

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE AWARDDING A COMMUNICATIONS SERVICES FRANCHISE TO OPENFIBER KENTUCKY COMPANY, LLC PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES.

SPONSORED BY: COUNCIL MEMBER GEORGE

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances, Louisville/Jefferson County Metro Government (“Louisville Metro”) solicited bid proposals from parties interested in obtaining communications services franchises to erect, install or maintain communications facilities, or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky; and

WHEREAS, OpenFiber Kentucky Company, LLC submitted a bid proposal to Louisville Metro for a communications services franchise that meets all of the requirements of Chapter 116 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws; and

WHEREAS, OpenFiber Kentucky Company, LLC is the exclusive wholesale partner of KentuckyWired, a project run by the Commonwealth of Kentucky through the Kentucky Communications Network Authority; and

WHEREAS, OpenFiber Kentucky’s core business is to connect customers to the KentuckyWired “middle-mile” statewide fiber optic network.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I. Louisville Metro hereby grants to OpenFiber Kentucky Company, LLC for a period of 20 years, a non-exclusive franchise to erect, install or maintain

communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances.

SECTION II. The Franchise Agreement by and between OpenFiber Kentucky Company, LLC as appended to this ordinance is hereby approved and the Mayor is hereby authorized to execute and enter into that agreement for and on behalf of Louisville Metro.

SECTION III. The statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

SECTION IV. If any section, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

SECTION V. This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____
0-175-2021 OpenFiber Kentucky Company, LLC, 4/0/2021 LRG

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this ____ day of _____ 2021, by and between the Louisville/Jefferson County Metro Government (hereinafter “Louisville Metro”) and OpenFiber Kentucky Company, LLC (hereinafter “OpenFiber Kentucky” or “Franchisee”).

WITNESSETH:

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances, Louisville Metro solicited bid proposals from parties interested in obtaining communications services franchises to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky; and

WHEREAS, OpenFiber Kentucky submitted a bid proposal to Louisville Metro for a communications services franchise that meets all of the requirements of Chapter 116 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws; and

WHEREAS, OpenFiber Kentucky is the exclusive wholesale partner of KentuckyWired, a project run by the Commonwealth of Kentucky through the Kentucky Communications Network Authority; and

WHEREAS, OpenFiber Kentucky’s core business is to connect customers to the KentuckyWired “middle-mile” statewide fiber optic network;

WHEREAS, pursuant to Ordinance No.____, Series 2021, Louisville Metro granted to OpenFiber Kentucky for a period of 20 years, a non-exclusive franchise to erect, install or maintain communications facilities or provide communication services by use of said

communication facilities within the confines of Louisville/Jefferson County, Kentucky pursuant to Chapter 116 of the Louisville Metro Code of Ordinances; and

WHEREAS, Louisville Metro and OpenFiber Kentucky have entered into this Franchise Agreement to memorialize the award by Louisville Metro to OpenFiber Kentucky of said franchise pursuant to the terms and conditions reflected in Chapter 116 of the Louisville Metro Code of Ordinances.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Louisville Metro and OpenFiber Kentucky hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Chapter 116 of the Louisville Metro Code of Ordinances, as now written and as it may be amended during the term of this Franchise Agreement, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid, narrative, and Council District maps of OpenFiber Kentucky for said franchise, which is attached hereto as Exhibit A, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. OpenFiber Kentucky agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy, as now written and as it may be amended during the term of this Franchise Agreement.

4. Upon thirty (30) days' notice prior to installation, the Franchisee agrees to allow Louisville Metro to attach to Franchisee owned poles, at no cost to Louisville Metro, equipment and associated accessories that are used solely for public health, safety, or welfare purposes of Louisville Metro (i.e. cameras and sensors, hereinafter, "equipment").

Louisville Metro will be responsible for all costs associated with the installation of this equipment, including costs for any required load bearing survey, and all costs associated with the operation of the equipment, including, but not limited to, maintenance of the devices, electric service, and network connectivity. The Franchisee shall maintain rights in reviewing its capacity for the equipment and determining placement of equipment on its poles so as to avoid damage or conflict with the Franchisee's equipment or other authorized attachments. Any proposed installation shall be conditioned on (i) availability and space, (ii) non-interference with existing users, and (iii) structural capacity. If it is determined that the Franchisee has excess capacity in their dark fiber network at a location where a camera is to be installed, Louisville Metro and the Franchisee may negotiate a fee for use of the excess fiber capacity to connect the equipment to the Louisville Metro network.

5. If it is determined that the Franchisee has excess capacity in their dark fiber network at a location where a camera is to be installed, Louisville Metro and the Franchisee may negotiate a fee for use of the excess fiber capacity to connect the equipment to the Louisville Metro network.

6. Louisville Metro granted unto OpenFiber Kentucky a non-exclusive franchise, for a term of 20 years to erect, install or maintain communications facilities, or provide communication services by use of said communication facilities within the confines of Louisville/Jefferson County, Kentucky and as more specifically identified in the above-mentioned bid pursuant to Chapter 116 of the Louisville Metro Code of Ordinances.

7. The franchise memorialized in this Franchise Agreement shall commence on passage of the Ordinance approving this agreement and shall expire in the time

designated in this agreement and ordinance approving this agreement.

8. OpenFiber Kentucky does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

9. This Franchise Agreement memorializes the agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

IN WITNESS WHEREOF, Louisville Metro and OpenFiber Kentucky have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

**OPENFIBER KENTUCKY
COMPANY, LLC**

GREG FISCHER, MAYOR

DAVID FLESSAS, CEO

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell,
Jefferson County Attorney

By: _____