of the Charter's thirty-six (36) month renewal window provided by 47 U.S.C. §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Charter's Franchise shall, ninety (90) days from Charter's written notice, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date of Charter's notice. Charter shall immediately thereafter secure franchise renewal rights pursuant to 47 U.S.C. §546 with no further notice to the City required. City and Charter shall then enter into proceedings consistent with 47 U.S.C. §546 for renewal of this Franchise. City and Charter shall have all rights and obligations provided under 47 U.S.C. §546).

(d) If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by any State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, Grantee has the right, to the extent it is lawful, to deem this Franchise expired and to negotiate a replacement franchise, license, consent, certificate or other authorization with any other appropriate governmental entity.

2.7 Franchise Renewal or New Franchise. The City may establish appropriate requirements for new franchises or franchise renewals consistent with the provisions of Section 626 of the Cable Act or any such successor statute as well as Applicable Law.

2.8 Periodic Public Review of Franchise and Franchise Modification. The field of requirements and conditions applicable to the services authorized by this Franchise Ordinance are rapidly changing. Therefore, in order to provide for a maximum degree of flexibility in this Franchise Ordinance, and to help achieve a continued advanced and modern Cable System, the following evaluation provision will apply.

(a) During year five (5) of this franchise, and upon request of either party, a public review may be held, should there be a material change to law, technology or services that may have an effect on the terms and conditions of this Franchise Ordinance.

(b) As a result of a periodic review, either party may request a change or amendment in the terms of this Franchise Ordinance. Parties will in good faith, review and negotiate the terms of the change and any amendment required to this Franchise Ordinance. Based on this review, and upon adoption of such a change or new requirement through a mutually acceptable Franchise Ordinance Amendment, the change will become effective.

2.9 Sale or Transfer of Ownership Franchise.

(a) Charter shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, this Franchise Ordinance or Cable System or any of the rights or privileges granted by this Franchise Ordinance, without the prior consent of the City upon notification from Charter to City using the forms and procedures applicable pursuant to the Cable Act, rules of the FCC and this Franchise Ordinance, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under this Franchise Ordinance. This provision shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Charter.

2.10 Change in Control. Charter shall promptly notify the City through the City Council of any proposed change in actual working control of the Cable System. Such change in control shall be subject to Section 2.9, above.

2.11 Right to Purchase the System.

(a) The Parties will comply with 47 U.S.C 547.

(b) In the event a franchise renewal is denied or terminated for any reason, the City must allow Charter to abandon the facilities, or effect transfer to another purchaser consistent with the franchise transfer provisions of this Franchise Ordinance.

2.12 Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available Cable Services insofar as their financial and other obligations to Charter are honored. In the event that Charter elects to overbuild, rebuild, modify, or sell the System, Charter shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstance. In the event of termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, Charter shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this Franchise Ordinance for a temporary period sufficient in length to maintain continuity of service to all subscribers.

2.13 Other Codes or Ordinances. Nothing in this Franchise Ordinance shall be deemed to waive the requirements of the other lawful codes and ordinances of the City regarding permits, fees to be paid or manner of construction, to the extent that the provisions of such codes and ordinances do not have the effect of limiting the benefits or expanding the obligations of Charter that are granted by this Franchise Ordinance. This Franchise Ordinance is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract or conflict with Applicable Law. This Franchise Ordinance sets forth the entire agreement between the parties respecting the subject matter thereof. Any changes to this Franchise Ordinance must be made in writing signed by Charter and the City. In the event of any conflict between this Franchise Ordinance and any City ordinance or regulation, this Franchise Ordinance will prevail.

SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY.

3.1 Use of Streets. Charter may, subject to the terms of this Franchise Ordinance, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, utility access covers, amplifiers, appliances, pedestals, poles, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable Communications System within the City.

3.2 Construction or Alteration. Charter shall in all cases comply with all lawful City ordinances and regulations regarding the acquisition of permits and such other items as may be reasonably required in order to construct, alter or maintain the Cable System so long as they are non-discriminatory and competitively neutral. Charter shall, upon request, provide information to the City regarding its progress in altering the Cable System.

3.3 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 the National Electric Code.

3.4 Construction Standards. All of Charter'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.

3.5 Safety. Charter shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

3.6 Non-Interference. Charter shall exert its best efforts to construct and maintain a Cable Communications System so as not to interfere with other use of Streets. Charter shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Charter. Charter shall individually notify all residents whose property will be affected by proposed construction prior to commencement of that work where and when this is reasonably possible.

3.7 Use of and Erection of Poles. Charter shall have the right to 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 City.

