


City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 3, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: ORDINANCE TO GRANT A TELECOMMUNICATIONS SERVICES FRANCHISE EXCLUDING CABLE TELEVISION SERVICES, TO VERIZON VIRGINIA, INC.

**ISSUE:** Consideration of an ordinance to grant a franchise to Verizon Virginia, Inc., a wholly owned subsidiary of Verizon Communications, Inc., to use the public rights-of way and other City property, for the construction and maintenance of its telecommunications system and FTTP (fiber to the premises) network in the City of Alexandria.

**RECOMMENDATION:** That City Council pass the franchise ordinance on first reading and schedule it for public hearing, second reading, and final passage on Saturday, June 13.

**DISCUSSION:** On April 18, City Council adopted an ordinance to solicit proposals for a franchise to provide telecommunications services in the City, exclusive of cable services. On May 26, Council received one proposal from Verizon Virginia, Inc. and referred it to the City Manager for review. Staff completed the review and determined that the proposal submitted meets all the terms and conditions of the solicitation, and includes all of the City's requirements for the construction and maintenance of fiber to the premises network in the City of Alexandria. The network will allow Verizon to bring FiOS services, excluding cable services, to the City of Alexandria. If a franchise award is made on June 13, Verizon has indicated that construction activities will begin this summer.

The negotiated franchise ordinance includes the following key terms:

- The non-exclusive franchise authorizes Verizon to construct and maintain a telecommunications system (data and voice or any addition to its telecommunications services except cable services) including the FTTP network, as allowed by state and federal law. It should be noted that telephone service is regulated by the State Corporation Commission and the Internet is not regulated at the federal, state or local level per federal statute.
- The franchise commences upon execution of the agreement by both parties, following final passage of the ordinance, and will expire 25 years after the effective date. The

franchisee shall have the option, subject to City Council approval, to renew the franchise for three consecutive renewal terms of five years each.

- The franchise requires Verizon to remove or relocate its facilities within a public right-of-way, at its own expense and within 30 days of written notice provided by the City, whenever the City, in its sole discretion, determines that the facilities disturb or interfere or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, avenues, roadways, or storm drainage systems.
- The franchise outlines conditions for constructing the FTTP network, including undergrounding requirements and placement of aerial facilities, citizen notification prior to commencing construction activities in neighborhoods, tree trimming by persons holding a “Certified Arborist” certification, and requires Verizon, at its own cost and expense, to replace, repair, or restore any damaged property to its prior condition.
- The franchise requires notification to the City whenever there is a change in the control or transfer of the franchise within 30 days after the any filing with the State Corporation Commission. “Control” means ownership of 25 percent or more of the voting stock of Verizon Virginia, Inc., or the actual exercise of any substantial influence over the policies and actions of Verizon Virginia.

**FISCAL IMPACT:** The City has imposed a PRoW (Public Rights-of Way) Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia. The PRoW is 89¢ per access line per month effective July 1, 2009. These fees are remitted to the State of Virginia and are distributed to local municipalities in aggregate form, so we are unable to distinguish Verizon contributions from other vendors’ contributions.

**ATTACHMENT:** Proposed Franchise Ordinance

**STAFF:**

Rose Williams Boyd, Director of Citizen Assistance  
Karen Snow, Assistant City Attorney

Introduction and first reading: 06/09/09  
Public hearing: 06/13/09  
Second reading and enactment: 06/13/09

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to grant to Verizon Virginia Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, and operation of a telecommunications system, excluding cable services, in the City.

Summary

The proposed ordinance grants a franchise to Verizon Virginia Inc., to provide telecommunications services, excluding cable services, in the City.

Sponsor

Rose Williams Boyd, Director, Office of Citizen Assistance

Staff

Rose Williams Boyd, Director, Office of Citizen Assistance  
Karen S. Snow, Assistant City Attorney

Authority

15.2-2100, et. seq., of the Code of Virginia (1950), as amended

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to grant to Verizon Virginia Inc., its successors and assigns a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, and operation of a telecommunications system, excluding cable services, in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to Verizon Virginia Inc., hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a telecommunications system, excluding cable services, using the public rights-of-way in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. 4586, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for 25 years to design, construct, maintain, and operate a telecommunications system, excluding cable services, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Telecommunications Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the City's department of transportation and environmental services.

2. All necessary permits shall be obtained as set forth in paragraph 28 of the Franchise; including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public rights-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property in accordance with paragraphs 12 and 39 of the Franchise and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the state or the Washington Metropolitan Area Transit Authority.

1 4. This Franchise may be assigned or transferred; provided, however, that Grantee shall  
2 provide notice to the City within thirty days after any filing with the Virginia State Corporation  
3 Commission seeking consent to such proposed transaction, as further set forth in paragraph 62  
4 of the Franchise.

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6 5. The Grantee shall provide to the City a surety in the amount of \$500,000 in a form  
7 acceptable to the City, to ensure completed construction of the fiber-to-the premises network.  
8 Upon completion of the construction of the network, the Grantee shall provide to the City a  
9 \$250,000 surety in a form acceptable to the City.

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11 6. The Grantee will obtain liability insurance to the satisfaction of the city attorney,  
12 which insurance shall name the City as an additional insured.

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14 7. The Grantee will not use the privileges granted by this Franchise to provide the  
15 functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-  
16 18 of the Alexandria City Code.

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18 8. With respect to the construction and placement of the fiber-to-the premises network  
19 as permitted by this Franchise, the Grantee shall comply with the conditions as set forth in the  
20 Franchise, including but not limited to those set forth in paragraph 21 of the Franchise.

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22 9. The Grantee shall protect all property of the City or any other person during any  
23 work of designing, constructing, maintaining, or operating its system in or adjacent to the  
24 public rights-of-way or other public place, and shall fully restore, in kind, any property  
25 damaged or destroyed during any such work as set forth in paragraph 34 of the Franchise.

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27 Section 4. That the city manager be and hereby is authorized to execute such  
28 documents as may be required to effectuate the Franchise hereby granted.

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30 Section 5. That the city clerk be and hereby is authorized to attest the execution of  
31 said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

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33 Section 6. That this ordinance shall become effective on the date and at the time of  
34 its final passage.

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36 WILLIAM D. EUILLE  
37 Mayor

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39 Attachment: Telecommunications Franchise Agreement

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42 Introduction: 06/09/2009  
43 First Reading:  
44 Publication:  
45 Public Hearing:  
46 Second Reading:  
47 Final Passage:

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