

City of Alexandria, Virginia

MEMORANDUM

DATE: OCTOBER 3, 2011
TO: THE HONORABLE MAYOR
AND MEMBERS OF CITY COUNCIL

FROM: JAMES L. BANKS, JR. 
CITY ATTORNEY

KAREN S. SNOW 
ASSISTANT CITY ATTORNEY

ROSE WILLIAMS BOYD 
SPECIAL ASSISTANT TO CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND AND REORDAIN
CHAPTER 3 OF THE CITY CODE TO ADOPT A NEW CABLE
COMMUNICATIONS CODE

ISSUE: City Council consideration of an ordinance to amend and reordain Title 9, Chapter 3, of the Code of the City of Alexandria to adopt a new Cable Communications Code.

RECOMMENDATION: That City Council pass this proposed ordinance (Attachment I) on first reading on October 11, 2011, and schedule it for public hearing, second reading and final passage on Saturday, October 15, 2011.

DISCUSSION: The City of Alexandria's Cable Communications Code ("Cable Code") has not been updated or amended in any significant manner since it was adopted in 1994. Initially, when the Cable Code was enacted it addressed many issues regarding the construction of a cable system in Alexandria. In addition, the Cable Code must be updated to reflect the legislation adopted by the General Assembly in 2006. These comprehensive provisions, Va. Code § 15.2-2108, et. seq, are intended to allow telecommunications companies that had not been in the cable television business to enter into competition with existing companies. However, this legislation does not (and as a matter of law cannot) supplant the provision of the Federal Communications Act of 1934, 47 U.S.C. § 521-573. The state law telecommunications provisions (1) add another set of limitations upon what localities may or may not require as part of a cable franchise; (2) ensure that prospective providers are not delayed in obtaining cable franchises; and (3) provide the much sought after "level playing field" among cable providers both new and old. While the proposed amendments to the City's Cable Ordinance are being adopted with the renewal of Comcast of Virginia, Inc.'s cable television franchise, it is important to note that unlike the

proposed renewed franchise agreement which has been negotiated by and is applicable solely to Comcast, the proposed Cable Ordinance, applies to any and all cable television providers in the City.

Accordingly, the proposed amendments to the City's Cable Code address not only the changes in the telecommunications industry but also the changes in the law. Rather than presenting the proposed Cable Code with strike outs and new highlighted language, which we believe will be confusing to the council and to the public, in the proposed ordinance, we have started anew by repealing the existing Cable Code and adopting new provisions. However, note that many of the provisions set forth in the proposed ordinance have not been amended. To ease review, we have summarized below, the significant amendments and deletions in the proposed Cable Code. The significant proposed amendments to the City's Cable Code fall into the following categories which are addressed more fully below: (1) City's ability to grant, renew, authorize transfer of and termination of a franchise; (2) rate regulation; (3) franchise fee; (4) consumer protection provisions which include: operating hours for a franchisee's local office, customer service telephone availability for subscribers; billing issues; and (5) general provisions.

1. Grant, renewal, transfer and termination of a Cable Television Franchise Agreement (Article D)

Under the former provisions of the City Code, the granting of a cable television franchise was initiated by an application as part of a bidding process. Currently, under Virginia Code § 15.2-2108, a franchisee may apply and renew a cable television franchise either by obtaining a Cable Ordinance Franchise in accordance with the provisions of the state code, or obtain a franchise through a negotiated cable franchise. Proposed City Code §§ 9-3-64 (grant of a cable television franchise) and 9-3-71 (renewal of a franchise), have been rewritten to comply with the requirements of Virginia Code § 15.2-2108.

Furthermore, in accordance with Virginia Code § 15.2-2108, previous city code provision § 9-3-82, which prohibited the City Council from approving a transfer of a cable franchise within three years of a franchisee's construction or acquisition of a cable television system is repealed as it conflicts with state law.

