

**City of Carson City
Agenda Report**

Date Submitted: June 2, 2015

Agenda Date Requested: June 18, 2015

Time Requested: 10 minutes

To: Carson City Board of Supervisors
From: Deputy District Attorney Joe Ward

Subject Title: For Possible Action: To introduce, on first reading, Bill No. ____, an ordinance amending the Carson City Municipal Code Title 5, Public Utility Franchises and Requirements, at Chapter 5.02 T.C.I. of Nevada, Inc., by repealing such chapter in conformance with Chapters 709 and 711 of the NRS and enacting other provisions properly related thereto. *(Joe Ward, Deputy DA)*

Staff Summary: Chapter 711 of the NRS “occupies the entire field of franchising and regulation of video service.” NRS 711.400. Chapter 709 of the NRS addresses public utilities and telephone companies. Chapter 5.02 of the Carson City Municipal Code (CCMC), enacted in 1987, and unchanged to date, pertained to the City’s franchise agreement with T.C.I. of Nevada, Inc. (TCI), which terminated in 2002. TCI was purchased in 1999 by AT&T, whose cable television assets were later acquired by Charter Communications and Comcast Corporation. TCI dissolved on December 21, 2004. The City does business with Charter, however Charter is not an affiliate of TCI. On December 21, 2006 the Board approved an agreement with Falcon Cable Systems II, L.P., locally known as Charter Communications, for 5 years -- through December 21, 2011. Bottom line, Chapter 5.02 of the CCMC is obsolete and should be deleted and replaced with language which comports with Chapters 709 and 711 of the NRS.

Type of Action Requested: (check one)
 Resolution Ordinance – First Reading
 Formal Action/Motion Other (Specify) Information Only

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to introduce, on first reading, Bill No. ____, an ordinance repealing Carson City Municipal Code Title 5 – PUBLIC UTILITY FRANCHISES AND REQUIREMENTS – Chapter 5.02 – T.C.I. of Nevada, Inc. – and amending this Title 5, Chapter 5.02, by replacing the repealed language with language compliant with Chapters 709 and 711 of the NRS pertinent to Telecommunications and Video Services and enacting other provisions properly related thereto.

Explanation for Recommended Board Action: The Carson City Municipality Code Title 5, Chapter 5.02, needs to be amended to conform with Chapters 709 and 711 of the NRS and

address the reality that the City is no longer in a contractual relationship with TCI or any successor company.

Applicable Statute, Code, Policy, Rule or Regulation: CCMC Chapter 5.02 and NRS Chapters 709 and 711.

Fiscal Impact: No Fiscal Impact

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do not accept the proposed repeal and Code amendment.

Supporting Material: Chapter 5.02 of the CCMC and Chapters 709 and 711 of the NRS.

Prepared By: Joe Ward, Deputy DA

Reviewed By: Lick Mancuso Date: 6/9/15
(City Manager)

(Community Development Director) Date: _____

[Signature] Date: 6-9-15
(District Attorney)

[Signature] Date: 6/9/15
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

ORDINANCE NO. 2015-__

BILL NO. __

AN ORDINANCE REPEALING CARSON CITY MUNICIPAL CODE TITLE 5 – PUBLIC UTILITY FRANCHISES AND REQUIREMENTS - CHAPTER 5.02 – T.C.I. OF NEVADA, INC., AND AMENDING THIS TITLE 5, CHAPTER 5.02, BY REPLACING THE REPEALED LANGUAGE WITH PROVISIONS COMPLIANT WITH CHAPTERS 709 AND 711 OF THE NEVADA REVISED STATUTES PERTINENT TO TELECOMMUNICATIONS AND VIDEO SERVICES AND ENACTING OTHER PROVISIONS PROPERLY RELATED THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DOES ORDAIN:

Section 1: Title 5 – PUBLIC UTILITY FRANCHISES AND REQUIREMENTS, Chapter 5.02 – T.C.I. of Nevada Inc., is hereby amended by its repeal and its replacement with provisions compliant with Chapters 709 and 711 of the Nevada Revised Statutes pertinent to Telecommunications and Video Services as follows. The bold underlined text (**bold underlined text**) is added and the stricken text (~~stricken text~~) is deleted.

