

## ORDINANCE 2025-2

AN ORDINANCE GRANTING TO SPECTRUM PACIFIC WEST, LLC, AN INDIRECT SUBSIDIARY OF CHARTER COMMUNICATIONS, INC., A ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION, AND AUTHORITY TO CONSTRUCT, INSTALL, MAINTAIN, AND OPERATE A CABLE SYSTEM, IN THE DESIGNATED SERVICE AREA LIMITING THE TERM OF SAID GRANT, PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID COMPANY MAY OPERATE.

**WHEREAS**, the City wishes to grant Grantee a renewal of its nonexclusive franchise to construct, install, maintain, extend and operate a Cable System in the Service Area as designated in this Franchise;

**WHEREAS**, the City is a “franchising authority” in accordance with the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to applicable law;

**WHEREAS**, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

**WHEREAS**, having afforded the public adequate notice and opportunity for comment, and having held a Public Hearing on November 12, 2024, at 6:00 PM at City Hall, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

***NOW, THEREFORE, Be it Ordained By the Governing Body of the City of Lander and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Franchising Authority and Grantee agree as follows:***

### **SECTION 1: Definition of Terms**

**1.1 Terms.** For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined 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, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Affiliate” when used in relation to Grantee means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.
- B. “Basic Service” means any service tier which includes the retransmission of local television broadcast signals.
- C. “Cable Act” shall mean the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “Cable Operator,” Cable System,” and “Cable Service,” shall be defined as set forth in the Cable Act.
- E. “City Council” shall mean the governing body of the Grantor.
- F. “Complaint” shall mean written correspondence received by Grantee via U.S. mail or email from a Subscriber in the City expressing dissatisfaction with the operation of the Cable System

or expressions of dissatisfaction with the Cable Service from a Subscriber in the City.

- G. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- H. “Franchise” shall mean this Franchise, and the non-exclusive rights granted pursuant to this Franchise to construct, operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- I. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, including locally-derived advertising revenues less commissions paid to third parties that are not Affiliates; provided, however, that such phrase 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, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity but shall not mean the Franchising Authority.
- K. “Service Area” shall mean the geographic boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.
- L. “State” shall mean the State of Wyoming.
- M. “Street” shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- N. “Subscriber” shall mean any Person lawfully receiving Cable Service from the Grantee.

## **SECTION 2 Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive 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 term; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. 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, State or local law.

Each term, provision or condition herein is subject to the provisions of State law, federal law, and the lawful, generally applicable provisions of the Municipal Code, and ordinances and regulations. This Franchise is intended to convey limited rights and interests only as to those Streets in which the City has an actual interest. It is not a warranty of title or interest in any street; it does not

provide Grantee with any interest in any particular location within the street; and it does not confer rights other than as expressly provided in the grant hereof.

**2.2     Term.** The Franchise and the rights, privileges and authority hereby granted shall be for a term of eight (8) years, commencing on the Effective Date of this Franchise.

**2.3     Police Powers, Conflicts with Franchise and Compliance.** The Grantee agrees to comply with the terms of any lawfully adopted local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this contract. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise shall control.

Grantee and the City shall comply with all federal and State laws, including any changes in such laws that occur subsequent to the Effective Date of this Franchise. Provided, however, that nothing in this Franchise shall preclude Grantee or the City from challenging any such laws on any basis.

**2.4     Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the Streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

### **SECTION 3 Franchise Renewal**

The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

### **SECTION 4 Indemnification and Insurance**

**4.1     Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor; provided, however, that the Grantee shall still be responsible for the costs, attorneys' fees and expenses of Grantor's defense, if at the conclusion of the action there is a determination that Grantee had a duty to indemnify Grantor. In the event Grantor elects to settle any such claim, Grantee shall have no obligation to pay any settlement amount unless Grantee has pre-approved the same in writing. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims

resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

#### 4.2 **Insurance.**

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

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence,
Combined Single Liability (C.S.L.)	\$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned and hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$3,000,000 per occurrence C.S.L.

- 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.

### **SECTION 5 Service Obligations**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

### **SECTION 6 Service Availability**

**6.1 Service Area.** 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, subject to economic feasibility. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided.

**6.2 New Developments - Underground.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to use its best efforts 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 Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee 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 Grantee 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 written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Grantee.

**6.3     Annexation.** 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 Section 6.1 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 to the addresses set forth in Section 14.5 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, 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.

## **SECTION 7 Construction and Technical Standards**

**7.1     Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electrical Safety Code and applicable FCC technical requirements and the provisions of Section 8.3.

**7.2     Construction Practices and Requirements.** All of the Grantee'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.

**7.3     Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may be amended from time to time, regardless of the transmission technology utilized.

**7.4     Performance Monitoring.** Grantee shall test the Cable System consistent with the FCC regulations.

**7.5     One Call of Wyoming.** In the event of underground construction by the City, Grantee shall comply with Wyoming 811 requirements and promptly mark the location of its underground facilities in the area of construction.

