

BEFORE THE LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT

Petition of

SQF, LLC,

For Approval of a Special Exception to Chapter 116
§ 116.03 (F)(1) Bond Requirement

Matter/Case No. _____

PETITION

SQF, LLC (“SQF” or “Applicant”) requests Metro Council approval of a Special Exception pursuant to Louisville-Jefferson County Code Chapter 116 § 116.03 (L). Approval of the Special Exception meets the requirements that SQF demonstrate

- (1) The exception will not create any threat to the public health, safety or welfare;
- (2) The increased economic burden and the potential adverse impact on franchisee’s construction schedule resulting from the strict enforcement of the requirement would actually or effectively prohibits the ability of franchisee to provide Communication Service in Louisville Metro; and
- (3) The requirement unreasonably discriminates against franchisee in favor of another comparable Communications Service provider.

Approval of the Special Exception will provide SQF with the ability to expand its service offerings in the Louisville-Jefferson County Metro area with corresponding benefits to the public for competition, service availability, and reliability, and the Special Exception will not result in the discontinuance, reduction, loss, or impairment of service to any customers.

In support of this Petition, SQF provides the following information:

I. Description of the Applicant and Project

SQF is a Delaware limited liability company¹ with its principal office at 16 Middle Street, 4th Floor, Portland, Maine 04101. SQF is currently a direct, wholly owned subsidiary of SQF Holdco. SQF holds a license to provide facilities-based competitive local exchange telecommunications services in Kentucky (Utility ID: 5057620; Utility Made Active Date: September 13, 2017). SQF provides its services using a system of fiber optic cables and small antennas and conversion equipment attached to poles and other structures.

SQF intends to purchase fifteen poles with small wireless antennas and ancillary equipment attached or integrated in the poles. SQF will provide the infrastructure for AT&T to lease space on the poles and to operate its wireless network for the public and its customers. These poles are either currently constructed or are soon to be constructed, and all construction permits will be covered under AT&T's franchisee and permitting process. AT&T intends to sell these poles to SQF only after construction of the pole and SQF's grant of a Communication Franchisee by the Louisville-Jefferson County Metro Government.

II. Application Requirements and Special Exception

The City of Louisville-Jefferson County Metro Government requires that prospective communication franchisees apply through the open bid process on their website. Chapter 116 of the Louisville-Jefferson County Metro Code articulates the minimum requirements for submission which includes a "franchise bond in the amount of \$1,000,000 which shall be required to be in place for the entire term of the franchise..." Chapter 116 § 116.03 (F)(1). The purpose of the franchise bond is for

¹ SQF, LLC converted from a Maine LLC to a Delaware LLC on February 12, 2019.

“[t]he failure of franchisee to comply with its obligations under this chapter...” Chapter 116 § 116.03 (F)(3). The \$1,000,000 requirement, however, is a one size fits all policy and discriminates against smaller facilities-based competitive local exchange telecommunications companies and it creates a financial threshold that makes it impossible to apply for a franchise and to compete in the Louisville-Jefferson County Metro area.

SQF proposes to have a franchise bond for the duration of the franchise equal to \$2000 per pole, equaling \$15,000 initially, and it will increase its bond amount each and every time a new pole is purchased or erected under SQF's franchise.

A. The exception will not create any threat to the public health, safety or welfare;

A bond by its very nature is a surety agreement against the performance of a contract. While SQF does not intend to violate the franchisee agreement, or any provision of Chapter 116 if it is given a Communication Franchisee, the franchise bond would only be necessary to protect the public health, safety or welfare if SQF fails to maintain its liability insurance. SQF has insurance that meets the required insurance limits under Chapter 116 § 116.03 (F)(6).

B. The increased economic burden and the potential adverse impact on franchisee's construction schedule resulting from the strict enforcement of the requirement would actually or effectively prohibits the ability of franchisee to provide Communication Service in Louisville Metro

SQF will be unable to purchase the poles from AT&T due to the economic burden a \$1,000,000 franchise bond would place on SQF. With such a high expense, SQF would have to have own thousands of poles in the Louisville-Jefferson County Metro area to be profitable and maintain a \$1,000,000 franchise bond. SQF proffers that a \$2,000 franchise bond, in conjunction with the required insurance and the performance bonds should adequately satisfy the needs of the Louisville-Jefferson County Metro Government and allow SQF to purchase the poles from AT&T and avoid

being effectively prohibited from receiving a franchise from the Louisville-Jefferson Country Metro Government.

C. The requirement unreasonably discriminates against franchisee in favor of another comparable Communications Service provider.

The \$1,000,000 franchise bond requirement favors larger franchisees over smaller franchisees as the larger franchisees can spread the cost of the \$1,000,000 over more infrastructure and therefore dilute the cost. SQF, as a smaller company, would only be able to spread the cost of a \$1,000,000 franchise bond over fifteen initial revenue generating poles, and therefore would be unable to generate a profit. As such, a one size fits all requirement such as this unreasonably discriminates against smaller franchisees and companies seeking a franchise, and effectively prohibits smaller companies from competing in the Louisville-Jefferson County Metro area.

Grant of this Petition and SQF's presence in the local telecommunications marketplace within the Louisville-Jefferson County Metro area will serve the public interest by supporting technological innovation, deployment of new infrastructure, lower rates through increased competition, and greater reliability of existing networks. Expanding the availability and reliability of telecommunications services in the Metro area will improve the telecommunications infrastructure and facilitate economic development.

III. Conclusion

For the foregoing reasons, Applicants submits that the public interest, convenience, and necessity would be furthered by approval of this Petition. Applicants respectfully request the Metro Council's approval of the Petition pursuant to Louisville-Jefferson County Code Chapter 116 § 116.03 (L) and grant Applicant a Special Exception of the \$1,000,00 Bond Requirement pursuant to Chapter 116 § 116.03 (F)(1) of the Louisville-Jefferson County Code, and in turn allow Applicant the

opportunity to procure a franchise bond pro-rated to equal \$2,000 per pole and to be increased each and every time the Applicant construct or purchase additional poles.

Respectfully submitted,

Matthew Bowen

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