~~[5.02.010 Enactment of franchise.~~

~~The franchise agreement entered into between Carson City (hereinafter city) and T.C.I. of Nevada, Inc. (hereinafter franchisee), appearing herein as Section 5.02.020, is enacted into law. The Carson City board of supervisors expressly find that T.C.I. of Nevada, Inc. complies with NRS 711.230.~~

~~(Ord. 1987-21 § 2, 1987).~~

~~5.02.020 Text of franchise.~~

~~“An ordinance granting, on terms and conditions, a franchise to T.C.I. of Nevada, Inc., a corporation licensed to do business in Nevada, its successors and assigns, the right and authority to establish, construct, operate and maintain a Community Antenna Television System in Carson City, Nevada.~~

~~“THE CARSON CITY BOARD OF SUPERVISORS DOES HEREBY ORDAIN:~~

~~“Section 1 Definition of Terms~~

~~1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below or in Nevada Revised Statutes Chapter 711. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:~~

~~"(a) "Access channels" means free composite channels to be used for educational purposes and by government and public agencies and/or their representatives (commonly referred to as "PEG" channels)~~

~~"(b) "Act" means the Cable Communications Policy Act of 1984 and any subsequent amendments.~~

~~"(c) "Addressability" means the ability of a system allowing the franchisee to authorize by remote control customer terminals to receive or to cancel any or all specified programming.~~

~~"(d) "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with franchisee.~~

~~"(e) "Bandwidth" means the measure of spectrum which transmits audio and visual information.~~

~~"(f) "Basic services" means those broadcast and non-broadcast services provided by the cable franchisee at the lowest monthly charge and consisting of local stations, access channels, and any other distant retransmission and/or satellite channels selected by the cable franchisee.~~

~~"(g) "Board" means the present governing body of the City or any future board constituting the legislative body of the City.~~

~~"(h) "Cable Act" means the Cable Communications Policy Act of 1984 and any subsequent amendments.~~

~~"(i) "Cable service" means (i) the one-way transmission to subscriber of video programming or other programming service, and (ii) subscriber interaction, if any which is required for the selection by the subscriber of such video programming or other programming service.~~

~~"(j) "CATV" means a community antenna television system as hereinafter defined.~~

~~"(k) "Channel" means a single path or section of the spectrum which carries a television signal.~~

~~"(1) "Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.~~

~~"(m) "Citizens Cable Advisory Committee" means a group of citizens that may be appointed by the City for the purpose of having oversight review of the city's cable television interests and which is responsible to the Board. Subcommittees may be appointed, or established, as a separate corporation by the Board with responsibilities for access broadcasting.~~

~~"(n) "City" means the City of Carson City, a consolidated municipality of the State of Nevada.~~

~~"(o) "Community antenna television company" means any person or organization which owns, controls, operates or manages a community antenna television system, except that such definition does not include:~~

~~"1. A telephone, telegraph or electric utility regulated by the Public Service Commission where the utility merely leases or rents to a community antenna signals to or toward subscribers of that company; or~~

~~"2. A telephone or telegraph utility regulated by the Public Service Commission where the utility merely provides channels of communication under published tariffs filed with the Public Service Commission to a community antenna television company for the redistribution of television signals to or toward subscribers of that company.~~

~~"(p) "Community Antenna Television Systems", "cable television system", or "system", means a system of antennas, cables, wires, lines, towers, transmission lines, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying, scrambling and distributing audio, video and other forms of electronic or electrical signals, located in whole or in part in the City. In addition "community antenna television system" means any facility within this state which is constructed in whole or in part in, on, under or over any highway or other public place and which is operated to perform for hire the service of receiving and amplifying the signals broadcast by one or more television stations or provided for public, educational or governmental purposes and redistributing those signals by wire, cable or other means of closed transmission to members of the public who subscribe to the service.~~

~~"Such a system does not include any system which serves:~~

~~"Fewer than 50 subscribers; or~~

~~"Only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the~~

~~premises of these dwellings if the buildings are separated by not more than one public street or right of way.~~

~~"As used in this section, "apartment dwelling" does not include a hotel, motel, condominium, town house or other similar dwelling.~~

~~"(q) "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector which also permits a subscriber to view all signals delivered at designated converter dial locations.~~