3.8 Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Charter if the City determines, in a non-discriminatory and competitively neutral manner, that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under State and local laws.

3.9 Undergrounding. The facilities of Charter 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, Charter 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 City, Charter shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Charter shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities unless City funding of such costs have been furnished to the City from an outside source directing the purpose and use of such funding, which cannot be used to reimburse Charter through no fault or neglect of the City.

3.10 Open or Joint Trenching. In cases of new construction or property development where utilities are to be placed underground, the City agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Charter 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 Charter's installation of conduit, pedestals and/or vaults, and laterals to be provided at Charter 's expense. Charter shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Charter fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Charter.

3.11 Restoration. In case of disturbance by Charter of any Street, public way, paved area or public improvement, Charter shall, at its own cost and expense and in accordance with the requirements of local law, restore such Street, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. Standards and conditions acceptable to the City shall be equally and uniformly applied to Charter as to any other Person in the road rights-of-way and consistent with all applicable City codes as they may apply to the City’s Police Power.

With respect to Street restoration, Charter 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, which may include but not be limited to placing a temporary asphalt patch, installing a trench plate or making other temporary repairs until the Street is restored. In the event that Charter, its contractors, or third parties should fail to restore any City road right-of-way consistent with City codes and ordinances, City may, after thirty (30) days’ written notice, or such longer time provided by the City in the event weather or other events beyond Charter’s control prevent such restoration, make such repairs or restorations as are necessary to return the City road rights-of-way to their pre-work condition, except if in the opinion of the City, Charter’s deficient restoration causes an emergency situation resulting in an immediate hazard to public safety, health, or property, the City may repair the deficiency without prior notice to Charter. Charter shall be responsible for reimbursing the City for any and all reasonable costs and expenses incurred by the City to correct any deficiency in Charter’s restoration of the Street, whether with notice as set out above or on an emergency basis. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, and an explanation of the basis for the City's determination that emergency restoration action was required to remove an immediate hazard to public safety, health or property, Charter shall pay the bill within sixty (60) days.

3.12 Access Through Private Property. Charter, with twenty-four (24) hour notice to the property owner, shall have the authority to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming into contact with the wires and cables of Charter.

3.13 Relocation.

(a) Charter shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any of its property when lawfully required by the City pursuant to its police powers. Charter shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to the relocation of their facilities.

(b) Charter shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any of its property, provided that the expense of such is paid by any such Person benefiting from the relocation and Charter is give reasonable advance written notice to prepare for such changes. Charter may require such payment in advance. For purposes of this subsection, "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.

(c) If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the City shall reimburse Charter in the same manner unless City funding of such costs have been furnished to the City from an outside source directing the purpose and use of such funding, which cannot be used to reimburse Charter through no fault or neglect of the City.

(d) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the City to remove any of Charter's facilities, no charge shall be made by Charter against the City for restoration and repair, unless such acts amount to gross negligence by the City.

SECTION 4. SYSTEM DESIGN AND CAPACITY.

4.1 Availability of Signals and Equipment. Charter shall, commencing with the effective date of the Franchise Ordinance, comply with FCC requirements regarding provision of parental control technology to subscribers and at a reasonable charge.

4.2 Free Drops and Cable Service. Charter may provide, on a voluntary basis, without charge one (1) cable drop, activated for Basic Cable Service to all elementary and secondary public schools and public libraries within the City and located within one hundred twenty-five (125) feet of Charter's plant. Additionally, Charter shall provide, without charge, one (1) activated outlet of Basic Cable Service at each of the following addresses, so that City may view and monitor PEG Access Programming: City Hall at 129 North Second Street, Yakima, WA 98901; Y-PAC at 124 S. 2nd Street, Yakima, WA 98901; and the Educational Access facility at 106 S. 6th Ave, Yakima, WA, 98902. The locations identified above shall be within one hundred and twenty-five (125) feet of Charter's feeder cable consistent with Section 10.1(b). 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 City shall take reasonable precautions to prevent any inappropriate use of or loss or damage to Charter's Cable System. The City shall not install other outlets or make any other alterations to the Cable System installed by Charter.

4.3 Right of Inspection of Construction. The City shall have the right to inspect all construction or installation work performed in the public Streets within the Franchise Area, and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Ordinance and other pertinent provisions of law, operating under its lawful police powers.

4.4 Emergency Alert Capability. Charter agrees at all times to comply with federal and state EAS rules as required in 47 C.F.R. Part 11 or as amended. If Charter provides an Emergency Alert System, then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of Charter's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The City shall hold Charter, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

4.5 Standby Power. Charter shall provide standby power at the Cable Communications System head-end and at all hubs. Charter shall maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. In addition, Charter shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request with reasonable notice.

