

ORDINANCE NO. 0-06-20

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE TELECOMMUNICATIONS (OR RELATED NON-CABLE) FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS OR RELATED NON-CABLE SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY OF CITY OF COVINGTON FOR A TEN (10) YEAR DURATION; AND PROVIDING FOR COMPLIANCE WITH OTHER RELEVANT LAWS, REGULATIONS, STANDARDS, AND ORDINANCES; DEFINITIONS; WORK, MATERIALS AND CONSTRUCTION STANDARDS; WIRE MOVING AND TREE TRIMMING; PERFORMANCE BONDS; INDEMNIFICATION; INSURANCE; ACCESS TO PROPERTY AND INSPECTIONS; NOTICE OF FILINGS WITH THE PUBLIC SERVICE COMMISSION; NO VESTED RIGHTS; LIMITED ASSIGNMENT; NOTICE OF FORECLOSURE AND BANKRUPTCY; CANCELLATION OR TERMINATION; VIOLATIONS AND PENALTIES; PERMITTING AND INSPECTION FEES; ADDITIONAL PERMITTING AND OTHER REQUIREMENTS FOR SUBSTANTIAL NEW CONSTRUCTION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

* * * *

NOW THEREFORE

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1 - Creation of Franchise.

There is hereby created a non-exclusive franchise granting to the purchaser thereof whose bid may be accepted, the discretionary right to construct, erect, operate and maintain upon, through, along, under and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of City of Covington, a Telecommunications System (or a related system which is not otherwise a Cable System) embracing underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, fiber, electrical conductors and other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of any type of Telecommunications System, subject to all of the provisions of this Ordinance. This franchise does not excuse the Grantee from complying with any and all applicable existing and future local laws and ordinances, as may be adopted or amended in the future, and their pursuant regulations.

Section 2 - Existing Legislation.

The Government has already adopted legislation and regulations pertaining to, and including but not limited to, permitting, construction, street project and other related activities by Grantees, franchisees and others in its Rights-of-way. Therefore, the terms

and provisions of the City of Covington existing ordinances, (the “Ordinances”), and as it may be amended in the future is incorporated herein by reference, and shall apply as if fully set forth herein.

Section 3 - Definitions.

The definitions and terminology of any terms contained in this Ordinance which are not specifically defined in this section may be contained in the applicable provisions of the Ordinances (as they may be amended in the future) which are hereby incorporated herein by reference.

- (a) “Applicant” means a Person which is applying for a franchise.
- (b) “Application” shall refer to the list of documents and information set forth in Section 4 required from new entrants, including any written responses provided on Government forms or written correspondence provided in response to Government inquiries and investigations. Applications must comply with the requirements of this Ordinance in its entirety.
- (c) “Cable Service” shall have the meaning in this Ordinance as it is defined in Section 602(6) of the Communications Act of 1934, as amended as it may be amended (hereinafter cited as 47 U.S.C. § 522(6)).
- (d) “Cable System” shall have the meaning in this Ordinance as it is defined in Section 602(7) of the Communications Act of 1934, as it may be amended (47 U.S.C. § 522(7)).
- (e) “Board of Commissioners” means the City of Covington Board of Commissioners.
- (f) “Cell Tower Regulations” means the Regulations for Cellular Antenna Towers and Small Cell Towers promulgated and administered by the Kenton County Planning Commission and its subdivision, PDS.
- (g) “Co-Location” means the mounting or installation of two (2) or more Facilities of any provider of Telecommunications Service on the same existing pole, structure or other improvement.
- (h) “Communications Act” means the Communications Act of 1934, as amended from time to time (47 U.S.C. § 151 et seq.).
- (i) “Customer” means a person located within the territorial limits of the Government who is legally receiving Telecommunications Service from the Grantee.
- (j) “Equipment and apparatus” means any manholes, underground conduits, ducts, nodes, electronic devices, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Telecommunications System.
- (k) “Facility” means any tangible component of Grantee's Telecommunication System.
- (l) “FCC” means the Federal Communications Commission, or its lawful successor.
- (m) “Franchise Fee” means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee’s use of public rights-of-way and roads. Use of this definition in this Ordinance is without

prejudice to any rights Grantee or Government may have under Federal and Kentucky law as they may be amended.

- (n) "Government" or "City" means (unless otherwise specified) the City of Covington, a city created pursuant to the Kentucky Revised Statutes, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (o) "Grantee" means a Person to which a franchise under this Ordinance is granted by the Board of Commissioners, or its successors and assigns.
- (p) "Initial System" means the Telecommunications System and/or associated Facilities initially constructed and/or installed at the outset and depicted or described in Grantee's Application.
- (q) "PDS" means either (a) the Planning and Development Services of Kenton County, Kentucky, which is administered to by the Kenton County Planning Commission or (b) the Planning and Zoning Commission/Staff of the City (or its designee) as may be applicable.
- (r) "PSC" means the Kentucky Public Service Commission or its lawful successor.
- (s) "Person" is any person, firm, partnership, association, corporation, company, governmental entity or organization of any kind.
- (t) "Road" or "Street" or "Right-of-way" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or transmitting Telecommunication System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Telecommunication System.
- (u) "Shall" is mandatory, not merely directive.
- (v) "Telecommunications Service" means any service provided for consideration for the purpose of provision, transmission, conveyance, or routing of information including, but not limited to, voice, video, images data, or any other information signals without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. By way of example, and not limitation, Telecommunications Service includes, but is not limited to the following:
 - 1. telecommunications service (as defined by 47 USC §153(53) (as such term is now, or may in the future be, defined under federal law);
 - 2. telephone exchange service (as defined by 47 USC §153(54) (as such term is now, or may in the future be, defined under federal law);

3. exchange access (as defined by 47 USC §153 (20) (as such term is now, or may in the future be, defined under federal law);
4. mobile service (as defined by 47 USC §153(33) (as such term is now, or may in the future be, defined under federal law);
5. advanced communications services (as defined by 47 USC §153(1) (as such term is now, or may in the future be, defined under federal law);
6. long distance, inter-exchange and inter-LATA services, which may include MTS, WATS, 800, operator services, directory assistance and travel card services;
7. private line point to point service for end users of voice and data transmission; non-entertainment video, videoconferencing, or point to point private line service; and
8. any other intrastate or interstate telecommunication services which the PSC or the FCC has authorized, or services provided by radio common carrier.