~~"(r) "Decoder" means electronic equipment which converts an electronically scrambled picture into a viewable signal.~~

~~"(s) "Downstream" means transmission of a signal from the cable head end to the subscriber terminal.~~

~~"(t) "Facility" means all real property, antennae, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a community antenna television company to provide service to its subscribers.~~

~~"(u) "FCC" means the Federal Communications Commission, or successor governmental entity thereto.~~

~~"(v) "Franchisee" means T.C.I. of Nevada, Inc. or the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this Franchise.~~

~~"(w) "Gross revenues" means all receipts derived from cable service installation, all other receipts from operation of the cable system and monthly recurring cable service charges including charges for basic cable service, FM channel, premium channels, connection charge, reconnection charge, move existing outlet, connect additional outlet, equipment charge (remote control) and late charge, but excluding any applicable deductions allowed pursuant to NRS 711.200.~~

~~"(x) "Highway" means every street, road, alley, thoroughfare, way or place of any kind used by the public or open to the use of the public as a matter of right for the purpose of vehicular traffic.~~

~~"(y) "Hub" means a sub-head end fed by signals from a cable head end. Signals are distributed from the hub to subscribers by primary and feeder cables.~~

~~"(z) "Installation" means the connection of the system from feeder cable to subscribers' terminals.~~

~~“(aa) “Institutional network” (I Network) or (closed “B” loop) means a cable communications network designed principally for the provision of non-entertainment interactive services to schools, public agencies or other non-profit agencies, separate and distinct from the subscriber network.~~

~~“(bb) “Instructional Television Fixed Service (ITFS)” means a television system operating at the 2,500 mghz. frequency set aside by the FCC for instructional television utilization.~~

~~“(cc) “Interactive services” means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.~~

~~“(dd) “Interconnect” means a link by various technical means to other cable systems for purposes of program distribution.~~

~~“(ee) “Leased access channels” or “local origination channel” means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the franchisee.~~

~~“(ff) “Local broadcast stations” means all television stations now and in the future broadcasting within thirty five (35) miles of the City, other stations in the same television market and all stations significantly viewed in the community.~~

~~“(gg) “Master Antenna Television System (MATV)” means an antenna system that serves a concentration of television sets such as an apartment building, hotel or motel.~~

~~“(hh) “Operator” means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this ordinance.~~

~~“(ii) “Pay Per View (PPV)” means per event programming for which the subscriber pays over and above the fee for regular cable service.~~

~~“(jj) “PEG” channel means public access channel.~~

~~“(kk) “Premium services” means programming over and above those provided by basic service for which there is additional charge.~~

~~“(ll) “Property of franchisee” means all property owned, installed or used by a franchisee in the conduct of a CATV business in the City under the authority of a franchise granted pursuant to this Franchise.~~

~~—"(mm) "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right of way, including, but not limited to, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle the City and the franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.~~

~~—"(nn) "Residential network" means a cable communications network designed principally for the delivery of entertainment, community access and/or interactive services to individual dwelling units.~~

~~—"(oo) "Satellite Master Antenna Television (SMATV)"~~

~~—means a non-franchised cable system, usually contained on a single or adjoining properties and not using public rights of way for signal distribution.~~

~~—"(pp) "Scrambler" means a device used to electronically alter a signal so that it can be viewed only on a TV receiver equipped with a special decoder.~~

~~—"(qq) "Service tier" means a category of cable service or other services, provided by franchisee for which a separate charge is made by franchisee.~~

~~—"(rr) "Subscriber" means a person or user of the cable system who lawfully receives cable services or other service therefrom with franchisee's express permission.~~

~~—"(ss) "Upstream" means transmission of a signal from the terminal to the system's head end.~~

~~—"(tt) "Video programming" means programming provided by a television broadcast station.~~

~~—"Section 2 Grant of Franchise~~

~~—"2.1 Grant. The City hereby grants to Franchisee a non-exclusive Franchise which authorizes the Franchisee to construct and operate a Cable System and offer~~

~~Cable Service and other services in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.~~

~~"2.2 Term. The Franchise granted pursuant to this Ordinance shall be for an initial term of fifteen (15) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Franchise.~~