4.6 Technical Standards. The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted or amended, shall apply. The City may establish reasonable technical standards for the performance of the Cable System if the FCC permits it to do so.

4.7 Performance Testing. Charter shall perform all System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise Ordinance.

Written records of all System test results performed by or for Charter shall be maintained for three (3) years, and shall be available for City inspection upon request.

The City may observe Charter perform tests of the system for which Charter shall give its cooperation. If more than one (1) of the locations tested fail to meet the performance standards, Charter shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least eight (8) additional randomly chosen locations. If a second test results in failure of one (1) or more sites, then the City may seek remedies in accordance with Sections 7.9 and 7.10 unless the circumstances of the failure are caused by conditions which are beyond Charter's control, as determined, acknowledged and verified by the City.

SECTION 5. PROGRAMMING AND SERVICES.

5.1 Categories of Programming Service. Charter shall carry broad categories of video programming, including local news, sports, and entertainment.

5.2 Changes in Video Programming Services. Changes in video programming shall be subject to federal law. Charter shall provide written notice to the City and to subscribers of any proposed changes to programming services in compliance with 47 CFR Sec. 76.1603.

5.3 Obscenity. Subject to applicable federal law, Charter shall not knowingly transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, provided, however, Charter shall in no way be responsible for programming over which it has no editorial control, including Public, Educational and Governmental access programming.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

6.1 PEG Access Channels. As of the Effective date of this Franchise Ordinance, Charter shall continue to make available four (4) standard video Channels on the System for Public, Educational and/or Governmental (PEG) access purposes.

(a) All PEG access channels may be delivered by City or its designee to Charter in standard digital format. Charter is only obligated to provide the PEG signal to its Subscribers in the quality in which it receives it from the City.

(b) The City or its designee will utilize PEG Channels authorized by this Franchise for locally scheduled original programming not less than 70% of the time, seven (7) days a week, for any consecutive eight (8) hour block during the hours of 6:00 am to 11:00 pm, as measured on an annual basis. For the purposes of this Section, “locally scheduled original programming” means programming produced or provided by any local resident, the City, its designee, any public or private entity that provides services to residents of the City, any transmission of a meeting or proceeding of any local, state, or federal governmental entity, any transmission of educational or instructional programming provided by an accredited educational institution, and includes the first showing of a program and three (3) repeat showings. The City or its designee will keep records of the amount of locally scheduled original programming on PEG Channels authorized by this Franchise and will provide a report of same to Charter by request, but not more often than once each year. If Charter believes the PEG Channel utilization criteria described in this Section is not being met on one (1) or more PEG Channels authorized by this Franchise, Charter may provide the City with ninety (90) days written notice of its intent to utilize the PEG Channel(s), at its own discretion, that it believes is (are) not meeting said criteria. If the City is not able to demonstrate to Charter within ninety (90) days of receiving said notice that the PEG Channel utilization criteria described in this Section is being met on the PEG Channel(s) identified in the notice, Charter may, at its own discretion, utilize the PEG Channel(s) identified in the notice. If the City can demonstrate at any point within the term of this Franchise that the PEG Channel utilization criteria described in this Section can be met on the PEG Channel(s) identified in the notice described in this Section, Charter, upon ninety (90) days written notice from the City, will reallocate said channel(s) for utilization by the City or its designee for locally scheduled original programming.

6.2 Management and Control of PEG Access Programming. The City, except as otherwise designated by the City, shall control and manage the use of any and all PEG Access Programming. The City and/or its designee(s) may formulate rules for the operation of the Public, Educational and Government Access Programming, consistent with this Franchise and Applicable Law. Such rules shall not be designed to control the content of PEG access programming.

(a) Subject to Section 6.1, Charter shall not cause any programming to override PEG programming on any PEG Access Channel, except by oral or written permission from the City, with the exception of Emergency Alert System signals.

(b) The City shall not allow commercial use or lease of PEG Access Channels or any use whatsoever that may generate revenue for the City or any other Person or compete with any services provided by Charter without the expressed written permission of Charter.

6.3 Location of PEG Channels. All PEG Channels required under this Franchise shall be carried by Charter on the lowest tier in a manner consistent with Applicable Law.

(a) Charter shall make every reasonable effort to coordinate the cablecasting of Public, Educational and/or Governmental access programming upon the Cable Television System at the same time and upon the same Channel designations as such programming is currently cablecast within the community.

