

ORDINANCE NO. 2306

AN ORDINANCE to provide for the granting by the City of Alexandria, Virginia, to a person or corporation and their successors or assigns, hereafter to be ascertained in a manner prescribed by law, the franchise, right and privilege, upon certain conditions, to use the streets, alleys and other public places of the City of Alexandria, Virginia, within its corporate limits, as the same now exist or may be hereafter extended or altered, for the purpose of providing a cable television service and system within said limits, as the same now exist or may be hereafter extended or altered, and to acquire, erect, install, construct, maintain, use and operate posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances, appurtenances and all other necessary apparatus in, under, over and along such streets, alleys and other public places for the aforesaid purposes; and to provide for the receiving of bids for such franchise, right and privilege.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section I. That it is proposed that there shall be granted, in the manner prescribed by law, the franchise, right and privilege to use streets, alleys and other public places of the City of Alexandria, Virginia, within its corporate limits, as the same now exist or may be hereafter extended or altered, for the purposes and upon and subject to the terms, conditions, provisions and limitations embodied in the following draft of an ordinance:

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

AN ORDINANCE to grant to \_\_\_\_\_, its successors and assigns, the franchise, right and privilege, upon certain conditions, to use the streets, alleys and other public places of the City of Alexandria, Virginia, within its corporate limits, as the same now exist or may be hereafter extended or altered, for the purpose of providing a cable television service and system within said corporate limits, and to acquire, erect, install, construct, maintain, use and operate posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances, appurtenances and all other necessary apparatus in, under, over and along such streets, alleys and other public places for the aforesaid purposes.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. The right is hereby granted \_\_\_\_\_, hereinafter referred to as "Grantee," its successors and assigns, for the term and subject to the terms, provisions, conditions and limitations hereinafter stated, to use the streets, alleys and other public places of the City of Alexandria, Virginia, hereinafter referred to as "City," and to acquire, erect, maintain and use, and if now erected or installed, to maintain and use posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances, appurtenances 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 cable television service and system within the corporate limits of the City as the same now exist or may be hereafter extended or altered.

Section 2. The Grantee shall have the right to use, maintain and operate, subject to the provisions, terms, conditions and limitations prescribed in this franchise and subject to all the terms and provisions of the Cable Television Regulation Code, Chapter 7B of the City Code and subject to the lawful exercise of the police power of the City, the posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances, appurtenances and all other necessary apparatus erected, maintained and used in, under, over and along the streets, alleys and other public places of the City on the day this franchise becomes in force and effect for the purpose of so providing a cable television service and system.

Section 3. The Grantee shall have the right to erect, maintain and use such posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances, appurtenances and all other necessary apparatus in, under, over and along the streets, alleys and other public places of the City at such locations as are reasonably suitable and convenient for the purpose of the Grantee and the City subject to the terms, provisions, conditions and limitations hereinafter stated and the lawful exercise of the police power of the City.

Section 4. The Grantee shall not erect or install, move, alter or change the location of any of its property, including but not limited to any posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures and appliances in, under, over or along any street, alley or other public place of the City or dig, cut or disturb any street, alley or other public place of the City unless prior written notice of its intention so to do is given to such department or agency of the City as shall have been or may be designated by the City Manager or the Council of the City and permission in writing so to do is granted by such department or agency or such requirement is waived by such department or agency. Such permission shall be conditioned upon compliance with the terms, conditions, provisions and limitations of this franchise and with such other terms, provisions, conditions and limitations as will preserve, protect and promote the safety of the public using the streets, alleys and other public places of the City and as will prevent interference with or obstruction of the use of streets, alleys and other public places by the City or by any other public utility or public service corporation for their respective purposes and functions. Such permission shall also be conditioned upon such other terms, provisions, conditions and limitations as will preserve, protect and promote the health, safety and general welfare of the City and its citizens subject to the lawful exercise of the police power.

Section 5. In the event the relocation, construction, reconstruction, maintenance or repair by the City of any of its facilities or services now or hereafter acquired, and including but not limited to any street, alley or other public place, sewer, electric, water, fire alarm, police communication, civil defense system or traffic control facilities or any part thereof, or in the event access to any street, alley or other public place to or from any property of the City is required, and it is necessary to move, alter or relocate, either permanently or temporarily, any of the Grantee's property or part thereof, on public property, public right-of-way or public easements, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances in order for the City to relocate, construct, reconstruct, maintain or repair

any such facility, sewer, street, alley or other public place or any such sewer or electric, water, fire alarm, police communication, civil defense system or traffic control facility, or any part thereof, or to obtain access to or from such property, upon notice from the City, the Grantee will move, alter or relocate any such property or part thereof, at its own cost and expense; and should the Grantee fail, refuse or neglect to comply with such notice, such property or part thereof, may be removed, altered or relocated by the City at the cost of the Grantee and the City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation. The Grantee agrees that as a condition of the granting of this franchise that it will do everything reasonably necessary, in a timely manner, to prevent any delays in City construction projects.