(v) "Telecommunications System" means all fiber optics, wires, cables, ducts, conduits, vaults, poles, anchors, nodes, antennas, cabinets, fixtures, transformers, Equipment and apparatus and other necessary facilities owned or used by Grantee for the purpose of providing Telecommunications Service and located in, above or below the Streets.

(w) "Transfer" means any sale, lease, mortgage, assignment, merger or other form of transfer of this Ordinance or of the rights and privileges granted or authorized by this Ordinance.

Section 4 - Applications.

All applications received by the Government from Applicants shall become the sole property of the Government. Applications shall be accompanied by a non-refundable application fee of three thousand five hundred dollars (\$3,500) payable to the Government. Said application fee shall defray in whole or part the Government's costs to process any application filed under this Ordinance and negotiate, award and administer any franchise. Said application fee shall not be considered franchise fee payments. It is the intent of the Government that its fees shall be in compliance with the applicable federal law or regulation as it may be amended from time to time. The application fee for the shall be no greater than the annual fees presumed reasonable by the Federal Communications Commission. The Government reserves the right to require payment of the full amount if the results of a cost study, or similar administrative review, show that the additional cost is necessary to recoup the costs of maintaining the Right-of way, maintaining the structures within the Right-of-way, and the administrative costs associated with the issuance and regulation of Small wireless facilities and the activities allowed by the permits, or the federal regulations relating to the "reasonable" governmental fees are amended by the federal government or invalidated by a valid court order.

(a) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.

- (b) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.
- (c) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
- (d) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under this Ordinance, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.
- (e) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
- (f) All applications received by the Government from the Applicants will become the sole property of the Government. Applicants shall submit all requested information as provided by the terms of this Ordinance. The following information must be complete and verified as true by the Applicant:
 1. *Name and address of Applicant.* The Applicant's name, address, e-mail address and telephone and facsimile numbers; date of application and signature of Applicant or appropriate corporate officer(s); the name, address and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency.
 2. *Description of proposed Telecommunications System.* A description of the Applicant's proposed Telecommunications System design.
 3. *Services.* A statement setting forth a description of all the types of Telecommunications Services proposed.
 4. *Applicant organization.* The Applicant shall be a corporation or limited liability company authorized to do business in the Commonwealth of Kentucky, as certified by the Secretary of State. Applicant must fully

disclose the ownership of the Facilities to be used in rendering the Telecommunications Service.

5. *Technical description.* Applicant shall provide a technical description of the type of Telecommunication System proposed by the Applicant and Applicant's plan for the installation of the Telecommunications System. Telecommunications System designs are to be submitted in bullet format detailing equipment start point, routes and end point location accompanied by network routing maps(s). The following information shall be included in the application:
 6. If the Applicant is proposing an underground installation in existing ducts or conduits within the rights-of-way, information in sufficient detail to identify the location of the existing ducts or conduits to be occupied.
 7. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way:
 - a. The location, depth, size and quantity of proposed new ducts or conduits;
 8. A preliminary installation schedule and completion date.
9. *Engineering statement.* A statement from the Applicant's senior technical staff member, or consultant, advising that the Applicant's planned Telecommunications System and operations thereof would meet all the requirements set forth herein.
10. *Additional requirements.*
 - a. Supplementary, additional or other information that the Applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted with the above number of copies. The Government may, at its discretion, consider such additional information as part of the application.
11. A copy of the Applicant's certificate of authority from the PSC where the Applicant is lawfully required to have such certificate from the PSC.
12. A copy of all insurance policies or certificates required under this Ordinance.
13. A statement signed by the Applicant that the Applicant agrees to be bound by all provisions of this Ordinance and its franchise and

agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a system in the right-of-way.

- (g) The information provided by Applicant shall be certified as true and correct and Applicant shall be responsible to certify to the Government any material changes to the information provided in the completed application during the term of any franchise.
- (h) *Supplementation to applications.* The Government reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.
- (i) *The Government's rights reserved.* The Government reserves the right to waive all formalities and/or technicalities where the best interest of the Government may be served.
- (j) *Material Alterations.* Any work involving a material alteration of any portion of the (a) Telecommunications System or Facilities or (b) the Right-of-way itself, such as any significant excavation or deviation thereof, must/may need approved in advance by: (1) a licensed structural engineer at Grantee's sole cost and expense if applicable; (2) the City; and (3) the building or codes department of the Planning Commission if applicable.

Section 5 - Rights Under Franchise.

- (a) The Grantee shall have the non-exclusive right and privilege of constructing, erecting, operating and maintaining a Telecommunications System upon, through, along, under and over the Rights-of-way within the City of Covington as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to the Government, including but not limited to those contained in the Ordinances. The Government reserves the right to grant similar franchises to more than one Grantee.
- (b) This Ordinance does not give the Grantee, the right nor the privilege of attaching its Telecommunications System to any buildings, poles, streetlights, Equipment and apparatus, or Facilities owned by the Government. Additionally, this Ordinance does not give the Grantee the right nor the privilege of constructing, erecting, operating and maintaining a Telecommunications System upon, through, along, under and over real property owned by the Government (other than Rights-of-way.) If Grantee desires to attach its Telecommunications System to any buildings, poles,

street lights, Equipment and apparatus, or Facilities owned by the Government or construct, erect, operate and maintain a Telecommunications System upon, through, along, under and over real property owned by the Government, the Grantee shall be required to enter into separate agreements with the Government.

- (c) This Ordinance does not include the right or privilege to provide Cable Service or open video system (as defined by 47 CFR 76.1500 (a)), which shall be subject to separate franchising requirements, and also does not apply to (1) private communications system services provided without using the public rights of way; (2) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (3) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.
- (d) Should Grantee desire to construct, install, operate, place or attach any equipment and/or Facilities associated with or for “cellular antenna towers,” “small cell towers,” or “small cell systems” or any other equipment and Facilities and specifically addressed or covered in the Cell Tower Regulations, Grantee shall be required to make application with PDS, as required by the Cell Tower Regulations prior to obtaining an encroachment permit.
- (e) References to Grantee’s poles throughout this Ordinance shall not be construed as permission to install Grantee’s poles in the Right-of-way absent the issuance of a permit or approval by the City, as applicable.
- (f) Unless specifically approved by the City in advance in writing and evidenced by a separate franchise, license or other agreement and provide additional compensation, as provided in the definition of “Right-of-way”, Grantee shall neither allow nor place: (1) Facilities on a Traffic-Control Device, Traffic Signal, City Poles or any structure supporting a Traffic Control Device, Traffic Signal or City Poles, or (2) Facilities or Grantee Poles on any part of a City bridge, overpass, tunnel or other public structure. For purposes of this Section, the term “Traffic Signal” means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed; the term “Traffic-Control Device(s)” means all signs, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic; and the term “City Poles” means City owned poles such as street light poles,

utility poles, decorative or signage poles or other structures owned and operated by the City.

