



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of December 10, 2016

DATE: November 28, 2016

SUBJECT: Adoption of a Resolution Approving the Renewal of the Certificate of Public Convenience and Necessity for Cable Television Held by Comcast of Potomac, LLC, and Authorizing the County Manager to execute the Fiber Use Agreement.

C. M. RECOMMENDATION:

1. Adopt the proposed Resolution (Attachment A) to Approve the Renewal of a Certificate of Public Convenience and Necessity for Cable Television Held by Comcast of Potomac, LLC, (“Certificate”) (Attachment B); and,
2. Authorize the County Manager to execute the Certificate, Fiber Use Agreement (Exhibit D to the Certificate), and all other associated documents, subject to approval of such documents as to form by the County Attorney.

ISSUES: There are no issues concerning this matter.

SUMMARY: Adopting the attached Resolution is necessary to renew the Certificate and approve a Fiber Use Agreement with a term of five (5) years. The proposed Certificate (“Agreement” or “Franchise”) will authorize Comcast to continue providing cable television services in Arlington County. In exchange for occupation of the County’s rights- of-way, the County will receive 5% of Comcast’s gross revenues for video services as the Virginia Communications Tax (franchise fees). The County also will receive an annual grant to support the County’s institutional network and the public, educational and government (“PEG”) channels.

BACKGROUND: The Arlington County Code authorizes the County Board to issue a nonexclusive cable television franchise if the Board finds that it is in the public interest to do so. Comcast of Potomac (“Comcast”) has been providing cable television service throughout the County as the successor-in-interest to a franchise originally granted in 1998 to Prime Communications. Since 1998, the County Board has issued Certificates of Public Convenience and Necessity to three entities for the provision of cable television service: Comcast, Verizon, and RCN Corporation. The term of the Comcast Certificate originally was to expire on June 30, 2013. The term has been extended periodically by the County Board since that date until December 14, 2016.

County Manager:

County Attorney:

Staff: Robert Billingsley, Department of Technology Services

DISCUSSION: To begin the Franchise renewal process, the Board adopted, on March 12, 2011, a resolution concerning the commencement of a proceeding for detailed assessments of technical, local programming, and other future needs, as well as the review of the performance of Comcast under the existing Certificate. Negotiations to renew the Certificate have been completed between County staff and Comcast.

The Board granted a Certificate of Public Convenience and Necessity for Cable Television in June 2006 to Verizon Virginia Inc. (“Verizon”). Since then, Verizon has provided Fiber to the Premises (“FTTP”) cable service in competition with Comcast in Arlington County. The FTTP technology allows Verizon to provide video, in addition to voice and high-speed data services using fiber optic cable.

The County’s previous agreement with Comcast was negotiated when there were no competing cable television providers, and in the renewal negotiations Comcast argued strongly that the terms of the new agreement should more closely resemble the Verizon agreement. As a result, staff and Comcast worked to negotiate an agreement that would impose on Comcast obligations that were comparable to those required of other cable franchisees in the County.

The 2006 Virginia General Assembly enacted legislation, effective July 1, 2006, that created an alternative method for localities to grant cable franchises. Under that legislation, local governments must permit entry into the market by new cable providers, and may either negotiate an acceptable franchise agreement, or adopt an ordinance in accordance with strictly prescribed standards set forth in the law. The proposed new Agreement between the County and Comcast was negotiated under the traditional renewal process provided by federal law.

Effective January 1, 2007, the General Assembly also enacted legislation that changed the way that cable television service providers pay the franchise fees on their local cable franchise agreements. The new tax law replaced all local taxes and surcharges on communications services with a state-wide standard Virginia Communications Tax of five percent (5%). The franchise fees previously received by localities directly from cable television franchisees were included in the definitions of Communication Taxes. Franchisees now pay these taxes directly to the Virginia Department of Taxation. After deducting certain costs, the remainder of the Tax revenue is passed on to localities, including the County.

