

AN ORDINANCE AMENDING CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES RELATING TO COMMUNICATION SERVICES.

SPONSORED BY: COUNCILMEMBERS KRAMER AND HOLLANDER

WHEREAS, Louisville Metro Government seeks to update Louisville Metro Code of Ordinances (“LMCO”) Chapter 116 to reflect the changing landscape of communication services in Louisville Metro; and

WHEREAS, Louisville Metro Council seeks to modify the regulation contained in LMCO Chapter 116 so that all communication service providers are treated equally and subject to the same rights and obligations when operating in Louisville Metro’s right-of-ways.

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

SECTION I. LMCO Section 116 is amended as follows:

CHAPTER 116: COMMUNICATIONS AND ~~CABLE TELEVISION SERVICES~~

~~—116.01— Scope and applicability~~

~~—116.02— Rate filing~~

~~—116.03— Rate filing review~~

~~—116.04— Rate order~~

~~—116.15— Purpose~~

~~—116.16— Definitions~~

~~—116.17— Reserved~~

~~—116.18— Director of finance/designee~~

~~—116.19— Franchise term~~

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- ~~—116.20 Significance of franchise~~
- ~~—116.21 Partial listing of rights reserved to the Metro Government~~
- ~~—116.22 Application for a franchise~~
- ~~—116.23 Acceptance and effective date of franchise~~
- ~~—116.24 Indemnity, bonds and insurance~~
- ~~—116.25 Tax on gross revenues and excise tax~~
- ~~—116.26 Franchise territory~~
- ~~—116.27 Time schedule after franchise is granted~~
- ~~—116.28 Installation and extension of service~~
- ~~—116.29 Service to customers~~
- ~~—116.30 System design~~
- ~~—116.31 Privacy~~
- ~~—116.32 Performance measurement~~
- ~~—116.33 Interconnection~~
- ~~—116.34 Emergencies~~
- ~~—116.35 Rates~~
- ~~—116.36 Police powers~~
- ~~—116.37 Transfer and assignments~~
- ~~—116.38 Abandonment~~
- ~~—116.39 Conditions of street occupancy~~
- ~~—116.40 Arrangements by franchisee with others~~
- ~~—116.41 Reports~~ moved to 116.12
- ~~—116.42 Review, renewal, termination and cancellation~~ moved to 116.10

- ~~116.43~~ Complaints
- ~~116.44~~ Revocation of franchise
- ~~116.45~~ Foreclosure-receivership moved to 116.11
- ~~116.46~~ Books and records of the franchise moved to 116.13
- ~~116.47~~ New developments
- ~~116.48~~ Time of essence moved to 116.14
- ~~116.49~~ Franchisee not to contest validity of franchise or ordinance
- ~~116.50~~ Violations moved to 116.15
- 116.7001 General provisions
- 116.7102 ~~Communications services~~ Franchise requirements and characteristics
- 116.7203 Rights-of-way management and facilities requirements
- 116.7304 Miscellaneous
- 116.7405 Transitional provisions
- 116.06 Program service providers
- 116.7507 Private communications facilities
- 116.7608 Liabilities and penalties
- 116.7709 Remedies not exclusive
- 116.4210 Review, ~~renewal~~, termination and cancellation
- 116.4511 Foreclosure-receivership
- 116.4412 Reports
- 116.4613 Books and records of the Franchise
- 116.4814 Time of essence
- 116.5015 Violations

116.16 Equal employment opportunity

116.98 Severability

116.99 Penalty

~~§ 116.01 SCOPE AND APPLICABILITY.~~

~~This subchapter governs the regulation of rates for basic service and equipment within Louisville Metro for any franchisee, which has been notified that the Louisville/Jefferson County Metro Government (“Metro Government”) or its predecessors has been certified to regulate basic service and equipment rates; and the Metro Government has adopted regulations governing basic service and equipment rates. The provisions set forth below are intended to be consistent with all Federal Communications Commission (FCC) regulations governing the regulation of basic service rates and equipment, and the Metro Government will regulate and interpret its rules so that they are consistent with FCC regulations, as if those regulations were set forth herein. If any provision of these regulations shall, to any extent, be held to be invalid, unenforceable, or preempted by federal law or regulation, the remainder hereof shall be valid in all other respects and continue to be effective. For purposes of these provisions, the term “basic service” or “basic cable service” has the same meaning as the term “basic service” at 47 C.F.R. § 76.901 and the term “equipment” refers to all equipment and services subject to regulation under 47 C.F.R. § 76.923.~~

~~§ 116.02 RATE FILING.~~

~~Every rate filing must be submitted to the Mayor of the Metro Government with a copy to the Office of the Metro Council Clerk. Such filings must contain all information and~~

~~supporting documentation as provided in FCC regulations and any other information as may be required by the Metro Government, as described further herein.~~

~~**§ 116.03 RATE FILING REVIEW.**~~

~~The Metro Council retains the final authority regarding approval, denial, modifying or tolling of all such rate filings.~~

~~**§ 116.04 RATE ORDER.**~~

~~Any rate order of the Metro Council shall be effective on its adoption, unless otherwise specifically directed or required by law (noting that tolling orders must be effective immediately). Each rate order shall be released to the public and the franchisee.~~

~~**§ 116.15 PURPOSE.**~~

~~The purpose of this chapter is:~~

- ~~—(A)— To regulate the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a cable communications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways or public places within the Metro Government Area, as now or in the future may exist;~~
- ~~—(B)— To provide for payment of a fee and other valuable consideration to the Metro Government for the privilege of constructing and operating a cable communications system;~~
- ~~—(C)— To provide for the regulation by the Metro Government of rates to be charged to subscribers;~~
- ~~—(D)— To provide for the development of a cable communications system as a community communications system and for other public purposes; and~~
- ~~—(E)— To provide remedies and prescribe penalties for the violation of this chapter.~~

~~§ 116.16 DEFINITIONS.~~

~~For the purpose of this subchapter and any ordinance and agreement awarding a franchise in accordance herewith, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless otherwise specifically provided in this subchapter, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Metro Government. When not inconsistent with the context, words used in the plural number include the singular number, and words in the singular number include the plural number. Further, the word "shall" is always mandatory and not merely directory.~~

~~**ANNUAL GROSS RECEIPTS.** Any and all compensation, revenue, and other consideration, derived directly or indirectly, in any form whatever, by a franchisee, its affiliates, subsidiaries, parents, from, or in connection with, the operation of a cable communications system in the Metro Government Area, with no deductions whatsoever.~~

~~**APPLICANT.** The natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind which applies for a franchise to be granted under this subchapter.~~

~~**CABLE COMMUNICATIONS SYSTEM.** Any facility that, in whole or in part, receives directly or indirectly, and amplifies or otherwise modifies signals which transmit non-broadcast services, and/or programming broadcast or furnished by one or more television or radio stations or similar facility and distributes such signals by wire or cable to subscribing members of the public who pay for such service. Such definition shall not include any similar facility that serves only the residents of one or more apartment or condominium dwelling under common ownership, control or management, or otherwise,~~

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~~and commercial establishments located on the premises of such an apartment house or condominium dwelling.~~

~~—**CATV.** A community antennae cable communications system, composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, laser beams, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing coaxial cable audio and/or visual radio, television, electronics or electrical signals to and from persons, subscribers, and locations in the Metro Government Areas.~~

~~—**CERTIFICATE OF COMPLIANCE.** Approval required by the FCC in order for a franchisee to begin operation within the metropolitan area.~~

~~—**CONVERTER.** An interface device which may be furnished to subscribers in order that non-standard television channels carried on the cable communications system may be received on a conventional home television receiver, or to prevent interference from strong broadcast signals.~~

~~—**DIRECTOR OF FINANCE.** The Director of Finance of the metropolitan area or the Director, or his/her designee, or the Director or designee of any successor agency to Finance.~~

~~—**DIRECTOR OF PUBLIC WORKS AND ASSETS.** The Director of Public Works and Assets for, or his/her designee, or the Director, or designee, of any successor agency to Public Works and Assets.~~

~~—**FAIR MARKET VALUE.** The price that a willing buyer under no compulsion to buy would pay to a willing seller under no compulsion to sell.~~

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~~—**FCC.** The Federal Communications Commission as that agency is presently constituted by the Communications Act of 1934 as amended, or any successor agency.~~

~~—**FRANCHISE.** The non-exclusive rights granted hereunder to construct and operate a cable communications system along the streets, alleys, and public ways in the Metro Government Area, or within specified areas in Jefferson County, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the Metro Government, as may be required by any other ordinances or laws of the Metro Government, or the Commonwealth of Kentucky.~~

~~—**FRANCHISEE.** The natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind, and the lawful successor, transferee, or assignee of same, granted a franchise by the Metro Government under this subchapter.~~

~~—**MAYOR.** The Mayor of the Metro Government.~~

~~—**METRO GOVERNMENT.** The Louisville/Jefferson Metro Government.~~

~~—**METRO GOVERNMENT AREA.** The corporate limits of the Louisville/Jefferson County Metro Government.~~

~~—**PERSON.** Any individual, partnership, association, corporation, joint venture, legal entity or organization of any kind.~~

~~—**SERVICE.** All communications, maintenance, repair and installation services provided by the franchisee, including the delivery of broadcast signals and programming covered by the regular monthly charge paid by all subscribers, including such standard type of service that is normally furnished by CATV franchisees for a regular monthly as are~~

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~~furnished as a part of the cable communications system in the way of two-way, return-path services.~~

~~—**STATE.** The Commonwealth of Kentucky.~~

~~—**STREET.** The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, or other public right-of-way including public utility easements or right-of-way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Metro Government which shall entitle Metro Government and the franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the franchisee's cable communications system. STREET shall also mean any easement now or hereafter held by the Metro Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Metro Government, which shall within their proper use and meaning entitle the Metro Government and the franchisee to the use thereof for the purposes of installing or transmitting cable communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable communications system.~~

~~—**SUBSCRIBER.** Any person who contracts the purchase, orally or in writing of any service as may be provided by a franchisee's cable communications system.~~

~~—**SUBSTANTIAL COMPLETION.** That point at which sufficient distribution facilities have been installed by the franchisee so as to provide service to at least 90% of the dwelling units in the franchise territory as described in § 116.26.~~

~~§ 116.17 RESERVED.~~

~~§ 116.18 DIRECTOR OF FINANCE / DESIGNEE.~~

~~The Director of Finance or his/her designee shall have the general duties of maintaining records.~~

~~§ 116.19 FRANCHISE TERM.~~

~~Franchises shall be for a period of 15 years from the date of issuance. Such franchise shall designate and be conditioned upon the acceptance by a franchisee of all of the terms of this subchapter and any amendments properly made thereto.~~

~~§ 116.20 SIGNIFICANCE OF FRANCHISE.~~

~~—(A) Any franchise granted hereafter by the Metro Government shall not be exclusive and the Metro Government reserves the right to grant a similar franchise to any other persons or entities at any time.~~

~~—(B) No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed.~~

~~—(C) Any franchise granted hereunder shall give to the franchisee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under the streets, alleys and public places of the Metro Government Area, such towers, antennae, cables, electronic equipment and other network appurtenances necessary for the operation of a cable communications system in the Metro Government Area; provided, however, that the exercise of such right and privilege shall not interfere with the use of such streets, alleys and public places by the Metro Government and such others as are permitted by the Metro Government to use same, and the Metro Government may demand the removal of the foregoing as have been~~

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~~constructed by or under contract with a franchisee at such time as the Metro Government believes that same are interfering with the use of the said streets, alleys or public places.~~

~~—(D) Any franchise granted hereunder shall be a privilege to be held for the benefit of the public.~~

~~—(E) Prior approval of the Metro Government shall be required and obtained where ownership or control of more than 10% of the right of control of any franchisee is acquired, disposed of or transferred by a person or group of persons acting in concert. Transfer from a subsidiary to a parent corporation, or vice versa, shall not be considered as a change of control.~~

~~—(F) Nothing in this subchapter shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof or a leasing by a franchisee from another person of said network or part thereof for financing purposes or otherwise. However, any such mortgage, pledge or lease shall be subject to the rights of the Metro Government under this subchapter, a franchise granted hereunder, and all other applicable laws.~~

~~—(G) Any franchise granted hereunder shall not relieve the franchisee of its obligation to obtain necessary pole or conduit use agreements as are necessary.~~

~~—(H) The award of any franchise hereunder shall not impart to the franchisee any right of ownership of streets or Metro Government-owned property.~~

~~—(I) Any franchise granted hereunder shall be binding upon the franchisee, its successors, lessees or assignees.~~

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~~—(J)— A franchisee, at its expense, shall comply with all applicable laws, orders, ordinances and regulations of federal, state and Metro Government or municipal authorities including those established to protect historic districts and/or designated landmark sites.~~

~~**§ 116.21 PARTIAL LISTING OF RIGHTS RESERVED TO THE METRO GOVERNMENT.**~~

~~—(A)— The Metro Government reserves such rights and powers which under applicable federal or state law or regulations, the Metro Government must reserve and maintain. Franchisee agrees to comply with any action or requirements of the Metro Government in the exercise of such rights and powers which either have been or shall subsequent to the grant of said franchise be enacted or established.~~

~~—(B)— The Metro Government may designate and transfer its obligations and duties under the franchise to any elected official, officer, employee, department, agent, board or Commission of the Metro Government and a franchisee shall recognize the authority of any such transferee.~~

~~—(C)— The Metro Government may inspect all construction or installation work performed pursuant to the franchise grant under this subchapter.~~

~~—(D)— Neither the granting of any franchise hereafter nor any provisions hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the Metro Government.~~

~~**§ 116.22 APPLICATION FOR A FRANCHISE.**~~

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~~Applications for an original franchise grant hereunder shall be filed with the Director of Public Works and Assets and shall contain the following written information and provisions:~~

~~—(A) *Bid bond and filing fee.* Applications shall be subject to the requirements of § 116.42 and shall be accompanied by a non-refundable filing fee of \$5,000 payable to the Metro Government. Upon award of a franchise, applicant must supply all other bonds and insurance required under § 116.24.~~

~~—(B) *Name and address of applicant.* The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).~~

~~—(C) *Description of proposed operation.* A general description of the applicants proposed operation, including, but not limited to: business hours, operating staff, maintenance procedures, management and marketing staff complement and procedures, rules of operation for public access, a statement of services to be provided, and a description of the system design as required by § 116.30(B).~~

~~—(D) *Special services.* A statement setting forth a description of any automated services proposed as well as a description of the production facilities to be made available by the franchisee for public, municipal, and educational access channels.~~

~~—(E) *Programming assistance.* A statement explaining any assistance, in terms of personnel, equipment or capacity, to be designated for the programming or programming assistance for the public, educational and governmental access channels.~~

~~—(F) *Rates.* A statement of the applicant's proposed rates in conformity with this subchapter.~~

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~~—(G) *Applicant organization.*~~

~~—(1) If the applicant is an individual, partnership, or unincorporated association, it shall state the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the applicant's business operation, and in and to the prospective franchise if awarded. The term equitable interest shall include all assignments for value, as well as all contingent assignments of any right or privilege under the prospective franchise, and shall also include any benefit, payment, or emolument whatsoever resulting from the grant of a franchise under this subchapter.~~

~~—(2) If the applicant is a non-public corporation, the application shall state, additionally, the names and addresses of the officers, directors, and shareholders of the said corporation, together with the number of shares held by each shareholder.~~

~~—(3) If the applicant is a publicly held corporation, as defined by the rules and regulations of the Securities and Exchange Commission, the statement shall contain the states in which incorporated and/or qualified to do business, the names and addresses of the officers and directors of the corporation, the names and addresses and number of shares owned of all stockholders both nominal and beneficial, owning 3% or more of the outstanding stock of the applicant.~~

~~—(4) A full disclosure of the ownership of the facilities to be used in rendering the service.~~

~~—(H) *Intra-company relationships.* A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.~~

~~—(I) *Agreements and understandings.* A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other~~

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~~person, firm, group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time the application is made.~~

~~—(J)— *Financial statements.* Audited financial statements for the applicant's two latest fiscal years unless applicant has not been in existence for at least two years, in which case applicant shall furnish audited financial statements for such lesser period of time covering the period that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the Federal Partnership Income Tax return for its latest two fiscal years or such lesser period of time that said partnership has been in existence.~~