- (g) Grantee shall permit third-party Co-Location of Facilities and equipment provided, however, that such third-party user is authorized to be in the Right-of-way and that any such third-party Facilities and equipment shall be approved by the City.
- (h) Grantee shall provide: (a) at least [thirty (30)] days' advance notice ("Expansion Notice") of any non-emergency extension, addition or expansion of any existing portion or portions of the Initial System, except as follows: 1) any overlashing to Grantee poles constructed and Installed as part of the Initial System or to existing utility poles; 2) the construction or installation of new Facilities, equipment, conduits and other installations within the City of Covington comprising, or becoming part of, the Telecommunications System and Facilities; 3) customer service builds and 4) any customer-specific service related activities; and (b) the plans and specifications for such extension, addition or expansion or new Facilities. Grantee shall abide by the City permitting process and applicable law.
- (i) Grantee may enter contracts or leases with unrelated third-parties ("Users") in ordinary course of Grantee's business for use of the Telecommunications System within the Right-of-way subject to this Ordinance and without prior consent from the City. Such contracts or leases specifically include, but are not limited to, (i) grant of an indefeasible right of User interest in the Facilities, or any portion thereof; and (ii) offer to provide capacity or bandwidth in its Facilities. Such described contracts or leases ("User Contract" or "User Contracts") shall be subject to all requirements and provisions of this Ordinance and the following:
 - a. No Person shall transmit data over the Telecommunications System except under a User Contract.
 - b. Such User(s) shall not perform any construction, installation, maintenance, operations or other work of any kind in the Right-of-way related to the Telecommunications System. Grantee shall disclose the identity of such User(s) to the City upon execution of the User Contract, subject to all confidential and proprietary protections available under applicable law, and nothing in this section shall be construed to require Grantee to violate state or federal law regarding subscriber privacy. All User Contracts shall prohibit User(s) from performing any construction, installation, maintenance, operation or other work of any description in

the Right-of-way related to the Telecommunications System, unless such User(s) have an agreement or franchise with the City.

- c. In the event the User Contract provides for the User to construct, install, operate or maintain any portion of the Telecommunications System within the route in the Right-of-way, no such arrangement shall proceed until the User enters into a Franchise with the City for use of the City's Right-of- Way.

Section 6 - Standards.

The Grantee shall conform to at least the minimum standards or requirements in federal and state law or regulation in the operation of its Telecommunications System pursuant to this Ordinance. In addition to complying with other applicable law, the Grantee shall:

- (a) All working Facilities and conditions used during construction, installation and maintenance of Facilities (including clearance of wires and cables above the Rights-of-way and placement of any underground facilities) shall comply with the standards of the Occupational Safety and Health Administration, the National Electric Safety Code, and the National Electric Code. In the operation of its Telecommunications System, the Grantee shall conform to all standards required by applicable state or federal law or regulation;
- (b) All materials and equipment used or installed in construction shall be of first-class quality, and any defect in the work, materials or equipment, whether latent or patent, will be remedied by the Grantee at its cost;
- (c) Construction, reconstruction, maintenance, or removal of any Facilities, shall be performed with due regard for the rights of the Government and others, and shall not unnecessarily interfere with, or in any way injure the property of the Government or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Rights-of-way;
- (d) Placement of lights, danger signals or warning signs shall be undertaken by the Grantee in compliance with applicable law;
- (e) Unless exempted by the Government, Facilities shall be installed underground at any location where all other utilities' Facilities that are used to provide customer service are then being installed underground, or when otherwise required under the Ordinances, and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable local law or regulation. The

Grantee assumes all responsibility for damage or injury resulting from its placement or maintenance of any above-ground Facilities;

- (f) With respect to any Facilities, equipment, cables and lines of Grantee that are or have been installed aboveground in the Right-of-way, Grantee may be required subsequently, in order to protect public safety, to bury those facilities which are capable of being placed underground at its expense subject to the provisions of this Ordinance and/or City ordinances, rules and regulations. Once Grantee is permitted to install its Facilities aboveground, the City may require Grantee to bury its Facilities in conformance with City ordinance, rules or regulations only on the condition that all utilities in the Right-of-way are also required to bury their facilities. The Grantee may contract and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all utilities involved in the underground project.
- (g) Grantee shall identify all of its Facilities, new and existing, by tagging or marking its Facilities with the Grantee's name and telephone number. Additionally, Grantee shall provide the Government annually with an electronic map (compatible with the Government's GIS System) which contains the location of all of its Facilities;
- (h) The Government, through its Mayor or his or her designee, or through such assistants as the Government may employ or designate, may, at all times and under reasonable conditions with prior notice, have reasonable access to all or any of the property or used in part or in whole by the Grantee in its operating and maintaining the Telecommunications System under this Ordinance and located within the Rights-of-way; and
- (i) The Grantee shall to provide to the Government and/or its Board of Commissioners with information pertaining to its provision of Telecommunications Services pursuant to this Ordinance upon reasonable request. This shall include, but is not necessarily limited to, attending public meeting(s) at which some or all of the Board of Commissioners members are in attendance (in order to provide such information upon reasonable advance notice) and providing an annual update to the Board of Commissioners upon its request.
- (j) Grantee shall comply fully with all FCC Regulations, including regulations addressing or pertaining to (a) radio spectrum or radio frequencies ("RF") generally, (b) RF safety and exposure, (c) limits for RF energy, (d) RF or spectrum management, and (e) technical requirements. Grantee shall resolve, as promptly as possible after receipt of written notice from the City

of technical interference problems caused by Grantee's Telecommunications System, Facilities, Grantee poles and related equipment with respect to (a) any City owned or operated equipment; and (b) any third-party or User equipment or with respect to additional Grantee equipment. If such interference is disruptive (as defined by FCC Regulations), such interference must be resolved as soon as possible and if such interference cannot be resolved within 24 hours, Grantee shall discontinue its signal until the interference is corrected, even if operating in compliance with FCC Regulations. Nondisruptive, intermittent interferences must be corrected within thirty (30) calendar days or Grantee's signal shall be disconnected until the interference is resolved. Additionally, Grantee shall also comply fully with all regulations and rules of the PSC and secure, obtain and maintain all necessary and appropriate certificates, tariffs, and permits needed for the construction, installation, maintenance and operation of a Telecommunications System and the offering or sale of Telecommunications Services.