The Principal Provisions of the Proposed 5-year Agreement are:

- The County will continue to receive a franchise fee of five percent of Comcast video revenues in the form of the Virginia Communications Tax on television services.
- Comcast will pay to the County an Annual PEG Grant for capital support of the County’s institutional network and the production of PEG programming. The Annual PEG Grant will be \$1.38 per subscriber per month.
- Comcast will be required to comply with customer service standards that address installations, service calls, billing practices, telephone availability and subscriber notices.
- Comcast will be required to comply with Federal Communications Commission (“FCC”) technical standards for maintaining and operating a cable system.
- Comcast will continue to provide quarterly and annual reports to the County to demonstrate compliance with the terms of the Agreement. The Agreement also has certain enforcement mechanisms, such as audits and the assessment of liquidated damages, to ensure that Comcast remains in compliance.

- Comcast will provide free video service to all County and schools facilities.
- Comcast will continue to comply with the County's rights-of-way regulations applicable to public utilities.

The Certificate Provides the Following Benefits to the County:

- The County currently has the right to use six standard definition (SD) channels for public, educational, and governmental (PEG) purposes, but the renewed Certificate provides high definition (HD) channels under the following conditions:
 - The County will retain three SD channels (one each per PEG entity).
 - The County will receive three high definition (HD) channels (one each per PEG entity) to replace three existing SD channels (one taken from ATV/ACG and two taken from AETV/APS).
 - Three SD channels will revert from Comcast to the County, in exchange for the three new HD channels, as the HD channels become available and are activated.
- The first HD channel will be available no later than June 30, 2017. The other two HD channels will be made available within 90 days of any County request after January 1, 2018, when Comcast's system upgrades will accommodate the additional channels. The County determines the order in which the PEG entities will receive the new HD channels.
- Comcast will allow the County to retain at least 43 of all 93 Institutional Network (INET) connections to County and Arlington Public School buildings, until the retained sites can be attached to ConnectArlington by December 31, 2017.
- Comcast will enter into a separate Fiber Use Agreement (Exhibit D attached to the Certificate) for the County to retain the right to use two essential backbone connections, at no cost to the County, to a backup network operations center in Shirlington, and to the Sequoia office buildings. The County also will retain two public safety interconnections to the NCRNet.
- The formula for determining the amount of annual PEG Capital expenses funding, to be received by the County from Comcast throughout the franchise term, will be \$1.38 per subscriber per month.
- Franchise Term will be five years.
- In-kind rent support from Comcast (i.e. no payment of rent to Comcast by AIM) for Arlington Independent Media ("AIM") facilities space currently at 2701 Wilson Boulevard (Comcast offices) will end on December 31, 2017. AIM will begin paying full rent and utilities, starting January 1, 2018.

The Terms of the Agreement are Comparable to those of the Current Agreement Previously Granted to Verizon, with Several Exceptions:

- **High Definition Broadcast Capabilities.** The Verizon Agreement provides the County six PEG channels broadcast in standard definition (SD) quality, but no HD channels as provided in the proposed Comcast Agreement.
- **Studio Facilities.** Verizon provides no support for any PEG studios except for the PEG Capital Grant, but Comcast will continue to provide office and studio space located at 2701 Wilson Boulevard with utilities at no cost for the Arlington Independent Media (AIM) public access organization for one year.

- **Temporary Use of the Institutional Network (I-Net).** Verizon provides no I-Net facilities, but Comcast will provide I-Net connections to some of the current I-Net sites.

- **Certain Network Facilities at No Cost.** Verizon provides no other long-term fiber network facilities, but Comcast will provide several network communications facilities, such as essential backbone connections and regional interconnections, under the terms of a separate Fiber Use Agreement.

The Comcast Renewal Agreement Differs from the Former Comcast Agreement in the Following Respects:

- **Limited Comcast Provided I-Net.** Comcast is no longer required to construct or maintain an I-Net at Comcast's expense for the full term of the Agreement. However, important segments of the I-Net will be maintained at no cost, as needed, until completion of ConnectArlington.

- **Per subscriber fee for PEG and I-Net Support.** Comcast will pay to the County an Annual PEG Grant based on a per-subscriber fee rather than specified grant amounts, as Comcast has done under its current agreement. The County will also receive in-kind support from Comcast, such as AIM studio space for the County's public access channel at no cost for one year. The per subscriber fees which Comcast will be obligated to pay are the same as the fees paid by Verizon.

