

ORDINANCE NO. 3567

AN ORDINANCE to provide for the grant by the City of Alexandria, Virginia, to a person or persons, or to a corporation, its successors and assigns, hereafter to be ascertained in the mode prescribed by law, of the right, for the term and upon the conditions hereinafter stated, to locate, construct, install, improve, maintain, repair and use, and if now constructed to maintain, repair and use, poles, towers, wire, conductors, cables, conduits, lines, subways, duct banks, manholes, handholes, and other equipment and appliances in, over, along, on and under the public streets, public alleys and other public places of the City of Alexandria, Virginia, for the purpose of distributing, transmitting and selling electric current for light, heat and power at any point within the corporate limits of the City of Alexandria, as such limits now exist or may hereafter be extended or altered.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Article I. That there shall be granted, in the mode prescribed by law for franchise grants and upon the conditions hereinafter specified, the rights and privileges in, over, along, on and under the public streets, public alleys and other public places of the City of Alexandria, Virginia, as such rights and privileges are set forth in the following draft ordinance:

AN ORDINANCE

To grant to _____, its successors and assigns, the right, for the term and upon the conditions hereinafter stated, to locate, construct, install, improve, maintain, repair and use, and if now constructed to maintain, repair and use, poles, towers, wires, conductors, cables, conduits, lines, subways, duct banks, manholes, handholes, and other equipment and appliances in, over, along, on and under the public streets, public alleys and other public places of the City of Alexandria, Virginia, for the purpose of distributing, transmitting and selling electric current for light, heat and power at any point within the corporate limits of the City of Alexandria, as such limits now exist or may hereafter be extended or altered.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the right is hereby granted unto _____, and its successors and assigns (hereinafter referred to collectively as the "Grantee"), for the term and

subject to the provisions, terms, conditions and limitations hereinafter stated in this franchise ordinance, to locate, construct, install, improve, maintain, repair and use, and if now constructed to maintain, repair and use, poles, towers, wires, cables, conduits, lines, subways, duct banks, manholes, handholes, and other equipment and appliances (hereinafter referred to collectively as "Facilities") in, over, along, on and under the public streets, public alleys and other public places of the City of Alexandria, Virginia (hereinafter referred to as the "City") for the purpose of distributing, transmitting and selling electric current for light, heat and power at any point within the corporate limits of the City, as such limits now exist or may hereafter be extended or altered; provided, that this right shall extend only to such areas of the City as are now or may hereafter be allotted to the Grantee for service under a certificate of public convenience and necessity issued by the State Corporation Commission or successor agency in accordance with all applicable law.

Section 2. That, subject to the provisions, terms, conditions and limitations stated in this franchise ordinance, and subject to the lawful exercise of the police power of the City, Grantee shall have the right to maintain, repair and use the Facilities which, as of the effective date of this ordinance, are being maintained and used, and those additional Facilities which, after the effective date of this ordinance, are placed, constructed or installed in over, along, on or under the public streets, public alleys and other public places of the City for the purposes set forth in Section 1 of this ordinance.

Section 3. That from and after the effective date of this franchise ordinance:

(a) The Facilities in, over, along, on and under the public streets, public alleys and other public places of the City that are authorized by this franchise ordinance, whether in existence on the effective date of this ordinance or thereafter coming into existence, shall be at locations approved by the City that are reasonably suitable and convenient for the purposes of the Grantee and of the City, subject to the terms, provisions, conditions and limitations stated in this ordinance and, in addition, to the lawful exercise

of the police power of the City and to the National Electric Safety Code. Except where approval is within the exclusive jurisdiction of the State Corporation Commission, the City's review and approval of the location of any Facilities shall be undertaken by the proper authorized administrative officer of the City, with the right on the part of the Grantee to appeal from the officer's decision to the City Council of Alexandria, and the decision of the Council on any such appeal shall be final and binding as to the location of the Facilities.

(b) If and when requested by the proper administrative officer of the City, and in any event from time to time, the Grantee shall file with the City plans showing the location of any Facilities which the Grantee proposes to place, construct or install in the City. In addition, Grantee shall obtain any and all permits required by the City or other governmental entities prior to the placement, construction or installation of any Facilities in, over, along, on and under the any public street, public alley or other public place of the City.

