

## **Ordinance 716 Series 2016**

### **An Ordinance Amending And Extending Ordinance 668 Series 2013 Granting A Franchise To Construct, Operate and Maintain A Cable Television System In The Town Of Mancos, Colorado To Bresnan Communications, LLC, I/k/a Charter Communications**

**Whereas**, The Town Board of Trustees passed Ordinance 668 Series 2013 granting a franchise agreement to Bresnan Communications LLC at their regular meeting on June 12, 2013; and

**Whereas**, the franchise agreement was effective June 13, 2013 for a period of three years; and

**Whereas**, the Town wishes to extend the franchise agreement for a period of ten years with an optional additional five year renewal term.

**NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF MANCOS, COLORADO, AS FOLLOWS:**

#### **AMENDMENT NO. 1 TO ORDINANCE 668 BETWEEN THE TOWN OF MANCOS AND BRESNAN COMMUNICATIONS, LLC, I/k/a CHARTER COMMUNICATIONS**

1. Parties. The Parties to this Amendment are the Town of Mancos, Colorado, a municipality organized and existing under the laws of the State of Colorado, whose address is P.O. Box 487, Mancos, CO 81328, (hereinafter, the "Town" or "Grantor") and Bresnan Communications, LLC, I/k/a Charter Communications, whose service of notice address is 12405 Powerscourt Drive, St. Louis, Missouri, 63131 (hereinafter, the "Grantee").

2. The Franchise Agreement. The Grantee currently operates under a Franchise Agreement, Ordinance 668, Series 2013, granted on June 13, 2013 to its predecessor-in-interest, Bresnan Communications, LLC, Its Successors and Assigns.

3. Extension and Modification of Franchise Agreement. Pursuant to this Amendment, Ordinance 668 is extended and modified as follows:

A. Section 2.2: the term of Ordinance 668 is extended until 11:59 p.m. on June 13, 2026 at which time Ordinance 668 will be automatically extended for an additional term of five (5) years from June 13, 2026 to June 13, 2031, as set forth herein, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of the referenced Franchise Agreement, i.e., on or before June 13, 2026. If such a notice is given, then the parties will proceed under the federal Cable Act renewal procedures. All other terms and conditions of Ordinance 668 remain unchanged and in full force and effect.

4. Section 3.12: Access Channel. (existing language is deleted and replaced with the following:

### **3.12.1 Community Programming.**

- A. Upon the second and fifth anniversary of this Franchise, upon written request of the Grantor, the Grantor and Grantee will meet to discuss the possibility of providing one (1) channel on the Cable System for use by the Grantor for non-commercial, video programming for education and government ("EG") access programming. The EG channel may be placed on any tier of service available to subscribers. If all of the following conditions are satisfied, Grantee will provide one (1) downstream access Channel upon no less than 120 days' written notice from the Grantor following such meeting and receipt of the following:
- (1) Grantor has passed a resolution stating that there is demonstrated community need for EG access programming;
  - (2) Grantor has passed a resolution in which it agrees to fund all the operational expenses for such programming;
  - (3) Grantor provides a letter to Grantee identifying those entities or persons who will be responsible for providing access programming and agreeing to indemnify Grantee for any negligence or willful misconduct of such entities or persons for such access programming; and
  - (4) A statistically-significant representative sample survey of Subscribers in the Service Area indicates that more than twenty-five percent (25%) of Subscribers are somewhat interested or very interested in viewing EG access programming; provided, however, that any such survey shall be at Grantee's option and cost, and shall be conducted and concluded within ninety (90) days of the meeting with the Grantor described above. If Grantee opts not to conduct such a survey, then this subsection (4) shall not be a condition to providing EG Funding.
- B. If the EG channel provided pursuant to this section is occupied by non-local or character-generated programming fifty (50%) percent of the time during "regular viewing hours" for any ten (10) consecutive week period, the Grantee shall have a right to a return of the EG channel upon one hundred twenty (120) days' notice to Grantor of its intent to reclaim the EG channel. For purposes of this subsection, "regular viewing hours" shall be the hours between 1 p.m. and 11 p.m., Monday through Friday, and between noon and midnight on weekends. For purposes of this section, "local programming" includes any programming produced by EG entities of the State of Colorado."

