

**CITY OF GEORGETOWN, KENTUCKY**

**ORDINANCE NO. 2021-05**

**AN ORDINANCE RELATING TO COMMUNICATIONS SERVICES IN THE CITY OF GEORGETOWN.**

**SUMMARY**

1. Requires a valid Franchise with the City of Georgetown for Communications Services in the Rights-Of-Way of the City, subject to certain exceptions, and provides the nature of said Franchises and establishes an application fee and process.
2. Provides that all Franchisees shall pay to the City the greater of five percent (5%) of Franchisee's Gross Revenue or two hundred seventy dollars (\$270.00) per Antenna in the Rights-Of-Way and defines the procedure for said payment, along with reporting, inspection, notice, assignment and other miscellaneous provisions related to the Franchise Fee.
3. Requires that Franchisee comply with the encroachment permitting requirements imposed by Georgetown Code of Ordinances Chapter 32 and other terms and conditions that may apply to an encroachment into the City's Rights-Of-Way; provides expectations for the removal or relocation of Facilities, including, but not limited to, cost, insurance and bonding, permitting, notice, traffic, delays, inspections and repairs.
4. Outlines other miscellaneous provisions and provides for transitions from existing franchises.
5. Provides requirements for all Franchisees providing Communications Service in the City of Georgetown; establishes licensing and conditions for Private Communications Systems in the Rights-Of-Way.
6. Defines review, reporting and recordkeeping rights and obligations, provides for termination or cancellation, establishes duties upon foreclosure, states that time is of the essence, provides for equal employment opportunity and defines violations and the enforcement and penalties therefor.
7. Provides for repeal of inconsistent ordinances, severability of provisions and an effective date upon passage and publication.

The full text of Ordinance 2021-05 is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at [www.georgetownky.gov](http://www.georgetownky.gov).

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INTRODUCED AND PUBLICLY READ FIRST TIME: March 8, 2021

PUBLICLY READ SECOND TIME AND PASSED: March 22, 2021

APPROVED: Tom Prather  
Tom Prather (Jun 17, 2021 12:12 EDT)

Tom Prather, Mayor

ATTEST: Tracie Hoffman  
Tracie Hoffman (Jun 18, 2021 09:10 EDT)

Tracie Hoffman, City Clerk

I, Devon E. Golden, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 21-05, of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9) and is a true and accurate summary of the contents of said Ordinance.



Devon E. Golden

**ORDINANCE 2021-05**

**AN ORDINANCE RELATING TO COMMUNICATIONS SERVICES IN THE CITY OF GEORGETOWN.**

SPONSORS: Tammy Lusby Mitchell and Todd Stone

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF GEORGETOWN, KENTUCKY:

**SECTION ONE**

A new Chapter of the Georgetown Code of Ordinances is created to read as follows:

- § 1 General provisions
- § 2 Franchise requirements and characteristics
- § 3 Rights-Of-Way management and Facilities requirements
- § 4 Miscellaneous
- § 5 Transitional provisions
- § 6 Franchisees providing Communications Service to Customers
- § 7 Private Communications Facilities
- § 8 Liabilities and penalties
- § 9 Remedies not exclusive
- §10 Review, termination, and cancellation
- §11 Foreclosure-receivership
- §12 Reports
- §13 Books and records of the Franchise
- §14 Time of essence
- §15 Equal employment opportunity
- §16 Violations
- §17 Enforcement and Penalties

**§ 1 GENERAL PROVISIONS.**

- (A) *Declaration of findings.* The City hereby declares, as a legislative finding, that the Rights-Of-Way controlled by the City:
- (1) Are unique and physically limited resources;
  - (2) Are critical to the travel and transport of persons and property in the City;
  - (3) Are intended for public uses and must be managed and controlled consistent with that intent;
  - (4) Can be partially occupied by the Facilities of providers of Communications Service, for the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
  - (5) Should be subject to specific additional regulations imposed in a competitively neutral, non-discriminatory, and non-discretionary manner as established by this chapter to ensure coordination of providers of Communications Service, maximize available space, and facilitate entry of a maximum number of providers of Communications Service and other services in the public interest.
- (B) *Title.* This chapter may be referred to and cited as the “Communications Service Franchise Ordinance.”
- (C) *Applicability.* The requirements of this chapter shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or State law, including such changes in applicable law as may be hereinafter enacted. No provisions of this chapter shall be disregarded, pursuant to this subsection, except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this chapter shall be deemed incorporated in each Franchise granted.
- (D) *Preservation of authority.* Any rights granted pursuant to this chapter and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce generally applicable ordinances necessary to the health, safety, and welfare of the public, as may be amended

from time to time (to the extent not in conflict with State or federal law, or Franchisee's Franchise). Nothing in this chapter shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, State, or local law currently in effect or as may hereinafter be amended.

- (E) *Public inspection of records.* Certain information required to be filed with the City pursuant to this chapter is subject to inspection and copying by the public pursuant to the provisions of the Kentucky Open Records Act, KRS 61.870 *et seq.*
- (F) *Indemnification.* As a condition of use of the Rights-Of-Way, each Franchisee, at its sole cost and expense, shall indemnify, protect, defend and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense (the "Indemnified Obligations") arising, directly or indirectly, in whole or in part, out of or in relation to the City's award of the Franchise to that Franchisee, the rights granted to the Franchisee, or the activities performed, or failed to be performed, by such Franchisee under the Franchise or use of the Rights-Of-Way, except to the extent that such Indemnified Obligations arise from or are caused by the negligence or willful misconduct of the City, its elected officials, officers, or employees. This indemnification shall survive the expiration or termination of any Franchise or removal of any System. The City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Franchisee and the Franchisee shall have the right to defend, settle, or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determines in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall be excused from any obligation to indemnify the City.

