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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CHARTER COMMUNICATIONS, INC., et al.

Debtors.

Chapter 11 Cases

09-11435(JMP)

(Jointly Administered)

**OBJECTION TO PROPOSED CURE AMOUNTS IN CONNECTION
WITH ASSUMPTION OF FRANCHISE AGREEMENTS**

The Cities of Gilroy, Hollister and San Juan Bautista (the "Cities"), by and through their counsel, hereby individually and collectively object to the proposed "zero" cure amount proposed by Charter Communications, Inc. and its debtor affiliates (collectively, the "Debtors" or "Charter") in connection with Debtors' assumption of the Cities' respective franchise agreements with Falcon Cable Systems Company II, L.P. ("Falcon"), one of the Debtors. The City of Hollister was served with a Notice to Counterparties to Executory Contracts to Be Assumed Pursuant to Plan ("Cure Notice") on or about July 6, 2009. The Cities of Gilroy and San Juan Bautista either have been served or anticipate that they will be served with substantially similar cure notices

consistent with Debtors' stated intention to assume all franchise agreements, and their apparent practice of routinely noticing cure amounts of zero for executory contracts.

INTRODUCTION AND SUMMARY

Charter provides cable television services in each of the Cities pursuant to separate franchise agreements ("Franchise Agreements") entered into with each City, which expire by their own terms between November 2009 and January 2010. Consistent with this situation, the "Schedule of Assets and Liabilities re: Falcon Cable Systems Company II, L.P.", filed in this docket on April 10, 2009 contains a "Schedule B-23 Licenses, franchises, and other general intangibles" that acknowledges Falcon has "franchise agreements" with each of the Cities. Nevertheless, in the Cure Notice served on the City of Hollister, Charter lists two types of executory contracts it intends to assume – "Real Estate" and "Headend." For each of these descriptions, Charter indicates that the cure amount is \$0.00. These descriptions are confusing and nonsensical. The City of Hollister is not a party to any executory contracts with Charter that are entitled "Real Estate" or "Headend." No date, title, or appropriate description is provided. Thus, the Cities object to the Cure Notice on the grounds that it is confusing and fails to identify the executory contracts to be assumed.

To the extent that it was Charter's intent by the Cure Notice (or any substantially similar cure notice for the Cities of Gilroy and San Juan Bautista) to assume any or all of the Franchise Agreements, with a zero cure amount, the Cities hereby object. In fact, the cure amount owed under each of the Franchise Agreements is substantial based on numerous, material defaults on the part of Charter. For example, an audit has revealed

that Charter owes tens of thousands of dollars in underpaid franchise fees and underpaid public, educational and governmental (“PEG”) fees, as detailed below. In addition, Charter has committed numerous, non-monetary defaults, including the failure to complete construction of an institutional network (“I-Net”) for the Cities. A technical audit performed by the Cities revealed that the I-Net is incomplete in several material respects, including the lack of an I-Net hub at San Juan Bautista City Hall, lack of functional video transmission/reception equipment at several I-Net locations, the failure to splice fiber at numerous locations, the lack of 24-hour back-up power at the PEG access center, and the failure of the video portion of the I-Net to ever work properly. The City has incurred substantial damages as a result of its inability to use the I-Net over the past eight years, when it was required to be operational. Charter’s other non-monetary defaults are described below.

The City provided Charter with written notice and opportunity to cure its various defaults on several occasions. For example, in May 2006 the City of Hollister notified Charter that the I-Net as it pertains to each of the Cities was incomplete, specified what still needed to be done in order for it to be complete and requested that Charter complete the project. In February 2009, each of the Cities sent Charter notice of its underpayment of franchise fees and PEG fees and requesting that they be paid. The company failed to make payment or even respond. In March 2009, Charter was provided with written notice and opportunity to cure monetary and nonmonetary defaults and again the company failed to do so. As a result, in additions to actual damages, significant liquidated damages have also accrued, as more particularly described below. In total, as of the date of this filing, the appropriate cure amounts for their respective Franchise Agreements should be

not less than \$3,168,135 for the City of Gilroy, \$3,217,313 for the City of Hollister, and \$3,141,950 for the City of San Juan Bautista, plus applicable interest.

BACKGROUND

1. Franchise Agreements

Charter provides cable television services in each of the Cities pursuant to separate Franchise Agreements. The Franchise Agreements, which were negotiated in tandem and are virtually identical, provide substantial benefits to Charter by permitting it to use the Cities' rights-of-way to construct and maintain its cable system serving residents of the Cities. In exchange for these benefits, Charter agreed to perform certain obligations under the Franchise Agreements, including the construction of the I-Net. The Franchise Agreements expire by their own terms between November 2009 and January 2010.