- (k) Facilities of the Telecommunications System shall be concealed or enclosed as much as possible in a box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible. All such equipment, boxes, cabinets and units shall be painted and maintained to prevent any deterioration, degradation or rusting of such equipment, boxes, cabinets and units. Failure of Grantee to comply with this section, after a thirty (30) day right-to-cure period, shall constitute an event of default.
- (l) As soon as practical, but not later than five (5) days from the date Grantee receives notice thereof, Grantee shall remove all graffiti on any of its Telecommunications System, Facilities, Grantee poles and related equipment located in the Right-of-way. In the event Grantee does not remove the graffiti within the time period specified in this section or should the City deem any graffiti to be overtly offensive or obscene and reasonable discretion dictates its immediate removal, then the City may remove or cause the graffiti to be removed promptly at the reasonable cost and expense of Grantee. Grantee shall reimburse the City within thirty (30) days of billing by the City accompanied by an itemized statement of the City's reasonable costs. Any removal of graffiti effected by painting over the graffiti shall be done with the same color and type of paint as is on the Telecommunications System, Facilities, Grantee poles or related equipment. The foregoing shall not relieve Grantee from complying with any City graffiti or visual blight ordinance or regulation.

- (m) If at any time the City or other agency or authority of competent jurisdiction determines that any work being done in the Right-of-way by Grantee or its contractors or Users presents a danger to the public health, safety or welfare, the City may require Grantee to cease and desist all work until Grantee and/or its contractors or Users, at its or their own expense, take the necessary corrective action. Should the City have to correct any condition, the City shall bill the Grantee for the actual cost of such correction and the Grantee shall promptly reimburse the City for its actual costs. If the Grantee fails to promptly reimburse the City, the City may take whatever actions necessary to enforce this Ordinance or Grantee's Franchise awarded pursuant to this Ordinance, including revoking Grantee's Franchise.
- (n) Grantee shall not allow or install power generators or back-up generators in the Right-of-way without the express written consent of the City.
- (o) In order to minimize street cuts, excavation and additional utility poles (including Grantee poles) in the Right-of-way, while preserving the rights of Grantee and other licensees or grantees to provide Telecommunications Services or other services, prior to applying for an encroachment permit to construct or install, or perform work on, the Telecommunications System, Facilities, a Grantee pole or other equipment in the Right-of-way, Grantee shall seek to use an existing utility pole, conduit, duct, conduit system or other facility where available in the Right-of-way. If an existing utility pole, conduit, duct, pipe or other Facility is unavailable to accommodate the proposed installation or the conditions required by other licensees or grantees owning the utility pole, conduit system, conduit, duct, pipe or other Facility that Grantee seeks to use are commercially unreasonable, Grantee shall indicate the reason(s) as part of its encroachment permit.
- (p) It is the policy of the City to encourage shared use of telecommunications and other utility Facilities by Grantees, licensees and permittees whenever practicable or feasible. Accordingly, Grantee shall make available and grant permission to other licensees, Grantees and Users of the Right-of-way the right to utilize Grantee poles, conduit, conduit system, duct, pipe or other Facilities for the purpose of attaching or locating thereon or therein any cable, wire, fiber optic lines, equipment or other facilities of such Grantees, licensees, grantees and Users; provided, however, that such utilization, attachment or location is practicable or feasible and provided, the other person enters Grantee's standard agreement, the terms and pricing provisions of which shall be in accordance with Federal and State laws and regulations.
- (q) The City may require Grantee to relocate its Telecommunications System, Facilities, Grantee poles and related equipment at the expense of Grantee:

(a) in order to allow the City to make any public use of or improvements to the Right-of-Way; (b) as made necessary due to a change in grade or other change in the Right-of-way made by the City; (c) as a result of traffic conditions or public safety or the widening or reconfiguring streets, highways or lanes; (d) as a result of the construction or installation of any public structure or public improvement by the City, the State or other public agency or district; or (e) in connection with any decision or action by the City to abandon or vacate a street, road, highway, avenue, lane, path, alley, public way, sidewalk or other Right-of-way space or area. Nothing in this Ordinance or the Franchise granted pursuant hereto shall abrogate the right of the City, or any governmental authority, to perform or carry out any public works or public improvements of any description, provided that the City shall comply with the provisions of the Telecommunications Act. The City shall not be liable for lost revenues sustained by Grantee, however caused, because of damage to, modification, alteration, or destruction of Grantee's Facilities in the Right-of-way or from the construction, installation, operation, and/or maintenance of City facilities, structures and/or the Right-of-way.

1. The City shall provide thirty (30) days' prior written notice of the necessary relocation. Grantee shall have at least thirty (30) days to complete the relocation.
2. If Grantee fails to complete the work within the time allotted by the City, the City or other public agency or district may perform the work at the expense of Grantee.
3. In the event Grantee refuses or neglects to alter or relocate its Telecommunications System, Facilities, Grantee poles or related equipment in a timely fashion, the City or other public agency shall have the right to break through, remove, alter or relocate such Facilities, equipment and poles as necessary without any damages or liability owing to Grantee, and Grantee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. Grantee shall pay to the City, within thirty (30) days of billing accompanied by an itemized statement, the actual costs incurred by the City in connection with its relocation, removal and/or alteration of the Telecommunications System, Facilities, Grantee poles and/or related equipment.
4. In cases of emergency, the City shall notify Grantee promptly upon learning of the emergency and the City may take necessary action to remediate the emergency situation, exercising reasonable efforts to avoid an interruption of Grantee's service. In cases of emergency, the City may cut, remove, or relocate the Grantee's Telecommunications System, Facilities, Grantee Poles and related equipment immediately at Grantee's expense without notice to Grantee, provided that the City shall undertake efforts to notify Grantee as soon as practicable after any remediation is complete. Grantee shall bear all costs of reinstallation, repair or other costs arising out of the emergency cutting, removal or relocation. All costs incurred by the City in cutting, removing or relocating such facilities, poles and equipment shall be

paid by Grantee within thirty (30) days of billing accompanied by an itemized statement by the City.