- (G) *Compliance with laws.* In performing activities and exercising rights and obligations under any Franchise, each Franchisee and other holder of a Franchise shall comply with all applicable federal and State laws, and, consistent with §1(D), local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of Rights-Of-Way and compliance with the Georgetown-Scott County Revenue Commission's regulations.
- (H) *Enforcement; attorneys' fees.* The City shall be entitled to enforce this chapter and any Franchise granted hereunder through all remedies lawfully available, and each Franchisee shall pay the City its costs of enforcement, including but not limited to reasonable attorneys' fees, in the event that Franchisee is determined judicially to have violated the terms of this Franchise.
- (I) *Relationship of the parties.* Under no circumstances shall any Franchise authorized by this chapter be construed to create any relationship of agency, partnership, joint venture, or employment between the City and the Franchisee.
- (J) *Defined terms.* For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**AFFILIATE** means, as to any Person, each Person, directly or indirectly, controlling, controlled by, or under common control with such Person.

**ANTENNA** means any device that transmits or receives signals. Such signals include but are not limited to radio and infrared waves for voice, data or video communications purposes.

**CITY** means the City of Georgetown, Kentucky.

**COMMUNICATIONS** means the transmission via the Facilities, in whole or in part, of video, audio, data, writings, signs, signals, pictures, sounds or other forms of information or intelligence

through wire, wireless or other electronic means, regardless of the federal or State statutory or regulatory scheme to which such transmissions may be subject.

**COMMUNICATIONS SERVICE** means the transmission of Communications via Facilities, to a Customer, or to any other Person, including a Private Communications System Owner's transmission of Communications, via a Private Communications System, that is within or outside the territorial limits of the City. Communications Service includes, but is not limited to, "telecommunications service," "enhanced service," "information service," "Internet access service," "broadband service," "video programming service," "other programming service," and Internet-based or "over the top" video service offerings, as those terms are now, or may in the future be, defined under federal law. The term also includes the use of all instrumentalities, Facilities, conduits, apparatus and services or functionalities (among other things, the receipt, forwarding, storage, generation or delivery of Communications) located within the territorial limits of the City, incidental to or designed to directly or indirectly facilitate or accept Communications.

**CUSTOMER** means a Person located within the territorial limits of the City who ultimately uses or is intended to ultimately use Communications Service provided by a Franchisee and is the ultimate last user of a Communications Service.

**FACILITIES** mean any portion of a System located in, along, over, upon, under, or through the Rights-Of-Way.

**FCC** means the Federal Communications Commission of the United States of America or any successor thereto.

**FRANCHISE** means a franchise granted under this chapter, or any other franchise granted by the City pursuant to Sections 163 and 164 of the Kentucky Constitution, or by the Kentucky General Assembly prior to the adoption of Sections 163 and 164 of the Kentucky Constitution, which permits a Franchisee to install or operate any Facilities in the Rights-Of-Way to provide Communications Service. Use of this definition in this chapter is not intended to include any

license or permit for the privilege of transacting and carrying on a business within the City, as may be required by any other ordinance or laws of the City or the State.

**FRANCHISE FEE** means for the purposes of this chapter any fee that may be imposed by the City on Franchisee as compensation for Franchisee's use of public Rights-Of-Way and roads. Use of this definition in this chapter is without prejudice to any rights the City may have under Federal and Kentucky law as they may be amended.

**FRANCHISEE** means the Person to whom a Franchise is granted.

**GROSS REVENUES** means any and all revenue, as determined in accordance with generally accepted accounting principles ("GAAP") received by the Franchisee including Franchisee's affiliates, from the operation of the Franchisee's System to provide Communications Services within the territorial limits of the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Communication Service, installation, disconnection, reconnection and change-in-service fees, remote control rental fees, late fees and administrative fees, revenues from rentals of converters, modems or other Communications System equipment, advertising revenues (less agency fees), the fair market value of consideration received by the Franchisee for use of the Franchisee's System to provide Communication Service within the territorial limits of the City and accounted for as revenue under GAAP, revenues from on-screen program guides, additional outlet fees, Franchise Fees, revenue from the sale or carriage of other Communication Services, and revenue attributable to the Communication System from carriage of home shopping channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than Franchisee where necessary to prevent evasion or avoidance of the obligations under this Franchise to pay Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on Communication Services furnished by the Franchisee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and

which are collected by the Franchisee on behalf of said governmental unit, including but not limited to, the FCC User Fee, but the Franchise Fee is not such a tax; (iii) any credits or refunds given to Subscribers; or (iv) deposits (for equipment or bad credit), as long as those monies are not considered revenue under GAAPs, or transferees.

**LESSEE** means a Person who provides Communications Service within the City solely by leasing Facilities and who has no control over what, where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

**PERSON** means individual, partnership, association, corporation, joint venture, legal entity or organization of any kind.

**PRIVATE COMMUNICATIONS SYSTEM** means a System used for delivering Communications by a Person solely in connection with the Communications needs of such Person's business, provided that such Person does not use, or permit the use of, such System to provide Communications Service to a Customer or any other Person in the City.

**PRIVATE COMMUNICATIONS SYSTEM OWNER** means a Person that owns or leases a Private Communications System.

**RESELLER SERVICE PROVIDER** means a Person who provides Communications Service within the City solely by reselling Communications Service and who has no control over what, where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

**RIGHTS-OF-WAY** means the surface and space on, above, and below every street, alley, road, highway, lane or other property dedicated or commonly used now or hereafter for utility purposes and Facilities in the City. Rights-Of-Way shall not include public property owned or leased by the City and not intended for Rights-Of-Way use, including, but not limited to, parks, public works property, buildings or overhead lighting.

**STATE** means the Commonwealth of Kentucky.

**SYSTEM** means any and all equipment, structures, materials or tangible components located in the Rights-Of-Way and used to provide Communications Service, including without limitation all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, Antennae, lines, poles, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying or distributing Communications Service.

## **§ 2 FRANCHISE REQUIREMENTS AND CHARACTERISTICS.**

- (A) *Unlawful to operate without a franchise.* Unless otherwise specifically authorized under applicable federal or State law, it shall be unlawful for any Person to own, erect, install, maintain, operate, repair, replace, remove or restore any Facilities in the Rights-Of-Way in the City that are used to provide Communications Services within the territorial limits of the City without a valid, unexpired Franchise from the City. Unless otherwise provided hereinafter by City Ordinance, Reseller Service Providers and Lessees shall not be required to obtain a Franchise. Private Communication Systems shall not require a Franchise but shall be licensed pursuant to § 7.
- (B) *Franchises nonexclusive.* The authority granted by the City in any Franchise shall be for the nonexclusive use of the Rights-Of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-Of-Way for any purpose to any other Person, including itself, as it deems appropriate, subject to all applicable laws.
- (C) *Nature of rights granted by any franchise.* Franchises shall not convey title, equitable or legal, in the Rights-Of-Way, and shall give only the right to occupy Rights-Of-Way, for the purposes and for the period stated in this chapter and as may be further modified by the Franchise in a nondiscriminatory and competitively neutral manner. No Franchise may excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on another

Person's Facilities. All Franchises shall be deemed to incorporate and be limited by the provisions of this chapter.

