



TBNK AND SPECTRUM (CHARTER COMMUNICATIONS) AGREE ON RENEWED CABLE FRANCHISE

Introduction:

The TBNK Franchise Negotiation Committee has reached an agreement with SPECTRUM MID-AMERICA, LLC (a subsidiary of Charter Communications) on a renewed Cable TV Franchise Agreement, pending adoption by our Cities and the Fiscal Court. At a special meeting on May 31st, the Board voted to accept Spectrum's official bid proposal and recommend adoption of the proposal by our member Cities and the Fiscal Court (hereinafter referred to as the "**Proposed Spectrum Franchise Agreement**"). The bid from Spectrum was in response to an RFP issued by TBNK in April in order to satisfy state franchising requirements. This Proposed Spectrum Franchise Agreement mirrors the agreement we negotiated and entered with altafiber (Cincinnati Bell) in December of 2021, except for a few changes/accommodations made to address some concerns of Spectrum.

Given today's Cable TV market with increased competition and recent significant changes in federal franchising laws and regulations, both this new franchise with Spectrum and the 2021 franchise with altafiber are more streamlined and have a lighter touch than our previous cable TV franchises and include reduced requirements in various provisions.

For instance, any issuance of a new or renewed franchises has to adapt to the FCC's 2019 Third Report and Order on Cable Franchising and the 2021 ruling of the U.S. Sixth Circuit Court of Appeals relating to the said Order, both of which reduces or eliminates several things that local franchising authorities could have required in a franchise. We also had to incorporate provisions to deal with the Kentucky Telecommunications Tax Law, which complicates some things.

Having worked through all of these new issues cooperatively with altafiber (Cincinnati Bell) at the time we completed the renewal process with altafiber, we employed the ensuing altafiber (Bell) Franchise Agreement as the model or starting point in our negotiations with Spectrum. Our goal has been to retain as much for our Cities and County as we can, while recognizing Spectrum's market/business concerns and adapting to the new federal franchising laws and regulations. At the outset, we did agree with Spectrum that we would discuss massaging or modifying the altafiber Franchise Agreement in order to address some of Spectrum's continuing concerns. This required considerable cooperation from both parties and a united effort to find for both parties win/win compromises and creative solutions.

The Proposed Spectrum Franchise Agreement is about half the number of pages as the 1997 Spectrum (Charter/Insight/TKR) Franchise Agreement. However, from the original draft first

submitted by Spectrum in 2016 to the draft that we have now, we have improved a lot of areas of the agreement and are reasonably satisfied with most of the provisions contained in the final document.

The following is a summary that highlights the primary areas of interest in the Proposed Spectrum Franchise Agreement.

EXECUTIVE SUMMARY OF RENEWED FRANCHISE AGREEMENT

A. Main Provisions:

1. **FRANCHISE FEE** – The Franchise Fee is set at five percent (5%) of the Gross Revenues derived from the operation of Spectrum’s Cable System, which is the maximum allowed by federal cable law. Franchise Fees shall be payable quarterly for each calendar quarter [March 31, June 30, September 30, and December 31], no later than forty-five (45) days after the quarter.
 - a. **BUNDLED SERVICES** - If Spectrum bundles Cable Service with Non-Cable Services, they agree that they will not intentionally, unfairly, or unlawfully allocate such revenue for the purpose of evading the Franchise Fee payments under this Franchise.
 - b. **PAYMENT OF MULTICHANNEL VIDEO PROGRAMMING SERVICES TAX – OR FRANCHISE FEES** – We added provisions to make clear that the cities/county can (and that most Cities have) opt-out of the Hold Harmless Distribution Fund managed by the Kentucky Revenue Department (the “**Hold Harmless Fund**”) and instead collect franchise fees directly from the cable operator. We also reserved the right for the Cities/County to opt-back-into the Hold Harmless Fund in the future and receive their local historical Hold Harmless distribution amount, as opposed to receiving direct franchise fee payments from Cable Operators, should they believe it would be advantageous to do so. [We recommend that you have this type of provision in every telecom agreement, whether wireline, small wireless facility or Cable TV that clearly maintains your rights. Then you need to monitor how much revenue that you are collecting for Cable TV fees and other telecom fees compared to your city's historical amount that you had collected from the State Hold Harmless Fund. Also, you should note that you need to include all telecom fees in this comparison, since opting into the state Hold Harmless Fund requires that you cease collecting fees for any/all type(s) of telecom and cable services.]
 - c. **OPT-OUT APPLICATION-FRANCHISE FEE; LIMITATION ON TRANSITIONS** - Spectrum agrees to cooperate in good faith with the Cities/County in making any such Opt-Outs or Opt-Ins to the Hold Harmless Fund. [We included this because, for any decision to Opt-in or Opt-out of the