~~—(K)— *Financial projection.* An estimated ten-year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Such projections shall also specify the estimated average profit or loss anticipated by the applicant for the first ten-year operations period, and shall specify the computations and criteria used to provide such estimate, such as number of homes adopted and effective, miles of cable construction, and anticipated inflation rate.~~

~~—(L)— *Financial support.* Suitable written evidence from a recognized financing institution addressed both to the applicant and to the Metro Government advising that the applicant's planned operation has been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a corporate board resolution or statement from a qualified officer of the applicant shall be supplied~~

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~~authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the cable communications system contemplated hereunder.~~

~~—(M) *Technical description.* A technical description of the type of network proposed by the applicant, including, but not limited to, a network map network configuration (i.e. hub), network capacity, two way operation capability and service to be provided, and a description of the studio or studios, studio equipment, planned hours of operation and hours of availability, if any, that same will be made available to governmental, public and/or educational institutions or agencies. Network designs are to be submitted in bullet format detailing equipment start point, routes and end point location accompanied by network routing maps(s)~~

~~—(N) *Engineering statement.* A statement from the applicant's senior technical staff member, or consultant, advising that he/she has reviewed this subchapter and that the applicant's planned network and operations thereof would meet all the requirements set forth herein.~~

~~—(O) *Existing franchises.* A statement of existing franchises held by the applicant indicating, with particularity, when the franchises were issued and when the systems were constructed together with the name, and address and phone number of a responsible governmental official knowledgeable of the applicant in each such franchise area.~~

~~—(P) *Convictions.* A statement as to whether the applicant or any of its officers or directors or holders of three percent or more of its voting stock or bonded indebtedness has in the past ten years been convicted of any crime which in any way is related to the~~

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~~operation and performance of a cable communications system or in any way relates to the applicant's ability or competency to perform its obligations under this subchapter.~~

~~—(Q) *Operating experience.* A statement detailing the prior CATV experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.~~

~~—(R) *Franchise renewal information.* If an application is for renewal of a franchise, the proposal must include, in addition to the information required in § 116.22(A) through (O):~~

~~—(1) A summary of the technical, financial and programming history of the network since the granting of the original franchise.~~

~~—(2) A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the forthcoming 15-year period.~~

~~—(S) *Additional requirements.* Fifteen copies of the application shall be filed. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted in the above number of copies. The Metro Government may, at its discretion, consider such additional information as part of the application.~~

~~—(T) *Supplementation to applications.* The Metro Government reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.~~

~~(U) Franchise renewal. The franchise granted under this subchapter may be reviewed under the authority of Section 626 of the Cable Communications Policy Act of 1984, as it may be amended.~~

~~§ 116.23 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.~~

~~(A) Any franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of an ordinance awarding a franchise hereunder, provided that on or before said date the franchisee shall:~~

~~(1) File with the Metro Government an unconditional acceptance of the franchise grant and enter into and execute such contracts and documents as required by the Metro Government consistent with the terms and provisions of this subchapter and such other terms and provisions as were negotiated by the franchisee and the Metro Government consistent with the application of the franchisee.~~

~~(2) File certificate of insurance as set forth in § 116.24.~~

~~(3) File such bond or bonds as required in § 116.24.~~

~~(4) Reimburse the Metro Government for the costs of publication of this subchapter and the ordinance awarding the franchise.~~

~~(5) Advise the Metro Government in writing of the franchisee's location and its address for mail and official notifications from the Metro Government.~~

~~(B) In the event the franchisee fails to comply in full with § 116.23(A), then it shall be conclusively considered that the franchisee has abandoned its application and rights to such grant and award of the franchise, and any such rights that the franchisee may have acquired under the ordinance shall immediately terminate, and the franchisee shall~~

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~~have no right, privilege or authority whatsoever under this subchapter. In the event the franchisee has paid the initial franchise fee of \$50,000 as contemplated in § 116.23(A), such shall be refunded to the franchisee if the franchisee has otherwise complied with § 116.23(A)(4). If it has not, the aforesaid costs of publication shall be deducted and the balance refunded.~~

~~—(C) The franchisee shall have no recourse whatsoever against the Metro Government for or on account of any loss, cost, expense or damage arising out of any provisions or requirements of this subchapter and/or the ordinance awarding the franchise or any amendments there to or rules or regulations thereunder.~~

~~—(D) The franchisee by acceptance of any franchise awarded hereunder, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the Metro Government to grant such a franchise.~~

~~—(E) The franchisee, by acceptance of any franchise awarded hereunder, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of this subchapter, the ordinance awarding the franchise, and such other contracts and documents entered into by the franchisee relative to the franchise.~~

~~—(F) The franchisee by acceptance of any franchise awarded hereunder acknowledges and agrees that the matters contained in the franchisee's application for franchise or supplements thereto, shall be incorporated into the ordinance awarding the franchise as though set out verbatim and shall thereafter be considered an integral part of such ordinance in all communications, correspondence, filings or applications with all appropriate regulatory agencies, including the FCC.~~

~~§ 116.24 INDEMNITY, BONDS AND INSURANCE.~~

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~~—(A) Franchisee shall at his or her sole cost and expense, fully indemnify, defend, and save harmless the Metro Government, its officers, boards, commissions, and employees against any and all claims, suits, actions, liability, and judgments for damage or penalty arising out of or derivative of this subchapter, the franchise awarded hereunder, and/or the construction, installation, operation, acquisition, maintenance or advertising of any cable communications system.~~

~~—(1) Same shall include, but shall not be limited to, damages arising out of copyright infringement and all other claims, suits, actions or liability, whether or not any act of complained of was authorized, allowed, or prohibited by the franchise.~~

~~—(2) A franchisee shall pay and by its acceptance of the franchise, specifically agrees that it will pay all expenses incurred by the Metro Government in defending itself with regard to all damages and penalties mentioned above. These expenses shall include, but not be limited to, all out-of-pocket expenses such as attorney fees and all other costs of litigation and shall also include the reasonable value of any services rendered by the Jefferson County Attorney or his or her assistants or any employee of the Metro Government.~~

~~—(3) (a) All persons submitting an application for a franchise in accordance herewith shall file with their applications a bond solely for the protection of the Metro Government with a surety company that is Treasury listed with a rating of A or better as follows:~~

~~—(b) A bid bond equal to 10% of the bid which shall indemnify the Metro Government up to the full amount of said bond from any damages or losses arising out of the failure of the person selected to be the franchisee to accept the franchise and~~

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~~execute a franchise agreement in conformity with this subchapter and such persons proposal hereunder; and~~

~~—(B) Immediately upon the effective date of the ordinance awarding a franchise under this subchapter, the franchisee shall file with the Metro Clerk the following bonds solely for the protection of the Metro Government with a surety company that is Treasury listed with a rating of A- or better:~~

~~—(1) A performance and payment bond equal to 100% of the contract price to be effective from the franchise award date hereunder, and thereafter until the cable communications system referred to therein is certified completed by the Public Works and Assets Department and an independent electrical engineer to be employed by the Metro Government for such purpose. The payment portion of this bond must contain a clause substantially to the effect that every person who, whether as subcontractor, or otherwise, has furnished material or supplied or performed labor in the prosecution of the work under this contract, and who has not been paid therefore, may sue on said payment bond and prosecute the same to final judgment for such sum, or sums, as may be justly due it, and have execution thereon; provided, however, that the Metro Government shall not be liable for the payment of any costs or expense of such suit. The performance portion of this bond shall indemnify the Metro Government in its own right and as trustee, for subscribers up to the full amount of said bond from any damages or losses arising out of the failure of the franchisee to faithfully perform and satisfactorily complete construction of the cable communications system in accordance with this subchapter and any agreement and ordinance in connection herewith, including, but not limited to, the cost of removal of any construction. The bond shall~~

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~~cover all such claims until one year after the cable communications system referred to therein is certified completed by the Public Works and Assets Department and an independent electrical engineer.~~

~~—(2)— A franchise bond in the amount of \$1,000,000, to be effective upon the execution of the said franchise agreement and the effective date of the ordinance awarding a franchise hereunder, and conditioned that in the event that the franchisee fails to comply with any provision of this subchapter or agreement or ordinance awarding a franchise in accordance herewith, then there shall be recoverable jointly and severally from the principals and surety any and all damages suffered or incurred by the Metro Government or by any subscriber as a result thereof, including, but not limited to, costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs which may be in default, up to the full principal amount of such bond, and the said condition shall be a continuing obligation during the entire term of any agreement or ordinance or ordinances awarding a franchise in accordance herewith and thereafter until the franchisee shall have satisfied in full any and all obligations to the Metro Government which arise out of or pertain to same.~~

~~—(C)— None of the provisions of this subchapter nor any bond accepted by the Metro Government pursuant hereto, nor any damages recovered by the Metro Government thereunder, shall be construed to excuse the faithful performance by or limit the liability of the franchisee under this subchapter or any agreement or ordinance awarding a franchise in accordance herewith or for damages either to the full amount of said bond or otherwise.~~

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~~—(D) Failure to maintain all bonds required hereinabove for the terms required shall be considered breach of contract and Metro Government may suspend or terminate franchisees Franchise Agreement and operations at its sole discretion.~~

~~—(E) Immediately upon the effective date of the ordinance awarding a franchise under this subchapter, the franchisee shall file with the Director of Public Works and Assets and maintain on file throughout the term of this franchise a liability insurance policy issued by a company duly authorized to do business in the Commonwealth and acceptable to the Metro Government, insuring Metro Government and its Metro Council/Mayor, with respect to the construction, installation, operation and maintenance of the system: Commonwealth with an AM Best Rating of A or better and acceptable to the Metro Government, insuring Metro Government and its Metro Council/Mayor, with respect to the construction, installation, operation and maintenance of the system. Acceptable proof of liability insurance is accomplished by filing a Certificate of Insurance, however Metro may at its sole discretion, require copies of actual policies in order to determine final acceptability. The following liability insurance is required:~~

~~—(1) General liability insurance, via an occurrence form, covering bodily injury, including death, personal injury and property damage, and including completed operations, contractual liability, independent contractors protective liability and personal injury liability protection. The minimum acceptable limit of liability amount is \$5,000,000 per occurrence and aggregate under a combined single limit. This policy must include the Louisville/Jefferson County Metro Government, including its Mayor and Metro Council members, as Additional Insureds as respects all operations of the Insured Franchisee. This policy must cover Metro Government for damages resulting from the~~

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~~transmission of any communication over the cable communications system. The Metro Government reserves the right to make reasonable increases in the required amount of insurance coverage herein at anytime. Nothing herein is intended as a limitation on the extent of any legal liability of the franchisee.~~

~~—(2) Copyright infringement liability insurance covering any alleged infringement of patent or copyright of any other legal infringement in the transmission of materials through the cable franchise system. This coverage may be written as part of the general liability insurance, or through a stand-alone policy, however, if written separately, it must have a minimum limit of liability amount of \$5,000,000 per occurrence and aggregate under a combined single limit and include the Louisville/Jefferson County Metro Government, including its Mayor and Metro Council members, as additional insureds as respects all operations of the insured franchisee. The Metro Government reserves the right to make reasonable increases in the required amount of insurance coverage herein at anytime. Nothing herein is intended as a limitation on the extent of any legal liability of the franchisee.~~

~~—(F) Failure to maintain all insurance required hereinabove for the terms required shall be considered breach of contract and Metro Government may suspend or terminate franchisees Franchise Agreement and operations at its sole discretion.~~

~~**§ 116.25 TAX ON GROSS REVENUES AND EXCISE TAX.**~~

~~Franchisee shall comply with all requirements for the payment of taxes and reporting requirements set forth in KRS 136.600–136.660.~~

~~**§ 116.26 FRANCHISE TERRITORY.**~~

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~~—(A) Any ordinance awarding a franchise to operate a cable communications system in accordance herewith shall apply to its operation throughout all of the Metro Government Area as now or in the future may exist, but including such incorporated areas as may choose to be included in the cable communications system.~~

~~—(B) The franchisee shall endeavor to offer cable communications service to all residents of the Metro Government Area. To the extent that the franchisee intends not to provide service to any specific area, streets building or other location, the franchisee shall designate same and clearly indicate in its application for a franchise in accordance herewith the technical or economic reason for its inability to provide service in the enumerated locations.~~

~~—(C) The franchisee is not required under this subchapter or any contract granted hereunder to extend its facilities to any area unless there exists in that area a potential of at least 35 subscribers per mile of trunk cable system. When the potential of 35 subscribers per mile does not exist, the company may make a charge at actual cost, including labor and material for cable extension, for service in this portion of the system.~~

~~§ 116.27 TIME SCHEDULE AFTER FRANCHISE IS GRANTED.~~

~~The franchisee shall adhere to the following time schedules:~~

~~—(A) Within 60 days after the effective date of the ordinance awarding the franchise, the franchisee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted~~

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~~regulatory agencies having jurisdiction over the operation of CATV systems, or their associated microwave transmission facilities.~~

~~—(B) The company agrees to comply with all of the procedural requirements of the FCC. The franchisee shall notify all necessary parties, including the FCC, within 30 days following the effective date of the ordinance awarding a franchise hereunder of its intent to operate a cable communications system and shall begin construction within 60 days after action by the FCC, a Certificate of Compliance, or operation of law, shall authorize the provision of CATV services in the Metro Government Area. If for any reason the franchisee has not notified all parties within the 30 days, then the franchise shall be considered null and void.~~

~~—(C) Within 12 months after the effective date of the ordinance awarding the franchise hereunder, the franchisee shall have in place and in operation no less than 100 miles of cable plant.~~

~~—(D) Within 36 months after the effective date of the ordinance awarding the franchise hereunder, the franchisee shall have achieved substantial completion of construction. However, the date to substantially complete construction shall be extended by the number of days of delay of the franchisee caused by strikes, lockouts, fire, unusual delay in the transportation, unavoidable casualty or such other delay authorized by the Metro Government.~~

~~§ 116.28 INSTALLATION AND EXTENSION OF SERVICE.~~

~~—(A) The franchisee shall extend cable to new developments and subdivisions and to other areas, including, but not limited to, blocks or streets, simultaneously with the~~

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~~installation of electric power and telephone utility facilities, provided same is contiguous to any part of the installed CATV system.~~

~~—(B) In all cases where new developments and subdivisions are to be constructed and to be served in whole or in part by both underground power and telephone utilities, the owner or developer of such areas shall provide the franchisee the trench, backfill and all necessary substructures for cables in order that the franchisee may install all necessary electronic cable communications facilities. In no event shall such undergrounding be at any cost or expense to the metropolitan area.~~

~~—(C) Failure to install cable in accordance with the construction timetable as provided in § 116.27, or to extend cable within 90 days of a subscriber's request for service to new developments, subdivisions or other areas in instances controlled by § 116.28(A) and (B) shall constitute a violation of this subchapter and a material breach of any agreement awarding a franchise in accordance herewith and shall subject the franchisee to all the penalties and remedies prescribed in this subchapter as well as all other remedies, both legal and equitable, which are available to Metro Government.~~

~~—(D) Cable communications service shall be made available to all individual dwellings, residences, including apartments, condominiums, cooperative or associate buildings, institutions, organizations, businesses and all other entities within the designated franchise area as the same now or in the future may exist.~~

~~—(E) Installation and service fees for the first television set of any subscriber shall be uniform for all entities listed in § 116.28(D). Installation or subscriber use of cable communications system service which involve retransmission of the cable signal to multiple reception points within a structure shall be negotiated separately by the~~

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~~franchisee and the owner of the structure or the subscriber. Service to condominium buildings shall be on such conditions as the governing body of the tenants in common may provide and as are agreed upon by the franchisee. Neither the franchisee nor the Metro Government shall be responsible or liable for any failure to provide cable communications service to a lessee or condominium owner whose lessor or governing body refuses the installation of such service. The provision of cable communications services to any multiple dwelling structure shall not be conditioned upon the purchase by the owner, lessor or governing body of such structure of any service of the franchisee or any person designated by it.~~

~~—(F) Residential installation, including multiple drops shall be offered as the feeder line passes the dwelling unit.~~

~~—(G) All of the franchisee's cable equipment shall be removed within a reasonable time, such time not to exceed one month from a subscriber's property at the subscriber's written request.~~

~~—(1) Where such removal interferes with the provision of cable communications services to another subscriber, it shall be the obligation of the subscriber so affected to secure a legal agreement which will enable the franchisee to provide the subscriber the cable communications service the subscriber desires.~~

