

AN ORDINANCE AUTHORIZING THE GRANTING OF A NONEXCLUSIVE FRANCHISE TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE COMMUNICATION SERVICE SYSTEM FACILITIES, AND ADDITIONS THERETO, IN, UNDER, OVER, ALONG, ACROSS AND UPON THE HIGHWAYS, PUBLIC WAYS, BRIDGES AND OTHER PUBLIC PLACES IN NELSON COUNTY, KENTUCKY, FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF COMMUNICATION SERVICES TO THE INHABITANTS OF THE COUNTY OF NELSON, KENTUCKY

WHEREAS, the Nelson County Fiscal Court, desires to grant, in accordance with sections 163 and 164 of the Constitution of the Commonwealth of Kentucky, one or more nonexclusive franchises for the erection, construction, maintenance and operation of a Communication Service system in the unincorporated territorial limits of Nelson County, Kentucky.

WHEREAS, the Nelson County Fiscal Court deems the granting of such Communication Service system franchises to be necessary for the preservation of the public health, safety, and welfare of the inhabitants of Nelson County, Kentucky;

BE IT ORDAINED by the Nelson County Fiscal Court as follows:

**SECTION I**

For purposes of this ordinance, the following terms Communication Service shall have the meaning set forth in this section:

**COMMUNICATIONS** mean 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. Communications Service includes, but is not limited to, "telecommunications service," "enhanced service," "information service," "Internet access service," "broadband service," "cable 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), incidental to or designed to directly or indirectly facilitate or accept Communications.

## SECTION II

Upon the conditions herein set forth and in accordance with sections 163 and 164 of the Constitution of the Commonwealth of Kentucky, the Nelson County Fiscal Court shall grant to one or more grantees to be designated by one or more ordinances of the Nelson County Fiscal Court (the "Grantees") a non-exclusive franchise to erect, construct, maintain, and operate Communication Service facilities including, but not limited to, the erection of poles, cables, wires and other appurtenances and additions thereto in, over, under, along, across and upon the highways, public ways, bridges and other public places in Nelson County, Kentucky, for the purpose of transmission and distribution of Communication Services to the inhabitants of Nelson County, Kentucky in all forms, in accordance with the laws and regulations of the United States and the Commonwealth of Kentucky, and the ordinances of Nelson County, Kentucky (each of the foregoing being referred to hereinafter as a "Nonexclusive Franchise").

## SECTION III

Upon the adoption of this ordinance and in accordance with section 164 of the Constitution of the Commonwealth of Kentucky, the Nelson County Fiscal Court shall: (1) duly advertise for bids for a Nonexclusive Franchise; (2) publicly receive bids for a Nonexclusive Franchise; and (3) award a Nonexclusive Franchise to the highest and best bidder, taking into consideration all factors held relevant thereto under the law of the Commonwealth of Kentucky; provided, however, that the Nelson County Fiscal Court expressly reserves the right to: (a) award more than one Nonexclusive Franchise; (b) reject any or all bids for a Nonexclusive Franchise; and (c) withhold the granting of any Nonexclusive Franchise. The Nelson County Attorney is hereby ordered and directed to duly advertise in accordance with the requirements of the law of the Commonwealth of Kentucky for bids for a Nonexclusive Franchise. Such advertisement shall provide that all bids shall contain a map delineating the boundaries of the proposed area (s) to be served, and a schedule stating when each specific area will be tentatively served.

## SECTION IV

The poles used for the Communication Service system shall be those of the City of Bardstown, the Salt River Rural Electric Cooperative Corporation, Kentucky Utilities

Corporation and/or AT&T, and/or any other utility company which owns or shall own poles located in Nelson County, Kentucky. All highways and public ways that may be disturbed or damaged in the construction of the Communication Service system shall be promptly repaired by any such Grantee at its own expenses and to the satisfaction of the Nelson County Fiscal Court; provided, however, that if such repairs are not made by such Grantee, the Nelson County Fiscal Court shall, after reasonable notice to such Grantee, make such repairs as it deems necessary and charge the same to the Grantee.

#### SECTION V

The Communication Service system poles, wires and appurtenances shall be located, erected, set, constructed and maintained so as not to endanger or interfere with the lives of any person, damage any property, public or private, or to interfere with any improvements the Nelson County Fiscal Court may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges or other public places or property.

Construction, maintenance, and operation of the Communication Service system, including connections made to the Communication Service system to provide service to subscribers, shall be in accordance with all applicable laws and regulations, specifically including the provisions of the National Electric Safety Code, prepared by the National Bureau of Standards, the national Code of the National Board of Fire Underwriters and such applicable ordinances and regulations of the Nelson County Fiscal Court affecting the installation which may be presently in effect or which may be enacted by the Nelson County Fiscal Court. The operation of the Communication Service system shall conform to all rules and regulations of the Federal Communications Commission applicable thereto.

#### SECTION VI

The Grantee shall be subject to all ordinances now in force or that may be hereafter passed relative to the use of highways, public ways, bridges and public places of Nelson County, Kentucky.

#### SECTION VII

The Grantee shall hold the Nelson County Fiscal Court safe and harmless from all damages or claims for damages, arising out of or by reason of the construction, maintenance or operation of the Communication Service system and the bidder shall carry liability insurance with a solvent insurance company with limits of no less than \$1,000,000.00 (one million dollars).

#### SECTION VIII

The Grantee shall be required to extend its distribution plant and make Communications Service available to homes in the unserved areas of Nelson County, Kentucky having a residential density of at least twenty-five thirty (25 homes) per street mile, as measured from the nearest access point of the Grantee's then current distribution plant in Nelson County, KY. The Grantee shall further be required to construct one-twenty-fifth (1/25) of one street mile of distribution plant per potential customer in any areas of Nelson County with less than twenty-five (25) potential customers per street mile provided that residents of such area pay the cost per street mile of such construction less 1/25 of said cost per the existing potential customer in that particular area and less the mileage required to be provided by the Grantee under all terms of this Section VIII.

#### SECTION IX

Each Nonexclusive Franchise shall be for a term of twenty (20) years from the date of the granting of each such Nonexclusive Franchise and shall cease and terminate at the expiration of such term.

#### SECTION X

This ordinance shall be effective immediately upon passage by the Fiscal Court of Nelson County.

#### SECTION XI

This ordinance shall be published in the Kentucky Standard newspaper by title and summary within 30 days after adoption.

#### SECTION XII

This order or parts of orders in conflict herewith are repealed to the extent of such conflict.

Adopted this 8th day of January, ~~2018~~ <sup>2019</sup>, by vote of 5 ayes,  
and 0 nays.

NELSON COUNTY FISCAL COURT

*Demuth*  
County Judge/Executive

ATTEST:

*Scotti Hale* *Scotti Hale*  
Nelson County Court Clerk