



County of Santa Cruz

COUNTY ADMINISTRATIVE OFFICE

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 SUSAN MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

January 17, 2006

AGENDA: January 24, 2006

BOARD OF SUPERVISORS
 County of Santa Cruz
 701 Ocean Street
 Santa Cruz, California 95060

CHARTER COMMUNICATIONS

Dear Members of the Board:

The County's Settlement Agreement with Charter Communications, LLC cures Charter's various breaches and misdeeds and provides for the County adopting a resolution which extends Charter's existing franchise, rate order and forbearance period; rescinds, revokes and vacates Resolutions Numbers 445-98, 136-2004, 278-2005; and approves the 1998 transfer of control. The attached Resolution, which was prepared by Special Counsel, includes the necessary actions.

It is RECOMMENDED that your Board adopt the attached Resolution of the Board of Supervisors of the County of Santa Cruz Relating to the Extension of the Franchise Agreement Granted to Charter Communications, LLC and Certain Other Matters.

Very truly yours,

Susan A. Mauriello
 County Administrative Officer

Attachment

cc: County Counsel
 Auditor-Controller
 Bill Marticorena
 Jeff Melching

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA**

RESOLUTION NO. _____

On the Motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA
CRUZ (THE "COUNTY") RELATING TO THE EXTENSION OF THE FRANCHISE
AGREEMENT GRANTED TO CHARTER COMMUNICATIONS PROPERTIES, LLC
("CHARTER") AND CERTAIN OTHER MATTERS**

WHEREAS Chapter 5.24 of the Santa Cruz County Code (the "Code") establishes a framework for the regulation of cable television within the jurisdictional boundaries of the County;

WHEREAS the Board of Supervisors of the County of Santa Cruz (the "Board") approved that document entitled "Franchise to Provide Cable Television Services Between the County of Santa Cruz, California and Charter Communications Properties, LLC", dated as of May 19, 1998 (the "Franchise"), whereby Charter was granted a franchise to construct, reconstruct, and operate a cable television system within certain portions of the County for a term of ten (10) years, commencing on May 19, 1998;

WHEREAS the Board approved two additional documents on May 19, 1998 entitled (i) "Agreement Relating to the Consent of the County of Santa Cruz to the Assignment and Transfer of the Franchise Agreement Granted to Sonic Cable TV Corporation" (the "Transfer Agreement") and (ii) "Rate Order of the County of Santa Cruz, California (the "County") Relating to the Prescription of Maximum Permitted Rates" (the "Rate Order") (the Code,

Franchise, the Transfer Agreement and the Rate Order are sometimes collectively referred to herein as the “Franchise Documents”);

WHEREAS certain provisions of the Code require the County’s prior consent for any transfer of control (as defined therein) of the Franchise or franchisee, and the Franchise Documents provide that certain penalties and remedies may be available to the County in the event that a transfer of control occurs without the County’s prior consent;

WHEREAS Charter submitted an application in August 1998 requesting the County’s consent to a change in control that would result from a nationwide transaction pursuant to which Paul G. Allen would acquire a controlling interest in Charter Communications, Inc. (“CCI”) (the “Transfer of Control”);

WHEREAS the Board adopted Resolution No. 445-98 on December 1, 1998, denying consent to the Transfer of Control;

WHEREAS the Transfer of Control occurred on or about December 23, 1998 without the County’s prior consent;

WHEREAS the County notified Charter by letter dated March 9, 1999 that the Transfer of Control, unless cured, would constitute a material breach of the Franchise Documents, and of other breaches which the County alleged had occurred as of that date (the “March 1999 Breach Notice”);

WHEREAS Charter filed suit against the County in the United States District Court for the Northern District of California in early 2000 (*Charter Communications, Inc., et al. v. County of Santa Cruz*, United States District Court, Northern District of California Case No. C 99 1874 WHA), challenging the County’s denial of consent to the Transfer of Control (the “Federal Litigation”);

WHEREAS the County contended (and Charter denied) that Charter was obligated under the terms of the Franchise to indemnify the County for its costs incurred in the Federal Litigation, including without limitation attorneys' fees, consultant and expert fees, staff time, court costs, etc.;

WHEREAS Charter contended (and the County denied) that it fully satisfied its obligations under the Franchise Documents regarding the rebuild of its cable system serving portions of the County on or before January 1,2000;

WHEREAS Charter contended (and the County denied) that it has fully satisfied its obligations under Section 14.D(4) of the Franchise;

WHEREAS Charter increased its rate for the Basic Service Tier effective January 1,2000 and has implemented rate increases for the Basic Service Tier on several occasions thereafter, which rate increases the County contended (and Charter denied) violate the terms of the Rate Order;

