City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 29, 2022

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES F. PARAJON, CITY MANAGER /s/

DOCKET TITLE:
Public Hearing and Consideration of a Recommendation to City Council for a Resolution to Initiate the Second Five-Year Extended Term of the Comcast Cable Television Franchise Agreement and Five-Year Extended Term of the Fiber Use Agreement. [ROLL-CALL VOTE]

ISSUE: Consideration of the proposed cable television franchise extension and fiber use agreement for Comcast of Virginia, Inc. to continue to provide cable television services in the City of Alexandria.

RECOMMENDATION: That City Council:

1. Consider a Resolution (Attachment 1) that initiates the Second Five-Year Extended Term of the Comcast Cable Television Franchise Agreement ("Franchise Agreement"), and schedule the Resolution for a Public Hearing and Final Passage on April 23, 2022; and

2. Authorize the City Manager to implement the renewal and extension of the Franchise Agreement and Fiber Use Agreement with Comcast of Virginia, Inc.

BACKGROUND: In October 2011, the City approved a Franchise Agreement for Comcast of Virginia, Inc. to provide cable television services to approximately 50,000 households and businesses in Alexandria. The 2011 Franchise Agreement consists of an initial term of five years ("Initial Term") with provisions for two extensions of five years each ("Extended Term"). Approval of the Extended Term of the franchise must be based on the results of franchise compliance reviews that are conducted by City staff. The first Extended Term was approved by City Council in October 2016 after satisfying a compliance review.

Compliance reviews consider the degree to which Comcast has adhered to the terms of the Franchise Agreement. The City's compliance review is narrowly defined under state and federal laws governing cable

television franchises and requires Comcast to be in significant breach of operations in order for the City to refuse the renewal term per the Franchise Agreement. General consumer dissatisfaction with an incumbent provider's service delivery does not provide the City with enough cause to withhold approval of an Extended Term.

The City also executed a separate but related five-year Fiber Use Agreement that outlines the lease agreement with Comcast for the City's Institutional Network (I-Net), which serves nearly 90 City and Alexandria City Public School (ACPS) sites with fiber optic connections. The Fiber Use Agreement allows the City to maintain fiber connectivity at City sites until transition to the City-owned broadband fiber network is completed. This Fiber Use Agreement is also due for a five-year Extended Term renewal.

In October 2021, City Council approved a six-month extension for these agreements in order to obtain additional information about the location of Comcast assets and more clearly define resolution of fiber related outages. The approval of the Second Five-Year Extended Term will satisfy the maximum 15-year term of the Franchise Agreement. The City will have the opportunity to evaluate how they want to utilize Comcast cable services and assets over these last five years of this agreement.

DISCUSSION:

Franchise Agreement Compliance Review

To conduct the compliance review, the City procured the services of an outside firm to test and inspect the Comcast cable system serving the City's franchise area to determine whether the Comcast system meets the terms of the technical performance requirements based on FCC requirements and the City's Franchise Agreement. The firm found that the Comcast system is in compliance with the current franchise agreement's technical requirements. All digital signal tests met the relevant standards.

In addition to the technical performance review the City also arranged for an industry specific financial review of the fees the City receives from Comcast. The review identified a single area of concern relating to the assessment methodology for the PEG (Public, Educational, and Governmental Access Use of System) Grant. Per the agreement, the City receives three percent of Comcast's annual gross revenue, known as "PEG Fees". The City's financial consultant and Comcast used different interpretation of certain accounting standards related to how revenue is measured for some streaming services. Because these standards continue to be refined by the accounting professionals, the City and Comcast agreed that Comcast would pay the City a settlement of $100,000 and the City would retain the ability to continue to review these accounting standards as they evolve.

Fiber Use Agreement Compliance Review

In reviewing the City's Fiber Use Agreement, staff expressed concerns related to having complete Comcast fiber location information, maintenance notifications and service response time. Comcast has agreed to improvements on these issues that are reflected in the attached amendment to the fiber use agreement. (Attachment 4).

FISCAL IMPACT: The City will receive $100,000 in PEG Fees as part of the settlement agreement with Comcast. The City continues to receive recurring fees from Comcast on a quarterly basis for PEG and I-Net equipment equal to three percent of Comcast's gross cable television revenues from the Alexandria system, or approximately $1 million annually.

The City will continue to make lease payments to Comcast for the use of the I-Net on a monthly basis for approximately $500,000 annually.

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ATTACHMENTS:

1. Resolution Initiating the Second Extended Term of the Comcast Cable Television Franchise
2. Comcast Cable Television Franchise Agreement (2011)
3. City of Alexandria Fiber Use Agreement with Comcast
4. First Amendment to the City of Alexandria Fiber Use Agreement with Comcast

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