## **SECTION 8 Conditions on Street Occupancy**

**8.1     General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other underground facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee has access to the foregoing on reasonable terms and conditions. Where Grantee does not have access on reasonable terms and conditions, Grantee shall apply for all legally required permits of the Grantor and Grantor shall not unreasonably delay or withhold approval of such permits.

**8.2 Underground Construction.** 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 aurally at the time of system construction, the Grantee may place its facilities aurally 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 that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of lines underground or the movement of lines, Grantee shall be reimbursed upon the same terms and conditions as any telephone and electric utilities.

**8.3 Codes and Permits.** Grantee, its contractors and subcontractors, as applicable, shall obtain all legally required permits, at its and their expense, before commencing any work requiring a permit, including, but not limited to the opening or disturbance of any Street or use of any public easement within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to public utility companies and other entities operating in the Service Area.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimal interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and operational condition, and in good order and repair. The Grantee 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. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

**8.5 Inspection of Construction and Facilities.** The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least forty-eight (48) hours' notice, or, in case of an emergency, upon demand without prior notice.

**8.6 Work of Contractors and Subcontractors.** Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's lawful, non-discriminatory ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors.

**8.7 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public ways or Streets as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the public ways or Streets immediately prior to such damage or disturbance.

**8.8 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's

facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

**8.9 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.10 Relocation for the Grantor.** The Grantee 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 property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee 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.

**8.11 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee 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.

**8.12 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**8.13 Emergency Use.** Grantee shall comply with 47 U.S.C. Section 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”).

## **SECTION 9 Service and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, with written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**9.3 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

**9.4 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under this Franchise.

**9.5 Service to Public Building.** The Grantee will provide one outlet of Basic Service (and, if necessary, the equipment required to receive Basic Service) at City Hall, located at 240 Lincoln Street, Lander, WY, to be used for the City's internal, non-commercial and non-public use, at no charge to the City, but on a voluntary basis. The Grantee will provide the Franchising Authority with at least 120 days' written notice in advance of any decision to alter or discontinue such complimentary service, provided that the Grantee will immediately discontinue such services to such location at such time that the Grantor is not using such location for municipal purposes.

**9.6 Customer Service Standards.** Grantee shall comply with the customer service standards in 47 C.F.R. § 76.309 of the FCC's Rules and Regulations, as may be amended from time to time.

## **SECTION 10 Franchise Fee**

**10.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to Five percent (5%) of Grantee's annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

**10.2 Payment of Fee.** Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees are to be paid to the Grantor pursuant to the Franchise commencing with the Effective Date of the Franchise.

**10.3 Quarterly Franchise Fee Reports.** Upon request from the Grantor, Grantee shall provide a written report to the Franchising Authority, containing an accurate statement in summarized form, as well as in reasonable and customary detail, of the Grantee's Gross Revenue and the computation of the payment amount.

**10.4 Audit or Review.** On an annual basis, upon 30 days prior written notice, the Franchising Authority shall have the right to conduct an independent audit or review of the Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. The report shall be shared with the Grantee promptly after the results are provided to the Franchising Authority. Any undisputed amounts due to the Franchising Authority as a result of the audit or review shall be paid within 60 days following the later of the delivery of the written notice to the Grantee by the Franchising Authority, or the delivery to the Grantee of the audit or review information. If the report shows that franchise fee payments have been underpaid by 5% or more, and subject to applicable law, Grantee shall pay the documented, itemized cost of the audit or review, such cost not to exceed \$5,000.

**10.5 Interest.** In the event of any late undisputed payment or underpayment, the Grantee shall pay, in addition to the amount due, interest at the rate of 1% per month, calculated from the date the payment was originally due until the date the Franchising Authority receives the payment.

**10.6 Other Fees and Charges.** The franchise fee shall be in addition to all lawful and non-discriminatory taxes, levies, assessments, license fees, permit fees, or charge on the business, occupation, property or income of the Grantee which



are now or will be required to be paid to the Franchising Authority under federal, State or local law, provided that such additional assessments do not violate 47 U.S.C. Section 542.

**10.7 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

**10.8 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

## **SECTION 11 Transfer of Franchise and Cable System**

The Franchise granted hereunder and Cable System shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the Grantor, and such consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

## **SECTION 12 Records, Reports and Maps**

**12.1 Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

### **12.2 Records Required.**

The Grantee shall at all times maintain and provide for inspection upon written request:

- A. A record of all written Complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year; and
- B. A service area map showing the location of the Cable System.

**12.3 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of 47 U.S.C. Section 551 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor

aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

### **SECTION 13 Enforcement or Revocation**

**13.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**13.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) cure such default, or (iii) if, 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 Grantor of the steps being taken and the projected date that they will be completed.

**13.3 Public Hearing.** If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the City Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the City in a newspaper of general circulation within the City. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

**13.4 Enforcement.** Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 13.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.

