

ORDINANCE NO. 057, SERIES 2021

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

**SPONSORED BY: COUNCIL MEMBER GEORGE**

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

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

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

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

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

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


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

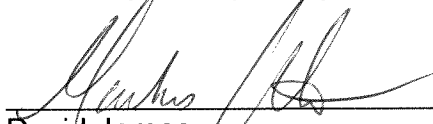
**SECTION II.** The Franchise Agreement by and between OpenFiber Kentucky Company, LLC as appended to this ordinance is hereby approved and the Mayor is hereby authorized to execute and enter into that agreement for and on behalf of Louisville Metro.

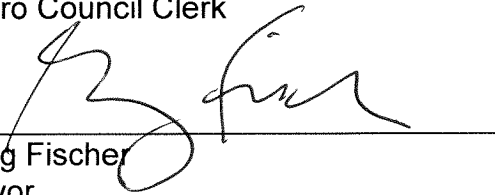
**SECTION III.** The statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

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

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

  
\_\_\_\_\_  
Sonya Harward  
Metro Council Clerk

  
\_\_\_\_\_  
David James  
President of the Council

  
\_\_\_\_\_  
Greg Fischer  
Mayor

05/10/2021  
\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

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

**LOUISVILLE METRO COUNCIL  
READ AND PASSED  
May 6, 2021**

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** made and entered into this 17<sup>th</sup> day of May 2021, by and between the Louisville/Jefferson County Metro Government (hereinafter "Louisville Metro") and OpenFiber Kentucky Company, LLC (hereinafter "OpenFiber Kentucky" or "Franchisee").

### WITNESSETH:

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

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

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

**WHEREAS**, OpenFiber Kentucky's core business is to connect customers to the KentuckyWired "middle-mile" statewide fiber optic network;

**WHEREAS**, pursuant to Ordinance No. 057, Series 2021, Louisville Metro granted to OpenFiber Kentucky for a period of 20 years, a non-exclusive franchise to erect, install or maintain communications facilities or provide communication services by use of said

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

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

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

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

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

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

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

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

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

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

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

designated in this agreement and ordinance approving this agreement.

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

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

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

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

  
\_\_\_\_\_  
**GREG FISCHER, MAYOR**

**OPENFIBER KENTUCKY  
COMPANY, LLC**

  
\_\_\_\_\_  
**DAVID FLESSAS, CEO**

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell,  
Jefferson County Attorney

By: \_\_\_\_\_



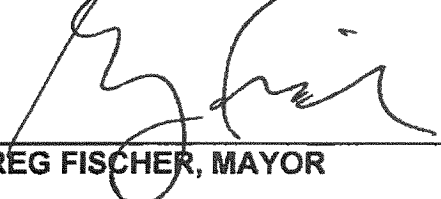
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**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

  
\_\_\_\_\_  
GREG FISCHER, MAYOR

**OPENFIBER KENTUCKY  
COMPANY, LLC**

  
\_\_\_\_\_  
DAVID FLESSAS, CEO

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell,  
Jefferson County Attorney

By:   
\_\_\_\_\_

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# Louisville Metro Public Works & Assets

## Communications Franchise Application

### Applicant Information

Applicant Name: OpenFiber Kentucky Company, LLC  
*(Complete Legal Name as registered with the Kentucky Secretary of State)*  
Address: 1700 Eastpoint Parkway, Suite 230  
City: Louisville State: KY Zip Code: 40223  
E-mail Address: OSP.Engineering@openfiberky.com  
Phone Number: 502-665-0590 Fax Number: \_\_\_\_\_

### Local Representative Information

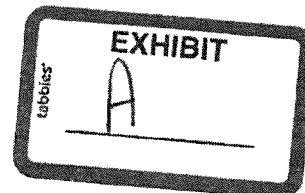
Applicant Name: David Holder  
Address: 1700 Eastpoint Parkway, Suite 230  
City: Louisville State: KY Zip Code: 40223  
E-mail Address: David.Holder@openfiberky.com  
Phone Number: 502-665-0590 Fax Number: \_\_\_\_\_  
Emergency Contact Information: Rosemary.Watkins@openfiberky.com 248-895-7577

### Certification

Applicant agrees to be bound by all provision of the Franchise and agrees to obtain all application permits and authorizations prior to constructing, installing or operating a System in the right-of-way.

