

ORDINANCE NO. 4009

AN ORDINANCE to amend and reordain Section 9-3-207 (ESTABLISHMENT OF RATES, CHARGES AND RULES), Section 9-3-208 (FILING AND REVIEW OF RATES AND CHARGES), Section 9-3-209 (PROVISIONS GENERALLY APPLICABLE TO RATE ORDERS), Section 9-3-210 (OBLIGATIONS OF FRANCHISEE), Section 9-3-211 (DUTIES OF THE OFFICE OF CITIZEN ASSISTANCE AND ADMINISTRATOR), and Section 9-3-212 (PENALTIES AND FORFEITURES), and to repeal Section 9-3-215 (REGULATION OF RATES; COMPLAINTS), of, and to add a new Section 9-3-216 (WAIVER AND EXTENSION) to, Article L, all of Chapter 3, Title 9 of The Code of the City of Alexandria, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 9-3-207 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. 9-3-207 Establishment of rates, charges and rules.

(a) A franchisee's initial schedule of rates, charges and other matters, required by section 9-3-203, shall be filed with the administrator within 60 days of the commencement of service by the franchisee. Any change to the schedule of rates, charges and other matters shall be filed with the administrator within 60 days of the effective date of the change.

(b) No change shall be made in the rates, charges and other matters set out in a schedule required by section 9-3-203 and filed with the administrator until advance notice of the change has been provided to each subscriber and the administrator. This advance notice shall be provided to subscribers 30 days, and to the administrator 90 days, prior to the effective date of the change, unless otherwise required by FCC regulations. Notwithstanding the above, the administrator may, by general regulation or in particular instances, permit changes to be made on lesser notice to correct errors, to provide special or new service, or to address special emergency conditions. Notice of a change in the rates, charges or other matters set out in a schedule shall consist of a statement which describes each matter as to which a change is proposed, the manner in which the current schedule treats the matter, the change that is proposed and the reason for the proposed change.

Section 2. 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) 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 ("initial 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.

Except as otherwise provided by law, 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 filing a submission justifying the increase ("rate increase filing") and obtaining 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 increase 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 initial rate filing and every rate increase filing (collectively, a "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 regulations governing the burden of proof, a filing submitted by a franchisee under this section shall demonstrate that the rates and charges being proposed for basic service and equipment are reasonable. Except as inconsistent with FCC regulations:

(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 or proposed increase in a rate that is based, in whole or in part, upon cost of service, and identify any pages of the filing that contain information that the franchisee claims is proprietary. If the filing proposes an increase in rates not based on cost of service, the cover letter shall state whether any part of the proposed increase is based on an inflation adjustment, an increase in external costs, an increase in the number of cable channels, or a combination of such increases.

(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.

(b) City review.

(1) Decision authority.

(i) Initial rate filings seeking to establish initial permitted basic service and equipment rates and charges, and rate increase filings seeking to establish increases in permitted basic service rates based on a cost of service showing, shall be decided, and appropriate implementing orders shall be issued, by city council consistent with the procedures set out in the FCC regulations (47 C.F.R. '76.933); provided, that the administrator shall review each such rate filing and make a recommendation to the council prior to its decision.

(ii) Rate increase filings seeking to establish increases in permitted basic service and equipment rates and charges based on the FCC's quarterly or annual price cap rate regulations (47 C.F.R. '76.922(d) and (e)), or to establish new basic service or equipment rates and charges, may be decided, and appropriate implementing orders may be issued, by the administrator consistent with the procedures set out in FCC regulations (47 C.F.R. '76.933); provided, that, if the administrator determines that such a rate increase filing should not be approved, that rates and charges which are less than those proposed in the filing should be approved, and/or that refunds should be ordered, her decision shall be in the form of a recommendation to city council which shall make the final decision on the filing and issue the implementing order; provided further, that the administrator shall make any such recommendation available to the franchisee and for public inspection prior to any council action, and shall forward to council, reasonably in advance of its decision, any comments on the recommendation made by the franchisee or members of the public.

(iii) Other matters relating to initial rate filings and rate increase filings, including without limitation the tolling of deadlines for review, permitting proposed rates and charges to take effect subject to refund, and directing a cable operator to keep an accurate accounting of all amounts received and on whose behalf such amounts were paid pursuant to 47 C.F.R. '76.933, may be decided, and appropriate implementing orders may be issued, by the administrator.

(2) After receiving an initial rate filing or a rate increase filing, the office of citizen assistance shall publish a notice in a newspaper having general circulation in the city that the rate 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 a reasonable time, in light of the dates by which city council or the administrator must decide the rate filing and issue an order, in which written comments on the filing may be submitted to the office. A copy of any submitted comments shall be provided to the franchisee which may submit written comments in response. The office shall forward comments submitted by the public and response comments submitted by the franchisee to the administrator and, in rate filings to be decided by city council, to the council.

(3) In reaching a decision on an initial rate filing or a rate increase filing, the city council and the administrator, as

the case may be, shall act in a manner that is consistent with the procedures set out in the FCC regulations (47 C.F.R. '76.933).

Section 3. 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 order issued by the city council or the administrator pursuant to section 9-3-208(b) approving or disapproving, in whole or in part, an initial rate filing or a rate increase filing, as those terms are defined in section 9-3-208(b) ("rate order"), shall be effective upon the date and upon such terms and conditions as specified by the council or the administrator. Any such rate order shall be released to the public and the franchisee. Where the council disapproves, in whole or in part, a rate filing, or orders that a rate or charge may go into effect subject to refund or otherwise orders refunds, 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 council's decision.

(b) 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 4. 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) 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 administrator's requests.

(f) Each franchisee is responsible for the continuing accuracy and completeness of information furnished to the city. Whenever information furnished by a franchisee is no longer accurate and complete in all significant respects, the franchisee shall correct the deficiencies.

Section 5. That Section 9-3-211 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. 9-3-211 Duties of the office of citizen assistance and administrator.

The office of citizen assistance and the administrator shall be responsible for administering the provisions of this article, as provided below. Without limitation and by way of illustration, and except as inconsistent with FCC regulations:

(1) The office shall ensure that notices are given to the public and the franchisee as required by this article and by FCC regulations.

(2) The administrator may submit requests for information to a franchisee and establish deadlines for the franchisee's response to them.

(3) For good cause, the administrator may extend any filing or response deadline except as to matters that are mandatory under FCC regulations.

(4) The administrator shall rule on any request for confidentiality.

(5) The administrator shall make the decisions and recommendations, and issue the implementing orders, as provided in section 9-3-208(b).

Section 6. That Section 9-3-212 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. 9-3-212 Penalties and forfeitures.

Except as prohibited by federal law, the city may impose fines or monetary forfeitures on a franchisee that does not comply with a rate order issued under this article, including an order requiring refunds to subscribers.

Section 7. That Section 9-3-215 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, repealed.

Section 8. That Article L, Chapter 3 of Title 9 of the Section 9-3-216 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended to read as follows:

Sec. 9-3-216 Waiver and extension.

For good cause, the city manager may waive any provision of this article or extend any deadline for filing or responding, except where the waiver or extension would violate FCC regulations or deny due process.

Section 9. That this ordinance shall become effective upon the date and at the time of its final passage, and shall apply to any rate filings pending as of the date of final passage.

KERRY J. DONLEY

Mayor

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