

City of Scottsbluff, Nebraska

Monday, November 4, 2019

Regular Meeting

Item Reports4

Council to discuss and consider action on Franchise Agreements with Spectrum Mid-America, LLC and Allo Communications, LLC and authorize the Mayor to sign the Agreements.

Staff Contact: Nathan Johnson, City Manager

FRANCHISE AGREEMENT

This Franchise Agreement is made on _____, 2019 between the City of Scottsbluff, Nebraska (the "City") and Spectrum Mid-America, LLC (the "Cable Operator").

Recitals:

- a. The Cable Operator is providing Cable Service to the residents of the City pursuant to an existing franchise, as extended.
- b. The Cable Operator has made a request to the City that its franchise be renewed (the "Franchise");
- c. The City has completed proceedings (1) to identify the future cable-related community needs and interests, and (2) to review the performance of the Cable Operator under the current franchise;
- d. The public has had adequate notice and opportunity to comment on the Cable Operator's request for renewal of its franchise;
- e. This Franchise is given pursuant to Chapter 11 Article 5 of the Scottsbluff Municipal Code entitled "Cable Television" (referred to in this Agreement as the "Cable Ordinances"). Capitalized terms which are not otherwise defined in this Agreement shall have the same meaning as provided for in the Cable Ordinances; and
- f. The Cable Operator has demonstrated and the City has determined that the Cable Operator has the legal, financial and technical ability to effectuate its continued operation of a Cable System.

Agreement:

1. **Grant:** The City grants to the Cable Operator a nonexclusive franchise (the "Franchise") which authorizes the Cable Operator to construct, operate and maintain a Cable System within the City pursuant to the Cable Ordinances, to include the use of Public Ways and Easements. Nothing in this Franchise shall be construed to prohibit the Cable Operator from offering any service over its Cable System that is not prohibited by federal, state or local law.
2. **Term:** This Franchise shall be considered effective as of January 1, 2020, and shall expire on December 31, 2029.
3. **Public Service:** Subject to applicable law, the Cable Operator shall continue to provide, at no cost, one outlet of Basic Cable Service to those public buildings identified on the attached Exhibit A. The Cable Operator may provide additional Services to schools and libraries on a voluntary basis.

4. **Cable Ordinances:** The Cable Operator agrees to comply with all provisions of the Cable Ordinances in existence as of this date. In addition, the Cable Operator agrees to comply with the terms of any generally applicable local ordinances necessary to the safety, health, and welfare of the public, to the extent that the provisions of such ordinances do not have the effect of limiting the benefits or expanding the obligations of the Cable Operator. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the terms of this Franchise, to include changes in the Cable Ordinances after this date which are not accepted in writing by the Cable Operator. Any changes to this Franchise must be made in writing signed by the Cable Operator and the City. In the event of any conflict between this Franchise and any City ordinance or regulation, including the Cable Ordinance, this Franchise shall control. Any determination by the City regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

5. **Assignment:** Unless permitted under the Cable Ordinances, the Cable Operator shall not assign the Franchise without the written consent of the City after compliance with the applicable assignment of Franchise provisions of the Cable Ordinances.

6. **Renewal or Extension:** Proceedings concerning renewal or extension of this Franchise shall be conducted according to the appropriate renewal or extension provisions of the Cable Ordinances and any applicable Federal law, rule or regulation.

7. **Notices:** Any notices or other communications to the City or the Cable Operator shall be in writing and shall either be delivered to each party's contact person by personal service with signed receipt of delivery, certified or registered mail, return receipt requested, or by recognized overnight delivery service with receipt verification, to the addresses set out below, or electronic mail communication to the designated email address provided for below, or to such other address(es) as the City or the Cable Operator may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Att: City Clerk
kwright@scottsbluff.org

With a copy to:

Simmons Olsen Law Firm, P.C.
1502 2nd Avenue
Scottsbluff, NE 69361
Att: Kent Hadenfeldt
khadenfeldt@simmonsolsen.com

b. If to the Cable Operator:

Charter Communications
5400 S 16th Street
Lincoln, NE 68512
Attn: Director, Government Affairs
Jeremiah.blake@charter.com

With a copy to:

Charter Communications
601 Massachusetts Avenue NW, Suite 400
Washington, DC 20001
Att: Senior Vice President, State Government Affairs

8. General Provisions:

a. If any provision of this Franchise is determined to be unenforceable or invalid, then that provision shall be severable from any remaining provision of this Franchise, and this Franchise shall remain in effect except with respect to any provisions declared to be unlawful or unenforceable.

b. This Franchise and the Cable Ordinance constitutes the entire agreement between the City and the Cable Operator concerning its subject matter, and supercedes any prior agreements or understandings between the parties.

c. The City's failure to enforce any provision of this Franchise or the Cable Ordinances on any one or more occasions, shall not excuse the Cable Operator from complying with this Franchise and the Cable Operator.

d. This Franchise (i) may be executed in one or more counterparts, each of which may be considered as an original; (ii) shall be construed according to the laws of Nebraska and the United States, where applicable; (iii) contains the entire agreement of the Parties concerning its subject matter, and (iv) shall be binding on the successors and assigns of the parties.

