ORDINANCE NO. 528

6-9-05

AN ORDINANCE FOR THE CITY OF WEST COLUMBIA, TEXAS, EXTENDING AND AMENDING THE CABLE TELEVISION FRANCHISE WITH CHARTER COMMUNICATIONS VI, L.L.C. FOR A TERM OF EIGHT (8) YEARS COMMENCING JANUARY 1, 2003 AND ENDING DECEMBER 31, 2010; CONTAINING VARIOUS TERMS AND CONDITIONS WITH REGARD TO THE FRANCHISE; WHICH IS OTHERWISE PURSUANT TO CHAPTER 20 OF THE CODE OF ORDINANCES OF THE CITY; PROVIDING FOR THE AUTOMATIC TERMINATION OF THE RIGHTS GRANTED BY THIS ORDINANCE IF NOT ACCEPTED BY THE GRANTEE WITHIN THIRTY (30) DAYS OF THE PASSAGE OF THIS ORDINANCE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES, POLICIES OR INFORMAL AGREEMENTS WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

Section One

Charter Communications VI, L.L.C. ("Charter" or "Grantee") is hereby granted an extension of the franchise granted to Falcon Video Communications L.P. by Ordinance No. 462 of the City of West Columbia, Texas, dated March 9, 1998, the original term of which expired on December 31, 2002 ("Franchise") pursuant to Chapter 20 of the Code of Ordinances of the City of West Columbia, Texas, upon the following terms and conditions:

[1] Charter acknowledges that is has been operating under an informal extension of the Franchise. The City and Charter stipulate and agree, for all purposes, that all activities of Charter within the City are deemed to have been under this Ordinance and Chapter 20 of the Code of Ordinances of the City, retroactive to January 1, 2003 and continuing to December 31, 2010.

[2] The extension Franchise extension granted under this Ordinance will automatically terminate unless written acceptance by the Grantee of the terms and conditions of this Ordinance is received by the City on or before thirty (30) days from the date of this Ordinance.

[3] Notice to the parties under this Ordinance shall be in writing and shall be by certified mail, return receipt requested, or by private delivery service such as Federal Express or U.P.S., addressed as follows:

To the City:

City of West Columbia
P. O. Box 487
West Columbia, Texas 77486
ATTN: City Manager

To the Grantee:

Charter Communications VI, L.L.C.
12405 Powerscourt Drive
St. Louis, MO 63131
Telephone: 314-965-0555
Facsimile: 314-965-6640
e-mail: sdunham@chartercom.com
Contact: Shannon Dunham, Esq.

[4] The Franchise, as amended, is expressly subject to the terms and conditions of Articles I and II of Chapter 20 of the Code of Ordinances of the City of West Columbia, Texas, as such Chapter exists as of the date of this Ordinance, a true and correct copy of which is attached to this ordinance as Exhibit "A" and is incorporated herein for all purposes. 6-9-05

[5] The requirement for the submission of a formal application under Sec. 20-9 of the Code of Ordinances of the City of West Columbia is waived.

[6] The requirement of the maintenance of a local office under Sec. 20-6C[3] of the Code is waived.

[7] Grantee has entered into an Asset Purchase Agreement ("Agreement") with McDonald Investment Company, Inc. ("MIC"), pursuant to which the Agreement will be assigned to MIC's affiliate, Texas Mid-Gulf Cablevision, L.P. ("Buyer") and thereafter the cable television system in City ("System") and the Franchise, as amended by this Ordinance, will transferred from Grantee to Buyer (the "Transfer"). Buyer has represented to the City that, subject to the lawful closing of the Transfer pursuant to the Agreement (the "Closing"), within two (2) years of the date of the Closing, Buyer shall offer the following new services within the City, subject to availability on commercially reasonable terms: digital video recorder services, High Definition Television service, and at least ten additional channels of programming (either analog or digital). Failure by Buyer to fully and timely comply with this Section shall not constitute grounds for termination, but may subject Buyer to monetary assessments for non-compliance as the City's sole remedy. Said monetary assessments shall not exceed $.25 (twenty five cents) per subscriber per month for the first ninety (90) days, $.50 (fifty cents) per subscriber per month for the second ninety (90) days, and $.75 (seventy five cents) per subscriber per month for each calendar quarter thereafter until such time as the violation and/or non-compliance are cured and remedied to the satisfaction of the City.

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City shall provide Buyer with ninety (90) days written notice prior to the imposition of any penalties pursuant to this paragraph. Said notice shall specify with particularity the violation alleged and shall provide Buyer with an opportunity to cure the alleged violation. In the event Buyer fails to cure the alleged violation, City may assess the monetary penalties provided herein without further notice to the Buyer. In the event the Transfer is not closed pursuant to the Agreement, this section shall be null and void.

[8] In the event the Transfer is closed pursuant to the Agreement, the contact name and address for Buyer shall be:

Texas Mid-Gulf Cablevision, L.P.
One Office Park Circle, Suite 300
Birmingham, Alabama 35223
Telephone: 205-879-0456
Facsimile: 205-879-0479
E-mail: wwmjr@wwminvest.com
Contact: William W. McDonald, Jr.

[9] Notwithstanding the requirements of section 20-21(a) of the Code of Ordinances, consent shall not be required for future transfers of the Franchise, the System or assets relating thereto to entities under common control with Texas Mid-Gulf Cablevision, L.P., provided the transferee or assignee files with the City a written statement, duly executed, accepting and agreeing to be bound by the terms of the Franchise and any other governing ordinances. For purposes of this section, "common control" shall mean ownership or control by William W. McDonald (or any legal entity controlled by him or owned primarily for the benefit of his wife and/or descendants) and/or William W. McDonald, Jr. (or any legal entity controlled by him or owned primarily for the benefit of his wife and/or descendants) of fifty percent (50%) or more of the entity.

Section Two

It is hereby declared to be the intention of the City Council that the several provisions of this Ordinance are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this Ordinance is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section Three

Any and all rules, ordinances, police regulations, resolutions and/or policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this Ordinance, shall be and are hereby repealed to the extent of such conflict and/or inconsistency. This Ordinance is adopted in reference to Chapter 20 of the Code of Ordinances of the City of West Columbia, Texas. In the event of any conflict or inconsistency between the specific terms of the grant of this Franchise and the terms of Chapter 20, this Ordinance shall control.

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Section Four

This Ordinance shall be effective from and after the date of its passage and approval, subject to automatic termination if not accepted in writing by the Grantee on or before thirty (30) days from the date of passage and approval.

PASSED and APPROVED this 9th day of May, 2005.

David Foster

DAVID FOSTER, Mayor
City of West Columbia

ATTEST:

Deborah J. Sutherland

DEBORAH SUTHERLAND,
City Secretary

ACKNOWLEDGED AND ACCEPTED:

Charter Communications VI, L.L.C.

By: Paul O'Kaffe
Dated: May 31, 2005