City Code provisions §§ 9-3-90 and 9-3-92, which govern a franchisee's obligation to remove its telecommunications facilities from the City's rights-of-ways upon revocation or expiration of a franchise and/or abandonment of the facilities in the City's rights-of-ways, are amended to reflect that City may require a franchisee to remove facilities from right-of-ways unless franchisee is using its facilities for other legal purposes. The proposed amendments are consistent with the terms in other franchises and license agreements held by companies who occupy the City's rights-of-ways.

Proposed § 9-3-121 (c) (formerly § 9-3-126 (c)) is amended to provide if a franchisee abandons its cable television system or fails to operate its system in accordance with its franchise or city code, the City may seek emergency relief from the courts to appoint another operator of the cable system.

2. Rate Regulation (Article L).

Proposed City Code § 9-3-197 (formerly § 9-3-202) is consistent with federal regulations which provide that the City's ability to regulate cable rates is limited to basic rates. Accordingly, the new provision provides that the City may regulate rates and charges only so long as it is in compliance with applicable law.

In addition, under the cable administrator's duties and responsibilities, proposed Code § 9-3-205, has not been substantively amended but all references to the City's office of citizen assistance have been eliminated.

3. Franchise Fee (Article M).

Proposed City Code § 9-3-232, repeals the provision that a cable television franchisee must pay franchisors a minimal franchise fee of 3% of gross revenues. The prior provision has been repealed based on the enactment of Virginia Code §§ 58.1-648, and 15.2-2108, which provide that the City may only receive payment from a cable television company for use of its rights-of-ways. However, in a negotiated cable franchise, the locality and the cable television company may negotiate an annual fee for public, educational, governmental, ("PEG") access capital needs.

4. Consumer Protection Provisions (Article K)

In accordance with state law and federal regulations, the proposed amendments to City Code § 9-3-167, delete the provision that a franchisee's local office has to be open for business during specified hours and on specified days. The new code provision requires that the franchisee's office in the City be open for business during "normal business hours." The amendment defines "normal business hours" as those "which most similar businesses in the community are open to serve customers" and includes some evening hours and/or weekend hours.

An additional amendment to § 9-3-167 is the requirement that the franchisee's customer service department answer its telephone within 30 seconds, 90% of the time, as measured on a quarterly basis. Previously, the City Code provided that this standard was to be met by the franchisee 95% of the time. This amendment is proposed to bring the City's Code into compliance with federal regulations because federal regulations require that answering time must be met 90% of the time, and state code mandates that local ordinances not be more stringent than federal law.

Proposed City Code § 9-3-171(f) which addresses credits to a subscriber's account for interruption of service is amended to reflect that credits by a franchisee are no longer automatic but a subscriber must notify the franchisee of service interruption and request a credit.

5. General Provisions (Article A)

The amendments to the code provisions enumerated below are made primarily to definitions contained in the Code.

- a. Proposed Code § 9-3-2, which defines the term “Purpose” of the Cable Communications Code, is amended to delete the following language, “Moreover, a cable company typically operates a monopoly in its service area, or faces very limited competition... and that a grant of a franchise gives the franchisee extensive economic benefits and has the potential of placing the holder in a position to abuse its public trust.” This amendment reflects that no telecommunications provider is barred from entering the cable television market at any time.
- b. Proposed Code § 9-3-28, which defines “Gross Revenues” is amended to incorporate the definition of gross revenues as contained in Virginia Code § 15.2-2108 (19).
- c. Proposed Code § 9-3-60, repeals the City’s authority to receive filing fees for granting, renewing, approving a franchise and fees for rate increase approvals. Virginia Code § 15.2-2108 prohibits franchising authorities from charging and collecting said filing fees. In accordance with state law, the only fees that the City may recover are based on the costs the City incurs in processing a request (which is essentially staff time).
- d. Proposed § 9-3-146 (formerly § 9-3-151(b)), which governs record-keeping requirements by franchisee deletes the requirement that franchisee needs to keep separate financial statements governing operations in franchise area, so long as information required by the City can be separated from a franchisee’s books and records.
- e. Proposed § 9-3-148, (formerly § 9-3-153) is amended to include franchisee reports that are relevant to regulation of franchise. Proposed provision eliminates enumeration of specified documents such as construction plans, ownership records and organizational charts, and replaced those specific documents with language that the City can require “other information with regard to franchisee’s operations, affairs, transactions or property as may be reasonably necessary or appropriate” to the franchisee’s performance in the City.
- f. Section 9-3-148(b) (formerly § 9-3-153(b) which regulates the annual opinion survey report has been amended to include requirement that survey questions are to be developed in collaboration between the cable administrator and the franchisee so the City has more input into questions.
- g. Code § 9-3-149 governs reports of complaints that a franchisee is required to submit to the City. This section is amended by deleting the requirement that a franchisee track subscribers’ verbal complaints. As a matter of business practice, franchisees track all subscriber complaints whether verbal or written, by written documentation, so the requirements of documenting verbal complaints is moot.

