

EXHIBIT NO. 1 16  
4-18-09

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~~4-14-09~~

City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 9, 2009  
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
FROM: JAMES K. HARTMANN, CITY MANAGER *J*  
SUBJECT: ORDINANCE SOLICITING FRANCHISE PROPOSALS TO USE THE PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES, EXCLUDING CABLE SERVICES, IN THE CITY

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**ISSUE:** Consideration of an ordinance to provide for the advertising and receipt of proposals for the granting of a franchise permitting the design, construction, upgrade, repair, removal and operation of a system, including a fiber-to-the premises network, in the public rights-of-way.

**RECOMMENDATION:** That City Council pass the ordinance (Attachment) on first reading and schedule it for public hearing, second reading and final passage on Saturday, April 18.

**DISCUSSION:** Verizon's original franchise was granted in 1977 for a 20-year period that ended on April 30, 1997. City Council granted five one year extensions with the last extension ending on April 30, 2003. Staff has reached the point in the negotiations with Verizon that the legal process for granting a telephone franchise needs to be initiated. The attached ordinance initiates and establishes the process for granting a franchise to provide telecommunications services, excluding cable services, in the City. This ordinance, which sets the broad parameters for a franchise and authorizes the solicitation of proposals, is required by Virginia Code Section 15:2-2100. Following the public hearing and adoption of the ordinance on April 18, the City is required to issue a public notice soliciting bids that must run for four consecutive weeks in a newspaper of general circulation. Announcement of the successful bidder will be docketed for the May 26 Council meeting. The actual franchise agreement will be docketed for Council action at the June 9 meeting, and set for public hearing, final approval and authorization of the City Manager to sign the document following the public hearing on Saturday, June 13.

As you may recall, Verizon staff requested that the telephone franchise be finalized before negotiations of a cable television franchise are begun. Adoption of this ordinance and approving a telecommunications franchise in June will ultimately allow Verizon to begin the construction of the FiOS network in the City of Alexandria. I recommend that Council approve the ordinance.

**FISCAL IMPACT:** The franchise is expected to have a positive fiscal impact and does not require any City funds to build or operate the network. There will be no franchise fee paid to the City as the state telecommunications tax law which became effective on January 1, 2007,

prohibits local franchise fees for telecommunications franchises, however, there will be a five percent tax paid to the State. These tax funds are pooled and remitted to localities by formula.

**ATTACHMENT:** Proposed Ordinance

**STAFF:**

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

Introduction and first reading: 4/14/09  
Public hearing:  
Second reading and enactment:

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to initiate and establish the process for granting a franchise by the City of Alexandria, Virginia, to use the public rights-of-way to provide Telecommunications Services, excluding Cable Services, in the City.

Summary

The proposed ordinance initiates the City of Alexandria's solicitation of bids, and negotiation and grant of a franchise for Telecommunications Services, excluding Cable Service, 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 initiate and establish the process for granting a franchise by the City of Alexandria, Virginia, to use the public rights-of-way to provide Telecommunications Services, excluding Cable Services in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City of Alexandria proposes to grant a franchise, in the manner prescribed by law, for Telecommunications Services, excluding Cable Services, permitting the design, construction, maintenance, upgrade, repair, removal and operation of a system, including a fiber-to-the-premises network, in the public rights-of-way, as set forth in the following proposed franchise ordinance:

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

AN ORDINANCE to grant to \_\_\_\_\_, 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, upgrade, repair, removal and operation of a system to provide Telecommunications Services, excluding Cable Services, in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to \_\_\_\_\_ hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, 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. \_\_\_\_\_, 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 \_\_\_\_ years to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, excluding Cable Services, using the public rights-of-way in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the

1 City of Alexandria, the Commonwealth of Virginia and the  
2 United States, and any regulatory agency having jurisdiction,  
3 including, without limitation, with the following conditions:  
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5 1. Each year an updated map of all facilities within  
6 the City, existing and proposed, showing locations, scheduled  
7 construction and service dates, and such additional information  
8 as the City Manager may specify in his reasonable discretion,  
9 shall be filed with the City's Department of Transportation and  
10 Environmental Services.  
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12 2. All necessary permits shall be obtained for each and  
13 every excavation or installation, including but not limited to  
14 boring in and/or under public rights-of-way or other public  
15 place.  
16

17 3. In the event the relocation, construction,  
18 reconstruction, maintenance or repair by the City, the  
19 Commonwealth of Virginia or the Washington Metropolitan Area  
20 Transit Authority of any facilities or services is necessary or  
21 desirable, and it is necessary to alter or relocate, either  
22 permanently or temporarily, any of the Grantee's property in the  
23 public rights-of way or other public property in order to  
24 accomplish same, the Grantee will, after reasonable notice,  
25 move, alter or relocate its property at its own cost and expense,  
26 and should the Grantee fail to comply with such notice, its  
27 property may be removed, altered or relocated by the City,  
28 Commonwealth or Washington Metropolitan Area Transit  
29 Authority at the cost of the Grantee and without liability for any  
30 resulting damage. The Grantee will do everything reasonably  
31 necessary, in a timely manner, to prevent any delays in  
32 construction projects of the City, the Commonwealth or the  
33 Washington Metropolitan Area Transit Authority.  
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35 4. This Franchise may be assigned or transferred;  
36 provided, however, that no such assignment or transfer shall be  
37 effective without the prior written consent of the City, which  
38 consent will not be unreasonably withheld.  
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40 5. The Grantee will obtain liability insurance to the  
41 satisfaction of the City Attorney, which insurance shall name the  
42 City as an additional insured.  
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44 6. The Grantee will not use the privileges granted by  
45 this Franchise to provide the functional equivalent of a cable  
46 system or Cable Services as defined in sections 9-3-17 and 9-3-  
18 of the Code of the City of Alexandria (1950), as amended.

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2           7. *The Grantee shall protect all property of the City or*  
3 *any other person during any work of designing, constructing,*  
4 *maintaining, repairing, upgrading, removing or operating its*  
5 *system in or adjacent to the public rights-of-way or other public*  
6 *place, and shall fully restore, in kind, any property damaged or*  
7 *destroyed during any such work. In the event the Grantee and any*  
8 *property owner are unable to agree on a remedy, the Grantee*  
9 *agrees to abide by the determination of the City as to compensation*  
10 *or restoration.*

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12           8. *That nothing in this Franchise shall increase or*  
13 *strengthen the rights that other franchisees may have. The City*  
14 *shall have no liability to the Grantee for exercising any rights the*  
15 *City may have in general or under its franchises with other*  
16 *franchisees, regardless of the effect of such exercise on the Grantee.*

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18           9. *The Grantee shall remove its property at its own*  
19 *expense at the expiration or termination of this Franchise or any*  
20 *extension hereof*

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22           Section 4. *That the City Manager be and hereby is*  
23 *authorized to execute such documents as may be required to*  
24 *effectuate the Franchise hereby granted.*

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26           Section 5. *That the City Clerk be and hereby is*  
27 *authorized to attest the execution of said documents and to affix*  
28 *thereon the official seal of the City of Alexandria, Virginia.*

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30           Section 2. That as soon as this ordinance has been finally passed, the City  
31 Clerk shall cause to be advertised once a week for four successive weeks in a  
32 newspaper published in the City of Alexandria, a descriptive notice of the proposed  
33 ordinance contained in Section 1 of this ordinance, and, in addition thereto, shall by  
34 such advertisement invite bids for the Franchise proposed to be granted by such  
35 proposed ordinance, by publishing with the descriptive notice of such ordinance a  
36 notice which shall be in substantially the following form:

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39                               NOTICE

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41           BIDS ARE INVITED BY THE CITY OF ALEXANDRIA, VIRGINIA, FOR THE  
42 GRANT OF A FRANCHISE PERMITTING THE FRANCHISEE TO USE THE PUBLIC  
43 RIGHTS-OF-WAY IN THE CITY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE,  
44 REPAIR, UPGRADE, REMOVAL AND OPERATION OF A SYSTEM TO PROVIDE  
45 TELECOMMUNICATIONS SERVICES, EXCLUDING CABLE SERVICES, FOR THE  
46 BENEFIT OF RESIDENTS, BUSINESSES AND GOVERNMENT IN THE CITY.

1 DETAILED CONDITIONS AND SPECIFICATIONS FOR THE FRANCHISE ARE ON FILE  
2 IN THE OFFICE OF THE DIRECTOR OF CITIZEN ASSISTANCE, 301 KING STREET,  
3 ALEXANDRIA VIRGINIA 22314.

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5 THE TERM OF THE FRANCHISE IS NEGOTIABLE, BUT IT SHALL BE FOR A  
6 MINIMUM OF FIVE YEARS.