Applicant hereby certifies that the information provided by the applicant is true and correct and that the person signing on behalf of the applicant is authorized to do so. Applicant further acknowledges and certifies that it shall be responsible to certify to Louisville Metro any material changes to the information provided in the completed application during the terms of any Franchise.

Complete Legal Name of Applicant: OpenFiber Kentucky Company, LLC  
Signature: David Flessas  
Printed Name: David Flessas  
Title: CEO  
Date: 02/19/2021







**OPENFIBER**  
KENTUCKY

March 15<sup>th</sup>, 2021

Louisville & Jefferson County Council:

OpenFiber Kentucky Company, LLC is the exclusive wholesale partner of the Commonwealth's Kentucky Wired project. Our core business is to connect confirmed customers to the Kentucky Wired "middle-mile" statewide fiber optic network. The proposed project detailed in the maps and designs included with this narrative is to provide service to customers in the Eastpoint business park development.

Expanded telecommunications services on a state-of-the-art redundant network are now available in Jefferson County and throughout the Commonwealth.

#### Description of Offered Services

***Ethernet Services:*** OpenFiber KY offers a variety of Ethernet service types that provide flexibility in constructing the right network topology for any business need. The varying service levels provide bandwidth scalability to meet the needs of even the most demanding applications, as well as network reliability and resiliency to ensure service continuity even during critical network events.

***Dedicated Internet Access:*** OpenFiber KY also offers industry leading, next generation fiber internet access to most locations in the Commonwealth. This service is a guaranteed and dedicated circuit with a 4-hour MTTR. Standard deployment is 10 Gbps capable.

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***Additional services offered include:*** E-Line Services, Ethernet Virtual Private LAN Service (E-LAN), Mobile Backhaul Transport, secure and reliable bandwidth, and a variety of other carrier services. E-Rate, Ethernet 100M – 10G, Dedicated Internet Access 100M – 10G

All these services follow industry standard Metro Ethernet Forum (MEF) guidelines for service and reliability. With data centers in Cincinnati/Northern Kentucky and Louisville, we offer diversity and capacity to meet carrier network needs.

OpenFiber KY provides cost effective Ethernet and Dedicated Internet services to the schools and libraries in the Commonwealth of Kentucky. As a certified E-rate provider OpenFiber KY has the experience and technology to meet the growing demand for eligible services under the E-rate program.

The OpenFiber Kentucky local management team has experienced professional leading the permitting and construction efforts. These professionals have years of experience working with the Department of Public Works under encroachment permits for work in the county and city roadways. OpenFiber Kentucky will strictly enforce the allowed working hours, proper pedestrian & traffic safety compliance and accelerated restoration of disturbed areas resulting from the construction activities.

OpenFiber Kentucky is unlike other fiber service providers who typically utilize a comprehensive network design and propose to build network infrastructure in all retail, commercial and industrial areas. We build to suit new customers who are committed to using this advance network's services and minimize the impact to the neighborhoods by effectively managing our construction activities according to the highest industry standards.

### **Project Description**

- Beginning at an existing aerial splice case on the east side of Bellewood Rd. installed to provide service to the Anchorage Elementary School
- Proposed fiber cable will be over-lashed to the existing aerial fiber cable running to the northeast and crossing Ridge Rd.
- New strand and fiber will be attached to existing poles heading to the east on Ridge Rd. from the intersection of Bellewood Rd.