(D) *Application and application fee required.* Applications for an original Franchise granted hereunder shall be filed with the City pursuant to the advertisement. All applications received by the City from the applicants will become the sole property of the City. Applicants shall submit all requested information as provided by the terms of this chapter. The following information must be complete and verified as true by the applicant:

(1) *Application fee.* Applications shall be accompanied by a non-refundable application fee of five thousand dollars (\$5,000.00) payable to the "City of Georgetown." The application fee shall be established at the rate set forth above, effective upon final passage of this chapter. Thereafter, the application fee shall be altered every two (2) years, to the nearest ten (10) dollars increment, if required, in proportional change to the most recently published Consumer Price Index (CPI) for telecommunications services at the time. The application fee shall defray in whole or part the City's costs to process any application filed under this chapter and negotiate, award and administer any Franchise.

(2) *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 reasonably available at all times; and information regarding how to contact the local representative in an emergency.

(3) *Description of proposed System.* Applicants for an original Franchise to construct a new System shall provide a description of the proposed System. At a minimum, the description shall include:

- a. A general description of the project by geographical area.
- b. A description of the proposed System components to include but not be limited to:

- i. Anticipated number and general location of small cell Antennae;
      - ii. Location (aerial/underground) of fiber. Where possible, provide estimated percent aerial and percent underground;
      - iii. Anticipated ground level elements (GLEs) and general locations.
    - c. For underground fiber installation, a summary of proposed installation methodologies. The narrative shall address compliance with FCC standards as related to applicable equipment, such as small cell Antennae and current acceptable Radio Frequency (RF) design standards currently in practice, as well as to those standards found in local ordinances and/or regulations.
    - d. Discussion of anticipated project phasing based on geographic and/or Rights- of-Way limitations, limitations imposed by local events and those internal limitations affected by finance and project logistics.
- (4) *Communications Service.* The Applicant shall provide a statement setting forth a general description of the Communications Service the applicant plans to provide over the System.
- (5) *Applicant organization.* The applicant shall be a corporation or limited liability company, partnership or other Person authorized to do business in the State. Said authorization shall be certified by the Secretary of State (but only to the extent such certification is applicable to the applicant). The applicant must fully disclose the ownership of the proposed Facilities and System.
- (6) *Georgetown-Scott County Revenue Commission.* The applicant must comply with the Georgetown-Scott County Revenue Commission as a qualification for being granted a Franchise.
- (7) *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

submitted in triplicate in hardcopy. The City may, at its discretion, consider such additional information as part of the application.

- b. 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.
- c. A copy of the applicant's certificate of authority from the Public Service Commission ("PSC") where the applicant is lawfully required to have such certificate from the PSC.
- d. A copy of the applicant's certificate of authority from the FCC where the applicant is lawfully required to have such certificate from the FCC.
- e. A copy of all insurance certificates required under this chapter.
- f. A statement signed by the applicant acknowledging that the applicant agrees to be bound by all provisions of this chapter and the Franchise granted by the City and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a System in the Rights-Of-Way.
- g. The information provided by applicant shall be certified as true and correct, and applicant shall be responsible to certify to the City any material changes to the information provided in the completed application during the term of any Franchise.

(8) *Supplementation to applications.* The City reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.

(9) *The City's rights reserved.* The City reserves the right to waive all formalities and/or technicalities where the best interest of the City may be served, provided that it shall exercise this right in a nondiscriminatory and competitively neutral manner.

(E) *Standards and procedures for approval or renewal of Franchises.* Franchises shall be granted in accordance with Kentucky Constitution Sections 163 and 164. The City shall grant Franchises or renewals to any eligible Franchisee for the right and privilege to construct, own, operate, repair, replace and maintain Facilities in, through and along the City's Rights-Of-Way for the purposes of

providing Communications Service on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this chapter, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC and the PSC.

(F) *Acceptance and effective date of Franchise.* Any Franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of an ordinance granting a Franchise hereunder, provided that on or before that date Franchisee shall:

- (1) Enter into and execute such agreements and documents as required by the City that are consistent with the terms and provisions of this chapter and applicable law;
- (2) File such bond or bonds as required in this chapter; and
- (3) Advise the City in writing of Franchisee's address for mail and official notifications from the City.

(G) *Use of Rights-Of-Way; police powers; Franchisee's use subordinate.* A Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, State and local laws, including all permit requirements and associated fee payments, and all other City codes and ordinances in effect as of the date of the award of its Franchise or thereafter adopted or amended, to the extent permitted by State or federal law, subject to §1(D). The grant of a Franchise does not in any way affect the continuing authority of the City, through the proper exercise of its Home Rule or statutory powers, to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-Of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-Of-Way authorized by any

Franchise shall in all matters be subordinate to the City's lawful use and rights therein, without limiting the generality of the following:

- (1) All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to regulate the construction, operation, and maintenance of Franchisee's System, subject to § 1(D), including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the City shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations concerning the Rights-Of-Way and utility standards.
- (2) The City reserves the right to exercise its police powers. Any conflict between the provisions of this chapter or a Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the police powers.
- (3) Franchisee shall not be excused from complying with any of the requirements of this chapter, or any subsequently adopted and lawfully binding amendments to this chapter, by any failure of the City on any one or more occasions to seek, or insist upon, compliance with such requirements or provisions.

