

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE AWARDING A RENEWAL OF A COMMUNICATIONS SERVICES FRANCHISE TO LEVEL 3 COMMUNICATIONS, LLC, ~~A WHOLLY OWNED SUBSIDIARY OF CENTURYLINK, INC.~~ PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES (AS AMENDED).

SPONSORED BY: COUNCIL MEMBER COAN

WHEREAS, pursuant to Chapter 116 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, Level 3 Communications, LLC, is ~~a Wholly Owned Subsidiary wholly owned subsidiary~~ of CenturyLink, Inc., and has a current communications service franchise, through TELCOVE of KENTUCKY, Ordinance No. 87, Series 2005, whose name was changed to LEVEL 3 Communications on May 30, 2018. ~~CenturyLink purchased Level 3 in 2017.~~ Said current communications service franchise expires on June 13, 2020; and

WHEREAS, Level 3 Communications, LLC, ~~a Wholly Owned Subsidiary of CenturyLink, Inc.~~ submitted a bid proposal to Louisville Metro for a renewal of a communications services franchise which meets all of the requirements of Chapter 116 of the Louisville Metro Code of Ordinances and all other applicable state and federal laws.

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 Level 3 Communications, LLC, ~~a Wholly Owned Subsidiary of CenturyLink, Inc.~~ 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 Level 3 Communications, LLC, ~~a Wholly Owned Subsidiary of CenturyLink, Inc.~~ as appended to this ordinance is hereby approved and the Mayor is hereby authorized to execute and enter into that agreement for and on behalf of Louisville Metro.

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

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

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

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer, Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell Jefferson
County Attorney

By: _____

0-193-2020 Level 3, 5/14/2020 As Amended JRD

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 14th day of June 2020, by and between the Louisville/Jefferson County Metro Government (hereinafter “Louisville Metro”) and Level 3 Communications, LLC, ~~a Wholly Owned Subsidiary of CenturyLink, Inc.~~ (hereinafter “Level 3”).

WITNESSETH:

WHEREAS, pursuant to Chapter 116 of the Louisville Metro Code of Ordinances and Sections 163 and 164 of the Kentucky Constitution, Louisville 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 Louisville/Jefferson County, Kentucky; and

WHEREAS, Level 3 a has current communications service franchise, through TELCOVE of KENTUCKY, Ordinance No. 87, Series 2005, whose name was changed to LEVEL 3 Communications on May 30, 2018. ~~CenturyLink purchased Level 3 in 2017.~~ Said current communications service franchise expires on June 13, 2020; and

WHEREAS, Level 3 submitted a bid proposal to Louisville Metro for a renewal of a communications services franchise pursuant to the requirements of Chapter 116 of the Louisville Metro Code of Ordinances; and

WHEREAS, pursuant to Ordinance No.____, Series 2020, Louisville Metro granted to Level 3 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 Level 3 have entered into this Franchise Agreement to memorialize the award by Louisville Metro to Level 3 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 Level 3 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 of Level 3 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. Level 3 agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy.

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. Level 3 has no poles in their system and has no plans to put poles in Metro's Right of Way. If Level 3 wishes to install poles in Metro's Right of Way, Level 3 and Metro agree to renegotiate the franchise agreement.~~

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 Level 3 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 or June 14, 2020, whichever is later, and shall expire in the time designated in this agreement and ordinance approving this agreement.

8. Level 3 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 Level 3 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**

LEVEL 3 COMMUNICATIONS, LLC

GREG FISCHER, MAYOR

BY: _____

TITLE: _____

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____