### **13.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or cure the alleged noncompliance. If the Grantor has not received a satisfactory response from

Grantee, it 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 Grantor's intent to revoke the Franchise.

- B. At the hearing, the City Council shall give the Grantee an opportunity to state its position on the matter, and present evidence and question witnesses, after which the City Council shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City Council *de novo*. The Grantee may continue to operate the Cable System until all legal appeal procedures have been exhausted.
- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place, which will then become the property of the City.

#### **SECTION 14 Miscellaneous Provisions**

**14.1 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, pandemics, 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 or qualified labor to perform the work necessary.

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

**14.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**14.4 Equal Protection.** If any other provider of cable services or wireline 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 ensure 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.

**14.5 Notices.** Every notice or response required by this Franchise to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered or five business days after having been posted in a properly sealed and correctly addressed envelope when sent by certified or registered mail, postage prepaid or when sent via electronic mail (email).

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Lander  
240 Lincoln St  
Lander, Wyoming 82530  
Attention: Mayor  
Email: [clerk@landerwyoming.org](mailto:clerk@landerwyoming.org)

The notices or responses to the Grantee shall be addressed as follows:  
Spectrum Pacific West, LLC, I/k/a Charter Communications  
611 E. Carlson Street  
Cheyenne, WY 82009  
Attention: Government Affairs  
Email: [mike.mores@charter.com](mailto:mike.mores@charter.com)

With a copy to:  
Charter Communications  
Attn: VP, Government Affairs & Franchising  
601 Massachusetts Ave., NW  
Suite 400W  
Washington, DC 20001  
Email: [charterfranchisenotices@charter.com](mailto:charterfranchisenotices@charter.com)

The Franchising Authority and the Grantee may designate another address or email address from time to time by giving written notice to the other without having to amend this Franchise.

**14.6 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

**14.6.1** Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 14.6 above.

**14.7 Descriptive Headings.** The headings to sections or subsections are intended solely to facilitate the reading thereof. They shall not affect the meaning or interpretation of the text herein.

**14.8 No Third-Party Beneficiaries.** Nothing in this Franchise is intended to confer third-party beneficiary status on any person to enforce the terms of this Franchise.

**14.9 Severability.** If any section, subsection, sentence, clause, or phrase of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, 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.

**14.10 Entire Agreement.** This Franchise constitutes the entire agreement between Grantee and the Grantor regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**14.11 Amendments of Franchise.** Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

**14.12 Publication Costs.** Grantee shall pay the City for the documented reasonable cost incurred by the City for publication and notice of this Franchise.

**14.13 Binding Effect.** This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

**14.14 No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

**14.15 No Waiver.** The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

**14.16 Venue and Governing Law.** Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the District Court, Fremont County, Wyoming, or in the United States District Court for the District of Wyoming in Lander. This Franchise shall be governed, construed and enforced in accordance with State and federal law.

**14.17 Wyoming Governmental Immunity.** The Franchising Authority does not waive its governmental immunity or its defenses as provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

**14.18 Effective Date.** This Franchise granted herein will take effect and be in full force from and after the date first above written ("Effective Date").

**SECTION 15.** This Ordinance and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this Ordinance, one or both of

the parties, or any transaction hereunder.

**SECTION 16.** This Ordinance and the rights, authority and franchise herein and hereby granted shall terminate and be of no further force and effect:

- (a) unless within six (6) months after final passage of this Ordinance Grantee shall file with the Clerk of said Municipality a written acceptance hereof; also
- (b) if and when, after such acceptance Grantee shall file with the Clerk of said Municipality a surrender hereof in writing.

**SECTION 17.** This Ordinance shall be in full force and effect from after its final passage and publication as required by law and upon acceptance by Grantee shall be held to constitute a binding contract between said Municipality and Grantee, subject to its terms and conditions.

**SECTION 18:** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

**SECTION 19:** Severability. If any section, subsection, sentence, phrase, or clause of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

PUBLIC HEARING November 12, 2024

PASSED ON FIRST READING    November 12, 2024

PASSED ON SECOND READING    November 26, 2024

PASSED ON THIRD READING    December 10, 2024

PASSED, ADOPTED AND APPROVED by the Mayor and City Council on the 10<sup>th</sup> day of December 2024.

THE CITY OF LANDER  
A Municipal Corporation

By \_\_\_\_\_  
Monte Richardson, Mayor

ATTEST:

\_\_\_\_\_  
Rachelle Fontaine, City Clerk

STATE OF WYOMING    )  
  ) ss.  
COUNTY OF FREMONT    )

CERTIFICATE

I hereby certify that on December 10, 2024, , following passage, adoption, and approval of Ordinance 2025-2, Monte Richardson, the duly elected, qualified, and acting Mayor of the City of Lander, issued this proclamation, and said Ordinance was published at least once in the Lander Journal, a newspaper of general circulation within Lander, Wyoming, the effective date and publication being December 11, 2024.

\_\_\_\_\_  
Rachelle Fontaine, City Clerk

