

RESOLUTION NO. 2741

Resolution to Approve the first five-year extended term of the Comcast of Virginia, Inc. Cable Television Franchise dated October 25, 2011

WHEREAS, on or about October 25, 2011, the City of Alexandria, Virginia (the “City”) granted a cable television franchise (the “Franchise”) to Comcast of Virginia, Inc. (“Comcast”); and

WHEREAS, the Franchise consisted of an initial term of five years (the “initial Term”) with provisions for two extension of five years each (“Extended Terms”); and

WHEREAS, the Initial Term is to expire on or about October 25, 2016, and approval of the first Initial Term of five years is to be based on the mutual agreement of the City and Comcast to extend the Franchise and based on the City’s compliance review of the Franchise to insure that Comcast has complied with the terms of the Franchise; and

WHEREAS, the City conducted the compliance review in late 2015, and the review determined that Comcast was not in compliance with its methodology for the three percent Public, Educational and Governmental Access (“PEG”) access fee; and

WHEREAS, Comcast upon notification adjusted their assessment methodology and resolved the issue; and

WHEREAS, notwithstanding the PEG methodology issue, the City determined that Comcast is substantially in compliance with the terms and conditions of the Franchise; and

WHEREAS, the City and Comcast agree to extend the Franchise for five years.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Alexandria, Virginia:

That the term of the Franchise is hereby extended until October 25, 2021; and


That this Resolution shall be effective immediately upon passage.

Adopted: September 27, 2016



ALLISON SILBERBERG MAYOR

ATTEST:



Jacqueline M. Henderson, MMC City Clerk

Comeast Draft 7-29-16 meeting

CABLE TELEVISION FRANCHISE EXTENSION AGREEMENT
Between The City of Alexandria and Comcast of Virginia LLC

This ~~E~~extension ~~A~~agreement is entered into as of the 25th day of October, 2016 (the “Effective Date”), between Comcast of Virginia, LLC, (the “Franchisee”), and The City of Alexandria, a municipal corporation in Virginia, with offices located at 301 King Street, Alexandria VA, 22314 (the “City”).

WHEREAS the City and Comcast entered into a five (5) year Franchise Agreement on October 25, 2011 with two five (5) year options to extend (“Franchise Agreement”) and;

WHEREAS, Section 2(i)(2) provides that the first five-year extension shall be granted upon a successful finding that the Franchisee has passed the compliance review set forth in Section 2(i)(2);

WHEREAS, the Office of ____ has conducted this compliance review and has found the Company in compliance with the relevant terms and conditions of the Franchise Agreement;

WHEREAS, the City and the Franchisee desire mutually agree to extend the Franchise Agreement, as amended below, for the first Eextended five-year Tterm; ~~to begin on October 25, 2016, as amended below~~

NOW, THEREFORE, the parties agree as follows:

1. Pursuant to Section 2(i) of the Franchise Agreement, the term of the Franchise is extended for a period of five years, to begin on October 25, 2016.
1. Section 6(a) of the Franchise Agreement shall be amended to include the provision of one high definition non-commercial public, education and governmental access channel as set forth below:

Section 6(a)

In order to ensure universal availability of public, educational and government programming, Franchisee shall provide six (6) Channels on the Basic Service Tier. The Access Channels shall be designated as follows: one (1) dedicated Public Access Channel, two (2) Educational Access Channels dedicated to higher education, two (1) Educational Access Channel dedicated to the Alexandria Public Schools, one (1) dedicated Government Access Channel, **and one HD channel to be used at the discretion of the City for non-commercial PEG programming** (collectively, “PEG Channels”). The Franchisee will provide downstream transmission of such Access Channels on its Cable System at no charge to the City or other PEG access programmers.