~~—(2) Where attachment to or use of a non-subscriber's property is necessary for the provision of cable communications services to a subscriber, it shall be the obligation of such subscriber to secure a legal agreement which will enable the franchisee to provide the service the subscriber desires.~~

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~~—(H) Nothing in this subchapter shall be construed as a representation, promise or guarantee by the Metro Government that any permit or other authorization required under any Metro Government regulation for construction or installation of a cable communications system shall be issued.~~

~~§ 116.29 SERVICE TO CUSTOMERS.~~

~~—(A) The cable communications system shall be designed for operation 24 hours per day and shall endure service interruptions only for good cause and for a reasonable time as determined by the Director of Finance. Permissible interruptions of service shall be for the shortest possible time.~~

~~—(B) The franchisee shall maintain an office in the County which shall be open to the general public during normal business hours.~~

~~—(C) The franchisee shall have a publicly listed telephone number.~~

~~—(1) The franchisee shall employ an operator or maintain a telephone answering device 24 hours per day, each day of the year to receive subscriber complaints.~~

~~—(a) A log shall be kept by the franchise listing each subscriber complaint or request for repair received and the disposition thereof.~~

~~—(b) Said log shall be available for inspection by the Director of Finance, or a designated representative upon reasonable notice.~~

~~—(D) The franchisee shall maintain a maintenance and repair service capable of responding to subscriber complaints or requests for repairs within 24 hours after the receipt of the complaint or request. If the franchisee or any of its shareholders owning at least three WP of its stock, or any subsidiary, parent or affiliated corporation of the franchisee engages in the business or activity of selling, leasing, repairing, dismantling~~

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~~or installing television or radio receivers, or accessories for such receivers, cameras, audio or video tape machines, video tapes, microphones, control boxes, modulators, or other equipment utilized by users or subscribers in the operation of any cable communications system, the franchisee shall not condition cable communications service or the continuation thereof or usage of cable communications facility on a subscriber's purchase of or failure to purchase any of such services or equipment.~~

~~—(E)— In the event that its service to subscribers is interrupted for 48 or more consecutive hours, except for acts of God, riots or a state of emergency declared by the President of the United States, the Governor of the Commonwealth of Kentucky or the Mayor, the franchisee shall grant affected subscribers a pro rata credit or rebate for the full duration of the interruption. In the event that any interruption of subscriber service is prolonged beyond any unreasonable period, such period being not less than 48 hours and as further determined by the Director of Finance, the procedure in § 116.42(E) may be instituted. An unreasonable interruption of subscriber services shall be deemed a violation of this subchapter and a material breach of any agreement awarding a franchise in accordance herewith and shall subject the franchisee to all of the penalties and remedies prescribed in the agreement as well as all other remedies, both legal and equitable, which are available to the Metro Government.~~

~~—(F)— The franchisee shall not deny or delay service or use of cable communications facility or otherwise discriminate against subscribers or uses on the basis of age, race, creed, color, sex, national origin, or marital status.~~

~~—(G) The franchisee shall maintain in constant readiness equipment capable of providing standby powering for the headend, transportation and trunk amplifiers for a minimum of four hours.~~

~~—(1) The equipment shall be constructed so as to revert automatically to a standby mode when alternating current power returns.~~

~~—(2) The franchisee shall comply with all utility and other safety regulations to prevent a standby generator from powering the dead utility line so as to prevent injury to any person.~~

~~§ 116.30 SYSTEM DESIGN.~~

~~—(A) The franchisee shall install a first quality cable system, using equipment designed by a major supplier of CATV equipment.~~

~~—(1) All necessary return path, amplifiers and/or amplifier modules shall provide maximum two way service capability, and shall be installed at the time of initial construction.~~

~~—(2) The number of channels to be provided and their use shall be described in the franchise proposal.~~

~~§ 116.31 PRIVACY.~~

~~The franchisee shall strictly observe the privacy and property rights of subscribers. The subscriber's rights of privacy shall be protected at all times by the franchisee. Individual subscriber preferences, viewing habits, beliefs, philosophy, creeds, religions or political beliefs shall not be revealed to any person, agency, governmental unit, police department or investigating agency unless upon the authority of a court of law or upon~~

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~~prior voluntary valid written authorization of the subscriber, which shall not in any event be required as a condition of receiving service.~~

~~—(A) Without the authorization described herein, neither the franchisee nor any other person shall in any manner activate, utilize or otherwise operate any channel from a subscriber's location.~~

~~—(B) Every subscriber shall have the absolute right to deactivate the return path from the subscriber's receiver at the franchisee's sole cost.~~

~~—(C) The franchisee shall not tabulate any test results, nor permit the use of its cable communications system for such tabulation, which would reveal the commercial product preferences or opinions of subscribers, members of their families or their invitees, licensees or employees.~~

~~—(D) Violation of any provision of this section of this subchapter shall be considered a material breach of this subchapter and any agreement or ordinance awarding a franchise in accordance herewith and shall subject the franchisee to all penalties and remedies prescribed in this subchapter as well as all other legal or equitable remedies available to the Metro Government.~~

~~—(E) Each compilation, publication, tabulation or other dissemination of each piece of information made or permitted to be made in violation of this subchapter shall be considered a separate violation of this subchapter.~~

~~—(F) A subscriber may at any time evoke any authorization previously made, by delivering to the franchisee in writing a substantial indication of his or her intent to so revoke. Any such revocation shall be effective on receipt by the franchisee.~~

§ 116.32 PERFORMANCE MEASUREMENT.

~~—(A) Test procedures used in verification of performance shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual report filed with the Metro Government.~~

~~—(B) The Metro Government reserves the right to require additional tests.~~

~~**§ 116.33 INTERCONNECTION.**~~

~~Nothing in this subchapter shall be construed so as to prohibit the franchisee from interconnecting its network with other similar networks either in the Metro Government Area or in other municipalities, counties or states or countries. Any applicable revenues derived therefrom shall be equitably allocated in the calculation of annual gross subscriber revenues.~~

~~**§ 116.34 EMERGENCIES.**~~

~~—(A) In the event of an emergency or disaster, a franchisee shall upon request of the Mayor, make available its facilities to the Metro Government or to the state or federal government, at no cost for emergency use during the period of such emergency or disaster and shall provide such personnel as necessary to properly operate the system under the circumstances.~~

~~—(B) A franchisee shall incorporate into its facilities the capability for an emergency override alert whereby the Metro Government, in times of crisis, may be able to introduce a bulletin on all channels simultaneously.~~

~~—(C) If at any time, in case of fire or disaster in the Metro Government, it shall become necessary in the reasonable judgment of the Mayor, to cut or move any of the wires, cables, amplifiers, or other appurtenances to the network of the franchisee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by~~

~~the franchisee, at its sole expense provided that such repairs are not necessitated by a negligent act of the Metro Government in which case, cost for repairs shall be borne by the Metro Government.~~

~~**§ 116.35 RATES.**~~

~~The franchisee shall file with the Metro Council Clerk on December 31 each year a full schedule of all subscriber and user rates and all other charges made in connection with the operation of the cable communications system.~~

~~**§ 116.36 POLICE POWERS.**~~

~~Nothing in this subchapter or in any agreement or ordinance in accordance herewith shall be construed as an abrogation by the Metro Government of any of its police powers.~~

~~**§ 116.37 TRANSFER AND ASSIGNMENTS.**~~

~~—(A) The franchisee shall not transfer, assign, sell, lease or dispose of, its interest in any franchise or ordinance or agreement awarding a franchise in accordance herewith or in its cable communications system without the prior written authorization of the Metro Government. A merger or consolidation shall be deemed a transfer or assignment.~~

~~—(B) During the term of any franchise, the franchisee shall not sell, transfer, assign, lease, dispose of, exchange or release of more than three per centum of the ownership of its cable communications system to a person, (hereinafter proposed transferee) without the prior written authorization of the Metro Government.~~

~~—(1) In seeking said prior written authorization required under this subchapter, the franchisee shall have the responsibility:~~

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~~—— (a) To show to the satisfaction of the Metro Government whether the proposed transferee, which in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in three per centum, or more of its voting stock, or any of the proposed transferee's principals:~~

~~—— 1. Has ever been convicted of a crime involving moral turpitude, including, but not limited to, criminal fraud, or is presently under an indictment charging such a crime;~~

~~—— 2. Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction;~~

~~—— 3. Has pending any legal claim or law suit arising out of or involving a cable communications system.~~

~~—— (b) To establish to the satisfaction of the Metro Government the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the franchisee was required to submit in its application for a franchise in accordance herewith, and such other financial data as the Metro Government may request.~~

~~—— (c) To establish to the satisfaction of the Metro Government that the financial standing of the proposed transferee is such that the proposed transferee shall be able to maintain and operate the cable communications system for the remaining term of the franchise.~~

~~—— (C) Any proposed transferee shall execute an agreement, in the form and containing the conditions approved by the Jefferson County Attorney, that it will assume and be bound by all of the provisions, terms and conditions of this subchapter and any agreement or ordinance in accordance herewith and all applicable federal, state and~~

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~~local laws and further that it shall be primarily liable and obligated under said documents without, however, relieving the franchisee from its obligations to the metropolitan area under said document.~~

~~—(D)— No transfer under § 116.37(A) or (B) shall be made within 13 months of the termination date of the term of franchise agreement.~~

~~—(E)— Nothing in any approval by the Metro Government of any transfer or assignment of any ownership interest pursuant to § 116.37(A) and (B) shall be construed to waive or release any rights of the Metro Government in and to the streets, public ways and public places of the Metro Government or as a release of any of the Metro Government's police powers.~~

~~—(F)— The occurrence of any event which constitutes either grounds for entry or an Order for Relief under the United States Bankruptcy Code, or placement of the franchisee into receivership, or the issuance of any order to the franchisee or any of its stockholders by a government agency or court of competent jurisdiction to divest any interest related to the cable communications system hereunder, or the entry of any judgment against the franchisee which, in the opinion of the Metro Government impairs the franchisee's credit, shall be deemed an unauthorized transfer and assignment under the provisions of this subchapter and shall:~~

~~—(1)— Be deemed a material breach and default of any agreement or ordinance awarding a franchise in accordance herewith; and~~

~~—(2)— Subject the franchisee to all penalties and remedies prescribed in the agreement and to all other remedies, legal and equitable which are available to the Metro Government.~~

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~~—(G) The occurrence of an unauthorized transfer or assignment may, at the option of the Metro Government, terminate any agreement and franchise and accelerate all of the obligations and rights thereunder including, inter alia, the right of the Metro Government to purchase the cable communications system at book value or to award a franchise to another person. The franchisee shall notify the Director of Finance of any occurrence which constitutes an unauthorized transfer under the provisions of § 116.37(F) and of the entry of any judgment against it within 24 hours of such occurrence.~~

~~—(H) From and after any of the occurrences enumerated in § 116.37(F), the franchisee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sale contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the cable communications system without the written approval of the Metro Government.~~

~~§ 116.38 ABANDONMENT.~~

~~In the event that the use of any part of the system is discontinued for any reason by any franchisee for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with requirements of this subchapter, or the rights granted hereunder have been terminated, cancelled or have expired, the franchisee shall promptly remove from the streets and public places all such property and poles of such system, other than any which the Metro Government may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the Metro Government. Any property of a~~

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~~franchisee to be abandoned in place, shall be abandoned in such manner as the Metro Government may prescribe. Upon a permanent abandonment of the property of a franchisee in place, the franchisee shall submit to the Metro Government an instrument to be approved by the Metro Government, transferring to the Metro Government the ownership of such property.~~

~~§ 116.39 CONDITIONS OF STREET OCCUPANCY.~~

~~—(A) All transmissions and distributions structures, lines and equipment erected by the franchisee within the Metro Government shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public places. The cable communications system shall be constructed and operated in compliance with all adopted local and national construction, fire, and safety codes.~~

~~—(B) The installation of the cable communications system shall be in accordance with all applicable laws, codes, ordinances, rules and regulations of the Commonwealth of Kentucky and the Metro Government affecting electrical installations and buildings, now or hereafter in effect.~~

~~—(C) Except when absolutely necessary to service a subscriber and not simply because it shall be more convenient, economical, or profitable for the franchisee to so operate, and then only when expressly permitted in writing by the Director of Public Works and Assets under such conditions as he or she shall prescribe for the public welfare, the franchisee shall not erect or authorize or permit others to erect any poles or other facilities within the streets of the Metro Government Area for the conduct of its~~

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~~cable communications system, but shall use the existing poles and other equipment of the appropriate electrical power and telephone or other utility companies under such terms and agreements as the franchisee shall negotiate with these companies. The franchisee shall use its best efforts to insure that the terms and agreements between the franchisee and any utility company are concluded in a reasonable time with no unnecessary delay.~~

~~—(D) Should the franchisee be required to place any lines or other equipment on any boulevard, parkway, or other property under control of the Metro Parks Department the manner of placement and location thereof shall be subject to the control of said board.~~

~~—(E) The franchisee may trim trees which infringe upon easements, rights-of-way, or streets of the Metro Government to prevent the trees from coming in contact with the cable communications system.~~

~~—(F) The franchisee shall at its expense, protect, support, temporarily disconnect, relocate or remove any property of the franchisee located on streets, public places, rights-of-way and easements of the Metro Government Area, when required by the Metro Government because of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by the Metro Government or the Commonwealth of Kentucky. If the franchisee fails to do so, the Metro Government or the Commonwealth of Kentucky may cause the necessary work to be completed and the franchisee shall pay the cost thereof within ten days of receipt of an itemized account of such cost.~~

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~~—(G) Whenever the Metro Government or the Commonwealth of Kentucky shall require the relocation or reinstallation of any property of the franchisee in any of the streets or public places of the Metro Government Area, it shall be the obligation of the franchisee upon notice of such requirement to immediately remove and relocate or reinstall said property as may be reasonably necessary at the sole cost of the franchisee.~~

~~—(H) Whenever, in any place within the Metro Government Area, all or any part of the electric or telephone utilities shall be located underground, it shall be the obligation of the franchisee to locate or to cause its property to be located underground within such places. If the electric or telephone utilities shall be located underground, in any place within the Metro Government Area after the franchisee shall have previously installed its property, nevertheless, the franchisee shall, at the same time or immediately thereafter, remove and relocate its property also underground in such places. If the franchisee shall in any case be unable, for operational reasons only, to locate or relocate any part of its property underground, then in that event the Director of Public Works and Assets, upon being satisfied as to the facts thereof and subject to the concurrence of the Metro Government, may permit such property to remain above the ground even though other facilities may be placed underground in the area. However, any such permission shall be upon such conditions as the Metro Government may require for the public welfare. Any facilities of the franchisee placed underground at the property owner's request, in an area where electric and telephone facilities are aerial, shall be installed with the additional expense paid by the property owner.~~

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~~—(I) In the case of disturbance of any street caused by the franchisee, the franchisee shall, at its own cost and expense and in a manner approved by the Director of Public Works and Assets, replace and restore such street, in such a condition as before the work involving such disturbance was done.~~

~~—(J) The franchisee shall upon request temporarily raise or lower its wires to permit the moving of buildings or other things. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than 72 hours advance notice to arrange for such temporary wire changes.~~

~~§ 116.40 ARRANGEMENTS BY FRANCHISEE WITH OTHERS.~~

~~There is hereby granted to the franchisee authority to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and utilities within the jurisdiction of Metro Government, including, but not limited to, the AT&T telephone company and Louisville Gas and Electric Company or their respective successors, and in each instance the franchisee shall make its own contractual arrangements with such entity in order to obtain the use of towers, poles, lines, cables and other facilities and shall report their arrangements to the Director of Finance.~~

~~§ 116.41 REPORTS.~~ Moved to 116.12

~~—(A) On or before the anniversary date of each year during the term of any agreement awarding a franchise in accordance herewith, the franchisee shall submit a written~~

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~~report to the Metro Government, by filing same with the Director of Finance, including, but not limited to, the following information:~~

~~— (1) A summary of the previous year's or, in the case of the initial reporting year, the initial year's activities in development of the cable communications system, including, but not limited to, services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;~~

~~— (2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, historic and pro forms balance sheets and a statement of sources and applications of funds, covering all years since the beginning of the franchise;~~