[signatures on following page]

**Signature Page to Franchise Agreement between the City of Scottsbluff, Nebraska
and Spectrum Med-America, LLC**

City of Scottsbluff, Nebraska

By: _____
Mayor

Attest:

City Clerk

Spectrum Mid-America, LLC

By: _____

Title: _____

EXHIBIT A

City Hall, 2525 Circle Drive
Public Safety, 1801 Avenue B
Public Works, 1105 3rd Avenue

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This Franchise Agreement is made on _____, 2019 between the City of Scottsbluff, Nebraska (the "City") and Allo Communications, LLC (the "Cable Operator").

Recitals:

- a. The Cable Operator is providing Cable Service to the residents of the City pursuant to an existing franchise, as extended.
- b. The Cable Operator has made a request to the City that its franchise be renewed (the "Franchise");
- c. The City has completed proceedings (1) to identify the future cable-related community needs and interests, and (2) to review the performance of the Cable Operator under the current franchise;
- d. The public has had adequate notice and opportunity to comment on the Cable Operator's request for renewal of its franchise;
- e. This Franchise is given pursuant to Chapter 11 Article 5 of the Scottsbluff Municipal Code entitled "Cable Television" (referred to in this Agreement as the "Cable Ordinances"). Capitalized terms which are not otherwise defined in this Agreement shall have the same meaning as provided for in the Cable Ordinances; and
- f. The Cable Operator has demonstrated and the City has determined that the Cable Operator has the legal, financial and technical ability to effectuate its continued operation of a Cable System.

Agreement:

1. **Grant:** The City grants to the Cable Operator a nonexclusive franchise (the "Franchise") which authorizes the Cable Operator to construct, operate and maintain a Cable System within the City pursuant to the Cable Ordinances, to include the use of Public Ways and Easements. Nothing in this Franchise shall be construed to prohibit the Cable Operator from offering any service over its Cable System that is not prohibited by federal, state or local law.
2. **Term:** This Franchise shall be considered effective as of January 1, 2020, and shall expire on December 31, 2029.
3. **Public Service:** Subject to applicable law, the Cable Operator shall not provide any outlets of Basic Cable Service to public buildings of the City at this time. The Cable Operator may provide Services to schools and libraries on a voluntary basis or to the City in the future.

4. **Cable Ordinances:** The Cable Operator agrees to comply with all provisions of the Cable Ordinances in existence as of this date. In addition, the Cable Operator agrees to comply with the terms of any generally applicable local ordinances necessary to the safety, health, and welfare of the public, to the extent that the provisions of such ordinances do not have the effect of limiting the benefits or expanding the obligations of the Cable Operator. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the terms of this Franchise, to include changes in the Cable Ordinances after this date which are not accepted in writing by the Cable Operator. Any changes to this Franchise must be made in writing signed by the Cable Operator and the City. In the event of any conflict between this Franchise and any City ordinance or regulation, including the Cable Ordinance, this Franchise shall control. Any determination by the City regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

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a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Att: City Clerk
kwright@scottsbluff.org

With a copy to:

Simmons Olsen Law Firm, P.C.
1502 2nd Avenue
Scottsbluff, NE 69361
Att: Kent Hadenfeldt
khadenfeldt@simmonsolsen.com

- b. If to the Cable Operator:

Allo Communications, LLC
330 S. 21st Street
Lincoln, NE 68510
Attn: Brad Moline, President

With a copy to:

Allo Communications, LLC
121 S. 13th Street
Lincoln, Nebraska 68508
Attn: Legal Department

8. General Provisions:

a. If any provision of this Franchise is determined to be unenforceable or invalid, then that provision shall be severable from any remaining provision of this Franchise, and this Franchise shall remain in effect except with respect to any provisions declared to be unlawful or unenforceable.

b. This Franchise and the Cable Ordinance constitutes the entire agreement between the City and the Cable Operator concerning its subject matter, and supercedes any prior agreements or understandings between the parties.

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[signatures on following page]

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and Allo Communications, LLC**

City of Scottsbluff, Nebraska

By: _____
Mayor

Attest:

City Clerk

Allo Communications, LLC

By: _____

Title: _____