(c) Whenever the City determines that Facilities of the Grantee which are located in, over, on and under any public street, public alley or other public place of the City should be removed or relocated, either in connection with the construction, repair, relocation or improvement of a street, alley or public place, or pursuant to the lawful exercise of the police or another valid power of the City, Grantee shall, within a reasonable time after being requested by the City in writing, remove or relocate the Facilities, using construction techniques acceptable to the City, to such place as shall be mutually agreeable to the City and Grantee. Grantee shall bear all costs of any removal and relocation described in this subsection; provided, that the City shall make a good faith effort to obtain or cause to be obtained, without charge to Grantee, any permits that may be required for the removal or relocation to occur. If Grantee does not commence and complete removal or relocation within a reasonable time after the City's written notice, the City may, after giving at least sixty (60) days written notice to Grantee, take such actions, at Grantee's sole expense, as are necessary to effect the removal or relocation. In the event the City effects the removal or

relocation of any Facilities pursuant to this subsection, the City shall not be liable to the Grantee for any damages incurred by Grantee that result from such removal or relocation. In addition, in the event the City effects the removal or relocation of any Facilities pursuant to this subsection, Grantee shall indemnify the City for, and hold the City harmless from, any and all losses, damages, judgments, liabilities, costs and expenses arising from or based upon the claims of third parties who allege personal injury, property damage or other loss caused, in whole or in part, by the removal or relocation; provided, that Grantee shall not be required to indemnify and hold the City harmless to the extent that the loss incurred by a third party is caused by the City's negligence.

Section 4. That Grantee shall not place, construct or install, or move, alter or change the location of, any Facilities in, over, along, on or under any public street, public alley or other public place of the City, or dig in, cut or disturb any public street, public alley or other public place of the City, unless prior written notice of its intention to do so is given to such department or agency of the City as shall have been or may be designated by the City Manager or the City Council of Alexandria and permission in writing to do so has been granted to Grantee by such department or agency, which permission shall not be unreasonably withheld; provided, that, in cases of emergency and in cases where the requirement for notice and permission has been waived by such department or agency, no notice need be given and no permission need be obtained. Any permission provided pursuant to this section shall be conditioned upon Grantee's compliance with the provisions, terms, conditions, and limitations of this franchise ordinance and with such other provisions, terms, conditions, and limitations which, the City determines, will preserve, protect or promote the safety of the public using the streets, alleys and other public places of the City, or will prevent interference with or obstruction of the use of streets, alleys and other public places by the City, by the public or by another public utility or public service corporation for their respective purposes and functions, or will preserve, protect or promote the health, safety and general welfare of the City and its citizens.

Section 5. That, in placing, constructing, installing, improving, maintaining, repairing and using Facilities, as authorized by this franchise ordinance, Grantee shall avoid all unnecessary damage to the trees in and along the public streets, public alleys and other public places of the City, and shall not cut or otherwise injure said trees to any greater extent than is reasonably necessary in the placement, construction, installation, improvement, maintenance, repair and use of the Facilities.

Section 6. That, in the event Grantee shall, in the course of placing, constructing, installing, improving, maintaining, repairing or using any Facilities, damage or cause damage to any pavement, sidewalk, sewer, water or other pipe or works of the City, or other property of the City, Grantee shall, upon notice thereof from the City, promptly repair or replace the same at its own cost and expense. In the event Grantee has not initiated the repair or replacement work identified in a notice provided by the City under this section within sixty (60) days of the date of the notice, the City may undertake the repair or replacement work, and Grantee shall thereafter reimburse the City for any and all costs incurred by the City in performing the work. In the event the City undertakes repair or replacement work pursuant to this section, the City shall not be liable to the Grantee for any damages incurred by Grantee that result from such work. In addition, in the event the City undertakes repair or replacement work pursuant to this section, the Grantee shall indemnify the City for, and hold the City harmless from, any and all losses, damages, judgments, liabilities, costs and expenses arising from or based upon the claims of third parties who allege personal injury, property damage or other loss caused, in whole or in part, by the work; provided, that Grantee shall not be required to indemnify and hold the City harmless to the extent that the loss incurred by a third party is caused by the City's negligence.

Section 7. That Grantee shall, when so requested by the City Council of Alexandria, continue to permit or permit, as the case may be, its Facilities to be used, without compensation, by the City for the purpose of placing thereon or therein any traffic control wire or equipment, any fire or police alarm wire or equipment, and any

other wire or equipment (other than telegraph or telephone wire or equipment) which is or may be necessary for the exclusive use of the police or fire department of the City; provided, that such use of Grantee's Facilities by the City shall not interfere with the proper use of the Facilities by the Grantee, and that the location and character of the wires and equipment to be used by the City shall be subject to the approval of the Grantee, which approval shall not be unreasonably withheld; provided further, that the City shall indemnify and hold Grantee harmless from any and all losses, damages, judgments, liabilities, costs and expenses arising from or based upon the claims of third parties who allege personal injury, property damage or other loss caused, in whole or in part, by the City's use of Facilities pursuant to this section except that the City shall not be required to indemnify the Grantee for losses, damages, judgments, liabilities, costs or expenses arising from a third party's personal injury, property damage or other loss which has been caused, in whole or in part, by the Grantee's own negligence in placing, constructing, installing, improving, maintaining or repairing the Facilities used by the City pursuant to this section.

