

MEMORANDUM

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA *IBP*
CITY ATTORNEY

KAREN S. SNOW *KSS/IBP*
ASSISTANT CITY ATTORNEY

DATE: May 3, 2001

SUBJECT: ORDINANCE EXTENDING FRANCHISE OF VERIZON VIRGINIA, INC.
(FORMERLY BELL ATLANTIC-VIRGINIA, INCORPORATED)

Issue: Consideration of a proposed ordinance to extend the franchise of Verizon Virginia, Inc., for one year, until April 30, 2002.

Recommendation: That city council pass the proposed ordinance on first reading, and set the ordinance for public hearing, second reading and final passage on May 12, 2001.

Discussion: The city's franchise to Verizon Virginia, Inc. (the successor to Bell Atlantic-Virginia, Incorporated) authorizes the company "to use the [city's] streets, alleys, and other public places" and "to acquire, erect, maintain and use posts, poles, wires, manholes, ... and all other necessary apparatus in, under, over and along the streets, alleys and public places of the city for the purpose of providing a telephone and telegraph service and system" within the city. The franchise was granted in 1977 for a 20-year period, ending on April 30, 1997. This is the fourth extension of the franchise agreement. As explained below, this extension is at the request of both city staff and Verizon.

In last year's docket memorandum, a copy of which is attached, we set out the history of the franchise and the prior extensions.

In that memorandum, we advised you that the federal courts of appeal had issued conflicting decisions regarding the application of local governments' authority to impose user fees and otherwise regulate their rights-of-way under the Federal Telecommunications Act. Unfortunately, one year later, the case pending in the Fourth Circuit, which includes Virginia, has not been resolved. Resolution of these legal issues will affect the terms of a new, long term franchise.

Verizon has requested that franchise negotiations with the city resume after June 1, 2001, because of the internal changes within the company which were a result of the August 2000, merger between Bell Atlantic and GTE. Moreover, Verizon's general counsel has advised city staff that he and his staff have been fully occupied by ongoing franchise negotiations with other local governments.

It is our intention to begin meeting with Verison in June and to have a new franchise ready for presentation to council by February of next year. Therefore, in order to keep the current franchise in effect during this period of negotiation, the proposed ordinance extends the term of the franchise until April 30, 2002.

We will be pleased to answer any questions about this matter.

Attachment

cc: Philip Sunderland
City Manager

Michele Evans
Assistant City Manager

Rose Boyd
Director, Citizen Assistance

M E M O R A N D U M

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA
ACTING CITY ATTORNEY

KAREN S. SNOW
ASSISTANT CITY ATTORNEY

DATE: APRIL 6, 2000

SUBJECT: ORDINANCE EXTENDING TERM OF BELL ATLANTIC FRANCHISE

Issue: Consideration of the attached proposed ordinance which extends the Bell Atlantic-Virginia, Incorporated ("Bell Atlantic"), franchise by one year, from April 30, 2000, to April 30, 2001.

Recommendation: That city council pass the proposed ordinance on first reading, and set the ordinance for public hearing, second reading and final passage on April 15, 2000.

Discussion: The city's franchise to Bell Atlantic authorizes it "to use the [city's] streets, alleys, and other public places" and "to acquire, erect, maintain and use posts, poles, wires, manholes, ... and all other necessary apparatus in, under, over and along the streets, alleys and public places of the city for the purpose of providing a telephone and telegraph service and system" within the city. The franchise was granted in 1977 for a 20-year period, ending on April 30, 1997. This is the third extension of the franchise agreement. As explained below, this extension is at the request of both city staff and Bell Atlantic because cases are pending before federal courts of appeal which when decided will establish the authority of local governments' to manage their public rights-of-way.

In 1997, city council extended the franchise for two years, until April 30, 1999. This was done because of legislation enacted by the General Assembly in 1997 that effectively placed a one-year moratorium on the authority of cities to impose any type of franchise fees on telephone companies, or to require the provision of any type of in-kind services or physical assets from such companies, in return for a franchise permitting the companies to use and occupy public rights-of-way. Council decided in 1997 that negotiations over a new franchise with Bell Atlantic should not begin until the General Assembly had enacted new legislation that lifted this moratorium and defined the authority of Virginia cities to impose fees and other requirements on phone companies in return for permission to use

and occupy public rights-of-way.

Such legislation was enacted by the General Assembly during its 1998 session and became effective on July 1, 1998. The legislation removed the moratorium that had been established a year earlier; it also (i) authorized cities to impose a "public rights-of-way fee" on each residential and business telephone line within their boundaries, (ii) assigned to the state department of transportation the responsibility annually to set the amount of the fee, and (iii) prohibited cities that elect to impose the fee from placing other requirements on telephone companies in return for the right to use and occupy rights-of-way. The city elected to impose this "public rights-of-way" fee, and an ordinance accomplishing this was enacted in June 1998.