(H) *Emergencies.*

- (1) Franchisee shall assign a management level individual to coordinate with, and assist, the City in the development of emergency plans.
- (2) If at any time, in case of fire or disaster or other emergency situation in the City, it shall become necessary in the reasonable judgment of the City to cut raise, lower, or relocate any Facilities, such cutting raising, lowering, or relocating may be done, and any repairs rendered necessary thereby shall be made by Franchisee, at its sole expense. Nothing in this chapter shall prohibit or limit any rights of a Franchisee under applicable law to recover its reasonable costs incurred

pursuant to this §2(H) to cut, raise, lower, or relocate Facilities from the Person(s) responsible for the fire, disaster, or other emergency situation.

(I) *Term.* Any franchise created herein by this chapter shall continue for a period of ten (10) years from and after the effective date of the franchise agreement between the parties. The City may, by ordinance, extend the terms of any franchise agreement awarded pursuant to this chapter by no more than two (2) five (5) year periods for a total franchise term of no more than twenty (20) years.

(J) *Franchise Fees.*

(1) Franchisees shall pay a Franchise Fee to the City, which shall be the greater of either (i) five percent (5%) of Franchisee's Gross Revenue or (ii) two hundred seventy dollars (\$270.00) per Antenna in the Rights-Of-Way and shall be payable as follows:

- a. The payment of the Franchise Fee shall be in addition to any other tax or payment owed to the City by Franchisee, subject to applicable law.
- b. If the Franchise Fee payment is based on Gross Revenues, the Franchise Fee shall be payable quarterly to the City, and the Franchisee shall file a complete and accurate report, signed by and certified as accurate by a financial representative of the Franchisee. If the Franchise Fee payment is based on Gross Revenues, the report shall contain all Gross Revenues received within the territorial limits of the City during the previous three (3) month period; said payment shall be remitted to the City no later than forty-five (45) days after the expiration of the quarter due. The Gross Revenue report from operations of the Franchisee within the franchise area shall be prepared by a qualified financial representative in accordance with Generally Acceptable Accounting Principles and shall include a quarterly schedule of Gross Revenue by category and a schedule of Gross Revenue upon which the Franchise Fee is based.
- c. If the Franchise Fee payment is based on the number of Antennas in the City, the Franchise Fee shall be payable annually to the City, and the Franchisee shall file a complete and accurate report, signed by and certified as accurate by a financial

representative of the Franchisee. The report should include the number of Antennas in the City during the previous year period, and said payment shall be remitted to the City no later than February 15<sup>th</sup> of the year due.

- d. Upon thirty (30) days' written notice, the City shall have the right to inspect the records relating to Gross Revenues and/or the number of Antennas at a mutually agreed upon location, as well as the right to audit and re-compute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Franchisee's fiscal years. If, as a result of such inspection, the City determines that Franchisee has underpaid its fees in any twelve (12) month period by five percent (5%) or more, then, in addition to making full payment of the relevant obligation, Franchisee shall reimburse the City for all of the verifiable, out of pocket costs associated with the audit or review, including costs for attorneys and accountants. Any additional undisputed amount due to the City as a result of an audit or review shall be paid within the thirty (30) days following written notice to the Franchisee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.
- e. In the event that any Franchise Fee payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall accrue from such date at the rate of prime plus one percent per annum, for the period of delinquency.

(2) The City reserves the right to require the Franchisee to collect any consumer or other tax or other fee that may be imposed by the City, the Commonwealth of Kentucky, or the federal government on Communication Services. The City acknowledges that such items may be reflected as separate line items on Subscribers' bills.

(3) Notwithstanding anything contained in this chapter, upon one hundred twenty (120) days' notice to Franchisees, the City may opt to set any Franchise Fees at the maximum amount allowed under applicable law.

(K) *No accord and satisfaction.* No acceptance by the City of any Franchise Fees or any other payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fees or any other payment be construed as a release of any claim of the City.

(L) *Franchise Fees not a tax; payment of taxes.* The Franchise Fees are compensation for the use of the Rights-Of-Way and shall in no way be deemed a tax of any kind. The Franchise Fees required herein shall be in addition to, not in lieu of, any and all taxes, charges, assessments, licenses, fees and impositions otherwise applicable to Franchisee that are or may be imposed by the City. A Franchisee shall be fully responsible for the payment of all applicable taxes.

(M) *Description of Communications Service.* During the term of the Franchise, Franchisee shall provide the City with a description of any material changes to the types of Communications Service offered over its Facilities in the Rights-Of-Way within the City during the prior year. Any individual Communications Service or item for which the Franchisee has a separate charge shall be considered a separate Communications Service.

(N) *Assignment of Franchise.* A Franchisee shall provide the City with written notice of any transfer or assignment of the Franchise. A Franchisee shall not sell, assign, sublet, dispose of or otherwise transfer a Franchise (or any of the rights or privileges granted by such Franchise), Franchisee's System, or control of Franchisee to another entity other than by operation of law or to an entity controlling, controlled by, or under common control with the Franchisee, without the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or System to secure indebtedness. No transfer of control of the Franchisee defined as an acquisition of fifty-one (51) percent or greater ownership interest in Franchisee shall take place without the prior written consent of the City. The City's consent to such a transfer shall not be withheld if the acquiring entity would have qualified for an original Franchise had it applied and if the acquiring entity demonstrates it has the same or

equivalent insurance coverage and bonds in place as was required of the original Franchisee. Nothing in any approval by the City of any transfer pursuant to this section shall be construed to waive, release or delegate any rights or powers of the City to hold the original Franchisee liable for any violation of its Franchise.

(O) *Forfeiture of Franchise and privilege.* In case of failure on the part of a Franchisee, its successors and assigns, to comply with any of the material provisions of this chapter or its Franchise, or if the Franchisee, its successors and assigns, should do or cause to be done any material act or thing prohibited by or in material violation of this chapter or the terms of its Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this chapter and its Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the proceedings specified in § 10(B).

(P) *Security for payment of fees.* Every Franchisee shall provide to the City an irrevocable letter of credit or deposit of cash in the amount of twenty-five thousand dollars (\$25,000.00) or one half (1/2) of the annual Franchise Fees owed, whichever is less, to secure the payment of the Franchise Fees for the first two (2) years in which the Franchisee is subject to a Franchise Fees. If, thereafter, there has been no default in paying the Franchise Fees nor any late payment of the Franchise Fees, the letter of credit shall be released or cash deposit returned.