When Charter entered into bankruptcy on March 27, 2009 it appeared that Charter expected to emerge from bankruptcy prior to the expiration of the Franchise Agreements, which the company intended to assume. Charter was well aware of the noncompliance issues which it would be required to cure prior to assumption of the Franchise Agreements, having been advised in writing by the Cities of its noncompliance with various I-Net obligations and various monetary and nonmonetary defaults on several occasions. Indeed, the Cities and Charter have had numerous discussions and negotiations in an attempt to settle these noncompliance issues before and after Charter entered into bankruptcy but have been unable to reach a resolution to date.

2. Defaults

If indeed Charter intends to assume any or all of the Franchise Agreements Charter must cure, or provide adequate assurance that it will promptly cure, each of the monetary and nonmonetary defaults under the Franchise Agreements.¹ The City of Hollister provided Charter with written notice of its failure to complete the I-Net as it pertains to each of the Cities on May 26, 2006. Charter failed to complete the I-Net. Moreover, each of the Cities provided Charter with written violation notices for the defaults described below on February 11, 2009, and on March 20, 2009. Each letter gave Charter 30 or more days to cure or liquidated damages would be imposed pursuant to each of the Franchise Agreements. None of the defaults were cured. Thus, in order to cure its numerous defaults under the Franchise Agreements, Charter would have to make payment of amounts owed for fees, and take actions to rectify nonmonetary defaults, as well as pay liquidated damages covering the period until such defaults are cured (as permitted by Section 17.2 of the Franchise Agreements).

a. Underpayment of Franchise Fees (Franchise Agreements Section 6.1)

Charter underpaid franchise fees to the Cities during the period of October 1, 2004 through September 30, 2008. The estimated underpayments are as follows:

Gilroy	\$19,161
Hollister	\$53,817
San Juan Bautista.....	\$1,327

¹In the event that Charter chooses not to assume the Franchise Agreements the Cities reserve their rights to claim damages as a result of Charter's defaults. The Cities anticipate that they will file proofs of claim and/or requests for payment of administrative claims for the full amount of its damages, as is necessary.

These amounts include accrued interest and a 5% late fee, as calculated through January 31, 2009 (permitted by Franchise Agreements, Section 6.3 and Cable Ordinances: Hollister, Section 5.20.590; Gilroy, Section 24.30(h); San Juan Bautista, Section 5.20.1040). Interest on these amounts continues to accrue. Each of the Cities sent Charter a formal violation notice letter dated February 11, 2009, giving Charter until March 13, 2009 to cure the above-noted breaches. These franchise violations were reiterated in the notice letters sent by the Cities to Charter dated March 20, 2009. The breaches have not been cured.

b. PEG Access Grants (Franchise Agreements, Section 11.1)

Charter also underpaid PEG fees during the period of October 1, 2004 through September 30, 2008. The amounts of underpaid PEG fees are estimated to be the following.

Gilroy	\$8,974
Hollister	\$23,496
San Juan Bautista.....	\$623

In addition to the above, Charter would also owe interest in an amount to be determined in accordance with California law. Each of the Cities sent Charter a formal violation notice letter dated February 11, 2009, giving Charter until March 13, 2009 to cure the above-noted breaches. These franchise violations were reiterated in the notice letters sent by the Cities to Charter dated March 20, 2009. The breaches have not been cured.

c. *PEG Access Center/Headend/institutional Network Link (Franchise Agreements Section 10.2)*

Section 10.2 requires Charter to ensure that the plant, headend, and PEG access center equipment permit PEG signals to be sent from the PEG access center to the headend on multiple channels, to receive signals from other locations on multiple channels simultaneously, and to remotely route signals originated at the PEG access center or other locations onto any access or I-Net channel on the cable system. This functionality was not in place during most of the franchise term. Problems included, but were not limited to, the lack of and the failure of the switcher in the City of Hollister; the system was plagued with frequent Iptek equipment failures; some I-Net locations either did not have functional video transmission equipment or had no video transmission equipment. The City of Hollister originally provided Charter with notice of these defaults on May 26, 2006, and Charter failed to fix the problems. Each of the Cities then provided Charter with notice of these material violations on March 20, 2009, giving Charter until April 20, 2009 to cure them. Charter again failed to cure the violations. As a result, the Cities have been deprived of the promised functionality and each is entitled to liquidated damages in the amount of \$628,000 [1256 days X \$500/day] through the date of this filing, plus \$500/day through the date of payment.