~~"2.3 Acceptance; Effective Date. Franchisee shall file a written acceptance of the Franchise granted pursuant hereto with the City Clerk or other appropriate official or agency of the City within thirty (30) days after the passage and final adoption of this Franchise. The City shall notify Franchisee of the date that the Franchise is finally passed and adopted, as well as, the date by which a written acceptance is required to be filed. Subject to the filing of the written acceptance by Franchisee, the effective date of this Franchise shall be on passage, and final adoption and publication.~~

~~"2.4 Favored Nations. In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Franchisee for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area which contains terms more favorable to such person or entity in any regard than similar provisions of this Franchise, then this Franchise shall be deemed amended as of the effective date of the other franchise, permit, license authorization or other agreement, so as to give the Franchisee the benefit of any such more favorable terms.~~

~~"Section 3 Standard of Service~~

~~"3.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Franchisee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.~~

~~"3.2 Restoration of Public Ways. If during the course of Franchisee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by Franchisee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance within 45 days of said disturbance.~~

~~"3.3 Relocation at Request of City. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Franchisee when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Franchisee shall in all cases have the right of abandonment of its property. If City funds are available and appropriated to any utility company using such street, easement or right of way for the purpose of defraying the cost of any of the foregoing, such funds may also be available to the Franchisee on a pro rata basis.~~

~~"3.4 Relocation at Request of Third Party. The Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Franchisee, making such payment in advance; and (b) the Franchisee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.~~

~~"3.5 Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Franchisee's wires, cables or other equipment. Franchisee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the City for tree trimming. The Franchisee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the System undertaken by Franchisee. Such replacement shall satisfy any and all obligations Franchisee may have to the City or property owner pursuant to the terms of this section.~~

~~"3.6 Use of Franchisee's Equipment by City. Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Franchisee in any Public Way; provided that (a) such use by the City does not interfere with a current or future use by the Franchisee; (b) the City holds the Franchisee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and (c) at Franchisee's sole discretion, the City may be required either to pay a reasonable rental fee or otherwise reasonably compensate Franchisee for the use of such~~

~~poles, conduits, or equipment; provided, however, that Franchisee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.~~

~~"3.7 Safety Requirements. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.~~

~~"3.8 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Franchisee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, City shall have the sole discretion to require Franchisee to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section 3.8 shall require Franchisee to construct, operate, and maintain underground any ground mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, Franchisee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.~~

~~"3.9 Required Extensions of Service. The Cable System as constructed as of the date of the passage and final adoption of this Franchise substantially complies with the material provisions hereof. Franchisee is hereby authorized and required to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Franchisee shall receive a request for service from at least twelve (12) potential subscribers or a person who is developing 12 or more residential lots pursuant to Carson City's Growth Management Ordinance (CCMG chapter 15.01), within 1320 cable bearing strand feet (one quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for~~

~~system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System, or as provided for under Section 3.10 of this Franchise.~~

~~—"Notwithstanding the foregoing the developer or where there is no developer the owner of any new home or homes shall be responsible for providing timely notice and where requested a copy of final plans of construction or development to Franchisee. Further, such developer or where there is no developer the owner shall have the responsibility for installing all PVC or equivalent conduit and opening and closing trenches where installation is underground. Upon request Franchisee shall provide specifications and such other technical data as the developer or owner may require.~~

~~"3.10 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of not more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than twelve (12) Subscribers per 1320 cable bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Franchisee will contribute an amount equal to the construction and other costs per mile multiplied by a number whose numerator equals the actual number of potential Subscribers per 1320 cable bearing strand feet of its trunks or distribution cable, and whose denominator equals twelve (12) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Franchisee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.~~

~~"3.11 Service to Public Buildings. The Franchisee shall provide without charge one (1) outlet of Basic Service to the City's office building(s), fire station(s), Sheriff's department and public school buildings that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Franchisee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.11, the Franchisee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and if it will not adversely affect the operation, financial condition or market development of the Cable System to do so, or unless the appropriate~~

~~governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Franchisee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.~~

~~"3.12 Emergency Override. In the case of any emergency or disaster, the Franchise shall, upon request of the City, make available its facilities for the City to provide emergency information and instructions during the emergency or disaster period. The City shall hold the Franchisee, its agents, employees, officers, and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.~~