- h. Code § 9-3-259 (formerly § 9-3-265) amended to eliminate requirement that franchisee pays for cost of consultant to aid City in review of analysis of matters relating to rates and charges, technical standards, system construction or upgrades, market surveys or other activities. Under current law, franchising authority may not charge franchisee for consultant's fees.

If you have any questions or wish to discuss this further, please call us.

FISCAL IMPACT: None.

ATTACHMENT: Proposed ordinance

STAFF:

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Special Assistant to the City Manager

cc: Bruce Johnson
Acting City Manager

Michele Evans
Deputy City Manager

Jacqueline M. Henderson
City Clerk

Introduction and first reading: 10/11/2011
Public hearing: 10/15/2011
Second reading and enactment: 10/15/2011

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Chapter 3 (ALEXANDRIA CABLE COMMUNICATIONS CODE) of Title 9 (LICENSING AND REGULATION) of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The ordinance repeals and reordains the City’s Cable Ordinance to incorporate changes in federal law and state law governing the City’s authority to regulate cable television companies.

Sponsor

Staff

Rose Boyd, Special Assistant to the City Manager
Karen S. Snow, Assistant City Attorney

Authority

47 U.S.C. §§ 521 – 573 and § 15-2-2108 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. _____

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AN ORDINANCE to amend and reordain Chapter 3 (ALEXANDRIA CABLE COMMUNICATIONS CODE) of Title 9 (LICENSING AND REGULATION) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 3 (Alexandria Cable Communications Code) of Title 9 (Licensing and Regulation) of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

[The following is all new language]

**ALEXANDRIA CABLE COMMUNICATIONS CODE
CHAPTER 3**

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14			

1
2 **ARTICLE A**

3
4 **General Provisions**

5
6 **Sec. 9-3-1 Title.**

7
8 This chapter shall be known and may be cited as the "Alexandria Cable Communications
9 Code."

10
11 **Sec. 9-3-2 Purpose.**

12
13 The City Council of Alexandria finds that the development of cable television systems
14 has the potential to be of great benefit to those who reside and work in the city. Cable
15 technology is rapidly changing, and cable plays an essential role as part of the city's basic
16 infrastructure. Cable television systems make extensive use of scarce and valuable public
17 rights-of-way in a manner that differs from the way in which the general public uses them. As
18 a result, the grant of a franchise for the use of public rights-of-way has the effect of giving the
19 holder extensive economic benefits. For these reasons, the city council finds that general
20 welfare of the city requires that regulations be established to ensure that any cable television
21 franchise granted by the city is in accord with and is operated in the public interest. In light of
22 the foregoing, the following goals, among others, underlie the provisions set forth in this
23 chapter:

24
25 (a) Cable television should be available to as many city residents as possible.

26
27 (b) A cable system should be capable of accommodating both the present and the
28 reasonably foreseeable future cable-related needs of the community.

29
30 (c) A cable system should be constructed and maintained during a franchise term so
31 that changes in technology may be integrated into existing system facilities to the maximum
32 extent feasible.