### **§ 3 RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS.**

(A) *Encroachment permit.* A Franchisee shall be subject to and comply with Chapter 32, Article IV Georgetown Code of Ordinances (Sec. 32-74 through 32-88) and any additional or supplementary terms and conditions of any encroachment on Rights-Of-Way permit, as may be amended from time to time, subject to §1(D).

(B) *Removal of Facilities.* Upon expiration of a Franchise, whether by lapse of time, by agreement between the Franchisee and the City, or by forfeiture thereof, the Franchisee shall remove, at its sole cost, from the Rights-Of-Way any and all of its Facilities that are the subject of such Franchise

within a reasonable time after such expiration, not to exceed ninety (90) days, and, it shall be the duty of the Franchisee immediately upon such removal to restore the Rights-Of-Way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, the City may allow Facilities to be left in place when the City determines in its sole discretion that it is not practical or desirable to require removal. Said removal shall be in compliance with Chapter 32, Article IV Georgetown Code of Ordinances (Sec. 32-74 through 32-88) and any additional or supplementary terms and conditions of any removal, as may be amended from time to time, subject to §1(D).

(C) *Relocation of Facilities.* Whenever the City shall, in its exercise of the public interest, request that the Franchisee relocate or reinstall any of its Facilities, the Franchisee shall, upon ten (10) days' written notice, remove, relocate, or reinstall any such Facilities as may be reasonably necessary to meet the request. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of the Franchisee. Upon request of any other Person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, a Franchisee shall, within ten (10) days, temporarily raise, lower, or relocate its wires or other Facilities as may be required for the Person to exercise the rights under the permit; however, the Franchisee may require such permit holder to make payment to Franchisee in advance for any expenses incurred by the Franchisee to temporarily move its Facilities pursuant to such Person's request. To the extent that any utility or other Right-of-Way occupant is required to remove or relocate its Facilities as part of the same of related Right-of-Way alteration, route or location change affecting Franchisee, Franchisee shall not be treated in a discriminatory manner relative to such utilities. Franchisee shall receive no less advance notice and shall be provided the same right to reimbursement for removing or relocating its Facilities as any utility receives from the City.

(D) *Franchisee responsible for costs.* A Franchisee shall be responsible for all reasonable costs incurred by the City that are directly associated with the Franchisee's erecting, installing, maintaining, operating, repairing, replacing, removing or restoring its Facilities in the Rights-Of-Way. A

Franchisee shall be responsible for its own costs incurred in removing or relocating its Facilities when required by the City due to the City requirements relating to maintenance and use of the Rights-Of-Way for the City purposes.

(E) *Insurance and Bonds.* During the term of any Franchise, a Franchisee shall obtain and maintain at its sole expense all insurance and bonds required by this chapter. It is expressly understood that the City does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Franchisee.

(1) Franchisee shall file with the City a Franchise bond in the amount of fifty thousand dollars (\$50,000.00), which shall be required to be in place for the entire term of the Franchise. Additionally, a Franchisee seeking to construct or install a System in the City shall file with the City a performance bond in an amount to be determined by the City, provided that said amount shall not exceed the actual cost of the construction project. In no event shall the amount of the performance bond required by the City exceed the reasonable costs of repairing the Rights-Of-Way in the event of non-performance by the Franchisee. The performance bond shall provide for the faithful performance of construction and installation of Franchisee's System. Two (2) years after demonstration of the completion of the construction of the System by Franchisee to the City, the City shall release the performance bond.

(2) The performance bond shall indemnify the City, in its own right and as trustee, from any damages or losses arising out of the failure of Franchisee to faithfully perform and satisfactorily complete construction of the System in accordance with this chapter.

(3) The failure of Franchisee to comply with its obligations under this chapter or the Franchise, as determined by the City, shall entitle the City to draw against either or both of Franchisee's performance and Franchise bonds, subject to §10(b).

(4) The rights reserved to the City with respect to the performance and Franchise bonds required hereunder are in addition to all other rights of the City, whether reserved by this chapter or

authorized by law, and no action, proceeding or exercise of a right with respect to such performance or Franchise bonds shall affect any other rights the City may have.

- (5) Unless otherwise released by the City, the performance or Franchise bonds required hereunder shall not expire or be materially altered without thirty (30) days' written notice and without securing and delivering to the City a substitute, renewal and replacement bond in conformance with this chapter. In the event the City does draw monies against the performance bond required hereunder, within ten (10) days thereafter, Franchisee shall pay such funds to the bonding company as necessary to bring said performance and/or Franchise bonds back to the applicable principal, where it shall continue to be maintained. The performance and Franchise bonds required hereunder shall contain the following endorsements:

“It is hereby understood and agreed that this bond may not be reduced, altered or canceled by Franchisee or Surety without thirty (30) days' written notice, by certified mail, to the City of Georgetown. Such termination or cancellation shall have no effect on any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation.”

- (6) Immediately upon the effective date of the ordinance granting a Franchise under this chapter, Franchisee shall file with the City the following proof of liability insurance issued by a company(ies) authorized to do business in the Commonwealth of Kentucky with an AM Best Rating of “A minus” (A-) or better:

- a. General Liability Insurance, via an occurrence form, covering bodily injury, including death, personal injury and property damage, and including completed operations, contractual liability, independent contractors' protective liability and personal injury liability protection. The minimum acceptable limit of liability amount is three million dollars (\$3,000,000.00) per occurrence and aggregate under a combined single limit. This policy must include the City, including its Mayor and City Council members officials, boards, members, agents, and employees, as additional insureds as respects

all operations of the insured Franchisee. The City reserves the right to make reasonable increases in the required amount of insurance coverage herein at any time, subject to §5(A)(2) of this chapter. Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

- b. Automobile Liability, insuring all owned, non-owned and hired motor vehicles of Franchisee. The minimum coverage liability limit shall be one million dollars (\$1,000,000.00) combined single limit for any one (1) accident. The limit of liability may be subject to increase according to any applicable State or federal transportation regulations.
- c. Workers' Compensation (if applicable), insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at statutory limits.

(7) Franchisee shall maintain on file with the City a certificate of insurance certifying the coverage required under this chapter, which certificate shall be subject to the approval of the City as to the adequacy of the certificate and of the insurance certified under the requirements of this chapter. Such certificate shall be identified on its face by the name of Franchisee, and shall be submitted to the City, in accordance with the terms and conditions of this chapter. Failure to maintain adequate insurance as required under this chapter shall be deemed a breach of the Franchise, subject to the notice and cure provisions in § 10(B).

