

CHARTER COMMUNICATIONS INC /MO/
Form 8-K
November 04, 2004

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **November 4, 2004**

[Charter Communications, Inc.](#)

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

000-27927

(Commission File Number)

43-1857213

(I.R.S. Employer Identification Number)

12405 Powerscourt Drive
St. Louis, Missouri 63131

(Address of principal executive offices including zip code)

(314) 965-0555

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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ITEM 2.02. RESULTS OF OPERATIONS AND FINANCIAL CONDITION.

On November 4, 2004, Charter Communications, Inc. issued a press release announcing its results for the third quarter ended September 30, 2004. The following information, including the entirety of the press release appearing in Exhibit 99.1 hereto, is not filed but is furnished pursuant to Item 2.02, "Results of Operations and Financial Condition."

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

The following exhibit is not filed but furnished pursuant to Item 2.02:

<u>Exhibit</u> <u>Number</u>	<u>Description</u>
99.1	99.1 Press release dated November 4, 2004. *

* furnished herewith

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS:

This Report includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), regarding, among other things, our plans, strategies and prospects, both business and financial including, without limitation, the forward-looking statements set forth in this Report. Although we believe that our plans, intentions and expectations reflected in or suggested by these forward-looking statements are reasonable, we cannot assure you that we will achieve or realize these plans, intentions or expectations. Forward-looking statements are inherently subject to risks, uncertainties and assumptions. Many of the forward-looking statements contained in this Report may be identified by the use of forward-looking words such as "believe," "expect," "anticipate," "should," "planned," "will," "may," "intend," "estimated" and "potential," among others. Important factors that could cause actual results to differ materially from the forward-looking statements we make in this Report are set forth in reports or documents that we file from time to time with the SEC, and include, but are not limited to:

- our ability to pay or refinance debt as it becomes due, beginning in 2005;
- our ability to sustain and grow revenues and cash flows from operating activities by offering video, high-speed data, telephony and other services and to maintain a stable customer base, particularly in the face of increasingly aggressive competition from other service providers;
- the availability of funds to meet interest payment obligations under our debt and to fund our operations and necessary capital expenditures, either through cash flows from operating activities, further borrowings or other sources;
- our ability to comply with all covenants in our indentures and credit facilities, any violation of which would result in a violation of the applicable facility or indenture and could trigger a default of other obligations under cross-default provisions;
- any adverse consequences arising out of our restatement of our 2000, 2001 and 2002 financial statements;
- the results of the pending grand jury investigation by the United States Attorney's Office for the Eastern District of Missouri, and our ability to reach a final approved settlement with respect to the putative class action, the unconsolidated state action, and derivative shareholders litigation against us on the terms of the memoranda of understanding described herein;
- our ability to obtain programming at reasonable prices or to pass programming cost increases on to our customers;
- general business conditions, economic uncertainty or slowdown; and
- the effects of governmental regulation, including but not limited to local franchise taxing authorities, on our business.

All forward-looking statements attributable to us or a person acting on our behalf are expressly qualified in their entirety by this cautionary statement. We are under no duty or obligation to update any of the forward-looking

statements after the date of this Report.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, Charter Communications, Inc. has duly caused this Current Report to be signed on its behalf by the undersigned hereunto duly authorized.

CHARTER COMMUNICATIONS, INC.,

Registrant

Dated: November 4, 2004

By: /s/ Paul E. Martin

Name: Paul E. Martin

Title: Interim Co-Chief Financial Officer,
Senior Vice President and Corporate Controller (Co-Principal Financial Officer and Principal Accounting Officer

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
99.1	99.1 Press release dated November 4, 2004. (furnished pursuant to Item 2.02)

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¹ The shares vested approximately 2.08% per month over 48 months.

Option Exercises and Stock Vested

During the year ended December 31, 2009, there were no option exercises or vesting of stock awards to our named executive officers.

Pension Benefits

During the fiscal year ended December 31, 2009, the Company did not have any pension or similar plans.

Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans

During the fiscal year ended December 31, 2009, the Company did not have any defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified.

Risk Consideration in Our Compensation Programs

The Compensation Committee has discussed the concept of risk as it relates to our compensation program and does not believe our compensation program encourages excessive or inappropriate risk taking. We structure our pay to consist of primarily fixed compensation with cash and non cash incentive programs. The base salary portion of compensation is designed to provide a steady income regardless of our stock price performance, so that executives do not feel pressured to focus exclusively on stock price performance to the detriment of other important business metrics. Our cash incentive program has traditionally been weighted on multiple financial metrics including revenues, operating income and new customer retention. Those metrics are evaluated each year based on perceptions of operating issues most critical to the company's short and long term success. Our equity incentive grants have traditionally been structured to provide longer term incentive. In addition, our initial equity grants typically cliff vest and are not exercisable at all for the first twelve months from the date of grant, and vesting occurs over the succeeding three years. Later grants typically vest monthly over 48 months. The

Compensation Committee feels that this compensation package strikes a balance between providing secure compensation and appropriate short term and long term incentives, such that our executives are not encouraged to take unnecessary or excessive risks.

Compensation Committee Interlocks and Insider Participation

None of the members of the Compensation Committee is or has been an officer or employee of the Company or any of its subsidiaries. There are no interlocks between the executive officers and members of the Compensation Committee of the Company and those of any other entity.

DIRECTOR COMPENSATION

Each non-employee director receives an annual retention fee of \$24,000, payable quarterly, and members of the Audit Committee receive an additional annual fee of \$10,000 for their service on the Audit Committee. Directors appointed during a term year may receive a proportional amount of the annual retention fee for that year. Options and other equity awards may be granted to directors on a discretionary basis. Upon joining the Board of Directors, each non-employee director receives an option under the Company's 2005 Equity Incentive Plan to buy 100,000 shares of the Company's common stock, vesting over a four year period, with an exercise price equal to the last reported sale price of the Company's common stock on the date of grant, and a ten year term. In March of 2009, each non-employee director received an additional option under the Company's 2005 Equity Incentive Plan to buy 100,000 shares of the Company's common stock, vesting over a four year period, with an exercise price equal to the last reported sale price of the Company's common stock on the date of grant, and a seven year term. Directors are reimbursed for travel and other expenses incurred in connection with attending board and committee meetings. Neither Mr. Reinhard nor Dr. Dylan-Hyde received any additional compensation for serving as a director.

The following table shows the compensation earned by or paid or awarded to our non-employee directors for all services rendered by them in their capacity as a director of the Company during the year ended December 31, 2009.

Name	Fees Earned or Paid in Cash (\$) ¹	Stock Awards (\$)	Option Awards (\$) ²	Non-Equity Incentive Plan Compensation (\$)	Non-Qualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Edward Gabrielson	\$ 24,000		\$ 52,000				\$ 76,000
Murray Hutchison	34,000		52,000				86,000
Andrew Leitch	34,000		52,000				86,000
Gerald Lewis	34,000		52,000				86,000
Lon Otremba	24,000		52,000				76,000

¹ Additionally one half of their 2008 fees were paid in 2009.

² The amount shown is the total dollar amount of the fair value of the award on the date of grant using the Black Scholes pricing model. In March 2009 each Director was awarded an additional 100,000 options with an exercise price of \$0.74, a grant date fair value of \$0.52 (using the Black Scholes pricing model), a seven year term, and vesting over 48 months.

SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

The following table summarizes equity compensation plans approved by stockholders and equity compensation plans that were not approved by stockholders as of December 31, 2009.

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by stockholders	3,340,000	\$ 1.58	2,321,169 ¹
Equity compensation plans not approved by stockholders		\$	
Total	3,340,000	\$ 1.58	2,321,169

¹ Under the terms of the plan in effect as of December 31, 2009, in addition to securities that may be issued upon the exercise of options, warrants or other rights granted under the plan, securities may also be issued under the plan in the form of shares of restricted stock of the

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Company issued with such restrictions on transfer, rights of first refusal, repurchase and/or forfeiture provisions and other provisions and conditions as the Board of Directors or the Compensation Committee may determine from time to time.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Pursuant to the terms of the Audit Committee's charter, the Audit Committee is responsible for reviewing all related party transactions for potential conflict of interest situations on an ongoing basis. The Company may not enter into a related party transaction unless it has been approved by the Audit Committee. A transaction is considered a related party transaction if the transaction would be required to be disclosed pursuant to Item 404 of Regulation S-K.