~~— (3) A current statement of costs of construction by component categories:~~

~~— (4) A projected income statement, balance sheet, statement of sources and application of funds and statement of projected construction for the next two years;~~

~~— (5) A reconciliation between previously projected construction and/or financial estimates as the case may be and actual results;~~

~~— (6) A summary of complaints, identifying the matter and nature of complaints and their disposition;~~

~~— (7) A list of officers and members of the Board of Directors of the franchisee, and its parent, subsidiary, or affiliate corporations, if any;~~

~~— (8) A list of stockholders holding three per centum or more of the voting stock of the franchisee, or its parent, subsidiary and affiliate corporations, if any;~~

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~~—(9) A copy of its annual report and those of its parent, subsidiary and affiliate corporations;~~

~~—(10) Such other information or reports as the Metro Government or the Director of Finance may request.~~

~~—(11) All reports required under this subchapter shall be available for public inspection in the Office of the Director of Finance during normal business hours.~~

~~—(12) The franchisee shall file with the Metro Government a copy of any document it files with the FCC or with any other regulatory agency pertaining to the cable communications system owned and/or operated by the franchisee pursuant to any agreement or ordinance in accordance herewith. To the extent that such documents contain, to the satisfaction of the Director of Finance, the information required by other reports hereunder, the Executive Director may suspend the requirements to file such other reports with the Metro Government so as to avoid duplicate and the administrative costs attendant thereto.~~

~~—(13) It shall be unlawful for the franchisee to refuse, fail or neglect to file the reports required under this subchapter. The refusal, failure, or neglect of the franchisee to file any of the reports required under this subchapter or as the Director of Finance may direct, shall be deemed a violation of this subchapter and shall subject the franchisee to the provisions of § 116.42(E) and shall be deemed a material breach of any agreement or ordinance awarding a franchise in accordance herewith and shall subject the franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the Metro Government.~~

~~—(14) Any material misrepresentation made knowingly by the franchisee in any report required under this subchapter shall subject the franchisee to the provisions of § 116.42(D) and shall subject the franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the Metro Government.~~

~~—(15) The Director of Finance shall review all items filed or required to be filed hereunder, and shall distill and condense same and thereafter report to the Metro Government concerning same, including therewith his/her comments, analysis and recommendations.~~

~~§ 116.42 REVIEW, RENEWAL, TERMINATION AND CANCELLATION.~~ **Moved to 116.10.**

~~—(A) To provide for technological changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable communications system and to achieve a continuing, advanced, modern system for the Metro Government Area, the Metro Government, and the franchisee shall comply with the following review provisions:~~

~~—(1) The Director of Finance shall hold a scheduled review session within 30 days of the second anniversary date of the execution of the franchise agreement and/or ordinance awarding a franchise hereunder. Subsequent review sessions shall be scheduled by the Director of Finance at two-year intervals thereafter. All such review sessions shall be open to the public and notice shall be given by advertisement in a newspaper of general circulation at least one week before each session. In addition, the franchisee shall announce the date and time of each such session on each of at~~

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~~least five days immediately preceding each session at a minimum of six regularly scheduled intervals daily.~~

~~—(2) Either the Metro Government or the franchisee may select additional topics for discussion at any regular or special review session.~~

~~—(3) Any topic proposed for discussion at any regular or special review session by a resident of the Metro Government Area and supported by a petition bearing the signature of 100 Metro Government residents, shall be included in the list of topics for discussion.~~

~~—(B) The procedure for considering the renewal or termination of any franchise or agreement or ordinance awarding a franchise in accordance herewith shall be as follows:~~

~~—(1) Twelve months prior to the expiration of the term of any franchise or agreement or ordinance awarding a franchise in accordance herewith:~~

~~—(a) The Director of Finance shall review the provisions of this subchapter and shall make recommendations, if any, to the Metro Government for its amendment.~~

~~—(b) The Director of Finance shall proceed to determine whether the franchisee has performed its obligations under this subchapter and the agreement or ordinance awarding a franchise in accordance herewith. In making this determination, the Director of Finance shall consider several factors including, but not limited to, the following:~~

~~—1. Technical development and performance of the franchisee's cable communications system;~~

~~—2. Programming;~~

~~—3. Additional services offered by the franchisee;~~

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~~4. Rates;~~

~~5. All obligations of the franchisee as prescribed by this subchapter or the Agreement awarding a franchise in accordance herewith, including, but not limited to, programming, equipment and personnel available to users for all forms of community communications:~~

~~6. Cable industry performance nationwide;~~

~~7. Comments from residents and representatives of community organizations submitted in a manner to be determined by the Director of Finance.~~

~~(c) The Director of Finance shall make recommendations to the Metro Government as to the franchisee's eligibility for renewal of the franchise and agreement and ordinance awarding the franchise in accordance herewith in no less than four nor more than ten months from the date of the Director of Finance's first consideration of said renewal as provided in § 116.42(B)(1). The Director of Finance in the recommendation shall address the following matters:~~

~~1. Renewal of the franchise and agreement awarding a franchise in accordance herewith;~~

~~2. Changes to the agreement; and~~

~~3. Amendments to the ordinance.~~

~~(C) After review of the Director of Finance's recommendations, the Metro Government shall, after hearing, take such action as it deems appropriate, which may include any of the following:~~

~~(1) The Metro Government may renew the franchise and agreement and ordinance awarding a franchise in accordance herewith upon conditions as it may direct;~~

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~~—(2) The Metro Government may authorize the franchise to transfer the cable communications system in accordance with § 116.37;~~

~~—(3) The Metro Government may solicit proposals for and execute a new agreement awarding a franchise in accordance with this subchapter and any amendments hereto;~~

~~or~~

~~—(4) The Metro Government may determine not to authorize the award of any further franchise, and thereupon may direct the franchisee to dismantle its cable communications system.~~

~~—(5) If the franchisee determines not to renew the agreement awarding a franchise in accordance herewith, the Metro Government shall proceed to follow one of the courses of action under §116.42(C)(2) through (C)(5).~~

~~—(D) *Termination.*~~

~~—(1) The Metro Government may terminate any Agreement awarding a franchise in accordance herewith in the event of the violation of any provision hereof or of any rule or regulation promulgated pursuant here to or of any applicable federal, state, or local law, or the breach or other failure, refusal or neglect by the franchisee to perform its obligations under the terms and conditions of the ordinance or of any ordinance or agreement awarding a franchise in accordance herewith, except when such violation, breach, failure, refusal or neglect is caused by any of the following:~~

~~—(a) Act of God;~~

~~—(b) Riot;~~

~~—(c) An emergency declared by the President of the United States of America, the Governor of the Commonwealth of Kentucky or the Mayor; or~~

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~~—— (d) A condition beyond the control of the franchisee.~~

~~—— (2) In the event that the Metro Government determines that the franchisee has violated any provision of this chapter, any rule or regulation promulgated pursuant hereto, any applicable federal, state or local law, or any term of an agreement or ordinance awarding a franchise, except as noted in § 116.42(E)(1)(a) through (E)(1)(d), the Metro Government shall make a written demand on the franchisee that it comply with the law or said agreement or ordinance. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the Metro Government within 30 days following such demand, the Metro Government shall determine whether or not, in its sole discretion, such violation, breach, failure, refusal, or neglect by the franchisee was excusable or inexcusable as provided in § 116.42(E)(1)(a) through (E)(1)(d).~~

~~—— (a) If the Metro Government determines such violation, breach, failure, refusal or neglect by the franchisee was excusable as provided in § 116.42(E)(1)(a) through (E)(1)(d), the Metro Government shall direct the franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the Metro Government may direct.~~

~~—— (b) If the Metro Government determines such violation, breach, failure, refusal, or neglect by the franchisee was inexcusable as provided in § 116.42(E)(1)(a) through (E)(1)(d), then the Metro Government shall declare this subchapter, the franchise agreement or ordinance awarding a franchise in accordance herewith breached, terminated, and of no further force and effect. This action shall be taken by ordinance.~~

~~—— (c) Termination shall in no way limit the rights of the country, or any remedies, legal or equitable, available to the Metro Government.~~

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~~—(3) If the Metro Government declares the said agreement breached pursuant to § 116.42(E)(1)(a) through (E)(1)(d), the Metro Government may pursue any remedies available to it pursuant to this subchapter or to the said franchise agreement or ordinance or any other remedy, legal or equitable, available to the Metro Government. In addition, the Metro Government may take action listed in § 116.42(C)(2) through (C)(6).~~

~~—(E) If any franchise is cancelled by reason of the default of the franchisee, the Metro Government may exercise its option to purchase any portion of the cable communications system then connected in any manner with the streets, public ways, public places, or other property of the Metro Government, at a cost not to exceed its then book value less any amount for any damages incurred by the Metro Government in connection with such cancellation. Damages incurred by the Metro Government shall include, but shall not be limited to, any payment made by the Metro Government authorizing or directing the continued operation of the system.~~

~~—(F) In the event that the franchisee dismantles or terminates the cable communications system or is required by any provision of this subchapter to dismantle or terminate the cable communications system, the franchisee shall at the Metro Government's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system, including any improvements made to such property subsequent to the construction of the system. Restoration of Metro Government property, including, but not limited to streets, shall be in accordance with the directions and specifications of the Metro Government and all applicable laws.~~

~~The franchisee, at the option and direction of the Metro Government, shall restore the same at its expense.~~

~~§ 116.43 COMPLAINTS.~~

~~Any complaint by any person respecting operations of a cable communications system shall be filed in writing with the Director of Finance. The Director of Finance shall review and investigate such complaints, and shall keep a record thereof as well as a record of the disposition thereof, and shall include same in his or her reports to the Metro Government. The Director of Finance shall devise the necessary procedure to handle complaints and be authorized to discuss same with representatives of a franchisee. Complaints which are not resolved to the mutual satisfaction of the complainant and the franchisee shall be reported to the Metro Government by the Director of Finance if, in his/her opinion, such is of a nature as reflecting on the ability or willingness of the franchisee to comply with the terms of this subchapter and the terms of any ordinance or agreement awarding a franchise hereunder. The Metro Government may consider such unresolved complaint and may take any action it deems proper under the terms of this subchapter, including §§ 116.42 and 116.44.~~

~~§ 116.44 REVOCATION OF FRANCHISE.~~

~~Any franchise issued hereunder may, after hearing be revoked, altered, or suspended by the Metro Government as it deems necessary on any of the following grounds:~~

~~—(A) For willful false or misleading statement in, or material omissions from, any application;~~

~~—(B) For failure to file and maintain the bonds and insurance required under this subchapter;~~

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~~—(C) For repeated failure, as determined by the Metro Government to maintain signal quality;~~

~~—(D) For any sale, lease, assignment, or other transfer of its permit without consent of the Metro Government;~~

~~—(E) For an inability to provide CATV service to subscribers at the rates authorized by the Metro Government;~~

~~—(F) For failure to properly provide service to subscribers or to the Metro Government;~~
and

~~—(G) For violation of the terms of its franchise or the agreement or ordinance awarding same or of this chapter as stated herein. In addition to all other rights and powers reserved or pertaining to the Metro Government, the Metro Government reserves as an additional and as a separate and distinct remedy the right to revoke the franchise and all rights and privileges of the franchisee thereunder in any of the following events or for any of the following reasons:~~

~~—(1) The franchisee shall by act or omission fail to comply with any term or condition of this subchapter and shall within 30 days following written demand by the Metro Government to effect such compliance fail or refuse to do so; or~~

~~—(2) Any provision of this subchapter shall be finally adjudged by a court of law invalid or unenforceable and the Metro Government further finds that such provision constitutes at that time a consideration material to the continuance of the franchise herein granted; or~~

~~—(3) The franchisee becomes insolvent; unable, unwilling or fails to pay its debts as such debts become due; or a custodian, receiver, trustee or agent appointed or~~

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~~authorized to do so, is appointed or takes charge of less than substantially all or substantially all of the property of a franchisee for the purpose of enforcing any lien, whether judicial, execution or otherwise; is the subject debtor of an Order for Relief entered by a Bankruptcy Court; or all or part of a franchisee's facilities be sold under an instrument to secure a debt and are not redeemed by franchisee within 30 days from said sale; or~~

~~—(4) The franchisee attempts to or practices any fraud or deceit in its conduct or relations under the franchise.~~

~~—(H) No such revocation shall be effective unless or until the Metro Government shall have adopted an ordinance setting forth the cause and reasons for the revocation and the effective date thereof, which ordinance shall not be adopted without 30 days prior notice thereof to the franchised and a full opportunity offered to the franchisee to be heard upon the proposed adoption of said ordinance. The franchisee shall not be declared in default or be subject to any sanction under any provision of this contract in any case in which the performance of any such provision is prevented for reasons beyond its control.~~

~~§ 116.45 FORECLOSURE-RECEIVERSHIP.~~ **Moved to 116.11**

~~—(A) Upon the foreclosure or other judicial sale of all or a substantial part of the cable communication system, or upon the termination of any lease covering all or a substantial part of the system, the franchise shall notify the Director of Finance of such facility and such notification shall be treated as a notification that a change in control of the franchisee has taken place and the provisions of this chapter governing the consent of the Metro Government to such change in control of the franchisee shall apply.~~

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~~—(B) The Metro Government shall have the right to cancel this franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:~~

~~—(1) Within 120 days after his or her election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this chapter and the agreement and ordinance awarding a franchise hereunder, and remedied all defaults thereunder; and~~

~~—(2) Such receiver or trustee, within said 120 days shall have executed an agreement, duly approved by the court having jurisdiction over same, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the agreement and ordinance awarding a franchise hereunder.~~

~~§ 116.46 BOOKS AND RECORDS OF THE FRANCHISE.~~ Moved to 116.13

~~—(A) The franchisee shall maintain an office in the Metro Government Area for so long as it continue to operate the cable communications system or any portion thereof and hereby designates such offices as the place where all notices, directions, orders, and requests may be served or delivered under this chapter. The Metro Government shall be notified of the location of such office or any change thereof.~~

~~—(B) The franchisee shall keep complete and accurate books of account and records of its business and operations in connection with any franchise granted under this subchapter.~~

~~—(C) The Metro Government, its representatives, its Director of Finance shall have access to all books of account and records of the franchisee for the purpose of ascertaining the correctness of any and all reports and may examine its officers and employees in respect thereto.~~

~~—(D) Any false entry in the books of account or record submitted to Metro Government, its representatives, its Director of Finance or false statements in reports to the Metro Government, its representatives, its Director of Finance as to material fact, knowingly made by the franchisee, shall constitute a breach of a material provision of this chapter and any franchise agreement or ordinance hereunder, for which the remedies provided in this chapter may be invoked.~~

~~§ 116.47 NEW DEVELOPMENTS.~~

~~It shall be the policy of the Metro Government to liberally amend any franchise of its own volition or upon application of a franchisee, after public hearing, when necessary to require or enable a franchisee to take advantage of any developments in the field of transmission of television and radio signals which would afford the franchisee an opportunity to more effectively, if efficiently or economically serve its customers so that at all times the cable communications system shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration.~~

~~§ 116.48 TIME OF ESSENCE.~~ **Moved to 116.14**

~~Whenever this chapter, or any ordinance or agreement awarding a franchise hereunder, shall set forth any time for any act to be performed by or on behalf of a franchisee, such time shall be deemed of the essence, and any failure of a franchisee to perform within~~

~~the time set forth shall constitute a material breach of the terms of this chapter and shall entitle the Metro Government to invoke all penalties and remedies prescribed in this chapter as well as all other legal or equitable remedies available to the Metro Government.~~

~~§ 116.49 FRANCHISEE NOT TO CONTEST VALIDITY OF FRANCHISE OR ORDINANCE.~~

~~By acceptance of any franchise hereunder a franchisee covenants and agrees that it will not at any time or in any manner or proceeding set up any term or condition of this chapter or of any ordinance or agreement awarding a franchise hereunder as unreasonable, arbitrary, voidable or void, or that the Metro Government had not the power or authority to make such term, or condition, but shall be required to accept the validity of same in their entirety.~~

~~§ 116.50 VIOLATIONS.~~ **Moved to 116.15**

~~—(A) It shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the Metro Government Area, any television, radio, or non-broadcast signals by means of a cable communications system unless a franchise therefore has first been obtained from the Metro Government, and unless such franchise is in full force and effect.~~

~~—(B) It shall be unlawful for any person to construct, install or maintain within any public street in the Metro Government Area, equipment or facilities for distributing any television, radio or non-broadcast signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been~~

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~~obtained from the Metro Government, and unless such franchise is in full force and effect.~~

~~—(C) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the unincorporated areas of the Metro Government Area, for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or other non-broadcast signals.~~

~~—(D) It shall be unlawful for any person, firm or corporation to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the Metro Government Area, for the purpose of enabling himself or others to receive any television signal, radio signal, picture, programs, sound, or other signals without payment to the owner of said system.~~

~~—(E) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wire, or equipment used in any cable communications system.~~

§ 116.7001 GENERAL PROVISIONS.