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8 ALL BIDS ARE TO BE SUBMITTED IN WRITING AND DELIVERED TO ROSE  
9 WILLIAMS BOYD, DIRECTOR, OFFICE OF CITIZEN ASSISTANCE, 301 KING  
10 STREET, ALEXANDRIA VIRGINIA 22314, ON OR BEFORE MAY 18, 2009 AT 3:00  
11 PM. EASTERN TIME. AT THAT TIME BIDS SHALL BE PUBLICLY OPENED AND  
12 BIDDERS IDENTIFIED.

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14 IN ADDITION, IDENTIFICATION OF THE BIDDERS SHALL BE ANNOUNCED  
15 IN OPEN SESSION OF THE CITY COUNCIL OF THE CITY OF ALEXANDRIA IN THE  
16 COUNCIL'S CHAMBERS, CITY HALL, 301 KING STREET, SECOND FLOOR,  
17 ALEXANDRIA, VIRGINIA 22314, ON MAY 26, 2009, AT 7:00 P.M. AT THAT TIME,  
18 THE MAYOR SHALL REFER THE BIDS RECEIVED TO THE CITY MANAGER TO  
19 EVALUATE, REVIEW AND CONSIDER IN THE MANNER PRESCRIBED BY LAW,  
20 INCLUDING THE SELECTION OF, AND NEGOTIATION OF A FRANCHISE  
21 AGREEMENT WITH, A PREFERRED BIDDER. AS SOON THEREAFTER AS  
22 PRACTICABLE, THE CITY MANAGER WILL RECOMMEND THE SUCCESSFUL  
23 BIDDER, AND PRESENT THE NEGOTIATED FRANCHISE AGREEMENT, FOR  
24 CONSIDERATION AND APPROVAL BY CITY COUNCIL.

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26 THE CITY RESERVES THE RIGHT IN THE CITY MANAGER'S SOLE  
27 DISCRETION TO REJECT ANY AND ALL BIDS; TO TERMINATE NEGOTIATIONS  
28 AT ANY STAGE OF THE SELECTION PROCESS, AND TO REISSUE THE REQUEST  
29 FOR BIDS WITH OR WITHOUT MODIFICATION.

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31 THE DESCRIPTIVE NOTICE OF THE PROPOSED FRANCHISE ORDINANCE IS  
32 AS FOLLOWS:

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34 The proposed ordinance will grant a franchise, under certain conditions,  
35 permitting the grantee to use the public rights-of-way in the City of Alexandria,  
36 for the design, construction, maintenance, repair, upgrade, removal and  
37 operation of a Telecommunications System, excluding Cable Services, for the  
38 benefit of residents, businesses and government in the City. (Complete text of  
39 ordinance available in office of the city clerk.)  
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1           Section 3. That this ordinance shall become effective on the date and at the time  
2 of its final passage.

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WILLIAM D. EUILLE,  
Mayor

- Introduction:
- First Reading:
- Publication:
- Public Hearing:
- Second Reading:
- Final Passage:



ORDINANCE NO. 4586

AN ORDINANCE to initiate and establish the process for granting a franchise by the City of Alexandria, Virginia, to use the public rights-of-way to provide Telecommunications Services, excluding Cable Services in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City of Alexandria proposes to grant a franchise, in the manner prescribed by law, for Telecommunications Services, excluding Cable Services, permitting the design, construction, maintenance, upgrade, repair, removal and operation of a system, including a fiber-to-the-premises network, in the public rights-of-way, as set forth in the following proposed franchise ordinance:

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

*AN ORDINANCE to grant to \_\_\_\_\_, 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, upgrade, repair, removal and operation of a system to provide Telecommunications Services, excluding Cable Services, in the City.*

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

*Section 1. That this Franchise is hereby granted to \_\_\_\_\_ hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, 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. \_\_\_\_\_, 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 \_\_\_\_ years to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, excluding Cable Services, using the public rights-of-way in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the 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 for each and every excavation or installation, including but not limited to boring in and/or under public rights-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 at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, Commonwealth 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 Commonwealth or the Washington Metropolitan Area Transit Authority.*

4. *This Franchise may be assigned or transferred; provided, however, that no such assignment or transfer shall be effective without the prior written consent of the City, which consent will not be unreasonably withheld.*

5. *The Grantee will obtain liability insurance to the satisfaction of the City Attorney, which insurance shall name the City as an additional insured.*

6. *The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent of a cable system or Cable Services as defined in sections 9-3-17 and 9-3-18 of the Code of the City of Alexandria (1950), as amended.*

7. *The Grantee shall protect all property of the City or any other person during any work of designing, constructing,*