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- The new aerial attachment will continue east on Ridge Rd. and then Avoca Rd for approx. 7,930'
  - The new aerial path will then turn north just after Parker Hollow Dr and cross the CSX tracks.
  - The new aerial path will then continue to the northeast for approx. 2,850' along Old Henry Rd stopping on the south side of the intersection of Stanley Gault Pkwy.
  - From this location directional drilling is proposed to the north along the east side of Stanley Gault Pkwy for approx. 5,115' to La Grange Rd.
  - The underground path will then turn to the northeast and follow La Grange Rd for approx. 1,220'
  - At the intersection with Nelson Miller Pkwy. The underground path turns to the southeast and follows the west side of Nelson Miller Pkwy. For approx. 4,625' to Eastpoint Pkwy.
  - At this intersection, the underground path will turn to head east on Eastpoint Pkwy for 930' and terminates in the ROW in front of 1700 Eastpoint Pkwy.
1. This project includes both aerial and underground infrastructure. The path described above will be a continuous fiber and they will be constructed as one project.
  2. We have applied to LG&E for use of the poles to complete the aerial sections. We do not anticipate any new pole locations will be required. LG&E may determine that a pole replacement may be necessary. In this event the pole to be replaced will be noted on the plans that are submitted to receive the encroachment permit.
  3. Project phases are as follows; 1) perform aerial make ready on poles, 2) begin directional drilling of underground sections, 3) mount new strand to pole route, 4) place continuous fiber in conduit and lash to strand, 5) notify public works department that work and restoration is completed, 6) correct any issues noted in final inspection.
  4. Construction Methods – Aerial work will be performed using bucket trucks or pole climbers where vehicle access is not available. Installation of new strand and fiber lashing will include industry standard materials and approved hardware of the pole owner. Underground work will be performed with directional drills and the use of 2" or 1 ¼" conduits. Bore pits and vault locations will be excavated using mini excavators and hand digging near existing utility lines. All existing utilities in the bore path will be potholed according to state guidelines for directional drilling.
  5. Restoration – a) Sidewalk restoration will occur from seam to seam using matching concrete mix and thickness of adjacent slabs. Soil will be compacted, and crushed stone

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base will be placed according to jurisdiction standards. Sidewalks will be restored to meet ADA standards not to exceed 2% slope and ADA ramps will not be altered or used for the placement of vaults. b) Any potholes in roadways will be core drilled, holes will be filled with self-compacting gravel to the base of existing concrete or asphalt. The remaining portion of potholes will be filled with concrete and/or asphalt mix to match existing thickness. c) Bore pits and dirt excavations will be filled and compacted at 6" to 8" lifts. Final grade will match the slope and grade prior to the start of work. All disturbed softscape will be seeded with straw or matting to prevent erosion. Mulched areas will also be restored with new mulch material to match existing cover. d) Vaults will be placed on an 8"-12" compacted gravel base. They will be backfilled on all sides with gravel to be compacted at intervals as fill is applied. In the event of a soft scape placement the gravel will be covered with silt fence material before 4" - 6" of soil is placed for grass seed to take root.

6. Traffic and Pedestrian Safety – Work will be performed in the approved timeframes and the work areas will include all signage and cones as shown in the MOTs included with the permit application package.


The proposed project utilizes existing aerial infrastructure to its fullest extent in Districts 17 & 19. The proposed design includes approximately 11,200' of aerial fiber and 11,900' of underground fiber. The underground sections of this project do not have any above ground utilities or poles that could be used.

Please do not hesitate to contact me for any reason should you need more information or have questions regarding this proposed fiber route.

Sincerely,

John Binkley

Program Manager



270-977-3660

**OpenFiber Kentucky**  
DISTRICT 17



**Aerial Attachment**  
Phases 1) relocate existing cables on poles  
2) attach new strand  
3) attach fiber to strand  
4) lash fiber to strand

- Legend**
- 1700 Eastpoint AER
  - Anchorage
  - District 1719 Boundary

2000 ft



Google Earth



# OpenFiber Kentucky

DISTRICT 19



**Legend**

- 1700 Eastpoint AER
- 1700 Eastpoint US
- Anchorage
- District 1719 Boundary

3000 ft

