



March 1, 2017

Members of the Garibaldi City Council  
City of Garibaldi  
PO Box 708  
Garibaldi, OR 97118

Re: Proposed Right of Way/Utility License Ordinance

Dear Members of the City Council:

Thank you for giving Charter Communications ("Charter") the opportunity to comment on the City's proposed ordinance establishing license and fee requirements for utility providers using the public rights-of-way ("Ordinance"). The Ordinance appears designed to circumvent and/or undermine Charter's important and federally protected cable franchise renewal rights, and to impose significant new taxes on City residents, which we believe is unwarranted and unlawful, as explained below and in the attached analysis from our legal counsel. **Charter respectfully urges the Council to withdraw the Ordinance and take no further action on it, unless it is amended to comply with state and federal law as proposed in the enclosed, revised version.**

As you know, Charter and the City are engaged in the franchise renewal process under federal law. Federal law provides Charter important substantive and due process protections related to the renewal of its franchise, and requires either that a renewal be negotiated between the parties or granted or denied pursuant to the very specific procedures set out in the Cable Act. The City cannot establish, unilaterally, franchise renewal terms or procedures that would violate Charter's federal rights. It is not clear if the City seeks to subvert this federal process in the Ordinance. But, to the extent the Ordinance includes provisions that purport to control the procedures for Charter's cable franchise renewal or dictate, unilaterally, the substantive terms of Charter's renewal, those provisions would be unlawful and preempted by federal law.

It is also not clear whether the City intends to require Charter to apply for a franchise for each of its Internet, phone, or video services, or all three. Nor is it clear whether the City intends to collect new taxes from Charter's customers who receive those services, or even what the amount of the tax would be. What is clear, however, is the Ordinance would impose a substantial tax on important communications services purchased by City residents, over and above any reasonable amounts needed to recover the City's regulatory costs. Any such tax would be unlawful under state and federal law, would directly conflict with the rights granted to Charter under its franchise with the City and by the federal Cable Act, and would, therefore, be unenforceable against Charter customers.

Assuming arguendo that the City were to proceed with a 5% tax on Charter's cable service and a 7% tax on each of Charter's other services despite these legal infirmities, Charter's customers who subscribe to Internet, phone, and video service would be required to pay roughly **\$10 every month** in City-imposed taxes. Charter would have no choice but to pass that considerable tax on to its customers, listing it as a line item on their bills and identifying the City as the source of the tax.

The Ordinance's double-digit per-customer tax would far exceed any amount needed to recover the City's regulatory costs. Indeed, Charter's 5% franchise fee on its cable service—the maximum fee permitted by federal law—already fully compensates the City for the regulatory costs associated with Charter's facilities installed in the City's right-of-way. Charter's provision of other services using the same cable system—including its Internet and voice services—does not impose any additional or new burdens on the right-of-way in order for the Council to justify the proposed Ordinance. It is, therefore, unlawful and unfair to saddle Charter's customers with new taxes when the City is already fully reimbursed for Charter's use of the right-of-way by its 5% franchise fee.

Far from compensating the City's residents, a new Internet tax would harm Garibaldi residents who rely on Internet service for work, school, and all manner of information critical to their daily lives. Federal and state authorities agree that broadband enhances economic development and public safety, improves health care and educational opportunities, and improves quality of life, particularly in rural areas. As a result, and to promote infrastructure investment and broadband adoption, both the U.S. Congress and Oregon Legislature have prohibited new taxes on Internet access services. We believe the City's proposed license fee violates these prohibitions, as detailed in the attached letter from Charter's counsel. Rather than focusing resources on legal disputes, however, we believe the City and Charter should work together to promote investment in faster broadband speeds and adoption of Internet services without burdening residents with new and unwarranted taxes.

Finally, it is not clear if the City intends to impose new franchise requirements and regulations on Charter's use of the right-of-way, either in lieu of or in addition to the requirements the parties negotiated as part of Charter's existing franchise, or as a means to establish, unilaterally, franchise renewal terms without giving Charter a seat at the negotiating table. As a practical matter, the City could not require Charter to comply with different right-of-way regulations on a service-by-service basis where Charter's services use the same cable system facilities. Charter's negotiated franchise agreement already comprehensively regulates Charter's use of the right of way for those facilities and, as a matter of contract and constitutional law, controls over any inconsistent ordinances or regulations subsequently adopted by the City. Nor could the City prohibit Charter from providing telecommunications over its cable system without first obtaining a franchise under the Ordinance, deny Charter's cable franchise renewal on the basis of its refusal to obtain separate franchises under the Ordinance, or attempt to impose franchise renewal terms unilaterally via the Ordinance. All of those actions would violate federal law and Charter's due process rights. Charter intends to avail itself of its federal, state, and local rights and does not waive them.

After considering the significant negative financial impact of the Ordinance on its residents, the burden it would place on their access to important communications services, and the legal deficiencies identified in the attached letter, we hope the City reconsiders the Ordinance and withdraws it, or modifies it to exclude franchised cable operators and their services from its scope. We welcome the opportunity to discuss ways to promote the deployment of faster broadband speeds and the adoption of broadband service throughout the community.

Sincerely,



Robin Smith  
Senior Manager of Government Affairs  
Charter Communications