(A) *Declaration of findings.* Louisville Metro hereby declares as a legislative finding that the rights-of-way within Jefferson Louisville Metro:

- (1) Are a unique and physically limited resource;
- (2) Are critical to the travel and transport of persons and property in Louisville

Metro;

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(3) Are intended for public uses and must be managed and controlled consistent with that intent;

(4) Can be partially occupied by the facilities of ~~utilities and public service~~ non-Metro owned entities, to the enhancement of the health, welfare, and general economic well-being of Louisville Metro and its citizens; and

(5) Should be subject to specific additional regulations imposed in a competitively neutral and non-discretionary manner as established by this ~~subchapter~~ to ensure coordination of users, maximize available space, and facilitate entry of a maximum number of providers of ~~communications~~ Programming Service, Communications Service and other services in the public interest.

(B) *Title.* This ~~subchapter~~ may be referred to and cited as the “Communications Services Franchise Ordinance”.

(C) *Applicability.* The requirements of this ~~subchapter~~ shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this ~~subchapter~~ shall be disregarded pursuant to this subsection except on express application to and determination by Louisville Metro to such effect based on the specific factual circumstances demonstrated. The provisions of this ~~subchapter~~ shall be deemed incorporated in each ~~Communications~~-Franchise granted.

(D) *Preservation of authority.* Any rights granted pursuant to this ~~subchapter~~ and pursuant to any Franchise authorized hereunder are subject to the authority of Louisville Metro to adopt and enforce ordinances necessary to the health, safety, and welfare of

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the public. Franchisees and other holders of Franchises shall be subject to and comply with all applicable laws enacted by Louisville Metro pursuant to its Home Rule or statutory powers, (only to the extent not in conflict with Kentucky or federal law) and the Louisville Metro Public Works and Assets Utility Policy as may be amended from time to time. Nothing in this subchapter shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

(E) *Public inspection of records.* Certain information required to be filed with Louisville Metro pursuant to this subchapter is subject to inspection and copying by the public pursuant to the provisions of the Kentucky Open Records Act, KRS 61.870 *et seq.*

(F) *Indemnification.* As a condition of use of the rights-of-way, each Franchisee at its sole cost and expense, shall indemnify, protect, defend (with counsel acceptable to Louisville Metro) and hold harmless Louisville Metro, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of or in relation to Louisville Metro's award of the Franchise to that Franchisee, the rights granted to the Franchisee, or the activities performed, or failed to be performed, by such Franchisee under the Franchise or use of the rights-of-way, except to the extent such acts or use arise from or are

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caused by the gross negligence or willful misconduct of Louisville Metro, its elected officials, officers, or employees. This indemnification shall survive the expiration or termination of any Franchise or use of the rights-of-way.

(G) *Compliance with laws.* In performing activities and exercising rights and obligations under any Franchise, each Franchisee and other holder of a Franchise shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

(H) *Enforcement; attorneys' fees.* Louisville Metro shall be entitled to enforce this ~~subchapter~~ and any Franchise granted hereunder through all remedies lawfully available, and each Franchisee shall pay Louisville Metro its costs of enforcement, including but not limited to reasonable attorneys' fees, in the event that Franchisee is determined judicially to have violated the terms of this ~~subchapter~~ or any Franchise.

(I) *Relationship of the parties.* Under no circumstances shall any Franchise authorized by this ~~subchapter~~ be construed to create any relationship of agency, partnership, joint venture, or employment between the ~~parties~~ Louisville Metro and the Franchisee.

(J) *Defined terms.* For purposes of this ~~subchapter~~, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are

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mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

AFFILIATE means, as to any person, each person, directly or indirectly, controlling, controlled by, or under common control with such person.

ANTENNA means any device that transmits or receives signals. Such signals include but are not limited to radio and infrared waves for Programming Service, voice, data or video communications purposes.

ATTACHER means any person, corporation, or other entity or their agents or contractors seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line or facility of any kind to a utility pole in the right-of-way or its adjacent ground space.

ATTACHMENT APPLICATION means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole.

~~— **CABLE FRANCHISE** means the rights and obligations extended by Louisville Metro to a person to own, lease, construct, maintain, or operate a cable system in the rights-of-way within the franchise area for the purpose of providing Cable Services.~~

~~— **CABLE INTERNET SERVICES** means the provision by a person of access to the internet or any intranet to customers over a cable system and shall include the provision of incidental services that are required by law to be treated under the same regulation as such direct access service. Louisville Metro shall treat cable internet services as a Cable Service unless it is definitively determined under applicable law that Cable Internet Service is not a Cable Service, in which case any person providing or wishing~~

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~~to provide Cable Internet Services shall obtain a separate communications franchise from Louisville Metro. All prior payments to Louisville Metro attributable to Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation, irrespective of any rates or terms required for any future use under any new Communications Franchise.~~

~~— **CABLE SERVICES** shall have the same meaning as is ascribed to the term “Cable Service” at 47 U.S.C. 522(6).~~

~~— **CABLE SYSTEM** shall have the same meaning as is ascribed to the term “Cable System” at 47 U.S.C. 522(7).~~

COMMUNICATIONS means the transmission via the facilities, in whole or in part, between or among points specified by the user, of information of the user’s choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the federal or state statutory or regulatory scheme to which such transmissions may be subject.

~~**COMMUNICATIONS FRANCHISE** means a franchise for use of the rights-of-way for communications services as authorized herein and executed by Louisville Metro and franchisee.~~

~~— **COMMUNICATIONS FRANCHISE FEE** means the fee imposed by Louisville Metro on franchisee for use of the rights-of-way pursuant to a communications franchise granted under this subchapter.~~

COMMUNICATIONS SERVICE means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any

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“telecommunications service,” “enhanced service,” “information service,” or “Internet service,” as such terms are now, or may in the future be, defined under federal law,¹ and including The term also includes the use of all instrumentalities, facilities, conduits, apparatus (“Communications Facilities”), and services or functionalities (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. Additionally, “Programming Service” is included in the definition of Communications Service. This term does not include “Cable Service” or “Open Video System Service”, but “Cable Services” and “Open Video System Service” shall be subject to separate franchising requirements and applications. This term does not include over-the-air radio or television broadcasts to the public at large licensed by the FCC or any successor thereto.

FACILITIES means any portion of a system located in, along, over, upon, under, or through the rights-of-way.

FCC means the Federal Communications Commission of the United States of America or any successor thereto.

FRANCHISE means a ~~Communications Franchise~~ granted under this chapter, as defined herein or any other Franchise granted by Louisville Metro pursuant to Sections 163 and 164 of the Kentucky Constitution,² or by the Kentucky General Assembly prior to the adoption of Sections 163 and 164 of the Kentucky Constitution,¹ which permits a Franchisee to install or operate any facilities in the use of the rights-of-way to provide for Communications Services. Use of this definition in this subchapter is not intended to include any license or permit for the privilege of transacting and carrying on a business

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within Louisville Metro, as may be required by any other ordinance or laws of Louisville Metro or the State.

~~— **FRANCHISE AREA**, unless otherwise specified in the applicable franchise, means the entire area of Louisville Metro as it is now constituted or may in the future be constituted, except that such area shall not include any area within another municipality within Louisville Metro.~~

FRANCHISE FEE means the fee imposed by Louisville Metro on Franchisee for use of the rights-of-way pursuant to a Franchise granted under this chapter.

FRANCHISEE means the party to whom a Franchise is granted~~subject to a Communications Franchise~~, or its successors, assigns, or transferees.

LESSEE means a person who provides Communications Services within Louisville Metro solely by leasing facilities and who has no control over what, where or how any facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

LOUISVILLE METRO means Louisville/Jefferson County Metro Government.

MAKE READY COSTS means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by Attacher to enable attachment to the utility pole or similar structure.

OPEN VIDEO SYSTEM (OVS) SERVICE shall have the same meaning as is ascribed to the term at 47 U.S.C. 573.

PERSON means individual, partnership, association, corporation, joint venture, legal entity or organization of any kind.

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POLE OWNER means a person, corporation or entity having ownership of a pole or similar structure in the right-of-way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by Franchise.

PRE-EXISTING THIRD PARTY USER means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right-of-way.

PRIVATE COMMUNICATION SYSTEM means a system used by a person solely in connection with the internal communications needs of such person's business, provided that such person does not use, or permit the use of, such System to provide Communications Services to any other person.

PRIVATE COMMUNICATIONS SYSTEM OWNER means a person that owns or leases a Private Communications System.

PROGRAMMING SERVICE means the provision of video, audio, or other programming service to subscribers, and the subscriber interaction, if any, required for the selection or use of the video or other programming service. This definition includes, but is not limited to, "Cable Service" as defined in 47 U.S.C. 522(6) and internet protocol television, without regard to delivery technology.

RENEWAL means a new ~~Communications~~ Franchise granted to an existing Franchisee.

RESELLER SERVICE PROVIDER means a person who provides Communications Services within Louisville Metro solely by reselling Communications Services and who

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has no control over what, where or how any facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

RIGHTS-OF-WAY means the surface and space on, above and below every street, alley, road, highway, lane or other public right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities, ~~thereon, including, but not limited to, overhead lighting facilities.~~ Rights-of-way shall not include public property owned or leased by Louisville Metro and not intended for rights-of-way use, including, but not limited to, parks, ~~or public works facilities, buildings or overhead lighting facilities.~~

STATE means the Commonwealth of Kentucky.

SYSTEM means any and all equipment, structures, materials or tangible components located in the rights-of-way and used to provide eCommunications services, including without limitation all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, antennae, lines, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying or distributing Communications Services.

~~**TELECOMMUNICATIONS ACT** means the Telecommunications Act of 1996 coded at Title 47 of the United States Code.~~

§ 116.7102 COMMUNICATIONS SERVICES FRANCHISE REQUIREMENTS AND CHARACTERISTICS.

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(A) *Unlawful to operate without a Franchise.* Unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by ordinance, it shall be unlawful for any person to erect, install, maintain, operate, repair, replace, remove or restore ~~Communications Facilities~~ or to provide Communications Services by use of facilities in the rights-of-way in Louisville Metro without a valid, unexpired Franchise from Louisville Metro, ~~unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by ordinance.~~ Unless otherwise provided hereinafter by Louisville Metro Ordinance, reseller service providers and lessees shall not be required to obtain a Franchise. Private Communication Systems shall not require a Franchise, but shall be licensed pursuant to § 116.7506. ~~A cable operator, or an affiliate thereof, that provides cable services as herein defined under a valid cable franchise granted by Louisville Metro or its predecessors, shall not be required to obtain a communications franchise hereunder; provided, however, if a cable operator, or an affiliate thereof, extends facilities in the right-of-way solely for the provision of telecommunications services than it shall pay the linear per foot fee as set forth in this subchapter, if no revenue for the computation of cable franchise fees are received from such extended facilities.~~

(B) *Franchises nonexclusive.* The authority granted by Louisville Metro in any Franchise shall be for the nonexclusive use of the rights-of-way. Louisville Metro specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the rights-of-way for any purpose to any other person, including itself, as it deems appropriate, subject to all applicable laws.

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(C) *Nature of rights granted by any Franchise.* Franchises shall not convey title, equitable or legal, in the rights-of-way, and shall give only the right to occupy rights-of-way, for the purposes and for the period stated in this subchapter and as may be further limited by the Franchise. No Franchise may excuse Franchisee from obtaining appropriate access or attachment agreements before locating its facilities on another person's facilities. All Franchises shall be deemed to incorporate and be limited by the provisions of this subchapter, ~~and shall create rights inuring solely to the benefit of the franchisee.~~

(D) *Application and application fee required.*

(1) Applications for an original ~~Communications~~ Franchise granted hereunder shall be filed with Louisville Metro with ten additional copies. All applications received by Louisville Metro from the applicants will become the sole property of Louisville Metro. Applicants shall submit all requested information as provided by the terms of this subchapter. The following information must be complete and verified as true by the applicant:

(a) *Filing Application fee.* Applications shall be accompanied by a non-refundable application fee of ~~\$1,000~~ 2,500 payable to Louisville Metro. ~~Said~~ The application fee shall defray in whole or part Louisville Metro's costs to process any application filed under this subchapter and negotiate, award and administer any Franchise. ~~Said application fee shall not be considered Communications Franchise fee payments.~~

(b) *Name and address of applicant.* The applicant's name, address, e-mail address and telephone and facsimile numbers; date of application and signature of

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applicant or appropriate corporate officer(s); the name, address and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency.

(c) *Description of proposed system.* ~~A description of the applicant's proposed system design.~~ A narrative and geographical description of the applicant's proposed system and a description of the rights-of-way on which it will be deployed.

(d) Communications Services. A statement setting forth a description of all the types of Communications Services the applicant plans to provide over the system proposed.

(e) *Applicant organization.* The applicant shall be a corporation or limited liability company, partnership or other business entity authorized to do business in the Commonwealth of Kentucky, as certified by the Secretary of State. The Applicant must fully disclose the ownership of the proposed facilities and system ~~facilities to be used in rendering the service.~~

(f) *Technical description.* Applicant shall provide a technical description of the type of system proposed by the applicant and applicant's plan for the installation of the system. System designs are to be submitted in bullet format detailing equipment start point, routes and end point location accompanied by network routing maps(s). The following information shall be included in the application:

1. If the applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, information in sufficient detail to identify the location of the existing ducts or conduits to be occupied.

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2. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:

(i) The location, depth, size and quantity of proposed new ducts or conduits; and

(ii) A preliminary installation schedule and completion date.

(g) *Engineering statement.* A statement from the applicant's senior technical staff member, or consultant, advising that the applicant's planned system and operations thereof would meet all the requirements set forth herein.

(h) *Additional requirements.*

1. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted with the above number of copies. Louisville Metro may, at its discretion, consider such additional information as part of the application.

2. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the applicant's application must be executed.

3. A copy of the applicant's certificate of authority from the Public Service Commission ("PSC") where the applicant is lawfully required to have such certificate from the PSC.

4. A copy of the applicant's certificate of authority from the FCC where the applicant is lawfully required to have such certificate from the FCC.

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5. A copy of all insurance policies and certificates required under this subchapter with a signed statement from the Louisville Metro's Insurance and Risk Coordinator (or his/her successor), who shall notify the Director of Finance when such policies and certificates are acceptable to Louisville Metro.

6. A statement signed by the applicant that the applicant agrees to be bound by all provisions of the Franchise and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a system in the right-of-way.

7. The information provided by applicant shall be certified as true and correct, and applicant shall be responsible to certify to Louisville Metro any material changes to the information provided in the completed application during the term of any Franchise.

(i) *Supplementation to applications.* Louisville Metro reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.

(j) *Louisville Metro's rights reserved.* Louisville Metro reserves the right to waive all formalities and/or technicalities where the best interest of Louisville Metro may be served.

(E) *Standards and procedures for approval or renewal of Franchises.* Franchises shall be granted in accordance with Kentucky Constitution Sections 163 and 164. Louisville Metro shall ~~authorize~~grant Franchises or renewals to any eligible Franchisee for the right and privilege to construct, own, operate, repair, replace and maintain facilities in, through and along the Louisville Metro's rights-of-way for the purposes of providing Communications Services on a nonexclusive basis within Louisville Metro,

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subject, however, to the standards, terms and conditions herein set forth within this subchapter, which shall be deemed incorporated into every Franchisetherein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, Louisville Metro, the FCC and the PSC.~~Kentucky Public Service Commission~~. Louisville Metro may establish standard Franchises setting forth the minimum requirements for all Franchisees.