In January 1999, Bell Atlantic requested that the city extend the franchise until April 30, 2000, because the parties had not had the opportunity to meet and negotiate a new franchise agreement. An ordinance accomplishing this was enacted on April 17, 1999.

With the lifting of the moratorium and the definition of cities' authority to impose what amounts to a franchise fee on telephone companies, we had expected to be able to negotiate a new franchise with Bell Atlantic during the latter part of 1998 and to present it to council for approval prior to the expiration of the current franchise on April 30, 1999. However, the application of the rights-of-way fee and local governments' authority to regulate their rights-of-way have been litigated by local governments in Maryland and Texas. Those courts have issued conflicting decisions. At least two of these cases have been appealed and argued before federal circuit courts. The federal courts are to decide these cases in the next four months. Therefore, Bell Atlantic and city staff have agreed to defer negotiations of a new franchise until these cases have been decided.

It is our current intention to begin meeting with Bell Atlantic after the cases on appeal have been decided and to have a new franchise ready for presentation to council in March of next year.

In order to keep the current franchise in effect during this period of waiting for the issuance of the courts' decisions and thereafter to start negotiations, the attached ordinance extends the term of franchise until April 30, 2001.

If you have any questions, please call us.

Attachment

cc: Philip Sunderland
City Manager

Michele Evans
Assistant City Manager

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EXHIBIT NO. 2

21
5-8-01

Introduction and first reading:	05/08/01
Public hearing:	05/12/01
Second reading and enactment:	05/12/01

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Ordinance No. 2165, as amended, to grant a one-year extension of franchise rights to Verizon Virginia, Inc., formerly known as Bell Atlantic-Virginia, Incorporated, formerly known as the Chesapeake and Potomac Telephone Company of Virginia.

Summary

The proposed ordinance extends the franchise ordinance enacted in 1977, which permits equipment and facilities of Verizon Virginia, Inc. to be located within the public rights-of-way in the City of Alexandria, to April 30, 2002.

Sponsor

Office of Citizen Assistance

Staff

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

Authority

§ 15.2-2100, Code of Virginia (1950), as amended

Estimated Costs of Implementation

None

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

None

EXHIBIT NO. 3

21
5-8-01

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Ordinance No. 2165, as amended, to grant a one-year extension of franchise rights to Verizon Virginia, Inc. formerly known as Bell Atlantic-Virginia, Incorporated, formerly known as the Chesapeake and Potomac Telephone Company of Virginia.

WHEREAS, on March 22, 1977, the city council enacted Ordinance No. 2165 which granted a franchise to the Chesapeake and Potomac Telephone Company of Virginia and its successors and assigns for the purpose of providing a telephone and telegraph service and system within the city; and

WHEREAS, Section 17 of Ordinance No. 2165 provided that the franchise rights and privileges provided by the ordinance were to continue for a term of twenty years, from May 1, 1977 until May 1, 1997; and

WHEREAS, in order to await the resolution of issues arising from the enactment of certain state and federal legislation affecting the rights of municipalities and telecommunications providers, the city council, on October 25, 1997, enacted Ordinance No. 3961, which extended the franchise an additional two-year period until April 30, 1999, and on April 17, 1999, enacted Ordinance No. 4039, which extended the franchise until April 30, 2000 and again, on April 15, 2000, enacted Ordinance No. 4126, which extended the franchise until April 30, 2001; and

WHEREAS, resolution of the rights and responsibilities of local governments and telecommunications providers awaits the outcome of cases pending before federal courts of appeal, and such resolution will affect the terms of a new long-term franchise; and

WHEREAS, Verizon Virginia, Inc. and the city have agreed to delay negotiations of a new franchise agreement until July 1, 2001; and

WHEREAS, the city council has determined that it is in the public interest to extend for an additional one-year period the franchise granted by Ordinance No. 2165 to Verizon Virginia, Inc. as the successor to Bell Atlantic-Virginia, Incorporated, which was the successor to the Chesapeake and Potomac Telephone Company of Virginia; now, therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That, pursuant to Article VII, Section 9 of the Virginia Constitution and Article 1 of Chapter 21 of Title 15.2 of the Code of Virginia, Section 17 of Ordinance No. 2165, which defines the term of the franchise granted to the Chesapeake and Potomac Telephone Company of Virginia and its successors and assigns, be, and the same hereby is, amended to set the term at 25 years, such that the franchise shall expire on April 30, 2002, unless sooner voluntarily surrendered by the franchisee with the consent of the city council, or unless sooner forfeited as provided by law.

Section 2. That Ordinance No. 2165, as amended by Section 1 of this ordinance, be, and the same hereby is, reordained.

Section 3. That this ordinance shall be effective upon the date and at the time of its final passage, and shall operate retroactively to extend the term of the franchise heretofore until April 30, 2002.

KERRY J. DONLEY
Mayor

Introduction: 5/08/01
First Reading: 5/08/01
Publication:
Public Hearing:
Second Reading:
Final Passage: