

ORDINANCE NO. \_\_\_\_\_, SERIES 2016

**AN ORDINANCE AMENDING CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES REGARDING COMMUNICATION SERVICES FRANCHISES (AMENDMENT BY SUBSTITUTION)(AS AMENDED).**

**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 Government desires to facilitate new and additional technology and infrastructure for the benefit of its citizens;

**WHEREAS**, pursuant to KRS 282.040(2), Metro Government retains all powers of municipalities and, pursuant to KRS 82.082, Metro Government may exercise any powers within its boundaries in furtherance of a public purpose; and

**WHEREAS**, Metro Government's proposed regulation of its rights of ways as set forth herein is consistent with the tariffs applicable to pole owners within Metro Louisville;

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

**SECTION I:** Section 116.70(J) of the Louisville Metro Code of Ordinances (LMCO) is hereby amended to add the following definitions:

**Attacher:** 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:** 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.

**Make Ready Costs:** 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.

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

**Pole 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 II:** LMCO Section 116.72(D) is hereby amended as follows:

(D)(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 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 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 thirty (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 thirty (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. ~~Following~~ Within thirty (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 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 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 ~~safety~~ Pole Owner's standards, the Pre-Existing Third Party User will notify Attacher ~~and~~ within seven (7) 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 ~~will~~ 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 thirty (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 "Indemnatee") 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 Indemnatee, 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 III:** LMCO Section 116.72(F)(6)(b) is hereby deleted in its entirety:

~~(b) Copyright Infringement Liability insurance covering any alleged infringement of patent or copyright or 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.~~

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

\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

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David Yates  
President of the Council

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Greg Fischer  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

BY: \_\_\_\_\_