(b) Charter shall not encrypt the PEG Channels any differently than other commercial and PBS Channels available on the Cable System.

(c) Charter shall provide the City with a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to the time Public, Educational, and/or Governmental Access Channel numbers are changed. Charter shall consult with City prior to making a final determination in its sole discretion regarding any changes in PEG Access Channel numbers. Any new Channel numbers for the Public, Educational and/or Governmental Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof of performance standards.

6.4 Digital Channels After Digital Transition. At such time as Charter no longer offers Basic Service in an analog format, Charter shall continue to provide activated downstream Channels for PEG access use in a standard digital format. Charter shall carry standard components of the standard definition access Channel signals provided by the City and/or its designee(s) including, but not limited to, closed captioning and stereo audio. The City and/or its designee(s) shall be responsible for providing the access Channel signal in a standard definition format from the demarcation point at the City to Charter's headend. With respect to signal quality, Charter shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Charter, but Charter shall distribute the access Channel signal without degradation.

6.5 Interconnection of PEG Access Channels. Upon request by the City, and based on a demonstrated need, Charter shall work in good faith with the City to interconnect with other cable operators at a designated meet point and not at Charter's headend or hubs in order to hand off PEG Access Channel signals for the purposes of sharing PEG programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Access

Channels without degradation to Charter's demarcation at the designated meet point of the interconnect.

The City shall not require such interconnection without the prior consent of Charter, which shall not be unreasonably withheld. Charter shall not be obligated to interconnect with any cable operator providing competitive Cable Services within the Franchise Area. Any incremental, direct capital costs incurred by Charter to interconnect shall be paid by the City.

6.6 Technical Quality of PEG Access Channels.

(a) Charter shall maintain, without charge to the City, its system in accordance with FCC technical standards so that PEG programming signals and interconnections of PEG programming signals are at the same level of technical quality and reliability as other commercial and broadcast programming signals carried by Charter, so long as the programming signal comes to Charter at the level of quality. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream.

(b) Within twenty-four (24) hours of a request from the City to Charter identifying a technical problem and requesting assistance, Charter will make every effort to provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Charter is responsible, and, if so, Charter will make every effort to take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Charter and the City in order to determine the course of action to remedy the problem.

6.7 Change in Technology. In the event Charter makes any change in the Cable System and related equipment and facilities or in Charter's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of PEG programming, Charter shall notify the City in writing, at least thirty (30) days in advance.

6.8 Support for PEG Access Channels. To help meet the City's PEG access needs over the term of the Franchise, Charter shall provide the following:

(a) Charter shall pay to the City as capital support for access equipment, replacement and facilities fifty cents (50¢) per Subscriber per month, during the ten (10) year term payable quarterly, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by the City.

(b) The City will establish an account in special revenue for any PEG access capital contributions from Charter which shall be used for PEG access capital funding.

(c) Should Charter continue to provide Cable Service after the scheduled expiration of the Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Charter shall continue to make quarterly capital support payments for, and in support of PEG access equipment, replacement and facilities as specified hereinabove.

(d) The capital funds used for PEG programming required by the Franchise shall be used in accordance with 47 U.S.C. § 542(g).

(e) The City recognizes that the capital support for PEG programming required above represent obligations, created under the terms of the Franchise. To the extent provided for in federal law, such costs and fees paid by Charter may be passed through to subscribers and itemized on subscriber bills.

6.9 **Annual Report to Grantee**. Upon request, the City agrees to provide Charter with a written report detailing annual PEG capital expenditures, which report shall be due to Charter within ninety (90) days after request. (Sample report is attached as Exhibit C.)

SECTION 7. REGULATORY PROVISIONS.

7.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

7.2 **Delegation of Authority to Regulate**. The City reserves the right to delegate its regulatory authority wholly or in part to the federal government and/or to agents of the City, including, but not limited to, an agency which may be formed to regulate several City franchises. However, the City recognizes that the City, not its delegates, are responsible for abiding by the conditions set forth in this agreement and such delegation does not affect Charter's rights under law or this agreement.

7.3 Areas of Administrative Authority. In addition to reserving its right to exercise all regulatory authority concerning the Franchise, the City shall have the right to exercise administrative authority in areas including but not limited to the following:

(a) Administering and enforcing the provisions of this Franchise Ordinance pursuant to Section 2.13, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordination of the operation of Public, Governmental and Educational Channels.

7.4 Right to Regulate. The City expressly reserves the right to regulate Charter's rates and charges in accordance with Applicable Law as such law may provide during the term of the Franchise.