33
34 (d) A cable system should be responsive to the needs and interests of the local
35 community. It is the intent of the city council that all provisions set forth in this chapter be
36 construed to serve the public interest and the foregoing public purposes, and that any
37 franchise issued pursuant to this chapter be construed to include the foregoing findings and
38 public purposes as integral parts thereof.

39
40 **Sec. 9-3-3 through 9-3-10 reserved.**

41
42 **Definitions and Word Usage**

43
44 **Sec. 9-3-11 Definitions and usage--general.**

45
46 For the purposes of this chapter, the following terms, phrases, words and abbreviations
47 shall have the meanings given in this article, unless otherwise expressly stated. Words not

1 defined herein shall have a meaning set forth in Title 47 of the United States Code, Chapter 5,
2 Subchapter V-A, 47 U.S.C. § 521, et seq., as amended, and, if not defined therein, should have
3 their common and ordinary meaning within the cable television industry.
4

5 **Sec. 9-3-12 Access Channel.**
6

7 "Access channel" shall mean any channel on a cable system set aside by a franchisee for
8 public, educational or governmental use.
9

10 **Sec. 9-3-13 Affiliate.**
11

12 "Affiliate" shall mean any person who owns or controls, is owned or controlled by, or is
13 under common ownership or control with a franchisee.
14

15 **Sec. 9-3-14 Administrator.**
16

17 "Administrator" shall mean the cable television administrator appointed by the city
18 manager.
19

20 **Sec. 9-3-15 Basic service.**
21

22 "Basic service" shall mean any service tier that includes the retransmission of local
23 television broadcast signals.
24

25 **Sec. 9-3-16 Cable act.**
26

27 "Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521,
28 et seq., as it may be amended from time to time.
29

30 **Sec. 9-3-17 Cable service.**
31

32 "Cable service" shall mean (1) the one-way transmission to subscribers of video
33 programming or other programming services, and (2) subscriber interaction, if any, which is
34 required for the selection of such video programming or other programming service.
35

36 **Sec. 9-3-18 Cable system or system.**
37

38 "Cable system" or "system" shall mean a facility consisting of a set of closed
39 transmission paths and associated signal generation, reception and control equipment that is
40 designed to provide cable service which includes video programming and is provided to multiple
41 customers within the city, but such term does not include any of the following: (1) a system that
42 serves fewer than 20 subscribers; (2) any facility that serves only to retransmit the television
43 signals of one or more television broadcast stations; (3) any facility that serves only subscribers
44 without using any public right-of-way; (4) any facility of a common carrier which is subject, in
45 whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. §
46 201, et seq., provided that such facility shall be considered a cable system if it is used in the
47 transmission of video programming directly to subscribers, unless the extent of such use is solely
48 to provide interactive on-demand services ; (5) any facility of any electric utility used solely for

1 operating its electric utility systems; (6) any portion of a system that serves fewer than 50
2 subscribers in any locality where such portion is a part of a larger system franchised in an
3 adjacent locality; or (7) an open video system that complies with § 653 of Title VI of the
4 Communications Act of 1934, as amended, 47 U.S.C. § 573. A reference to a cable system refers
5 to any part thereof, including, without limitation, converters.
6

7 **Sec. 9-3-19 City.**

8
9 "City" shall mean the City of Alexandria, Virginia.
10

11 **Sec. 9-3-20 City council or council.**

12
13 "City council" or "council" shall mean the governing body of the city.
14

15 **Sec. 9-3-21 Educational access channel.**

16
17 "Educational access channel" shall mean any channel on a cable system set aside by a
18 franchisee for educational use.
19

20 **Sec. 9-3-22 FCC.**

21
22 "FCC" shall mean the Federal Communications Commission, its designee or any
23 successor governmental entity.
24