(F) *Acceptance and effective date of Franchise.* Any Franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of a resolution granting a Franchise hereunder, provided that on or before ~~said~~that date Franchisee shall:

- (1) Enter into and execute such ~~contracts~~agreements and documents as required by Louisville Metro that are consistent with the terms and provisions of this subchapter;
- (2) File certificates of insurance as set forth in this subchapter;
- (3) File such bond or bonds as required in this subchapter; and
- (4) Advise the Director of Finance in writing of Franchisee's address for mail and official notifications from Louisville Metro.

~~(G) Cable Service and Open Video Systems (OVS); separate franchise required. A Communications Franchise shall not permit a franchisee to provide Cable Services as a Cable Operator (as defined by 47 U.S.C. § 522(5)) within Louisville Metro. Upon a franchisee's request for a franchise to provide Cable Services as a Cable Operator (as defined by 47 U.S.C. § 522(5)) within Louisville Metro, Louisville Metro shall timely~~

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~~negotiate such Cable Franchise in good faith with the franchisee. A Communications Franchise shall also not permit a franchisee to operate an Open Video System. A person may operate an Open Video System only if that person obtains a separate franchise permitting same, and such person remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where such person otherwise complies with FCC regulations promulgated pursuant to 47 U.S.C. § 573. Absent such applicable separate franchise from Louisville Metro, a franchisee shall be prohibited from offering OVS service and any such service shall be considered a breach of its franchise.~~

~~(H)(G) Use of rights-of-way; police powers; Franchisee's use subordinate.~~

(1) A Franchisee shall construct and maintain its facilities in accordance with all applicable federal, state and local laws, including all permit requirements, the Louisville Metro Public Works and Assets Utility Policy, and fee payments, and all other Louisville Metro codes and ordinances in effect as of the date of the award of its Franchise or thereafter adopted or amended, to the full extent permitted by~~not in contravention of~~ state or federal law. The grant of a Franchise does not in any way affect the continuing authority of Louisville Metro through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. Louisville Metro makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of rights-of-way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the rights-of-way authorized by any Franchise shall in all

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matters be subordinate to Louisville Metro's use and rights therein. Without limiting the generality of the foregoing:

(a) All rights and privileges granted herein are subject to the police powers of Louisville Metro and its rights under applicable laws and regulations to regulate the construction, operation, and maintenance of Franchisee's system, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as Louisville Metro shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce regulations relating to equal employment opportunities and the right to adopt and enforce ordinances and regulations ~~containing~~ concerning the rights-of-way, communications, and utility standards.

(b) Louisville Metro reserves the right to exercise its police powers, notwithstanding anything in this ~~subchapter~~ and in any Franchise to the contrary. Any conflict between the provisions of this ~~subchapter~~ or a Franchise and any other present or future lawful exercise of Louisville Metro's police powers shall be resolved in favor of the latter.

(c) Franchisee shall not be excused from complying with any of the requirements of this ~~subchapter~~ or any subsequently adopted amendments to this ~~subchapter~~, by any failure of Louisville Metro on any one or more occasions to seek, or insist upon, compliance with such requirements or provisions.

~~(d) If federal or state law alter the required services, fees, costs, conditions or standards upon which the Communications System is to operate, Louisville Metro shall~~

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~~have the right to amend this subchapter to make it consistent with the modified federal or state laws.~~

~~(e)~~(d) Any Franchise granted pursuant to this subchapter shall be subject to any present and future legislation or resolution, which may be enacted by Louisville Metro, and to the Louisville Metro Public Works and Assets Utility Policy.

~~(I)~~(H) *Emergencies.*

(1) Franchisee shall assign a management level person to coordinate with, and assist Louisville Metro's Emergency Management Agency, in the development of emergency plans.

(2) If at any time, in case of fire or disaster in Louisville Metro, it shall become necessary in the reasonable judgment of Louisville Metro, to cut or move any facilities, such cutting or moving may be done, and any repairs rendered necessary thereby shall be made by Franchisee, at its sole expense.

(3) Franchisees providing Programming Service shall incorporate into their facilities the capability for an emergency override alert whereby Louisville Metro, in times of crisis, may be able to introduce a bulletin on all channels simultaneously.

~~(J)~~(I) *Term.* A Franchise shall be for a term not to exceed 20 years.

~~(K)~~(J) *Communications fFranchise fFees.* During any period of time which Louisville Metro opts to forego imposing a Franchise Fee and to instead participate in the Multichannel Video Programming and Service Tax system set forth under KRS 136.600 et seq., a Franchisee shall not be required to pay Franchise Fees. If at any time Louisville Metro elects to exercise its constitutional right to impose and collect Franchise Fees, Franchisee's first Franchise Fee payment under this chapter shall be

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paid to the Louisville Metro the later of one hundred twenty (120) days after such election, or thirty (30) days after the last day of the first calendar quarter expiring after Franchise received written notice from Louisville Metro that Louisville Metro has opted to exercise its constitutional right to impose and collect Franchisee Fees. Franchisee shall pay to Louisville Metro as annual compensation for the use of the rights-of-way a ~~Communications Franchise Fee~~ equal to:

~~(1) \$100 per antenna in the rights-of-way; plus~~

~~(2) A fee equal to the lesser of (i) \$50,000, or (ii) the sum of the following:~~

~~(a) For each single cable, wire, fiber, conduit or other linear facility, or bundle of the same up to two inches in diameter placed above-ground, \$1 per foot of rights-of-way on which it is placed or over which it is suspended; plus~~

~~(b) For each bundle of cable, wire, fiber, conduit or other linear facility greater than two inches in diameter placed above ground, \$.50 per foot of rights-of-way on which it is placed or over which it is suspended; plus~~

~~(c) For each single cable, wire, fiber, conduit or other linear facility, or aggregate of the same placed below-ground contemporaneously, \$.50 per foot of rights-of-way used to accommodate the same.~~

~~(L)(K) Use of ~~communications f~~Franchise ~~f~~Fees.~~ Louisville Metro shall dedicate and use all ~~Communications Franchise Fees~~ received under this subchapter for maintenance of the public-rights-of-way and for government access television.

~~(M) Holders of multiple franchises.~~ Persons holding a ~~Communications Franchise~~ and also a ~~Cable Franchise~~ shall fairly and accurately apportion and attribute revenues received to the various services offered.

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~~(N)~~(L) *Timing of payment of ~~communications~~ ~~Franchise~~ ~~Fees~~.* Unless otherwise agreed to in writing, all ~~Communications~~–Franchise Fees shall be due and payable on a quarterly basis and payment shall be made on or before the date which is 30 calendar days after the last day of the calendar quarter for which the payment applies (the “Due Date”); provided, however, that in the event that a Franchisee ceases to provide Communications ~~s~~Service for any reason (including as a result of a sale or transfer of the Franchisee’s system), such Franchisee shall make a final payment of any amounts owed to Louisville Metro on or before the date which is 30 calendar days after the date on which its operations in Louisville Metro cease (which shall be deemed a “Due Date” for purposes of this ~~sub~~chapter).

~~(O)~~(M) *Interest on late payments and under payments.* If any ~~Communications~~ Franchise Fee, or any portion thereof, is not received by Louisville Metro on or before the due date, interest thereon shall accrue from the due date until received, at the rate of 1.5% per month, unless such other maximum rate is established by applicable law.

~~(P)~~(N) *Fee statement.* Each ~~Communications~~–Franchise Fee payment shall be accompanied by a statement (a “Fee Statement”) showing the manner in which the ~~Communications~~–Franchise Fee was calculated. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth the amount of linear feet of right-of-way occupied by its facilities, ~~feet and antennae within the facilities~~ provided, however, that in the event that a Franchisee ceases to provide Communications ~~s~~Service for any reason (including as a result of a transfer), such Franchisee shall provide such a statement within 30 calendar days after the date on which its operations in Louisville Metro cease. In calculating the amount of

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linear feet of right-of-way occupied by its facilities, a Franchise shall include all facilities, including antenna and other wireless facilities, and all facilities whether installed underneath the rights-of-way or on poles or other structures above the rights-of-way.

~~(Q)~~(O) *No accord and satisfaction.* No acceptance by Louisville Metro of any ~~Communications~~ Franchise Fee or any other payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any ~~Communications~~ Franchise Fee or any other payment be construed as a release of any claim of Louisville Metro.

~~(R)~~(P) *Description of Communications sService.* During the term of the Franchise, Franchisee shall provide Louisville Metro with a description of any material changes to the types of Communications Services offered over its facilities in the rights-of-way within Louisville Metro during the prior year. Any individual Communications sService or item for which the Franchisee has a separate charge shall be considered a separate Communications sService.

~~(S)~~(Q) *~~Communications~~ fFranchise fFee not a tax; payment of taxes.* The ~~Communications~~ Franchise Fee is compensation for the use of the rights-of-way and shall in no way be deemed a tax of any kind. The ~~Communications~~ Franchise Fees required herein shall be in addition to, not in lieu of; any and all taxes, charges, assessments, licenses, fees and impositions otherwise applicable to Franchisee that are or may be imposed by Louisville Metro. A Franchisee shall be fully responsible for the payment of all applicable taxes.

~~(T)~~(R) *Assignment of Franchise.* A Franchisee shall provide Louisville Metro with written notice of any transfer or assignment of the Franchise. A Franchisee shall not

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sell, assign, sublet, dispose of or otherwise transfer a Franchise (or any of the rights or privileges granted by such Franchise), Franchisee's system, or control of Franchisee to another entity, without the prior written consent of Louisville Metro. Louisville Metro's consent to such a transfer shall not be withheld if the acquiring entity would have qualified for an original Franchise had it applied and if the acquiring entity demonstrates it has the same or equivalent insurance policies and bonds in place as is required of the original Franchisee. Nothing in any approval by Louisville Metro of any transfer pursuant to this section shall be construed to waive, release or delegate any rights or powers of Louisville Metro to hold the original Franchisee liable for any violation of its Franchise.

~~(U)~~(S) *Forfeiture of Franchise and privilege.* In case of failure on the part of a Franchisee, its successors and assigns, to comply with any of the provisions of this subchapter or its Franchise, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this subchapter or the terms of its Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this subchapter and its Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until Louisville Metro shall carry out the following proceedings: Before Louisville Metro declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Franchisee, setting forth in detail the neglect or failure complained of, and the ~~company~~Franchisee shall have 30 days thereafter, or such other reasonable period established by Louisville Metro, in which to cure the default by complying with the conditions of its Franchise and fully remedying any default or

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violation. If at the end of such 30 day or other reasonable period, Louisville Metro determines that the conditions have not been complied with, Louisville Metro shall take action by an affirmative vote of a majority of the Council present at the meeting and voting, to terminate the Franchise, setting out the grounds upon which the Franchise is to be forfeited or revoked. Nothing herein shall prevent Louisville Metro from invoking any other remedy available at law or in equity.

~~(V)~~(T) *Security for payment of fees.*

(1) Every Franchisee shall provide to Louisville Metro an irrevocable letter of credit in the amount of \$25,000, or one half of the annual ~~f~~Franchise ~~f~~Fee owed, whichever is less, to secure the payment of the ~~Communications~~ Franchise Fee for the first two years of the Franchise. ~~After which, if, thereafter,~~ there has been no default in paying the ~~f~~Franchise ~~f~~Fee nor any late payment of the ~~f~~Franchise ~~f~~Fee, the letter of credit shall be released.

(2) This subsection is inoperative during any period of time during which Louisville Metro elects to participate in the state baseline and local growth funds under KRS 136.600 et seq., and to have Franchisees taxed accordingly.

~~(W)~~(U) *Special rules for governmental entities.* Nothing herein requires Louisville Metro to apply the provisions of this subchapter to a governmental entity if Louisville Metro determines that it is not in the public interest to do so, and nothing in this subchapter shall be read to require a governmental entity to comply with this subchapter where Louisville Metro cannot enforce the subchapter against such entity as a matter of law. Louisville Metro is authorized to enter into agreements with other governmental agencies to facilitate Louisville Metro's use and management of the rights-of-way, and

such agreements shall be enforceable according to their respective terms and notwithstanding any provision of this subchapter.

§ 116.7203 RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS.

(A) *Encroachment permit.* A Franchisee shall be subject to and comply with the additional or supplementary terms and conditions of Louisville Metro's "Encroachment on Rights-of-Way Permit," as may be amended from time to time, with these terms and conditions being which is incorporated herein by reference and those terms and conditions of Franchisee's such provisions and the provisions of said encroachment permit shall be deemed a condition of any that Franchisee's Franchise.

(B) *Additional facilities requirements; planned infrastructure.* When a Franchisee installs any new underground facilities, the Franchisee shall, unless waived by Louisville Metro, simultaneously install conduit provided by Louisville Metro ("Louisville Metro Conduit"). Louisville Metro shall reimburse Franchisee for any marginal or additional costs incurred by Franchisee in connection with installation of the Louisville Metro Conduit. Louisville Metro Conduit shall be installed in accordance with Louisville Metro specifications and consistent with sound engineering practice. No ~~Communications~~ Franchise Fee shall apply to any Louisville Metro Conduit.

(C) *Removal of facilities.* Upon expiration of a Franchise, whether by lapse of time, by agreement between the Franchisee and Louisville Metro, or by forfeiture thereof, the Franchisee shall remove, at its sole cost, from the rights-of-way any and all of its facilities that are the subject of such Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of the Franchisee immediately upon such removal to restore the rights-of-way from which the facilities are

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removed to as good condition as the same were before the removal was effected and as required by Louisville Metro. Notwithstanding the foregoing, Louisville Metro may allow facilities to be left in place when Louisville Metro determines in its sole discretion that it is not practical or desirable to require removal.

(D) (1) *Relocation of facilities.* Whenever Louisville Metro shall in its exercise of the public interest request of the Franchisee to relocate or reinstall ~~the relocation or reinstallation~~ of any of its facilities, the Franchisee shall forthwith remove, relocate, or reinstall any such ~~property~~ facilities as may be reasonably necessary to meet the request, ~~and t~~The cost of such relocation, removal, or reinstallation of the facilities shall be the exclusive obligation of ~~such~~ the Franchisee. ~~A franchisee shall, u~~Upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of Louisville Metro, a Franchisee shall temporarily raise, lower, or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit within 48 hours prior to the date upon which said person intends to exercise its rights under said permit; provided, however, that the Franchisee may require such permit holder to make payment to Franchisee in advance for any expenses incurred by ~~said~~ the Franchisee to temporarily move its facilities pursuant to such person's request.

(2) *Third party facilities.* Notwithstanding any provision of this chapter to the contrary, the provisions of this subsection shall not apply to (i) facilities located above the "Communication Worker Safety Zone" as such term is defined in the National Electrical Safety Code or (ii) any electric supply facilities wherever located. Make-Ready Costs that are to be paid by Attacher include, without limitation, all costs and

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expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate Attacher's Attachment. Upon approval of an Attachment Application, Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate Attacher's Attachment using Pole Owner approved contractors; provided, however, that Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage (this subsection does not authorize activity requiring an electric supply outage) without first providing 30 days prior written notice to the Pre-Existing Third Party User. In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within 30 days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, Attacher may undertake such work. Within 30 days of the completion of any relocation or alteration, Attacher will send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner(s) of all poles or other structures on which such relocations or alterations were made. The as-built reports will include a unique field label identifier, and an address or coordinates. Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within 14 days at Attacher's expense. Attacher will pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner(s) for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable Pole Owner's standards, the Pre-Existing

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Third Party User will notify Attacher within seven days of the inspection. In the notice, the Pre-Existing Third Party User will elect to either (a) perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or (b) instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within 30 days of such notification. As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this subsection, Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates (each an "Indemnitee") from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(E) *Franchisee responsible for costs.* A Franchisee shall be responsible for all reasonable costs incurred by Louisville Metro that are directly associated with the Franchisee's erecting, installing, maintaining, operating, repairing, replacing, removing or restoring its facilities in the rights-of-way. A Franchisee shall be responsible for its own costs incurred in removing or relocating its facilities when required by Louisville

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Metro due to Louisville Metro requirements relating to maintenance and use of the rights-of-way for Louisville Metro purposes.

(F) *Insurance and bonds.* During the term of any Franchise, a Franchisee shall obtain and maintain at its sole expense, all insurance and bonds required by this subchapter. Nothing contained in this subchapter shall limit a Franchisee's liability to Louisville Metro to the limits of insurance certified or carried.