7.5 Notice of Change in Rates and Charges. Throughout the term of the Franchise, Charter shall give the City and all subscribers within the City at least thirty (30) days notice of any intended modifications or additions to subscriber rates or charges consistent with 47 CFR Sec. 76.1603. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.

7.6 Rate Discrimination Prohibited. Within any category of subscribers, Charter shall not discriminate among subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of subscribers shall be made by Charter on the basis of those considerations. Nevertheless, Charter shall be permitted to establish discounted rates and charges for providing Cable Service to low-income handicapped or low-income elderly subscribers.

7.7 Privacy. Charter shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551) and any other applicable federal or State laws.

7.8 Remedies for Franchise Violations. The City, subject to applicable provisions of this Franchise Ordinance and as described in this Section 7, has the right to assert the following remedies in the event Charter violates any provision of this Franchise Ordinance:

(a) Commence an action at law for monetary damages or seek other equitable relief.

(b) In the case of a substantial default of a material provision of this Franchise Ordinance, declare the Franchise to be revoked, consistent with the procedures in Section 7.11.

(c) Require Charter to correct or otherwise remedy the violation prior to considering the approval of any proposed rate increase if rate regulation is authorized by law and is in effect.

(d) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

In determining which remedy or remedies for Charter's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Charter has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

7.9 Procedure for Remedying Franchise Violations.

(a) In the event that the City believes that Charter has not complied with the terms of this Franchise Ordinance, the City shall notify Charter in writing of the exact nature of the alleged noncompliance.

(b) Charter shall have thirty (30) days from the receipt of notice described above to (a) respond to the City contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date they will be completed.

(c) In the event that Charter fails to respond to the notice described herein or cure the default pursuant to the procedures set forth above, the City shall schedule a public hearing to investigate the default. The City shall give Charter twenty (20) calendar days notice of the time and place of the hearing and provide Charter with an opportunity to be heard. Charter shall have the right to present evidence and to question witnesses. The City shall determine if Charter has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Charter may petition for *de novo* reconsideration before any competent tribunal having jurisdiction over such matters.

7.10 Minor Violations. Furthermore, the parties hereby agree that it is not the City's intention to subject Charter to penalties, fine, forfeitures or revocation of the Franchise Ordinance for violations of the Franchise Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to Charter which outweighs the benefit to be derived by the City and/or Subscribers.

7.11 Revocation. In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

(a) Charter is in substantial violation of any material provision of the Franchise and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 7.9, Procedure for Remedying Franchise Violations.

(b) Charter is found by a federal or state court to have engaged in any actual or attempted fraud or deceit upon the City, Persons or subscribers.

(c) Charter fails to obtain and maintain any material permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the System.

Upon the occurrence of one (1) of the events set out above, following sixty (60) days written notice to Charter of the occurrence and the proposed forfeiture and an opportunity for Charter to be heard, the City may by Ordinance or other appropriate document, declare a forfeiture. In a hearing of Charter, Charter shall be afforded due process rights as if the hearing were a contested case hearing subject to Washington law, including the right to cross-examine witnesses and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the City's decision. If a forfeiture is lawfully declared, all rights of Charter under this Franchise Ordinance shall immediately be divested without a further act upon the part of the City, subject to a *de novo* appeal to a court of law.

7.12 Right to Require Removal of Property. Upon the termination of the Franchise, as provided for by this Franchise Ordinance, the City shall have the right to require Charter to remove, at Charter's own expense, all or any part of the Cable Communications System from all Streets and public ways within the Franchise Area, where the abandoned facilities interfere with reasonable uses of the rights-of-way. If Charter fails to do so, the City may perform the work and collect the cost thereof from Charter. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Charter effective upon filing of the lien with the Yakima County Auditor. This section shall not apply in cases where Charter opts to sell or transfer the System pursuant to Section 2.9.

Any order by the City Council to remove cable or conduit shall be mailed to Charter not later than thirty (30) calendar days following the date of termination of the Franchise. Charter shall file written notice with the Clerk of the City Council not later than thirty (30) calendar days following receipt of the Council's order of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of termination of the Franchise.

Charter shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Charter may voluntarily remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Charter shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of said Council, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned.

7.13 Enforcement. In the event the City, after such hearing, determines that Charter is in default of any provision of this Franchise Ordinance, the City may impose any of the remedies set out in Section 7.8 herein.

7.14 Failure to Enforce. Charter shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise Ordinance by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Charter's conduct.