(8) The City reserves the right to make reasonable increases in the amount of insurance coverage referred to in this section at any time, subject to §5(A)(2) of this chapter.

(9) The following clause shall be added to Franchisee's Commercial General Liability Policies:

"The City of Georgetown, its elected and appointed officials, employees, agents and successors are added as an "additional insured" as respects operations of the Named Insured performed relative to the Franchise."

(F) *Permits.* Prior to performing any construction or installation work in the public Rights-Of-Way, Franchisee shall apply to the City for any necessary permit(s) and shall include descriptive

information about the specific location of any lines, Facilities, boxes, or related equipment. All terms and conditions of the permit application shall apply and be adhered to. In the case of emergencies, the Franchisee may perform critical work and at its earliest opportunity seek any required permit(s) and submit any applicable fees.

- (1) Franchisee shall furnish detailed plans of the work to be done within the Rights-Of-Way and provide other such information as required by the City.
- (2) Franchisee shall coordinate any construction work within the Rights-Of-Way with the City and shall begin construction work only after approval by the City, unless work is performed under emergency operations.
- (3) All permits issued by the City shall be available for inspection by City personnel at the indicated work site.

(G) *Notification.* Franchisee shall notify the City, in writing or by electronic mail or, at least fifteen (15) days prior to non-emergency construction. Such written notification shall contain the location of the construction, the starting date and the estimated completion date.

(H) *Standards.* Any work required or performed pursuant to this chapter shall be done in accordance with federal, State and local law, and the National Electric Safety Code.

- (1) In the event that Franchisee leases space on the poles or in the conduits of an electric or other utility, Franchisee shall abide by the construction and other requirements of that utility, and the granting of a Franchise by the City shall not be construed or interpreted in any way to alleviate Franchisee's responsibilities and obligations to a pole or conduit owner on whose poles and/or conduit Franchisee leases space.
- (2) Franchisee, its contractors, sub-subcontractors and anyone directly or indirectly employed by Franchisee shall conduct such operations so as to promote and preserve the public safety and general welfare of the citizens of the City.
- (3) All construction, installation or maintenance by Franchisee shall be completed with diligence and with respect to all interests and rights of the public.

(I) *Traffic.* Franchisee's work in the Rights-Of-Way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic on the Rights-Of-Way or public land.

(1) Franchisee shall maintain lanes of vehicular traffic in each direction at all times during construction, installation or maintenance activity.

(2) Traffic control devices to protect and control pedestrian and vehicular traffic in any construction, maintenance or installation areas may be prescribed by the City in accordance with the Manual on Uniform Traffic Control Devices or in accordance with the Kentucky Transportation Cabinet traffic control requirements when operating in a State Right-Of-Way.

(J) *Delay.* Improvements to City Rights-Of-Way conducted by the City or its contractors shall not be delayed by any Franchisee work authorized by this chapter.

(K) *Special exceptions.* Any special exceptions granted shall be granted in a non-discriminatory manner. The City may grant a special exception to the requirements of this chapter if a Franchisee, upon application, demonstrates with written evidence that:

(1) The exception will not create any threat to the public health, safety or welfare;

(2) The increased economic burden and the potential adverse impact on Franchisee's construction schedule resulting from the strict enforcement of the requirement would actually or effectively prohibit the ability of Franchisee to provide Communications Service in the City; and

(3) The requirement unreasonably discriminates against Franchisee in favor of another comparable Communications Service provider.

(L) *Inspections.* All construction, installation and operation of Franchisee's System in the Rights-Of-Way are subject to inspection by the City.

(M) *Repair of sunken pavement over excavation.* In case the pavement or the surface of the Rights-Of-Way over any excavation should become depressed or broken at any time within five (5) years after the excavation has been completed and before resurfacing of the Rights-Of-Way or any intervening excavation by another entity, natural wear of the surface excepted, Franchisee shall, upon written

notice from the City, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. Franchisee shall make repairs to the installation or backfill and have the pavement restored, as specified by the City, within such reasonable time period; however, said time period shall not be less than ten (10) calendar days, as may be specified by the City. If the pavement is not restored as specified by the City and within the time period specified by the City, and unless delayed by a strike or conditions beyond Franchisee's control, the City may cause the work to be done after giving Franchisee twenty-four (24) hours' final notice. The cost thereof, including, but not limited to, any inspection costs and administrative overhead incurred by the City, shall be assessed against Franchisee.

(N) In the event that the use of any part of the System is discontinued for any reason by any Franchisee for a continuous period of twelve (12) months, or in the event such System or Facility has been installed in Rights-Of-Way without complying with requirements of this chapter or the rights granted hereunder have been terminated, cancelled or have expired, the Franchisee shall promptly remove from the Rights-Of-Way all such Facilities of such System, other than any which the City may permit to be abandoned in place. In the event of such removal, the Franchisee shall promptly restore the Rights-Of-Way from which such Facilities have been removed to a condition satisfactory to the City. Any Facilities of a Franchisee to be abandoned in place shall be abandoned in such manner as the City may prescribe. Upon a permanent abandonment of the Facilities of a Franchisee in place, the Franchisee shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such Facilities.

(O) During any phase of construction, installation, maintenance or repair of the System, the Franchisee shall use materials of good and durable quality. All such work shall be performed in a safe, thorough and reliable manner and in compliance with City ordinances and regulations, as amended.

**§ 4 MISCELLANEOUS.**

- (A) *Administration of Franchise.* The City shall be responsible for the continued administration of this chapter and any Franchises granted hereunder.
- (B) *Non-enforcement by the City.* A Franchisee shall not be relieved of its obligation to comply with any of the provisions of this chapter or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.
- (C) *Publication of Notices.* A Franchisee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments or renewals thereto.
- (D) *Severability.* If any material provision of this chapter or of any Franchise granted pursuant to this chapter is held by a court or other competent governmental authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this chapter or the Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions herein or therein.