25 **Sec. 9-3-23 Franchise.**

26
27 "Franchise" shall mean a non-exclusive authorization granted in accordance with this
28 chapter to construct, operate and maintain a cable system along and within the public rights-of-
29 way of the city or a specified portion thereof. Any such authorization, in whatever form granted,
30 shall not include, or be deemed to include, an authorization to transact or carry on a business
31 within the city, or to attach devices to poles or other structures, whether owned by the city or a
32 private entity, or to excavate or perform work in or along any public right-of-way.
33

34 **Sec. 9-3-24 Franchise agreement.**

35
36 "Franchise agreement" shall mean a contract between the city and a franchisee that sets
37 forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.
38

39 **Sec. 9-3-25 Franchise area.**

40
41 "Franchise area" shall mean the area of the city that a franchisee is authorized to serve by
42 its franchise agreement.
43

44 **Sec. 9-3-26 Franchisee.**

45
46 "Franchisee" shall mean a person who has been granted a franchise by the city.
47

1 **Sec. 9-3-27 Governmental access channel.**

2
3 "Governmental access channel" shall mean any channel on a cable system set aside by a
4 franchisee for government use.
5

6 **Sec. 9-3-28 Gross revenues.**

7
8 "Gross revenues" shall mean all revenue, as determined in accordance with generally
9 accepted accounting principles, that is actually received by the cable operator and derived from
10 the operation of the Cable System to provide Cable Services in the franchise area. Gross
11 revenues shall include, without limitation, monthly fees charged subscribers for any basic,
12 optional, premium, per-channel or per-program service; installation, disconnection, reconnection
13 and change-in-service fees; leased channel fees; late fees and administrative fees; revenues from
14 the rentals and sales of converters or other equipment; fees for the rental of studios and
15 production equipment and the use of franchisee personnel; advertising revenues; revenues from
16 program guides; and revenues from home shopping channels, including commissions from the
17 sales of goods; provided, however, that in an ordinance cable franchise "gross revenue" shall not
18 include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is
19 received from the sale of merchandise over home shopping channels carried on the cable system,
20 but not including revenue received from home shopping channels for the use of the cable service
21 to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a
22 governmental entity or its agent or designee, including without limitation a local public access or
23 education group; (iv) program launch fees; (v) directory or Internet advertising revenue
24 including, but not limited to, yellow page, white page, banner advertisement, and electronic
25 publishing; (vi) a sale of cable service for resale or for use as a component part of or for the
26 integration into cable services to be resold in the ordinary course of business, when the reseller is
27 required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii)
28 revenues received by any affiliate or any other person in exchange for supplying goods or
29 services used by the cable operator to provide cable service; and (viii) revenue derived from
30 services classified as noncable services under federal law, including, without limitation, revenue
31 derived from telecommunications services and information services, and any other revenues
32 attributed by the cable operator to noncable services in accordance with rules, regulations,
33 standards, or orders of the Federal Communications Commission.
34

35 **Sec. 9-3-29 Ordinance Cable Franchise.**

36
37 "Ordinance cable franchise" shall mean a franchise issued in accordance with Va. Code
38 § 15.2-2018.21.
39

40 **Sec. 9-3-30 Person.**

41
42 "Person" shall mean a natural person, partnership, association, joint stock company,
43 organization, corporation, limited liability corporation and any other legal entity, and any lawful
44 successor thereto or transferee thereof, but such term does not include the city.
45

1 **Sec. 9-3-31 Public access channel.**

2
3 "Public access channel" shall mean any channel on a cable system set aside by a
4 franchisee for use by the general public, including groups and individuals, and which is available
5 for such use on a non-discriminatory basis.
6

7 **Sec. 9-3-32 Public rights-of-way.**

8
9 "Public rights-of-way" shall mean the surface, the air space above the surface, and the
10 area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive
11 or bridge, in which the city holds a property interest and which, consistent with the purposes for
12 which it was acquired or dedicated, may be used for the installation, operation and maintenance
13 of a cable system. No reference in this chapter or in any franchise agreement to a "public right-
14 of-way" shall be deemed to be a representation or guarantee by the city that its interests or other
15 rights in such right-of-way are sufficient to permit its use for the installation, operation and
16 maintenance of a cable system, and a franchisee shall be deemed to gain only those rights which
17 the city has the undisputed right and power to give.
18