7.15 Force Majeure. Charter shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by circumstances reasonably beyond the ability of Charter 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 Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

7.16 Alternative Remedies. No provision of this Franchise Ordinance, including remedies identified in this Franchise Ordinance, shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise Ordinance or any rule, regulation, requirement or directive promulgated thereunder.

7.17 Compliance with the Laws. Charter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of the Franchise as long as they are lawful expressions of the City's police powers and subject to Section 2.13. Nothing in this Franchise Ordinance shall limit or expand the City's right of eminent domain under state law. Nothing in this Franchise Ordinance shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid or manner of construction as long as they are generally applicable to all users of the City's rights-of-way in a non-discriminatory and competitively neutral manner and subject to federal and State law.

SECTION 8. REPORTING REQUIREMENTS.

8.1 Annual Report. Upon request, but no more than once per year, Charter shall present a written report to the City which shall include:

(a) A summary of the previous year's activities for the Franchise Area, including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, other System facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the System.

(b) A summary of complaints received, with a summary of how the complaints have been dealt with.

(c) If City does not request the reports described in this Section, Charter shall maintain the information necessary to produce such reports for inspection by City, upon reasonable notice, for a period of not less than twenty-four (24) months.

8.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Charter shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, and based on request from City, Charter shall provide reports of the semi-annual test and compliance procedures established by this Franchise Ordinance, no later than thirty (30) days after the completion of each series of tests.

8.3 Public Disclosure. The City agrees to treat any information disclosed by Charter as confidential to the maximum extent permissible under RCW Chapter 42.56, Public Records Act, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, and based on the laws of the State of Washington, or for any other reason, it shall advise Charter in advance so that Charter may take appropriate steps to protect its interests. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

8.4 Communications with Regulatory Agencies. Upon request, a copy of responses or any other communications from the FCC or any other federal or state regulatory commission or agency to Charter or any affiliate pertaining to the Cable System in City shall be provided to the City. In addition, upon request Charter and its affiliates shall provide a copy to the City of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the Cable System in the City.

SECTION 9. CUSTOMER SERVICE POLICIES.

9.1 Customer Service Standards. Charter shall comply with the customer service standards set forth in 47 C.F.R. § 76.309 of the Federal Communications Commission's Rules and Regulations (FCC customer service standards are attached hereto as Exhibit A), as such may be amended from time to time and as described in Section 9 of this Franchise Ordinance. In addition, the City reserves the right to establish additional specific customer service and consumer protection standards, by separate Ordinance, as allowed by federal law or FCC regulation.

9.2 Customer Service Agreement and Manual. Charter shall provide to subscribers a welcome kit for use in establishing subscriber service. A copy of the welcome kit shall be provided to each subscriber at the time of initial and any re-connection hookup, and at any time the kit is requested by the subscriber. These requirements may be satisfied by posting these documents on Charter's website. Charter shall provide said welcome kit to a subscriber(s) in written form if requested to do so by a subscriber(s).

9.3 Subscriber Billings. Charter shall cause to have printed clearly on each cable bill the telephone number and address of the office designated by the City, for handling unresolved complaints about Cable Service.

SECTION 10. LINE EXTENSION POLICY.

10.1 Standard Installation. Charter shall make service available, within sixty (60) days and at standard installation rates and standard service rates, for every potential subscriber:

(a) Whose dwelling is one (1) of a minimum of thirty (30) dwelling units per linear cable mile from the nearest existing cable plant; and

(b) Where connection to the potential subscriber's dwelling from cable plant constructed as required under this Franchise Ordinance requires no more than a one hundred and twenty-five (125) foot aerial drop cable.

10.2 Isolated Areas. Potential subscribers within the Franchise Area requesting service but requiring service extended beyond the standard installation and service provisions under Section 10.1 shall be provided the first one hundred and twenty-five (125) feet of aerial cable at the prevailing installation rate. Cable and service required for a non-standard installation will be provided under the following circumstances:

(a) Where the potential subscriber, or any group including the potential subscriber, pays in advance the direct and incremental cost of extending the line and making the installation; or

(b) Where the potential subscriber and Charter reach an independent agreement for the provision of service, so long as the agreement does violate any other requirements and standards of this Franchise Ordinance.

10.3 <u>Annexation.</u> In the event the City modifies the Franchise Area by annexation or any other means, the City shall provide at least sixty (60) day prior notice to Charter. The City shall also notify Charter of all new Street address assignments or changes within the Franchise Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. The City shall provide address files and maps in sufficient detail and in an acceptable digital format. Charter shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Charter shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Charter.

All notices provided under this subsection shall be delivered in accordance with Section 12.7 of this Franchise Ordinance.