state Hold Harmless Fund, you need to provide the prescribed notice to all telecom and Cable TV providers from whom you collect any fees and to the Department of Revenue to coordinate any such change. The DOR says that they need a 90-day notice before any effective date for resuming the collection of local franchise fees, and that the cable companies (and other communications providers) will likely need a similar amount of time to alter their accounting processes and databases.]

Unlike the altafiber Franchise Agreement (which is limited to three (3) elections only), there is no limitation in this Proposed Spectrum Franchise Agreement as to the number of times a City/County can Opt-In or Opt-Out of the Hold Harmless Fund.

2. **TERM OF FRANCHISE** - The initial term of the proposed Spectrum Franchise shall be from the date of the Effective Date for a period of five (5) years (the “**Initial Term**”). At that point, the Franchise shall be automatically renewed for an additional five (5) year period (the “**Renewal Term**”), unless six (6) months prior written notice is given by the Grantor or Grantee that either Party does not wish to exercise the automatic renewal. If either Party chooses not to automatically renew this Franchise, then at the end of the Initial Term, Grantee’s ability to provide Cable Services under this Franchise shall continue on a month-to-month basis - provided that, in such event, Spectrum demonstrates earnest efforts towards good faith negotiations to arrive at a mutually agreeable franchise. In the event, however, the Parties are unable to arrive at a mutually agreeable franchise prior to the six (6) month period, which begins with the thirty-sixth (36) month before the expiration date of the Renewal Term, either Party may initiate federally outlined formal and informal franchise renewal proceedings under Section 626 of the Cable Act (47 U.S.C. §546) by providing written notice to the other Party of its intent.
3. **POLICE POWERS** – This provision is identical to the one contained in the altafiber Franchise Agreement. When we negotiated the altafiber Franchise, the Mission Group wanted strong protection for police powers. We also tied this provision to Kentucky Statutes on “home rule” and noted its power to enact laws or ordinances addressing rights-of-way and other subjects or topics that are within the jurisdiction of said Cities/County. Specifically, in the case of a conflict between a provision in the Franchise Agreement and any adopted rights of way law or ordinance currently in place, the law or ordinance would prevail. Municipalities may also adopt any future rights of way ordinance, but any specific provisions in such a future ordinance that are specifically addressed in the franchise would be resolved in favor of the franchise. Between being able to enforce any existing ordinance in its entirety, and the core rights of way provisions included in the Franchise Agreement, along with the ability to adopt any future ordinance, the cities should be able to fully exercise their police powers, with these few rights of way provisions being agreed to as limits on just those specific items for any future ordinances.

4. **RELIEF FROM THIS FRANCHISE** – Section 23 (Relief From This Franchise), has two main sections to consider. Section 23B deals only with relief that may be due traditional Cable System operators, who were overbuilt by another cable operator and given a more favorable franchise agreement. A version of this provision has been in our past franchises, and we are comfortable with this Section 23B.

However, Subsection 23C introduced an expanded concept that deals with the idea of potentially providing some relief to Spectrum related potentially to a broader group of possible Multichannel Video Programming Distributor (MVPD) Systems. Larger cable television operators across the country, including altafiber/Bell and Spectrum/Charter are requiring or demanding provisions similar to this Section 23C be included in new and renewed franchise agreements. This relief provision, if triggered, could result in various requirements or obligations in your franchise being lessened or gutted, including the 5% franchise fee, reporting and customer notification obligations, billing and payment regulations and local PEG programming and channels. Therefore, we have given considerable attention and thought to this provision with the goal of minimizing its impact.