2. Section 2 of the Franchise Agreement is amended to add an additional subsection 2(n), ~~which to include a provision concerning competitive equity. The language~~ shall read as follows:

2(n) Competitive Equity

(1) The City reserves the right to grant additional franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the ~~Public Rights-of-Way. The City intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law.~~ If, following the Effective Date of this ~~Agreement~~ Franchise, the City grants such an additional franchise or authorization to use the ~~Public Rights-of-Way~~ to provide ~~video programmingsueh~~ services (the "Competitive Grant") and Franchisee believes the City has done so on terms materially more favorable ~~to the grantee~~ (the "Competitor") than the obligations ~~of Comcast~~ under this Agreement, then the provisions of this subsection will apply.

(2) ~~As part of this Agreement, T~~ the City and Franchisee ~~have mutually agreed that certain provisions of this Franchise Agreement upon the following terms as a condition of granting the Franchise, which terms~~ may place the Franchisee at a significant competitive disadvantage if not required of a wireline competitor. ~~Those provisions are:~~ the Franchise fee [Section 7(b)], the definition of "Gross Revenues," [City Code Section 9-3-28], the amount of PEG funding [Section 6(b)], the number of PEG Access Channels [Section 6(a), as amended], liquidated damages and enforcement provisions [Sections 8(a) – 8(e)], customer service obligations [City Code Sections 9-3-166 – 9-3-176], and reporting obligations [City Code Section 9-3-148] (hereinafter "Material Obligations"). ~~The City and Franchisee agree that these Material Obligations bear no relationship to the technology employed by the Franchisee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors.~~ The City and Franchisee further agree that ~~the terms of any Competitive Grant are not required to be identical word-for-word, and that the intent of preserving competitive equity shall be met this provision shall not require a word for word identical franchise or authorization for a competitive equity~~ so long as the regulatory and financial burdens on ~~Comcast and the Competitor~~ each entity are generally equivalent.

(3) ~~To exercise its rights under this subsection 2(n), w~~ Within one (1) year of the ~~issuance of a Competitive Grant~~ adoption of a wireline competitor's franchise or similar authorization, Franchisee must notify the City in writing of the Material Obligations in this Agreement that ~~Franchisee believes~~ exceed the Material Obligations of the ~~Competitor under the Competitive Grant, wireline competitor's franchise or similar authorization.~~ The City shall have one hundred twenty (120) days to agree to allow Franchisee to adopt the same Material Obligations provided to the ~~wireline C~~ competitor, or ~~to assert~~ dispute that the ~~challenged~~ Material Obligations are ~~not materially more favorable to the Competitor than the corresponding terms of the Franchise Agreement~~ different. In the event the City ~~asserts~~ disputes that the ~~burden of the Competitor's~~ Material Obligations ~~is not materially more favorable~~ are different, Franchisee may bring an action in federal or state court for a determination as to whether the Material Obligations are ~~materially more favorable~~ different and as to what franchise amendments would

be necessary to remedy the disparity. Alternatively, Franchisee may notify the City that it elects to immediately commence the renewal process under 47 U.S.C. § 546 and to have the remaining term of this Agreement shortened to not more than thirty (30) months.

(4) Nothing in this subsection is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

(5) This provision does not apply if the City is ordered or required by law to issue a franchise on different terms and conditions. In addition, the Franchisee's right to seek, and the relief is contingent on the actual commencement of service by the Competitor to at least one subscriber in the Citynew Cable Operator actually commencing provision of service in the market to its first customer. Furthermore, sShould the Competitornew Cable Operator fail to continuously provide service for a period of six (6) months, the City has the right to implement this Agreement with its original terms upon one hundred eighty (180) days' notice to Franchisee.

(6) This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; or to systems that serve less than 5% (five per cent) of the geographic area of the City; or to "over-the-top" services that only provide video programming by means of via the public Internet (e.g., i.e. Netflix).

3. Section 12 is amended to substitute, as recipient of copies of notices to: Comcast 7850 Walker Drive, Suite 200 Greenbelt, MD 20770 Attn: Government Affairs and Comcast Cable Northeast Division 676 Island Pond Rd. Manchester, NH 03109 Attn: Government Affairs Department.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date.

Comcast of Virginia, LLC

City of Alexandria, Virginia

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Titles: _____