

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 07/15/2014 **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** x **PUBLIC HEARING** x

ITEM TITLE: ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER.

STAFF RECOMMENDATION: APPROVAL

PUBLIC NOTICE AND HEARING: Required

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE: Surety Bond Required of Successful Bidder.

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. <u>Public Services</u>	<u>P.E.</u>	_____	<u>6/20/14</u>
2. <u>Purchasing/Procurement</u>	<u>TB</u>	_____	<u>6/20/14</u>
3. <u>Finance</u>	<u>CB</u>	_____	<u>6/20/14</u>
4. _____	_____	_____	_____
5. <u>City Attorney</u>	<u>[Signature]</u>	_____	<u>6/20/2014</u>
6. <u>City Manager</u>	<u>[Signature]</u>	_____	<u>6/20/14</u>
7. <u>Clerk of Council</u>	_____	_____	_____

Initiating Department Director's Signature: [Signature] 6/20/2014
Date



APPROVED AS TO FORM:
[Signature] 6/20/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Members of Common Council

From: Anthony C. Williams, City Attorney

Date: June 20, 2014

RE: ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER.

THE ISSUE: The City's contract with Adelphia Cable (the majority of whose assets were absorbed by COMCAST) has expired. A new cable franchise is required by the service provider in order to continue providing cable services.

RELATIONSHIP TO STRATEGIC PLAN: (Goal 1): Create a more livable City for all and (Goal 2) Grow the Economy.

BACKGROUND: While there is no current cable franchise agreement with COMCAST, when Adelphia Cable Communications filed bankruptcy in 2002, its revenue-generating assets were officially acquired by Warner Cable and Comcast on July 31, 2006. Accordingly, COMCAST has been honoring the terms of the existing Agreement with Adelphia since July 31, 2006. The Adelphia Agreement has expired and a new franchise agreement is necessary for the continued provision of services to the citizens of the City of Winchester.

BUDGET IMPACT: None anticipated.

OPTIONS: Adopt, reject, or modify Ordinance.

RECOMMENDATIONS: Approve upon receipt of acceptable bid.

NOTICE OF INVITATION TO BID FOR FRANCHISE TO USE PUBLIC PROPERTY OF THE CITY OF WINCHESTER, VIRGINIA FOR DISTRIBUTION AND TRANSMISSION OF CABLE SERVICES PURSUANT TO §15.2-2101 OF THE CODE OF VIRGINIA:

TAKE NOTICE that the City of Winchester hereby invites bids for the franchise, privilege, lease or right to use the public streets, highways, parks, and other public places of the City of Winchester, within the limits thereof as they now exist or may hereafter be extended by annexation or otherwise, and to erect, operate and maintain, and if not constructed to construct, maintain and use, lines for the distribution and transmission of cable services, including the necessary poles, wires, fixtures, electrical conductors, and underground conduits, over, along and under the public places of the City of Winchester, Virginia for the purpose of distributing and transmitting cable services with the substance of the specific terms and conditions of the draft Franchise Ordinance. A full copy of the text of the draft Franchise Ordinance and Bid Documents are on file with the City Clerk and available for public inspection during normal business hours of the City of Winchester. **Bids shall be submitted in writing to the City Clerk at 15 N. Cameron Street, Winchester, Virginia 22601 on or before 10:00 am on September 2, 2014. The bids shall be opened by the presiding officer in public session of Council held in Council Chambers on September 9, 2014 at the Meeting of Common Council at 7:00 p.m. or as soon thereafter as reasonably possible, and marked for identification by the Clerk of Council.** The cost of this advertisement shall be reimbursed by the successful bidder as required by law. The City of Winchester reserves the right to reject any and all bids in accordance with §15.2-2101(B) of the Code of Virginia.

BID FOR CABLE SERVICE FRANCHISE

To: The Honorable Members of Common Council for the City of Winchester

From: ____ [NAME OF COMPANY] _____

Subj: Bid Submission for Cable Service Franchise – City of Winchester, VA
Ordinance No.: _____

Date: _____

____ [NAME OF COMPANY] _____ hereby bids ____ [\$ AMOUNT] _____ for the franchise rights and privileges under Ordinance No.: _____ herein attached.