*maintaining, repairing, upgrading, removing or operating its system in or adjacent to the public rights-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work. In the event the Grantee and any property owner are unable to agree on a remedy, the Grantee agrees to abide by the determination of the City as to compensation or restoration.*

*8. That nothing in this Franchise shall increase or strengthen the rights that other franchisees may have. The City shall have no liability to the Grantee for exercising any rights the City may have in general or under its franchises with other franchisees, regardless of the effect of such exercise on the Grantee.*

*9. The Grantee shall remove its property at its own expense at the expiration or termination of this Franchise or any extension hereof*

*Section 4. That the City Manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.*

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

Section 2. That as soon as this ordinance has been finally passed, the City Clerk shall cause to be advertised once a week for four successive weeks in a newspaper published in the City of Alexandria, a descriptive notice of the proposed ordinance contained in Section 1 of this ordinance, and, in addition thereto, shall by such advertisement invite bids for the Franchise proposed to be granted by such proposed ordinance, by publishing with the descriptive notice of such ordinance a notice which shall be in substantially the following form:

#### NOTICE

BIDS ARE INVITED BY THE CITY OF ALEXANDRIA, VIRGINIA, FOR THE GRANT OF A FRANCHISE PERMITTING THE FRANCHISEE TO USE THE PUBLIC RIGHTS-OF-WAY IN THE CITY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, REPAIR, UPGRADE, REMOVAL AND OPERATION OF A SYSTEM TO PROVIDE TELECOMMUNICATIONS SERVICES, EXCLUDING CABLE SERVICES, FOR THE BENEFIT OF RESIDENTS, BUSINESSES AND GOVERNMENT IN THE CITY. DETAILED CONDITIONS AND SPECIFICATIONS FOR THE FRANCHISE ARE ON FILE IN THE OFFICE OF THE DIRECTOR OF CITIZEN ASSISTANCE, 301 KING STREET, ALEXANDRIA VIRGINIA 22314.

THE TERM OF THE FRANCHISE IS NEGOTIABLE, BUT IT SHALL BE FOR A MINIMUM OF FIVE YEARS.

ALL BIDS ARE TO BE SUBMITTED IN WRITING AND DELIVERED TO ROSE WILLIAMS BOYD, DIRECTOR, OFFICE OF CITIZEN ASSISTANCE, 301 KING STREET, ALEXANDRIA VIRGINIA 22314, ON OR BEFORE MAY 18, 2009 AT 3:00 PM. EASTERN TIME. AT THAT TIME BIDS SHALL BE PUBLICLY OPENED AND BIDDERS IDENTIFIED.

IN ADDITION, IDENTIFICATION OF THE BIDDERS SHALL BE ANNOUNCED IN OPEN SESSION OF THE CITY COUNCIL OF THE CITY OF ALEXANDRIA IN THE COUNCIL'S CHAMBERS, CITY HALL, 301 KING STREET, SECOND FLOOR, ALEXANDRIA, VIRGINIA 22314, ON MAY 26, 2009, AT 7:00 P.M. AT THAT TIME, THE MAYOR SHALL REFER THE BIDS RECEIVED TO THE CITY MANAGER TO EVALUATE, REVIEW AND CONSIDER IN THE MANNER PRESCRIBED BY LAW, INCLUDING THE SELECTION OF, AND NEGOTIATION OF A FRANCHISE AGREEMENT WITH, A PREFERRED BIDDER. AS SOON THEREAFTER AS PRACTICABLE, THE CITY MANAGER WILL RECOMMEND THE SUCCESSFUL BIDDER, AND PRESENT THE NEGOTIATED FRANCHISE AGREEMENT, FOR CONSIDERATION AND APPROVAL BY CITY COUNCIL.

THE CITY RESERVES THE RIGHT IN THE CITY MANAGER'S SOLE DISCRETION TO REJECT ANY AND ALL BIDS; TO TERMINATE NEGOTIATIONS AT ANY STAGE OF THE SELECTION PROCESS, AND TO REISSUE THE REQUEST FOR BIDS WITH OR WITHOUT MODIFICATION.

THE DESCRIPTIVE NOTICE OF THE PROPOSED FRANCHISE ORDINANCE IS AS FOLLOWS:

The proposed ordinance will grant 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, repair, upgrade, removal and operation of a Telecommunications System, excluding Cable Services, for the benefit of residents, businesses and government in the City. (Complete text of ordinance available in office of the city clerk.)

Section 3. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE  
Mayor

Final Passage: April 18, 2009