**§ 5 TRANSITIONAL PROVISIONS.**

- (A) *Existing Franchises.* Franchises previously granted shall be deemed to continue through their current expiration date.
- (B) Further amendments of the chapter shall be deemed accepted by a Franchisee unless, within sixty (60) days of any further amendments, a Franchisee indicates in writing it does not accept the amendments as part of its Franchise. Upon such notice of non-acceptance, said Franchisee and the City may renegotiate or terminate the Franchisee's Franchise pursuant to all local, State and federal law.
- (C) The Franchise shall contain such further conditions or provisions as may be negotiated between the City and the Franchisee. In the case of such conflict or ambiguity between any terms or provisions of the Franchise and this chapter, the words of the Franchise shall be deemed to control.

(D) *Transitional provisions to be narrowly interpreted.* It is the intent of the City to apply the provisions of this chapter to all owners or operators of Communications Systems with Facilities, including local exchange carriers, that now occupy or may in the future occupy Rights-Of-Way, except to the extent federal or State law prevents the City from doing so.

## **§ 6 FRANCHISEES PROVIDING COMMUNICATIONS SERVICE TO CUSTOMERS.**

All Franchisees providing Communications Service to Customers shall, to the greatest extent applicable:

- (A) At all times comply, at a minimum, with the FCC requirements for Emergency Alert Systems that are specifically applicable to their Communications Services.
- (B) Provide to every Customer access to Public, Educational and Government Access channels that are available on the City's website, not to exceed two (2), at no cost to the City. Additional channels may be negotiated, with both parties' consent, in the Franchise agreement.
- (C) Maintain a publicly listed telephone number.
- (D) Employ an operator or maintain a telephone answering device twenty-four (24) hours per day, each day of the year, to receive Customer complaints.
- (E) Upon Customer's termination of the Communications Services, permit Customers to return any equipment that Franchisee requires to be returned upon such termination at Franchisee's expense and advise Customers of this option when Customers inquire about returning equipment. These expenses do not include the cost for use of the equipment before termination of the Communications Services.
- (F) Indemnify the City, pursuant to §1(F), against any alleged infringement of patent or copyright or any other legal infringement in the transmission of materials through the System, except to the extent any infringement arises from or is caused by the City's or another Person's use of the System, including for any Public, Educational, and Government Access channels. Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

## **§ 7 PRIVATE COMMUNICATIONS FACILITIES.**

(A) *Application for license.* A Person wishing to erect, install, maintain, operate, repair, replace, remove or restore a Private Communications System in the Rights-Of-Way must obtain a license therefor from the City. Such license shall only authorize placement of the Private Communications System in a specific portion of the Rights-Of-Way for a limited period of time and for a specific purpose in connection with the Person's business and shall not permit the use of the Private Communications System to provide Communications Service to any other Customer or Person in the City. Such Person shall submit an application to the City on such form as may be developed by the City, accompanied by such application fee as may be determined by the City.

(B) *Conditions of license.* Any license shall be subject to such conditions as the City may from time to time establish, shall be expressly subordinate to the use of the Rights-Of-Way by the City and Franchisees and shall otherwise conform to the requirements of this chapter.

(C) *Compensation.* A Private Communications System Owner shall pay a fee established by the City from time to time to reflect the cost to the City for management of the Rights-Of-Way used.

## **§ 8 LIABILITIES AND PENALTIES.**

Except as expressly stated in this chapter, the express or implied repeal or amendment by this chapter of any ordinance or part thereof shall not affect any liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this chapter. Those liabilities and penalties are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this chapter had not been adopted.

## **§ 9 REMEDIES NOT EXCLUSIVE.**

The rights and remedies of the City and the Franchisee, as set forth in their Franchise or in this chapter, shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity.

## **§ 10 REVIEW, TERMINATION AND CANCELLATION.**

(A) To provide for technological changes in the state of the art of Communications Services, to facilitate renewal procedures, and to achieve continuing, advanced, modern Systems for the City, a Franchisee shall comply with the following review provisions:

- (1) The City may hold review sessions which shall be open to the public, and notice shall be given by advertisement in a newspaper of general circulation at least one (1) week before each session.
- (2) Either the City or the Franchisee may select additional topics for discussion at any regular or special review session.
- (3) Any topic proposed for discussion at any regular or special review session by a resident of the City and supported by a petition bearing the signature of thirty (30) City residents shall be included in the list of topics for discussion.

(B) *Termination.*

- (1) The City may terminate any Franchise in accordance herewith in the event of the violation of any material provision hereof or of any rule or regulation promulgated pursuant hereto or of any applicable federal, State, or local law or the breach or other failure, refusal or neglect by the Franchisee to perform its obligations under the material terms and conditions of this chapter or of any ordinance or agreement awarding a Franchise in accordance herewith, except when such violation, breach, failure, refusal or neglect is caused by any of the following:
  - a. Act of God;
  - b. Riot, insurrection, civil disturbance, sabotage or vandalism, tampering or interference, act of public enemy, public health emergency, accident, fire, flood, strike, unavailability of materials or equipment, war or act of war, all of which are beyond the control of the Franchisee; or
  - c. An emergency declared by the President of the United States of America, the Governor of the Commonwealth of Kentucky or the Mayor of the City of Georgetown.
- (2) In the event that the City determines that the Franchisee has violated any material provision of this chapter, any rule or regulation promulgated pursuant hereto, any applicable federal, State or local law or any material term of an agreement, Franchise or ordinance awarding a Franchise, the City shall make a written demand on the Franchisee that it comply with the law or said

agreement, Franchise or ordinance. The written demand shall set forth the exact nature of the noncompliance. The Franchisee shall have sixty (60) days from such notice to either object in writing, state its reasons for such objections and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Franchisee, or the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the City within sixty (60) days following such demand, the City shall determine whether or not, in its sole discretion, any violation, breach, failure, refusal or neglect by the Franchisee was excusable or inexcusable as provided in § 10(B)(1).