Section 8. That nothing contained in this franchise ordinance shall be construed to exempt the Grantee from any tax, levy or assessment which is now or which may hereafter be authorized by law.

Section 9. That Grantee shall indemnify the City for, and shall hold the City harmless from, any and all losses, damages, judgments, liabilities, costs or expenses arising from or based upon the claims of third parties who allege personal injury, property damage or other loss caused, in whole or in part, by the presence, location, construction, installation, improvement, maintenance, repair, removal, relocation or use by Grantee of any Facilities; provided, that Grantee shall not be required to indemnify and hold the City harmless for losses, damages, judgments, liabilities, costs or expenses arising from a third party's personal injury, property damage or other loss which has been caused by the City's negligence.

Section 10. In the event that suit is brought against the City, including any of its officers, agents or employees, by a third party

seeking compensation or other relief on account of any injury, damage or other loss described in Section 3, 6 or 9 of this franchise ordinance, whether or not suit is also brought against Grantee or one or more of its officers, agents or employees, Grantee shall, upon written notice to it by the City, defend the City and all of its officers, agents and employees named in such suit, at the sole cost of Grantee and, in the event a final judgment is entered against the City and/or any named officer, agent or employee of the City, whether independently or jointly with any other individual or entity, including Grantee, Grantee shall pay the entire judgment, including any award of expenses and attorneys' fees included therein, and all costs, and shall hold the City and all of its named officers, agents and employees harmless from the judgment and costs; provided, that Grantee shall not be required to defend, or pay a judgment entered against, any City official, agent or employee who, when performing or failing to perform the actions alleged in the suit, was not acting within the scope of his employment or agency with the City; provided further, that, if a suit is brought against the City, its officers, agents and/or employees alleging negligence on the City's or their part, Grantee shall not be required to defend the City or the named officers, agents and employees or pay any judgment that is entered against the City or any such individuals based on a finding of negligence on the part of the City or one or more City officers, agents and/or employees; and provided further, that if, in a suit alleging negligence on the part of the City or one or more of its officers, agents or employees, no judgment is entered against the City or any officer, agent and or employee, and no settlement is reached pursuant to which the City agrees to provide compensation to the plaintiff, grantee shall reimburse the City for the reasonable attorneys' fees and expenses it incurs in defending the suit.

Section 11. That the rights and privileges set forth in this franchise ordinance are granted and conferred upon Grantee upon the express condition, and with and upon the understanding of Grantee, that, at all times during the term of this ordinance, Grantee shall render to the public within the portion of the City it serves efficient and adequate electric service at reasonable rates, and it shall place, construct, install, improve, maintain, repair and use its Facilities within the

City in a safe manner and condition and in good order. In addition, Grantee acknowledges and agrees that the State Corporation Commission and any successor agency shall have jurisdiction during the term of this ordinance, to the full extent and in the manner now or hereafter provided by law, to issue regulations requiring, or otherwise to require, Grantee to render efficient and adequate electric service at reasonable rates, to place, construct, install, improve, maintain, repair and use its Facilities in a safe manner and condition and in good order, and otherwise to enforce the provisions of this section to the full extent provided by law, and Grantee hereby agrees to comply with any and all such requirements of the State Corporation Commission. However, nothing in this franchise ordinance shall be construed as precluding the City from enforcing the provisions of this section to the full extent authorized by law.

Section 12. That the City and Grantee shall take all reasonable actions to ensure that any person who intentionally destroys or damages any of Grantee's Facilities within the City, constructed and maintained in accordance with the provisions of this franchise ordinance, shall be diligently prosecuted pursuant to any and all applicable provisions of the Virginia Code. The City and Grantee shall also take all reasonable actions to ensure that any person who tampers with any metering device on or incident to any of Grantee's Facilities, or who otherwise intentionally prevents such metering device from properly registering, or who illegally diverts electric service so that it does not pass through such metering device, shall be diligently prosecuted pursuant to any and all applicable provisions of the Virginia Code.

Section 13. That, subject to and with the prior written consent of the City, which consent shall not be unreasonably withheld, all rights and privileges granted to Grantee in this franchise ordinance may be exercised by any successor or successors to, or assignee or assignees of, Grantee, and said successor, successors, assignee or assignees shall be subject to all of the provisions, terms, conditions, limitations, obligations, stipulations and penalties stated in this ordinance.

Section 14. That the rights and privileges granted to Grantee in this franchise ordinance shall continue for the period of thirty (30) years from and after the effective date of this ordinance, unless the rights and privileges so granted shall be sooner voluntarily surrendered by Grantee, with the consent of the City Council of Alexandria, or unless the rights and privileged shall be sooner terminated or forfeited as provided by this ordinance, by any other agreement between the City and Grantee, or by law.

