

W. 7. b.

Memorandum Date: July 11, 2006
Board Order Date: July 26, 2006

TO: Board of County Commissioners

DEPARTMENT: CAO/Economic Development Standing Committee

PRESENTED BY: Mike McKenzie-Bahr, Community and Economic Development Coordinator

AGENDA ITEM TITLE: IN THE MATTER OF A REQUEST FROM CHARTER COMMUNICATIONS FOR RELEASE OF FRANCHISE DUTIES IN THE MAPLETON AREA AND SETTING A PUBLIC HEARING FOR INPUT REGARDING THE TERMINATION OF CHARTER CABLE TELEVISION SERVICE IN MAPLETON.

I. MOTION

Move to request that Charter Communications continues service in Mapleton, that the Board set a public hearing for Mapleton cable television subscribers and for staff to work with Charter Communications to explore long term solutions for television service in Mapleton.

II. AGENDA ITEM SUMMARY

Charter Communications is planning to discontinue providing cable television service in Mapleton. In a letter to the County, Charter states that "increase costs of maintenance...couple with an increase in competition and loss in subscribers" is the reason for ending the service. According to Charter they have less than 50 subscribers in Mapleton.

Charter informed its subscribers in Mapleton about the end of service in a letter dated July 11, 2006. The termination work will start August 15, with customers being shut off by November 15.

Under the franchise agreement, Lane County grants Charter the right to provide cable television service in the unincorporated areas of the County. In exchange for that right, Charter pays the County a franchise fee (\$874 annually for Mapleton) and has an obligation to provide cable television service to residents in the franchise areas who want it.

There is no section of the franchise agreement that deals with the ending of service. However, within the sections that govern how television service is provided, there are clearly service elements, like providing new service connections, that Charter could no longer meet in Mapleton if the service there is ended.

Which is why Charter has requested that the County agree by signature to the termination and to release Charter from all duties set forth in the cable franchise agreement with regards to Mapleton.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Lane County has a 15-year franchise agreement with Charter Communications that covers much of the rural area of the County including Mapleton. That agreement has one more year before it ends. Charter and the County are currently going through negotiations for a 5-year extension of the franchise agreement.

Mapleton is among the nine areas of the County served by Charter. The cable system in Mapleton is a stand-alone system that is not connected to the other Charter service areas. Charter has shown declining subscriber rates in Mapleton and rising costs. In addition the system there is older and the number of channels being offered is fewer than in other service areas. Charter states "that it is no longer commercially practical to maintain cable operations within the Mapleton area."

In two meetings with County staff, Charter representatives have stated that they have searched for some other operator to take over the system, but have been unable to find one as there are not enough subscribers to pay for the operations and maintenance of the present system.

As part of the service termination procedure, Charter has requested the County agree to the Mapleton cable service termination and exempt Charter from the franchise agreement requirements for that area.

B. Policy Issues

The board is faced with several policy issues in this situation.

- 1) Franchise Agreement changes – Does the board want to make franchise agreement changes outside of the franchise agreement extension process currently occurring?
- 2) Mapleton user needs – Does the Board want to take action on an item impacting customers without hearing from the customers?

- 3) Business considerations – The Board may wish to consider whether the franchise operation is one business, or is it several cable systems/service areas to be dealt with independently of one another.

C. Board Goals

Lane County Strategic Plan goals include the following outcomes that are affected directly and indirectly by cable television services: 1) “work for a strong regional economy” - this is enhanced when people in all communities of the county have access to meetings of the Board of Commissioners that promote economic development; 2) providing “opportunities for citizen participation in decision-making, voting, volunteering, and civic and community involvement . . .” are directly affected by education and government information on cable television channels; 3) “ensuring the public’s safety . . . emergency preparedness, [and] law enforcement . . .” is facilitated through public information channels. Many other public benefits are derived when public channels are available in a uniform way wherever cable television facilities exist.

D. Financial and/or Resource Considerations

The financial consideration to County finances regarding this issue is minimal, as the termination of service in Mapleton will reduce the amount of franchise fees paid by Charter to the county by only \$874.

The resource consideration may be much greater as the loss of cable television service in any area of the County minimizes the ability of the County and others to share information with people in that area. The Board has directed staff to work with Charter to get the BCC meetings on to the Charter system. The airing of meetings will occur in the near future for most of the Charter areas. The one area that a solution has not been found for is Mapleton, because it is a stand-alone system. However over the long-term, if cable television service is continued in that area a solution to have the meetings play on the Mapleton system can be found. Without cable television service in Mapleton, in all likelihood the BCC meetings will never be shown there.

