



ORDINANCE NO. 2021-001

AN ORDINANCE FOR THE FRANCHISE AGREEMENT BETWEEN THE CITY OF ANTHONY, NEW MEXICO AND CHARTER COMMUNICATIONS.

WHEREAS, the City of Anthony, New Mexico (“Grantor”) and Spectrum Gulf Coast LLC, locally known as Charter Communications, hereinafter referred to as the “Grantee.”

WHEREAS, the franchise agreement attached hereto as Exhibit A will expire in ten (10) years from the adoption of this ordinance;

WHEREAS, NMSA 1978, Section 3-42-1 allows municipalities to franchise to any person, firm or corporation for the construction and operation of any public utility;

WHEREAS, Charter Communication has fully reviewed and agreed to the terms in the *franchise Agreement* (Ex. A);

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF ANTHONY, NEW MEXICO:

Section 1. PURPOSE.

The purpose of this Ordinance is to approve franchise agreement to meet community needs.

Section 2. AUTHORITY.

This ordinance is adopted pursuant to NMSA 1978, Section 3-42-1.

Section 3. EFFECTIVE DATE.

This ordinance shall be in full force and effect Thirty days after its adoption, approval, and publication as provided by law, unless a referendum election is held pursuant to Section 6 herein.

Section 4. ADOPTION OF AGREEMENT FOR THE FRANCHISE AGREEMENT

- a. The Governing Body hereby approves and adopts the *Franchise Agreement*.
- b. The Mayor is hereby authorized, empowered and directed to execute the *Franchise Agreement* on behalf of the City.
- c. The City Manager is hereby authorized, empowered and directed to take all action necessary to implement the terms of the *Franchise Agreement* on behalf of the City.

Section 5. PUBLICATION.

This Ordinance shall be published prior to its adoption pursuant to NMSA 1978 Section 3-1-2(J), and Section 3-17-3, and at least once within one week following adoption pursuant to NMSA 1978 Section 3-1-2(J). Franchise ordinance shall become effective at least thirty days after its adoption,



during which time the franchise ordinance shall be published twice in full, not less than seven days apart pursuant to NMSA 1978, Section 3-42-1(B).

Section 6. REFERENDUM

This Ordinance may be challenged by referendum as set forth in NMSA 1978 Section 3-42-1(E).

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF MAY 2021.


Diana M. Trujillo, Mayor



ATTEST:



Esther Motongo, City Clerk

{SEAL}

ROLL CALL VOTE:

Mayor Pro Tem, Fernie Herrera

☒ YES ☐ NO



Fernie Herrera

Trustee Gloria Gameros

☒ YES ☐ NO



Gloria Gameros

Trustee Elva Flores

☒ YES ☐ NO



Elva Flores

Trustee Javier Silva

☒ YES ☐ NO



Javier Silva



FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Anthony, New Mexico, hereinafter referred to as the "Grantor" and Spectrum Gulf Coast LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the "Grantee."

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

1. Definitions:

- a. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- c. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, franchise fee, or sales or utility taxes; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusion available under applicable state law.
- e. "Service Area" shall mean the geographic boundaries of the Grantor.
- f. "Streets" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter, and the public grounds, places or water within the geographic boundaries of Grantor.
- g. "Subscriber" means any person lawfully receiving any Cable Service from the Grantee.



2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets now in existence and as may be created or established during its terms; any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.
3. **Term.** The Franchise shall be for a term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 16. This Franchise will be automatically extended for an additional term of *five (5) years*, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.
4. **Use of the Streets and Dedicated Easements.**
 - a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities when available on reasonable terms and conditions.
 - b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.
 - c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.
 - d. Nothing in this Franchise shall be construed to prevent Grantor from constructing, maintaining, repairing, or relocating any sewers, Streets, water mains, or other public improvement. All such work, however, shall be done, insofar as it is practicable, so as not to obstruct, injure, or prevent the free use of the Cable System.
 - e. If any portion of the Cable System shall interfere with the construction, maintenance, repair, or relocation of any sewers, Streets, water mains, or other public improvement, Grantor shall provide at least thirty (30) days written notice



to Grantee, who shall remove or replace any such interference at its own expense, provided, however, if Grantor or any agency thereof directly or indirectly reimburses any right-of-way user for the movement of its property, Grantee shall be similarly reimbursed.

5. Construction and Maintenance of the System.

- a. Grantee shall at all times employ ordinary care in the construction, maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor.
- b. All construction practices and installation of equipment shall be done in accordance with all applicable federal and state law and generally applicable, non-discriminatory local codes. Installation of electronic equipment of a permanent nature shall be done in accordance with all applicable sections of the National Electrical Safety Code.
- c. The Cable System shall be designed, constructed and operated so as to meet all building and zoning codes applicable to the Service Area and those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may, from time to time, be amended.
- d. The Grantor shall have the right to inspect all construction or installation work in the Streets performed pursuant to the provisions of this Franchise.
- e. Any and all Streets and municipal property which are damaged or destroyed by Grantee during construction, repair, replacement, relocation, operation, maintenance or reconstruction of the Cable System shall be promptly repaired or replaced by Grantee at its expense and restored to a condition reasonably comparable to the condition prevailing prior to the Grantee's damage or destruction of the property. If Grantee fails to promptly repair, replace, or otherwise correct such damage or destruction following written notice by the Grantor, the Grantor may complete the repair or replacement and invoice the Grantee for the reasonable, documented expense of the repair or replacement. .

6. Service.

- a. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.



- b. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

7. Insurance/Indemnity.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

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|---|--|
| Workers' Compensation | Statutory Limits |
| Commercial General Liability | \$1,000,000 per occurrence, \$2,000,000 General Aggregate |
| Auto Liability including coverage on all owned, non owned hired autos | \$1,000,000 per occurrence Combined Single Limit |
| Umbrella Liability | \$1,000,000 per occurrence |

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the negligent



actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

8. Revocation.

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
- c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

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



option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 9 shall be deemed a waiver of any remedies available to Franchisee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545

10. **Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.
11. **Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.
12. **Confidentiality.** If Grantee provides any books, records or maps to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books, records or maps marked confidential to any person.
13. **Notices, Miscellaneous.**
 - a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. In accordance with applicable law, Grantee shall provide notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: Oscar Dominguez
City Manager
820 Highway 478



Email: Anthony, NM 88021
odominguez@cityofanthonymn.org

Grantee: Ed Serna
Director, Government Affairs
1005 Congress Ave., Suite 420
Austin, TX 78701
Email: ed.serna@charter.com

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

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
 - c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
 - d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.
14. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
15. **Franchise Fee.**
- a. Grantee shall pay to the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year, transmitted by electronic funds transfer to a bank account designated by Grantor. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.
 - b. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video



service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a Franchise Fee under this Section 15 shall be reduced by an equivalent amount.

- c. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.
16. **Effective Date.** The Franchise granted herein will take effect and be in full force thirty days after the date of acceptance by Grantee recorded on the signature page of this Franchise.
17. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 5 day of May, 2021

City of Anthony, New Mexico

Signature: _____

Name/Title: Oscar Dominguez, City Manager

Accepted this ____ day of ____, 20__, subject to applicable federal and state law.

Spectrum Gulf Coast, LLC

Signature: _____

Name/Title: _____



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- c. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.

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Considered and approved this 5 day of May, 2021

City of Anthony, New Mexico

Signature: _____

Name/Title: Oscar Dominguez, City Manager

Accepted this 25 day of May, 2021, subject to applicable federal and state law.

Spectrum Gulf Coast, LLC

Signature: _____

Name/Title: Paul Abbott/VP, Local Gov't Affairs & Franchising