- r. Grantee shall use all reasonable efforts to locate pedestals or other aboveground Facilities along property lines or adjacent to other utility pedestal or Facility locations.

Section 7 – Permits and Tree Trimming.

- (a) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than twenty-one (21) days advance notice to arrange for such temporary wire changes.
- (b) The Grantee shall have the authority to trim trees upon the overhanging Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires or cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all applicable laws or regulations and the National Arborist Association standards.
- (c) Grantee shall not (a) construct, install, maintain or operate a Telecommunications System, Facilities, Grantee poles or any related or associated equipment or (b) make any material alteration of the Telecommunications System, Facilities or Grantee poles, without obtaining an encroachment permit.

Section 8 - Indemnification.

The Grantee shall indemnify, hold harmless, and defend the Government from any and all losses or claims of whatever kind to the extent that they arise from or are alleged to have arisen, directly or indirectly from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the Government. This indemnity shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive to the extent permitted by the applicable statute of limitations.

For purposes of this Indemnity provision:

- (1) The word “defend” includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at

Grantee's expense, using an attorney selected by the Grantee and approved in writing by the Government which approval shall not be unreasonably withheld.

- (2) The word "claims" includes, but is not limited to, claims, demands, liens, suits, and other causes of action of whatever kind.
- (3) The word "losses" includes, but is not limited to: attorneys' fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any Person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the Government, and damage to or destruction of any property, including the property of the Government.

Section 9 – Insurance.

- (a) The Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:
 - (1) Commercial General Liability Insurance with:
 - A. Limits of not less than \$10,000,000.00 for Bodily Injury and Property Damage.
 - B. Products-Completed Operations coverage.
 - C. Personal and Advertising Injury coverage.
 - D. Explosion, collapse & underground coverage.
 - E. Grantee's Commercial General Liability insurance policy will list as additional insureds, "the City of Covington, its elected and appointed officials, employees, volunteers and consultants for their vicarious liability from the negligent acts or omissions of Grantee.
 - F. Additionally, such insurance shall contain endorsement that Grantee's insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee's insurance and shall not contribute to it.
 - (2) Comprehensive Automobile Liability Insurance providing limits of not less than \$5,000,000.00.
 - (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000 with endorsement that insurer shall agree to waive all rights of subrogation against Government for losses arising from work performed by the Grantee for Government.
 - (4) The Grantee shall abide by all local, state, and federal insurance regulations.
- (b) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.
- (c) Evidence of Insurance. The Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee shall to provide the Government, the following:

- (1) Signed renewal Certificates for expiring policies;
- (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements;
- (d) Right to Review, Audit and Inspect. Government may review, audit, and inspect any and all of Grantee's relevant records and operations to insure compliance with these Insurance requirements.
- (e) Safety and Loss Control. Grantee shall to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.
- (f) Maintenance of Insurance. The insurance required in this Section 9 shall not be suspended, voided, canceled by the Grantee, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested to the Government.
- (g) Definition of Default. If Grantee fails to comply with any of these insurance, safety or loss control provisions (including with, among other things, Section 9(f)) within ten (10) business days after notice from the Government, then the Grantee shall be in noncompliance and this noncompliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise. The date of default with respect to Section 9(f) shall relate back to the date of breach, without regard to the date on which notice is provided by the Government.

Section 10 - Non-discrimination and Affirmative Action.

The Grantee shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, sex, age or disability.

Section 11 - Transfer of Control & General Rate Cases.

- (a) In the event that the Grantee files for a Transfer of the Grantee, or a general rate case with the PSC, it will furnish the Mayor or her designee with timely notice of such filing. In the event the Government should choose to intervene in such PSC action, the Grantee shall not oppose such intervention.
- (b) No Transfer shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Government which shall not be unreasonably refused, withheld, or delayed. The notice shall include full

identifying particulars of the proposed transaction, and the Board of Commissioners shall act by resolution. The Government shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control or assignment, if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.

- (c) Section 11(b) is not intended to apply to assignments to a parent, subsidiary or affiliate of the Grantee, or in those instances in which the Grantee has filed for a transfer of control before the PSC. Such inter-corporate transfers or transfers subject to the jurisdiction of the PSC shall require notice to the Government as provided in Section 11(a).
- (d) In making a determination on whether to grant an application for a Transfer, the Government may consider the financial, technical and other qualifications of the transferee (assignee) to operate the Telecommunication System; whether the incumbent Grantee is in compliance with this Ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance and any other criteria allowed by applicable law.
- (e) The consent or approval of the Government to any Transfer of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the streets.
- (f) The person to whom the Franchise is transferred ("Transferee") shall complete a transfer application in a form required by City and pay a \$2,500 application fee, providing the following information:
 - 1. Name, post office address, E-mail address, fax number and telephone number of Transferee, parent of Transferee, and any affiliate of Transferee who may be or is expected to lease, use or operate Transferee's Telecommunications System, Facilities, Grantee poles and related equipment, or make any payment, in whatever form, to Transferee in order to utilize Transferee' Telecommunications System, Facilities, Grantee Poles and related equipment.
 - i. Address and telephone number of local office of Transferee, if any.
 - ii. Method to contact Transferee on a 24-hour basis in case of emergency with respect to its Telecommunications System, Facilities, Grantee poles and related equipment.

- iii. The articles of incorporation or organization of Transferee, the state in which Transferee was formed, and whether Transferee is in good standing in that state.
 - iv. Whether Transferee is qualified to do business in the Commonwealth of Kentucky.
 - v. The name, address and telephone number of Transferee's agent for service of process in Kentucky.
 - vi. A statement signed by an officer of Transferee certifying that Transferee has obtained authorization from the PSC to provide Telecommunications Services in Kentucky, and a copy of the document constituting that authorization. If no approval is required by the PSC, the Transferee shall identify the statute or regulation exempting Transferee from the necessity to obtain approval.
 - vii. An agreement signed by Transferee and Grantee stating that Transferee: (a) has read this Agreement, (b) will comply with all its terms and conditions, and (c) has accepted and assumed all obligations and liabilities arising under this Agreement.
- (g) Should Grantee attempt to effect a transfer of its Franchise without fully complying with this Section, or should Transferee fail to comply with the requirements of this Section, such assignment or transfer shall be invalid, unless ratified by the City. The Transferee shall be liable for all costs incurred by the City with regard to the transfer of the Franchise, including attorneys' fees, and shall reimburse City within thirty (30) days of billing accompanied by an itemized statement.
- (h) Notwithstanding a transfer of a Franchise to the Transferee, Grantee shall remain liable and obligated for any debts or obligations incurred to the City by Grantee prior to the date of the Transfer.

