

ORDINANCE NO. 3882

AN ORDINANCE to amend and reordain Sections 9-3-208, 9-2-209 and 9-2-210, all of Chapter 3 (ALEXANDRIA CABLE COMMUNICATIONS CODE), Title 9 (LICENSING AND REGULATIONS) of The Code of the City of Alexandria, 1981, as amended.

Section 1. That Section 9-3-208 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 9-3-208 *Filing and review of rates and charges.*

(a) Rate filings by franchisee.

(1) If a franchisee is notified by the city that its basic service and equipment rates and charges are subject to regulation, it shall file a submission ("rate filing") within 30 days of the notification, justifying its then-existing basic service and equipment rates and charges. All such rates and charges, for all customer classifications, shall be justified. Once a franchisee has been notified by the city that its basic service and equipment rates and charges are subject to regulation, it may not thereafter increase any such rates or charges without the prior approval of the city. This prohibition applies in all cases, including rate and charge increases announced but not implemented prior to the date of the city notice informing the franchisee that its rates and charges are subject to regulation. In addition to its initial rate filing, franchisee shall file a rate filing for any increase in basic service or equipment rates and charges, and for any new basic service or equipment rate or charge (collectively, a "rate increase"). An "increase" occurs when there is an increase in rates or charges, or a decrease in program or customer services without a corresponding decrease in rates or charges. Rate filings proposing a rate or charge increase shall be filed at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

(2) Every rate filing shall be filed with the city's office of citizen assistance, and shall be considered filed on the date that the original and three copies of the filing (including all supporting materials) are received by that office. Information that the franchisee claims is proprietary under section 9-3-213 must be clearly identified and segregated from the remainder of the filing so that the city may determine the manner in which it was used by the franchisee in setting rates.

(3) Subject to any FCC rules governing the burden of proof, a rate filing submitted by a franchisee shall demonstrate that the rates and charges being proposed for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

(i) The rate filing shall state in a cover letter whether it addresses the existing rates and charges of the franchisee or a proposed increase in the franchisee's rates and charges, and shall contain a brief, narrative description of the existing or the proposed increase in rates and charges. The letter shall also identify any rate that is based, in whole or in part, upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. If the filing proposes an increase in rates or charges, the cover letter shall also state whether any part of the proposed increase is based on an inflation adjustment or an increase in external costs.

(ii) The pages of the rate filing shall be numbered sequentially.

(iii) The rate filing shall contain all applicable FCC forms which shall be correctly completed.

(iv) If the rate filing proposes, for different classes of customers, different rates or charges for basic service, it shall demonstrate that the classifications of customers and the differences in rates or charges are reasonable and consistent with federal law.

(4) Except as inconsistent with FCC rules:

(i) If a franchisee seeks to support a rate or charge based upon the cost of providing cable service, the city will establish a rate that provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment shall not be presumed to be reasonable merely because the franchisee has incurred or made it.

(ii) If a franchisee seeks to justify all or any part of its rates or charges based upon the cost of providing cable service, then, in addition to information the city requires the franchisee to provide, and unless the city grants a waiver of this provision, the franchisee shall also submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from its cable system, directly or indirectly, by the franchisee or any person that constitutes a cable operator of the system within the meaning of the Cable Act, 47 U.S.C. § 522(5). This cost of service analysis shall identify the accounting level (as that term is used in the FCC regulations) at which each expense or revenue identified was aggregated, and shall show how the expense or revenue was allocated. The franchisee may not include costs at an accounting level unless it also includes the revenues from that same level that are attributable to the system or to a group of systems of which the system serving the city is a part. The cost of service analysis

shall also identify the replacement cost of a comparable cable system and contain a justification for the identified figure. Further, the analysis shall identify the name and address of any person with which the franchisee has a contract, other than a programmer, and which derives revenues from the system, and shall state whether and how the revenues and costs of that person are included in the analysis. In addition, the analysis shall show the rate that is being proposed by the franchisee for each channel on the system and, for each such rate, the derivation of the rate and the application of the rate to yield a basic service rate. The analysis shall also show, for each of the items listed below, the manner in which the item was used in the derivation of the basic service rate:

- (A) operation and maintenance expenses;
- (B) administrative and general expenses;
- (C) programming expenses (identifying retransmission consent costs and copyright fees separately);
- (D) costs for public, educational and governmental access channel programming;
- (E) franchise fee expenses;
- (F) investment in the system and associated depreciation;
- (G) other expenses, including federal, state and local taxes, itemized; and
- (H) the proposed return on equity and the actual interest expense paid by the franchisee.