- a. If the City determines such violation, breach, failure, refusal or neglect by the Franchisee was excusable as provided in § 10(B)(1), the City shall direct the Franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as are just and reasonable and as the City may direct.
- b. If the City determines such violation, breach, failure, refusal or neglect by the Franchisee was inexcusable, then City Council, by ordinance, may seek to terminate the Franchisee's Franchise at a public hearing before the City Council, and the City Council may provide a time period for the Franchisee to become compliant. If the City seeks to terminate Franchisee's Franchise, it shall provide Franchisee with at least twenty (20) days' written notice prior to conducting a hearing. The hearing shall be on the record and transcribed, if Franchisee so elects and at Franchisee's cost, and shall provide Franchisee full due process rights, including the right to state its position on the matter, present evidence, and question witnesses. Franchisee may appeal any decision made by the City after the hearing to an appropriate court. Nothing in this chapter, including the provisions set forth in this §10, shall prevent Franchisee from filing, at any time, a legal action in any permissible court or tribunal seeking a declaration or enforcement of Franchisee's rights or obligations under the Franchise,

this chapter, or applicable law. The Franchisee may continue to operate the System until all avenues and procedures of judicial review have been fully and finally exhausted.

- (3) If the City declares the said agreement or Franchise has been breached pursuant to § 10(B)(2)(b), and the Franchisee either does not challenge the City's decision or City's decision is affirmed in a final, non-appealable court order, the City may pursue any remedies available to it pursuant to this chapter or to the said Franchise or ordinance or any other remedy, legal or equitable, available to the City.

(C) In the event that the Franchise is terminated, the Franchisee shall follow the procedure in § 3(O).

#### **§ 11 FORECLOSURE-RECEIVERSHIP.**

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Franchisee shall notify the City of such foreclosure. Franchisee's notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this chapter governing the consent of the City to such change in control of the Franchisee shall apply.

#### **§ 12 REPORTS.**

(A) Upon the City's written request, the Franchisee shall submit a written report to the City, including, but not limited to, the following information:

- (1) A summary of the previous year's or, in the case of the initial reporting year, the initial year's activities in development of the System, including, but not limited to, Communications Service begun or discontinued;
- (2) If the City exercises its constitutional right to collect Franchise Fees, a statement of revenues;
- (3) A list of officers and members of the Board of Directors of the Franchisee and its parent, subsidiary, or Affiliate corporations, if any.

(B) It shall be unlawful for the Franchisee to refuse, fail or neglect to file the reports required under this chapter. The refusal, failure, or neglect of the Franchisee to file any of the reports required

under this chapter or as the City may direct, shall be deemed a violation of this chapter and shall subject the Franchisee to the provisions of § 10, shall be deemed a material breach of any agreement or ordinance awarding a Franchise in accordance herewith, and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the City. Franchisee's delivery of any report requested pursuant to this Section shall cure any prior alleged refusal, failure or neglect to file reports requested and required under this Section.

- (C) Any material misrepresentation made knowingly by the Franchisee in any report required under this chapter shall subject the Franchisee to the provisions of § 10 and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the City.

### **§ 13 BOOKS AND RECORDS OF THE FRANCHISE.**

- (A) The Franchisee shall keep complete and accurate books of account and records of its business and operations in connection with any Franchise granted under this chapter.
- (B) Upon request, the City shall have access to all books of account and records of the Franchisee for the purpose of auditing Franchise Fees payments and of ascertaining the correctness of any and all reports and may examine Franchisee's officers and employees in respect thereto; provided, however, that no audit shall occur more often than once in any given twelve (12) month period of time.
- (C) Any false entry in the books of account or record submitted to the City, or false statements in reports to the City, as to material fact, knowingly made by the Franchisee, shall constitute a breach of a material provision of this chapter and any Franchise agreement or ordinance hereunder, for which the remedies provided in this chapter may be invoked.

### **§ 14 TIME OF ESSENCE.**

Whenever this chapter, or any ordinance or agreement awarding a Franchise hereunder, shall set forth any time for any act to be performed by or on behalf of a Franchisee, such time shall be deemed of the essence,

and any failure of a Franchisee to perform within the time set forth shall constitute a material breach of the terms of this chapter and shall entitle the City to invoke all penalties and remedies prescribed in this chapter as well as all other legal or equitable remedies available to the City.

**§ 15 EQUAL EMPLOYMENT OPPORTUNITY.**

- (A) To the extent applicable to a Franchisee, a Franchisee shall comply in all respects with the FCC's regulations governing equal opportunity. Franchisees shall also comply with all other applicable equal opportunity government regulations whether federal, State or local.
- (B) Franchisees shall afford equal opportunity in employment to all qualified Persons, and no Person shall be discriminated against because of race, color, religion, national origin, handicap, sex, or age.

**§ 16 VIOLATIONS.**

- (A) It shall be unlawful for any Person to establish, operate or carry on the business of distributing to any Persons in the City, any Communications Service by means of a System in the Rights-Of-Way unless a Franchise therefor has first been obtained from the City and unless such Franchise is in full force and effect.
- (B) It shall be unlawful for any Person to own, erect, install, maintain, operate, repair, replace, remove or restore within any public street in the City, equipment or Facilities for distributing to any Persons in the City any Communications Service through a System, unless a Franchise authorizing such use of such Rights-Of-Way has first been obtained from the City and unless such Franchise is in full force and effect.

**§ 17 ENFORCEMENT AND PENALTIES.**

- (A) Violation of any section of this Chapter shall constitute a civil offense which shall be enforced according to the procedures set forth in chapter 2, article VI by the code enforcement board, hearing

officers, code enforcement officers, citation officers and other persons duly authorized to investigate and enforce the violations through investigation, inspection and issuance of citations.

(B) The penalty for violations of this article shall be as set forth in section 2-842. All violations of this Chapter shall be considered Class 2 violations.

**SECTION TWO**

If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

**SECTION THREE**

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION FOUR**

This Ordinance shall be in full force and effect upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: March 8, 2021

PUBLICLY READ SECOND TIME AND PASSED: March 22, 2021

APPROVED: *Tom Prather*  
Tom Prather (Jun 17, 2021 12:12 EDT)  
Tom Prather, Mayor

ATTEST: *Tracie Hoffman*  
Tracie Hoffman (Jun 18, 2021 09:10 EDT)  
Tracie Hoffman, City Clerk

# 2021-03-08 - Communications Ordinance Final

Final Audit Report

2021-06-18

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By:	Tracie Hoffman (tracie.hoffman@georgetownky.gov)
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