We were able to neutralize, more or less, the version to which we agreed in the altafiber Franchise (something which Spectrum is very aware of and wanted to change.) The initial drafts of this Section 23C from Spectrum were significantly worse, but after several months of trying to come at this from different angles, and both sides trying to listen to each other's concerns, we have been able to significantly improve the language to narrow the scope or reach of this provision. However, there is still some risk of interpretation of the language and trying to define or identify the changing technology which could be different in the coming years and bring un-foreseen affects.

One of the main issues with this Section 23C is that TBNK Member Governments, as a local franchising authority (LFA), are not authorized to regulate other multichannel video programming distributors such as "competitors" that provide video or video streaming services via wireless systems, video dial tone systems, direct broadcast satellite and/or small cell systems. LFAs cannot regulate these types of services because (a) they are not, for the most part, in the rights-of-way and (b) neither the Federal Cable Act nor any other federal legislation authorizes local governments any regulatory authority or control over their business and/or services.

The first problem with Section 23C is that it does not use the term "Cable System" or "cable operator;" instead it uses the term "Multichannel Video Programming Distributor (MVPD)", as well as the phrase "other authorization" along with "cable franchise" as the type of agreement that could trigger relief. Under the federal Cable Act, MVPD is a broad definition for video service providers that offer multiple linear channels to subscribers, including Cable TV as well as other such services that might not use the Rights of Way and that are not considered Cable TV such as satellite video providers.

So, this is a broader definition than “Cable System” for what type of video service can trigger the request for relief, and TBNK Member Governments are not authorized to regulate such other MVPD’s under the Federal Cable Act. In addition, streaming services such as Sling TV or YouTube TV are what are known as Virtual Multichannel Video Programming Distributors (vMVPD’s) because they provide multiple linear channels that resemble Cable TV, but are transmitted over the internet, instead of actually constructing their own facilities in the ROW. So, this change away from the term “Cable TV” to “MVPD” and the addition of the phrase “other authorization” caused some initial concerns. We also wanted to make clear that the language would NOT include other streaming video providers, such as Netflix or Amazon Prime, etc., which are random access libraries of “Video On Demand” programming – not a service with multiple live linear channels of programming.

The good news here is that we have been able to add language which states that relief is not available to unregulated video programming services or service providers that provide Over The Top (OTT) and other streaming services offered to customers over the internet, which should eliminate many of the streaming services such as Netflix, Disney+, Prime video, the various vMVPD’s, etc.

We also made a key addition to the language which makes it clear that a TBNK Member Government, as a grantor, has to actually issue or grant a franchise or “other authorization” to the competitor to offer MVPD service; therefore, we don’t have a problem if a provider just starts offering a service that might cause an issue without having received any permission from a TBNK Member Government. However, several of our TBNK Member Governments have already granted permission for several other types of telecommunications providers to use the ROW for provisioning of telecommunications and information services, and with the implementation of new technology, it might be possible for these providers to begin offering multichannel video programming distributor services. So, our TBNK Member Governments have to be sure that they have NOT given permission to offer MVPD services in those other authorizations - now or in the future.

A positive here is that we read the language, which uses the present tense “issues or grants” “at any time during the existence of this Franchise” to say that relief only applies to agreements granted after the new franchise effective date.

New telecom providers that might begin to offer some type of subscriber video services is probably one of the more concerning remaining scenarios, since video is already transmitted over cell phones and because cell phone providers now have facilities in your rights of way with the new Small Wireless Facilities (SWF) or 5G small cell service, along with whatever new subscription MVPD services or technology they might develop. This could create some legal argument around such cell phone companies’ or even other wireline telecom providers’ facilities in the ROW and what kind of subscriber video services might develop.

This is why we added language in the final proposed draft that would eliminate video services offered primarily over cellphones, personal wireless service facilities, or small cell facilities.