Charter shall provide the City written notice of address changes affecting this subsection pursuant to Section 12.7.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS.

11.1 Franchise Fees. During the term of the Franchise, Charter shall pay to the City an amount equal to five percent (5%) of Charter's annual Gross Revenues as a Franchise Fee.

(a) Franchise Fees shall be calculated annually and transmitted quarterly by electronic funds transfer to such City of Yakima bank account as designated by the director of finance and budget, to be received not later than the forty-fifth (45^{th}) of each quarter for the preceding calendar quarter. Within thirty (30) days after the payment, Charter shall file with the City a written statement which identifies in detail the sources and amounts of Gross Revenues earned by Charter during the quarter for which payment is made (Franchise Fee Payment Report is attached hereto as Exhibit B). No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(b) If any Franchise payment or recomputed payment is not made on or before the dates specified herein, Charter shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one percent (1%) over the prime interest rate.

(c) Throughout the term of the Franchise, including any extensions that may be granted, the City will dedicate all Franchise Fee revenue for allocation to expenditures directly related to costs associated with operation of the City's Master Control Center and/or the provision of Community Relations services, Communications services, and other public information services.

11.2 Inspection of Records. Charter shall permit any duly authorized representative of the City, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all records that are legally permissible for release and that are reasonably necessary to ensure Charter's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that Charter may organize the necessary books and records for access by the City. Charter shall make any records requested by the City available for inspection at Charter's office closest in proximity to City, if possible. Charter shall not be required to maintain any books and records for Franchise compliance purposes longer than two (2) years, except for service complaints, which shall be kept for one (1) year. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City is a public agency and is subject to the Washington State Public Records Act, Chapter 42.56. RCW ("PRA"), as existing or hereafter amended. To the extent authorized by the PRA, the City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Charter makes the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, to comply with the PRA, or for any other reason, it shall advise Charter in advance so that Charter may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Charter's books and records marked confidential, as set forth above, to any Person. The City, its agents, employees, representatives or any other Person who has access to records provided by Charter shall sign Charter's nondisclosure agreement prior to records review.

11.3 Insurance.

(a) Coverages**.** Charter shall maintain, throughout the term of this Franchise, liability insurance insuring Charter, its officers, employees and agents, with regard to claims and damages, in the minimum amounts as follows:

(1) Commercial Liability Insurance. Charter shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars ($2,000,000) combined single limit bodily injury and property damage per occurrence and Two Million Dollars ($2,000,000) in the aggregate. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and that the insurer will endeavor to provide advance written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise Ordinance. The policy shall name the City, its elected officials, officers, agents and employees as additional insureds. The insurance shall be with an insurance company authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance. If Charter uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

(2) Business Automobile Liability Insurance. Charter shall provide the City with a certificate of insurance as proof of business automobile insurance with a minimum liability limit of Two Million Dollars ($2,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and the insurer will endeavor to provide advance written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise. The policy shall name the City, its elected officials, officers, agents

and employees as additional insureds. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance. If Charter uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

(3) Umbrella Liability Insurance. Charter shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. Charter shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Five Million Dollars ($5,000,000). The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance.

(4) Professional Liability Insurance. Charter shall provide the City with a certificate of insurance as evidence of Professional Liability Insurance with coverage of at least One Million Dollars ($1,000,000.00) claims made and an annual aggregate limit of at least One Million Dollars ($1,000,000.00). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of the Franchise. The insurance coverage shall remain in effect during the term of this Franchise and for a minimum of three (3) years following the termination of this Franchise.

Providing coverage in the amounts as set forth above shall not be construed to relieve Charter from liability in excess of those limits.

11.4 Waiver, Indemnity, No Estoppel, No Duty.

(a) Charter hereby waives all claims, direct or indirect, for loss or liability against the City arising out of Charter's franchised or permitted operations; provided, however, such indemnification shall not extend to that portion of any claims, liability, expense of any nature whatsoever including all costs and attorneys' fees caused by or arising directly or indirectly from or out of the negligence or willful misconduct of the City, its agents, employees, officers, contractors, or subcontractors.

(b) Charter shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of Charter, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law, arising from the construction, installation, maintenance, operation, alteration or modification of the Cable Communications System or arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, provided that the City shall give Charter written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this Section. In the event any such claim arises, the City shall tender the defense thereof to Charter and Charter shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by Charter, Charter shall be excused from any obligation to represent the City. Notwithstanding the foregoing, Charter shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System, including any PEG Channels

(c) Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive against Charter, not only as to the amount of such damage, but as to its liability, provided Charter has reasonable notice or actually knew, or should have known, of the pendency of such suit. Under such circumstances, Charter may also request the opportunity to defend or participate in the suit with legal counsel of its choice, at its expense, said request not to be unreasonably denied.