Section 12 - Franchise Duration.

- (a) The franchise hereby created shall be for an initial period of ten (10) years from the date of acceptance by the Board of Commissioners.
- (b) The franchise created by this Ordinance creates no vested rights in the Grantee other than those provided by this Ordinance or at law, and any installation or placement of Facilities by the Grantee in the Rights-of-way is at the Grantee's risk.

Section 13 - Penalties.

- (a) If, after the Grantee is provided the opportunity to appear and present evidence before the Mayor or his or her designee, the Mayor finds that the Grantee has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Mayor or his or her designee shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.
- (1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Grantee may post a performance bond, letter of credit or other surety acceptable to the Government in an amount sufficient to complete such construction projects. This section shall not apply to any projects for which performance bonds or other surety is already pledged.
 - (2) For failure to provide data and reports requested by the Government and as required by this Ordinance the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
 - (3) For failure to pay a permit fee or franchise fee when due pursuant to local law, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) If the Grantee fails to comply within thirty (30) days of any Board of Commissioners resolution directing compliance with any other provisions of this Ordinance, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues. The decision of the Board of Commissioners may be appealed to a court of competent jurisdiction.
- (c) The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek the Grantee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this

section is in addition to its right to terminate and cancel as set forth in Section 15 of this Ordinance.

Section 14 - Maintenance of Telecommunication System.

The Grantee shall maintain its Telecommunication System in reasonable operating condition at all normal times during the term of its Franchise. An exception to this is automatically in effect when Telecommunications Service furnished by the Grantee is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Grantee, or by storms, floods or other casualties, in any of which events the Grantee shall do all things reasonably within its power to restore normal Telecommunications Service within a reasonable period of time.

Section 15 - Right to Terminate and Cancel the Franchise.

- (a) In addition to all other rights and powers pertaining to the Government by virtue of this Ordinance or otherwise, the Government, by and through its Board of Commissioners, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
 - (1) Willfully violates any provision of this Ordinance, the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect or due to a force majeure act;
 - (2) Willfully attempts to evade any provision of this Ordinance or the franchise or practices any fraud or deceit upon the Government;
 - (3) Fails to begin or complete construction as provided under this Ordinance or the franchise;
 - (4) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of the franchise; or
 - (5) Entry of a final and non-appealable order by the PSC which revokes any authority of the Grantee to provide Telecommunications Service in the City of Covington, Kentucky.
- (b) The Government may make a written demand that the Grantee do or comply with any such provision, rule, order or determination. The Grantee will be provided the opportunity to appear and present evidence before the Mayor or his or her designee, whose decision shall be the final

administrative decision, and shall be in writing and provide the basis for the decision. If the violation by the Grantee continues for a period of thirty (30) days following such a decision by the Mayor or his or her designee without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Grantee, the Government may place its request for termination of the franchise as early as the next regular Board of Commissioners meeting agenda. The Government shall cause to be served upon Grantee, at least ten (10) days prior to the date of such Board of Commissioners meeting, a written notice of intent to request such termination and the time and place of the meeting and shall publicly notice the same.

- (1) It shall be a defense to any attempt to terminate and cancel the franchise that the Grantee was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.
- (2) The Board of Commissioners shall consider the request of the Government and shall hear any Person interested therein, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause.
- (3) If such violation by the Grantee is found to have been with just cause, the Board of Commissioners shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable within the Government's lawful authority.
- (4) If the Board of Commissioners determines such violation by the Grantee was without just cause, then the Board of Commissioners may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited unless there is compliance by the Grantee within such reasonable period as the Board of Commissioners may fix. Any such determination by the Board of Commissioners is a final appealable action to a court of competent jurisdiction.

Section 16 - Foreclosure or Other Judicial Sale.

The Grantee shall provide the Government, in the form and manner required by the appropriate court or judicial body, at least thirty (30) days advance written notice, if at all possible, of the foreclosure or other judicial sale of all or a substantial part of the Grantee's Facilities within the City of Covington, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a transfer or assignment of the franchise has taken place.

Section 17 - Government's Rights After the Appointment of a Receiver or Trustee.

The Board of Commissioners shall have the right to cancel a Grantee's franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

- (a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
- (b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Grantee.

Section 18 - Advertising for Bids.

It shall be the duty of the Mayor or his designee to offer the terms of this Ordinance to the public. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor or his designee after due notice thereof by advertisement or publication as required by law.

Section 19 - Bid Process.

- (a) Bids and proposals for the purchase and acquisition of the franchise hereby created shall be in writing and shall be delivered to the Mayor or his designee upon the date(s) and at the time(s) fixed by him or her in said advertisement(s) for receiving same. Thereafter, the Mayor shall report and submit to the Board of Commissioners, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval.
- (b) The Board of Commissioners reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise; and, in case the bids reported by the Mayor shall be rejected by the Board of Commissioners, it may direct said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.

- (c) Each bid made by a Person not already holding a franchise within the territorial limits of the City of Covington sufficient to render the Telecommunications Service required by this Ordinance, shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the Telecommunications System required to render the Telecommunications Service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient performance bond in favor of the Government in a sum equal to one-fourth (1/4) of the fair estimated cost of the Telecommunications System to be erected, conditioned that it shall be enforceable in case the Grantee should fail, within one hundred eighty (180) days, to establish and begin rendering the Telecommunications Service in the manner set forth in this Ordinance. Upon rendering the initial Telecommunications Service, this bond may be replaced by the performance bond required by Section 22(b), if applicable.
- (d) Bids made by a Person not already holding a franchise within the territorial limits of the City of Covington shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the Telecommunications System and compliance with all applicable state, federal and local statutes, ordinances and regulations.

Section 20 - Compensation.

- (a) During any period during which the Government opts to forego collecting a Franchise Fee in lieu of participating in the Multichannel Video Programming and Service Tax scheme under KRS 136.600 et seq., Grantee shall not be required to pay Franchise Fees.
- (b) The Telecommunications Excise Tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees.
- (c) If the Government exercises its constitutional right to collect Franchise Fees, Grantee shall pay a quarterly franchise fee to the Government,

which shall be the maximum Franchise Fee allowable under federal law, as may be adopted or amended in the future.