We also would have liked this provision better if it said something more like “*the Grantor may, but is not obligated to grant relief,*” which is in our 2009 agreement. However, Spectrum would not agree to this language. The final draft, on the other hand, provides that our Cities/County “*shall not unreasonably refuse to grant the relief requested by Grantee.*” This is a different standard. However, this is also not a rubber stamp that requires us to give them all or any of what they might request, but we have to have reasons for our decision. If the request is valid under the terms of this provision (unless, for instance, the competing provider that Spectrum might cite in their request does not trigger the provision), our failure to negotiate and/or grant at least some of the requested relief could potentially result in a legal battle.

However, the final version also has language that says that we “shall take into consideration all of the circumstances in existence at the time, including, but not limited to, the proportional relationship of the “competitor’s” operations as well as Applicable Law, which may set up different levels of requirements for different classes of providers. This allows us to weigh other aspects of the law with or against possible advantages and disadvantages related to such a request, as well as limits that the law might place on the Grantor for regulating different types of providers, including advantages that the law might provider different types of providers.

All of the improvements made narrow the broad scope, which originally had been offered by Spectrum, but there is still risk or exposure in this provision, because no one knows what future technology might develop, or any future changes that might occur in applicable law, and how they could affect and/or trigger this provision.

However, please remember that relief may only be claimed or requested by Spectrum under this Section 23C, if a TBNK Member Government pulls the following “triggers”:

- City/County affirmatively issues or grants a franchise or other authorization;
- Such franchise or authorization permits the grantee to use the Streets;
- The grantee system also is a facilities-based multichannel video programming distribution system (MVPD); and
- The franchise or authorization allows for the provision of MPVD services.

For instance, we know that Verizon Communications and AT&T have telecommunications facilities and fiber optic lines and related infrastructure within the rights-of-way of Edgewood, Fort Mitchell, and Covington and possibly other cities. However, they are only providing telecommunications and information (i.e., internet) services. Will these companies ever decide to provide multichannel video programming services? This possibility is why it needs to be noted that under any small cell licenses or

even fiber/wireline telecommunications franchise agreements it is important that TBNK Member Governments do the following:

- Limit or restrict services to telecommunications services and information (i.e., internet) services, which are defined terms in the Telecommunications Act of 1996; and
- Include a provision that states the provider is **NOT authorized** to offer Multichannel Video Programming Distributor (MVPD) or Cable TV services without first obtaining a separate franchise agreement specifically permitting or authorizing such video type services. *TBNK can help you with the appropriate language.*

5. **REQUIRED SERVICES AND FACILITIES – PEG ACCESS** (Public, Educational & Government Access) – We negotiated a few modifications to the PEG Access provisions, as outlined below:

- i. NKU Access Channel – TBNK had offered the release of this channel, as NKU has been doing less with it, but the Mission Group had requested that such channel be restored, which both altafiber and Spectrum agreed to incorporate back into the renewed franchises.
- ii. The new agreement also retains the other six (6) local PEG channels for Public, Educational, and Governmental use.
- iii. HD channels for PEG – The new agreement states that HD PEG channels will be provided to the cities/county if HD PEG channels are provided to other communities located in Northern Kentucky.
- iv. No PEG Support Fees – Our Cities/County said that they do not wish to require cable operators to charge subscribers a monthly PEG Support Fee of 25 cents, so that PEG Support has been eliminated.
- v. Release of Return Lines from City/County Buildings – A 2019 FCC Order, which was recently and mostly upheld on appeal at the 6th Circuit Appeals Court in Cincinnati, permits cable operators to charge Cities/County for the cost of maintenance and upkeep of those lines. TBNK has agreed to give them up (even if the FCC Order is vacated), as TBNK is now streaming live meetings of the Cities/County back to TBNK for distribution downstream over the PEG Access Channels.
- vi. Complimentary Cable Service – An FCC Order also allows cable operators to charge Cities/County for such free cable service and/or offset that charge against franchise fees due under the franchise. We developed a provision that provides for continuation of free cable service if the FCC Order is reversed by what will be a newly re-constituted FCC, which is re-considering the order. However, if the FCC Order is not reversed, then the cable operator is required to give notice and allow the Cities/County an opportunity to decide if they want to (a) continue receiving such service but pay for it directly or allow the cable operator to offset the charge against franchise fees or (b) cancel the service. Notwithstanding the

foregoing, Spectrum has agreed to continue providing free basic cable services on a voluntary basis for now.