d. *Institutional Network (Franchise Agreements, Section 10.3 B C. D., and E.)*

In the Franchise Agreements, Charter agreed to construct an I-Net for the Cities that would connect approximately 60 sites including government buildings, police, fire and other essential city services. Charter never fulfilled its I-Net obligations to the Cities. Among other obligations, Subsection 10.3.A calls for the I-Net to include equipment

which will fully provide for switching and routing of video signals between various locations and between the I-Net and PEG access channels on the subscriber network. The I-Net was to be designed and fully function to permit information to flow to, from, and between any I-Net location and any other I-Net location in Gilroy, Hollister or San Juan Bautista. Each City Hall was to house an I-Net Node/Hub location. The I-Net locations in each City were to be connected to the I-Net Node/Hub location in each City, and each of the three I-Net Node/Hub's is to be connected to the I-Net headend. This provision also obliges Charter to provide 24-hour backup power at Community Media Access Partners ("CMAP") and to install, operate and maintain the I-Net, headend, and network components. Pursuant to this section, Charter was obligated to provide documentary proof that the I-Net was performing according to requirements at each I-Net location.

The Cities have retained a technical consultant to review the I-Net and other documentation provided by the Cities. The technical consultant indicated that there are numerous noncompliance issues associated with the I-Net. For example:

- There is no I-Net hub at San Juan Bautista City Hall.
- There are missing and/or nonfunctional video transmission/reception equipment items at a number of the I-Net locations
- The video portion of the I-Net does not functioned as required, due to equipment failures and lack of video switchers at hub site.
- There is no 24-hour back-up power provided at CMAP (PEG access center).
- The I-Net was not properly maintained.

- There was no complete documentary proof that the I-Net was performing according to requirements at each I-Net location.

The City of Hollister originally provided Charter with notice of these material violations on May 26, 2006, and Charter failed to fix the problems. Each of the Cities then provided Charter with notice on March 20, 2009, giving the company until April 20, 2009 to cure the violations. Charter failed to cure the violations. As a result, each of the Cities has been denied a functional I-Net for the past eight years when the system should have been fully functional. The Cities are entitled to damages for Charter's failure to provide a functional I-Net. In addition, the Cities are each entitled to liquidated damages in the amount of 628,000 [1256 days X \$500/day] through the date of this filing, plus \$500/day through the date of payment, for each of the distinct material defaults committed by Charter, including (i) failure to provide an I-Net hub at San Juan Bautista, (ii) failure to provide a functional system, and (iii) failure to provide back-up power at the CMAP public access center. Thus, each City is entitled to not less than \$1,884,000 in liquidated damages.

e. Failure to Complete System (Franchise Agreements, Section 7.2)

As a result of Charter's overall failure to complete the I-Net system, the Cities are entitled to damages for Charter's failure to provide a functional I-Net. In addition, the Cities are entitled to liquidated damages as a result of Charter's failure to complete the system within two years pursuant to Section 7.2 of the Franchise Agreements. Thus, the Cities are entitled to liquidated damages in the amount of \$628,000 [1256 days X \$500/day] through the date of this filing, plus \$500/day through the date of payment

f. Quarterly and Annual System Reports

Under Section 2.8 of the Franchise Agreements, Charter also agreed to be bound by the terms of each City's Cable Ordinance. The Cable Ordinances require Charter to file certain quarterly system reports 45 days after the end of each quarter (Ordinance Sections: Hollister-5.20.450A.; Gilroy-24.27(c.)(1); San Juan Bautista-5-20-710 (A)). The quarterly reports are to contain important and detailed customer service and operating information used by the Cities to evaluate Charter's ongoing performance.

In addition, Charter is required to file certain annual system reports 90 days after the close of each fiscal year (Ordinance Sections: Hollister-5-20-450B; Gilroy-24-27(c.)(2); San Juan Bautista-5-20-710(B)). The annual reports are to contain extensive information about the ownership, organization, and technical operation of the cable system, customer service information, an audited or certified revenue report, and other details about the size of the cable system and its technical performance. The annual reports are required to enable the Cities to evaluate Charter's ongoing performance and compliance with the Franchise Agreements.

Charter has not filed these quarterly and annual reports. Charter was notified of these Ordinance and Franchise Agreement violations by letter dated March 20, 2009 and was given until April 20, 2009 to cure the violations. Charter failed to cure the violations. The Cities have been deprived of these important reports, and are entitled to receive them as well as payment of liquidated damages in the amount of \$106,000 each through the date of this filing, plus \$500/day through the date of payment.