Section 6. The Grantee shall at no cost to the City erect, install and maintain on any of its property, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances in, under, over, along or near the streets, alleys and other public places of the City such reasonable devices to apprise or warn persons using the streets, alleys and other public places of the existence of such property as shall be from time to time reasonably prescribed or approved for purposes of public safety by such department or agency of the City as shall have been or may be designated for the purpose by the City Manager or Council of the City.

Section 7. The Grantee shall have the right to remove, trim, cut and keep clear of any of its property, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances, the trees in and along the streets, alleys and other public places of the City, provided it first obtain a written permit from the City so to do, except in cases of emergency.

Section 8. The Grantee in the exercise of any right granted to it by this franchise shall at no cost to the City promptly reconstruct, replace, restore or repair any facility or service of the City, now or hereafter acquired, including but not limited to any street, alley or other public place, sewer, electric, water, fire alarm, police communication, civil defense system or traffic control facility or any part thereof which may be damaged, disturbed or destroyed by the exercise of any such right, in a manner, with such materials and to the satisfaction of such department or agency as shall have been or may be designated by the City Manager or Council of the City.

Section 9. The City reserves and shall have the right to require the Grantee to obtain the specific permission of the City to locate, construct or erect any micro-wave tower, radio relay installation, television relay installation and all other apparatus and appliances appurtenant thereto in, on, under, over, above and along the streets, alleys and other public places of the City and the City further reserves and shall have the right to attach reasonable conditions to the granting of any such specific permission. The City reserves and shall have the right to require the Grantee to obtain the specific permission of the City to locate, construct or erect any of its property, including but not limited to posts, poles,

wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances that exceed in height or size that are now in common use throughout the City in, on, under, over, above and along the streets, alleys and other public places of the City and the City further reserves and shall have the right to attach reasonable conditions to the granting of any such specific permission.

Section 10. Nothing contained in this franchise shall be construed to exempt the Grantee from any tax, levy or assessment which is now or which may be hereafter authorized by law.

Section 11. The Grantee shall render to the public in the City at all times during the term of this franchise efficient cable television service at reasonable rates, which rates shall be controlled by the provisions of the Cable Television Regulation Code, Chapter 7B of the City Code. The Grantee shall render to the City at all times during the term of this franchise efficient cable television service at reasonable rates, which rates shall be as controlled by the Cable Television Regulation Code, Chapter 7B of the City Code. The Grantee will maintain its property, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances in good order and operating condition throughout the term of this franchise, and the Grantee by accepting this franchise agrees that the City or its successors has jurisdiction, to the full extent and in the manner now or hereafter provided by law, during the term of this franchise to require the Grantee to render efficient cable television service at reasonable rates, and that the Circuit Court of the City or its successor has jurisdiction to enforce compliance with all of the terms, provisions, conditions and limitations of this franchise to the full extent and in the manner now or hereafter provided by law during the term of this franchise.

Section 12. The Grantee agrees and binds itself to indemnify, keep and hold the City and its officers, employees and agents free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of the erection, installation, maintenance, repair, operation and use of any of the Grantee's property, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances on the streets, alleys and other public places of the City, or the exercise of any right granted by or under this franchise or the failure, refusal or neglect of the Grantee to perform any duty imposed upon or assumed by the Grantee by or under this franchise; and in the event that any suit or proceeding shall be brought against the City and its officers, employees and agents, at law or in equity, either independently or jointly with the Grantee on account thereof, the Grantee will defend the City and its officers, employees and agents in any such suit or proceeding at the cost of the Grantee; and in the event of a final judgment or decree being obtained against the City and its officers, employees and agents, either independently or jointly with the Grantee, then the Grantee will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the City and its officers, employees and agents harmless therefrom; but nothing herein contained shall be construed to render the Grantee liable for the negligence of the City or of its officers, employees or agents, or for that of any other person, firm or corporation.

Section 13. The City agrees that the provisions, terms, conditions and limitations prescribed in this franchise shall be applicable in all respects to the use of streets, alleys and other public places situated in any territory annexed to the City or which may otherwise become a part of the City through extension of its corporate boundaries, and to the acquisition, erection, maintenance and use, for the said purposes of the Grantee, or property of Grantee, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances in such streets, alleys and public places, and the Grantee shall have the same rights and privileges with respect thereto as are granted by this franchise for the use of streets, alleys and other public places of the City, regardless of the provisions of any franchise or other authority, public or private, granted by any county or other city or town, or of or by any deed or other instrument, and regardless of any limitation upon the expiration thereof fixed in any such franchise, authority, deed or instrument; and the right and privilege to so use such streets, alleys and public places and to acquire, erect, maintain and use such property in such streets, alleys and public places shall expire or terminate with the expiration or termination of this franchise.

Section 14. The rights granted to the Grantee by this franchise may be exercised by any successor or successors, assignee or assignees of the Grantee, but such successor or successors, assignee or assignees shall be subject to and bound by all of the provisions, terms, conditions and limitations prescribed in this franchise.

