



Louisville Metro Government

Legislation Text

File #: O-269-18, Version: 1

ORDINANCE NO. _____, SERIES 2018
AN ORDINANCE AWARDDING A COMMUNICATIONS SERVICES FRANCHISE TO INSIGHT KENTUCKY PARTNERS II, L.P., LOCALLY KNOWN AS CHARTER COMMUNICATIONS, PURSUANT TO THE TERMS AND CONDITIONS IN CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES.

SPONSORED BY: COUNCILMAN PAT MULVIHILL

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 jurisdictional boundaries of Louisville Metro; and

WHEREAS, Insight Kentucky Partners II, L.P., locally known as Charter Communications, ("CHARTER") submitted a bid proposal to Louisville Metro for 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 Charter, 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 jurisdictional boundaries of Louisville Metro pursuant to Chapter 116 of the Louisville Metro Code of Ordinances.

SECTION II. The franchise agreement by and between Charter 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 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 this Ordinance.

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

H. Stephen Ott

David James

Metro Council Clerk

President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By:

O-269-18 - Charter Ordinance and Franchise Agreement(8-15-18).docx **FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the Louisville/Jefferson County Metro Government (hereinafter "Louisville Metro") and Insight Kentucky Partners II, L.P., locally known as

Charter Communications (“Charter”).

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.

WHEREAS, Charter submitted a bid proposal to Louisville Metro for a communications services franchise pursuant to the requirements of Chapter 116 of the Louisville Metro Code of Ordinances (“Chapter 116”).

WHEREAS, pursuant to Ordinance No. _____, Series 2018, Louisville Metro granted to Charter, and its lawful successors, assigns, or transferees approved pursuant to Section 116.02(R) of Chapter 116, a non-exclusive franchise, for a period 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 Louisville/Jefferson County, Kentucky pursuant to Chapter 116 (“Franchise Agreement”).

WHEREAS, Louisville Metro and Charter have entered into this Franchise Agreement to memorialize the award by Louisville Metro to Charter of said franchise pursuant to the terms and conditions reflected in Chapter 116 and the Franchise Agreement.

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 Charter hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Chapter 116 is incorporated herein by reference in its entirety and shall apply as if fully set

forth herein, subject to Paragraph 9 and 10 herein, and without waiving Charter's objections to the "one-touch" provisions of the Ordinance (previously codified at Metro Code Section 116.72(d), and now codified at Section 116.03(D)(2) of the Ordinance) that are raised as claims and arguments concerning such one-touch provisions in the on-going litigation styled as *Insight Kentucky Partners II, L.P. vs Louisville/Jefferson County Metro Government, et al.*, Case No. 3:16-cv-625-CHB-CHL, presently pending before the United States District Court, Western District of Kentucky.

2. The bid of Charter 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. Charter agrees to comply with all applicable requirements as set forth in the Louisville Metro Public Works & Assets Utility Policy, subject to Paragraph 9 herein.

4. Charter agrees to dedicate and activate at no cost to Louisville Metro channels for the carriage of non-commercial public, educational and governmental access ("PEG Channels"). The PEG Channels shall consist of:

- (a) one (1) full-time public access channel; and
- (b) one (1) full-time government access channel.

Charter shall make the PEG Channels available on its cable system to all of its cable service subscribers. In addition, pursuant to LMCO Section 116.06(b), Charter will not prevent any of its subscribers from accessing the PEG Channels that are available on the Louisville Metro website. As used in this Section 4, a subscriber is anyone who is located within the territorial limits of Louisville Metro and who is billed for and authorized to receive the applicable service provided by Charter. To the extent permitted by law, Louisville Metro shall indemnify and hold harmless Charter from and against any and all liability resulting from the use of the public and governmental access channels by Louisville Metro or its designee(s), except to the extent such use is not within the direct control of or

otherwise directed by Louisville Metro. The foregoing defines Charter's obligations pursuant to LMCO Section 116.06(b) to provide and make available PEG Channels pursuant to this Franchise and the Ordinance.

5. Louisville Metro grants unto Charter a non-exclusive cable 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 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.

6. The Franchise Agreement shall commence _____, 2018, and shall expire on _____, 2038.

7. Charter does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of the Franchise Agreement, and further to faithfully perform all acts required of it as the purchaser of the Franchise Agreement

8. 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, including any lawful successors, assigns, or transferees, approved pursuant to Section 116.02(R) of Chapter 116.

9. Louisville Metro and Charter agree that pursuant to Section 116.05 of Chapter 116, there is a process in place for generally applicable changes to Chapter 116 and the Louisville Metro Public Works & Assets Utility Policy which are the result of Louisville Metro's lawful exercise of its police power. Louisville Metro and Charter further agree the Franchise Agreement is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained or incorporated by reference herein, including any action that has the effect of limiting the benefits or expanding the obligations of Charter, that are granted by this Franchise

Agreement, or by the versions of Chapter 116 and the Louisville Metro Public Works & Assets Utility Policy in effect as of the date of execution of this Franchise Agreement, except as to those generally applicable changes which are the result of Louisville Metro's lawful exercise of its police power. Any changes, modifications or amendments to this Franchise Agreement and/or Charter's rights and obligations under it, except those provided for by Section 116.05 pursuant to Louisville Metro's lawful exercise of its police powers, must be made in writing, approved and adopted by the Metro Council by a majority vote, and signed by Louisville Metro and Charter. Nothing herein shall constitute a waiver of any rights held by Charter or Louisville Metro under applicable federal, state, and local law.

10. Louisville Metro and Charter agree that Charter's obligations under certain sections of Chapter 116 may be satisfied as follows:

a. For the purposes of Charter's compliance with Chapter 116 and this Franchise, and without waiving any arguments Charter may have under applicable law: (1) Section 116.06(E) of the Ordinance shall not require Charter to reimburse a Customer for costs incidental to the return of equipment, such as transportation to a Charter location or a shipping location, and (2) for purposes of Section 116.06(E) and Section 116.12(A) only, Customer shall have the same meaning as "subscriber" as that term is defined in Section 4 herein.

b. Charter may satisfy its obligations under Section 116.02(P) (Description of Services) by including its service offerings on its publicly available website.

c. The obligations of Section 116.03(B) concerning installation of Louisville Metro Conduit shall apply only to installations of conduit by Charter where Louisville Metro requests installation of Louisville Metro Conduit during the permitting process.

d. Notwithstanding the language of Section 116.03(D)(1), Charter shall not be required to underground its aerial Facilities in a particular area unless Louisville Metro imposes a similar

undergrounding obligation upon all other Franchisees and users of the Rights-of-Way in that area.

IN WITNESS WHEREOF, Louisville Metro and Charter 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	INSIGHT KENTUCKY PARTNERS II, L.P.
_____	By: Insight Kentucky Partners I, L.P., its General Partner, By: Insight Communications of Kentucky, L.P., its General Partner, By: Insight Midwest Holdings, LLC, its General Partner, By: Charter Communications, Inc., its Manager
GREG FISCHER, MAYOR APPROVED	BY: _____
AS TO FORM AND LEGALITY: Michael J. O'Connell Jefferson County Attorney	TITLE: _____
By:	