### **3.12.2 Community Access Funding.**

- A. Upon the second and fifth anniversary of this Franchise, upon written request of the Grantor, the Grantor and Grantee will meet to discuss the possibility of providing capital funding for Grantor's non-commercial, video programming for education and government ("EG") access programming ("EG Funds"). The Grantor shall prepare an EG Funding plan that will identify the capital support needed to fund the EG access. The Grantor and Grantee shall agree upon the amount of such capital support and the amount to be recovered from Subscribers. If all of the following

conditions are satisfied, Grantee will provide EG Funds upon no less than 120 days' written notice from the Grantor following such meeting and receipt of the following:

- a. Grantor has passed a resolution requesting that the Grantee begin collecting EG Funds from Subscribers, not to exceed \$.04 per subscriber per month for payment to the Grantor;
- b. Grantor has passed a resolution in which it agrees:
  - i. to fund all the operational expenses for such programming; and
  - ii. to only use such EG Funds for capital expenses in accordance with federal law.
  - iii. A statistically-significant representative sample survey of Subscribers in the Service Area indicates that more than twenty-five percent (25%) of Subscribers are somewhat interested or very interested in viewing EG access programming; provided, however, that any such survey shall be at Grantee's option and cost, and shall be conducted and concluded within ninety (90) days of the meeting with the Grantor described above. If Grantee opts not to conduct such a survey, then this subsection (iii) shall not be a condition to providing EG Funding.

B. All EG Funds must be spent for EG capital in compliance with federal law. Grantee shall have the right to request information from the Grantor about use of the EG Funds to confirm such compliance.

C. Grantee shall have the right to stop its collection from Subscribers and payment to the Grantor of the EG Funds if Grantee no longer carries any EG channels on its Cable System.

5. Section 6.1 Insurance Requirements.(existing language is deleted and replaced with the following:

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.



C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

6. Section 7. Enforcement and Termination of Franchise. Subsection 7.5 is hereby deleted. The remaining sections of Section 7 remain in full force and effect.

7. Negotiation Time Period. If one of the parties notifies the other in writing of its desire to not exercise the automatic extension referenced in paragraph 3.a above, the Parties agree to begin negotiations for a new Franchise Agreement no later than December 1, 2023. The Company agrees to send a request for renewal to the City no later than November 1, 2023.

8. Reservation of Rights. The Parties reserve all rights under Section 626 of the Cable Act, 47 U.S.C. § 546, and do not waive any rights related thereto.

9. Signatures. The Parties to this Amendment, through their duly authorized representatives, have executed this Amendment on the days and dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Amendment.

THIS ORDINANCE PASSED ON FIRST AND FINAL READING HELD on the 8th Day of June 2016, at the hour of 7:00 p.m. at the Town Hall in Mancos, Colorado. This ordinance shall become effective thirty (30) days after passage.

TOWN OF MANCOS, COLORADO

  
\_\_\_\_\_  
Queenie Barz, Mayor

ATTEST:

  
\_\_\_\_\_  
Heather Alvarez, Clerk/Treasurer

BRESNAN COMMUNICATIONS, LLC:

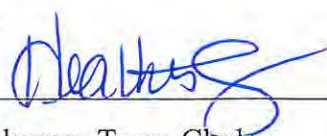
l/k/a Charter Communications

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

PUBLISHED THE 14 DAY OF June, 2016 BY THE AUTHORITY OF THE TOWN CLERK OF MANCOS, COLORADO

ATTEST:

  
\_\_\_\_\_  
Heather Alvarez, Town Clerk