

RESOLUTION __-2017

A RESOLUTION DIRECTING CHARTER COMMUNICATIONS INC. ("CHARTER") DOING BUSINESS AS "SPECTRUM" TO COMPLY WITH CERTAIN PROVISIONS OF ORDINANCE NO. 152-2014 WITHIN THIRTY (30) DAYS OF THE PASSAGE OF THIS RESOLUTION AND DIRECTING THE COMMISSIONER OF LAW TO SEND TO CHARTER A COPY OF THIS RESOLUTION, WHICH SHALL SERVE AS A WRITTEN DEMAND TO CHARTER THAT IT SHALL COMPLY WITH CERTAIN PROVISIONS OF ORDINANCE 152-2014.

WHEREAS, by Ordinance No. 152-2014 ("Ordinance"), the Lexington-Fayette Urban County Government ("Lexington") created a ten (10) year, non-exclusive franchise for a cable television system within the confines of Lexington; and

WHEREAS, by Invitation to Bid 197-2014, Lexington offered at bid a non-exclusive cable television franchise pursuant to the Ordinance; and

WHEREAS, after publication of said advertisement on November 24, 2014, Lexington received a bid from Insight Kentucky Partners II, LP. (the parent company of which was Time Warner Cable Inc.); and

WHEREAS, by Resolution 741-2014, Lexington accepted the bid of Insight Kentucky Partners II, LP. and authorized the Mayor to sign the Franchise Agreement ("Franchise") which memorializes the award by Lexington to Insight Kentucky Partners II, L.P. of said franchise; and

WHEREAS, the Franchise states that: "This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinance No. 152-2014 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto."; and

WHEREAS, the Franchise states that the Ordinance, which is attached to the Franchise as an exhibit, is incorporated therein by reference in its entirety and shall apply as if fully set forth therein; and

WHEREAS, by Resolution No. 743-2014, Lexington consented to the transfer of control of Insight Kentucky Partner II, L.P., from Time Warner Cable Inc. to Charter Communications, Inc. ("Charter"); and

WHEREAS, Charter is doing business in Lexington, KY under the name "Spectrum"; and

WHEREAS, Section 34(b) of the Ordinance states that penalties, in the amount of five hundred dollars (\$500.00) per day or part thereof that the violation continues,

shall be recoverable from Charter for failure to provide data and reports as required by Section 39; for failure to meet the customer service standards of Section 25; and for failure to comply within thirty (30) days of any Council resolution directing compliance with any other provision of the Ordinance; and

WHEREAS, Section 34(c)(1) of the Ordinance states that prior to imposing a penalty under Section 34(b) of the Ordinance, Lexington shall make a written demand that Charter comply with the provision of the Franchise with which Lexington believes Charter is not in compliance and explain the basis for such belief. If the violation by Charter continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, Lexington may place a request for the imposition of penalties upon a regular Council meeting agenda; and

WHEREAS, Lexington believes Charter is not in compliance with certain provisions of the Ordinance (which is incorporated by reference in its entirety in the Franchise and shall apply as if fully set forth therein) including: Section 39(b)(2), Section 39(b)(8), Section 25(a)(1), Section 25(a)(5), Section 25(a)(6), Section 25(b)(5), Section 26(c), Section 26(e), Section 27(e), and Section 27(f); The basis for such belief is set out in full below; and

WHEREAS, Section 39(b)(2) of the Ordinance states that if requested by Lexington in writing, Charter shall provide to Lexington within thirty (30) days of said request, information indicating the number of calls receiving a busy signal; and

WHEREAS, in a letter dated June 14, 2017 (“June 14th Letter”), Lexington requested that Charter provide the number of calls receiving a busy signal. To date, said information has not been provided by Charter. Thus, Lexington believes Charter is not in compliance with Section 39(b)(2) of the Ordinance; and

WHEREAS, Section 39(b)(8) of the Ordinance states that if requested by Lexington in writing, Charter shall provide to Lexington within thirty (30) days of said request, subject to Section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent

system problems, the nature of each problem and what steps have been taken to correct them; and

WHEREAS, in the June 14th Letter, Lexington requested that Charter provide, subject to Section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent system problems, the nature of each problem and what steps have been taken to correct them. To date, Charter has not provided the specific information required by Section 39(b)(8) of the Ordinance. Thus, Lexington believes Charter is not in compliance with Section 39(b)(8) of the Ordinance; and

WHEREAS, Section 25(a)(1) of the Ordinance states that “[k]nowledgeable, qualified, company representatives shall be available to respond to customer telephone inquiries Monday through Saturday during normal business hours.”; and

WHEREAS, Lexington has received multiple complaints from Charter customers that telephone inquiries made Monday through Saturday during normal business hours were not responded to by knowledgeable, qualified, company representatives. Thus, Lexington believes Charter is not in compliance with Section 25(a)(1) of the Ordinance; and

WHEREAS, Section 25(a)(5) of the Ordinance states that “[c]ustomers who are not satisfied after speaking with an initial customer service representative may ask to speak with a supervisor.”; and

WHEREAS, Lexington has received multiple complaints from Charter customers that they were not given an opportunity to speak with a supervisor after speaking with an initial customer service representative. Thus, Lexington believes Charter is not in compliance with Section 25(a)(5) of the Ordinance; and

WHEREAS, Section 25(a)(6) of the Ordinance states that Charter shall permit customers to return cable equipment by U.S. mail, UPS or similar delivery method at Charter’s expense and shall advise customers of this option when customers inquire about returning equipment; and