Respectfully Submitted,
____ [NAME OF COMPANY] _____

[Name and title of Company's executing official]

I hereby acknowledge that on this ____ day of _____, 2014, I received the Bid by ____ [Name of Company] ____ for the Franchise for Cable Service described above to be considered at the _____, 2014 meeting of Common Council for the City of Winchester.

Clerk of Council,
City of Winchester, VA

ACCEPTANCE OF FRANCHISE FOR CABLE SERVICE

To: The Honorable Members of Common Council for the City of Winchester

From: ____ [NAME OF COMPANY] _____

Subj: Bid Submission for Cable Service Franchise – City of Winchester, VA
Ordinance No.: _____

Date: _____

____ [NAME OF COMPANY] _____ respectfully accepts the franchise rights granted to it by action of the City Council of the City of Winchester, Virginia, on _____ (Ordinance No.: _____), and hereby posts a surety bond in the amount of \$50,000.00 as security for proper performance of its franchise obligations under Section 8 of the Ordinance.

____ [NAME OF COMPANY] _____

[Name and title of Company's executing official]

I hereby acknowledge on this ____ day of _____, 2014, the above Acceptance was delivered to me and I further acknowledge receipt of proof of surety as described above.

Clerk of Council,
City of Winchester, VA

THE COMMON COUNCIL

AN ORDINANCE TO GRANT TO _____, ITS SUCCESSORS OR ASSIGNS, UNDER THE CODE OF VIRGINIA AND THE CABLE ACT A NONEXCLUSIVE FRANCHISE AUTHORIZING THE GRANTEE TO CONSTRUCT AND OPERATE A CABLE SYSTEM IN THE PUBLIC WAYS WITHIN THE FRANCHISE AREA, AND FOR THAT PURPOSE TO ERECT, INSTALL, CONSTRUCT, REPAIR, REPLACE, RECONSTRUCT, MAINTAIN, OR RETAIN IN ANY PUBLIC WAY SUCH POLES, WIRES, CABLES, CONDUCTORS, DUCTS, CONDUITS, VAULTS, MANHOLES, PEDESTALS, AMPLIFIERS, APPLIANCES, ATTACHMENTS, AND OTHER RELATED PROPERTY OR EQUIPMENT AS MAY BE NECESSARY OR APPURTENANT TO THE CABLE SYSTEM AND TO PROVIDE SUCH SERVICES OVER THE CABLE SYSTEM AS MAY BE LAWFULLY ALLOWED BEGINNING _____, 2014, AND ENDING _____.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA:

SECTION 1. Be it Ordained by the Common Council of Winchester that permission be and the same is hereby granted to _____, its successors and assigns, for a period beginning _____, 2014, and terminating _____, 201____, under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such services over the Cable System as may be lawfully allowed in accordance with the express terms of the Franchise Agreement which is adopted and incorporated by reference as if set forth fully herein.

SECTION 2. (a) That the work of locating and installing any wires, cables, and appurtenances or other equipment by virtue of this ordinance shall be done under the supervision of the Public Utilities Director, by and with the advice of such other persons as the Common Council may appoint to represent the City. Where a property owner objects to the location and erection of franchisee's wires, cables and appurtenances the Public Utilities Director shall make reasonable effort to assist Franchisee in finding an alternative location for installation of said wires, cables and appurtenances.

(b) _____ shall replace and properly repair any street, sidewalk or other property of the City of Winchester that may be displaced or damaged by _____ or its agents in the exercise of its privileges under this ordinance, and upon the failure of _____ so to do after twenty days notice in writing shall have been given it by the City Manager of Winchester, the City may repair such property or replace said street, sidewalk or other property, and collect the necessary cost thereof from _____.

SECTION 3. _____ shall at all times be subject to the ordinances of the City of Winchester now in existence or which may hereafter be enacted into law relative to the use of the public streets, highways, parks and other public places by companies granted a franchise to use City property.

SECTION 4. The Franchisee agrees and binds itself to indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons, firms, or corporations or property growing out of or directly or indirectly resulting from such use of the streets, alleys, highways and other public places of the City, the construction, maintenance, and operation of such posts, poles, conduits, manholes, ducts, cables, wires and all other necessary overhead and underground apparatus or the exercise of any right granted by or under this franchise or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under this franchise, and in the event that any suit or proceeding shall be brought against the City, at law or in equity, either independently or jointly with the Company on account thereof, the Company will defend the City in any such suit or proceeding at the cost of the Company, and in the event of a final judgment or decree being obtained against the City for any of the above reasons, either independently or jointly with the Company, then the Company will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the City harmless therefrom; but nothing herein contained shall be construed to render the Company liable for the negligence of the City or of its agents or employees, or for that of any other person, firm or corporation.

