

ORDINANCE NO. 4447

AN ORDINANCE to initiate and establish the process for granting a franchise by the City of Alexandria, Virginia, to use the public right-of-way and other public places to provide a citywide wireless network for internet access and other purposes.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City of Alexandria proposes to grant a franchise, in the manner prescribed by law, permitting the design, construction, maintenance, and operation of a citywide wireless network in the public right-of-way and on other public property, as set forth in the following proposed franchise ordinance:

ORDINANCE NO. _____

AN ORDINANCE to grant to _____, its successors and assigns, a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to _____, hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, and operate a citywide wireless network for internet access and other purposes, using the public right-of-way and other public property in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. ____, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

*Section 3. That the Grantee be,
and hereby is,
granted a Franchise
for ____ years to
design, construct,
maintain, and
operate a citywide*

wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

- 1. Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled*

construction and service dates, and such additional information as the city manager may specify in his reasonable discretion, shall be filed with the city's department of transportation and environmental services.

2. All necessary permits shall be obtained for each and every excavation or installation, including but not limited to boring in and/or under a public right-of-way or other public place.

3. In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public right-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, state or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the state or the Washington Metropolitan Area Transit Authority.

4. *This Franchise may be assigned or transferred; provided, however, that no such assignment or transfer shall be effective without the prior written consent of the City, which consent will not be unreasonably withheld.*

5. *The Grantee will obtain liability insurance to the satisfaction of the city attorney, which insurance shall name the City as an additional insured.*

6. *The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent of a cable system or cable service as defined in sections 9-3-17 and 9-3-18 of the Alexandria City Code.*

7. *In exchange for the privileges granted by this Franchise, the City shall have free use of the network for municipal governmental purposes.*

8. *In exchange for the privileges granted by this Franchise, the general public shall have free use of the network for wireless internet access in the outdoor areas and public facilities in the City designated in the Franchise Agreement.*

9. *At such time as the City may require underground installation of existing overhead facilities in any area covered by this Franchise, the Grantee will, at its sole cost and expense, relocate its facilities underground in accordance with the provisions of the City's underground utilities ordinance, to the extent underground location of such facilities is technically feasible.*

10. The Grantee shall protect all property of the City or any other person during any work of designing, constructing, maintaining, or operating its system in or adjacent to the public right-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work. In the event the Grantee and any property owner are unable to agree on a remedy, the Grantee agrees to abide by the determination of the City as to compensation or restoration.

11. That nothing in this Franchise shall be construed to obligate the City to continue its franchise with any other franchisee who owns or uses the poles to be used by the Grantee, nor shall this Franchise increase or strengthen the rights that other franchisees may have. The City shall have no liability to the Grantee for exercising any rights the City may have in general or under its franchises with other franchisees, regardless of the effect of such exercise on the Grantee.

12. The Grantee shall remove its property at its own expense at the expiration or termination of this Franchise or any extension hereof.

Section 4. That the city manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the city clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 2. 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, a descriptive notice of the proposed ordinance contained in Section 1 of this ordinance, and, in addition thereto, shall by such advertisement invite bids for the Franchise proposed to be granted by such proposed ordinance, by publishing with the descriptive notice of such ordinance a notice which shall be in substantially the following form:

NOTICE

BIDS ARE INVITED BY THE CITY OF ALEXANDRIA, VIRGINIA, FOR THE GRANT OF A FRANCHISE PERMITTING THE FRANCHISEE TO USE THE PUBLIC RIGHT-OF-WAY AND OTHER PUBLIC PLACES IN THE CITY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, AND OPERATION OF A CITYWIDE WIRELESS NETWORK FOR INTERNET ACCESS AND OTHER PURPOSES, FOR THE BENEFIT OF RESIDENTS, BUSINESSES AND GOVERNMENT IN THE CITY. DETAILED CONDITIONS AND SPECIFICATIONS FOR THE FRANCHISE ARE ON FILE IN THE OFFICE OF THE DIRECTOR OF INFORMATION TECHNOLOGY SERVICES, 123 NORTH PITT STREET, SECOND FLOOR, ALEXANDRIA VIRGINIA 22314. ALL DOCUMENTS RELATING TO THIS FRANCHISE ARE ALSO AVAILABLE FOR REVIEW AT:

www.wirelessalexandria.com

A PRE-BID CONFERENCE, WHICH SHALL NOT BE MANDATORY, SHALL BE HELD AT THE FOLLOWING TIME AND PLACE [To be determined by city manager]:

THE TERM OF THE FRANCHISE IS NEGOTIABLE, BUT IT SHALL BE FOR A MINIMUM OF FIVE YEARS.

ALL BIDS ARE TO BE SUBMITTED IN WRITING AND DELIVERED TO MICHAEL HERWAY, DIRECTOR, OFFICE OF INFORMATION TECHNOLOGY SERVICES, 123 NORTH PITT STREET, SECOND FLOOR, ALEXANDRIA VIRGINIA 22314, ON OR BEFORE JUNE 23, 2006 AT 3:00 PM. EASTERN TIME. AT THAT TIME BIDS SHALL BE PUBLICLY OPENED AND BIDDERS IDENTIFIED.

IN ADDITION, IDENTIFICATION OF THE BIDDERS SHALL BE ANNOUNCED IN OPEN SESSION OF THE CITY COUNCIL OF THE CITY OF ALEXANDRIA IN THE COUNCIL=S CHAMBER, CITY HALL, 301 KING STREET, SECOND FLOOR, ALEXANDRIA, VIRGINIA 22314, ON JUNE 27, 2006, AT 7:00 P.M. AT THAT TIME, THE MAYOR SHALL REFER THE BIDS RECEIVED TO THE CITY MANAGER TO EVALUATE, REVIEW AND CONSIDER IN THE MANNER PRESCRIBED BY LAW, INCLUDING THE SELECTION OF, AND NEGOTIATION OF A FRANCHISE AGREEMENT WITH, A PREFERRED BIDDER. AS SOON THEREAFTER AS PRACTICABLE, THE CITY MANAGER WILL RECOMMEND THE SUCCESSFUL BIDDER, AND PRESENT THE NEGOTIATED FRANCHISE AGREEMENT, FOR CONSIDERATION AND APPROVAL BY CITY COUNCIL.

THE CITY RESERVES THE RIGHT IN THE CITY MANAGER=S SOLE DISCRETION TO REJECT ANY AND ALL BIDS; TO TERMINATE NEGOTIATIONS AT ANY STAGE OF THE SELECTION PROCESS, AND TO REISSUE THE REQUEST FOR BIDS WITH OR WITHOUT MODIFICATION.

THE DESCRIPTIVE NOTICE OF THE PROPOSED FRANCHISE ORDINANCE IS
AS FOLLOWS:

The proposed ordinance will grant a franchise, under certain conditions, permitting the grantee to use the public right-of-way and on other public property in the City of Alexandria, for the design, construction, maintenance, and operation of a citywide wireless network for internet access and other purposes, for the benefit of residents, businesses and government in the City.
(Complete text of ordinance available in office of the city clerk.)

Section 3. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE,
Mayor

Final Passage: May 20, 2006

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