~~"3.13 System Services.~~

~~"3.13.1 System capability 400 mghz. (54 channel) within 24 months of this Franchise taking effect.~~

~~"3.13.2 20 cable channels each of 6 mghz. immediately upon this Franchise taking effect.~~

~~"3.13.3 A full FM broadcast band.~~

~~"3.13.4 Standards: FCC rules and regulations part 76, subpart K.~~

~~"3.13.5 1 peg channel (public access channel): Format shall include but not be limited to time, weather and local public information.~~

~~"3.13.6 One dedicated scrambled channel to be used for such institutional purposes as the City deems fit and proper at the following public buildings where cable is available with free scramblers provided to all City offices, public educational facilities, the Carson City Sheriff's Department, all Carson City Fire Stations and Carson Tahoe Hospital. One insertion point shall be provided to the City by the Franchisee at the mutually agreed upon location.~~

~~"3.13.7 An emergency override for emergency alert purposes within 12 months of this Franchise taking effect.~~

~~"3.13.8 Emergency power for 50% of service area within 12 months of this Franchise taking effect; emergency power for entire service area within 2 years of this Franchise taking effect.~~

~~"3.13.9 Basic Services: 25 cable channels immediately upon this Franchise taking effect.~~

~~"3.13.10 Coverage of Service Area: Subject to Section 3.10 Franchisee shall provide cable service to City service area not presently served with cable service within two (2) years of the effective date of this Franchise. The phrase "service area" shall include all areas presently served with cable service and in addition includes all approved residential subdivisions, planned unit developments, apartment buildings and mobile home parks which have a minimum of twelve (12) units for which certificates of occupancy have been issued by the City.~~

~~"Section 4 Regulation by Franchise Authority~~

~~"4.1 Franchise Fee. Franchisee shall pay to the City a franchisee fee equal to 5% of Gross Revenues as defined herein received by Franchisee from the operation of the Cable System on a monthly basis as allowed by NRS 711.200. If a 5% franchise fee is not approved by the State of Nevada then the franchise fee shall equal that amount approved by the State of Nevada. For the purpose of this section, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the City and Franchisee. The monthly franchise fee payment shall be due and payable by the 15th day of the following month. Each payment shall be accompanied by a brief written report or spreadsheet from a representative of Franchisee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by Franchisee exceed 5% of Gross Revenues received by Franchisee in the 12-month period for the preceding year. The franchise fee may be renegotiated to a rate higher than 5% of gross revenues if allowed by amendments to the Act or Federal case law.~~

~~"4.2 Rates and Charges. The City may not regulate the rates for the provision of Cable Service and other service, including, but not limited to, ancillary charges relating thereto, except as expressly provide herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto. The rates and charges charged by Franchisee for all services rendered under this Franchise shall be filed with the City Clerk and provided to all subscribers thirty (30) days prior to the effective date thereof. From time to time, and at any time, Franchisee has the right to modify such rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Franchisee shall give notice to the City of any such modifications or additional charges thirty(30) days prior to the effective date thereof. For the purpose of this Section 4.2, the parties agree that the rates and charges for the provision of Basic Service are not considered to be fixed. Notwithstanding anything to the contrary set forth herein, rates and charges for second outlets for Basic Service shall be deregulated.~~

~~—"In the event that Basic Service rate increases are subject to approval of the City, the Franchisee may, at its discretion and without consent of the City, increase rates relating to the provision of Basic Service by an amount which is at least equal to five (5) percent per year or the amount of any identifiable increase in cost which is attributable to the provision of Basic Service with 7 days prior notification to City and Cable casting such increase for 7 days prior to any increase.~~

~~"4.3 Renewal of Franchise. The City and the Franchisee agree that any proceedings undertaken by the City 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 (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.~~

~~"In addition to the procedures set forth in said Section 626(a), the City agrees to notify Franchisee of its preliminary assessments regarding the identity of future cable related community needs and interests, as well as, the past performance of Franchisee under the then current Franchise term. The City further agrees that such a preliminary assessment shall be provided to the Franchisee prior to the time that the four (4) month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this Section 4.3, the Franchisee and City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Franchisee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. The Franchisee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Exhibit "A" and incorporated herein by this reference.~~