- **Fiber Use Agreement.** In a separate agreement, critical portions of the Comcast-provided I-Net, previously paid for by the County, linking critical County and APS buildings and services with hundreds of fiber optic segments will be maintained by Comcast for five years at no cost to the County. Thereafter, the Fiber Use Agreement, will provide, as specified, 144 fiber connections currently running between the two County Network Operations Centers, 48 fiber connections currently running between the County the office building at 2100 Clarendon Boulevard and the County offices located at 2100 Washington Boulevard, and will maintain fiber interconnections to Fairfax County and Alexandria for Public Safety and other intergovernmental purposes.

- **Virtual Private Network Connections.** Comcast will also provide high speed business class service data modems monitoring certain County facilities at no cost for two years.

A public hearing on the proposed franchise is scheduled to be held on December 5, 2016, by the Information Technology Advisory Commission (ITAC). After the hearing, the report from the ITAC will be submitted under separate cover to the Board.

PUBLIC NOTICE: Public notice of the proposed Resolution was placed in the November 16, 2016 and November 23, 2016 issues of the Washington Times for a public hearing during the County Board Meeting of December 10, 2016.

FISCAL IMPACT: The County will receive a 5% franchise fee, paid by Comcast to the Commonwealth of Virginia as the Virginia Communications Tax, the bulk of which is passed on to the County. In addition, Comcast will provide an Annual PEG Grant for capital support of the County's institutional network and the production of PEG programming.

CONCLUSION: The proposed Certificate will continue to provide Arlington County cable subscribers with direct competition in the delivery of cable television services in accordance with franchise terms that are comparable for both providers. In addition, the Certificate provides the County with fair compensation for the use of the County's rights-of-way. It is recommended that the County Board adopt the Resolution Approving the Certificate and authorizing the County Manager to execute the Certificate, and all other associated documents, subject to approval as to form by the County Attorney.

ATTACHMENT A

RESOLUTION RENEWING THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR CABLE TELEVISION HELD BY COMCAST OF POTOMAC, LLC,

WHEREAS, on June 23, 1998, the County Board of Arlington County, Virginia (the “County Board”), granted a Certificate of Public Convenience and Necessity for Cable Television (the “Certificate”) to SBC Media Ventures, L.P.; and

WHEREAS, the Certificate is now held by Comcast of Potomac, LLC (the “Certificate Holder”); and

WHEREAS, the original expiration date of the Certificate was June 30, 2013; and

WHEREAS, the original expiration date was extended by various Resolutions of the County Board, with the consent of the Certificate Holder, to December 14, 2016; and

WHEREAS, Arlington County staff and the Certificate Holder have been engaged in discussions concerning the renewal of the Certificate, and those discussions have been completed; and

WHEREAS, Arlington County staff and the Certificate Holder have also reached an agreement concerning the use and maintenance of certain fiber optic facilities that were constructed by the Certificate Holder at the County’s expense, the terms of the agreement are contained in a Fiber Use Agreement; and

WHEREAS, the County Board and the Certificate Holder wish to renew the Certificate for a term ending on December 31, 2021, and enter into the Fiber Use Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the County Board having found that it is in the public interest to do so, and after considering the relevant factors authorized and permitted by law, including the Certificate Holder’s compliance with the prior Certificate and applicable law, the quality of the Certificate Holder’s service, the financial, legal and technical qualifications of the Certificate Holder, and the future cable-related needs and interests of the community, grants a renewed Certificate of Public Convenience and Necessity for Cable Television to Comcast of Potomac, LLC, for a term ending on December 31, 2021; and

BE IT FURTHER RESOLVED THAT the County Board authorizes the County Manager to execute the renewed Certificate, Fiber Use Agreement, and all other associated documents, subject to approval of such documents as to form by the County Attorney.

This Resolution shall be effective upon adoption by the County Board, and the rights, privileges, and authority granted by the renewed Certificate shall take effect and be in force as provided by law.

ARLINGTON COUNTY, VIRGINIA

ATTACHMENT B

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR CABLE
TELEVISION HELD BY COMCAST OF POTOMAC, LLC.**