(1) Upon being awarded a Franchise, Franchisee shall immediately file a Franchise bond in the amount of \$1,000,000, and a performance bond in an amount to be determined by the Director of ~~the Department of~~ Public Works and Assets. In no event shall the amount required by ~~the Department of~~ Public Works and Assets exceed the reasonable costs of repairing the rights-of-way in the event of non-performance by the Franchisee. Said performance bond shall provide for the faithful performance of construction and installation of Franchisee's system. Two years after demonstration of the completion of the construction of the system by Franchisee to the Department of Public Works and Assets ~~Department, the Department of~~ Public Works and Assets ~~Department~~ shall release the performance bond.

(2) ~~Said~~The performance bond shall indemnify Louisville Metro in its own right and as trustee, from any damages or losses arising out of the failure of Franchisee to faithfully perform and satisfactorily complete construction of the system in accordance with this subchapter.

(3) The failure of Franchisee to comply with its obligations under this subchapter or the Franchise as determined by Louisville Metro shall entitle Louisville Metro to draw against either or both of Franchisee's ~~-performance or Franchise bonds-~~.

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(4) The rights reserved to Louisville Metro with respect to the performance and Franchise bonds required hereunder are in addition to all other rights of Louisville Metro, whether reserved by this ~~sub~~chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such performance or Franchise bonds shall affect any other rights Louisville Metro may have.

(5) Unless otherwise released by Louisville Metro, ~~T~~he performance or Franchise bonds required hereunder shall not expire or be materially altered without 30 days written notice and without securing and delivering to Louisville Metro a substitute, renewal and replacement bond in conformance with this ~~sub~~chapter. In the event Louisville Metro does draw monies against the performance bonds required hereunder, within ten days thereafter, Franchisee shall pay such funds to the bonding company as necessary to bring said performance and/or Franchise bonds back to the applicable principal, where it shall continue to be maintained. The performance and Franchise bonds required hereunder shall contain the following endorsements:

“It is hereby understood and agreed that this bond may not be reduced, altered or canceled by Franchisee or Surety without 30 days written notice, by certified mail, to Louisville Metro. Such termination or cancellation shall have no effect on any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation.”

(6) Immediately upon the effective date of the resolution granting a Franchise under this ~~sub~~chapter, Franchisee shall file with Louisville Metro the following proof of liability insurance issued by a company(ies) authorized to do business in the Commonwealth with an AM Best Rating of A- or better:

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(a) General Liability Insurance—, via an occurrence form, covering bodily injury, including death, personal injury and property damage, and including completed operations, contractual liability, independent contractors protective liability and personal injury liability protection. The minimum acceptable limit of liability amount is \$5,000,000 per occurrence and aggregate under a combined single limit. This policy must include the Louisville/Jefferson County Metro Government, including its Mayor and Metro Council members, as Additional Insureds as respects all operations of the Insured Franchisee. This policy must cover Louisville Metro Government for damages resulting from ~~the~~any transmission of ~~any communication over the cable communications a~~ system. ~~The~~Louisville Metro Government reserves the right to make reasonable increases in the required amount of insurance coverage herein at any time. Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

(b) Any Franchisee providing Programming Service shall maintain copyright infringement liability insurance covering any alleged infringement of patent or copyright or any other legal infringement in the transmission of materials through the system. This coverage may be written as part of the general liability insurance or through a stand-alone policy, however, if written separately, it must have a minimum limit of liability amount of \$5,000,000 per occurrence and aggregate under a combined single limit and include Louisville Metro, including its Mayor and Metro Council members, as Additional Insureds as respects all operations of the Insured Franchisee. Louisville Metro reserves the right to make reasonable increases in the required amount of insurance coverage herein at any time. Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

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(7) Franchisee shall maintain on file with Louisville Metro ~~a~~ certificate of insurance certifying the coverage required under this ~~subchapter~~, which certificate shall be subject to the approval of Louisville Metro as to the adequacy of the certificate and of the insurance certified under the requirements of this ~~subchapter~~. Louisville Metro may at its sole discretion require a certified copy of the insurance policy(s) required under this ~~subchapter~~, specifically endorsed to include all liability assumed by Franchisee hereunder. Such policy(s) and certificate shall be identified on their face by the name of Franchisee, and shall be submitted to Louisville Metro, in accordance with the terms and conditions of this ~~subchapter~~. Failure to maintain adequate insurance as required under this ~~subchapter~~ shall be deemed a breach of the Franchise.

(8) ~~Metro~~-Louisville Metro reserves the right to make increases in the amount of insurance coverage referred to in this section at any time.

(G) *Permits*. Prior to performing any construction or installation work in the public rights-of-way, Franchisee shall apply to ~~the Department of~~ Public Works and Assets Department for a permit, and shall include descriptive information about the specific location of any lines, facilities, boxes, or related equipment. All terms and conditions of the permit application shall apply and be adhered to.

(1) Franchisee shall furnish detailed plans of the work to be done within the public rights-of-way and provide other such information as required by Louisville Metro.

(2) Franchisee shall coordinate any construction work within the public rights-of-way with ~~the Department of~~ Public Works and Assets Department and shall begin construction work only after approval of ~~the Department of~~ Public Works and Assets Department.

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(3) All permits issued by Louisville Metro shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Louisville Metro personnel.

(H) *Notification.* Franchisee shall notify ~~the Department of~~ Public Works and Assets ~~Department~~, in writing, at least 15 days prior to construction. Such written notification shall contain the location of the construction, the starting date and the estimated completion date.

(I) *Underground construction.* Except as provided in § 116.03(J)72(J), all of Franchisee's facilities shall be installed underground and all street crossings installation shall be made by trenchless technology.

(1) Franchisee shall register any and all underground line locations with the local "Before You Dig" or "BUD" office for tracking specific underground line locations.

(2) All backfilling and replacement of pavement shall be done by Franchisee:

(a) In accordance with Louisville Metro requirements and all restoration work shall be completed to the same or better condition than found; and

(b) To the satisfaction of ~~the Department of~~ Public Works and Assets ~~Department~~, and, if not acceptable, may be completed by Louisville Metro at Franchisee's expense.

(3) At any time Franchisee disturbs the yard, residence, or other real or personal property in Louisville Metro, Franchisee shall ensure that the yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.

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(4) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by Franchisee.

(J) *Aerial construction.* Aerial construction of facilities must be specifically authorized by Louisville Metro prior to construction and located to minimize interference with the other uses of the rights-of-way and other public properties, and interference with the rights and reasonable convenience of property owners whose property adjoins any of the rights-of-way and other public properties. The decision to authorize above-ground construction shall be applied in a non-discriminatory manner. If other Franchisees have facilities above ground and there is capacity available, above-ground installations shall be permitted until such time as all Franchisees are required to relocate underground. Aerial facilities shall be moved underground at Franchisee's own cost upon request from Louisville Metro or when other Franchisees or users of the same rights-of-way are required by Louisville Metro to convert to underground facilities.

(K) *Standards.* Any work required or performed pursuant to this subchapter shall be done in accordance with federal, state and local law, and the National Electric Code.

(1) In the event that Franchisee leases space on the poles or in the conduits of an electric or other utility, Franchisee shall abide by the construction and other requirements of ~~said~~that utility, and the granting of a ~~Communications~~ Franchise by Louisville Metro shall not be construed or interpreted in any way to alleviate Franchisee's responsibilities and obligations to the pole or conduit owner.

(2) Franchisee, its contractors, sub-subcontractors and anyone directly or indirectly employed by Franchisee, shall conduct such operations so as to promote and preserve the public safety and general welfare of the citizens of Louisville Metro.

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(3) All construction, installation or maintenance by Franchisee shall be completed with diligence and with respect to all property, contracts, persons, rights and the interests and rights of the public.

(4) During any phase of construction, installation, maintenance, and repair of the system, Franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner.

(L) *Traffic.* Franchisee's work in the rights-of-way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic on the public rights-of-way or public land.

(1) Franchisee shall maintain lanes of vehicular traffic in each direction at all times during construction, installation or maintenance activity.

(2) Traffic control devices to protect and control pedestrian and vehicular traffic in any construction, maintenance or installation areas may be prescribed by Louisville Metro in accordance with the Manual on Uniform Traffic Control Devices.

(M) *Delay.* ~~Louisville Metro required improvements~~ to Louisville Metro rights-of-way conducted by Louisville Metro or its contractors shall not be delayed by any Franchisee work authorized by this subchapter.

(N) *Special exceptions.* Louisville Metro may grant a special exception to the requirements of this ~~subchapter~~ if a Franchisee, upon application, demonstrates with written evidence that:

- (1) The exception will not create any threat to the public health, safety or welfare;
- (2) ~~Franchisee demonstrates that~~ The increased economic burden and the potential adverse impact on Franchisee's construction schedule resulting from the strict

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enforcement of the requirement would actually or effectively prohibits the ability of Franchisee to provide Communications Services in Louisville Metro; and

(3) ~~Franchisee demonstrates that~~ The requirement unreasonably discriminates against Franchisee in favor of another person comparable Communications Service provider.

(4) Any special exceptions shall be granted in a non-discriminatory manner.

(O) *Inspections.* All construction, installation and operation of Franchisee's system in the rights-of-way are subject to inspection by ~~the Department of~~ Public Works and Assets Department.

(P) *Repair of sunken pavement over excavation.* In case the pavement or the surface of the rights-of-way over any excavation should become depressed or broken at any time within five years after the excavation has been completed and before resurfacing of the rights-of-way, natural wear of the surface excepted, Franchisee shall, upon written notice from ~~the Department of~~ Public Works and Assets Department, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. Franchisee shall make repairs to the installation or backfill and have the pavement restored as specified by ~~the Department of~~ Public Works and Assets Department, within such time period as may be specified by ~~the Department of~~ Public Works and Assets Department. If the pavement is not restored as specified by ~~the Department of~~ Public Works and Assets Department within the time period specified by ~~the Department of~~ Public Works and Assets Department, and unless delayed by a strike or conditions beyond Franchisee's control, Louisville Metro may cause the work to be done after giving Franchisee 24 hours final notice. The cost

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thereof, including, but not limited to, any inspection costs and administrative overhead incurred by Louisville Metro, shall be assessed against Franchisee.

(Q) In the event that the use of any part of the system is discontinued for any reason by any Franchisee for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with requirements of this chapter, or the rights granted hereunder have been terminated, cancelled or have expired, the Franchisee shall promptly remove from the streets and public places all such property and poles of such system, other than any which Louisville Metro may permit to be abandoned in place. In the event of such removal, the Franchisee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to Louisville Metro. Any property of a Franchisee to be abandoned in place, shall be abandoned in such manner as Louisville Metro may prescribe. Upon a permanent abandonment of the property of a Franchisee in place, the Franchisee shall submit to Louisville Metro an instrument to be approved by Louisville Metro, transferring to Louisville Metro the ownership of such property.

(R) During any phase of construction, installation, maintenance, or repair of the system, the Franchisee shall use materials of good and durable quality. All such work shall be performed in a safe, thorough and reliable manner and in compliance with Louisville Metro's Public Access and Utility Policy, as amended.

§ 116.7304 MISCELLANEOUS.

(A) *Administration of Franchise.* Louisville Metro shall be responsible for the continued administration of this subchapter and any Franchises granted hereunder.

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(B) *Non-enforcement by Louisville Metro.* A Franchisee shall not be relieved of its obligation to comply with any of the provisions of this ~~sub~~chapter or its applicable Franchise by reason of any failure of Louisville Metro to enforce prompt compliance.

(C) *Publication of notices.* A Franchisee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments or renewals thereto.

(D) *Severability.* If any material provision of this ~~sub~~chapter or of any Franchise granted pursuant to this chapter ~~to it~~ is held by a court or other competent governmental authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this ~~sub~~chapter or the Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions herein or therein.

§ 116.7405 TRANSITIONAL PROVISIONS.

(A) *Revocation of licenses to use the rights-of-way.* Any and all licenses and other authority which: (1) Louisville Metro may have extended to any person prior to the effective date of this ~~sub~~chapter to erect, install, maintain, operate, repair, replace, remove or restore Communications Facilities or provide Communications Services by use of facilities in the rights-of-way in Louisville Metro; and (2) are expressly revocable at the will of Louisville Metro, are hereby revoked and deemed null and void as of 11:59 p.m. Eastern Standard Time on the date which is 90 days after the effective date of this

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~~subchapter.~~ Within 90 days after the effective date of this ~~subchapter~~, any person holding such revocable license or other authority may file an application for a ~~Communications Franchise~~ and, by doing so, shall be deemed granted a temporary license to continue erecting, installing, maintaining, operating, repairing, replacing, removing and restoring ~~Communications Facilities~~ or providing ~~Communications Services~~ by use of facilities in the rights-of-way in Louisville Metro under the same terms and conditions as its prior license during the pendency of such application. Upon award or denial of the ~~Communications Franchise~~ for which such person applied, ~~all authority under which such person was erecting, installing, maintaining, operating, repairing, replacing, or removing facilities or providing Communications Services by use of facilities in the rights-of-way in Louisville Metro as of the effective date of such award or denial~~ that person's temporary license shall be deemed ~~immediately~~ revoked, null and void without further notice as of the effective date of the award or denial of the ~~Communications Franchise~~.

(B) *Existing Franchises.* No ~~telecommunication~~ Franchise previously granted shall be revoked or terminated by this amended ~~subchapter~~, but the holder of any prior Franchise shall be entitled to apply for a new Franchise hereunder and shall not be required to pay a new application fee. Upon written request to Louisville Metro such previous Franchise holder shall be automatically deemed to have complied with all application and qualification requirements hereunder. Upon grant of a new Franchise, the holder of a prior Franchise may surrender the prior Franchise and receive a pro rata credit for any fees paid under the prior Franchise against any costs, bond requirements or charges assessed under the new Franchise.

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(C) *Transitional provisions to be narrowly interpreted.* It is the intent of Louisville Metro to apply the provisions of this subchapter to Communications System operators, including local exchange carriers that now occupy or may in the future occupy rights-of-way, except to the extent federal or state law prevents it from doing so.

§ 116.06 PROGRAMMING SERVICE PROVIDERS.

All Franchisees providing programming service shall comply with the following requirements with respect to their provision of programming service:

A) Programming service Franchisees shall install, and at all times maintain, automatic, activated stand-by power on trunk-cable and at Head-Ends, hubs and receive-sites associated with the distribution of Programming Service to and throughout Louisville Metro.

(B) Programming service shall at all times comply, at a minimum, with the FCC requirements for Emergency Alert System for their systems.

(C) Programming service Franchisees shall provide three (3) channels for Public, Educational and Government Access at no cost to Louisville Metro.

(D) Programming service Franchisees shall have a publicly listed telephone number;

(E) Programming service Franchisees shall employ an operator or maintain a telephone answering device 24 hours per day, each day of the year to receive subscriber complaints.

§ 116.7507 PRIVATE COMMUNICATIONS FACILITIES.

(A) *Application for license.* A person wishing to erect, install, maintain, operate, repair, replace, remove or restore a Private Communications System in the rights-of-way must obtain a license therefore from ~~Louisville Metro's~~ Department of Public Works

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and Assets-~~Department~~. Such license shall only authorize placement of the Private Communications System in a specific portion of the rights-of-way for a limited period of time and for a specific purpose in connection with the person's business and shall not permit the use of the provision of private Communications Service System to provide Communications Service to any other person or to the public. Such person shall submit an application to ~~the Department of~~ Public Works and Assets-~~Department~~ on such form as may be developed by ~~the Department of~~ Public Works and Assets-~~Department~~, accompanied by such application fee as may be determined by Louisville Metro.

(B) *Conditions of license.* Any license shall be subject to such conditions as Louisville Metro may from time to time establish, shall be expressly subordinate to the use of the rights-of-way by Louisville Metro and Franchisees, and shall otherwise conform to the requirements of this ~~subchapter~~.

(C) *Compensation.* A Private Communications System Owner shall pay a fee established by Louisville Metro from time to time to reflect the fair market value of the property used.

§ 116.7608 LIABILITIES AND PENALTIES.

Except as expressly stated in this ~~subchapter~~, the express or implied repeal or amendment by this ~~subchapter~~ of any ordinance or part thereof shall not affect any liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this ~~subchapter~~. Those liabilities and penalties are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ~~subchapter~~ had not been adopted.

§ 116.7709 REMEDIES NOT EXCLUSIVE.