(iii) Notwithstanding the foregoing, a franchisee seeking to base its rates and charges upon the cost of providing cable service is not required to submit the cost of service analysis described in subsection (ii) of this section for equipment rates, and instead may complete, submit and support the costs of equipment using applicable FCC forms and presenting any other information the city deems necessary or appropriate, consistent with FCC regulations. The cost of service analysis submitted to justify basic service rates must show that it does not include equipment costs.

(b) City review.

(1) After receiving a rate filing, the office of citizen assistance shall publish a notice in a newspaper having general circulation in the city that the filing has been received and that, except for those parts which may be withheld as

proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide such parties at least ten calendar days from the date of the notice to submit written comments on the filing to the office. The office shall submit any comments it has received, along with the city manager's recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least ten calendar days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than four calendar days before the date scheduled for consideration of the filing by council. The response shall be filed with the office of citizen assistance and, if submitted in a timely fashion, shall be forwarded to the council.

(2) After conducting a public hearing on the filing and within 30 days of the date of the rate filing, the city council shall issue a written order, which may be in any lawful form, approving the rates and charges proposed in the filing in whole or in part, denying the rates and charges in whole or in part, or tolling the rates and charges in whole or part; provided, that, with respect to rate filings made between May 25 and August 15 that the council does not act upon within this 30-day period, the city manager is authorized to issue an order within the period that tolls the rates and charges. If the council or the manager issues an order tolling the rates and charges, the order shall explain that additional time is required to review the rate filing, shall identify any deficiencies in the franchisee's filing then known to the council or manager, and shall state that the franchisee may cure the deficiencies by submitting a supplemental filing as provided in subsection (c) of this section. With respect to a filing that addresses franchisee's existing rates and charges, tolling means that the rates and charges may remain in effect, subject to refund. With respect to a filing that proposes an increase in rates and charges, tolling means that the increase, or the portion thereof, that is tolled may not go into effect. If the council or manager issues an order allowing the rates to go into effect subject to refund, the franchisee shall thereafter maintain an accounting in accordance with 47 C.F.R. § 76.933.

(c) Supplemental filing.

(1) If the city council or the city manager tolls a rate filing in whole or in part, the franchisee shall file a supplemental filing within 20 days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service analysis) and containing, at the option of the franchisee, a response to information and comments presented by interested parties or to the recommendations of the office of citizen

assistance, or any additional information necessary to support the filing. A supplemental filing shall be filed in accordance with section 9-3-208(a)(2).

(2) A supplemental filing shall also contain such information, reasonably related to the issues addressed by the filing, as the city directs the franchisee to provide.

(3) In addition to information the city requires the franchisee to provide, unless the city grants a waiver of this provision, and except to the extent inconsistent with FCC rules, a franchisee seeking approval of a rate based, in whole or in part, upon the adjustments for inflation and external costs contemplated by 47 C.F.R. § 76.922(d)(1)-(2) shall submit, as part of its supplemental filing, the following:

(i) as to the adjustment for inflation, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(ii) as to the adjustment for external costs, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(iii) as to each external cost (as defined by FCC rules) for which the franchisee seeks an adjustment, a statement describing the make-up of the cost, and the amount of the cost for the two calendar years prior to the year in which the supplemental filing is made and for the portion of such year prior to the date of the filing, and the projected amount of the cost for the remainder of such year and for the following calendar year;

(iv) if the filing seeks approval of rates and charges based, at least in part, upon one or more increases in programming service costs, the contract for each programming service whose cost has increased, a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the franchisee (as defined by FCC regulations), the contract for each programming service whose cost has decreased over the two calendar years prior to the year in which the supplemental filing is made, and, for any contract for programming services that has been in effect less than 12 months, the prior contract for the services; and

(v) a sworn statement by the franchisee's chief financial officer or an independent, certified accountant that:

(A) states that the individual has examined all of the franchisee's external costs (including all programming

costs) for the two years immediately prior to the supplemental filing and has offset against the claimed increase in those costs both the amount of any decreases in external costs incurred during such period and the amount by which the increase in external costs (net of such decreases) was below the Gross National Produce Fixed Weight Price Index (GNP-PI), as required by 47 C.F.R. § 76.922(d)(2);

(B) affirms that the franchisee is only seeking to recover external costs to the extent that such costs exceed the GNP-PI; and

(C) affirms that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate, except as authorized in 47 C.F.R. § 76.922(d)(2)(vi).