SECTION 5. The franchisee shall be bound to the all of the terms of the Franchise Agreement adopted and incorporated by reference as if set forth fully herein. This Ordinance contemplates that the franchisee shall install and maintain a "cable system" and provide "cable service" as defined in said Agreement which terms are defined in the Agreement as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

"Cable system" or "cable television system" means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use

is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

SECTION 6. (a) That the right of the City to impose any legal licenses or other tax upon _____, or its property, is hereby expressly reserved, and is not to be deemed in any manner waived or abridged by this ordinance.

(b) If more than one company uses the same pole, right of way, or other City property each company shall pay any legal or constitutional annual pole rental that may be imposed upon a single company.

SECTION 7. _____ shall file with the Clerk of the Common Council of Winchester (1) its written acceptance of this ordinance; (2) a fully executed copy of a Franchise Agreement consistent with this Ordinance; and sufficient evidence of surety as described in Section 8 within ten (10) days from date when this Ordinance has been adopted by Common Council.

SECTION 8. _____, to which the franchise, rights and privileges herein granted are awarded, shall execute a bond with good and sufficient surety in favor of the City of Winchester in the sum of \$50,000, conditioned upon the construction, installation, maintenance, and operation of the franchisee's wires, cables and appurtenances thereto for providing cable service including the maintenance thereof in good order throughout the term of this grant.

SECTION 9. The City of Winchester shall have the right to forfeit the grant of the privileges, rights and franchises herein granted in the event _____ shall fail to maintain its property in good order and condition throughout the term of this grant and secure to the public efficient service at reasonable rates at the discretion of Common Council and in accordance with the Franchise Agreement.

SECTION 10. _____ shall, whenever required to do so by the City of Winchester, in the reasonable exercise of its police power, remove from the public streets, highways, parks and other public places of the said City, or any part thereof, franchisee's wires, cables and appurtenances thereto for providing cable service, and place the wires, cables and appurtenances underground in safe and suitable conduits. Any work done under this section shall be at the Franchisee's sole expense and subject to such supervision and review by the City as provided by this ordinance or any other ordinances, resolutions of the City, or general law.

SECTION 11. That _____ shall provide all consideration recited in the Franchise Agreement in return for the City's grant of this Franchise and non-exclusive right to utilize City property in furtherance of the Franchisee's stated enterprise of providing cable service. In addition to the consideration contained in the Franchise Agreement,

the Franchisee is responsible for reimbursing the City for the costs associated with advertising the Franchise as required pursuant to §15.2-2101 of the Code of Virginia. The City may revoke or rescind this Franchise at anytime in accordance with the terms of the Franchise Agreement, or for failure of the Franchisee to comply with any of the provisions contained in this Ordinance or for other good cause shown.

SECTION 12. All of the rights and privileges hereby granted and all of the obligations of _____ herein contained shall be applicable in the event new territory shall be annexed by the City of Winchester except as may be ordered by a tribunal of competent jurisdiction.

SECTION 13. Whenever necessary to improve or widen streets and the final new property line cannot be given before construction starts, _____ agrees, on reasonable notice, to move existing wires, cables and appurtenances thereto, out of the way of construction to such points along or adjacent to the new property line as may be designed by the Public Utilities Director, City Manager, or other designated City Official as the probable final location; but the City is bound by this ordinance to give to _____ such reasonable and practical location for its wires, cables and appurtenances thereto, as is required in order that _____ may meet and discharge its duties to the public as required under this Ordinance and Franchise Agreement.

SECTION 14. This ordinance shall be in force from and after the date of its passage.

NOW therefore be it ORDAINED that the City Manager is hereby authorized by Common Council to execute a Franchise Agreement on behalf of the City of Winchester, Virginia with _____ for the purpose of providing cable service consistent with the terms of the attached Franchise Agreement and the provisions of this Ordinance.

Adopted by the Common Council of the City of Winchester, Virginia, and approved by Common Council, on the ____ day of _____, 2014.