On November 10, 2008, the Company completed a senior secured debt financing of approximately \$6.0 million. To facilitate this financing certain executive management and company consultants participated in the financing as described below. In addition, to further facilitate participation in the debt financing by other independent, non-affiliated investors, Christopher J. Reinhard, the Company's Chief Executive Officer, executed a personal guarantee and a pledge and security interest in certain personal real estate holdings as well as his equity interest in Cardium common stock (totaling 2.8 million shares) to one independent non-affiliated investor which invested \$2.0 million, representing 33% of notes. Of the total \$6.0 million in notes, (i) Mr. Reinhard invested \$479,000, all in the form of prior personal cash advances to the Company and salary deferrals, he agreed to permanently forego in consideration of a note (and accrued interest) in such amount and a warrant to purchase 718,500 shares of the Company's common stock; (ii) Tyler Dylan-Hyde, the Company's Chief Business Officer, invested \$200,000, of which approximately \$92,000 was in the form of salary deferrals, and received a warrant to purchase 300,000 shares of the Company's common stock; (iii) Gabor Rubanyi, the Company's Chief Scientific Officer, invested \$200,000, of which approximately \$46,000 was in the form of salary deferrals, and received a warrant to purchase 300,000 shares of the Company's common stock; and (iv) Robert Engler, a consultant and the Company's Chief Medical Advisor, invested \$228,000, all in the form of prior advances and salary deferrals, and received a warrant to purchase 342,000 shares of the Company's common stock. The notes issued in this transaction including those notes issued to Messrs. Reinhard, Dylan-Hyde, Rubanyi and Engler bear interest at a fixed rate of 12% per annum, payable monthly, have a one year term, are secured by all of the assets and intellectual property of the Company and its subsidiaries, and are senior to, and have priority in right of payment over, any other indebtedness of the Company. The warrants issued in this transaction, including those warrants issued to Messrs. Reinhard, Dylan-Hyde, Rubanyi and Engler have a five year term, an exercise price of \$2.00 per share and are fully exercisable.

On June 11, 2009 the Company closed an unsecured debt financing of \$600,000, that when completed on June 23, 2009 totaled \$750,000. The June 11, 2009 closing included (i) Gabor Rubanyi, the Company's Chief Scientific Officer, invested \$100,000, and received a warrant for 67,000 shares of the Company's stock, and (ii) Robert Engler, a consultant and the Company's Chief Medical Advisor, invested \$150,000, and received a warrant to purchase 100,500 shares of the Company's common stock. The notes issued to Messrs. Rubanyi and Engler bear interest at a fixed rate of 12% per annum. The warrants issued to Messrs. Rubanyi and Engler have a five year term, an exercise price of \$2.00 per share and are fully exercisable.

On July 24, 2009, the Company make a principal repayment to all participating note holders of \$2,778,500. Of this amount, Mr. Reinhard received a principal repayment of \$139,500, Mr. Engler received a principal repayment of \$139,000 and Mr. Rubanyi received a principal repayment of \$100,000.

On November 5, 2009, the Company make the remaining principal repayment to the note holders of \$3,971,500. Of this amount, Mr. Reinhard received a principal repayment of \$339,500, Mr. Dylan-Hyde received a principal repayment of \$200,000, Mr. Rubanyi received a principal repayment of \$200,000, and Mr. Engler received a principal repayment of \$239,000. During 2009 Mr. Reinhard received interest payments of \$53,798, Mr. Dylan-Hyde received interest payments of \$27,372, Mr. Rubanyi received interest payments of \$30,076, and Mr. Engler received interest payments of \$46,170.

All warrants issued in the above debt financing include provisions for down round price protection; based on subsequent equity transactions, the warrants issued to related parties in connection to the November, 10, 2008 debt financing have since been re-priced to \$0.90 per share and the warrants issued in connection to the June 11, 2009 debt financing have since been re-priced to \$1.30 per share.