~~"Pursuant to NRS 711.210 and if not in conflict with the Act the CITY shall not refuse to renew this Franchise unless it finds that:~~

~~"1. The ability of the Franchisee to provide services to its subscribers has substantially changed;~~

~~"2. The Franchisee substantially failed to comply with a term or condition of the franchise;~~

~~"3. The quality of the transmissions of the Franchisee have consistently failed to meet the standards for transmissions adopted by the Federal Communications Commission;~~

~~"4. The Franchisee failed to comply with a requirement for the setting aside of additional channels or for additional facilities which requirement is reasonable and based upon the needs of the subscribers within the jurisdiction of City; or~~

~~"5. The Franchisee refused to accept a reasonable term or condition which the City proposed to add to the franchise.~~

~~"4.4 Conditions of Sale. If a renewal of Franchisee's Franchise is denied and the City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern, but with no value allocated to the Franchise itself.~~

~~"If Franchisee's Franchise is lawfully revoked for cause and the City acquires ownership of the Cable System or by its actions effects a transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at an equitable price. Franchisee and City agree that in the case of a revocation, at Franchisee's request, which shall be made in its sole discretion, Franchisee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party at fair market value, determined on the basis of the Cable System valued as an ongoing concern. The City further agrees that during such a period of time, it shall authorize the Franchisee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Franchisee is unsuccessful in procuring a qualified transferee or assignee of its Cable System, which is reasonably acceptable to the City, Franchisee and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Franchisee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, no an extinguishment of, any rights of either the City or the Franchisee. Notwithstanding anything to the contrary set forth in Section 4.4, neither City nor Franchisee shall be required to violate federal or state law.~~

~~"4.5 Transfer of Franchise. Franchisee's right, title, or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an Affiliate, without prior consent of the City, such consent not to be unreasonably withheld. 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 Franchisee in the Franchise or Cable System in order to secure indebtedness.~~

~~"Section 5 Compliance and Monitoring~~

~~"5.1 Testing for Compliance. The City may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably~~

~~interfere with the normal business operations of the Franchisee or the Cable System in order to determine whether or not the Franchisee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Franchisee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Franchisee an opportunity to be present during such tests. In the event that such testing demonstrates that the Franchisee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Franchisee. In the event that such testing demonstrates that Franchisee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Franchisee upon Franchisee's request.~~

~~—"5.2 Books and Records. The Franchisee agrees that the City may review such of the Franchisee's books and records to be provided by Franchisee at Franchisee's Carson City Office, Carson City, Nevada, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Franchisee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature.~~

~~—"Section 6 Insurance, Indemnification, and Bonds or Other Surety~~

~~—"6.1 Insurance Requirements. Franchisee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, General Comprehensive Liability Insurance in the amount of \$1,000,000 for bodily injuries, (including accidental death) to any one person, and subject to the same limit for each person in amount not less than \$300,000 on account of any one occurrence, and Property Damage Liability Insurance in an amount not less than \$500,000 resulting from any one occurrence. Said insurance shall designate the City as an additional named insured. Such insurance shall be non-cancellable except upon thirty (30) days prior written notice to the City. Franchisee shall make all reasonable efforts to provide the City with written proof of insurance when this franchise agreement is considered by the Board on first reading.~~

~~—"6.2 Indemnification. The Franchisee agrees to indemnify, save and hold harmless and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury, (including accidental death), which arise out of the~~

~~Franchisee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs.~~

~~"6.3 Bonds and other Surety. Except as expressly provided herein, Franchisee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The City acknowledges that the legal, financial and technical qualifications of Franchisee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Franchisee and City recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the City agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The City shall require a bond or letter of credit in an aggregate amount of \$25,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. This bond or letter of credit may be proceeded against by City following written notice by City that Franchisee has not properly restored a public way or ways in accordance with section 3.2 of this Franchise Agreement.~~

~~"Section 7 Enforcement and Termination of Franchise~~

~~"7.1 Notice of Violation. In the event that the City believes that the Franchisee has not complied with the terms of the Franchise, it shall notify Franchisee of the exact nature of the alleged non-compliance.~~