6. **PUBLIC NOTICE** – The altafiber Franchise originally contained a provision that would require the Cities/County and TBNK to publish notices of meetings in the newspaper, wherein cable matters would be addressed. This requirement was too burdensome and costly to TBNK, as every board and committee meeting conceivably could be considered as an undertaking of cable matters.

The final provision now requires the Cities/County and/or TBNK to provide Minimum public notice in compliance with KRS 61.804 to 850 (Open Meetings of Public Agencies) and for KRS 424.110 to 424.150 (Legal Notices) for those meetings considering an application for the issuance of a competitive franchise agreement to another cable operator. TBNK presently follows the procedures of the Open Meetings Act.

Notice is also to be provided to Spectrum by (a) certified mail, return receipt requested, (b) personal service with a signed receipt of delivery, or (c) overnight with receipt verification to the person designated to receive notices, which person is listed in the agreement.

7. **CUSTOMER SERVICE OBLIGATIONS** – Requires compliance with all the customer service standards or obligations specified by FCC Regulations. Instead of listing the contents of those regulations in the body of the agreement, the Franchise references the FCC standards. This streamlined the document and allows the provision to adapt as the standards may be amended from time to time by the FCC. (The same approach of referencing FCC regulations was taken in regard to compliance with FCC technical standards, as well as Electrical Safety Codes.)
8. **USE OF STREETS (& Rights-of-Way)** – The original draft of the altafiber Franchise contained few rights-of-way provisions as compared to the then presently existing altafiber (Bell) 2009 Franchise Agreement and the Spectrum (TKR) 1997 Franchise Agreement. Per instructions of the Mission Group, we kept to a more streamlined approach for these rights-of-way provisions in our resulting altafiber and Proposed Spectrum Franchise Agreements while maintaining basic core protections for cities that presently do not have much of anything on the books:
 - i. The Franchise requires Spectrum to construct, remove, operate, and maintain its Cable System in a manner consistent with:
 - a. all Applicable Laws,
 - b. good engineering practices and construction standards
 - ii. Specifically, it also requires compliance with:
 - a. National Electrical Safety Code (National Bureau of Standards);
 - b. National Electrical Code (National Bureau of Fire Underwriters);

c. Applicable FCC or other federal, State and local regulations including Technical Standards; and

d. **Applicable local permits and ordinances.**

- iii. Mandates that none of the cable facilities are to unreasonably endanger or interfere with any lives of any Person or safety;
- iv. Requires cable pedestals to be located on the far side of a homeowner's lot and not in the middle of the lot;
- v. Permits cables and lines to be installed above ground in areas where telephone and electric lines are above ground; however, the Cities/County may require such cables and lines to be placed underground at a later date (or follow any regulations that any specific city presently has adopted);
- vi. All new cables and wires shall be installed, where possible, parallel with electric and telephone lines.
- vii. Permits Cities/County to repair streets damaged by the cable operator and to bill or invoice the cable operator for costs incurred in making the repairs.
- viii. Permits Cities/County to remove cable lines and equipment in emergency situations and not be liable for damages.
- ix. Authorizes cable operator to trim trees but such trimming must follow any applicable ordinance(s) and the cable operator must submit a trimming plan for prior approval.
- x. No poles or wire-holding structure can be erected without the prior written approval of the City/County. Spectrum is required to use existing poles.
- xi. Requires relocation of poles, facilities and wires without reimbursement of cost in connection with any public works project, such as widening of roads.

These provisions provide some or limited protection for those smaller Cities that do not have in place, or fail to develop and adopt, rights-of-way ordinances or regulations. As provided in Section B.1 above, the use of streets and rights-of-way still fall under the "police powers" of the cities/county.

