

Chapter 85 -- Cable TV Franchise

85.010. Grant of Non-Exclusive Franchise. The Board of Aldermen for the City of Moscow Mills, Missouri hereby grants and assigns a non-exclusive Franchise to Charter Communications Entertainment I, LLC, hereinafter referred to as the “Franchisee”, to operate and maintain a cable system for a period of ten (10) years, with an option to renew for an additional ten (10) years upon renegotiation and acceptance by both parties.

85.020. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. The work “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

A. “**Board**” shall mean the Board of Aldermen for the City of Moscow Mills, Missouri.

B. “**Cable Act**” shall mean Title VI of the Communications Act of 1934, as amended.

C. “**Cable System**” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided for sale to or use by the inhabitants or businesses of the City.

D. “**City**” shall mean the City of Moscow Mills, Missouri.

E. “**Franchise**” shall mean the authorization to operate a cable television system, including all mutual rights, duties and obligations of the Franchisee and the City as contained in this Ordinance.

F. “**Franchisee**” shall mean Charter Communications Entertainment I, LLC, d/b/a Charter Communications.

G. “**Gross Receipts**” shall mean any receipts received by the Franchisee from the operation of the Cable System to provide cable services within the City, provided, however, that this shall not include any taxes or copyright fees on services furnished by the Franchisee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Franchisee on behalf of said government unit.

85.030. Grant of Authority.

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

B. Franchisee shall raise or lower wires or equipment upon the reasonable

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

85.040. Compliance with Applicable Laws.

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

85.050. Compliance with FCC Regulation.

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

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

85.060. Compliance with Electrical Standards.

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

85.070. Franchise Requirements for Other Franchise Holders.

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

B. In the event that a non-Franchise multi-channel video programming distributor provides service to the residents of the City, the Franchisee

Moscow Mills City Code

shall have a right to request Franchise amendments from the Board that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the

Franchisee shall file a petition to the Board seeking to amend the Franchise. Such petitions shall:

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

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

85.080. Cable System Franchise Required, Exclusive Contracts Prohibited.

A. No Cable System shall be allotted to occupy or use the streets or public right-of-way of the City or be allowed to operate without a Cable System Franchise.

B. No Franchisee or other multichannel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multichannel video programming with any person, or demand the exclusive right to serve a Person or location, as a condition of extending service to that or any other Person or location.

C. No Franchisee or other multichannel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the City, except for such actions as are expressly authorized by law.

85.090. Service Territory.

A. Franchise shall include the entire area of the City.

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

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

85.100. Customer Service.

A. Franchisee shall comply with applicable Federal, State and local laws for the protection of privacy of cable subscribers.

B. Franchisee shall render efficient repair service, and interrupt service only for good cause and for the shortest time possible. A toll-free telephone number shall be maintained so that complaints and repair requests may be received by Franchisee at any time. All non-emergency service requests and complaints shall be responded to within five (5) days of receipt. All emergencies and/or system outages will be responded to within twenty-four (24) hours.

C. Franchisee shall give the City thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

D. The Franchisee shall by appropriate means, as subscribers are connected or reconnected to the Cable System, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and toll-free telephone number of the Franchisee.

E. The equipment installed by the Franchisee in the subscriber's home shall remain the property of the Franchisee and shall be subject to reasonable inspection and service by the Franchisee at reasonable hours, and removal upon non-payment or termination of the service.

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

85.120. Service to City.

A. Franchisee shall provide and maintain one (1) free connection of basic cable service to City Hall, police and fire stations, and to all public and parochial primary and secondary schools located in the City. The cost of any internal wiring shall be borne by the institution.

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

85.130. Fee to City.

A. Franchisee shall pay to the City for the privilege of operating a Cable System under this Franchise three percent (3%) of its Gross Receipts per month, in accordance with the Cable Act. Such percentage shall be payable to the City on an annual basis due no later than ninety (90) days following the end of the calendar year.

Moscow Mills City Code

B. City shall have the right to inspect for up to three (3) previous years the Franchisee's records showing its gross receipts for all services from which its contracted payouts are computed. No acceptance of any payout by the City shall be construed as a release of or an accord or satisfaction of any claim the City might have for further or additional sums payable under the terms of this Franchise.

85.140. Conditions on Street Use.

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

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

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

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

85.150. Indemnification and Insurance.

A. The Franchisee shall maintain, throughout the term of the Franchise, insurance in the amounts 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	\$1,000,000 per occurrence C.S.L.

Moscow Mills City Code

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

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

85.160. Transfer.

Franchisee shall promptly notify the City in the event of any sale or transfer of 25% or more of the voting stock or control of the Franchise, however, such notification shall not apply to any sale, assignment, or transfer to any entity controlling, controlled by or under common control with the Franchisee.

85.170. Notice.

Any notices to be sent to the parties hereto shall be sent to the following addresses unless either party notifies the other in writing of another address:

To the City:

City of Moscow Mills
Attn: City Clerk
City Hall
P.O. Box 36
Moscow Mills, Missouri 63362

To the Franchisee:

Charter Communications
Attn: General Manager
219 W. Church Street
Bowling Green, Missouri 63334

With a copy to:

Charter Communications
Attn: Vice President - Government Relations
12405 Powerscourt
St. Louis, Missouri 63131

85.180. Duration and Renewal of Franchise.

A. This Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years.

B. This Franchise may be renewed for an additional ten (10) years if the Franchisee has substantially complied with the material terms of the Franchise and with applicable law.

85.190. Emergency Use of Facilities.

In the case of any emergency or disaster, the Franchisee shall upon request of the City, make available its facilities for emergency use during the emergency or disaster.

85.200 Public Records.

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

85.210. Forfeiture of Franchise.

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

1. Violates any provision of this Franchise or any rule, order, or determination of the Board made pursuant of this Franchise, except where such violation, other than Subsection (2) below, is without fault or through excusable neglect;
2. Becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt;
3. Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City.

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

C. Prevention or delay of any performance under the Franchise due to circumstances beyond the control of Franchisee or City including, but not limited to, natural disaster, employee strikes or war shall not be deemed noncompliance with or a violation of this Franchise.

85.220. Equal Employment Opportunity Compliance.

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

85.230. Severability.

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

85.240. Integration.

This Ordinance sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter

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

85.250. Rate Regulation.

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

Adopted by Ordinance 6/14/93. Amended by: Ordinance #49, 4/14/97.