~~"7.2 Franchisee's Right to Cure or Respond. Franchisee shall have thirty (30) days from receipt of the notice described in Section 7.1 to (a) respond to the City contesting the assertion of non-compliance, or (b) to cure such default or, in the event that, by the nature of 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 that they will be completed.~~

~~"7.3 Public Hearing. In the event that Franchisee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Franchisee is notified of the alleged default pursuant to Section 7.1, the City shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Board which is scheduled at a time which is no less than five (5) business days therefrom. The City shall notify the Franchisee of the time and place of such meeting and provide the Franchisee with an opportunity to be heard.~~

~~"7.4 Enforcement. Subject to applicable federal and state law, in the event the City, after such meeting, determines that Franchisee is in default of any provision of the Franchise, the City may:~~

~~—"a) Foreclosure on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default;~~

~~—"b) Commence an action at law for monetary damages or seek other equitable relief;~~

~~—"c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or~~

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

~~—"The Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance.~~

~~—"7.5 Acts of God. The Franchisee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.~~

~~—"Section 8 Unauthorized Reception~~

~~—"8.1 Misdemeanor. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electronically, acoustically, inductively or otherwise, with any part of the Cable System without the express consent of the Franchisee. Further, without the express consent of Franchisee, it shall be a misdemeanor for any person to tamper with, remove or injure any property, equipment or part of the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the City shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this Section 8.1.~~

~~—"Section 9 Miscellaneous Provisions~~

~~—"9.1 Documents Incorporated and Made a Part Hereof. The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between them, the document of latest date shall govern:~~

~~—"a) Any enabling provision contained in the Carson City Charter in existence as of the date hereof; and~~

~~"b) Any proposal submitted by Franchisee pursuant to a Franchise renewal procedure, as amended and supplemented during the Franchise renewal negotiation process;~~

~~"c) Any franchise agreement between Franchisee and Franchising Authority reflecting the renewal of the Franchise, if any;~~

~~"d) Nevada Revised Statutes Chapter 711 and the Federal Cable Act (PL98-549).~~

~~"9.2 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject and supersede or preclude the exercise of the like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.~~

~~"9.3 Actions of City. In any action by the City or representative thereof 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.~~

~~"9.4 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses to the City shall be addressed as follows: Clerk Treasurer of Carson City, 2621 Northgate Lane, Carson City, Nevada; with a copy to City Manager of Carson City, 2621 Northgate Lane, Carson City, Nevada. The notices or responses to the Franchisee shall be addressed as follows: ATTENTION: "Legal Department," addressed to the Franchisee, c/o T.C.I. of Nevada at 5455 South Valentia Way, Englewood, Colorado, 80011 and T.C.I. of Nevada, 1802 N. Carson Street, Carson City, Nevada. The City and the Franchisee may designate such other address or addresses from time to time by giving notice to the other.~~

~~"9.5 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.~~

~~"9.6 Severability. If any Section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section,~~

~~sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.~~

~~"9.7 Complaints. Franchisee shall provide a 24-hour a day telephone hot line for reporting service problems. Franchisee shall log all complaints by subscribers in writing and include the name of the subscriber, time/date of complaint and disposition of claim. Franchisee shall provide City with copies of the above log sheets on demand.~~

~~"9.8 PEG Channel. Franchisee and City shall develop and adopt a written public access policy within 60 days of the effective date of this franchise. No local origination studio shall be required without 12 months prior written notice by City. On the giving of such notice negotiations and discussions shall be entered into."~~

~~(Ord. 1987-21 § 3, 1987).]~~

5.01.000 Statutory Obligation of Franchisees toward School District.

1. The Carson City Board of Supervisors may grant to any person, company, corporation or association the franchise, right and privilege to construct, install, operate and maintain electric light, heat and power lines, gas and telephone lines, and all necessary or proper appliances used in connection therewith or appurtenant thereto, in any streets, alleys, avenues and other places within the City, and along the City's public roads and highways, pursuant to NRS 709.050 to 709.170, inclusive.

2. The Carson City Board of Supervisors may not impose any terms or conditions on such a franchise, right and privilege mentioned above for the provision of telecommunication service as defined at NRS 711.135 or interactive computer service as defined at 47 U.S.C. § 230(f)(2), other than concerning the placement and location of the lines and fees imposed for a business license or the franchise, right or privilege to construct, install or operate such lines.

