

ORDINANCE NO. 089, SERIES 2016

AN ORDINANCE AWARDING A COMMUNICATIONS SERVICES FRANCHISE TO SHELBY COMMUNICATIONS, LLC PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116.70 - 116.99 OF THE LOUISVILLE METRO CODE OF ORDINANCES.

Sponsored by: COUNCIL MEMBERS YATES AND KRAMER

[WHEREAS, pursuant to Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances the 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, an Interlocal Cooperation Agreement for a Jefferson County Uniform Communications Services Franchise ("Interlocal") has been executed by and among Metro Louisville and all the municipalities within Jefferson County having franchise authority; and

WHEREAS, the Interlocal authorized Metro Louisville on behalf of the municipalities to advertise for bids and to process bid applications and to administer the permitting process for the installation of the communications infrastructure; and

WHEREAS, Shelby Communications, LLC submitted a bid proposal to Louisville Metro for a communications services franchise which meets all of the requirements of Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws.

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

Section 1. Louisville Metro hereby grants to Shelby Communications, LLC for a period of twenty (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 116.70 - 116.99 of the Louisville Metro Code of Ordinances.

Section 2. The franchise agreement by and between Shelby Communications, LLC and Louisville Metro 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 3. That 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 4. That 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.

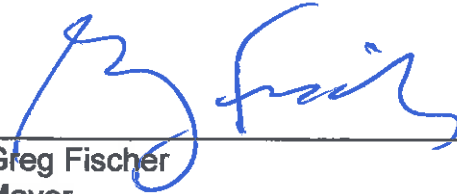
Section 5. This ordinance shall take effect upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

Date Approved: 6/13/16

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
June 9, 2016

By: 

**JEFFERSON COUNTY, KENTUCKY
UNIFORM FRANCHISE AGREEMENT**

THIS UNIFORM FRANCHISE AGREEMENT made and entered into this ____ day of _____, 20__ by and Louisville/Jefferson County Metro Government (“Metro”), and _____ (hereinafter “Provider”).

WITNESSETH:

WHEREAS, Louisville/Jefferson County Metro Government (“Metro”) and _____ (“City”) have entered into an Interlocal Cooperation Agreement pursuant to KRS 65.210 et seq. for the purpose of providing a uniform franchising process for communications services providers throughout Jefferson County, Kentucky; and

WHEREAS, the other municipalities within Jefferson County having franchise authority shall execute the Uniform Franchise Agreement applicable within their respective municipal boundaries, and

WHEREAS, Metro desires to execute a franchise agreement consistent with the Uniform Franchise Agreement to be applicable solely within the municipal boundaries of Metro Louisville, and

WHEREAS, the City desires to award a non-exclusive franchise to Provider; and

WHEREAS, pursuant to Chapter 116.70 - 116.99 of the Metro Code of Ordinances, as they were written as the approval of this franchise and/or as amended thereafter throughout the term limits of this franchise , Sections 163 and 164 of the Kentucky Constitution and the Metro solicited bid proposals from parties interested in obtaining franchises to erect, install and maintain communications facilities or provide communication services by use of said communication facilities within the confines of Jefferson County; and

WHEREAS, Provider submitted a bid proposal to Metro for a communications services

franchise pursuant to the requirements of Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances.

WHEREAS, pursuant to Ordinance No. _____, Series ___ Metro granted to Provider for a period of twenty (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 boundaries of Metro in conformance with Chapter 116.70 - 116.99 of the Metro Code of Ordinances as they were written as of the approval of this franchise and/or as amended thereafter throughout the term limits of this franchise.

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

1. Metro grants unto Provider a non-exclusive franchise, for a term of twenty (20) years to erect, install or maintain communications facilities or provide communication services by use of said communication facilities within the confines of Metro and as more specifically identified in the above- mentioned bid in conformance with Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances, as they were written as of the date of the approval of this franchise and/or amended thereafter throughout the term limits of this franchise. No amendments will be made by Metro of any sections of this Chapter that would directly or indirectly affect the intent and/or purpose of this franchise without the prior notice to and input from all affected Cities within Jefferson County.

2. Chapter 116.70 - 116.99 of the Louisville Metro Code of Ordinances (as amended by Metro Ordinance O-427-15, enacted February 11, 2016) as written and in force as of the approval of this franchise and/or amended thereafter through the period of the franchise are incorporated herein by reference in their entirety and shall apply as if fully set forth herein.

3. The bid of Provider 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.

4. Provider agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy.

5. In the event that KRS 136.660 is declared inoperative, unconstitutional, or is repealed, in whole or in part, commencing within thirty (30) days thereof or at such time as the parties may mutually agree in writing, Provider shall pay to Metro an annual franchise fee as calculated by applying the formula set forth in Section 116.71(K) of the Louisville Metro Code of Ordinances as of the approval of this franchise, or as the parties may mutually agree in writing.

6. Provider shall periodically provide to the Metro a point of contact for Provider in order to facilitate communication. The point of contact shall provide and maintain a current e-mail address to Metro, through the Director of the Public Works Department.

7. Provider shall make application to Metro to obtain all necessary permits for any work that will be performed Metro's Right of Ways (ROW'S). Upon request of the Provider and prior to making an application for a ROW permit, Metro will use its best efforts to notify Provider of any unique features and/or conditions, as well as any unique Ordinances, of which the Metro is aware which could have the potential to hinder, delay, or alter construction or significantly

increase the cost thereof. Applications for a ROW permit shall contain descriptions and locations of construction, and projected timelines for the same. Metro will upon receipt and determination that the application is complete in accordance to Metro Chapter 116 .70 through 116.99 and its related Utility Policies. The Provider will use its best efforts to satisfy any commercially reasonable/legal concerns/objections presented to them, and adjust or modify its permit application accordingly. However, the decision to approve an application will be made by Metro based solely on the applications conformity with Metro code. Should objections not be raised by Metro during the above mentioned timeframe allocated, any concerns/objection then known or which reasonably could have been known by Metro shall be deemed to have been waived. Following the 10 business day review period, Metro will communicate to the Provider approval or denial of the permit application based solely on the applications conformity with Metro code. In no event shall a permit be valid for more than eighteen months; provided, however, that requests for an extension will not be unreasonably withheld. Provider shall give reasonable notice Metro prior to commencing construction.

8. Provider shall notify Metro upon completion of the permitted work issued in compliance with Paragraphs 1-7 above and Metro shall have a right of final inspection and approval thereof based on the approved permit. Metro shall perform inspections within 10 days of receipt of notice from the Provider that the permitted work has been completed. Metro shall notify in writing the Provider within 48 hours of their inspection(s) and findings.

9. Any dispute arising between the parties pursuant to or in connection with the Franchise shall not be subject to binding arbitration, but the parties agree that they will use their best efforts to resolve any such dispute (including mediation if appropriate) prior to bringing suit in a court of competent jurisdiction and appropriate venue to resolve the dispute.

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

11. This Franchise constitutes the entire agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto. Provider represents and warrants that it has purchased its franchises from other governmental entities located in Jefferson County upon terms and conditions materially identical to those contained herein, and that there are no franchise agreements, contracts, leases or other agreements between Provider and any other governmental entity within Jefferson County which provide benefits materially different in kind than those being afforded to the City under this Franchise.

12. This Franchise shall commence _____, 20____, and shall expire on _____, 20____.

PROVIDER

By: _____

Its: _____

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

MAYOR

APPROVED AS TO FORM AND LEGALITY

**MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY**

By: _____