Section 15. The rights and privileges granted by this franchise shall continue for a term of fifteen (15) years from the first day of May , 1979 unless sooner voluntarily surrendered by the Grantee, with the consent of the Council of the City, or forfeited as provided by law. Upon the expiration of the term of this franchise or surrender or forfeiture of the rights and privileges granted by this franchise, the Grantee shall remove all of its property, including but not limited to posts, poles, wires, manholes, ducts, cables, conduits, electrical conductors, fixtures, appliances and appurtenances from the streets, alleys and other public places of the City and shall repair, restore or replace any street, alley or other public place and any sewer or water, electric, fire alarm, civil defense system, police communication or traffic control facility or tree, or any part thereof, which may be damaged, disturbed or destroyed by or as a direct or indirect result of the removal of such property, in a manner, with such materials and to the satisfaction of the City Manager of the City at the cost and expense of the Grantee within a reasonable time thereafter, which reasonable time shall be prescribed by the Council of the City. Upon the refusal, failure or neglect of the Grantee to so remove such property from the streets, alleys and other public places, or to repair, restore or replace any such street, alley, public place, sewer, water or electric, fire alarm, civil defense system, police communication or traffic control facility or tree in a manner, with such materials and to the satisfaction of such department or agency of the City as shall be designated by the City Manager or Council of the City, the City may remove such property from the streets, alleys and other public places of the City and repair, restore or replace any such street, alley, public place, sewer, water, electric, fire alarm, civil defense system, police communication or traffic control facility or tree at the cost of the Grantee

and the City shall not be liable to the Grantee for damages resulting from such removal.

Section 16. This franchise is granted pursuant to Article VII, Section 9, of the Constitution of the Commonwealth of Virginia and Article 2 of Chapter 9 of Title 15.1 of the Code of Virginia, and is subject to all franchises and permits heretofore granted by the Council to use the streets, alleys and public places of the City by other public utility or public service corporations. It is not intended by the grant of this franchise to abridge the exercise of the police power heretofore or hereafter granted to the City by the General Assembly. The grant of this franchise is subject to all ordinances and resolutions of the Council of the City as the same now exist or may be hereafter amended, revised or modified, in the lawful exercise of the police power or in the lawful exercise of any other power granted to the City by the General Assembly.

Section 17. That this franchise and the rights and privileges granted thereby are not exclusive and nothing in this ordinance shall be construed to prevent a grant by the City of a similar franchise and rights and privilege to other persons or corporations.

Section 18. Where any of the Grantee's facilities are installed anywhere in the City limits, as now or hereafter extended, not in a public street, alley or other public place and a street, alley or other public place shall thereafter be opened or dedicated so as to include any of such facilities within the boundaries of such street, alley or other public place, any of such included facilities shall be operated and maintained under the terms of this franchise.

Section 19. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage, and shall become effective when the Grantee (a) accepts this franchise and agrees to exercise the rights and privileges granted by this franchise and upon and subject to the terms, provisions, conditions and limitations set forth in this franchise, which acceptance and agreement shall be in writing and shall be filed in the office of the city clerk, and (b) at the same time files in such office the bond or bonds required by section 7B-62 of the City Code, with surety approved by the City Manager of the City, conditioned that the Grantee will exercise the rights and privileges granted by this franchise upon and subject to such terms, provisions, conditions and limitations. Such written acceptance and bond shall be filed as provided in this section before the first day of May, 1979.

FRANK E. MANN  
Mayor

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

Section II. 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 the full text of the ordinance contained in Section I of this ordinance and in addition thereto shall, by such advertisement invite bids for the franchise, privilege or right proposed to be granted by said ordinance by publishing with the ordinance a notice which shall be in substantially the following form:

#### NOTICE

Bids will be received by the City Council of the City of Alexandria, Virginia, for the franchise, right and privilege, upon certain conditions, to use the streets, alleys and other public places of the City of Alexandria, Virginia, for the purpose of providing a cable television service and system within the City of Alexandria, Virginia, as more particularly set forth in the text of the proposed ordinance published below.

Bids must be submitted in writing and delivered to the presiding officer of the City Council of the City of Alexandria, Virginia, in open session of said Council in the Council Chamber, City Hall Building, City of Alexandria, Virginia, on the thirteenth day of February, 1979, at the hour of 7:30 P.M.

After receiving said bids the presiding officer and the City Council will proceed to consider the bids and the granting of the proposed franchise in the manner prescribed by law.

The right to reject any and all bids is reserved.

The successful bidder shall be required to reimburse the City of Alexandria for the cost of advertisement.

The proposed ordinance is as follows:

(Insert full text of proposed franchise ordinance as set forth in Section I of this ordinance in publication.)

Section III. That upon approval of this ordinance by the Mayor, it shall be published in a newspaper of general circulation published in the City not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

FRANK E. MANN  
Mayor

FINAL PASSAGE: NOVEMBER 28, 1978