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The rights and remedies of Louisville Metro and the Franchisee as set forth in their Franchise, or in this subchapter, shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity.

§ 116.4210 REVIEW, RENEWAL, TERMINATION AND CANCELLATION.

(A) To provide for technological changes in the state of the art of Communications Serviceable ~~communications~~, to facilitate renewal procedures, ~~to promote the maximum degree of flexibility in the cable communications system~~ and to achieve a continuing, advanced, modern systems for Louisville Metro ~~the Metro Government Area, the Metro Government,~~ and the Franchisee shall comply with the following review provisions:

(1) ~~The Director of Finance Louisville Metro shall~~ may hold a scheduled review sessions ~~within 30 days of the second anniversary date of the execution of the franchise agreement and/or ordinance awarding a franchise hereunder. Subsequent review sessions shall be scheduled by the Director of Finance at two-year intervals thereafter. All such review sessions~~ which shall be open to the public and notice shall be given by advertisement in a newspaper of general circulation at least one week before each session. In addition, ~~the franchisee shall announce the date and time of each such session on each of at least five days immediately preceding each session at a minimum of six regularly scheduled intervals daily.~~

(2) ~~Either the~~ Louisville Metro Government or the Franchisee may select additional topics for discussion at any regular or special review session.

(3) Any topic proposed for discussion at any regular or special review session by a resident of the Louisville Metro Government Area and supported by a petition bearing

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the signature of 100 Louisville Metro Government residents, shall be included in the list of topics for discussion.

~~(B) The procedure for considering the renewal or termination of any franchise or agreement or ordinance awarding a franchise in accordance herewith shall be as follows:~~

~~(1) Twelve months prior to the expiration of the term of any franchise or agreement or ordinance awarding a franchise in accordance herewith:~~

~~— (a) The Director of Finance shall review the provisions of this subchapter and shall make recommendations, if any, to the Metro Government for its amendment.~~

~~— (b) The Director of Finance shall proceed to determine whether the franchisee has performed its obligations under this subchapter and the agreement or ordinance awarding a franchise in accordance herewith. In making this determination, the Director of Finance shall consider several factors including, but not limited to, the following:~~

~~— 1. Technical development and performance of the franchisee's cable communications system;~~

~~— 2. Programming;~~

~~— 3. Additional services offered by the franchisee;~~

~~— 4. Rates;~~

~~— 5. All obligations of the franchisee as prescribed by this subchapter or the Agreement awarding a franchise in accordance herewith, including, but not limited to, programming, equipment and personnel available to users for all forms of community communications:~~

~~— 6. Cable industry performance nationwide;~~

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~~7. Comments from residents and representatives of community organizations submitted in a manner to be determined by the Director of Finance.~~

~~(c) The Director of Finance shall make recommendations to the Metro Government as to the franchisee's eligibility for renewal of the franchise and agreement and ordinance awarding the franchise in accordance herewith in no less than four nor more than ten months from the date of the Director of Finance's first consideration of said renewal as provided in § 116.42(B)(1). The Director of Finance in the recommendation shall address the following matters:~~

~~1. Renewal of the franchise and agreement awarding a franchise in accordance herewith;~~

~~2. Changes to the agreement; and~~

~~3. Amendments to the ordinance.~~

~~(C) After review of the Director of Finance's recommendations, the Metro Government shall, after hearing, take such action as it deems appropriate, which may include any of the following:~~

~~(1) The Metro Government may renew the franchise and agreement and ordinance awarding a franchise in accordance herewith upon conditions as it may direct;~~

~~(2) The Metro Government may authorize the franchise to transfer the cable communications system in accordance with § 116.37;~~

~~(3) The Metro Government may solicit proposals for and execute a new agreement awarding a franchise in accordance with this subchapter and any amendments hereto; or~~

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~~(4) The Metro Government may determine not to authorize the award of any further franchise, and thereupon may direct the franchisee to dismantle its cable communications system.~~

~~(5) If the franchisee determines not to renew the agreement awarding a franchise in accordance herewith, the Metro Government shall proceed to follow one of the courses of action under §116.42(C)(2) through (C)(5).~~

~~(D)~~(B) *Termination.*

(1) ~~The Metro Government~~ Louisville Metro may terminate any Agreement awarding a Franchise in accordance herewith in the event of the violation of any provision hereof or of any rule or regulation promulgated pursuant here to or of any applicable federal, state, or local law, or the breach or other failure, refusal or neglect by the Franchisee to perform its obligations under the terms and conditions of the ordinance or of any ordinance or agreement awarding a Franchise in accordance herewith, except when such violation, breach, failure, refusal or neglect is caused by any of the following:

- (a) Act of God;
- (b) Riot;
- (c) An emergency declared by the President of the United States of America, the Governor of the Commonwealth of Kentucky or the Mayor; or
- (d) A condition beyond the control of the Franchisee.

(2) In the event that ~~the Metro Government~~ Louisville Metro determines that the Franchisee has violated any provision of this chapter, any rule or regulation promulgated pursuant hereto, any applicable federal, state or local law, or any term of

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an agreement or ordinance awarding a Franchise, except as noted in § 116. ~~10(B)(1)42(E)(1)(a) through (E)(1)(d)~~, the ~~Metro Government~~ Louisville Metro shall make a written demand on the Franchisee that it comply with the law or said agreement or ordinance. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the ~~Metro Government~~ Louisville Metro within 30 days following such demand, the ~~Metro Government~~ Louisville Metro shall determine whether or not, in its sole discretion, such violation, breach, failure, refusal, or neglect by the Franchisee was excusable or inexcusable as provided in § 116. ~~10(B)(1)42(E)(1)(a) through (E)(1)(d)~~.

(a) If the ~~Metro Government~~ Louisville Metro determines such violation, breach, failure, refusal or neglect by the Franchisee was excusable as provided in § 116. ~~10(B)(1)42(E)(1)(a) through (E)(1)(d)~~, the ~~Metro Government~~ Louisville Metro shall direct the Franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the ~~Metro Government~~ Louisville Metro may direct.

(b) If the ~~Metro Government~~ Louisville Metro determines such violation, breach, failure, refusal, or neglect by the Franchisee was inexcusable as provided in § 116. ~~10(B)(1)42(E)(1)(a) through (E)(1)(d)~~, then the ~~Metro Government~~ Louisville Metro shall declare this subchapter, the franchise agreement or ordinance awarding a franchise in accordance herewith breached, the Franchisee's Franchise breached, terminated, and of no further force and effect. This action shall be taken by ordinance.

(c) ~~Termination shall in no way limit the rights of the country, or any remedies, legal or equitable, available to the Metro Government.~~

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(3) If ~~the Metro Government~~ Louisville Metro declares the said agreement breached pursuant to § 116. ~~10(B)(1)42(E)(1)(a) through (E)(1)(d)~~, the ~~Metro Government~~ Louisville Metro may pursue any remedies available to it pursuant to this subchapter or to the said Franchise agreement or ordinance or any other remedy, legal or equitable, available to ~~the Metro Government~~ Louisville Metro. ~~In addition, the Metro Government may take action listed in § 116.42(C)(2) through (C)(6).~~

~~(E)(C)~~ If any Franchise is cancelled by reason of the default of the Franchisee, the ~~Metro Government~~ Louisville Metro may exercise its option to purchase any portion of the ~~cable communications~~ system then connected in any manner with the streets, public ways, public places, or other property of ~~the Metro Government~~ Louisville Metro, at a cost not to exceed its then book value less any amount for any damages incurred by the ~~Metro Government~~ Louisville Metro in connection with such cancellation. Damages incurred by the ~~Metro Government~~ Louisville Metro shall include, but shall not be limited to, any payment made by ~~the Metro Government~~ Louisville Metro authorizing or directing the continued operation of the system.

~~(F)(D)~~ In the event that the Franchisee dismantles or terminates the ~~cable communications~~ system or is required by any provision of this subchapter to dismantle or terminate the ~~cable communications~~ system, the Franchisee shall at ~~the Metro Government~~ Louisville Metro's direction, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the system, including any improvements made to such property subsequent to the construction of the system. Restoration of ~~the Metro Government~~ Louisville Metro property, including, but not limited to, streets, shall be in accordance with the directions and specifications of ~~the Metro~~

~~Government~~Louisville Metro and all applicable laws. The Franchisee, at the option and direction of ~~the Metro Government~~Louisville Metro, shall restore the same at its expense.

§ 116.4511 FORECLOSURE-RECEIVERSHIP.

(A) Upon the foreclosure or other judicial sale of all or a substantial part of the ~~cable communication~~ system, or upon the termination of any lease covering all or a substantial part of the system, the Franchisee shall notify ~~the Director of Finance~~Louisville Metro of such foreclosure. ~~facility and such~~ Franchisee's notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this chapter governing the consent of ~~the Metro Government~~Louisville Metro to such change in control of the Franchisee shall apply.

(B) ~~The Metro Government~~Louisville Metro shall have the right to cancel ~~this~~the Franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Within 120 days after his or her election of appointment, ~~such~~the receiver or trustee shall have fully complied with all of the provisions of this chapter and the agreement and ordinance awarding a Franchise hereunder, and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said 120 days shall have executed an agreement, duly approved by the court having jurisdiction over same, whereby such

receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the agreement and ordinance awarding a Franchise hereunder.

§ 116.4112 REPORTS.

~~(A) On or before the anniversary date of each year during the term of any agreement awarding a franchise in accordance herewith~~Upon Louisville Metro's request, the Franchisee shall submit a written report to ~~the Metro Government~~Louisville Metro, by ~~filing same with the Director of Finance~~, including, but not limited to, the following information:

(1) A summary of the previous year's or, in the case of the initial reporting year, the initial year's activities in development of the ~~cable communications~~ system, including, but not limited to, Communications Sservices begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;

~~(2) A financial statement including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, historic and pro forms balance sheets and a statement of sources and applications of funds, covering all years since the beginning of the franchise;~~

~~(3) A current statement of costs of construction by component categories;~~

~~(4) A projected income statement, balance sheet, statement of sources and application of funds and statement of projected construction for the next two years;~~

~~(5) A reconciliation between previously projected construction and/or financial estimates as the case may be and actual results;~~

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~~—(6) A summary of complaints, identifying the matter and nature of complaints and their disposition;~~

(2) If Louisville Metro exercises its constitutional right to collect Franchise Fees, a statement of revenues;

~~(7)(3)~~ A list of officers and members of the Board of Directors of the Franchisee, and its parent, subsidiary, or affiliate corporations, if any;

~~(8) A list of stockholders holding three per centum or more of the voting stock of the franchisee, or its parent, subsidiary and affiliate corporations, if any;~~

~~—(9) A copy of its annual report and those of its parent, subsidiary and affiliate corporations;~~

~~—(10) Such other information or reports as the Metro Government or the Director of Finance may request.~~

~~(11)(4)~~ All reports required under this subchapter shall be available for public inspection in the Office of the Director of Finance during normal business hours.

~~—(12) The franchisee shall file with the Metro Government a copy of any document it files with the FCC or with any other regulatory agency pertaining to the cable communications system owned and/or operated by the franchisee pursuant to any agreement or ordinance in accordance herewith. To the extent that such documents contain, to the satisfaction of the Director of Finance, the information required by other reports hereunder, the Executive Director may suspend the requirements to file such other reports with the Metro Government so as to avoid duplicate and the administrative costs attendant thereto.~~

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~~(13)~~(5) It shall be unlawful for the Franchisee to refuse, fail or neglect to file the reports required under this subchapter. The refusal, failure, or neglect of the Franchisee to file any of the reports required under this subchapter or as the ~~Director of Finance~~Louisville Metro may direct, shall be deemed a violation of this subchapter and shall subject the Franchisee to the provisions of § 116.1042~~(E)~~ and shall be deemed a material breach of any agreement or ordinance awarding a Franchise in accordance herewith, and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to Louisville Metro~~the Metro Government~~.

~~(14)~~(6) Any material misrepresentation made knowingly by the Franchisee in any report required under this subchapter shall subject the Franchisee to the provisions of § 116.10~~42~~(D) and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to Louisville Metro~~the Metro Government~~.

~~(15)~~ The Director of Finance shall review all items filed or required to be filed hereunder, and shall distill and condense same and thereafter report to the Metro Government concerning same, including therewith his/her comments, analysis and recommendations.

§ 116.4613 BOOKS AND RECORDS OF THE FRANCHISE.

~~(A)~~ The franchisee shall maintain an office in the Metro Government Area for so long as it continue to operate the cable communications system or any portion thereof and hereby designates such offices as the place where all notices, directions, orders, and

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~~requests may be served or delivered under this chapter. The Metro Government shall be notified of the location of such office or any change thereof.~~

~~(B)~~(A) The Franchisee shall keep complete and accurate books of account and records of its business and operations in connection with any Franchise granted under this subchapter.

~~(C)~~(B) ~~The Metro Government, its representatives, its Director of Finance~~Upon request, Louisville Metro shall have access to all books of account and records of the Franchisee for the purpose of auditing Franchise Fee or tax payments and of ascertaining the correctness of any and all reports and may examine its officers and employees in respect thereto.

~~(D)~~(C) Any false entry in the books of account or record submitted to Louisville Metro, ~~Metro Government, its representatives, its Director of Finance~~ or false statements in reports to Louisville Metro, ~~the Metro Government, its representatives, its Director of Finance~~ as to material fact, knowingly made by the Franchisee, shall constitute a breach of a material provision of this chapter and any Franchise agreement or ordinance hereunder, for which the remedies provided in this chapter may be invoked.

§ 116.4814 TIME OF ESSENCE.

Whenever this chapter, or any ordinance or agreement awarding a Franchise hereunder, shall set forth any time for any act to be performed by or on behalf of a Franchisee, such time shall be deemed of the essence, and any failure of a Franchisee to perform within the time set forth shall constitute a material breach of the terms of this chapter and shall entitle Louisville Metro, ~~the Metro Government~~ to invoke all penalties

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and remedies prescribed in this chapter as well as all other legal or equitable remedies available to Louisville Metro~~the Metro~~ Government.

§ 116.5015 VIOLATIONS.

(A) It shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in Louisville Metro~~the Metro~~ Government Area, any Communications Service~~television, radio, or non-broadcast signals~~ by means of a ~~cable communications~~ system in the right-of-way unless a Franchise therefore has first been obtained from Louisville Metro~~the Metro~~ Government, and unless such Franchise is in full force and effect.

(B) It shall be unlawful for any person to construct, install or maintain within any public street in Louisville Metro~~the Metro~~ Government Area, equipment or facilities for distributing any Communications Service~~television, radio or non-broadcast signals~~ through a ~~cable communications~~ system, unless a Franchise authorizing such use of such street or property or area has first been obtained from Louisville Metro~~the Metro~~ Government, and unless such Franchise is in full force and effect.

~~(C) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the unincorporated areas of the Metro Government Area, for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or other non-broadcast signals.~~

~~(D) It shall be unlawful for any person, firm or corporation to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable communications system within the Metro Government~~

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~~Area, for the purpose of enabling himself or others to receive any television signal, radio signal, picture, programs, sound, or other signals without payment to the owner of said system.~~

~~(E) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wire, or equipment used in any cable communications system.~~

§ 116.16 EQUAL EMPLOYMENT OPPORTUNITY.

(A) Franchisees shall comply in all respects with the FCC's regulations governing equal opportunity. Franchisees shall also comply with all other applicable equal opportunity government regulations whether federal, state or local.

(B) Franchisees shall afford equal opportunity in employment to all qualified persons, and no person shall be discriminated against because of race, color, religion, national origin, handicap, sex, or age.

(C) Franchisees must currently be and remain qualified by the Louisville Metro Human Relations Commission concerning the requirements for an affirmative action plan consistent with the Louisville Metro Code of Ordinances, § 37.68(B)

§ 116.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 116.99 PENALTY.

(A) Any person violating or failing to comply with any of the provisions of §§ 116.1531 or 116.50 shall be guilty of a misdemeanor, and shall be punished by a fine of

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not less than \$50 nor more than \$250 or by imprisonment for a term of not to exceed 90 days, or by both such fine and imprisonment, except that a corporation shall be punished by a fine of not less than \$100 nor more than \$5,000.

(B) Each day that a person violates or fails to comply with the terms of §§ 116.1534~~or 116.50~~ shall constitute a separate offense under this chapter.

SECTION II. This Ordinance shall take effect upon passage and approval.