AUDIT COMMITTEE REPORT*

The Audit Committee has reviewed and discussed the Company's audited financial statements for the year ended December 31, 2009 with the Company's management, and has discussed with Marcum LLP, the Company's independent registered public accounting firm, the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T. The Audit Committee has received the written disclosures and the letter from Marcum LLP required by applicable requirements of the Public Company Accounting Oversight Board regarding Marcum LLP's communications with the audit committee concerning independence, and has discussed with Marcum LLP its independence. Based on the Audit Committee's above described review and discussions, the Audit Committee recommended to the Board of Directors that the audited financial statements for the year ended December 31, 2009, be included in the Company's Annual Report on Form 10-K for such year for filing with the SEC.

It is not the duty of the Audit Committee to plan or conduct audits, to determine that the Company's financial statements are presented fairly in all material respects in accordance with accounting principles generally accepted in the United States, to certify the Company's financial statements or to guarantee the report of the Company's independent registered public accounting firm. As the Audit Committee's primary function is oversight, the Audit Committee relies on the expertise, skills and knowledge of management and the Company's independent registered public accounting firm and the accuracy of information provided to the Audit Committee by such persons in carrying out its oversight responsibilities. In giving its recommendation to the Board of Directors that the audited financial statements be included in the Company's Annual Report on Form 10-K, the Audit Committee relied on (i) certain representations and reports of management concerning the preparation of the financial statements; and (ii) the reports of the Company's independent registered public accounting firm with respect to such financial statements.

Submitted by the members of the Audit Committee

Andrew M. Leitch, Chairman

Murray H. Hutchison

Gerald J. Lewis

* The Audit Committee Report above is not considered proxy-soliciting material, is not deemed to be filed with the SEC or subject to Regulation 14A or the liabilities of Section 18 of the Securities Exchange Act of 1934, as amended, and shall not be deemed incorporated by reference by any general statement incorporating by reference this proxy statement into any filing with the SEC, except to the extent we specifically incorporate this information by reference.

ANNUAL REPORT

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (2009 Annual Report), as filed with the SEC, excluding exhibits, is being mailed to stockholders with this proxy statement. We will furnish any exhibit to our 2009 Annual Report free of charge to any stockholder upon written request to the Company at 12255 El Camino Real, Suite 250, San Diego, California 92130. The 2009 Annual Report is not incorporated in, and is not a part of, this proxy statement and is not proxy-soliciting material. We encourage you to review the 2009 Annual Report together with any later information that we file with the SEC and other publicly available information. Documents we file with the SEC may be reviewed and/or obtained through the SEC's Electronic Data Gathering Analysis and Retrieval System, which is publicly available through the SEC's website at <http://www.sec.gov>.

STOCKHOLDER PROPOSALS

Stockholders who wish to submit a proposal for inclusion in our proxy materials to be distributed in connection with next year's annual meeting must submit their proposal so that we receive it no later than the close of business on December 24, 2010. If, however, we change the date of next year's annual meeting by more than 30 days from the date of this year's Annual Meeting, the deadline to submit a proposal for inclusion in our proxy materials would be within a reasonable time before we begin to print such materials. Any such proposal must be in accordance with the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended. Pursuant to such rule, simply submitting a proposal does not guarantee that it will be included in our proxy materials.

In accordance with our Amended and Restated Bylaws, to be properly brought before a meeting, a stockholder must deliver timely notice of any matter the stockholder wishes to present to the attention of our Secretary. To be timely, we must receive the notice at our principal place of business not later than the close of business on the 15th day following the date on which notice of such meeting or the record date thereof is first publicly announced with respect to special meetings, or 120 days before the date that is one year from the date of the immediately preceding annual meeting of stockholders with respect to proposals to be considered at an annual meeting of stockholders. To be in proper form, the notice must be in writing and include the specified information set forth in Section 1.12 of Article I of our Amended and Restated Bylaws.

All proposals and notices should be sent by certified mail, return receipt requested, to Cardium Therapeutics, Inc., 12255 El Camino Real, Suite 250, San Diego, California 92130, Attn: Tyler M. Dylan-Hyde, Secretary. We reserve the right to reject, rule out of order, or take other appropriate action with respect to any proposal or matter that does not comply with these and other applicable requirements.