In addition, under the cable franchise, Charter is to provide service to public buildings, like fire stations and schools. If the service in Mapleton goes away, we do not currently know what the impact on those resources would be.

E. Analysis

The end of service to an area is not directly dealt with in the franchise agreement. However service to customers is dealt with throughout the agreement.

In Article IV, Section R. Consumer Protection, the franchise agreement reads: ... the Grantee shall not, without good cause, fail to make available cable service to prospective subscribers nor shall the Grantee terminate service without good cause. Service shall be provided to all interested customers where economically feasible..."

Within the franchise agreement, "good cause" is not defined. Nor is the term "economically feasible" defined.

There are other provisions of the agreement that require the provider to "make cable television service available to any resident within the franchise area who requests connection..."

The Board has heard in writing from Charter regarding its reasons for terminating service. The Board has not heard from cable television users in Mapleton about how the termination of service will impact them.

F. Alternatives/Options

The Board has numerous options to consider as follows:

Item A) The request from Charter Communications for the signing of a letter allowing the termination of service in Mapleton:

Option 1: The Board could choose not to sign the letter and request that Charter continue service in Mapleton.

Option 2: The Board could choose not to sign the letter and let the termination process continue without the County releasing Charter from its duties under the franchise agreement.

Option 3: The Board could sign the letter and let the termination proceed.

Option 4: Explore legal options to facilitate continuation of service.

Item B) The impact on cable television subscribers of the termination of Mapleton service.

Option 1: The Board can set a public hearing in Eugene as part of its regular meeting to take testimony from Mapleton cable television subscribers to assess how the termination of the system will impact the residents of Mapleton.

Option 2: The Board can direct County staff to hold a public hearing in Mapleton or staff can do an outreach effort to cable television subscribers in Mapleton to assess how Charter Cable's termination of the cable television system will

impact them. Such outreach may be difficult as Charter has refused to give us a list of cable subscribers in that area, claiming that is propriety information.

Option 3: The Board can wait for feedback from cable television subscribers in Mapleton to see if the end of service is a problem for them.

Item C) Changes in the Franchise Agreement with regards to service areas

Option 1: The Board can direct staff to work with Charter Communications to incorporate franchise agreement changes into the franchise agreement extension process.

Option 2: The Board can take no position on when franchise agreement changes should occur.

IV. TIMING/IMPLEMENTATION

Charter Communications has already contacted its subscribers in Mapleton to inform them of the planned termination of service. That termination is scheduled to occur between August 15 and November 15. Charter hopes to have the demolition of the system completed before heavy rains or snow make the task more difficult.

If the Board sets a public hearing it could be held on August 15, which is the week Charter is set to begin the termination process.

V. RECOMMENDATION

Staff recommends that the Board adopt the motion in this report.

VI. FOLLOW-UP

If the Board chooses, a public hearing will be set so the Board can hear first hand from Mapleton cable television subscriber about the issue. Staff will keep the Board informed regarding the termination process with periodic updates.

VII. ATTACHMENTS

- 1) Board Order
- 2) Letter from Charter Communications dated July 11 to Mr. Michael McKenzie-Bahr
- 3) Letter from Charter Communications dated July 11 to cable subscribers

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY OREGON

ORDER NO.) **IN THE MATTER OF A REQUEST FROM**
) **CHARTER COMMUNICATIONS FOR RELEASE**
) **OF FRANCHISE DUTIES IN THE MAPLETON**
) **AREA AND SETTING A PUBLIC HEARING**
) **FOR INPUT REGARDING THE TERMINATION**
) **OF CHARTER CABLE TELEVISION SERVICE IN**
) **MAPLETON.**

WHEREAS, Lane County is a local franchise authority for the unincorporated areas of the County, including about 4,000 Charter Communications subscribers in and around communities across Lane County's 4,600 square mile area;

WHEREAS, the Mapleton area falls under Lane County's franchise authority;

WHEREAS, Charter Communications has notified the County that Charter plans to terminate service in Mapleton;

WHEREAS, Charter Communications has requested the County agree to the termination and release Charter from all duties and liabilities set forth in the franchise agreement for the Mapleton area :

NOW THEREFORE IT IS HEREBY RESOLVED AND ORDERED that the Lane County Board of Commissioners does hereby request that Charter Communications does not terminate service in Mapleton;

IT IS FURTHER ORDERED that a public hearing be set for August 15 at 1:30 p.m. in Harris Hall to hear testimony from Mapleton cable television subscribers.