- (d) The first Franchise Fee payable under this Ordinance shall be paid to the Government ninety (90) days after the Government exercises its constitutional right to collect Franchise Fees.
- (e) If Franchise Fee payments are based on Grantee's gross revenues, said payment shall be made quarterly and paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of a franchise created under this Ordinance.
- (f) If Franchise Fee payments are based on the quantity of Grantee's facilities, said payment shall be computed based on Grantee's Facilities in the City of Covington as of January 1 of each calendar year and paid on or before April 15th of calendar year during the term of a Franchise created under this Ordinance.
- (g) Payment not received by the Government by the due date shall be assessed interest equal to one percent (1%) per month. Interest shall be compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the Government receives the payment.
- (h) Prior to making each payment to the Government, Grantee shall file with the Government a written report containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in form satisfactory to the Government.
- (i) If any Franchise Fee is owed to the Government, upon reasonable notice, the Government shall have the right to inspect the Grantee's income records, the right to audit and to re-compute any amounts determined to be payable under any Franchise granted pursuant to this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following

written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.

- (j) If any Franchise Fee is owed to the Government, in the event that any Franchise Fee payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- (k) The Government reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be imposed by the Government, the Commonwealth of Kentucky, or the federal government on Telecommunications Services.

Section 21 - Additional Requirements.

In addition to all other requirements, and except to the extent prohibited by law, any Grantee not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within the City of Covington, or any Grantee that is required pursuant to law to file for a certificate of convenience and necessity from the PSC in order to replace or significantly upgrade or expand a substantial portion of its existing Facilities within the Rights-of-way, shall also be required to perform the following requirements during the construction, replacement, upgrade or expansion of its Telecommunications System unless the Board of Commissioners determines that any or all of such requirements are not necessary to adequately protect the interests of the Government:

- (a) In addition to obtaining any and all permits required pursuant to the Ordinances, the Grantee shall submit for the Government's approval a comprehensive schedule of construction of its Telecommunications System no later than one (1) month after the Government's acceptance of the Grantee's bid. The schedule shall include sufficient detail for Government to determine the time and locations of construction activities and shall also depict the anticipated time frame of identifiable tasks required for construction purposes, as delineated by the Government. No construction related activities may be conducted in the Rights-of-way until the schedule is approved by the Government. In addition, at thirty (30) day intervals during construction, the Grantee shall provide the Government with a plan of construction activities setting forth a general description of the activities to be undertaken during the following thirty (30) days and designating the geographical area of the City of Covington that will be affected. Approval by

the Government of these plans shall constitute a condition which must be met prior to undertaking any construction activities.

- (b) The Grantee shall furnish traffic control plans, including site-specific hours of construction, to the Government no later than seven (7) days prior to the commencement of any construction activities. Such plans are subject to approval or modification by the Government. No construction related activities may be conducted in the Rights-of-way without an approved traffic control plan.
- (c) The Grantee shall provide the Government a local telephone contact number, staffed twenty-four (24) hours per day, to enable the Government to report any concerns regarding construction of the Telecommunications System. In the event that the Government reports any concerns to the Grantee, the Grantee shall respond within a reasonable time as specified by Government or as specified elsewhere in this Ordinance. The Grantee shall perform the required repair or correct any adverse impact to Government's use or operations or the use or operations of a third party caused by the Grantee's construction activities in the Rights-of-way at no cost to the Government.
- (d) Fourteen (14) days prior to commencement of construction, and every thirty (30) days thereafter during construction the Grantee shall publish, at its sole cost, a notice containing a map depicting where construction will occur in the *Kenton County Recorder*. Additionally, such notice shall provide a general description of construction activities and a telephone number to be called by citizens with questions concerning construction activities. A copy of said notice(s) shall be provided to the Government.
- (e) The Grantee shall provide at least fourteen (14) days' notice to other utilities in the City of Covington of its interest in seeking construction permits to open the street before it applies for any street cut permit. The Government shall provide the Grantee with a listing of all such utilities and their points of contact upon request. Such notice shall inform the other utility companies of the Grantee's intent to undertake construction in the affected areas and state that the other utility companies must notify the Government and the Grantee within seven (7) days of receipt of such notice of their desire to simultaneously lay conduit, or other Facilities, in any trench opened by the Grantee.
- (f) Failure to comply with the above provisions, or the Ordinances may, in the sole discretion of the Government:

- (1) Be the basis for the Government to reasonably require that the Grantee perform more extensive restoration work than otherwise anticipated by a permit; and
 - (2) May result in the Grantee being assessed an additional premium on any permit fee to recoup any additional costs or expenses reasonably associated with the Grantee's failure.
- (g) Unless otherwise provided an extension by the Board of Commissioners, the Grantee must make Telecommunications Services available within the City of Covington within one hundred eighty (180) days from the date of the award of the franchise. This requirement shall not apply to a Grantee that does not provide, or has no intention of providing, any Telecommunications Services to the City of Covington Customers.
- (h) The Grantee shall maintain accurate Telecommunications System design drawings, maps and improvement plans of the Telecommunications System, in a form acceptable to the Government, in a manner consistent with industry construction standards. The Grantee shall furnish the Government, without charge, with a complete set of "as-built" drawings within sixty (60) days of completion of construction of the Telecommunications System. Such maps and improvement plans shall also be furnished to Government in digital form and shall be provided pursuant to a lawful protective agreement.
- (i) The Government shall have the right, during the term of any franchise granted pursuant to this Ordinance , to install and maintain, free of charge, upon the poles or tower structures owned by Grantee and located in the Streets, any wire or fiber optic cables, pole fixtures and antennas that do not unreasonably interfere with the Telecommunication System operations of Grantee.

Section 22 - Letter of Credit and Performance Bond.

In addition to all other requirements, and except to the extent prohibited by law, any Grantee not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within the City of Covington, shall also be required to perform the following requirements during the construction of its Telecommunications System unless the Board of Commissioners determines that any or all of such requirements are not necessary to adequately protect the interest of the Government:

- (a) Within ten (10) days after the award of a franchise pursuant to this Ordinance, the Grantee shall deposit with the Government a one-year irrevocable

renewable letter of credit from a financial institution acceptable to the City of Covington in the amount of fifty thousand dollars (\$50,000.00). The form and content of such letter of credit shall be approved by the Government. The letter of credit shall be used to insure the faithful performance by the Grantee of all provisions of this Ordinance ; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance, and the payment by the Grantee of any claims, liens and taxes due the Government which arise by reason of the construction, operation or maintenance of the Telecommunications System.