OTHER MATTERS

The Board of Directors does not know of any other matters that will be presented for consideration at the Annual Meeting. If any other matters are properly brought before the Annual Meeting or any adjournment thereof, the proxy holders named in the accompanying proxy card will have discretionary authority to vote all proxies in accordance with their best judgment with respect to any such matters.

San Diego, California
April 28, 2010

By Order of the Board of Directors

PROXY CARDIUM THERAPEUTICS, INC.

PROXY FOR ANNUAL MEETING OF STOCKHOLDERS TO BE HELD JUNE 3, 2010

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The stockholder whose signature appears on the reverse side hereby revokes all previous proxies, acknowledges receipt of the notice of annual meeting of stockholders to be held June 3, 2010 and the proxy statement, and appoints Christopher J. Reinhard and Tyler M. Dylan-Hyde or either of them the proxy of such stockholder, each with full power of substitution, to vote, as designated on the reverse side of this proxy card, all of the shares of common stock of Cardium Therapeutics, Inc. that the stockholder would be entitled to vote, if personally present, at the Annual Meeting of Stockholders to be held on Thursday, June 3, 2010, at 9:00 a.m. Pacific time, at the San Diego Marriott Del Mar, 11966 El Camino Real, San Diego, California 92130, and at any adjournment or postponement thereof.

This proxy, when properly executed, will be voted as specified. If no choice is specified, then this proxy will be voted for the election of the nominees for the Board of Directors listed on the reverse side and for the other proposal.

The shares represented by this proxy when properly executed will be voted in the manner directed on the reverse side by the stockholder whose signature appears on the reverse side with respect to all shares of common stock of Cardium Therapeutics, Inc. that the stockholder would be entitled to vote, if personally present, at the Annual Meeting of Stockholders. **If no direction is made, this proxy will be voted FOR the election of each of the nominees for director in the class indicated and FOR Proposal 2.** If any other matters properly come before the meeting, the persons named will vote in their discretion.

If you vote your proxy by telephone or the Internet, please DO NOT mail back this proxy card. Your telephone or Internet vote authorizes the named proxies to vote your shares in the same manner as if you marked, signed and returned your proxy card.

THANK YOU FOR VOTING.

CARDIUM THERAPEUTICS

Electronic Voting Instructions

You can vote by Internet or telephone!

Available 24 hours a day, 7 days a week!

Instead of mailing your proxy, you may choose one of the two voting methods outlined below to vote your proxy.

VALIDATION DETAILS ARE LOCATED BELOW IN THE TITLE BAR.

Proxies submitted by the Internet or telephone must be received by 1:00 a.m., Central time, on June 3, 2010.

Vote by Internet

Log on to the Internet and go to www.envisionreports.com/CXM.

Follow the steps outlined on the secured website.

Vote by telephone

Call toll free 1-800-652-VOTE (8683) within the United States, Canada & Puerto Rico any time on a touch tone telephone. There is **NO CHARGE** to you for the call.

Follow the instructions provided by the recorded message.

Using a blank ink pen, mark your votes with an X as

shown in this example. Please do not write outside the designated areas. x

Annual Meeting Proxy Card

IF YOU HAVE NOT VOTED VIA THE INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.

A. Proposals The Board of Directors recommends a vote FOR all the nominees listed and FOR Proposal 2.

1. Election of Class I Directors:

	For	Withhold		For	Withhold
01 Edward W. Gabrielson	02 Lon E. Otremba

2. To ratify the selection of Marcum LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2010.

For	Against	Abstain
..

B. Non-Voting Items

Change of Address Please print new address below.

C. Authorized Signatures This section must be completed for your vote to be counted. Date and Sign Below

This proxy card must be signed for your instructions to be executed. Each joint owner should sign. Signatures should correspond with the names printed on this proxy card. Attorneys, executors, administrators, guardians, trustees, corporate officers or others signing in a representative capacity should also give full title with their signature.

Date (mm/dd/yyyy) - Please print date below.

Signature 1 - Please keep signature within the box.

Signature 2 - Please keep signature within the box.