DATED this 26th day of July, 2006

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date: 7/21/06 for county
Jerry E. Jacobs
OFFICE OF LEGAL COUNSEL



July 11, 2006

Hand delivered

Mr. Michael McKenzie-Bahr
Community & Economic Development Coordinator
Lane County
125 E. 8th Ave.
Eugene, OR 97401

RE: Ordinance No. 6-92 granting Falcon Cable Systems Company II, d/b/a Charter ("Charter") a Cable Franchise and the right to construct, operate and maintain a cable distribution system in the unincorporated areas of Lane County, Oregon ("County") right-of-way (hereinafter referred to as the "Charter Cable Franchise").

Dear Mr. McKenzie-Bahr:

Pursuant to the Charter Cable Franchise and pursuant to our meeting on June 20, 2006, please let this letter serve as Charter's notification to the County of Charter's intention to terminate operations of its cable distribution system within the Mapleton area effective September 15, 2006 ("Effective Date of Termination").

As you know and as we discussed, ever since Charter assumed responsibilities for maintaining and operating the cable system serving the Mapleton area in 1999, Charter has effectively served its customers in the Mapleton area and has been in substantial compliance with the terms set forth in the Charter Cable Franchise. Charter has over the years valued its relationship with Lane County in the Mapleton area and its customers. However, as you also know, there has recently been a change in economic circumstances that are particular to the Mapleton area which are greatly affecting our ability to serve our customers in the Mapleton area (i.e., the increased costs of maintenance of our plant coupled with an increase in competition and loss in subscribers). After giving great consideration to the overall viability and effectiveness of the cable system's current operations within the Mapleton area, Charter has concluded that due to a change in economic conditions, Charter finds that it is no longer commercially practical to maintain cable operations within the Mapleton area. Thus, Charter shall terminate its cable services as of the aforementioned Effective Date of Termination.

Please do note that Charter shall provide its customers residing within the Mapleton area with thirty (30) days prior written notice (see attached letter) of termination and Charter shall continue to provide cable services to its existing customers at the current cable rate card cost until the Effective Date of Termination. Thereafter, Charter shall provide services to its existing

customers "for free" until Charter has completely removed its cable plant from the City's right-of-way, with said removal to be completed by November 30, 2006. Charter shall also work with the County to effectively remove its cable plant from the County right-of-way and Charter shall continue to adhere to its financial commitments to the County up until the Effective Date of Termination as those commitments are set forth in the Charter Cable Franchise agreement and/or which are set forth in Federal and State law (i.e., the payment of any applicable taxes, fees and assessments).

Charter kindly requests that Lane County (Mapleton area) acknowledge and agree to the termination of the Charter Cable Franchise as of the Effective Date of Termination as set forth herein by having an authorized representative for the County affix his/her signature below. By executing this document, the County hereby releases Charter from any and all duties and liabilities to the County and its residents pursuant to and/or which are set forth in the Charter Cable Franchise, including, but not limited to, the operation and maintenance of the cable plant in the County right-of-way, as of the Effective Date of Termination.

We would like to thank the County for assisting Charter in its efforts to provide cable services to the residents of the Mapleton area, OR. Please do note that if the particular economic conditions relative to the Mapleton area were to change in the future, Charter would welcome the opportunity to serve the residents of the Mapleton area once again. Until such time, Charter would like thank Lane County, OR for its commitment and cooperation over the past years.

As always, if you have any questions or comments regarding the aforementioned, please feel free to contact me directly at (360) 828-6615.

Sincerely,



Linda Kimberly
General Manager

Charter Northwest Key Market Area (NW KMA) - Sahalee Group

cc: Petra A. Redchuk, Director, Government Affairs - Charter NW KMA
Charter Corporate Government Affairs Dept. - Files

Lane County (Mapleton area), OR

Community Cord.

Witness

Date

Date



July 11, 2006

Dear:

Over the years Charter has valued its relationship with our customers in Mapleton, OR. Unfortunately recent changes in economic circumstances have greatly affected our ability to serve our customers in the area.

In particular, we have experienced an increased cost to maintain our plant. That, coupled with intensified competition from satellite providers and a loss in subscribers, has forced us to consider the overall viability of offering cable television services in Mapleton, OR. Charter has concluded it is no longer economically practical to maintain cable operations in Mapleton, OR. We regret to inform you that Charter will terminate cable services in Mapleton, OR as of August 15, 2006.

Demolition of our cable plant will begin on November 15, 2006. Although you may continue to receive services beyond August 15th and until the demolition is completed, you will not be billed for cable television services that you receive after August 15, 2006.

It has been our privilege to serve the community of Mapleton over the years. Should economic conditions change in the future, Charter would welcome the opportunity to serve you once again.

Sincerely,

A handwritten signature in cursive script that reads "Linda Kimberly".

Linda Kimberly
General Manager