Section 15. That upon the expiration of the 30-year term of this franchise ordinance or upon the earlier termination of the rights and privileges granted to Grantee by this ordinance by surrender or forfeiture or otherwise, all of the Facilities of Grantee then in the public streets, public alleys and public places of the City shall remain the property of Grantee and may be removed from the streets, alleys and public places of the City, at the sole expense of Grantee, within a reasonable time, set by the City Council of Alexandria and Grantee, after the expiration or termination of the Grantee's rights and privileges under this ordinance; provided, that Grantee shall remove from the streets, alleys and public places of the City any Facilities which the City, within one (1) year of the expiration or termination of Grantee's rights and privileges and in a written notice to Grantee, identifies for removal, and shall, at the sole cost of Grantee and within a reasonable time set by the City Manager or her designee, repair, restore or replace any street, alley or other public place, any sewer or water equipment or facility, any electric, fire alarm, police communication or traffic control wire, equipment or facility, any other City property, and any tree or any part thereof, which may be damaged, disturbed or destroyed, directly or indirectly, by the removal of any Facilities, in a manner and with such materials approved by, and to the satisfaction of, the City Manager or her designee. The provisions of Sections 3(c), 9 and 10 of this franchise ordinance shall apply to and govern the removal of Facilities by Grantee from the streets, alleys or public places of the City following the expiration or termination of its rights and privileges under this ordinance and the subsequent repair, restoration and replacement of public places, wires, equipment and facilities, and other public property, and shall also apply to and govern any request, made by the City pursuant

to this section, that Grantee remove Facilities from the streets, alleys and public places of the City and undertake the repair, restoration and replacement of public places, wires, equipment and facilities, and other public property made necessary by the removal of Facilities.

Section 16. That this franchise ordinance and the rights and privileges that are granted and conferred by it shall not become effective unless and until Grantee has filed with the City Clerk its written acceptance of the ordinance, in a form satisfactory to the City, as evidenced by a certification provided by the City Attorney, and has entered into and filed with the City Clerk a bond in the sum of two hundred fifty thousand dollars (\$250,000), with surety satisfactory to the City, which provides assurances that Grantee will place, construct, install, improve, maintain, repair and use any and all Facilities that are reasonably necessary for the exercise of the rights and privileges granted and conferred by this ordinance in the manner required by this ordinance, that Grantee will maintain and repair the same in good and safe condition and order throughout the term of this ordinance, and that Grantee will comply with the provisions, terms, conditions, limitations and obligations of this ordinance in all respects, and which further provides that, if Grantee fails to comply with any of these assurances, the City shall be entitled, at its sole discretion, to draw funds from the surety, in an amount identified by the City at its sole discretion, which will enable the City to undertake the action or actions that Grantee has failed to perform or otherwise to remedy the Grantee's failure to perform.

Section 17. That this franchise ordinance and the rights and privileges granted to Grantee by this ordinance to use the public streets, public alleys and other public places in the City are not exclusive, and nothing herein shall be construed to prevent a grant by the City of a similar franchise and similar rights and privileges to other persons.

Section 18. That this franchise ordinance and its grant of rights and privileges to Grantee to use the public streets, public alleys and other public places in the City are not intended to abridge, and shall not be construed as abridging, the lawful exercise by the City of its police

power. In addition, this franchise ordinance and the rights and privileges it grants to Grantee shall be subject to all ordinances and resolutions of the City Council of Alexandria and to all provisions of the Code of Virginia (1950), as amended, currently in effect or amended subsequent to the enactment of this ordinance, and to all City ordinances and resolutions and all Virginia Code provisions adopted subsequent to the enactment of this ordinance, as long as such ordinances and resolutions are adopted in the lawful exercise of the police power or any other power possessed by the City or the Virginia General Assembly, as the case may be.

Section 19. That this franchise ordinance shall become effective upon _____, 1992.

Article II. That, upon the enactment of this ordinance by the City Council of Alexandria, the City Clerk shall cause to be advertised once a week for four successive weeks, in a newspaper of general circulation in the City, a descriptive notice of the proposed ordinance and an invitation that interested parties may submit a bid for the rights and privileges to be granted by the proposed ordinance. This notice shall require that all bids be in writing and be delivered to the presiding officer of the City Council in open session at the day and hour of the regular legislative meeting of the Council to be held on May 26, 1992. The bids which are received by the presiding officer at this meeting shall then be presented to the Council to be dealt with and acted upon in the manner prescribed by law for franchise grants. The advertisement placed by the City Clerk shall also expressly reserve, and this ordinance hereby expressly reserves, to the City the right to reject any and all bids. The advertisement placed by the City Clerk shall further provide that the successful bidder shall be required to pay all costs of advertising, in addition to the sum bid by it.

Article III. That this ordinance shall become effective upon the date and at the time of its enactment.

Patricia S. Ticer
Mayor

Final Passage: April 28, 1992