(4) Upon receipt of a supplemental filing, the office of citizen assistance shall promptly publish a notice in a newspaper with general circulation in the city that the filing has been received and that it is available for public review, except those parts which may be withheld as proprietary. The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty days to submit written comments on the filing to the office. The office shall submit the comments it receives, along with its recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least twenty business days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than ten business days before the date scheduled for the council consideration of the filing. The response shall be filed with the office of citizen assistance and, if timely, shall be forwarded to the council.

(5) After conducting a public hearing on the supplemental filing, the city council shall, within the periods identified in subsection (6), issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part, or denying the proposed rate in whole or in part.

(6) The order specified in subsection (5) shall be issued within 90 days after the tolling order for any rate the franchisee justifies based on the benchmark rates set out in the FCC regulations. The order shall be issued within 150 days of the tolling order for any rate the franchisee justifies on the basis of a cost of service analysis. If an order is not issued within the applicable time period, the proposed rate shall go into effect upon the expiration of that period. However, any such rate increase shall be refunded to subscribers in the event the council later denies all or part of the increase, so long as before the expiration of the period the council has issued an order, in accordance with 47 C.F.R. § 76.933, requiring the

franchisee to keep an accurate accounting of all amounts received by reason of the rate increase and of the persons on whose behalf such amounts were paid.

Section 2. That Section 9-3-209 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 9-3-209 *Provisions generally applicable to rate orders.*

(a) Any rate order of the city council shall be effective upon the date and upon such terms and conditions as specified by the council. A rate order shall be released to the public and the franchisee. In any case where the council approves or denies a rate or charge, where the council or the city manager tolls a rate or charge, or where the council orders that a rate or charge may go into effect subject to refund, orders refunds or establishes a rate or charge, a public notice shall be published in a newspaper with general circulation in the city stating that the order has been issued and is available for review in the office of citizen assistance. Any such order shall be in writing, and explain the basis for the city's decision.

(b) Except as prohibited by federal law, the city council may, as part of a rate order, impose terms and conditions on a franchisee that, it concludes, reasonably advance the public interest. Any order establishing rates or charges other than those proposed by the franchisee shall explain why the franchisee's proposed rates or charges were unreasonable and why the rates and charges established by the order are reasonable. In no event may an order establishing rates or charges other than those proposed by the franchisee or requiring a franchisee to make refunds to subscribers be issued by the city council unless and until the franchisee has been given notice of, and an opportunity to comment upon, the order.

Section 3. That Section 9-3-210 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 9-3-210 *Obligations of franchisee.*

(a) A franchisee shall implement remedial requirements, including refunds and prospective rate reductions, within 60 days of the date on which the city council issues the order imposing the requirements.

(b) Within 90 days of the date on which an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative, stating:

(1) whether the franchisee has complied with all provisions of the council order;

(2) describing the measures taken to implement the council order; and

(3) showing how any refunds (including interest thereon) were calculated and distributed.

(c) It is the franchisee's obligation to maintain books and records of account so that it can make proper refunds.

(d) It is the franchisee's obligation to submit as complete a rate filing as possible.

(e) Information requests.

(1) A franchisee and any other person having records showing revenues or expenses that are allocated to the franchisee's cable system in the city shall respond to requests for information from the administrator within reasonable deadlines established by the administrator. A franchisee is responsible for ensuring that such other entity responds to the city's requests.

(2) Because federal law limits the time available to the city to provide an initial response to a rate filing, a franchisee shall be prepared to respond to a request for information from the administrator, made prior to the issuance of an order under section 9-3-208(b), within five days of the date it receives the request; provided, that a franchisee may decline to respond to such a request if it consents to the issuance of a tolling order by the council or the city manager, pursuant to section 9-3-208(b), and to providing the requested information as part of its supplemental filing pursuant to section 9-3-208(c). Information requests made under this section may include a request for information that the franchisee would be required to provide as part of a supplemental filing.

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Final Passage: June 25, 1996