ARGUMENT

I. The Cure Notices Fail to Identify the Executory Contracts to Be Assumed.

As mentioned above, the “Schedule of Assets and Liabilities re: Falcon Cable Systems Company II, L.P.”, filed in this docket on April 10, 2009 contains a “Schedule B-23 Licenses, franchises, and other general intangibles” that acknowledges Falcon has “franchise agreements” with each of the Cities. Nevertheless, in the Cure Notice served on the City of Hollister, Charter lists two types of executory contracts it intends to assume – “Real Estate” and “Headend.” These descriptions of executory contracts are confusing and nonsensical. The City of Hollister is not a party to any executory contracts with Charter that are entitled “Real Estate” or “Headend.”² No date, title, or appropriate description is provided. Thus, the Cities object to the Cure Notice on the grounds that it is confusing and fails to identify the contracts to be assumed.

II. To the Extent Charter is Attempting to Assume the Franchise Agreements, the Cure Amount of Zero is Incorrect.

Pursuant to 11 U.S.C. § 365(b)(1), a debtor may not assume an executory contract if there has been a default under such contract unless at the time of assumption the debtor (A) cures, or provides adequate assurance that it will promptly cure such default; (B) compensates, or provides adequate assurance that it will promptly compensate the other party to the contract for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract.

² In addition to the Franchise Agreement, the City of Hollister is party to a certain Lease Agreement with Falcon dated April 1, 2002 (“Lease”). To the extent Charter intended to assume that lease the City does not object.

As noted above it is unclear what executory contracts Charter is attempting to assume in the Cure Notices. But to the extent Charter is attempting by the notices to assume the Franchise Agreements, the Cities object because the stated cure amount - \$0.00 - does not cure the outstanding defaults under the Franchise Agreements or provide adequate assurance that such defaults will be promptly cured, as required under § 365(b)(1)(A); it fails to compensate the Cities for their actual pecuniary loss suffered as a result of Charter's defaults, or to provide assurance that Charter will promptly compensate the Cities for such loss as required under § 365(b)(1)(B); and it fails to provide adequate assurance that Charter will perform under the Franchise Agreements in the future, without continued defaults, as required under § 365(b)(1)(C).

Charter has numerous outstanding defaults, as described above, and has failed to cure or provide any assurance that it will cure those defaults.

WHEREFORE, the Cities respectfully request that: (a) the Debtors be required to identify with specificity the contract(s) intended to be assumed via the Cure Notice sent to the City of Hollister; (b) the Debtors be required to clarify whether they are seeking to assume the Cities' Franchise Agreements; (c) to the extent the Debtors are seeking to assume the Franchise Agreements that they be required to cure the monetary and nonmonetary defaults thereunder, or provide adequate assurance that they will promptly cure such defaults, including paying all amounts owed under the Franchise Agreements, including liquidated damages; (d) the Debtors provide adequate assurance of future

performance prior to assumption of the Franchise Agreements and the assumption of any other contracts Charter may specifically identify in the corrected notices; and (e) such further relief as the Court deems just.

Dated: November 19, 2009
San Francisco, CA

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)
In re) Chapter 11
)
CHARTER COMMUNICATIONS, INC., <i>et al.</i> ,) Case No. 09-11435 (JMP)
)
Debtors.) (Jointly Administered)
_____)

AFFIDAVIT OF SERVICE

DISTRICT OF COLUMBIA) ss.:

Barbara A. Lutes, being duly sworn, deposes and says:

1. I am not a party to this action, am over 18 years of age and am employed by the law firm of MILLER & VAN EATON, P.L.L.C., 1155 Connecticut Avenue, N.W., Suite 1000, Washington, D.C. 20036.
2. On November 19, 2009, I caused true and correct copies of the Cities of Gilroy, Hollister and San Juan Bautista, California, Objection to Proposed Cure Amount in Connection with Assumption of Agreements Between the Debtors and Cities of Gilroy, Hollister and San Juan Bautista, California, [Docket No. 924], to be served via First Class Mail upon the parties identified in Exhibit A.

3. I caused true and correct copies of the above-referenced Objection of the Cities of Gilroy, Hollister and San Juan Bautista, California, to be served electronically on notice parties via the Court's Case Management/Electronic Case Filing (CM/ECF) system.

/s/ Barbara A. Lutes

B

arbara A. Lutes

Sworn to before me this
19th day of November, 2009

/s/ Willette A. Hill

Willette A. Hill

Notary Public, District of Columbia

Commission Expires April 30, 2013

EXHIBIT A

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