- (1) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of Grantee's franchise, even if amounts have to be withdrawn pursuant to this section.
- (2) If the Grantee fails to pay to the Government any compensation within the time fixed herein; or, fails, after ten (10) days' notice to pay to the Government any taxes due and unpaid; or, fails to repay the Government, within such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with its franchise; or, fails, after three (3) days' notice of such failure by the Government to comply with any provision of its franchise which the Government reasonably determines can be remedied by demand on the letter of credit, the Government may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.
- (3) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.
- (4) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, by registered mail, a written notice of such intention to cancel or not to renew."

(b) The Government may require the Grantee to file with the Government a Performance Bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) in favor of the Government. This bond shall be maintained throughout the construction period. In lieu of the above-mentioned performance bond, the Grantee may deposit with the Government an irrevocable letter of credit from a financial institution acceptable to the City of Covington in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form and content of such letter shall be approved by the Government.

(1) In the event the Grantee fails to comply with the Ordinances or any law, Ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of this Ordinance or the franchise, including the Grantee's application (as required in Section 4), there shall be immediately recoverable, jointly and severally, from the principal and surety of the bond or the letter of credit, any damages or loss suffered by the Government as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Government legal staff, and costs, up to the full amount of the bond.

(2) Upon completion of construction the Grantee's initial service area the requirement of this additional performance bond shall be waived.

(3) The bond or letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this bond [letter of credit] may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, registered mail, a written notice of such intent to cancel or not to renew."

(4) The rights reserved to the Government with respect to the performance bond or letter of credit are in addition to all other rights of the

Government, and no action, proceeding or exercise of a right with respect to such performance bond or letter of credit shall affect any other right the Government may have.

Section 23 - Discontinuing Use of Facilities.

- (a) If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the Government may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the Government, the ownership of Facilities in the Government's Streets shall transfer to the Government and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that any such Facility remain in place, the Government may require Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The Government may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Government. Until such time as Grantee removes or modifies the Facility as directed by the Government, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 24 - Offers of Payment.

Bids offered for purchase of a franchise pursuant to this Ordinance shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the City of Covington, shall be deposited with the Government. This amount shall be in addition to the provision for any payments contained in Sections 19 this Ordinance. Any check deposited pursuant to this section by an unsuccessful bidder shall be returned when the Board of Commissioners shall have accepted the bid or bids which in its judgment is or are the highest and best.

Section 25 - Forfeiture.

Any violation by the Grantee or successor or authorized Grantee representative of the provisions of this Ordinance or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of its franchise and all rights hereunder after written notice to the Grantee and continuation of such violations, failure or default, as set forth herein.

Section 26 - Governing Law.

This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or any franchise shall be in the court of competent jurisdiction in Kenton County, Kentucky.

Section 27 - Non-enforcement by the Government.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Ordinance by reason of any failure of the Government to enforce prompt compliance, nor does the Government waive or limit any of its rights under this Ordinance by reason of such failure or neglect.

Section 28 - Agent.

The Grantee shall designate in writing a local agent to oversee and manage all activities required pursuant to this Ordinance to accept service of any legal proceeding initiated by the Government.

Section 29 - Third Parties.

This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Grantee.

Section 30 - Severability.

If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance.

Section 31. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.

In any case of an actual inconsistency between any provision or section of this Ordinance and any franchise granted hereunder, and any provision or section of a federal or state rule, regulation, or law, the federal or state rule, regulation, or law shall not only supersede the effect of the franchise, but also control in any local application

Section 32. Relief from this Ordinance.

- A. Grantee may file a written petition, at any time, with the Government seeking relief from one (1) or more provisions of this Ordinance. The relief requested may specifically include the delay in implementation of one (1) or more provisions of this Ordinance.
- B. So that no provider of Telecommunications Services shall receive an unfair competitive advantage, Grantee shall be entitled to relief from competition as follows:
 - 1. Grantee shall have no greater responsibility to furnish insurance, bonds, letters of credit or reports than any provider of Telecommunications Services in the Right of way.
 - 2. Grantee shall have no greater responsibility to pay a franchise fee than any provider of Telecommunications Services in the Right of way.

Section 33. Environmental Laws

- a. Grantee shall comply with, and shall cause its Users, contractors, sub-contractors and vendors to comply with, all rules, regulations, statutes or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Grantee's use of any portion of the Right-of-way under this Ordinance ("**Environmental Laws**"). Grantee shall promptly reimburse the City for any fines or penalties levied against the City because of Grantee's failure, and/or the failure of its Users, contractors, subcontractors and/or vendors to comply with Environmental Laws.
- b. Neither Grantee nor its Users, contractors, subcontractors or vendors shall possess, use, generate, release, discharge, store, dispose of or transport any Hazardous Materials on, under, in, above, to or from the site except in compliance with the Environmental Laws. "**Hazardous Materials**" mean any substances, materials or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state or local laws, regulations, ordinances or orders. Neither Grantee, nor its clients, Users, vendors or contractors, if any, shall deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials or substances in the City's storm sewer system or sanitary sewer system or elsewhere on or in the Right-of-way in violation of the Environmental Laws.

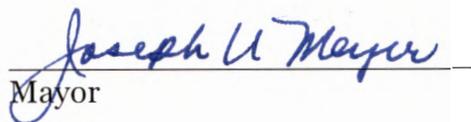
Section 34. Signage Requirement

All single wireless data or communications transmitter receiver Facilities shall have two (2) RF warning signs installed. A sign must be installed near the pole top at the where the safe approach distance ends for the FCC General Population/Uncontrolled Power Levels and read at a minimum "Warning- Antenna approach distance is ___ Feet" The second sign shall be placed near the base of the pole at eye-level and shall read "Radio frequency fields at pole top may exceed FCC limits for utility work on structure within the safe antenna approach distance. Call Grantee at Grantee's phone number for disconnect instructions or more information." The sign shall include Grantee's name and phone number. When work is required within the antenna approach distance, Grantee will disconnect the RF source.

Section 35. Effective Date.

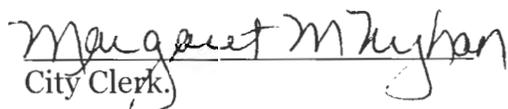
The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Board of Commissioners.

Section 36 - This Ordinance shall become effective on the date of its publication.



Mayor

ATTEST:



City Clerk.

Passed: 2-25-20 (Second Reading)

2-11-20 (First Reading)