19 **Sec. 9-3-33 Sale.**

20
21 "Sale" shall mean any sale, exchange or barter transaction.
22

23 **Sec. 9-3-34 Service tier.**

24
25 "Service tier" shall mean a package of two or more cable services for which a separate
26 charge is made by a franchisee, other than a package of premium and pay-per-view services that
27 are also sold on a genuine a la carte basis.
28

29 **Sec. 9-3-35 Subscriber.**

30
31 "Subscriber" shall mean any person who legally receives any service delivered over a
32 cable system.
33

34 **Sec. 9-3-36 Transfer.**

35
36 "Transfer" shall mean any transaction in which (i) an ownership or other interest in the
37 cable operator is transferred, directly or indirectly, from one person or group of persons to
38 another person or group of persons, so that majority control of the cable operator is transferred;
39 or (ii) the rights and obligations held by the cable operator under the cable franchise granted
40 under this article are transferred or assigned to another person or group of persons. However,
41 notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise
42 shall not include (a) transfer of an ownership or other interest in the cable operator to the parent
43 of the cable operator or to another affiliate of the cable operator; (b) transfer of an interest in the
44 cable franchise granted under this article or the rights held by the cable operator under the cable
45 franchise granted under this article to the parent of the cable operator or to another affiliate of the
46 cable operator; (c) any action that is the result of a merger of the parent of the cable operator; (d)
47 any action that is the result of a merger of another affiliate of the cable operator; or (e) a transfer

1 in trust, by mortgage, or by assignment of any rights, title, or interest of the cable operator in the
2 cable franchise or the system used to provide cable in order to secure indebtedness.

3
4 **Sec. 9-3-37 Transmission of video programming directly to subscribers.**

5
6 "Transmission of video programming directly to subscribers" shall mean the delivery of
7 programming to equipment located on subscriber premises, whether or not that programming is
8 selected, controlled or marketed to subscribers by the entity that delivers it.

9
10 **Sec. 9-3-38 User.**

11
12 "User" shall mean a person utilizing a cable system channel or equipment and facilities
13 for purposes of producing or transmitting material, as contrasted with the receipt thereof in the
14 capacity of a subscriber.

15
16 **Sec. 9-3-39 through 9-3-51 reserved.**

17
18
19
20 **General Franchise Characteristics**

21
22 **Sec. 9-3-52 Grant of Franchise.**

23
24 The city council may grant one or more negotiated cable television franchises in
25 accordance with this chapter and Va. Code § 15.2-2108.20. Except as otherwise expressly
26 provided in a franchise agreement, each such franchise shall be subject to the provisions of this
27 chapter, as it may be amended from time to time. The city council may also grant one or more
28 ordinance cable franchises, to the extent the applicable statutes are not preempted by federal law.

29
30 **Sec. 9-3-53 Franchise required.**

31
32 No person may construct or operate a cable system without a franchise granted by the
33 city council. No person may be granted a franchise unless such person has entered into a
34 franchise agreement with the city, or the city has adopted an ordinance issuing such person an
35 ordinance cable franchise.

36
37 **Sec. 9-3-54 Operation of a cable system without a franchise.**

38
39 Any person who occupies public rights-of-way for the purpose of constructing or
40 operating a cable system and who does not hold a valid franchise from the city shall be subject to
41 all provisions of this chapter. In its discretion, the city may, at any time, require such person to
42 enter into a franchise agreement with the city, or issue such person an ordinance cable franchise,
43 require such person to remove its property and restore the area occupied by the property to a
44 condition satisfactory to the city, remove the property itself and restore the area to a satisfactory
45 condition and charge the person the costs therefor, or take any other action it is entitled to take
46 under applicable law, including filing an action for damages. In no event shall a franchise be
47 created unless it is issued by action of the city council and is subject to a written franchise
48 agreement or an ordinance cable franchise.

