

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

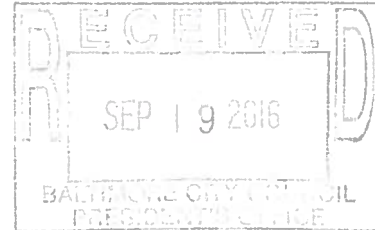


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

September 16, 2016

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 16-0724 – Franchise – Comcast of Baltimore City, LLC

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0724 for form and legal sufficiency. The bill grants a franchise to Comcast of Baltimore City, LLC, to construct, operate, and maintain a cable communications system in and across certain streets and public ways, subject to certain terms, conditions, and reservations. The bill provides for an immediate effective date.

The current Comcast franchise agreement, approved in 2004, is set to expire December 31, 2016. Council Bill 16-0724 is intended to replace the agreement that now regulates the rights and obligations of the parties. Under the federal Cable Communications Policy Act of 1984 (Cable Act), 47 U.S.C.A. §§ 521–59, the City possesses limited grounds for declining to renew an existing cable franchise. Pursuant to the Cable Act, the Mayor and City Council must act to (1) renew the franchise or (2) issue a preliminary assessment that the franchise should not be renewed. 47 U.S.C.A. § 546(c)(1). If a preliminary assessment is issued, it triggers an administrative hearing. The resulting hearing board must assess whether -

- (a) Comcast has substantially complied with the material terms of the existing franchise and with applicable law;
- (b) The quality of the operator's service has been reasonable in light of community needs, where "operator's service" includes signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system;
- (c) Comcast has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (d) Comcast's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

Fav w/ comments

Id.

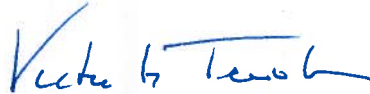
The Federal Communication Commission prohibits a local franchise provider, such as the City, from refusing to renew a franchise merely because a cable company refuses to provide broadband services to the extent demanded by the City. *See Federal Communication Commission, First Report & Order* (para. 121), March 5, 2007; *Second Report & Order*, (para. 14), November 6, 2007. If the City intends to deny the renewal, the decision must be based on adverse findings about one or more of the four factors above. 47 U.S.C.A. § 546(d). Although certain exceptions apply, if a denial is based on an alleged violation of either paragraphs (a) or (b), the City, prior to denial, must have provided Comcast notice and an opportunity to cure. *Id.*

Turning to local requirements, Article VIII of the Baltimore City Charter requires that a bill granting a franchise be referred to the Board of Estimates after First Reading. City Charter, Art. VIII, § 2. Within the limits set by the federal law for cable franchises, the BOE is empowered to change both the proposed compensation to be paid the City and the conditions under which the franchise is granted. *Id.* Furthermore, the Board of Estimates must approve by vote or resolution the compensation and terms of the franchise and these are to be attached to the bill before the bill can be enacted. *Id.*

The Board of Estimates, as well as the Mayor and City Council should note, however, that the franchise fee charged under Council Bill 16-0724 is the maximum allowed under federal law – 5% of gross revenues. 47 U.S.C.A. § 542.

Assuming the above procedural requirements are met, the Law Department will approve the bill for form and legal sufficiency.

Very truly yours,



Victor K. Tervala
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief, Opinions & Advice
Minda Goldberg, Chief Solicitor
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor