

ORDINANCE NO. _____, SERIES 2015

AN ORDINANCE AMENDING CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES REGARDING COMMUNICATION SERVICES FRANCHISES.

Sponsored By: Council Member Hollander

WHEREAS, communication services providers are increasing the types and volume of data, voice and image transmission services to consumers; and

WHEREAS, such expanded services require new and additional infrastructure in a limited amount of space available on poles, structures and ground space within the public right of way; and

WHEREAS, Metro desires to facilitate new and additional technology for the benefit of its citizens.

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

SECTION I: Section 116.72, et seq. of the Louisville Metro Code of Ordinances is hereby amended as follows:

(D) Alteration of Facilities

- 1. Relocation of facilities.** Whenever Louisville Metro shall in its exercise of the public interest request of the franchisee the relocation or reinstallation of any of its facilities, the franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the facilities shall be the exclusive obligation of such franchisee. A franchisee shall, upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of Louisville Metro, 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 in advance for any expenses incurred by said franchisee pursuant to such person's request.

2. **Third Party Facilities.** Notwithstanding any provision of this ordinance to the contrary, the provisions of this paragraph 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 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, and subject to the consent of the owner(s) of all poles or other structures to which attachments will be made, 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 Utility 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 may cause a customer outage (this paragraph does not authorize activity requiring an electric supply outage) without first providing thirty (30) days prior written notice to the Pre-Existing Third Party User. In the event owners of such other facilities fail to transfer or rearrange their facilities within thirty (30) days from receipt of notice, Attacher may undertake such work. Following 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 are to be 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 fourteen (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 non-industry standard conditions are found, the Pre-Existing Third Party User will notify Attacher and Attacher will correct such conditions at Attacher's expense. Attacher hereby agrees to allow its attachments and facilities to be relocated or altered by Utility or Pre-Existing Third Party Users under the same terms and conditions prescribed in this Section. For the avoidance of doubt, the terms and conditions of this paragraph are not limited to relocations or alterations performed during Major Installation periods. As a condition of exercising the ability to relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this paragraph, Attacher agrees to 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 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 there for and reasonable attorney's fees, that are 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.

SECTION II: For the purpose of Subsection 116.72 (D) (2), the following definitions shall apply:

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

Pre-Existing Third Party User: Any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

Pole or Structure Owner: 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.

SECTION III: Section 116.72 is hereby amended by deletion of Subsection (F)(6)(b) in its entirety:

~~Copyright Infringement Liability insurance covering any alleged infringement of patent or copyright of any other legal infringement in 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 any time. Nothing herein is intended as a limitation on the extent of any legal liability of the franchisee.~~

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

H. Stephen Ott
Metro Council Clerk

David W. Tandy
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____