- 9. **SOVEREIGN IMMUNITY** – The original Bell (altafiber) Franchise did not contain such a provision and, as directed by the Mission Group, we added a sovereign immunity provision which provides that none of the Cities/County waive any tort or other immunity they may have by law, and this provision is contained in the Proposed Spectrum Franchise Agreement.
- 10. **TRANSFER OF OWNERSHIP OR CONTROL** – Prior express written approval by the Cities/County and the TBNK is required before any change in Control of the Franchise, or the Cable System may occur and before the Proposed Spectrum Franchise or any rights, interest or obligations of the Grantee (Spectrum) in the Cable System or assets of the Cable System can be sold, assigned, transferred, or disposed of. Any such changes also must be in compliance with Applicable Law.

B. Other Streamlining and Concessions Provided in the Agreement:

In previous negotiations with Spectrum (prior to the break in negotiations in 2020), we offered multiple concessions to streamline the 1997 Franchise Agreement with Spectrum (Charter/Insight/TKR) [*about 90 pages in length*]. In our negotiations with altafiber (Bell), we offered the same concessions to altafiber and, these concessions are reflected in both the 2021 altafiber Renewed Franchise Agreement and this Proposed Spectrum Franchise Agreement. These concessions consist of the following:

1. Bond Amount - Reduced bond amount from \$500,000 to \$300,000;
2. Liquidated Damages - Eliminated liquidated damages provision – this provision provided an amount that was to be paid by the cable operator for various breaches of the franchise agreement. We had never utilized this provision in the past and, if we had, the cities/county would have been sued;
3. Customer Service Centers - Reduced the number requirement for customer service centers, as the FCC Regulations only requires a cable operator to offer a service center which is conveniently located to the franchise area. In the prior franchise agreements, we once required up to a total of three service centers;
4. Return Feeds – As noted above, we have eliminated such feeds;
5. Customer Services Standards – Eliminated multiple pages of such standards from the franchise agreements, but require the cable operator to comply with the service standards contained in the FCC Regulations;
6. Technical Standards for Cable System – Significantly reduced provisions addressing compliance with technical standards set forth in the franchise agreements, but require the cable operator to comply with technical standards set forth in the FCC Regulations;
7. No Interconnection – In prior franchise agreements, we had required the cable operators to interconnect their cable systems in the franchise area. This was eliminated as we can accomplish our PEG programming without such interconnection;
8. Insurance Policy Increases – Eliminated the provision that allowed Cities/County to require the cable operator to increase insurance coverage amounts;
9. Extension of Cable System – Eliminated requirement procedures and cost sharing on line extensions; and
10. Cable System Requirements – Streamlined provisions that addressed the type and character of the cable operator’s cable system. Since there is competition in our Cities/County, we eliminated such provisions as we believe competition will drive the cable operators to offer better and improved cable systems and programming.
11. Rights-of-way – In prior franchise agreements, rights-of-way provisions were comprehensive and detailed. We have since streamlined such provisions per instructions received from the Mission Group, but with the understanding that Cities/County can adopt rights-of-way ordinances or regulations should they chose to do so. Also, any rights of way ordinances presently in effect will prevail over the provisions of the Franchise Agreement.

C. Adoption Process – Next Steps:

As we go through the adoption process, some of our steps to accomplish include:

- Providing a model ordinance to our communities for adoption.
- The model ordinance will be modified to reflect the appropriate government name and ordinance requirements adopted by the Cities/County and such ordinance will be provided in electronic format.
- Provide each TBNK Member Government with two (2) execution copies of the Proposed Spectrum Franchise Agreement for the signature of the Mayor and attestation of the clerk.
- Upon adoption of the Franchise Agreement by whichever City is the last to do so, we will establish that date as the Effective Date of the Franchise and execute a Commencement Agreement with Spectrum stating such.
- TBNK will collect from the TBNK Member Governments both executed copies of the Proposed Spectrum Franchise Agreement and secure the signatures of Spectrum.
- Once that is accomplished, we will distribute fully executed documents to all TBNK Member Governments.