3. Those entities who have been granted by the Carson City Board of Supervisors a franchise, right and privilege to construct, install, operate and maintain electric light, heat and power lines, gas and telephone lines, are required to file with the City's recorder an agreement to pay annually, for the benefit of the school district, 2 percent of their net profits.

5.02.010 Video Service Providers.

1. Every business entity providing video service within Carson City as defined by NRS 711.141 must obtain a certificate of authority issued by the Secretary of State pursuant to NRS Chapter 711. A fee pursuant to NRS 711.670 shall be paid by each video service provider to Carson City not later than 30 calendar days after the end of each calendar quarter and shall be five percent of such business entities' total gross receipts. Chapter 711 of the NRS is incorporated in this Chapter.

2. "Total gross receipts" means "gross revenue" as defined by NRS 711.066, as amended.

3. A license or franchise fee not received by Carson City, or postmarked within 30 calendar days after the end of each calendar quarter, shall be delinquent and the business entity that is subject to this ordinance shall pay Carson City, in addition to the fee, a penalty of two percent per month of the delinquent amount.

4. A business entity that is subject to this section of the Code shall, not later than 30 calendar days after the end of each calendar quarter, provide to Carson City a statement of the amount of revenue it derived during that calendar quarter from the sale of video services to its customers located within Carson City.

5. Rights-of-way:

a. Subject to state law including NRS 711.640, the provisions contained herein, and any other applicable provisions of the Code, licensees shall have a nonexclusive revocable privilege to construct, install, operate and maintain communications lines in, under, along, over and across public ways in Carson City. As used herein, the term public ways means the surface of and the space above and below any public street, sidewalk, rights-of-way, alley, right-of-way easements, or other public way of any type.

b. Construction or installation in the public ways shall be subject to the provisions contained in Chapters 11.08 and 11.12 of the Code, the latest adopted edition of the Standard Specifications for Public Works Construction, the Standard Details for Public Works Construction, the Carson City Public Works Design Manual and the Carson City Standard Details. Such

publications shall be available for public inspection and review at the office of the Carson City Public Works Department.

c. A business entity that is subject to this Section of the Code shall submit construction drawings for Carson City approval prior to performing any construction or installation in the public way. In the case of excavations in the public way, the business entity shall reimburse Carson City for related administrative costs, costs of asphalt replacement and the cost of full-time inspection of the construction or installation.

d. Upon completion of any construction or installation in the public way, the business entity must provide Carson City with "as built" construction drawings within 30 days of the completion of the work.

e. When directed by Carson City, in writing, and within the time limits set forth by Carson City, a business entity that is subject to this Section of the Code shall, at its own expense, perform any necessary alterations, repairs, maintenance or relocation of its property installed or located in the public way. If the business entity fails to perform the necessary alterations, maintenance, repairs or relocation as directed by Carson City, at its option Carson City may perform the necessary operations at the business entity's expense.

f. All excavations and other construction in the public ways shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by Carson City under the police and regulatory powers of Carson City.

6. A business entity that is subject to this Section shall maintain in full force and effect commercial general liability insurance with an insurance company licensed to do business in the State of Nevada.

a. Limits of liability shall be at least \$3,000,000.00 combined single limit per occurrence. Any deductibles or self-insured retentions must be approved by Carson City.

b. Carson City, including its officers, agents, and employees, must be named as an additional insured and the policy must contain a provision for 30 days notice to Carson City of cancellation, non-renewal, or material change.

Section II: If any clause, sentence, section, provision or part of this Chapter and Section of the Code shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair or affect the remainder of this Chapter and Section.

Section III: That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____ (month) _____ (day), 2015.

PROPOSED by _____.

PASSED _____ (month) _____ (day), 2015.

VOTE: AYES: SUPERVISORS: _____

NAYS: SUPERVISORS: _____

ABSENT: SUPERVISORS: _____

Robert Crowell, Mayor

ATTEST:

SUSAN MERRIWETHER
CLERK/RECORDER.

This ordinance shall be in force and effect from and after the ___ day of the month of _____ of the year, 2015.