WHEREAS the County notified Charter by letter dated October 24, 2000 that it believed that Charter had committed additional material breaches of the Franchise Documents by, among other things, (allegedly) (i) failing to satisfy the requirements of Section 14.D(4) of the Franchise; (ii) failing to satisfy the requirements of Section 14.D(5) of the Franchise; (iii) violating the terms of the Rate Order; (iv) failing to properly and timely complete the Rebuild of the cable system serving portions of the County; (v) failing to properly certify completion of the Rebuild; and (vi) failing to provide the County with certain documentation concerning the Rebuild (the "October 2000 Breach Notice");

WHEREAS Charter disputed that it had materially breached any provision of the Franchise Documents;

WHEREAS the Board initiated a public hearing on April 29, 2003 to consider whether Charter had committed material breaches of the Franchise Documents (as alleged in the March 1999 Breach Notice and the October 2000 Breach Notice) and, if so, what remedy should be imposed (the "Breach Hearing");

WHEREAS during the course of the Breach Hearing, County staff contended (and Charter denied) that Charter had "practiced a material fraud upon the County" within the meaning of Section 5.24.13(A)(4) of the Code;

WHEREAS the Board closed the Breach Hearing on May 4, 2004 and adopted Resolution No. 136-2004 in which the Board, among other things, (i) concluded that certain material breaches of the Franchise had occurred, (ii) assessed liquidated damages in relation thereto, (iii) declared a complete forfeiture of the Letter of Credit and Performance Bond, (iv) found that Charter "had practiced a material fraud" upon the County within the meaning of Section 5.24.13(A)(4) of the Code, and (v) reserved to the Board the right to later terminate or revoke the Franchise (the "Original Breach Resolution");

WHEREAS, the parties have reached a full and final settlement of any and all disputes between them which (1) existed as of December 14, 2005 and (2) arise from or relate to the Franchise Documents or Charter's operation of a cable system within the County (the "Settlement Agreement"); and

WHEREAS the term of Charter's Franchise with the County is currently scheduled to expire on May 18, 2008, and Charter and the County desire to extend the term of Charter's Franchise, and the operative term of the Rate Order, to operate a cable system within the County in the manner and for the time set forth herein.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals are hereby determined to be true, correct and accurate.

Section 2. Settlement Agreement. The Settlement Agreement is hereby approved and ratified in its entirety.

Section 3. Franchise Extension.

a. First Extension. The term of the Franchise and the Franchise Documents are hereby extended from May 19, 2008 until May 19, 2011 ("First Extension").

b. Second Extension. At Charter's sole option, the term of the Franchise and the Franchise Documents may later be extended from May 19, 2011 to May 19, 2014 ("Second Extension"), regardless of whether Charter has made a 626 Request. Charter may exercise the option for the Second Extension by submitting written notice to the County between May 19, 2008 and November 19, 2008. Upon the submission of such written notice, the term of the Franchise *shall automatically be extended* to May 19, 2014, without any further consideration by Charter or any further action by Charter, the County or the Board; no further consent or approval is required by the County or the Board, and any pending 626 Request by Charter to the County shall be deemed withdrawn. If Charter exercises its option for the Second Extension, and thereafter wishes to exercise its rights under Section 626 of the Communications Act for a renewal of the Franchise then scheduled to expire on May 19, 2014, it shall submit to the County a written 626 Request between May 20, 2011 and November 19, 2011. Charter's 626

Request, if submitted to the County between May 20, 2011 and November 19, 2011, shall be deemed timely in all respects.

c. Extension of Rate Order and Forbearance Period. The terms and conditions of the Rate Order are hereby extended to run concurrently with the Franchise, as extended by the First Extension and potentially extended by the Second Extension, and shall expire upon the expiration of the Franchise Agreement. The Forbearance Period, as that term is defined in Section 9(b) of the Transfer Agreement, is hereby amended to coincide with the term of the Franchise Agreement, as extended by the First Extension and potentially extended by the Second Extension.

d. No other changes to Franchise Documents. Except as provided herein, all other terms, conditions and obligations of the Franchise shall remain unchanged and in full force and effect.

Section 4. Resolution No. 445-98. Resolution No. 445-98, and each and every finding and conclusion therein, is hereby revoked, rescinded, and vacated in its entirety.

Section 5. Approval of Transfer of Control. The Transfer of Control is hereby approved pursuant to the relevant provisions of the Franchise and the Code.

Section 6. Resolution No. 136-2004. Resolution No. 136-2004, and each and every finding and conclusion therein, is hereby revoked, rescinded and vacated in its entirety.

Section 7. Resolution No. 278-2005. Resolution No. 378-2005, and each and every finding and conclusion therein, is hereby revoked, rescinded and vacated in its entirety.

Section 8. This Resolution shall immediately be effective upon its adoption.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,
State of California this ____ day of _____, 2006, by the following vote:


AYES: Supervisors:
NOES: Supervisors:
ABSENT: Supervisors:
ABSTAIN: Supervisors:

Chairperson of the Board of Supervisors

Attest:

Clerk of the Board

APPROVED AS TO FORM:



Special Counsel