

ORDINANCE NO. 1180

AN ORDINANCE OF THE CITY OF FORT MORGAN, COLORADO, GRANTING A NON-EXCLUSIVE FRANCHISE TO BRESNAN COMMUNICATIONS, LLC, AND ITS LAWFUL SUCCESSORS, TRANSFEREES AND ASSIGNS, FOR THE RIGHT TO MAKE REASONABLE AND LAWFUL USE OF THE RIGHTS-OF-WAY WITHIN THE CITY TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE A CABLE SYSTEM FOR THE PURPOSE OF PROVIDING CABLE SERVICES TO CITIZENS WITHIN THE CITY OF FORT MORGAN, COLORADO, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, Bresnan Communications, LLC, d/b/a Charter Communications ("Charter"), is the successor to TCI Cablevision of Colorado, Inc., and currently holds a cable television franchise with the City of Fort Morgan, granted by Ordinance No. 908; and,

WHEREAS, Charter and the City have been involved in negotiations for several months related to the granting of a new cable franchise agreement to Charter; and,

WHEREAS, these negotiations have resulted in a proposed Franchise Agreement that is being presented to the City Council for its consideration and approval (the "Franchise Agreement"), a copy of which is attached hereto as Exhibit 'A,' as well as on file with the City Clerk; and,

WHEREAS, the Franchise Agreement includes the following major terms and conditions: (1) a term of fifteen (15) years; (2) a requirement that Charter pay to the City a franchise fee of five percent (5%) of the gross revenues that Charter, an affiliated entity, or any other entity in which Charter has a financial interest derives, directly or indirectly, from the operation of the cable system used to provide cable services within the City; and (3) a requirement that Charter continue to comply with the customer service standards as adopted and subsequently modified by the City, consistent with applicable law. Charter has additionally represented that it will provide cable service on a complimentary basis to the City's Emergency Operations Center located at 116 Main Street in the City; and,

WHEREAS, pursuant to notice duly published, public hearing has heretofore been held before the City Council of the City of Fort Morgan and the Council has found and determined, subsequent to said public hearing, that the City's grant of a cable franchise to Charter, in accordance with the terms and conditions of the Franchise Agreement, is in the best interests of the citizens of the City of Fort Morgan, will meet the future cable-related needs of the community, and is consistent with the pre-emptive requirements of §541 of the Cable Television Consumer Protection and Competition Act of 1992, as determined by the United States District Court for the District of Colorado in *Qwest Broadband Services, Inc. v. City of Boulder*, 151 F. Supp. 2d 1236 (D. Colorado 2001).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, THAT:

Section 1. Franchise Agreement.

Subject to all terms and conditions and obligations contained therein, the City Council hereby authorizes the Mayor and the City Clerk to execute the Franchise Agreement by and between Bresnan Communications, LLC d/b/a Charter Communications and the City of Fort Morgan, in the form attached hereto as Exhibit A.

Section 2. Effective Date.

This Ordinance shall retroactively authorize the Franchise Agreement to take effect on the 2nd day of December, 2015 subject to the Franchise Agreement being fully executed by both the City and Charter, and the publication of this Ordinance as required by law.

Section 3. Severability.

All sections of this Ordinance and the Franchise Agreement attached as Exhibit A shall be severable, and if any section or portion of this Ordinance or the Franchise Agreement is declared or ruled invalid or otherwise invalidated by any Court or agency of competent jurisdiction, such declaration or ruling shall not affect the validity of any other section, and all other sections and provisions of this Ordinance or the Franchise Agreement shall remain in full force and effect. City Council hereby declares that it would have passed this Ordinance and approved the Franchise Agreement and each part thereof irrespective of the fact that any one part be declared unconstitutional or invalid.

Section 4. Repeal.

All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED
PUBLISHED** on the 15th day of March, 2016.



CITY OF FORT MORGAN, COLORADO

By:


Ronald Shaver, Mayor

ATTESTED AND AUTHENTICATED:


John Brennan, City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED on the 5th day of April, 2016, publication by title only once in the
newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to
take effect five days after final publication as of the Effective Date herein provided.



CITY OF FORT MORGAN, COLORADO

By:


Ronald Shaver, Mayor

ATTESTED AND AUTHENTICATED:



John Brennan, City Clerk

ORDERED REPUBLISHED with corrections on the 19th day of July, 2016, publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the resolution correcting the Ordinance.



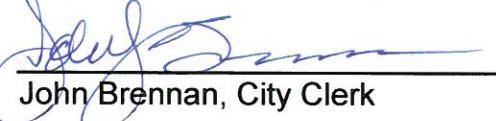
CITY OF FORT MORGAN, COLORADO

By:



Ronald Shaver, Mayor

ATTESTED AND AUTHENTICATED:



John Brennan, City Clerk

Accepted subject to applicable federal, state and local laws this 19th day of
August, 2016.

BRESNAN COMMUNICATIONS, LLC
d/b/a CHARTER COMMUNICATIONS

By:



Name: Mark E. Brown
 Title: V.P. STATE GOVERNMENT AFFAIRS
MARK E. BROWN

 STATE OF COLORADO)
 COUNTY OF MORGAN) ss.
 CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, the duly appointed City Clerk do hereby certify and attest that the foregoing Ordinance No. 1180 was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 15th day of March, 2016. Said Ordinance, as proposed, was duly read at length at said Regular Meeting, and thereafter the same was, on the 18th day of March, 2016, published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed Ordinance was again taken up and read a second time, duly and legally passed, approved and adopted at a regular meeting of the City Council held on the 5th day of April, 2016. Within five (5) days after its final passage, said Ordinance was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Ordinance was subsequently republished to correct clerical errors as approved at a regular meeting of the City Council held on the 19th day of July, 2016 in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.



John Brennan, City Clerk