(d) No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or regulatory functions related to this Franchise shall be asserted by Charter, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its boards, departments, divisions, officers, officials or employees.

(e) It is not the intent of this Franchise to acknowledge, create, imply or expand any duty or liability of the City with respect to its role as a franchising authority, in the exercise of its police powers or for any other purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group or entity.

SECTION 12. MISCELLANEOUS PROVISIONS.

12.1 Voluntary Agreement. Charter shall agree that it enters into the Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise.

12.2 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the State of Washington and Charter consents to jurisdiction and venue in the state and federal courts of the State of Washington. In any action or suit to enforce any right or remedy under the Franchise, the prevailing party shall be entitled to recover its costs, including without limitation reasonable attorneys' fees.

12.3 Separability. If any portion of this Franchise Ordinance shall be declared by a court of competent jurisdiction to be void or unenforceable, then the City and Charter shall negotiate in good faith to modify the Franchise and/or this Franchise Ordinance as may be necessary to meet the requirements of the law. However, 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 Ordinance.

12.4 Consent. Wherever the consent or approval of either Charter or the City is specifically required in this Franchise Ordinance, such consent or approval shall not be unreasonably withheld or denied.

12.5 Ordinances Terminated. The cable television franchise as originally granted by Ordinance No. 93-115, shall be deemed terminated upon the Effective Date of this Franchise Ordinance, provided that any unpaid Franchise Fees and other outstanding liabilities and obligations of Charter to the City under such pre-existing franchise shall survive such termination.

12.6 No Third Party Beneficiaries. There shall be no third party beneficiaries of this Franchise Ordinance.

12.7 Written Notice. Unless otherwise provided by federal, State or Local law, all notices, reports or demands pursuant to this Franchise Ordinance 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 or by nationally or internationally recognized courier service such as Federal Express. Charter shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means.

If to City: City of Yakima,
129 North Second Street
Yakima, WA 98901

With a Copy to: Attn: Communications & Public Affairs Director
129 North Second Street
Yakima, WA 98901

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

With a Copy to: Charter Communications
Attn: Vice President, Government Affairs
601 Massachusetts Ave. NW, Suite 400W
Washington, DC 20001

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

12.8 Franchise Ordinance Acceptance. Charter, within sixty (60) days after the date of adoption of the Franchise Ordinance by the City Council, shall execute and return to the City three (3) original Franchise Ordinances, in which Charter shall declare that it has carefully read the terms and conditions of this Franchise Ordinance and accepts all of the terms and conditions of this Franchise Ordinance and agrees to abide by the same. In accepting the Franchise, Charter acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a Franchise, that this Franchise Ordinance represents the entire agreement between Charter and the City, and that Charter accepts all reasonable risks related to the interpretation of this Franchise Ordinance. The executed Franchise Ordinance shall be returned to the City together with proof of insurance as provided in Sections 11.3(4) (b) of this Franchise Ordinance. In the event Charter fails to accept this Franchise Ordinance as provided for herein, or fails to provide the required accompanying documents, the Franchise Ordinance shall be null and void.

12.9 Effective Date. This Franchise Ordinance shall be effective on thirty (30) days after its adoption and publication; PROVIDED, however, that if Charter does not accept this Franchise pursuant to Section 12.8 and comply with all conditions for such acceptance set forth herein within sixty (60) days after passage of this Franchise Ordinance, this Franchise Ordinance shall be null and void.

PASSED BY THE CITY COUNCIL, signed and approved this _____ day of ________, 2024.

____
Patricia Byers, Mayor

ATTEST:

____
Rosalinda Ibarra, City Clerk

Publication Date: ____________

Effective Date: ______________

Signature of Applicant:

Spectrum Pacific West, LLC, l/k/a Charter Communications
By Charter Communications, Inc., Its Manager

Signature: ______________________________

Name/Title: ______________________________

Date: ______________________________

EXHIBIT A.
CUSTOMER SERVICE STANDARDS

CODE OF FEDERAL REGULATIONS
TITLE 47 -- TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

(2) A franchising authority from enforcing, through the end of the franchise term, preexisting customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable System office hours and telephone availability.

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

(i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(ii) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(iii) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable Channels.

EXHIBIT B.

SAMPLE FRANCHISE FEE PAYMENT REPORT

EXHIBIT C

SAMPLE PEG CAPITAL REPORT