WHEREAS, Lexington has received multiple complaints from Charter customers that they were not given an opportunity to return cable equipment by U.S. mail, UPS or

similar delivery method at Charter's expense and were not advised by Charter of this option when they inquired about returning equipment. Thus, Lexington believes Charter is not in compliance with Section 25(a)(6) of the Ordinance; and

WHEREAS, Section 25(b)(5) of the Ordinance states if at any time an installer or technician is running late, Charter shall attempt to contact the customer; and

WHEREAS, Lexington has received multiple complaints from Charter customers that installers or technicians were running late and that Charter failed to contact the customers. Thus, Lexington believes Charter is not in compliance with Section 25(b)(5) of the Ordinance; and

WHEREAS, Sections 26(c), 26(e), 27(e) and 27(f) of the Ordinance are not specifically enumerated in Section 34(b) of the Ordinance and thus a Council resolution directing compliance is required prior to assessment of any penalties for non-compliance of said sections of the Ordinance; and

WHEREAS, Section 26(c) of the Ordinance requires that Charter shall maintain a written record or "log", listing date and time of written customer technical, customer service, cable service, and billing complaints, describing the nature of the technical, customer service, cable service, and billing complaints and when and what action was taken by Charter in response thereto; such record shall be kept at Charter's local office, for as long as business needs require (but for not less than two (2) years), and shall be available for inspection by Lexington during normal business hours. Charter is not required to make available any personally identifiable information or other information which Charter may not disclose under applicable law; and

WHEREAS, in the June 14th Letter, Lexington requested Charter's "log" as required by Section 26 (c) of the Ordinance, however, to date, Charter has not provided the specific information required by Section 26 (c) of the Ordinance, Thus, Lexington believes Charter is not in compliance with 26 (c) of the Ordinance; and

WHEREAS, Section 26(e) of the Ordinance states that upon request from a subscriber, Charter shall respond in writing regarding any resolution of a subscriber's complaint; and

WHEREAS, Lexington has received multiple complaints from Charter subscribers that Charter has failed to respond in writing regarding the resolution of subscribers'

complaints, despite the fact that the subscribers requested that Charter respond in writing regarding the resolution of their complaints. Thus, Lexington believes Charter is not in compliance with Section 26(e) of the Ordinance; and

WHEREAS, Section 27(e) of the Ordinance requires that Charter shall not charge subscribers for any services they have not affirmatively requested; and

WHEREAS, Lexington has received multiple complaints from Charter subscribers that they have been charged for services that they have not affirmatively requested. Thus, Lexington believes Charter is not in compliance with Section 27(e) of the Ordinance; and

WHEREAS, Section 27(f) of the Ordinance requires that upon request from subscribers, Charter shall confirm in writing regarding any agreements or bill modifications made over the phone; and

WHEREAS, Lexington has received multiple complaints from Charter subscribers that Charter has refused to provide confirmation in writing regarding agreements or bill modifications made over the phone, despite the fact that the subscribers had requested that Charter provide said written confirmation. Thus, Lexington believes Charter is not in compliance with Section 27 (f) of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL AS FOLLOWS:

Section 1. Charter is hereby directed to comply with Section 26(c) of the Ordinance within thirty (30) days of passage of this Resolution. Charter is directed to produce the “log” as required by Section 26(c) of the Ordinance containing the specific information required by Section 26(c) of the Ordinance.

Section 2. Charter is hereby directed to comply with Section 26(e) of the Ordinance within thirty (30) days of passage of this Resolution. Charter is directed to respond in writing regarding any resolution of a subscriber's complaint, upon request from a subscriber, as required by Section 26(e) of the Ordinance.

Section 3. Charter is hereby directed to comply with Section 27(e) of the Ordinance within thirty (30) days of passage of this Resolution. Charter is directed, pursuant to Section 27(e) of the Ordinance, not to charge subscribers for any services they have not affirmatively requested.

Section 4. Charter is hereby directed to comply with Section 27(f) of the Ordinance within thirty (30) days of passage of this Resolution. Charter is directed, pursuant to Section 27(f) of the Ordinance that, upon request from subscribers, Charter shall confirm in writing regarding any agreements or bill modifications made over the phone.

Section 5. Pursuant to Section 34(c)(1) of the Ordinance, this Resolution shall serve as a written demand to Charter that the Charter shall comply with the following

provisions of the Ordinance (which is incorporated by reference in its entirety in the Franchise and applies as if fully set forth therein): Section 25(a)(1); Section 25(a)(5); Section 25(a)(6); Section 25(b)(5); Section 26(c); Section 26(e); Section 27(e); Section 27(f); Section 39(b)(2); and Section 39(b)(8). Lexington believes Charter is not in compliance with said provisions and the basis for such belief is set out in full in the Preamble to this Resolution.

Section 6. The Commissioner of Law is hereby directed to send (via certified mail, return receipt request) a copy of this Resolution to Charter.

Section 7. That the statements set forth in the Preamble to this Resolution are hereby incorporated in this Resolution by reference, the same as if set forth at length herein.

Section 8. That if any section, sentence, clause or phrase of this Resolution is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Resolution.

Section 9. That this Resolution shall be effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
1117-17_LKA:X:\CASES\CCO\17-LE0001\LEG\00589632.DOCX

APPROVED AS TO FORM AND LEGALITY:

By: _____
Linda K. Ain
The Law Firm of Linda K. Ain